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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	WT Docket No. 07-208
	)	
Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation	)	File Nos. 0003155487, *et al.*, ITC-T/C-20070904-00358
	)	
For Consent To Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases	)	
	)	
and	)	
	)	
Petitions for Declaratory Ruling that the Transaction Is Consistent with Section 310(b)(4) of the Communications Act	)	File Nos. ISP-PDR-20070928-00011, ISP-PDR-20070928-00012

MEMORANDUM OPINION AND ORDER AND DECLARATORY RULING

Adopted: July 31, 2008 **Released: August 1, 2008**

By the Commission: Commissioner Adelstein approving in part, concurring in part and issuing a statement; Commissioner Copps approving in part, dissenting in part and issuing a statement.

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I. INTRODUCTION

1. In this Memorandum Opinion and Order and Declaratory Ruling, we consider a series of applications filed by Cellco Partnership d/b/a Verizon Wireless ("Cellco"), AirTouch Cellular ("AirTouch" and, together with Cellco, "Verizon Wireless") and Rural Cellular Corporation ("RCC" and, together with Verizon Wireless, the "Applicants") pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended ("Communications Act").[1] In these applications, the Applicants are seeking Commission approval of the transfer of control of licenses, authorizations, and spectrum manager leasing arrangements held by RCC and its subsidiaries from RCC to Verizon Wireless.[2] As proposed, RCC would continue to exist after closing as a wholly-owned subsidiary of

[1] 47 U.S.C. §§ 214, 310(d).

[2] For a complete list of applications involved in this transaction, *see* Verizon Wireless and Rural Cellular Corporation Seek FCC Consent to Transfer Control of Licenses, Spectrum Manager Leases, and Authorizations, WT (continued....)

AirTouch, which is a wholly-owned subsidiary of Cellco. RCC would continue to own the stock of its subsidiaries, and the RCC subsidiaries would continue to hold all of the licenses and spectrum leasing arrangements that they held prior to the completion of this proposed transaction.

2. These transfer of control applications pertain to licenses for the Part 22 Cellular Radiotelephone Service ("cellular"), the Part 22 Paging and Radiotelephone Service ("paging"), the Part 24 Personal Communications Service ("PCS"), the Part 101 Local Multipoint Distribution Service ("LMDS"), the Part 101 Local Television Transmission Service, and the Part 101 Common Carrier Fixed Point-to-Point Microwave Service ("microwave"), as well as international section 214 authorizations. The Applicants also have filed petitions for declaratory ruling that the public interest would be served by extending to RCC's subsidiaries and to their wireless licenses and spectrum leasing arrangements, the foreign ownership ruling that the Commission has previously issued to Verizon Wireless under section 310(b)(4) of the Communications Act.[3]

3. Pursuant to sections 214(a), 310(b)(4), and 310(d) of the Communications Act,[4] we must determine whether the approval of these applications seeking consent to the transfer of licenses, leases, and authorizations to Verizon Wireless and the grant of the petitions for declaratory ruling would serve the public interest, convenience, and necessity. Based on the record before us, we find that the Applicants have generally met that burden, with certain conditions. Because the proposed transaction would result in the combination of overlapping mobile telephony coverage and services, we applied an initial screen to identify those markets in which there clearly is no competitive harm. The initial screen indicated that there was no competitive harm in most of the overlap markets, but identified 17 markets[5] in which a market-by-market competitive analysis was necessary. We then conducted a market-by-market competitive analysis to examine the potential consequences of increasing Verizon Wireless's market share and spectrum holdings in those markets. We find that competitive harm is unlikely in most of these markets, primarily because multiple other service providers in these markets would be an effective competitive constraint on the behavior of the merged entity. With regard to six local areas, however, our case-by-case analysis indicates that competitive harms likely will result. In these areas, we impose narrowly tailored conditions that will effectively remedy the potential for these particular harms.

II. BACKGROUND

A. Description of Applicants

1. Verizon Wireless

4. Verizon Wireless, which is incorporated in Delaware and headquartered in Basking Ridge, New Jersey, is the largest wireless company in the United States based on revenues[6] and the second

(Continued from previous page)
Docket No. 07-208, *Public Notice*, 22 FCC Rcd 18356 (2007). File No. 0003155487 has been designated the lead application ("Application"). The other applications contain an exhibit referring to the exhibits attached to file no. 0003155487. Thus, for convenience, when referring to these applications, we only cite to the lead Application. One of the applications filed to transfer control of a spectrum manager leasing arrangement from RCC Minnesota, Inc. to Verizon Wireless has been withdrawn because the leases were terminated. *See* Application, File No. 0003163550.

[3] 47 U.S.C. § 310(b)(4). *See* Requests for Declaratory Ruling, File Nos. ISP-PDR-20070928-00011, ISP-PDR-20070928-00012 ("Petitions for Declaratory Ruling").

[4] 47 U.S.C. §§ 214(a), 310(b)(4), 310(d).

[5] The markets identified by the initial screen were 17 Cellular Market Areas ("CMAs") and 15 Component Economic Areas ("CEAs"). The 17 CMAs and 15 CEAs are listed in Appendix A. For convenience, in this Memorandum Opinion and Order we simply refer to the 17 CMAs. *See* Appendix A.

[6] Application, Description of Transaction, Public Interest Showing and Related Requests and Demonstration, at 2 ("Application, Public Interest Statement"); Rural Cellular, Investor Relations Press Release, Verizon Wireless to (continued....)

largest wireless company based on the number of subscribers.[7] For the fiscal year of 2007, Verizon Wireless had revenues of approximately $43.9 billion.[8] Verizon Wireless provides wireless voice and data services and equipment sales across the United States.[9] As of May 30, 2008, Verizon Wireless reports that it serves approximately 67.2 million customers throughout the United States on its wireless voice and data network.[10] Verizon Wireless utilizes Code Division Multiple Access ("CDMA") technology, along with 1xRTT, Evolution-Data Optimized ("EvDO") and EvDO Revision A ("EvDO Rev. A") technology for wireless broadband services,[11] operating on 800 MHz cellular and 2 GHz PCS spectrum.[12] Its digital network covers a total aggregate population ("POPs") of approximately 265 million[13] and provides service in 49 of the top 50 markets in the United States.[14]

(Continued from previous page)
Acquire Rural Cellular Corporation, Expand the Nation's Most Reliable Wireless Network (July 30, 2007) ("Transaction Press Release"), *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=85091&p=irol-newsArticle_print&ID=1034183&highlight= (last visited June 28, 2008); Verizon Communications Inc., Form 10-Q, at 1 (filed Apr. 29, 2008) ("Verizon 10-Q")

[7] *See* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Twelfth Report*, 23 FCC Rcd 2241, 2256 Chart 1 (2008) ("*Twelfth Competition Report*") (providing a chart of 2006 subscriber information).

[8] *See* Verizon Communications, 2007 Annual Report, at 2, 20 ("Verizon Annual Report"), *available at* http://investor.verizon.com/financial/quarterly/pdf/07_annual_report.pdf (last visited June 28, 2008); Verizon Wireless, Press Kit, at 2 (May 30, 2008) ("Verizon Wireless Press Kit"), *available at* http://news.vzw.com/pdf/Verizon_Wireless_Press_Kit.pdf (last visited June 28, 2008); Verizon Wireless, About Us, Overview, http://aboutus.vzw.com/aboutusoverview.html ("Verizon Wireless Overview") (last visited June 28, 2008); Verizon, Investor Relations, Business Units, Domestic Wireless, http://investor.verizon.com/business/wireless.aspx ("Verizon Domestic Wireless") (last visited June 28, 2008).

[9] Verizon Domestic Wireless at 1; Verizon, Investor Relations, Business Units, http://investor.verizon.com/business/index.aspx ("Verizon Business Units") (last visited June 28, 2008).

[10] *See* Verizon Wireless Press Kit at 2; Verizon Domestic Wireless at 1; Verizon Business Units at 1; Verizon Wireless Overview. At the time it filed the Applications seeking consent to the proposed transaction, Verizon Wireless stated that it had 62.1 million subscribers. Application, Public Interest Statement at 1; Transaction Press Release at 2.

[11] Verizon Wireless provided service using analog technology, but it terminated its analog AMPS cellular service on February 18, 2008. *See* Application, Public Interest Statement at 2 n.4 (citing http://support.vzw.com/faqs/Wireless%20Issues/analog_retirement.html (last visited Mar. 13, 2008)).

[12] Application, Public Interest Statement at 2; Verizon Wireless Press Kit at 2. As of December 2007, an enhanced version of EvDO – EvDO Rev A – was available to more than 240 million POPs. Verizon, Investor Relations, Company Profile, Corporate History, Recent History, http://investor.verizon.com/profile/history/history_001.aspx (Verizon Recent History") (last visited June 28, 2008).

[13] Verizon Wireless Press Kit at 3. Recently, Verizon Wireless entered into an agreement to acquire ALLTEL Corporation. *See* Verizon, Investor Relations, Verizon Wireless to Acquire ALLTEL; Will Expand Nation's Most Reliable Wireless Network (June 5, 2008), *available at* http://investor.verizon.com/print.aspx?pg=http://investor.verizon.com/news/view.aspx?NewsID=923. The applications seeking consent to the transfer of control of licenses, spectrum manager and *de facto* transfer leasing arrangements, and authorizations from Atlantis Holdings LLC, which is the parent company of ALLTEL Corporation, to Verizon Wireless and requesting a declaratory ruling on foreign ownership have been filed and public comment has been sought. *See* Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer Licenses, Spectrum Manager and *De Facto* Transfer Leasing Arrangements, and Authorizations, and Request a Declaratory Ruling on Foreign Ownership, WT Docket No. 08-95, *Public Notice*, DA 08-1481 (rel. June 25, 2008); Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements and (continued....)

5. Cellco, which does business under the name of Verizon Wireless, is a general partnership that is a joint venture that is ultimately owned by Verizon Communications Inc. ("Verizon") and Vodafone Group Plc. ("Vodafone"), each through a series of intermediate companies.[15] Verizon and Vodafone hold a 55 and 45 percent indirect interest, respectively, in the joint venture.[16] Cellco's Board of Representatives is comprised of nine members – five designated by Verizon and four by Vodafone.[17] Verizon holds majority control of the Board and, therefore, has affirmative control of Cellco and its subsidiaries, including AirTouch.[18]

6. Verizon, headquartered in New York and incorporated in Delaware, provides wireline, wireless, and broadband services to mass market, business, government and wholesale customers.[19] Verizon operates two network-based business units – the wireline unit, which includes Verizon Telecom and Verizon Business, and Verizon Wireless.[20] Verizon Telecom provides communications services, including local telephone services and nationwide long distance, broadband, video and data, and entertainment and information services over a fiber-optic network in 28 states and Washington, D.C. for consumers and small and medium size businesses.[21] Verizon Business provides voice, data, and Internet communications services, along with advanced communications solutions in networking, security, mobility, hosting, and IT solutions to medium and large businesses and government entities.[22] As of December 2007, Verizon's wireline network included more that 41 million wireline access lines and 8.2 million broadband connections nationwide.[23] Verizon's network also includes approximately 13 million miles of local inner-city and long-distance all-digital fiber-optic systems ("FiOS").[24] In 2007, Verizon's

(Continued from previous page)

Petition for Declaratory Ruling that the Transaction Is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Order*, DA 08-1733 (WTB rel. July 24, 2008) (extending pleading cycle).

[14] Recent History at 1. Verizon Wireless does not hold PCS or cellular licenses in the state of Alaska, but serves the lower 48 contiguous states, the District of Columbia, and Hawaii. *See id.* at 1 n.3.

[15] Application, Public Interest Statement at 2; Cellco Partnership, FCC Form 602, Attachment – Ownership of Cellco Partnership at 1 (filed Aug. 30, 2007) ("Cellco Form 602"); Transaction Press Release at 1; Verizon Wireless, Investors, http://news.vzw.com/investor/index.html (last visited June 28, 2008) (stating that Verizon Wireless in not currently a reporting company under the Securities Exchange Act of 1934, does not make filings with the Securities and Exchange Commission, and does not announce earnings or other financial performance information, but instead Verizon includes information about Verizon Wireless in its earnings announcements).

[16] Cellco Form 602, Attachment – Ownership of Cellco Partnership at 1; Verizon Annual Report at 26.

[17] Cellco Form 602, Attachment – Ownership of Cellco Partnership at 1.

[18] *Id.*.

[19] Verizon, Investor Relations, Company Profile, Overview, http://investor.verizon.com/profile/overview.aspx ("Verizon Overview") (last visited June 28, 2008); Verizon, Corporate History, http://investor.verizon.com/profile/history/index.aspx ("Verizon Corporate History") (last visited June 28, 2008).

[20] Verizon Annual Report at 44; Verizon Business Units at 1.

[21] Verizon Annual Report at 23, 24; Verizon Communications Inc., Form 10-Q, at 21 (filed Apr. 29, 2008) ("Verizon Form 10-Q"), *available at* http://www.sec.gov/Archives/edgar/data/732712/000119312508095227/d10q.htm (last visited June 28, 2008); Recent History at 2; Verizon, Investor Relations, Business Units, Overview, http://investor.verizon.com/business/overview.aspx ("Verizon Business Units Overview") (last visited June 28, 2008).

[22] Verizon Annual Report at 23, 24; Verizon Form 10-Q at 21; Recent History at 2; Verizon Business Units Overview.

[23] Verizon Recent History at 1.

[24] *Id.* at 1-2.

wireline operations generated approximately $50.3 billion in gross revenues,[25] and Verizon, which is traded on the New York Stock Exchange,[26] generated consolidated operating revenues of approximately $93.5 billion.[27]

7. Vodafone's headquarters are located in the United Kingdom.[28] Its ordinary shares are listed on the London stock exchange and its American Depository Shares are listed on the New York Stock Exchange.[29] Vodafone provides mobile voice and data, paging, and internet services in 25 countries in Europe, Asia, the Middle East, and the United States through its subsidiaries, joint ventures, and other investments.[30] Specifically, Vodafone holds interests in 33 licensed network operators in 27 countries.[31] Vodafone's presence in the United States is through its indirect non-controlling interest in Cellco.[32] Also since 2006, Vodafone has entered into agreements for the development and marketing of services under dual brand logos with network operators in countries where it does not have an equity stake.[33] As of March 31, 2008, Vodafone had 260 million subscribers worldwide calculated on a proportionate basis with Vodafone's interests.[34]

2. Rural Cellular Corporation

8. RCC, incorporated in Minnesota and headquartered in Alexandria, Minnesota, is a wireless communications service provider that focuses primarily on rural markets in the United States.[35] RCC currently serves approximately 790,000 customers located primarily in rural areas in 15 states.[36] RCC has five regional territories – a Central cluster serving locations in Kansas; a Midwest cluster serving locations in Minnesota, North Dakota, South Dakota, and Wisconsin; a Northeast cluster serving areas in Massachusetts, Maine, New Hampshire, New York, and Vermont; a Northwest cluster serving locations in Washington, Idaho, and Oregon; and, a Southern cluster serving locations in Alabama and Mississippi.[37] RCC provides service to its customers, under the name of UNICEL,[38] using primarily 800

[25] Verizon Annual Report at 20; Verizon Business Units Overview at 1.

[26] Verizon Corporate History at 1; Verizon Wireless Investors at 1.

[27] Verizon Annual Report at 2, 5, 20; Verizon Recent History at 2; Verizon Wireless Press Kit at 2.

[28] *See* Vodafone, About Vodafone, http://www.vodafone.com/start/investor_relations/vodafone_at_a_glance0.html ("About Vodafone") (last visited June 30, 2008).

[29] *See id.*

[30] *See* About Vodafone; Vodafone, Fact Sheet, http://www.vodafone.com/start/investor_relations/vodafone_at_a_glance0/fact_sheet.html (last visited June 30, 2008).

[31] *See* Vodafone, Structure and Management, http://www.vodafone.com/start/investor_relations/structure_and_management.html (last visited June 30, 2008).

[32] *See* About Vodafone; Application, Public Interest Statement at 58.

[33] *See* About Vodafone.

[34] *See id.*

[35] Rural Cellular Corporation, Form 10-K, at 1, 4 (filed Mar. 14, 2008) ("RCC 10-K").

[36] Rural Cellular Corporation, Form 10-Q, at 23 (filed May 12, 2008) ("RCC 10-Q"); UNICEL, About Us, Licensed Area, http:www.unicel.com/about us/investor_relations ("RCC License Areas") (last visited June 28, 2008); Transaction Press Release at 1, 2; RCC 10-K at 4. At the time RCC filed its application, it reported that it served over 778,000 customers. *See* Application, Public Interest Statement at 3.

[37] Application, Public Interest Statement at 3 n.10; Transaction Press Release at 1; RCC 10-K at 4.

[38] RCC 10-K at 1.

MHz cellular and 1900 MHz PCS licenses and spectrum leases,[39] and utilizes both CDMA and Global System for Mobile Communications ("GSM") technology.[40] Specifically, RCC uses CDMA2000/1XRTT technology in the Midwest and GSM/General Packet Radio Service ("GPRS")/Enhanced Data Rates for GSM Evolution ("EDGE") service in its other territories.[41] RCC's cellular and PCS licenses collectively cover 8.6 million POPs and its network covers approximately 7.2 million POPs.[42] RCC also holds LMDS, microwave, and paging licenses, along with one Local Television Transmission license,[43] as well as several international section 214 authorizations in support of its service offerings.[44] RCC holds its licenses through four subsidiaries – RCC Atlantic Licenses, LLC ("RCC Atlantic"), RCC Minnesota, Inc. ("RCC Minnesota"), TLA Spectrum, LLC ("TLA Spectrum"), and Wireless Alliance, LLC ("Wireless Alliance") (collectively, "RCC Subsidiaries").[45] All of these licensee subsidiaries are wholly-owned by RCC, with the exception of Wireless Alliance.[46] RCC, a publicly-traded company on the NASDAQ,[47] had total revenues of $635.3 million in 2007.[48]

B. Description of Transaction

9. On July 29, 2007, RCC, Cellco, and AirTouch entered into an Agreement and Plan of Merger ("Merger Agreement").[49] Pursuant to this Merger Agreement, Rhino Merger Sub Corporation ("Merger Sub"),[50] a newly formed, wholly-owned subsidiary of AirTouch, will merge with and into RCC, with RCC continuing as the surviving corporation.[51] After consummation of the proposed transaction, RCC

[39] *See* Application, Public Interest Statement at 3-4; RCC License Areas; RCC 10-K at 5.

[40] RCC 10-K at 12; RCC 10-Q at 23.

[41] RCC 10-K at 12.

[42] RCC 10-Q at 23; Application, Public Interest Statement at 4.

[43] RCC's paging business currently serves over 2,460 customers. The Applicants have indicated, however, that RCC plans to terminate this business. Application, Public Interest Statement at 4 n.11.

[44] Application, Public Interest Statement at 3-4.

[45] *Id.* at 4. RCC previously operated a separate retail long distance business under the name RCC Atlantic Long Distance, LLC. In mid-2005, with FCC consent, the company sold the long distance assets and terminated all operations associated with that business. While the entity appears on older RCC FCC Form 602 filings, it was merged with and into RCC and no longer exists. *Id.* at 4 n.12.

[46] *Id.* at 4. Wireless Alliance is 70 percent owned and controlled by RCC, with the remaining 30 percent owned by T-Mobile USA, Inc. ("T-Mobile"). Wireless Alliance holds two PCS licenses (WPOH983 and WPOH998), both of which are partitioned, disaggregated B Block spectrum in the Minneapolis, MN MTA (MTA012). Wireless Alliance's current ownership is described in ULS Ownership Disclosure File Nos. 0002940661 (T-Mobile USA, Inc.) and 0002856474 (RCC Mn., Inc.). *Id.* at 4 n.13.

[47] UNICEL, About Us, Corporate Profile, http:www.unicel.com/about us/investor_relations (last visited June 28, 2008); Rural Cellular – Investor Relations Press Release, Rural Cellular Corporation Shareholders Approve Merger Agreement with Verizon Wireless (Oct. 4, 2007) ("RCC Shareholder Approval Press Release"), *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=85091&p=irol-newsArticle_print&ID=1059238&highlight= (last visited June 30, 2008); Transaction Press Release at 2.

[48] RCC 10-K at 42.

[49] Application, Public Interest Statement at 4.

[50] Merger Sub was formed on July 30, 2007 and, on July 31, 2007, Merger Sub executed and became a party to the Merger Agreement. *Id.* at 5 n.15.

[51] *Id.* at 4-5.

will be a wholly-owned subsidiary of AirTouch and a wholly-owned indirect subsidiary of Cellco.[52] Thus, all licenses, leases, and authorizations currently controlled by RCC and its subsidiaries will be controlled by Verizon Wireless.[53]

10. As proposed, Verizon Wireless will acquire RCC for approximately $2.67 billion in cash and assumed debt.[54] Upon consummation of the transaction, each issued and outstanding share of Class A and Class B common stock of RCC will be canceled and converted into the right to receive $45.00 in cash, without interest.[55] Each outstanding option to acquire RCC's common stock will be cancelled in exchange for an amount equal to the product of: $45.00 minus the exercise price of each option and the number of shares underlying the option.[56] Further, at consummation, each share of common stock of Merger Sub will be converted into one share of common stock in the surviving corporation, RCC,[57] which will, in turn, make RCC a subsidiary of AirTouch.

11. The Applicants state that the proposed transaction will enhance Verizon Wireless's network coverage in markets adjacent to its existing service areas.[58] The proposed transaction would "increase Verizon Wireless's coverage by approximately 4.7 million licensed POPs . . . , and increase its customer base by more than 700,000."[59] Verizon Wireless expects to deploy CDMA service in RCC's existing GSM markets and convert the GSM customers to CDMA service.[60] However, it plans to maintain RCC's existing GSM networks to provide roaming services to other GSM providers' customers.[61]

C. Application Review Process

1. Commission Review Process

12. Between September 4, 2007 and September 19, 2007, pursuant to section 310(d) of the Communications Act,[62] the Applicants filed applications seeking consent to the proposed transfer of control of licenses and spectrum manager leases held by RCC Subsidiaries from RCC to Verizon Wireless.[63] The Applicants also filed an application, pursuant to section 214 of the Communications Act,[64] seeking consent to the transfer of control of RCC's international section 214 authorizations to

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[52] *Id.* at 5.

[53] *Id.* at 6.

[54] RCC Shareholder Approval Press Release at 1; Transaction Press Release at 1; Verizon Annual Report at 33; Verizon Form 10-Q at 7, 28. The total value of the proposed transaction – $2.67 billion – includes the total equity price of $757 million on a fully-diluted basis and RCC's net debt. *See* Transaction Press Release at 1; Verizon Annual Report at 33; Verizon Form 10-Q at 7, 28.

[55] Application, Public Interest Statement at 6; Rural Cellular Corporation, Form 8-K, at 1 (filed July 30, 2007) ("RCC Form 8-K") (containing the Merger Agreement as an exhibit), *available at* http://www.sec.gov/Archives/edgar/data/869561/000134100407002211/0001341004-07-002211.txt.

[56] Application, Public Interest Statement at 6; RCC Form 8-K at 1.

[57] RCC Form 8-K at 6.

[58] Transaction Press Release at 1; Application, Public Interest Statement at 8.

[59] Transaction Press Release at 1.

[60] Transaction Press Release at 1; Application, Public Interest Statement at 13, 23.

[61] Transaction Press Release at 1; Application, Public Interest Statement at 23.

[62] 47 U.S.C. § 310(d).

[63] *See* discussion of applications filed *supra* note 2.

[64] 47 U.S.C. § 214.

Verizon Wireless,[65] and two petitions seeking declaratory rulings that it is in the public interest for RCC's subsidiaries to have indirect foreign ownership in excess of the 25 percent benchmark under section 310(b)(4) of the Communications Act.[66] On October 11, 2007, the Commission released a Public Notice seeking comment on the proposed transaction.[67] The Public Notice established a pleading cycle for the applications and petitions for declaratory ruling, with petitions to deny due November 13, 2007, oppositions due November 23, 2007, and replies due November 30, 2007.

13. *Petitions and Comments Received in Response to Public Notice.* Following release of the Public Notice, the Commission received one petition to deny, filed by the Vermont Department of Public Service ("VDPS"), requesting that the Commission either conditionally approve the Application or deny it in its entirety.[68] The Commission also received a letter from Senator Bernard Sanders expressing concerns about the impact that the proposed transaction will have on wireless coverage in Vermont and proposing that Verizon Wireless be permitted to complete the acquisition of RCC subject to conditions.[69] Additionally, the Commission received two comments expressing concern about the effects of the proposed transaction on the ability to get service in Vermont.[70]

14. The Commission also received a letter filed by the Department of Homeland Security ("DHS"), with the concurrence of the Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI"), requesting that the Commission defer action on the RCC applications to allow them an opportunity to complete their review for any national security, law enforcement, and public safety issues.[71] Following their review, on April 2, 2008, DHS and DOJ filed a Petition to Adopt Conditions to Authorizations and Licenses with respect to the RCC applications.[72]

15. *Requests to Extend Deadline for Filing Petitions to Deny.* The Commission received two requests to extend the deadline for filing a petition to deny – a motion for extension of time from Vermont Public Interest Research Group ("Vermont PIRG")[73] and a letter from Senator Bernard Sanders.[74] Both

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[65] *See* File No. ITC-T/C-20070904-00358.

[66] 47 U.S.C. § 310(b)(4). *See* File Nos. ISP-PDR-20070928-00011, ISP-PDR-20070928-00012.

[67] *See* Verizon Wireless and Rural Cellular Corporation Seek FCC Consent to Transfer Control of Licenses, Spectrum Manager Leases, and Authorizations, WT Docket No. 07-208, *Public Notice*, 22 FCC Rcd 18356 (2007) ("Public Notice").

[68] Petition to Condition Approval or Deny of the Vermont Department of Public Service, WT Docket No. 07-208 (filed Nov. 13, 2007) ("VDPS Petition to Deny").

[69] Letter from Bernard Sanders, United States Senator, to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission (dated Oct. 29, 2007) ("Senator Sanders Oct. 29, 2007 Letter"). In addition, by email dated November 16, 2007, Senator Sanders transmitted to Chairman Martin two editorials from Vermont newspapers reiterating many of the concerns raised in the Senator Sanders Oct. 29, 2007 Letter. Email from Bernard Sanders, United States Senator, to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission (dated Nov. 16, 2007), enclosing November 7, 2007 editorial from The Burlington Free Press and November 11, 2007 editorial from The Valley News.

[70] Comment of Lake Champlain Regional Chamber of Commerce, WT Docket No. 07-28 (filed Nov. 8, 2007); Comment of Vermont League of Cities and Towns, WT Docket No. 07-208 (filed Nov. 13, 2007).

[71] Letter from Gregory Pinto, Director, Regulatory Policy, United States Department of Homeland Security, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated Nov. 9, 2007).

[72] *See infra* Section VIII.

[73] Motion for Extension of Time of Vermont Public Interest Research Group, WT Docket No. 07-208 (filed Nov. 9, 2007) ("Vermont PIRG Extension Motion").

[74] *See* Senator Sanders Oct. 29, 2007 Letter.

Vermont PIRG and Senator Sanders requested an additional 90 days for the filing of petitions to deny to allow sufficient analysis of the proposed transaction and time for petitions and comments to be filed by interested parties.[75] On November 13, 2007, the Applicants filed an opposition to the Vermont PIRG Extension Motion arguing that an extension was not justified and would delay the benefits to the public associated with the proposed transaction.[76]

16. The Wireless Telecommunications Bureau ("Bureau"), on November 13, 2007, granted Vermont PIRG's motion for extension of time.[77] The Bureau found that the justification offered by Vermont PIRG for a 90-day extension of the filing periods was warranted and granted the requested relief.[78] The Bureau further stated that the opposition filed by the Applicants did not provide sufficient basis for rejecting Vermont PIRG's justification.[79] Accordingly, the revised date for petitions to deny was changed to February 11, 2008, oppositions were due February 21, 2008, and replies were due February 28, 2008.[80]

17. In response to the Bureau's 90-day extension of the deadline for filing petitions to deny, the Applicants filed a petition for reconsideration, on November 16, 2007.[81] Both Vermont PIRG and VDPS opposed the Applicants' petition for reconsideration, arguing that their request was broader than competitive concerns in Vermont.[82] Senator Sanders, in a letter to Chairman Martin dated November 20, 2007, also opposed the Applicants' petition for reconsideration, asserting that the scope of Applicants' commitment to divest certain GSM assets was unclear and would not, in any event, address all of the concerns previously raised by the Senator.[83] The Applicants filed a reply to the oppositions on December 3, 2007, arguing that there was no basis for granting an extension of time.[84] Subsequently, on December

[75] Vermont PIRG Extension Motion at 1; Senator Sanders Oct. 29, 2007 Letter at 1. By letter submitted in the docket on November 5, 2007, the Chairman wrote Senator Sanders that, as of the date of the letter, no parties had yet asked the Commission to extend the petition to deny deadline. Letter from Kevin J. Martin, Chairman, Federal Communications Commission, to The Honorable Bernard Sanders, United States Senate (submitted Nov. 5, 2007). Chairman Martin's letter further stated the Commission would give careful consideration to any request for extension that it received. *Id.* Finally, the Chairman advised Senator Sanders that the issues raised by the Senator's letter would be considered as part of the Commission's review of the proposed Verizon Wireless-RCC transaction. *Id.*

[76] Opposition of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation to Motion for Extension of Time of Vermont Public Interest Research Group, WT Docket No. 07-208 (filed Nov. 13, 2007) ("Verizon Wireless/RCC Opposition to Extension Motion").

[77] Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation, WT Docket No. 07-208, *Order*, 22 FCC Rcd 19799 (WTB 2007) ("Comment Extension Order").

[78] *See id.* at 19801 ¶ 6.

[79] *See id.*

[80] *See id.* at 19801 ¶¶ 6, 7.

[81] Petition for Reconsideration of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation to Grant of Extension of Time, WT Docket No. 07-208 (filed Nov. 16, 2007) ("Verizon/RCC Petition for Reconsideration").

[82] Opposition to Petition for Reconsideration of Vermont Public Interest Research Group, WT Docket No. 07-208 (filed Nov. 26, 2007) ("Vermont PIRG Reconsideration Opposition"); Comments of the Vermont Department of Public Service, WT Docket No. 07-208, DA 07-4192 (filed Nov. 26, 2007) ("VDPS Reconsideration Comments").

[83] Letter from Bernard Sanders, United States Senator, to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission (dated Nov. 20, 2007) ("Senator Sanders Nov. 20, 2007 Letter").

[84] Reply to Opposition to Petition for Reconsideration of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation, WT Docket No. 07-208 (filed Dec. 3, 2007) ("Verizon Wireless/RCC Reconsideration Reply").

5, 2007, the Applicants filed an *ex parte* notification, arguing that the extension of time was no longer necessary since they had reached an agreement to sell to AT&T Inc. ("AT&T") RCC's overlapping cellular assets in Vermont.[85] On December 12, 2007, Vermont PIRG filed an opposition to the Applicants' *ex parte* notification stating that the Applicants have failed to show that the sale of RCC's overlapping cellular assets will address the issues raised by Vermont PIRG and others.[86]

18. *Subsequently Filed Petitions and Comments.* On February 11, 2008, a petition to deny the proposed transaction was filed by the Consumer Federation of America, Consumers Union, Free Press, U.S. Public Interest Research Group and Vermont PIRG ("Joint Petitioners").[87] Joint Petitioners state that the transaction, as proposed, would have anticompetitive and anti-consumer effects in several areas, most of which are rural. VDPS also filed supplementary comments in support of its previously filed petition to deny, restating that, absent conditions to preserve and protect the GSM network in the State of Vermont, the Application should be denied.[88] The Commission also received numerous brief comments, including e-mail comments, from individuals raising concerns about the transaction's impact, primarily in Vermont but elsewhere as well.[89]

19. On February 21, 2008, the Applicants responded to the two petitions to deny and associated comments.[90] The Joint Petitioners replied, on February 28, 2008, to the Applicants' filing in opposition,

[85] Letter from John T. Scott, III, Vice President & Deputy General Counsel Regulatory Law, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, *Ex Parte*, WT Docket No. 07-208 (filed Dec. 5, 2007) ("Verizon Wireless Dec. 5, 2007 *Ex Parte* Filing").

[86] Letter from Larry A. Blosser, Vermont Public Interest Research Group, to Marlene H. Dortch, Secretary, Federal Communications Commission, *Ex Parte*, WT Docket No. 07-208 (filed Dec.12, 2007) ("Vermont PIRG Dec. 12, 2007 *Ex Parte* Filing").

[87] Petition to Deny of Consumer Federation of America, Consumers Union, Free Press, U.S. Public Interest Research Group and Vermont Public Interest Research Group, WT Docket No. 07-208 (filed Feb. 11, 2008) ("Joint Petitioners Petition to Deny").

[88] Supplement to Petition to Condition Approval or Deny of the Vermont Department of Public Service, WT Docket No. 07-208 (filed Feb. 11, 2008) ("VDPS Supplement to Petition to Deny").

[89] Brief and e-mail comments were filed by 44 people or entities, most of whom voiced concerns about the proposed transaction. The vast majority of these commenters are residents of Vermont, although residents of Maine, New York, North Dakota, Kentucky, and Washington also filed comments. Some of the concerns raised by these comments include: loss of coverage; loss of automatic roaming at reasonable rates; transition to new service plans and/or handsets, potentially at a higher cost; replacement of GSM service by CDMA service; concerns about less competition, higher costs, and/or degraded service due to monopoly presence; and concerns about Verizon and/or Verizon Wireless customer service.

[90] *See* Opposition to Petitions to Deny and Comments of Rural Cellular Corporation and Cellco Partnership d/b/a Verizon Wireless, WT Docket No. 07-208 (filed Feb. 21, 2008) ("Verizon Wireless/RCC Opposition"). Attached to this filing were copies of four letters from members of the U.S. Senate and the U.S. House of Representatives urging that no additional time beyond the 90-day extension be afforded in this proceeding. *See* Letter from Cliff Stearns, U.S. Representative, Terry Everett, U.S. Representative, and Fred Upton, U.S. Representative, to Chairman Kevin Martin, Federal Communications Commission (dated Feb. 12, 2008); Letter from Senator Richard Shelby and Senator Jeff Sessions to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission (dated Feb. 7, 2008); Letter from Pat Roberts, United States Senator, Sam Brownback, United States Senator, and Jerry Moran, United States Congressman, to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission (dated Feb. 7, 2008); and Letter from Tim Johnson, United States Senator, John Thune, United States Senator, and Stephanie Herseth Sandlin, United Stated Representative, to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission (dated Jan. 30, 2008).

continuing to urge the Commission to deny the Application or to grant approval only if certain conditions are also imposed.[91]

20. On March 18, 2008, the Bureau released a public notice announcing that Numbering Resource Utilization and Forecast ("NRUF") reports and local number portability ("LNP") data related to wireless telecommunications carriers would be placed into the record and adopted a protective order pursuant to which the Applicants and third parties would be allowed to review the specific NRUF reports and LNP data placed into the record.[92] The Bureau received no requests to review the NRUF and LNP data that is in the record.

21. On July 25, 2008, Senator Sander filed a letter expressing his continued concerns with Verizon Wireless's proposed acquisition of RCC.[93] He requests either that the Commission withhold approval of the proposed transaction so that it may be considered with the transfer of control of various Commission authorizations held by ALLTEL Corporation to Verizon Wireless,[94] or that the Commission condition any approval on both Verizon Wireless and AT&T committing to "provide service to the large number of rural residents in Vermont and in other states who currently have unreliable or no service at all."[95]

22. *Related Spectrum Swap Applications.* In February and March 2008, Verizon Wireless and AT&T filed applications to exchange certain wireless licenses, spectrum manager leasing arrangements, and related authorizations in parts of Arizona, Kentucky, Nevada, New York, Ohio, Pennsylvania, Vermont, and Washington.[96] As part of this proposed exchange, Verizon Wireless would transfer to AT&T some licenses that it is receiving from RCC, including some markets in Vermont. Although the Bureau placed this proposed exchange of licenses between Verizon Wireless and AT&T in the same docket established for the instant Verizon-RCC transaction (WT Docket No. 07-208), we are not deciding on the proposed exchange at this time and instead will consider it separately at a later time.

23. *Spectrum Leasing Applications.* On July 31, 2008, the Applicants and W. Stephen Cannon ("Management Trustee") submitted via the Commission's Universal Licensing System ("ULS") three short-term *de facto* transfer spectrum leasing applications in order to effectuate the divestiture of six

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[91] Reply to Opposition to Petition to Deny of Consumer Federation of America, Consumers Union, Free Press, U.S. Public Interest Research Group and Vermont Public Interest Research Group, WT Docket No. 07-208 (filed Feb. 28, 2008) ("Joint Petitioners Reply").

[92] Applications of Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of Licenses, Spectrum Manager Leases, and Authorizations, Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports Placed into the Record, Subject to Protective Order, WT Docket No. 07-208, CC Docket No. 99-200, *Public Notice*, 23 FCC Rcd 4539 (2008); Applications of Cellco Partnership b/b/a Verizon Wireless and Rural Cellular Corporation For Consent to Transfer Control of Licenses, Spectrum Manager Leases and Authorizations, WT Docket No. 07-208, CC Docket No. 99-200, *Protective Order*, 23 FCC Rcd 4542 (2008).

[93] Letter from Bernard Sanders, United States Senator, to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission (dated July 25, 2008) ("Senator Sanders July 25, 2008 Letter").

[94] *Id.* at 1, 2.

[95] *Id.* at 1, 3-4.

[96] *See* AT&T Inc. and Verizon Wireless Seek FCC Consent to Assign and Transfer Control of Licenses, Spectrum Leasing Arrangements, and Related Authorizations, WT Docket No. 07-208, *Public Notice*, 23 FCC Rcd 5841 (2008).

CMAs as discussed below.[97] In addition, the Applicants and W. Stephen Cannon, in cooperation with third-party licensees, filed two applications for short-term spectrum manager subleasing arrangements.[98]

2. Department of Justice Review

24. The Antitrust Division of DOJ reviews telecommunications mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that may substantially lessen competition.[99] The Antitrust Division's review is limited solely to an examination of the competitive effects of the acquisition, without reference to national security, law enforcement, or other public interest considerations. The Antitrust Division reviewed the proposed merger between Verizon Wireless and RCC. As a result of its analysis, DOJ concluded that the proposed merger was likely to result in competitive harm in certain markets, and entered into a settlement with the Applicants designed to address its competitive concerns.[100] On June 10, 2008, DOJ filed a Complaint and Preservation of Assets Stipulation and Order with the United States District Court for the District of Columbia ("District Court"),[101] and the parties jointly filed a proposed Final Judgment with the District Court.[102] DOJ will allow the merger to proceed subject to the Applicants' divestiture of business units in six markets.[103]

25. Specifically, under the terms of the settlement between the Applicants and DOJ, Verizon Wireless and RCC have agreed to transfer control of certain cellular licenses and related operational and network assets (including certain employees, retail sites, and subscribers) in the Burlington, VT MSA (CMA248), New York RSA 2 (CMA560), Vermont RSA 1 (CMA679), Vermont RSA 2 (CMA680), Washington RSA 2 (CMA694), and Washington RSA 3 (CMA695).[104] These assets will be transferred to a court-appointed management trustee ("Management Trustee"), who will manage them while Verizon seeks a third-party buyer.[105] The buyer must be someone who, in DOJ's sole judgment, has the intent and capability of being an effective competitor to Verizon Wireless.[106] Verizon Wireless has a period of 120 days from consummation of the transaction (which can be extended for up to 60 days) to sell the assets to

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[97] FCC Form 608, RCC Atlantic Licenses, LLC and W. Stephen Cannon, ULS File No. 0003521488 (filed July 31, 2008); FCC Form 608, RCC Minnesota, Inc. and W. Stephen Cannon, ULS File No. 0003521491 (filed July 31, 2008); FCC Form 608, RCC Minnesota, Inc. and W. Stephen Cannon, ULS File No. 0003521495 (filed July 31, 2008).

[98] These applications were filed on August 1, 2008, on paper, in the Commission's Gettysburg offices.

[99] 15 U.S.C. § 18. DOJ does not review mergers below certain statutorily mandated dollar thresholds, which are currently approximately $63 million (where certain other factors are present) and $252 million. 15 U.S.C. § 18a.

[100] *See generally* United States of America and State of Vermont v. Verizon Communications Inc. and Rural Cellular Corporation, Complaint, Case No. 1:08-cv-00993 (filed June 10, 2008) ("DOJ Complaint"); United States of America and State of Vermont v. Verizon Communications Inc. and Rural Cellular Corporation, Competitive Impact Statement, Case No. 1:08-cv-00993 (filed June 10, 2008) ("DOJ Competitive Impact Statement"). All DOJ filings regarding this matter are available at http://www.usdoj.gov/atr/cases/verizon2.htm.

[101] *See* DOJ Complaint; United States of America and State of Vermont v. Verizon Communications Inc. and Rural Cellular Corporation, Preservation of Assets Stipulation and Order, Case No. 1:08-cv-00993 (entered June 10, 2008) ("DOJ Stipulation").

[102] United States of America and State of Vermont v. Verizon Communications and Rural Cellular Corporation, Proposed Final Judgment, Case No. 1:08-cv-00993 (filed June 10, 2008) ("DOJ Proposed Final Judgment").

[103] *See* DOJ Complaint at 7; DOJ Proposed Final Judgment at 3-6, 7-11.

[104] *See* DOJ Proposed Final Judgment at 3-6, 7-11; DOJ Competitive Impact Statement at 7, 10-13.

[105] *See* DOJ Stipulation at 8-13.

[106] DOJ Proposed Final Judgment at 10-11.

a third-party buyer or divest the assets to a divestiture trustee ("Divestiture Trustee"), who will both manage and market the assets for sale to a third party.[107]

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

26. Pursuant to sections 214(a) and 310(d) of the Communications Act, we must determine whether the Applicants have demonstrated that the proposed transfers of control of licenses and authorizations will serve the public interest, convenience, and necessity.[108] In making this assessment, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act,[109] other applicable statutes, and the Commission's rules.[110] If the transaction does

[107] *See id.* at 7-8.

[108] 47 U.S.C. §§ 214(a), 310(d).

[109] Section 310(d), 47 U.S.C. § 310(d), requires that we consider the applications as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. *See, e.g.*, Applications of T-Mobile USA, Inc. and SunCom Wireless Holdings, Inc. For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-237, *Memorandum Opinion and Order*, 23 FCC Rcd 2515, 2519 ¶ 9 (2008) ("*T-Mobile-SunCom Order*"); Application of Aloha Spectrum Holdings Company LLC (Assignor) and AT&T Mobility II LLC (Assignee) Seeking FCC Consent For Assignment of Licenses and Authorizations, WT Docket No. 07-265, *Memorandum Opinion and Order*, 23 FCC Rcd 2234, 2236 ¶ 7 (2008) ("*AT&T-Aloha Order*"); Applications of AT&T Inc. and Dobson Communications Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-153, *Memorandum Opinion and Order*, 22 FCC Rcd 20295, 20301 ¶ 10 (2007) ("*AT&T-Dobson Order*"); Applications of ALLTEL Corporation, Transferor, and Atlantis Holdings LLC, Transferee, For Consent To Transfer Control of Licenses, Leases and Authorizations, WT Docket No. 07-128, *Memorandum Opinion and Order*, 22 FCC Rcd 19517, 19519-20 ¶ 7 (2007) ("*ALLTEL-Atlantis Order*"); AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74, *Memorandum Opinion and Order*, 22 FCC Rcd 5662, 5672 ¶ 17 (2007) ("*AT&T-BellSouth Order*"); Applications for the Assignment of License from Denali PCS, L.L.C to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C to General Communications, Inc., WT Docket No. 05-114, *Memorandum Opinion and Order*, 21 FCC Rcd 14863, 14871 ¶ 15 (2006) ("*GCI-Alaska DigiTel Order*"); Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc., WT Docket No. 06-76, *Memorandum Opinion and Order*, 21 RCC Rcd 13580, 13588 ¶ 13 (2006) ("*DoCoMo-Guam Order*"); Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc., WT Docket No. 05-339, *Memorandum Opinion and Order*, 21 FCC Rcd 11526, 11535 ¶ 16 (2006) ("*ALLTEL-Midwest Wireless Order*"); Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees, *Memorandum Opinion and Order*, 21 FCC Rcd 7358, 7360 ¶ 7 (2006) ("*Sprint Nextel-Nextel Partners Order*"); SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control, WC Docket No. 05-65, *Memorandum Opinion and Order*, 20 FCC Rcd 18290, 18300 ¶ 16 (2005) ("*SBC-AT&T Order*"); Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control, WC Docket No. 05-75, *Memorandum Opinion and Order*, 20 FCC Rcd 18433, 18442 ¶ 16 (2005) ("*Verizon-MCI Order*"); Applications of Nextel Communications, Inc. and Sprint Corporation, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 13976 ¶ 20 (2005) ("*Sprint-Nextel Order*"); Applications of Western Wireless Corporation and ALLTEL Corporation, WT Docket No. 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13053, 13062 ¶ 17 (2005) ("*ALLTEL-Western Wireless Order*"); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21542 ¶ 40 (2004) ("*Cingular-AT&T Wireless Order*").

[110] *See, e.g.*, *T-Mobile-SunCom Order*, 23 FCC Rcd at 2519 ¶ 9; *AT&T-Aloha Order*, 23 FCC Rcd at 2236 ¶ 7; *AT&T-Dobson Order*, 22 FCC Rcd at 20301 ¶ 10; *ALLTEL-Atlantis Order*, 22 FCC Rcd at 19519-20 ¶ 7; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14871 ¶ 15; *DoCoMo-Guam Order*, 21 FCC Rcd at 13588-89 ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7360 ¶ 7; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18442-43 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21542-43 ¶ 40.

not violate a statute or rule, we next consider whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.[111] We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.[112] The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.[113] If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we must designate the application for hearing under section 309(e) of the Communications Act.[114]

27. Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite "citizenship, character, financial, technical, and other qualifications."[115] Therefore, as a threshold matter, the Commission must determine whether the applicants to the proposed transaction meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission's rules.[116] In making this determination, the Commission

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[111] *See, e.g., T-Mobile-SunCom Order*, 23 FCC Rcd at 2519 ¶ 9; *AT&T-Aloha Order*, 23 FCC Rcd at 2236 ¶ 7; *AT&T-Dobson Order*, 22 FCC Rcd at 20301 ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14871 ¶ 15; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589 ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18442-43 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20.

[112] *See, e.g., T-Mobile-SunCom Order*, 23 FCC Rcd at 2519 ¶ 9; *AT&T-Aloha Order*, 23 FCC Rcd at 2236 ¶ 7; *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14871 ¶ 15; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589 ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7360 ¶ 7; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062-63 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

[113] *See, e.g., AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14871-72 ¶ 15; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589 ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7360 ¶ 7; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976-77 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

[114] 47 U.S.C. § 309(e). *See also AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672-73 ¶ 19; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 15; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589 ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *SBC-AT&T Order*, 20 FCC Rcd at 18300-01 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543-44 ¶ 40. Section 309(e)'s requirement applies only to those applications to which Title III of the Act applies, *i.e.*, radio station licenses. We are not required to designate for hearing applications for the transfer or assignment of Title II authorizations when we are unable to find that the public interest would be served by granting the applications, *see* ITT World Communications, Inc. v. FCC, 595 F.2d 897, 901 (2d Cir. 1979), but of course may do so if we find that a hearing would be in the public interest.

[115] 47 U.S.C. §§ 308, 310(d). *See also AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 11; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18525-26 ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

[116] *See* 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; *see also AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 11; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589-90 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 (continued....)

does not, as a general rule, re-evaluate the qualifications of transferors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant designation for hearing.[117] Conversely, section 310(d) obligates the Commission to consider whether the proposed transferee is qualified to hold Commission licenses.[118] When evaluating the qualifications of a potential licensee, the Commission previously has stated that it will review allegations of misconduct directly before it,[119] as well as conduct that takes place outside of the Commission.[120] In this proceeding, no issues have been raised with respect to the basic qualifications of Verizon Wireless and RCC, both of which previously have been found qualified to hold Commission licenses.[121] Thus, we find that, at this time, there is no reason to re-evaluate the qualifications of these entities.

(Continued from previous page)
¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

[117] *See, e.g.*, *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 11; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13590 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362 ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063-64 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44. *See also* Stephen F. Sewell, Assignment and Transfers of Control of FCC Authorizations under Section 310 (d) of the Communications Act of 1934, 43 FED. COMM. L.J. 277, 339-40 (1991). The policy of not approving assignments or transfers when issues regarding the licensee's basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. *See id.*

[118] *See, e.g.*, *AT&T-Dobson Order*, 22 FCC Rcd at 20302-03 ¶ 11; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13590 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362 ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

[119] *See, e.g.*, *AT&T-Dobson Order*, 22 FCC Rcd at 20303 ¶ 11; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13590 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47. The Commission will consider any violation of any provision of the Act, or of the Commission's rules or policies, as predictive of an applicant's future truthfulness and reliability and, thus, as having a bearing on an applicant's character qualifications. *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 172; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 184; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 n.85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47; Policy Regarding Character Qualifications In Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, Gen. Docket No. 81-500, *Report and Order and Policy Statement*, 100 F.C.C. 2d 1179, 1209-10 ¶ 57 (1986), *modified*, 5 FCC Rcd 3252 (1990), *recon. granted in part*, 6 FCC Rcd 3448 (1991), *modified in part*, 7 FCC Rcd 6564 (1992).

[120] *See, e.g.*, *AT&T-Dobson Order*, 22 FCC Rcd at 20303 ¶ 11; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872-73 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13590 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47. The Commission previously has determined that in its review of character issues, it will consider forms of adjudicated, non-Commission related misconduct that include: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition. *See, e.g.*, *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 172; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 184; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 n.86; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

[121] *See, e.g.*, Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc., WC Docket No. 07-22, *Memorandum Opinion and Order*, 23 FCC Rcd 514 (Jan. 9, 2008); (continued....)

28. Our public interest evaluation necessarily encompasses the "broad aims of the Communications Act," which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest.[122] Our public interest analysis may also entail assessing whether the proposed transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.[123] In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.[124]

29. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.[125] The Commission and DOJ each have independent authority to examine the competitive impacts of proposed communications mergers and transactions involving transfers of Commission licenses, but the standards governing the Commission's competitive review differ somewhat from those applied by DOJ.[126] Like DOJ, the Commission considers how a transaction will affect competition by defining a relevant market, looking at the market power of incumbent competitors, and analyzing barriers to entry, potential competition and the efficiencies, if any, that may result from the transaction. The Antitrust Division of DOJ, however, reviews

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Applications of WWC Holding Co., Inc. and RCC Minnesota, Inc., For Consent to Assignment of Licenses, *Memorandum Opinion and Order*, 22 FCC Rcd 6589 (WTB 2007).

[122] *E.g., AT&T-Dobson Order*, 22 FCC Rcd at 20303 ¶ 12; *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 20; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 17; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 18; *SBC-AT&T Order*, 20 FCC Rcd at 18301 ¶ 17; *Verizon-MCI Order*, 20 FCC Rcd at 18443-44 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

[123] *See, e.g., AT&T-Dobson Order*, 22 FCC Rcd at 20303-04 ¶ 12; *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 20; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 17; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 18; *SBC-AT&T Order*, 20 FCC Rcd at 18301 ¶ 17; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064-65 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

[124] *See, e.g., AT&T-Dobson Order*, 22 FCC Rcd at 20304 ¶ 12; *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 20; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 17; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 18; *SBC-AT&T Order*, 20 FCC Rcd at 18301-02 ¶ 17; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

[125] *See, e.g., AT&T-Dobson Order*, 22 FCC Rcd at 20304 ¶ 13; *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 18; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 ¶ 16; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13977-78 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42.

[126] *See, e.g., GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 n.75; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 n.77; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; Rainbow DBS Company LLC, Assignor, and EchoStar Satellite L.L.C., Assignee, Consolidated Application for Consent to Assignment of Space Station and Earth Station Licenses, and Related Special Temporary Authorization, IB Docket No. 05-72, *Memorandum Opinion and Order*, 20 FCC Rcd 16868, 16874 ¶ 12 (2005); *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42. *See also Satellite Business Systems*, 62 FCC 2d 997, 1088 (1977), *aff'd sub nom. United States v. FCC*, 652 F.2d 72 (D.C. Cir. 1980) (*en banc*); *Northern Utilities Service Co. v. FERC*, 993 F.2d 937, 947-48 (1st Cir. 1993) (public interest standard does not require agencies "to analyze proposed mergers under the same standards that the Department of Justice . . . must apply").

telecommunications mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that may substantially lessen competition.[127] The Antitrust Division's review is also limited solely to an examination of the competitive effects of the acquisition, without reference to diversity, localism, or other public interest considerations. The Commission's competitive analysis under the public interest standard is somewhat broader, for example, considering whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant market.[128]

30. Our analysis recognizes that a proposed transaction may lead to both beneficial and harmful consequences.[129] For instance, combining assets may allow a firm to reduce transaction costs and offer new products, but it may also create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.[130] Our public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.[131] Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.[132] Similarly, section 214(c) of the

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[127] 15 U.S.C. § 18.

[128] *See, e.g., AT&T-Dobson Order*, 22 FCC Rcd at 20305 ¶ 13; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 18; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 16; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11538 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

[129] *See, e.g., AT&T-Dobson Order*, 22 FCC Rcd at 20305 ¶ 13; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 18; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 16; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

[130] *See, e.g., AT&T-Dobson Order*, 22 FCC Rcd at 20305 ¶ 13; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873-74 ¶ 18; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

[131] *See, e.g., AT&T-Dobson Order*, 22 FCC Rcd at 20305 ¶ 14; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 22; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43 (conditioning approval on the divestiture of operating units in select markets). *See also* Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., 13 FCC Rcd 18025, 18115 ¶ 156 (conditioning approval on the divestiture of MCI's Internet assets); Applications of VoiceStream Wireless Corporation, PowerTel, Inc., Transferors, and Deutsche Telekom AG, Transferee, IB Docket No. 00-187, *Memorandum Opinion and Order*, 16 FCC Rcd 9779 (2001) ("Deutsche Telekom-VoiceStream Wireless Order") (conditioning approval on compliance with agreement with Department of Justice and Federal Bureau of Investigation addressing national security, law enforcement, and public safety concerns).

[132] 47 U.S.C. § 303(r). *See also AT&T-Dobson Order*, 22 FCC Rcd at 20305 ¶ 14; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18302-03 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978-79 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC (continued....)

Act authorizes the Commission to attach to the certificate "such terms and conditions as in its judgment the public convenience and necessity may require."[133] Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to rely upon our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits.[134] Despite this broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes.[135] Thus, we generally will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.[136]

IV. COMPETITIVE ANALYSIS

31. Consistent with our practice when reviewing proposed wireless transactions affecting the mobile telephony market, our analysis of the proposed Verizon-RCC transaction considers the potential competitive effects that might result from increased concentration.[137] Horizontal transactions raise

(Continued from previous page)
Rcd at 21545 ¶ 43; *FCC v. Nat'l Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978) (upholding broadcast-newspaper cross-ownership rules adopted pursuant to section 303(r)); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (section 303(r) powers permit Commission to order cable company not to carry broadcast signal beyond station's primary market); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989) (syndicated exclusivity rules adopted pursuant to section 303(r) authority).

[133] 47 U.S.C. § 214(c). *See also AT&T-Dobson Order*, 22 FCC Rcd at 20305-06 ¶ 14; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 20; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

[134] *See, e.g., AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 14; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 22; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592-93 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538-39 ¶ 20; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43. *See also Schurz Communications, Inc. v. FCC*, 982 F.2d 1043, 1049 (7th Cir. 1992) (discussing Commission's authority to trade off reduction in competition for increase in diversity in enforcing public interest standard).

[135] *See, e.g., AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 14; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674-75 ¶ 22; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13593 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11539 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

[136] *See, e.g., AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 14; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874-75 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13593 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11539 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

[137] *See, e.g., T-Mobile-SunCom Order*, 23 FCC Rcd at 2520 ¶ 11; *AT&T-Aloha Order*, 23 FCC Rcd at 2236-37 ¶ 10; *AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 15; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14875 ¶ 21; *DoCoMo-Guam Order*, 21 FCC Rcd at 13593-94 ¶ 18; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11539 ¶ 22; *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 30; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68; Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, at § 0.1, n.6. (Apr. 2, 1992, revised Apr. 8, 1997) ("*DOJ/FTC Merger Guidelines*").

competitive concerns when they reduce the availability of choices to the point that the resulting firm has the incentive and the ability, either by itself or in coordination with other firms, to raise prices. A fundamental tenet of the Commission's public interest review is that, absent significant offsetting efficiencies or other public interest benefits, a transaction that creates or enhances significant market power or facilitates its use is unlikely to serve the public interest.[138]

32. As we have discussed in several recent wireless transaction orders – including *AT&T-Dobson Order, GCI-Alaska DigiTel Order*, *ALLTEL-Midwest Wireless Order*, *Sprint-Nextel Order*, and *Cingular-AT&T Wireless Order* – transactions, such as mergers, can diminish competition and allow firms to exercise market power in a number of ways.[139] However, a horizontal transaction or merger is unlikely to create or enhance market power or facilitate its exercise unless the transaction significantly increases concentration and results in a concentrated market, properly defined and measured. Transactions that do not significantly increase concentration or do not result in a concentrated market ordinarily require no further competitive analysis. Thus, when examining the effect of proposed transactions, we have first applied a three-part initial "screen" that identifies those local markets in which there is clearly no competitive harm arising from the transaction. Two parts of the screen utilize changes in the measures of the Herfindahl-Hirschman Index ("HHI") market concentration. The final part of this screen examines the input market for spectrum available on a nationwide basis for the provision of mobile telephony services.[140] For those markets that are not eliminated by the initial screen, we then conduct, on a market-by-market basis, an analysis of other market factors that pertain to competitive effects, including the incentive and ability of other existing firms to react and of new firms to enter the market, in response to attempted exercises of market power by the merged entity. Ultimately, we must assess whether it is likely that the combined firm could exercise market power in any particular market.[141]

33. Our competitive analysis is set forth in six sections below. First, consistent with these recent wireless transaction orders, we begin our competitive analysis by determining the appropriate market definitions for this transaction.[142] This includes determination of the product market and geographic

[138] *See T-Mobile-SunCom Order*, 23 FCC Rcd at 2519 ¶ 9; *AT&T-Aloha Order*, 23 FCC Rcd at 2236 ¶ 7; *AT&T-Dobson Order*, 22 FCC Rcd at 20301 ¶ 10; *GCI-Alaska-DigTel Order*, 21 FCC Rcd at 14871 ¶ 15; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589-90 ¶ 13; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11540 ¶ 22; *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 30; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68; *DOJ/FTC Merger Guidelines* § 0.1, n.6. The ability to raise prices above competitive levels is generally referred to as "market power." Market power may also enable sellers to reduce competition on dimensions other than price, including innovation and service quality.

[139] *See, e.g., AT&T-Dobson Order*, 22 FCC Rcd at 20307 ¶ 16; *GCI-Alaska Digitel Order*, 21 FCC Rcd at 14875 ¶ 23; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11541 ¶ 24; *Sprint-Nextel Order*, 20 FCC Rcd at 13982 ¶ 32; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 70.

[140] *See, e.g., T-Mobile-SunCom Order*, 23 FCC Rcd at 2520 ¶ 11; *AT&T-Aloha Order*, 23 FCC Rcd at 2237 ¶ 10; *AT&T-Dobson Order*, 22 FCC Rcd at 20307 ¶ 16; *GCI-Alaska Digitel Order* 21 FCC Rcd at 14875 ¶ 22; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

[141] *See, e.g., AT&T-Dobson Order*, 22 FCC Rcd at 20307 ¶ 16; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14875 ¶ 22; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11540 ¶ 23; *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 31; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 69; *DOJ/FTC Merger Guidelines* § 1.0.

[142] *See AT&T-Dobson Order*, 22 FCC Rcd at 20307 ¶ 17; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 24; *DoCoMo-Guam Order*, 21 FCC Rcd at 13593-94 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 28; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558 ¶ 74.

markets, as well as the identification of the market participants. It also considers the input market for spectrum available for the provision of mobile telephony services. As discussed more fully below, applying the same analysis as in the recent transaction orders, we find the product market to be the combined market for mobile telephony services, and the geographic market to be local markets.[143] In accordance with the approach that we applied in the *AT&T-Dobson Order*, we examine the input market based on an updated initial spectrum screen that includes not only spectrum in the cellular, SMR, and broadband PCS bands, but also spectrum in the 700 MHz Band.[144] Based on the same precedent, our initial spectrum aggregation screen for the proposed transaction is set at 95 megahertz. In addition, while we still maintain that it is premature to include AWS-1 (1710-1755 MHz and 2110-2155 MHz) and Broadband Radio Service ("BRS") spectrum in the initial screen, we will consider such spectrum in our case-by-case analyses to the extent such spectrum is available in any local market not eliminated by our screen.[145] We then examine the market participants holding spectrum in these bands

34. Second, we apply the Commission's three-part initial screen to this transaction. As described above, through this process, we identify those markets that we subject to further case-by-case review while eliminating from further review those markets in which there clearly is no competitive harm. Third, we examine the remaining markets with regard to specific issues related to potential competitive harms associated with horizontal concentration. We consider the potential of both unilateral and coordinated effects resulting from the merger. Fourth, we undertake a granular, market-by-market analysis of the local markets identified by the initial screen. In this transaction, we identify 17 particular local markets by the screen and, after our additional analysis determine that in six of those markets competitive harm would be likely. Fifth, we address other concerns raised by the petitioners in response to this transaction, including the potential adverse impact of the transaction with regard to the provision of roaming services. Sixth, we examine the public interest benefits of the proposed transaction and conclude that the transaction, subject to the conditions we impose, is likely to result in transaction-specific public interest benefits.

35. Finally, consistent with our determination that the proposed Verizon-RCC transaction would likely pose significant competitive harms in six local mobile telephony markets, we adopt various conditions and remedies to prevent these harms.

A. Market Definitions

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

1. Product Market Definition

37. As noted above, we adopt the same product market definition as applied by the Commission in recent transactions involving the mobile telephony market – *AT&T-Dobson Order*, *GCI-Alaska DigiTel Order*, *DoCoMo-Guam Order*, *ALLTEL-Midwest Wireless Order*, *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order*. In those orders, the Commission found that there

[143] *See AT&T-Dobson Order*, 22 FCC Rcd at 20308-11 ¶ 21-25; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876-77 ¶¶ 25-27; *DoCoMo-Guam Order*, 21 FCC Rcd at 13593 ¶ 18; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541-43 ¶¶ 26-31; *Sprint-Nextel Order*, 20 FCC Rcd at 13983-91 ¶¶ 37-57; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067-70 ¶¶ 25-36; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557-63 ¶¶ 71-91.

[144] *AT&T-Dobson Order*, 22 FCC Rcd at 20307-08 ¶ 17.

[145] *Id.* at 20308 ¶ 17.

are separate relevant product markets for interconnected mobile voice services and mobile data services, and also for residential services and enterprise services.[146] Nevertheless, it analyzed all of these product markets under the combined market for mobile telephony service.[147] Based on consideration of various factors, including the nature of these services and their relationship with each other, the Commission found that this approach provided a reasonable assessment of any potential competitive harm resulting from the transactions under review.[148]

38. The Applicants concur that the product market definition should include interconnected mobile voice and data services, as well as residential and enterprise services, in a combined market for mobile telephony service.[149] Based on our precedent and the record in this proceeding, we will use the same product market definition in our analysis of the proposed transaction.

2. Geographic Market Definition

39. In its recent wireless transaction orders, the Commission applied the "hypothetical monopolist test" and found that the relevant geographic markets are local, larger than counties, may encompass multiple counties, and, depending on the consumer's location, may even include parts of more than one state.[150] The Commission in these orders identified two sets of geographic areas that effectively may be used to define local markets – CEAs and CMAs.[151] Because these two sets of geographic areas

[146] *See AT&T-Dobson Order*, 22 FCC Rcd at 20308 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 25; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 28; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558 ¶ 74.

[147] *See AT&T-Dobson Order*, 22 FCC Rcd at 20308 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 25; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 29; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 74.

[148] *See AT&T-Dobson Order*, 22 FCC Rcd at 20308 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 25; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068-69 ¶¶ 29-30; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21559-60 ¶¶ 77, 79.

[149] Application, Public Interest Statement at 27.

[150] *See AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 27; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542-43 ¶¶ 29-30; *Sprint-Nextel Order*, 20 FCC Rcd at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562-63 ¶¶ 89-90.

[151] We have chosen CEAs and CMAs for our data analysis because both are consistent in order of magnitude with the local market definition we have adopted and because each brings a different consideration to the analysis. CEAs are designed to represent consumers' patterns of normal travel for personal and employment reasons and may therefore capture areas within which groups of consumers would be expected to shop for wireless service. *See* Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURVEY OF CURRENT BUSINESS, February 1995, at 75. In addition, CEAs should be areas within which any service providers present would have an incentive to market – and actually provide – service relatively ubiquitously. Conversely, CMAs are the areas in which the Commission initially granted licenses for the cellular service. Although partitioning has altered this structure in many license areas, CMAs represent the fact that the Commission's licensing programs have to a certain degree shaped this market by defining the initial areas in which wireless providers had spectrum on which to base service offerings, and they may therefore serve as a reasonable proxy for where consumers face the same competitors. *See Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105; *see also AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876-77 ¶ 27; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542 ¶ 29; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 57; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072-73 ¶¶ 44-45.

come from different sides of the equation – demand in one case, supply in the other – the Commission found them to be useful cross-checks on each other and, together, they help ensure that the Commission's analysis does not overlook local areas that require more detailed analysis.[152]

40. The Applicants undertake their competitive analysis at the CMA level "in the interest of expedited processing."[153] Nonetheless the Applicants argue that the market for mobile telephony service is increasingly national in scope.[154] The Applicants argue that Verizon Wireless, along with other national carriers, both advertises and sets prices on a national basis, leaving very little room for local or regional variation in pricing, and therefore local market conditions are less relevant to Verizon Wireless's competitive strategy than actions taken by other national carriers.[155] The Applicants also emphasize the increasing reliance on national rate plans and argue that the large (82 percent) share of mobile telephony customers who subscribe to a national carrier or an affiliate of a national carrier supports the conclusion that consumers shop for national plans and shop national rates, all of which are set on a national level.[156]

41. For this transaction, we continue to find that the most appropriate geographic level for market analysis is comprised of CMAs and CEAs. For the proposed transaction at issue here, we determine that the geographic market is the area within which a consumer is most likely to shop for mobile telephony service.[157] For most individuals, this will be a local area, as opposed to a larger regional or nationwide area.[158] This is because "in response to a small but not insignificant price increase by providers" that offer service where consumers live, work or travel, most consumers are unlikely to switch to alternative carriers that operate only outside of such a locality.[159] Further, the Applicants' argument that prices are set on a national level, and that consumers shop for national plans and national rates, does not undercut the finding of a local geographic market. We conclude that their assertions regarding the behavior of nationwide service providers and consumers do not establish the existence of a national market.[160] Accordingly, we will use the same geographic market definition in this analysis as the Commission has used in its recent wireless transaction orders discussed above.

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[152] *See, e.g., AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11546 ¶ 35; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105.

[153] Application, Public Interest Statement at 27.

[154] *Id.* at 27, 38.

[155] *Id.* at 27, 39.

[156] *Id.* at 27, 39.

[157] *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23. *See also ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542 ¶ 30; *Sprint-Nextel Order*, 20 FCC Rcd at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 89.

[158] *AT&T-Dobson Order*, 22 FCC Rcd at 20310-11 ¶ 25; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542 ¶ 30; *Sprint-Nextel Order*, 20 FCC Rcd at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 89. *See also Twelfth Competition Report*, 23 FCC Rcd at 2331-32 ¶ 174 (indicating that the average person shops for mobile telephony services in markets that include place of work, place of residence, and surrounding areas that are economically related; such areas generally are larger than counties).

[159] *DOJ/FTC Merger Guidelines* §§ 1.11, 1.12.

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

3. Input Market for Spectrum

42. Consistent with the Commission's recent wireless transaction orders, we also examine this transaction in light of the input market for spectrum associated with the provision of mobile telephony services. In particular, the Commission has made a determination to include, in its evaluation of potential competitive harm, spectrum in particular bands that is "suitable" for the provision of mobile telephony services. As first explained by the Commission in the 2004 *Cingular-AT&T Wireless Order*, suitability is determined by whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its uses for mobile telephony.[161]

43. For the proposed Verizon-RCC transaction, we analyze the input market for spectrum based on the approach that we established in the *AT&T-Dobson Order*. Specifically, we apply a 95 megahertz initial spectrum aggregation screen to our market-by-market review of the proposed transaction. In the *AT&T-Dobson Order*, adopted in November of 2007, the Commission found that, in light of recent developments, spectrum "suitable" for the provision of mobile telephony services includes not only approximately 200 megahertz of cellular, broadband PCS, and Specialized Mobile Radio ("SMR") spectrum, but also an additional 80 megahertz of 700 MHz band spectrum (in the 698-806 MHz band) throughout the nation, bringing the total amount of spectrum suitable for mobile telephony services on a nationwide basis to approximately 280 megahertz.[162] Applying the Commission's previous determination that a spectrum aggregation screen should be based approximately on one-third of the total bandwidth available for mobile telephony services, we revised the spectrum aggregation screen from 70 megahertz to 95 megahertz, approximately one-third of the 280 megahertz of the spectrum designated as being available for mobile telephony services.[163] We explained that, consistent with the Commission's previous orders, setting this screen at approximately one-third of the total suitable spectrum is designed to be conservative and ensure that any markets in which there is potential competitive harm based on spectrum aggregation are identified and subjected to more in-depth analysis.[164] Under the revised screen, the Commission found that there was no need for additional analysis where there was at least 185 megahertz of spectrum (of the 280 megahertz of mobile telephony spectrum) available to other firms to compete in the provision of mobile telephony service.[165]

44. At the time of the *AT&T-Dobson Order*, we did not find it appropriate to include certain other spectrum bands – particularly AWS-1 and BRS spectrum – in the initial spectrum screen because they do not yet meet one of the criteria for suitability on a nationwide basis.[166] We noted, however, that AWS-1 and BRS spectrum is capable of supporting mobile telephony services given its physical properties and the state of equipment technology, and the spectrum is licensed with allocation and service rules that allow mobile uses. We also noted that, in many markets, this spectrum is committed to another use that effectively precludes its use for mobile telephony, and it was often unclear whether it will be available for

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[161] *See id.* at 21560-61 ¶ 81; *see also AT&T-Dobson Order*, 22 FCC Rcd at 20311 ¶ 26; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14877 ¶ 28; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 ¶ 21; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11543 ¶ 31; *Sprint-Nextel Order*, 20 FCC Rcd at 13992 ¶ 61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 41.

[162] *See AT&T-Dobson Order*, 22 FCC Rcd at 20312-14 ¶¶ 30-31.

[163] *See id.* at 20312-13 ¶ 30.

[164] *See id.*

[165] *See id.*

[166] *See id.* at 20314-15 ¶¶ 32-34.

mobile use in the sufficiently near-term.[167] We determined in the *AT&T-Dobson Order* that excluding this spectrum on this basis was appropriate since the initial screen was intended to be conservative, that is, erring in the direction of identifying more rather than fewer markets for in-depth review.[168] However, the Commission did consider the extent to which AWS-1 or BRS licenses were in fact available *locally*, and included them in the local spectrum input market, in our detailed, case-by-case analysis of markets caught by the initial screen.[169]

45. The Applications for the proposed Verizon-RCC transaction were filed in September of 2007, prior to the release of the *AT&T-Dobson Order*. Therefore the Applicants' arguments concerning the spectrum bands that should be included in the spectrum input market began with the discussion of the approximately 200 megahertz of spectrum in the cellular, PCS, and SMR bands that the Commission had determined to be the amount of spectrum suitable for the provision of mobile telephony services prior to adoption of the *AT&T-Dobson Order*. The Applicants contend that the input market should include not only these previously designated cellular, PCS, and SMR bands, but also BRS/EBS 2.5 GHz spectrum, AWS-1 spectrum, and 700 MHz spectrum.[170]

46. As described above, we decided in the *AT&T-Dobson Order* late last year to include 700 MHz spectrum as part of the initial spectrum screen, but not AWS-1 and BRS spectrum.

47. For the proposed Verizon-RCC transaction, we apply the same analysis of the input market for spectrum that we used in the *AT&T-Dobson Order* as part of an initial screen for determining which markets require case-by-case analysis. Thus, we apply an initial spectrum screen of 95 megahertz of cellular, broadband PCS, SMR, and 700 MHz spectrum in the input market. In this transaction, application of the 95 megahertz spectrum aggregation part of our initial three-part screen does not require us to review any individual markets. For those markets subject to further review under the HHI parts of the screen, however, we consider the extent to which AWS-1 or BRS licenses are available *locally*, and include them in the local spectrum input market in our detailed, case-by-case analysis of markets.

4. Market Participants

48. In its recent wireless transaction orders, when computing initial measures of market concentration, the Commission limited its analysis of transactions involving mobile telephony services to cellular, PCS, and SMR facilities-based service providers, and excluded satellite service providers, wireless Voice over Internet Protocol ("VoIP") providers, mobile virtual network operators ("MVNOs"), and resellers from consideration.[171] We continue to find that mobile telephony services offered by

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[167] *See id.*

[168] *See id.* at 20314 ¶ 32; *see also Sprint-Nextel Order*, 20 FCC Rcd at 13993-94 ¶¶ 62, 65; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 10374 ¶ 49; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69 ¶¶ 108-109.

[169] *See AT&T-Dobson Order*, 22 FCC Rcd at 20315 ¶ 35.

[170] Application, Public Interest Statement at 28-38.

[171] *See AT&T-Dobson Order*, 22 FCC Rcd at 20316 ¶ 36; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 ¶ 31; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 ¶ 22; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶¶ 38-39; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92. Although satellite providers offer facilities-based mobile voice and data services, the price of these services is, at present, significantly higher than for services offered by cellular, PCS, or SMR providers. Therefore, most consumers would not view satellite phones as substitutes for mobile telephony. *See* Global Com, Iridium Satellite Phone Service Plans, at http://www.globalcomsatphone.com/satellite/services/iridium_service_plans.html (last visited June 26, 2008); GlobalStar, Airtime Pricing, Voice Pricing, at http://www.globalcomsatphone.com/ satellite/services/globalstar.html (last visited June 26, 2008). *See also AT&T-Dobson Order*, 22 FCC Rcd at 20316 n.130; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 n.108; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 n.104; *ALLTEL-Midwest* (continued....)

facilities-based providers using cellular, PCS, and SMR spectrum and employing various technologies offer the same basic voice and data functionality and are indistinguishable to the consumer.[172] As discussed above, because of recent developments we also will consider 700 MHz spectrum in our spectrum aggregation analysis. To the extent that entities provide facilities-based mobile telephony services using 700 MHz spectrum, we also consider them to be market participants.[173] In addition, we will consider AWS-1 and BRS providers market participants in our in-depth analysis of individual local markets not eliminated by our initial screen to the extent that they provide mobile telephony services.

49. The Applicants contend that the Commission should revisit its previous conclusion to exclude satellite carriers, wireless VoIP providers, MVNOs, and resellers from consideration when computing initial measures of market concentration.[174] They claim that the national resellers/MVNOs have recently emerged to compete successfully on branded packaged voice and data services and therefore also should be considered as legitimate market participants.[175] They further state that cable operators are also expected to bundle wireless services with their video and VoIP offerings, and therefore the Commission should consider these providers to be participants in the relevant market as well.[176]

50. Under Commission precedent, we generally limit our analysis to facilities-based service providers, either nationwide or regional, excluding MVNOs and resellers from consideration when computing initial concentration measures. While the Commission has acknowledged that non-facilities based service options have an impact in the marketplace and in some instances may provide additional constraints against anticompetitive behavior, to date, in evaluating proposed transactions involving mergers of wireless service providers, the Commission has not included resellers or MVNOs in its initial screen.[177] We take account of the role of resellers and MVNOs, to the extent necessary, in our discussion

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Wireless Order, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38. We also do not consider wireless VoIP providers as providing the same functionality as mobile telephony providers because the service they provide now is nomadic rather than mobile. *See AT&T-Dobson Order*, 22 FCC Rcd at 20316 n.130; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 n.108; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 n.104; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38. Wireless VoIP services are nomadic in the sense that one can use them from a number of different locations (for example, by using a laptop at different internet cafes all over a town). *See AT&T-Dobson Order*, 22 FCC Rcd at 20316 n.130; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 n.108; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 n.104; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544-45 n.134; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 n.151.

[172] *See, e.g., AT&T-Dobson Order*, 22 FCC Rcd at 20316 ¶ 36; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 ¶ 31; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 32; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 91.

[173] *See AT&T-Dobson Order*, 22 FCC Rcd at 20316 ¶ 36.

[174] Application, Public Interest Statement at 33.

[175] *Id.*

[176] *Id.* at 34.

[177] *See AT&T-Dobson Order*, 22 FCC Rcd at 20317 ¶ 38; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 ¶ 31; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 ¶ 22; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶¶ 38-39; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92.