of likely competitive effects below.[178] Accordingly, we will use the same market participant definition in this analysis as the Commission has in its recent wireless transaction orders, and expand this analysis to include facilities-based entities that are using the designated 80 megahertz of licensed 700 MHz spectrum.[179]

B. Initial Screen

51. Having determined the appropriate market definitions for this transaction, our competitive analysis next applies the Commission's initial screen, followed by a further case-by-case review of the markets identified by that screen. As discussed in previous wireless transaction orders, the purpose of this initial screen is to eliminate from further review those markets in which there is clearly no competitive harm relative to today's generally competitive marketplace.[180] The initial screen is designed to be conservative and ensure that we do not exclude from further scrutiny any geographic areas in which the potential for anticompetitive effects exists. In addition to market concentration, which is measured with market share data, we consider the input market of spectrum that is suitable for the provision of mobile telephony services because spectrum is a necessary resource for wireless service providers to compete effectively. This initial screen is only the beginning of our competitive analysis. Subsequent sections examine on a case-by-case analysis those markets identified by the screen, where potential harm is possible, in order to determine whether harm is in fact likely and a remedy needed.

52. For this transaction, we use our June 2007 NRUF database, which tracks phone number usage by all telecommunications service providers, including wireless service providers, to estimate mobile telephony subscribership levels, market shares, and concentration for various geographic markets.[181] Consistent with our discussion of geographic market definition above, in calculating market shares and market concentration, we analyze carrier data using two sets of geographic areas, CEAs[182] and CMAs.[183]

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[178] *See AT&T-Dobson Order*, 22 FCC Rcd at 20317 ¶ 38; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14881 ¶ 35; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 38; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92.

[179] *AT&T-Dobson Order*, 22 FCC Rcd at 20317 ¶ 38.

[180] *See, e.g., AT&T-Dobson Order*, 22 FCC Rcd at 20317 ¶ 39; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14881 ¶ 36; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11547 n.151; *Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 62; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073-74 ¶ 48; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69 ¶¶ 106-109.

[181] These data indicate the number of assigned phone numbers that a wireless carrier has in a particular wireline rate center. Rate centers are geographic areas used by local exchange carriers for a variety of reasons, including the determination of toll rates. *See* HARRY NEWTON, NEWTON'S TELECOM DICTIONARY: 19TH EXPANDED & UPDATED EDITION 660 (July 2003). All mobile wireless providers must report to the FCC the quantity of their phone numbers that have been assigned to end users, thereby permitting the Commission to calculate the total number of mobile subscribers. For purposes of geographical analysis, the rate center data can be associated with a geographic point, and all of those points that fall within a county boundary can be aggregated together and associated with much larger geographic areas based on counties. In the Cingular-AT&T Wireless and Sprint-Nextel transactions, the Commission also used billing data submitted by the nationwide wireless service providers. *See Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 63; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 103. Although we may decide to collect such billing data as part of our review of future transactions, we found that the competitive situation associated with this proposed transaction was such that collection of third-party billing data was unnecessary.

[182] CEAs are defined by the Bureau of Economic Analysis ("BEA"), and are composed of a single economic node and surrounding counties that are economically related to the node. There are 348 CEAs in the 50 states and the District of Columbia. Of the 3,141 U.S. counties, 2,267 are non-nodal counties that are assigned to a CEA based first on county-to-county commuting flows from the 1990 Census and second on locations of the most widely read regional newspapers. Three quarters of non-nodal counties were assigned based on commuting patterns. *See* Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURV. OF CURRENT BUS., Feb. 1995, at 75-81. In (continued....)

Our initial screen criteria identifies, for further case-by-case market analysis, those markets in which, post- transaction: (1) the HHI would be greater than 2800 and the change in HHI will be 100 or greater, (2) the change in HHI would be 250 or greater, regardless of the level of the HHI, and (3) the Applicants would have a 10 percent or greater interest in 95 megahertz or more of cellular, PCS, SMR, and 700 MHz spectrum.

53. Our initial screen identifies a total of 17 CMAs and 15 CEAs that require further competitive review. All 17 CMAs and 15 CEAs were flagged by one of the HHI initial screens and none of these markets triggered the 95 megahertz spectrum aggregation screen. As noted previously, because the applications for the proposed Verizon-RCC transaction were filed prior to the release of the *AT&T-Dobson Order*, the Applicants identify markets that would be captured using the 70 megahertz spectrum aggregation screen used by the Commission prior to the *AT&T-Dobson Order*.[184] In particular, in their Applications they identify nine CMAs with one or more counties in which the combined entity would hold 70 megahertz or more of PCS and cellular spectrum.[185] In light of the Commission's decision to revise the initial spectrum aggregation screen to 95 megahertz in the *AT&T-Dobson Order*, the Applicants subsequently revised their request by noting that the Commission's applicable initial spectrum aggregation screen is not triggered in any market, since the post-merger entity's spectrum holdings would fall below the revised screen of 95 megahertz even in markets identified by the previous 70 megahertz screen.[186]

54. VDPS argues that the results from the auction of 700 MHz licenses in Auction No. 73 should be considered in the Commission's spectrum aggregation analysis because under the 95 megahertz screen, 700 MHz spectrum is considered "suitable" spectrum for the provision of mobile telephony service.[187] VDPS requests that the Commission delay action on this transaction until the 700 MHz licenses in Auction No. 73 are assigned.[188] The Applicants disagree, arguing that the Commission should not delay action on this transaction until the 700 MHz spectrum has been assigned.[189] The Applicants further argue

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November 2004, the Bureau of Economic Analysis updated definitions for CEAs. The total number of CEAs decreased from 348 to 344. Non-nodal county assignment continued to be based on county-to-county commuting flows and locations of the most widely read regional newspapers. *See* Kenneth P. Johnson & John R. Kort, *2004 Redefinition of the BEA Economic Areas*, SURV. OF CURRENT BUS., Nov. 2004, at 68-71. For purposes of this transaction, we did not adopt the new CEA definitions.

[183] *See, e.g., AT&T-Dobson Order*, 22 FCC Rcd at 20317-18 ¶ 40; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14890-91 ¶ 61; *DoCoMo-Guam Order*, 21 FCC Rcd at 13596 n.110; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11545 ¶ 35; *Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 63; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072 ¶ 44; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 104. CMAs are the regions originally used by the Commission for issuing cellular licenses. There are 734 CMAs, made up of 305 MSAs, 428 RSAs, and a market for the Gulf of Mexico. *See Twelfth Competition Report*, 23 FCC Rcd at 2277 ¶ 78. RSAs are regions defined by the Commission for the purpose of issuing spectrum licenses. *See Twelfth Competition Report*, 23 FCC Rcd at 2277 n.145. *See* discussion justifying the use of CEAs and CMAs *supra* ¶ 41.

[184] Application, Public Interest Statement at 43-55.

[185] *Id.* The nine CMAs are: CMA221 Fargo-Morehead, ND-MN; CMA248 Burlington, VT; CMA276 Grand Forks, ND-MN; CMA560 New York 2 - Franklin; CMA582 North Dakota 3 - Barnes; CMA670 Vermont 1 - Franklin; CMA680 Vermont 2 - Addison; CM694 Washington 2 - Okanogan; and CMA695 Washington 3 - Ferry.

[186] The Applicants do not include spectrum won by Verizon Wireless in Auction No. 73 in their spectrum totals. *See* Verizon Wireless/RCC Opposition at 8-9.

[187] VDPS Supplement to Petition to Deny at 9.

[188] *Id.*

[189] Verizon Wireless/RCC Opposition at 10.

that the 700 MHz spectrum auctioned in Auction 73 is "greenfield" spectrum and, because no network has yet been constructed, would not have any effect on market shares and therefore the HHI indices.[190]

55. Licenses won by Verizon Wireless in Auction No. 73 have not been included in our initial spectrum screen. Verizon Wireless's applications for these licenses are still pending and therefore it has not yet acquired any spectrum as a result of this auction.[191] Hence, we conclude it would not be appropriate to include this spectrum in our analysis at this time.

56. Neither the Applicants nor the petitioners identify markets that would be captured using initial screens based on the post-transaction HHI and the change in the HHI, or the change in the HHI alone. However, VDPS emphasizes that, if approved, the transaction would reduce the number of rival wireless carriers from three to two "throughout most of Vermont"[192] or at least "in many Vermont counties."[193] In addition, VDPS asserts that HHI indices "are extremely high across Vermont markets" and that use of the Commission's two HHI-based screening tests "would likely result in the Commission performing a case-by-case analysis of all Vermont CMAs that remain part of the transaction."[194] The Applicants argue that Verizon Wireless has committed to divesting network operations and customers throughout the overwhelming majority of the state of Vermont, in which case there will be no change in the HHI as a result of the proposed transaction.[195] The Applicants further state that Verizon Wireless would acquire and retain a cellular spectrum license only in areas where it does not currently operate a cellular system and has only a small market share, and that the change in the HHI would be insignificant in those few counties.[196]

C. Horizontal Issues

57. This section examines how the transaction could affect competitive behavior in the 17 CMAs and 15 CEAs identified by the initial screen as requiring additional analysis to determine whether the proposed transaction would result in competitive harm. As discussed in the Commission's recent wireless transaction orders, competition may be harmed either through unilateral actions[197] by the merged entity or through coordinated interaction[198] among firms competing in the relevant market.

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[190] *Id.*

[191] *See* Application, File No. 0003382435 (filed Apr. 2, 2008) (pertaining to the A- and B-block licenses won in Auction 73); Application, File No. 0003382444 (filed Apr. 2, 2008) (pertaining to the C-block licenses won in Auction 73).

[192] VDPS Petition to Deny at 10.

[193] VDPS Supplement to Petition to Deny at 7. *See also* VDPS Petition to Deny at 9-10; Vermont PIRG Extension Motion at 2.

[194] VDPS Supplement to Petition to Deny at 7.

[195] Verizon Wireless/RCC Opposition at 9.

[196] *Id.* at 9-10, 18-19.

[197] Unilateral effects are those that result when a merged firm finds it profitable to alter its behavior by increasing prices or reducing output. *DOJ/FTC Horizontal Merger Guidelines* § 2.2. *See AT&T Dobson Order,* 22 FCC Rcd at 20318-19 ¶ 42; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 ¶ 68; *DoCoMo-Guam Order*, 21 FCC Rcd at 13597 ¶ 25, n.112; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11550 ¶ 47; *Sprint-Nextel Order*, 20 FCC Rcd at 14001 n.199; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13076 n.155; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 n.341.

[198] Coordinated interaction consists of actions by a group of firms that are profitable for each of the firms involved only because the other firms react by accommodating these actions rather than attempting to undercut them. *See DOJ/FTC Horizontal Merger Guidelines* § 2.1; *AT&T Dobson Order,* 22 FCC Rcd at 20318-19 ¶ 42; *GCI-Alaska*
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58. In this Memorandum Opinion and Order, we find that extended discussions of unilateral and coordinated effects are unnecessary.[199] First, many aspects of our previous analyses in wireless transaction orders are unchallenged here.[200] Second, because only a limited number of local areas require

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DigiTel Order, 21 FCC Rcd at 14896 ¶ 77; *DoCoMo-Guam Order*, 21 FCC Rcd at 13597 ¶ 25, n.113; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11554 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 n.167; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 n.211; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151.

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

[200] For unilateral effects, the unchallenged aspects include: (1) product differentiation and substitutability (*see AT&T Dobson Order,* 22 FCC Rcd at 20321 ¶ 47; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 14002-07 ¶¶ 94-107; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13077-79 ¶¶ 59-64; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21571-75 ¶¶ 119-133); (2) network effects (*see GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13082-83 ¶¶ 75-77; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21578 ¶¶ 142-145); (3) marginal cost reductions (*see GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 14009 ¶ 115); (4) spectrum and advanced wireless services (*see ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11552 ¶¶ 53-54; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13819-21 ¶¶ 73-74; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21577-78 ¶¶ 138-141); and (5) penetration (*see ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11553-54 ¶¶ 58-59; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13083-85 ¶¶ 78-83; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21578-80 ¶¶ 146-149). For coordinated interaction, the unchallenged aspects include: (1) firm and product homogeneity (*see AT&T Dobson Order,* 22 FCC Rcd at 20321 ¶ 47; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 13997 ¶¶ 75-78; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13087 ¶ 90; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21582-84 ¶¶ 156-159); (2) existing cooperative ventures (*see GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21585 ¶ 163); (3) number of firms (*see GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 13996 ¶¶ 71-72); (4) technology development (*see GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 13998-99 ¶¶ 81-83); (5) response of rivals (*see GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 13999-14000 ¶¶ 84-88); (6) transparency of information (*see GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *Sprint-*
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in-depth analysis, it is feasible to provide a market-by-market discussion of each CMA where we are requiring business unit divestitures.[201] We therefore discuss unilateral effects and coordinated interaction at a general level only to the extent issues are raised by the parties to this proceeding.[202]

1. Unilateral Effects

59. Verizon Wireless's acquisition of RCC could lead to changes in the structure of the markets in 17 CMAs or 15 CEAs identified above by our initial screen for further analysis. Thus, we have examined in more detail the possibility that the proposed transaction may lead to competitive harm through unilateral actions by the merged entity.[203] Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by "elevating price and suppressing output."[204] As discussed in the Commission's wireless transaction orders, in the case of mobile telephony service, as defined above, this might take the form of delaying improvements in service quality or adversely adjusting plan features without changing the plan price.[205] Incentives for such unilateral competitive actions vary with the nature of competition in the relevant markets.

60. As we explain below, the market for mobile telephony service in the United States appears to be differentiated. Wireless service providers do not offer a completely homogeneous service. Rather, the service providers compete vigorously on the basis not only of price but also of other plan features, call quality, geographic coverage, and customer service. While service providers can change some of these attributes relatively quickly, others – particularly non-price attributes such as quality and coverage – require investments in spectrum or infrastructure and are not easily modified.

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

[201] *See* Appendix B.

[202] *See AT&T Dobson Order,* 22 FCC Rcd at 20320 ¶ 43; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893-94 ¶ 68; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549-50 ¶ 46.

[203] *See AT&T Dobson Order,* 22 FCC Rcd at 20320 ¶ 44; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11550 ¶ 47; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075 ¶ 54; *Cingular-AT&T Wireless*, 19 FCC Rcd at 21570 ¶ 115; Application of EchoStar Communications Corporation (A Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (A Delaware Corporation) (Transferee), CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559, 20620 ¶ 153 (2002) ("*EchoStar-DirecTV HDO*"); *see also DOJ/FTC Merger Guidelines* § 2.

[204] *See AT&T Dobson Order,* 22 FCC Rcd at 20320 ¶ 44; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14894 ¶ 69; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11550 ¶ 47; *Sprint-Nextel Order*, 20 FCC Rcd at 14001 ¶ 91; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075 ¶ 54; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115; *DOJ/FTC Merger Guidelines* § 2.2.

[205] The term "unilateral" refers to the method used by firms to determine strategy, not to the fact that the merged entity would be the only firm to change its strategy. The term unilateral is used to indicate that strategies are determined unilaterally by each of the firms in the market and not by explicit or tacit collusion. Other firms in the market may find it profitable to alter their behavior as a result of the merger-induced change in market structure by, for example, repositioning their products, changing capacity, or changing their own prices. These reactions can alter the total effect on the market and must be taken into account when evaluating potential unilateral effects. *See AT&T Dobson Order,* 22 FCC Rcd at 20320 n.150; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.204; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11550 n.176; *Sprint-Nextel Order*, 20 FCC Rcd at 14001 n.199; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13076 n.155; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 n.341.

61. In their applications, the Applicants discuss unilateral effects for the nine CMAs where, post-transaction, the combined entity would hold 70 megahertz or more of cellular and PCS spectrum.[206] The Applicants identify the rival service providers in these CMAs and provide details of their spectrum holdings and network coverage.[207] Based on their analysis of these factors, the Applicants generally argue that the response of rival service providers will be sufficient to constrain unilateral actions by the merged firm.[208] Further, the Applicants claim that post-transaction there would be sufficient spectrum capacity for new market entry.[209] The Applicants also argue that pre- and post-transaction market shares do not give rise to competitive issues; however, they do not provide any data on subscriber shares for these nine CMAs.[210]

62. VDPS argues that if Verizon Wireless continues to operate RCC's legacy GSM network after it finishes overlaying the RCC network with CDMA technology, it will have monopoly powers that would enable it to raise service prices or alter its behavior in other ways that would result in the degradation of Vermont's only GSM network.[211] In particular, given that Verizon Wireless provides nationwide mobile telephony services with CDMA technology, there is no competing GSM network in Vermont, and an existing entrant without an A- or B-block cellular license would find it difficult to support a GSM platform, VDPS argues that Verizon Wireless faces no incentive to maintain the GSM network at its current quality level or to invest in network innovations or new technology deployments.[212] VDPS also claims that Verizon Wireless's acquisition of RCC's cellular spectrum would give it the ability and incentive to exercise market power because of propagation characteristics that limit the substitutability of PCS spectrum for cellular spectrum in the state of Vermont.[213] VDPS stresses that mobile telephony service providers in Vermont face unique challenges, including higher costs per user due to low population density and a mountainous terrain that limits signal propagation.[214] As a result, VDPS argues that wireless carriers in Vermont depend heavily on cellular spectrum, as opposed to other types of spectrum, such as PCS, that have smaller area coverage and require many more cell sites, to achieve geographic coverage.[215] Therefore, competitors with only PCS licenses would not be an adequate deterrent to anticompetitive behavior by the merged entity holding cellular spectrum because for a large segment of Vermont customers the mobile telephony services provided by firms holding only PCS spectrum are not a sufficiently close substitute for the services provided by firms with access to cellular spectrum.

63. Senator Sanders asserts that, post-transaction, Verizon Wireless would become a monopoly in the provision of mobile telephony service in Vermont.[216] Further, Senator Sanders contends that even with Verizon Wireless's commitment to maintain the GSM network for 18 months, Vermont consumers

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[206] *See* discussion *supra* note 183 and accompanying text.

[207] Application, Public Interest Statement at 43-55.

[208] *Id.* at 40-41.

[209] *Id.* at 41.

[210] *Id.* at 42.

[211] VDPS Petition to Deny at 5-6; VDPS Supplement to Petition to Deny at 3.

[212] VDPS Petition to Deny at 6, 8-10.

[213] VDPS Supplement to Petition to Deny at 8-9.

[214] VDPS Petition to Deny at 2-4.

[215] *Id.* at 2, 10.

[216] Senator Sanders Oct. 29, 2007 Letter.

would be harmed.[217] Specifically, Senator Sanders argues that Verizon Wireless is unlikely to upgrade or expand RCC's GSM system, and therefore if another GSM provider were to enter the market, it would have to build the entire infrastructure from scratch.[218] Senator Sanders requests that Verizon Wireless agree to several conditions for acquiring RCC's licenses and business in Vermont.[219] The conditions that Senator Sanders proposes include: (1) Verizon Wireless to extend 100 percent geographic wireless phone coverage in Vermont within 30 months; and (2) the maintenance and expansion of the GSM network indefinitely or a requirement that the GSM assets be sold to a provider that would maintain, upgrade, and expand the GSM network.[220]

64. The Applicants argue that Verizon Wireless would have no more market power than RCC currently has because Verizon Wireless is merely replacing RCC as the operator of these GSM systems; therefore, its proposed acquisition of RCC's GSM network and operations would not change the competitive landscape.[221] In addition, the Applicants claim that VDPS's argument ignores the likelihood of a new entrant in Vermont because a substantial amount of the spectrum available for mobile telephony services in that state is already licensed to AT&T and T-Mobile, mobile telephony providers that utilize the GSM technology.[222] Further, the Applicants argue that Verizon Wireless has natural business and economic incentives to provide quality GSM service while it deploys a CDMA network because it will want to retain as many of its GSM customers as possible until it is ready to migrate them to CDMA.[223]

65. The Applicants also argue that a condition requiring Verizon Wireless to provide 100 percent geographic coverage in Vermont in 30 months is unprecedented in the context of a proposed transaction involving the merger of two entities, and in any event would be more appropriately addressed in a rulemaking.[224] Also, the Applicants argue that the Commission has put in place build-out rules for cellular and PCS spectrum, and that the Applicants have met those requirements.[225] Finally, since coverage is an important source of a mobile telephony provider's competitive advantage, Verizon Wireless has every incentive, post-transaction, to expand coverage in its markets.[226]

66. The results of our market-by-market analysis of the markets of concern are reported below. As indicated there, our analysis identifies three Vermont CMAs, one New York CMA, and two Washington CMAs in which the Commission is requiring business unit divestitures because of concerns that the number of competing service providers after the merger would not be sufficient to deter anticompetitive behavior by the merged entity. Regarding the three Vermont CMAs, we find that these required business unit divestitures render moot any concerns raised by VDPS or other petitioners about the potential unilateral effects of the proposed transaction in the state of Vermont. We note, however, given our finding that mobile telephony services offered by facilities-based providers using cellular, PCS, and SMR spectrum and employing various technologies offer the same basic voice and data functionality

[217] *Id.*

[218] *Id.*

[219] *Id.*

[220] *Id.*

[221] Verizon Wireless/RCC Opposition at 11.

[222] *Id.* at 11-13.

[223] *Id.* at 16.

[224] *Id.* at 19.

[225] *Id.* at 20.

[226] *Id.*

and are indistinguishable to the consumer,[227] we base our determination whether the response of rival service providers will be sufficient to deter anticompetitive behavior by the merged entity on factors other than the number of competitors using the same technological standard.

2. Coordinated Effects

67. As discussed in previous wireless transaction orders, in markets where only a few firms account for most of the sales of a product, those firms may be able to exercise market power by either explicitly or tacitly coordinating their actions.[228] Accordingly, one way in which a transaction may create or enhance market power or facilitate its exercise is by making such coordinated interaction among firms more likely, more successful, or more complete.[229] Successful coordination depends on two key factors. The first is the ability to reach terms that are profitable for each of the firms involved, and the second is the ability to detect and punish deviations that would undermine the coordinated interaction.[230]

68. As discussed above, the Applicants provide a competitive analysis for the nine CMAs identified by the 70 megahertz spectrum aggregation screen previously employed by the Commission.[231] Based on this market-by-market evaluation, the Applicants assert that there is little risk of coordinated interaction in any of the nine CMAs because the overall market for mobile services is highly competitive, and the services provided are generally fungible.[232] The Applicants do not identify any specific constraints on the ability of the remaining competitors to reach terms of coordination or to detect and punish deviations following the transaction.[233]

69. The Applicants' arguments on coordinated interaction do not cause us to alter our general views on this topic, as set out in the Commission's recent wireless transaction orders.[234] Those views underpin the market-by-market analysis to which we now turn.

D. Market-by-Market Evaluation

1. Analytical Standard

70. In this section, we undertake a granular analysis of local markets using the approach the Commission adopted in its recent wireless transaction orders.[235] In particular, we examine 17 CMAs

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[227] *See supra* ¶ 48.

[228] *See AT&T Dobson Order,* 22 FCC Rcd at 20321 ¶ 48; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14896 ¶ 77; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11554 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 ¶ 69; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150; *DOJ/FTC Merger Guidelines* § 0.1.

[229] *See AT&T Dobson Order,* 22 FCC Rcd at 20321 ¶ 48; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14896 ¶ 77; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11554 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 ¶ 69; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150.

[230] *See AT&T Dobson Order,* 22 FCC Rcd at 20321-22 ¶ 48; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14896 ¶ 77; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11554 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 ¶ 69; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151; *DOJ/FTC Merger Guidelines* § 2.11.

[231] *See* discussion *supra* note 185 and accompanying text.

[232] Application, Public Interest Statement at 42.

[233] *Id.* at 43-55.

[234] *See AT&T Dobson Order,* 22 FCC Rcd at 20322 ¶ 50; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555 ¶ 62; *Sprint-Nextel Order*, 20 FCC Rcd at 13995-01 ¶¶ 69-89; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085-87 ¶¶ 85-93; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580-86 ¶¶ 150-164.

identified by the Commission's initial screen examining both HHI market concentration and spectrum input. In undertaking this market-by-market analysis, we consider variables that the general analyses in these orders have shown are important for predicting the incentive and ability of service providers to successfully restrict competition on price or non-price terms through coordinated interaction, and the incentive and ability of the merged entity unilaterally to elevate prices or suppress output.[236] These include: the total number of rival service providers; the number of rival firms that can offer competitive nationwide service plans; the coverage of the firms' respective networks; the rival firms' market shares; the merged entity's post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony services controlled by the combined entity; and the spectrum holdings of each of the rival service providers. In reaching determinations, we balance these factors on a market-specific basis, and consider the totality of the circumstances in each market.

71. Thus, for example, if our count of the number of rival service providers and our scrutiny of their spectrum holdings and network coverage indicates that the response of rival service providers will likely be sufficient to limit the ability and incentive of the combined entity to raise prices unilaterally, we would find that the transaction is not harmful to competition in a specific market even in the presence of a relatively high post-transaction market share of the combined entity.[237] We also scrutinize, and base our determinations on, the uniformity of competitive conditions in local markets. Thus, in some instances, we may find that the transaction is not harmful to competition in a particular market if the potential harm from the transaction is confined to a small enclave within the market, and this harm is likely to be ameliorated by the more favorable competitive conditions in most of the market.[238]

2. Result of Analysis

72. Our market-by-market analysis finds that there would be a significant likelihood of harm in the proposed transaction, either from unilateral effects or coordinated interaction, in six of the 17 CMAs identified by the initial screen. As the Commission determined in its previous wireless transaction orders, this multi-factor, market-specific analysis, which employs a combination of data sources, provides a reliable basis for making our determinations herein.[239]

73. For these markets, the market share and HHI information are derived from our analysis of data compiled in our NRUF database, which tracks phone number usage by all telecommunications service providers, including wireless service providers. However, our analysis does not rely solely on market shares to determine which markets are likely to experience competitive harm as a result of this

(Continued from previous page)

[235] *See, e.g.*, *AT&T Dobson Order*, 22 FCC Rcd at 20322 ¶ 51; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555, 11574-75 ¶ 63, App.; *Sprint-Nextel Order*, 20 FCC Rcd at 14046-14053 App. C; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13120-36 App. C, App. D; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21649 App. D.

[236] *See, e.g.*, *AT&T Dobson Order*, 22 FCC Rcd at 20322 ¶ 51; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555 ¶ 63; *Sprint-Nextel Order*, 20 FCC Rcd at 13995-14009 ¶¶ 68-116; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075-87 ¶¶ 54-93; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570-86 ¶¶ 115-164.

[237] *See, e.g.*, *AT&T Dobson Order*, 22 FCC Rcd at 20322-23 ¶ 52; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555 ¶ 64; *Sprint-Nextel Order*, 20 FCC Rcd at 14010 ¶ 118; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13096 ¶ 118; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 190.

[238] *See, e.g.*, *AT&T Dobson Order*, 22 FCC Rcd at 20322-3 ¶ 52; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555 ¶ 64; *Sprint-Nextel Order*, 20 FCC Rcd at 14010 ¶ 118; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13095-96 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 190.

[239] *AT&T Dobson Order*, 22 FCC Rcd at 20323 ¶ 53; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11556 ¶ 65; *Sprint-Nextel Order*, 20 FCC Rcd at 14010 ¶ 118; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13095-96 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 190.

transaction. In combination with the other factors in our multi-factor, market-specific analysis, which draws competitive conclusions based on the totality of the circumstances present in a given market, we are confident that these ranges are a reliable basis for our determinations.

74. In addition, we examine data from our LNP database through June 30, 2007. This information includes each instance of a customer porting a phone number from one mobile carrier to another, and indicates both the origin and destination carrier.[240] We also analyze carrier launch and coverage information available from a variety of public sources, as well as information regarding spectrum holdings, which we obtained from our licensing databases and from the Application.

75. *Divestitures Proposed by Verizon Wireless.* In a December 5, 2007, filing with the Commission, Verizon Wireless states that it had made a commitment to DOJ to divest RCC's cellular spectrum and associated networks where there is overlap with Verizon Wireless's cellular networks, including in the state of Vermont. Verizon Wireless also claims that once these divestitures are completed, Verizon Wireless would not be an exclusive provider of GSM services in the overwhelming majority of the state of Vermont.[241] However, Verizon Wireless notes that these proposed divestures would result in Verizon Wireless retaining RCC's cellular system in the southern half of the Vermont 2-Addison CMA.[242] Verizon Wireless claims that no competitive harms would result from it retaining RCC's cellular spectrum in certain counties in the Vermont 2-Addison CMA because it would be competing head-to-head with the other cellular service provider, U.S. Cellular, in this area.[243] Further, Verizon Wireless claims that in the Vermont 2-Addison CMA, it would continue to provide GSM service until another GSM provider begins to offer service.[244]

76. VDPS argues that the proposed divestitures do not ameliorate its concerns because the divestiture plans: (1) were not formalized; (2) did not ensure the continued operation and maintenance of a GSM system in Vermont; and (3) did not ensure the continuation of a GSM network in three counties in the Vermont 2-Addison CMA.[245] Joint Petitioners argue that a full divestiture of RCC's cellular system in the Vermont 2-Addison CMA would ensure the integrity of the GSM network, while permitting Verizon Wireless to continue to build out its CDMA network in the market.[246]

77. In light of the agreement reached with DOJ, Verizon Wireless states that the DOJ Final Judgment requires that it divest all of RCC's cellular spectrum and network in Vermont. This divestiture includes not only the three Vermont CMAs but also CMA560 New York 2-Franklin, and these must be sold to a single buyer.[247] Further, until these properties are transferred to a buyer, they will be maintained

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[240] This data was provided to the Commission by NeuStar.

[241] Verizon Wireless made a commitment to DOJ to divest RCC's cellular spectrum and network in Vermont to AT&T, a GSM mobile telephony service provider. Verizon Wireless Dec. 5, 2007 *Ex Parte* Filing at 1; Verizon Wireless/RCC Opposition at 11-12; Letter from Nancy J. Victory, Counsel, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, *Ex Parte*, WT Docket No. 07-208, at 2 (filed June 11, 2008) ("Verizon Wireless June 11, 2008 *Ex Parte* Filing").

[242] Verizon Wireless/RCC Opposition at 12, 18-19; Verizon Wireless Dec. 5, 2007 *Ex Parte* Filing at 1, 3; Verizon Wireless June 11, 2008 *Ex Parte* Filing at 2.

[243] Verizon Wireless Dec. 5, 2007 *Ex Parte* Filing at 3.

[244] Verizon Wireless Dec. 5, 2007 *Ex Parte* Filing at 1, 3.

[245] VDPS Reconsideration Comments at 3-4.

[246] Joint Petitioners Reply at 5-6.

[247] Verizon Wireless June 11, 2008 *Ex Parte* Filing at 2-3.

by a management trustee.[248] Therefore, according to Verizon Wireless, the divestiture as proposed in the Final Judgment ameliorates any concerns raised by VDPS.[249]

78. *Specific Markets in Which Competitive Harm Is Likely.* We list below the six markets in which our case-by-case analysis indicates that competitive harm is likely as a result of this transaction. A detailed discussion of these markets is contained in Appendix C. As we did in the *Cingular-AT&T Wireless Order*, we find that, in any market in which the transaction would reduce the number of genuine competitors to four or fewer, the proposed transaction may result in a significant likelihood of successful unilateral effects and/or coordinated interaction.[250] The following six markets, which are the markets where we are requiring business unit divestitures, represent all the markets in which the acquisition will reduce the number of genuine competitors to four or fewer. In fact, in three of these six markets, the number of fully constructed operators will be reduced from two to one.[251] In all six of these markets, we expect that the post-transaction market share of the combined entity likely would make it profitable for the entity to raise price and restrict output. Further, the presence and capacity of rival service providers, taking into account near-term opportunities to obtain access to additional spectrum, are such that the response of rival service providers is likely to be insufficient to deter such unilateral actions.

79. Most of these six markets are smaller markets with high market shares for the merged entity and few competing service providers. In these markets, we are concerned that, post-transaction, competing service providers would not be sufficiently numerous to deter anticompetitive behavior by the merged entity.[252]

CMA	Name
CMA248	Burlington, Vermont
CMA560	New York 2 - Franklin
CMA679	Vermont 1 - Franklin
CMA680	Vermont 2 - Addison
CMA694	Washington 2 - Okanogan
CMA695	Washington 3 - Ferry

[248] *Id.*

[249] *Id.*

[250] *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 191.

[251] For purposes of this determination, we define fully built-out as having coverage of at least 70% of the population in the CMA. *See* Appendix B.

[252] Application of the initial screen on a CEA basis shows that no potential markets of concern are identified that are not also identified by CMA application of the screen. For convenience, we limit our discussion of the markets of concern to CMAs because, upon completing our competitive analysis, we find that the most exact divestiture area to eliminate concerns of competitive harm would be CMAs. Therefore, we undertake our in-depth analysis on the basis of CMA areas only.

E. Roaming

1. Background

80. *Background.* VDPS, the Joint Petitioners, and Senator Sanders each raise concerns about the potential for the transaction to have an adverse impact on roaming arrangements and request that the Commission prevent such adverse outcomes by imposing certain conditions on the transaction.

81. Roaming occurs when the subscriber of one CMRS provider travels beyond the service area of that provider and utilizes the facilities of another CMRS provider to place an outgoing call, to receive an incoming call, or to continue an in-progress call.[253] Subscribers can roam manually by providing a credit card number to the host carrier, while automatic roaming allows mobile telephone subscribers to place calls while roaming as they do in their home coverage area, by simply entering a phone number and pressing "send." The provision of roaming is subject to the requirements of sections 201, 202, and 208 of the Communications Act.[254] In August 2007, the Commission determined that when "a reasonable request is made by a technologically compatible [commercial mobile radio service] carrier, a host [commercial mobile radio service] carrier must provide automatic roaming to the requesting carrier outside of the requesting carrier's home market . . ."[255] on reasonable and non-discriminatory terms and conditions.[256] The Commission also said that if a carrier makes a reasonable request for automatic roaming, "then the would-be host carrier cannot refuse to negotiate an automatic roaming agreement with the requesting carrier."[257] At the same time, the Commission maintained its existing manual roaming requirement, which imposes on CMRS providers the obligation to permit customers of other service providers to roam manually on their networks.[258]

82. VDPS states that RCC is effectively the sole operator of a GSM network in the state of Vermont, since GSM operator T-Mobile operates only one cell site in the state.[259] VDPS argues that, as a result of the proposed transaction, Verizon Wireless would control Vermont's only GSM network, and therefore would be able to "extract high rents from GSM service providers that require roaming

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[253] *See AT&T Dobson Order*, 22 FCC Rcd at 20324 ¶ 59; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14901 ¶ 91; *DoCoMo-Guam Order*, 21 FCC Rcd at 13600 ¶ 33; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11561-62 ¶ 98; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13090 ¶ 101; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21586 ¶ 166; *see also* Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Service, WT Docket No. 05-265, 00-193, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 15047, 15048 ¶ 2 (2005) ("*Roaming Notice*").

[254] Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817, 15818 ¶ 1 (2007) ("*Roaming Report and Order*").

[255] *Id.* at 15818 ¶ 2; *see also id.* at 15831 ¶ 33.

[256] *Id.* at 15826 ¶ 23.

[257] *Id.* at 15828 ¶ 28.

[258] 47 C.F.R. § 20.12(c) provides:

> Each carrier subject to this section must provide mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to this section, including roamers, while such subscribers are located within any portion of the licensee's licensed service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee's base stations.

[259] VDPS Petition to Deny at 5.

arrangements in order to provide service to their customers traveling through Vermont."[260] Also, VDPS and Senator Sanders claim that, because the Applicants intend to overlay RCC's GSM network with CDMA technology and then discontinue RCC's GSM network, the proposed transaction threatens the quality of and other mobile telephony service providers' access to Vermont's only GSM network and the availability of mobile service to Vermont vacationers and business travelers with GSM handsets.[261] VDPS further argues that Verizon Wireless's divestiture commitment to DOJ does not allay these concerns because it is limited to divestiture of RCC's cellular operations in any Vermont market where RCC and Verizon Wireless have overlapping cellular operations, and excludes divestiture of RCC's cellular operations in several counties (Bennington, Windham, and southern Windsor) in the Vermont 2-Addison CMA, where Verizon Wireless holds PCS rather than cellular spectrum licenses.[262] Since RCC is the only GSM service provider in these counties, VDPS maintains that if Verizon Wireless were to acquire RCC's cellular licenses and convert them to CDMA technology in these markets, GSM handsets would no longer work in this part of Vermont.[263] Further, the unavailability of cellular spectrum would make it extremely difficult for a competitor to acquire suitable spectrum needed to reintroduce GSM to those counties.[264]

83. Based on these concerns, VDPS requests that the Commission condition its approval of the transaction on the divestiture of all of RCC's spectrum licenses in Vermont, with the divestiture structured in a manner that preserves Vermont's existing GSM network.[265] If the Commission does not condition its approval on divestiture of RCC's spectrum licenses in the Vermont CMAs, VDPS requests that the Commission condition its approval on the requirement that Verizon Wireless maintain the existing GSM network in Vermont at the current level of investment for a period of at least six years.[266] In the absence of either of these conditions, VDPS requests that the Commission deny the applications for the transfer of control of licenses held by RCC and its subsidiaries to Verizon Wireless.[267]

84. The Joint Petitioners address their comments on roaming to southern Vermont, where Verizon Wireless's divestiture commitment contemplates retention of RCC's cellular licenses, with Verizon Wireless continuing to operate the GSM network built by RCC until a GSM operator begins to offer service in such areas.[268] The Joint Petitioners claim that Verizon Wireless would begin to transition the cellular spectrum to CDMA once a GSM operator begins to offer service in these markets. The Joint Petitioners argue that roamers who use GSM handsets would be harmed because Verizon Wireless "has no obvious incentive to properly maintain, upgrade, or expand the GSM network" in these markets.[269] The Joint Petitioners also argue that, if Verizon Wireless were to acquire RCC's GSM network, it would have a monopoly on the GSM network, and therefore would be able to set monopoly prices for GSM

[260] *Id.*

[261] *Id.* at 14; VDPS Supplement to Petition to Deny at 3-4; Vermont PIRG Extension Motion at 2-3; Senator Sanders Oct. 29, 2007 Letter; Senator Sanders Nov. 20, 2007 Letter.

[262] VDPS Reconsideration Comments at 3-4.

[263] *Id.*

[264] *Id.*; VDPS Petition to Deny at 10.

[265] VDPS Supplement to Petition to Deny at 4, 14-15.

[266] *Id.* at 4.

[267] *Id.* at 4.

[268] Joint Petitioners Petition to Deny at 4.

[269] *Id.*

roaming rates.[270] In markets where Verizon Wireless would control the only GSM network, the Joint Petitioners request that the Commission condition its approval of the transaction on one of the following requirements: (1) divestiture of the spectrum and GSM network to a competitor offering GSM service; or (2) an agreement by Verizon Wireless to maintain, upgrade, and expand the GSM service for as long as competitors and roamers could use it, or a period of six years, whichever is longer.[271] In addition, the Joint Petitioners and Senator Sanders request that the Commission require Verizon Wireless to commit to provide automatic roaming services at reasonable rates to other GSM and CDMA carriers.[272]

85. The Applicants argue that there is no basis for conditioning the approval of the transaction on either the divestiture of all of RCC's GSM systems to a GSM carrier, or a requirement that Verizon Wireless maintain the GSM network built by RCC for a period of six years or indefinitely.[273] Further, the Applicants argue that Verizon Wireless's acquisition of RCC's GSM network and operations does not change the competitive landscape in Vermont because Verizon Wireless is merely replacing RCC as the operator of these systems, and therefore Verizon Wireless will have no more power to set anticompetitive roaming rates than RCC currently possesses.[274] The Applicants also argue that the Commission should not, in the context of this proposed transaction, require Verizon Wireless to provide automatic roaming at reasonable rates to other service providers because the Commission has already established roaming rules that are applicable to all CMRS providers and Verizon Wireless will comply with these rules.[275]

86. With respect to the proposed requirement that Verizon Wireless preserve the GSM network, the Applicants claim that Verizon Wireless has already committed, on the record, to providing GSM service in the southern portion of the Vermont 2-Addison CMA where it currently does not have cellular operations until a GSM provider is operational and offering service in this area. Therefore, post-transaction, there would be at least one GSM competitor providing mobile telephony service if Verizon Wireless ceases to operate the GSM network acquired from RCC.[276] Contrary to the allegation that Verizon Wireless would have an incentive to allow the GSM network to atrophy and service quality to deteriorate, the Applicants argue that Verizon Wireless would have the incentive to continue to maintain and improve the GSM network in order to retain as many of its GSM customers as possible until it is able to transition these customers to its CDMA network.[277] The Applicants further claim that RCC derives significant GSM roaming revenues from its Vermont properties and it is not in Verizon Wireless's economic interest to reduce this revenue stream by allowing the GSM network to fall into disrepair.[278] Moreover, since AT&T already has spectrum in the retained portion of the Vermont 2-Addison CMA, the Applicants contend that AT&T would have strong incentives to build out the southern portion of the Vermont 2-Addison CMA in order to offer services to customers in other parts of the state where it is acquiring RCC's cellular operations. The Applicants also contend that Verizon Wireless's commitment

[270] *Id.*

[271] *Id.* at 9.

[272] Senator Sanders Oct. 29, 2007 Letter at 3; Joint Petitioners Petition to Deny at 9.

[273] Verizon Wireless/RCC Opposition at 11-18, 22-23.

[274] *Id.* at 11.

[275] *Id.* at 22-23.

[276] *Id.* at 16, 18.

[277] *Id.* at 16.

[278] *Id.* at 16-17.

to grant AT&T access to tower sites owned and retained by Verizon Wireless in the southern portion of the Vermont 2-Addison CMA should facilitate and speed this build-out process.[279]

87. The Applicants also argue that the Commission has consistently and steadfastly maintained that it is not appropriate for the agency to mandate use of a particular technology, and note that the Commission has rejected attempts by opponents to require the preservation of a particular technology platform for roaming in several prior transactions.[280] The Applicants contend that requiring Verizon Wireless to maintain the GSM platform in this area for six more years would clearly be contrary to the public interest because the CMRS industry is characterized by rapid technological change, and given that national GSM carriers have already begun to transition their systems to the next wideband CDMA standard in the GSM evolutionary path, locking in a technology that is sure to become outdated over time would severely disadvantage customers in this region.[281] Finally, the Applicants claim that the required divestitures detailed in the DOJ Final Judgment resolve concerns that subscribers with GSM handsets that roam on RCC's network in Vermont would lose roaming once Verizon converted the network to CDMA technology.[282]

2. Discussion

88. The Commission has previously found that competition in the retail market is sufficient to protect consumers against potential harm arising from intercarrier roaming arrangements and practices.[283] As discussed elsewhere in this Order, we find that the proposed transaction would be likely to cause significant competitive harm in a limited number of geographic markets, and that a package of divestitures of licenses and related network assets on which we are conditioning our grant of authority to transfer control of licenses from RCC to Verizon Wireless is sufficient to prevent competitive harm in those markets. Because the divestitures will protect competition at the retail level in those geographic markets, we conclude that the transaction will not alter competitive market conditions in such a way as to harm consumers of mobile telephony services, including roaming services. Accordingly, we decline to condition our approval of the transaction on any special requirements relating to roaming rates or arrangements, including a requirement to maintain RCC's GSM network for a specified period of time in certain markets.

89. We further note that the markets in which we are requiring divestitures of RCC's spectrum and operations include the counties in the Vermont 2-Addison CMA where Verizon Wireless holds PCS licenses rather than cellular licenses. We emphasize, however, that the need for divestiture in this CMA, as well the other markets identified in our competitive analysis, is based on the potential for the transaction to cause competitive harm due to a reduction in the number of competitors in general, and not on any potential for the transaction to have an adverse effect on roaming arrangements, in particular through its impact on GSM roaming rates, the continuation of the GSM network, or the quality of GSM service.[284]

[279] *Id.* at 6, 17.

[280] *Id.* at 14-15; Verizon Wireless June 11, 2008 *Ex Parte* Filing at 2.

[281] Verizon Wireless/RCC Opposition at 15.

[282] Verizon Wireless June 11, 2008 *Ex Parte* Filing at 1.

[283] *See Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21591 ¶ 180; *Roaming Report and Order*, 22 FCC Rcd at 15822 ¶ 13; *see also DoCoMo-Guam Order*, 21 FCC Rcd at 13602 ¶ 36; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11563-64 ¶ 104.

[284] We note that it is a long-standing principle of the Commission not to dictate licensees' technology choices. *See, e.g., Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21608 ¶ 227; Spectrum Policy Task Force, ET Docket No. 02-135, *Report*, at 14 (rel. Nov. 2002).

90. In addition, we emphasize that the clarifications and the obligations adopted in our *Roaming Report and Order* were intended to address concerns expressed by certain service providers that other providers would deny reasonable requests for an automatic roaming agreement or charge unreasonable or discriminatory roaming rates, and that those obligations will continue to apply squarely to Verizon Wireless after the closing of this transaction.[285] As stated in the *Roaming Report and Order*, automatic roaming is a common carrier service, and the provisioning of automatic roaming service is subject to the requirements of section 201, 202, and 208 of the Communications Act.[286] Accordingly, all charges and practices by CMRS service providers in connection with roaming services must be just and reasonable. Section 208 provides that complaints may be filed with the Commission against common carriers subject to the Communications Act.[287] As noted in the *Roaming Report and Order*, we intend to address roaming related complaints expeditiously on a case-by-case basis.[288]

F. Public Interest Benefits

91. In addition to assessing the potential competitive harms of the proposed Verizon Wireless-RCC transaction, we also consider whether the respective combination of these companies' wireless operations is likely to generate verifiable, transaction-specific public interest benefits.[289] In doing so, we ask whether the resulting combined entity would be able, and would be likely, to pursue business strategies resulting in demonstrable and verifiable benefits to consumers that would not be pursued but for the combination.[290]

92. As discussed below, we find that the proposed transaction is likely to result in certain transaction-specific public interest benefits. We reach this conclusion recognizing that many of these benefits may be challenging to achieve in the near future because of sizable technological and financial requirements. As a result, it is difficult for us to precisely quantify either the magnitude of or the time period in which these benefits will be realized.[291]

1. Analytical Framework

93. The Commission has recognized that "[e]fficiencies generated through a merger can mitigate competitive harms if such efficiencies enhance the merged firm's ability and incentive to compete and therefore result in lower prices, improved quality, enhanced service or new products."[292] Under

[285] *Roaming Report and Order*, 22 FCC Rcd at 15828-29 ¶ 28.

[286] *Id.* at 15818 ¶ 1.

[287] *See* 47 U.S.C. § 208.

[288] *Roaming Report and Order*, 22 FCC Rcd at 15829-30 ¶¶ 30-31.

[289] *See, e.g.*, *AT&T-Dobson Order*, 22 FCC Rcd at 20330 ¶ 73; *AT&T-BellSouth Order*, 22 FCC Rcd at 5760 ¶ 200; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14908 ¶ 109; *DoCoMo-Guam Order*, 21 FCC Rcd at 13603 ¶ 39; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 105; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 182; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 193; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13100 ¶ 132; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

[290] *See, e.g.*, *AT&T-Dobson Order*, 22 FCC Rcd at 20330 ¶ 73; *AT&T-BellSouth Order*, 22 FCC Rcd at 5760 ¶ 200; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14908 ¶ 109; *DoCoMo-Guam Order*, 21 FCC Rcd at 13603 ¶ 39; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 105; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 182; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 193; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13100 ¶ 132; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

[291] *See, e.g.*, *AT&T-Dobson Order*, 22 FCC Rcd at 20330 ¶ 74; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14909 ¶ 110; *DoCoMo-Guam Order*, 21 FCC Rcd at 13603 ¶ 40.

[292] *E.g.*, *AT&T-Dobson Order*, 22 FCC Rcd at 20330 ¶ 75; *AT&T-BellSouth Order*, 22 FCC Rcd at 5760 ¶ 201; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14909 ¶ 111; *DoCoMo-Guam Order*, 21 FCC Rcd at 13603 ¶ 41;
(continued....)

Commission precedent, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms.[293]

94. The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms. First, the claimed benefit must be transaction- or merger-specific. This means that the claimed benefit "must be likely to be accomplished as a result of the merger but unlikely to be realized by other means that entail fewer anticompetitive effects."[294] Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a merger is in the sole possession of the applicants involved in such a transaction, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude.[295] In addition, as the Commission has noted, "the magnitude of benefits must be calculated net of the cost of achieving them."[296] Furthermore, as the Commission has previously explained, "benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than

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ALLTEL-Midwest Wireless Order, 21 FCC Rcd at 11564 ¶ 107; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 183; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 194; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101 ¶ 135; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204; *see also DOJ/FTC Merger Guidelines* § 4.

[293] *See, e.g., AT&T-Dobson Order,* 22 FCC Rcd at 20330-31 ¶ 75; *AT&T-BellSouth Order*, 22 FCC Rcd at 5760-61 ¶ 201; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14909 ¶ 111; *DoCoMo-Guam Order*, 21 FCC Rcd at 13603 ¶ 41; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 107; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 183; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 194; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101 ¶ 135; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204.

[294] *AT&T-Dobson Order,* 22 FCC Rcd at 20331 ¶ 76; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14909 ¶ 112; *DoCoMo-Guam Order*, 21 FCC Rcd at 13603-04 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 108; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599-600 ¶ 205; *accord EchoStar-DirecTV HDO*, 17 FCC Rcd at 20630 ¶ 189; Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, *Memorandum Opinion and Order*, 12 FCC Rcd 19985, 20063-64 ¶ 158 ("Pro-competitive efficiencies include only those efficiencies that are merger-specific, *i.e.*, that would not be achievable but for the proposed merger. Efficiencies that can be achieved through means less harmful to competition than the proposed merger . . . cannot be considered to be true pro-competitive benefits of the merger."); Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, CC Docket No. 98-141, *Memorandum Opinion and Order*, 14 FCC Rcd 14712, 14825 ¶ 255 ("Public interest benefits also include any cost saving efficiencies arising from the merger if such efficiencies are achievable only as a result of the merger . . . ."). *Cf. DOJ/FTC Merger Guidelines* § 4.

[295] *See AT&T-Dobson Order,* 22 FCC Rcd at 20331 ¶ 76; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14909-10 ¶ 112; *DoCoMo-Guam Order*, 21 FCC Rcd at 13604 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564-65 ¶ 108; *SBC-AT&T Order*, 20 FCC Rcd at 18384-85 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101-02 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

[296] *AT&T-Dobson Order,* 22 FCC Rcd at 20331 ¶ 76; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 112; *DoCoMo-Guam Order*, 21 FCC Rcd at 13604 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565 ¶ 108; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18530-31 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101-02 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

predictions about events that are expected to occur closer to the present."[297] Third, the Commission has stated that it "will more likely find marginal cost reductions to be cognizable than reductions in fixed cost."[298] The Commission has justified this criterion on the ground that, in general, reductions in marginal cost are more likely to result in lower prices for consumers.[299]

95. Finally, the Commission applies a "sliding scale approach" to evaluating benefit claims.[300] Under this sliding scale approach, where potential harms appear "both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand."[301] On the other hand, where potential harms appear less likely and less substantial, as in this case, we will accept a lesser showing to approve the transaction.[302]

[297] *AT&T-Dobson Order*, 22 FCC Rcd at 20331 ¶ 76; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 112; *DoCoMo-Guam Order*, 21 FCC Rcd at 13604 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565 ¶ 108; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205 (citing *EchoStar-DirecTV HDO*, 17 FCC Rcd at 20630 ¶ 190).

[298] *AT&T-Dobson Order*, 22 FCC Rcd at 20331-32 ¶ 76; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 112; *DoCoMo-Guam Order*, 21 FCC Rcd at 13604 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565 ¶ 108; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205. *See also DOJ/FTC Merger Guidelines* § 4.

[299] *AT&T-Dobson Order*, 22 FCC Rcd at 20332 ¶ 76; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 112; *DoCoMo-Guam Order*, 21 FCC Rcd at 13604 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565 ¶ 108; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 137; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206; *see also DOJ/FTC Merger Guidelines* § 4.

[300] *AT&T-Dobson Order*, 22 FCC Rcd at 20332 ¶ 77; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 203; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 113; *DoCoMo-Guam Order*, 21 FCC Rcd at 13605 ¶ 43; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565 ¶ 109; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 185; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 196; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 137; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206.

[301] *AT&T-Dobson Order*, 22 FCC Rcd at 20332 ¶ 77; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671-72 ¶ 203; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 113; *DoCoMo-Guam Order*, 21 FCC Rcd at 13605 ¶ 43; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565-66 ¶ 109; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 185; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 196; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 137; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206. *Cf. DOJ/FTC Merger Guidelines* § 4 ("The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.").

[302] *See, e.g., AT&T-Dobson Order*, 22 FCC Rcd at 20332 ¶ 77; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 203; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 113; *DoCoMo-Guam Order*, 21 FCC Rcd at 13605 ¶ 43; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11566 ¶ 109; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 185; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 195.

2. Discussion

96. The Applicants assert that a number of public interest benefits would result from the proposed Verizon Wireless-RCC transaction.[303] They contend that the proposed transaction would provide substantial benefits for existing RCC customers and existing and future Verizon Wireless customers.[304] First, the Applicants note that this transaction would expand Verizon Wireless's wireless footprint.[305] Second, the increased resources would enable Verizon Wireless to increase broadband deployment and network access.[306] Third, the proposed transaction would allow the combined entity to provide higher quality service.[307] Fourth, the Applicants maintain that the combined entity would increase efficiency and achieve economies of scale and scope.[308] Finally, they argue that the proposed transaction would strengthen Verizon Wireless as a competitor in the wireless telecommunications marketplace.[309]

97. According to the Applicants, approval of the proposed transaction will benefit RCC's customers by giving them improved quality of service through upgraded networks and greater choice of wireless services (especially broadband data), devices, and rate plans, and improved customer service.[310] According to the Applicants, Verizon Wireless customers will enjoy the expansion of network access and wireless broadband services, cost savings through increased efficiencies, and greater economies of scale.[311]

a. Increased Wireless Footprint and Network Coverage

98. The Applicants emphasize that completion of the transaction will expand Verizon Wireless's licensed footprint into all or portions of 30 new cellular market areas where the company currently has no cellular or PCS spectrum.[312] Specifically, the Applicants state that the proposed transaction will enable Verizon Wireless to enter eight new CMAs[313] and portions of twenty-two other CMAs[314] where Verizon Wireless currently holds no cellular or PCS spectrum.[315]

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[303] Application, Public Interest Statement at 8-26.

[304] *Id.* at 9-26; Verizon Wireless/RCC Opposition at 4.

[305] Application, Public Interest Statement at 13-14; Verizon Wireless/RCC Opposition at 4-7.

[306] Application, Public Interest Statement at 20-22.

[307] *Id.* at 11-13; Verizon Wireless/RCC Opposition at 4.

[308] Application, Public Interest Statement at 22-24.

[309] *Id.* at 24-26.

[310] *Id.* at 11-13.

[311] *Id.* at 13-14, 20-24.

[312] *Id.* at 9; Verizon Wireless/RCC Opposition at 5.

[313] These markets include Kansas 2 - Norton (CMA429); Kansas 7 - Trego (CMA434); Kansas 11 - Hamilton (CMA438); Kansas - 12 (Hodgeman (CMA439); Kansas 13 - Edwards (CMA440); Minnesota 3 - Koochiching (CMA484); Minnesota 9 - Pipestone (CMA490); and South Dakota 4 - Marshall (CMA637). Application, Public Interest Statement at 9 n.21.

[314] These markets include Alabama 3 - Lamar (CMA309); Alabama 4 - Bibb (CMA310); Alabama 5 - Cleburne (CMA311); Alabama 7 - Butler (CMA313); Georgia 14 - Worth (CMA384); Kansas 1 - Cheyenne (CMA428); Kansas 6 - Wallace (CMA433); Maine 2 - Somerset (CMA464); Minnesota 2 - Lake of the Woods (CMA483); Minnesota 5 - Wilkin (CMA486); Minnesota 6 - Hubbard (CMA487); Minnesota 7 - Chippewa (CMA488); Minnesota 8 - Lac qui Parle (CMA489); Minnesota 10 - Le Sueur (CMA491); Mississippi 2 - Benton (CMA494); Mississippi 3 - Bolivar (CMA495); Mississippi 4 - Yalobusha (CMA496); Mississippi 6 - Montgomery (CMA498); (continued....)

99. According to the Applicants, the transaction will provide Verizon Wireless access to areas – particularly rural areas – in which it is not currently providing service.[316] The Applicants state that these new areas will provide a larger, seamless national footprint for subscribers and allow Verizon Wireless to implement more continuous coverage of major routes between cities and these areas.[317]

100. As a result of the transaction, the Applicants stipulate that Verizon Wireless will integrate RCC's analog, GSM, TDMA, CDMA networks into Verizon Wireless's existing operations over a period of about 18 months.[318] Given the compatibility of RCC's CDMA network equipment with Verizon Wireless's existing CDMA network, the Applicants state that Verizon Wireless will be able to undertake a rapid and smooth integration of these two networks where RCC has existing CDMA coverage.[319] Following this integration, the Applicants contend that RCC's customers will enjoy seamless wireless coverage throughout Verizon Wireless's entire footprint.[320] In addition, the Applicants emphasize that the services that customers enjoy within their home markets will be available to them as they travel throughout the country.[321] Further, the Applicants state that the transaction will enable RCC customers for the first time to utilize their mobile phones when traveling internationally.[322] The Applicants indicate that at present RCC does not permit its subscribers to roam on other networks outside of the United States, but that Verizon Wireless has roaming agreements in thirty-three countries that permit subscribers to use their mobiles while on travel.[323] The Applicants believe the ability to roam internationally will be a substantial benefit to existing RCC subscribers.[324]

b. Promotion and Deployment of Broadband and Next Generation Services

101. The Applicants argue that the proposed transaction will benefit Verizon Wireless's existing and future customers by expanding the area in which Verizon Wireless can offer wireless broadband services.[325] Specifically, they contend that RCC holds spectrum and provides service in eight rural CMAs where Verizon Wireless does not currently hold either 800 MHz cellular or 2 GHz PCS spectrum.[326] In addition, they assert that RCC holds spectrum in parts of twenty-two other rural CMAs

(Continued from previous page)
Mississippi 7 - Leake (CMA499); Mississippi 10 - Smith (CMA502); Oregon 3 - Umatilla (CMA608); and Wisconsin 2 - Bayfield (CMA709). RCC is operational in all of these expansion areas except the counties in Mississippi 7 - Leake. Application, Public Interest Statement at 9 n.22.

[315] Application, Public Interest Statement at 9.

[316] *Id.* at 20-21; Verizon Wireless/RCC Opposition at 5.

[317] Application, Public Interest Statement at 20-21.

[318] *Id.* at 13-14.

[319] While the AMPS standard for analog systems would allow rapid integration of RCC and Verizon Wireless analog systems, Verizon Wireless had announced that it would retire its analog systems on February 18, 2008. *Id.* at 13 n.31.

[320] *Id.* at 14.

[321] *Id.*

[322] *Id.*

[323] *Id.*

[324] *Id.*

[325] *Id.* at 20.

[326] *See supra* note 313.

where Verizon Wireless lacks complete 800 MHz or 2 GHz license coverage.[327] They also assert that increasing Verizon Wireless' coverage footprint by integrating RCC's CDMA operations in areas where Verizon Wireless does not currently operate will enhance Verizon Wireless ability to deploy new services in areas where its coverage overlaps with RCC.[328]

102. Further, the Applicants state that the proposed transaction would increase Verizon Wireless's spectrum capacity in markets where Verizon Wireless already provides service, which will allow Verizon Wireless to better support the increasing demand for broadband services and applications.[329] The Applicants point out that RCC has network assets – including both spectrum and radio towers – that can be incorporated into the Verizon Wireless network.[330] They argue that additional towers and transmitting facilities could enhance Verizon Wireless's signal strength in some areas and enable better allocation of network resources in others.[331] Even more important, they state, is the fact that the additional spectrum held by RCC in particular markets will allow Verizon Wireless to deploy new wireless broadband services, and, in other areas, to enhance existing capacity.[332] The Applicants emphasize that greater spectrum availability translates into faster broadband access.[333]

c. Improvements in Service Quality

103. *Networks and Wireless Services.* The Applicants state that RCC's customers currently do not enjoy the third generation wireless broadband services that Verizon Wireless customers experience from Verizon Wireless's EvDO network,[334] which has been upgraded to utilize EvDO Rev. A technology.[335] In areas where it offers GSM service, RCC has only recently announced plans to upgrade its network to EDGE technology, which is far slower in throughput speed than EvDO Rev. A.[336] In CDMA areas, RCC offers only EDGE technology, which generally provides peak data rates of 473.6 kb/s – over sixty times slower than Verizon Wireless's EvDO Rev. A network.[337] Following consummation of the transaction, the Applicants state that RCC customers will have access to a broader range of mobile

[327] *See supra* note 314.

[328] Application, Public Interest Statement at 21-22.

[329] *Id.* at 9.

[330] *Id.* at 21.

[331] *Id.*

[332] *Id.*

[333] *Id.*

[334] The Applicants state that this network enables customers to access BroadbandAccess™ on their laptops, e-mail on their PDAs, and Verizon Wireless's VCast™ Video and Music services on their wireless phones. *Id.* at 12. *See also* Verizon Wireless/RCC Opposition to Extension Motion at 4.

[335] *See* Verizon Wireless News Center, 100 Percent of Wireless Broadband Network Now Enhanced With Faster Speeds, http://news.vzw.com/news/2007/06/pr2007-06-28h.html (last visited Aug. 27, 2007). According to the Applicants, the use of EvDO Rev. A technology allows Verizon Wireless's customers to access wireless services and to download files as much as ten times faster than customers of other wireless service providers who rely on different network technologies. Application, Public Interest Statement at 12 n.29. *See also* Verizon Wireless/RCC Opposition at 4 n.10.

[336] Application, Public Interest Statement at 11 n.25 ("Verizon Wireless's EvDO Rev. A network provides data rates of up to 3.1 Mbit/s, as compared to RCC's recently announced EDGE technology, which has a theoretical maximum rate of 473.6 kbit/s using all 8 timeslots."). *See also* Verizon Wireless/RCC Opposition at 4 n.10.

[337] *See* Verizon Wireless/RCC Opposition at 4 n.10.

music, video, television and other multimedia services offered by Verizon Wireless.[338] The Applicants indicate that currently RCC subscribers are restricted by the more limited capabilities of RCC's networks and its on-going capital constraints.[339] In contrast, the Applicants stress Verizon Wireless offers its customers the latest in business information, entertainment, and gaming services and content.[340] According to the Applicants, after completion of the transaction, RCC's customers will be able to use mobile phones and laptop computers to access internet-enabled applications, graphics for 3D games, music, full-featured mobile video, video on demand, and TV.[341] Further, the Applicants indicate that the EvDO Rev. A network makes possible new mobile emergency and safety applications, such as remote patient monitoring and mobile robotics.[342] Services and products are also available to support vehicle assistance capabilities through VZNavigator in the form of maps and turn-by-turn directions.[343]

104. *Wireless Devices.* The Applicants state that the transfer of control of RCC to Verizon Wireless will permit RCC's customers to gain access to a broader array of wireless devices. According to the Applicants, RCC's customers currently have access to 11 models of phones, one Smartphone, and one PC card. After the transaction, the Applicants state that RCC's customers will be able to choose from among 42 models of phones, 11 PDA/Smartphones or Blackberry devices, and 7 PC cards – a selection of phones that includes a broad array of Hearing Aid Compatible ("HAC") compliant devices.[344] These wireless devices include devices that take advantage of the faster speeds provided by Verizon Wireless's EvDO Rev. A network.[345]

105. *Service Plans.* The Applicants emphasize that after completion of the transfer, RCC's subscribers will be able to choose from a wide variety of service plans.[346] The Applicants indicate that Verizon Wireless offers a variety of service plans with data bundles and packaged offerings and that all of Verizon Wireless service plans include unlimited nights and weekends and unlimited mobile-to-mobile minutes.[347] By contrast, the Applicants indicate that RCC's service plans offer only limited night and weekend minute bundles and that only certain plans offer unlimited mobile-to-mobile minutes.[348]

106. *Customer Service.* Finally, the Applicants indicate that RCC's customers will benefit from better customer service, and they point out that Verizon Wireless offers customer service and product support for Spanish-speaking customers in its call centers.[349] Further, the Applicants contend that

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[338] Application, Public Interest Statement at 16-17; *see also* Verizon Wireless/RCC Opposition at 4.

[339] Application, Public Interest Statement at 16. They support this contention by pointing out that Verizon Wireless has invested $37 billion in the last seven years to increase the coverage and capacity of its network and to add new services. *Id.* at 11.

[340] *Id.* at 16.

[341] Applicants assert that RCC's subscribers will be able to access ESPN video clips, YouTube, CBS, Comedy Central, Fox, MTV, NBC News, NBC Entertainment and Nickelodeon, ABC News Now, Fox Sports, Country Music Television, Just for Laughs, CNN to Go, ET to Go, the Wall Street Journal, AccuWeather.com, The Weather Channel, Sesame Street, Maxim, Atom Films, and Heavy.com. *Id.* at 16-17.

[342] *Id.* at 12.

[343] *Id.* at 12-13.

[344] *Id.* at 17-18; Verizon Wireless/RCC Opposition at 4-5.

[345] Application, Public Interest Statement at 18.

[346] *Id.* at 18-19; Verizon Wireless/RCC Opposition at 4.

[347] Application, Public Interest Statement at 18-19.

[348] *Id.* at 18.

[349] *Id.* at 15-16; Verizon Wireless/RCC Opposition at 4.

RCC's customers will also benefit from the ability to terminate service during the term of a contract.[350] The Applicants indicate that Verizon Wireless prorates early termination fees.[351]

d. Efficiencies and Economies of Scale and Scope

107. In addition, the Applicants state that the proposed transaction will result in operational synergies including roaming expense savings, elimination of redundant facilities, and a reduction in sales, general, administrative, marketing, and customer service costs.[352] Applicants also note that Verizon Wireless has technical expertise, financial resources, and economies of scope and scale that would benefit of RCC's customers.[353] According to the Applicants, RCC and Verizon Wireless are preferred roaming partners on each others' CDMA networks, so that RCC CDMA subscribers will generally roam on Verizon Wireless systems out-of-region.[354] The Applicants contend that the savings resulting from each company's roaming traffic being brought onto the expanded Verizon Wireless network will be substantial.[355] Further, the Applicants state that Verizon Wireless will be able to save the costs currently incurred by both companies as a result of having to administer the companies' roaming agreements.[356] Finally, the Applicants state that as a result of the integration of the RCC and Verizon Wireless customer bases, the administrative costs associated with servicing customers will be reduced.[357] For example, the Applicants state that savings will result from the integration of RCC's third-party billing systems into Verizon Wireless's less costly in-house system.[358] Verizon Wireless expects to realize more than $1 billion in synergies in reduced roaming and operations expenses.[359]

e. Strengthen Competition

108. The Applicants state that the proposed transaction "will create a stronger and more efficient wireless competitor with greater coverage in an industry where national coverage has proven to be paramount in attracting customers and driving competition."[360] They argue that competition will benefit all consumers in the relevant markets by encouraging better quality of service, more choice in services, applications, rate plans, and wireless devices, and lower prices.[361] Specifically, the Applicants assert that the benefits of competition will be especially profound in RCC service areas not currently served by Verizon Wireless, because a new national provider of wireless services would provide consumers in these areas with equipment and service choices, a variety of rate plans, data services, and content offerings.[362] The Applicants state that as a result of the proposed transaction, the number of

[350] Application, Public Interest Statement at 19.

[351] *Id.*

[352] *Id.* at 22.

[353] Verizon Wireless/RCC Opposition to Extension Motion at 4.

[354] *Id.*

[355] Application, Public Interest Statement at 22-23.

[356] *Id.* at 23.

[357] *Id.* at 24.

[358] *Id.*

[359] Transaction Press Release at 1.

[360] Application, Public Interest Statement at 24. *See also* Verizon Wireless/RCC Opposition at 5.

[361] Application, Public Interest Statement at 24-25.

[362] *Id.* at 25.

national wireless service providers will increase from zero to one in five markets, from one to two in eight markets, and from two to three in eight markets.[363]

3. Conclusion

109. While we find that this transaction is likely to result in transaction-specific public interest benefits, we are not able on the basis of this record, using the sliding-scale approach described above, to conclude that they are sufficiently large or imminent to outweigh the potential harms we have identified in certain individual markets. In those markets, therefore, remedies are necessary to ameliorate likely competitive harms.

V. CONDITIONS/REMEDIES

110. Using the analytical standards outlined above, we find that the Applicants' proposed transaction would likely pose significant competitive harms in six local mobile telephony markets. We conclude that, in these markets, the potential harms would not be outweighed by the proposed transaction's alleged public interest benefits. Thus, if our analysis ended at this point, we would have to conclude that the Applicants have not demonstrated that the proposed transaction, on balance, would serve the public interest, convenience, and necessity.

111. In its review of proposed transactions, the Commission is empowered to impose conditions on the transfer of control of Commission licenses to mitigate the harms the transaction would likely create. Such conditions are tailored to address the specific harms anticipated based on economic analysis, examination of documents submitted in response to our inquiry, and public comment contained in the record of this proceeding. We conclude that the conditions set forth below alter the public interest balance of the proposed transaction by mitigating the potential public interest harms. Accordingly, with the conditions that we adopt in this Memorandum Opinion and Order and Declaratory Ruling, and assuming the Applicants' compliance with these conditions, we find that the Applicants have demonstrated that the proposed transfer of licenses would serve the public interest, convenience, and necessity.

112. We find that the operating unit divestitures described below resolve the transaction-specific harms raised by VDPS and the Joint Petitioners. As we discuss elsewhere, we decline to impose additional conditions proposed by VDPS and the Joint Petitioners because we find they are not designed to remedy transaction-specific harms.

A. Operating Unit Divestitures

113. We found above that the proposed transaction would be likely to cause significant competitive harm in six geographic markets. Specifically, our analysis indicated that, in those markets, there would not be an adequate number of competing service providers remaining after the transaction with sufficient network and spectrum assets to deter anticompetitive behavior by the merged entity. To address these concerns, we will require the Applicants to divest all licenses, leases, and authorizations and related operational and network assets, which shall include certain employees, retail sites, subscribers,

[363] *Id.* The Applicants believe that no national carriers are operational and marketing in CMA438, CMA439, CMA 440, CMA489, and CMA608. The Applicants believe that only one national carrier is currently operating and marketing in CMA 429 (Sprint, through Nex-Tech), CMA434 (Sprint, through Nex-Tech), CMA637 (Sprint); CMA310 (T-Mobile), CMA384 (AT&T), CMA428 (Sprint, through Nex-Tech), CMA433 (Sprint, through Nex-Tech), and CMA464 (AT&T). The Applicants believe only two national carriers are operating and marketing in CMA 490 (T-Mobile & Sprint), CMA309 (AT&T & T-Mobile), CMA311 (AT&T & T-Mobile), CMA483 (AT&T & Sprint), CMA488 (T-Mobile & Sprint), CMA491 (T-Mobile & Sprint), CMA498 (T-Mobile & Sprint), and CMA709 (AT&T & Sprint). Application, Public Interest Statement at 25 n.43. *See also* Verizon Wireless/RCC Opposition at 6.

customers, all fixed assets, goodwill, and all spectrum associated therewith (together, the "Divestiture Assets"), of either Verizon Wireless or RCC, in certain markets. Thus, as in the *AT&T-Dobson Order* and the *Cingular-A&T Wireless Order*, we will here require the divestiture of all spectrum, including PCS and cellular spectrum, associated with the Verizon Wireless or RCC business unit being divested, and not just the business unit's cellular spectrum.[364] Specifically, we condition this grant of authority to transfer control of licenses, authorizations, and spectrum manager leasing arrangements from RCC to Verizon Wireless on the divestiture of the Divestiture Assets in the following markets.

CMA	Name
CMA248	Burlington, Vermont
CMA560	New York 2 - Franklin
CMA679	Vermont 1 - Franklin
CMA680	Vermont 2 - Addison
CMA694	Washington 2 - Okanogan
CMA695	Washington 3 - Ferry

114. In its petition, VDPS argues that any divestiture requirements should include provisions to preserve the GSM network.[365] VDPS also requests that if divestiture is not required in all Vermont markets, Verizon Wireless should be required to maintain the GSM network at the current level of investment for at least six years in those markets where divestiture is not required.[366] Similarly, the Joint Petitioners argue that where Verizon Wireless would control the only GSM network, Verizon Wireless should be required to divest the GSM network, or must agree to maintain, upgrade, and expand the GSM service for as long as competitors and roamers could use it, or six years, whichever is longer.[367] The Applicants argue that forcing Verizon Wireless to maintain the same service as RCC currently offers would violate Commission policy and could work to the detriment of Verizon Wireless customers by preventing rates from decreasing over time.[368] As discussed above, it is the Commission's long-standing policy not to dictate licensees' technology choices.[369] Accordingly, we decline to require divestiture of cellular spectrum in other markets or to impose a condition that the buyer must retain GSM services. We do, however, specifically encourage Verizon Wireless to continue building out their operations in Vermont and to work with the newly created Vermont Telecommunications Authority in considering possible additional avenues for increasing wireless coverage to rural areas in Vermont.[370]

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[364] *See AT&T-Dobson Order*, 22 FCC Rcd at 20366 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21620 ¶ 254.

[365] VDPS Petition to Deny at 15.

[366] *Id.*.

[367] Joint Petitioners Petition to Deny at 9.

[368] Verizon Wireless/RCC Opposition at 21.

[369] *See, e.g., AT&T Dobson Order,* 22 FCC Rcd at 20336 ¶ 89; *ALLTEL-Atlantis Order*, 22 FCC Rcd at 19523 n.26; Cingular-AT&T Wireless Order, 19 FCC Rcd at 21608 ¶ 227; Spectrum Policy Task Force, ET Docket No. 02-135, *Report*, at 14 (rel. Nov. 2002).

[370] *See* Senator Sanders July 25, 2008 Letter.

B. Operation of Divestitures

115. Disposal of the Divestiture Assets will be accomplished in the following way. A Management Trustee shall be appointed to serve as manager and operator of the Divestiture Assets until such assets are sold to third party purchasers or transferred to a Divestiture Trustee (who may be the same person as the Management Trustee). During the period in which the Management Trustee is in day-to-day control of the Divestiture Assets, Verizon Wireless shall retain *de jure* control and shall have the sole power to market and dispose of the Divestiture Assets to third-party buyers, subject to the Commission's regulatory powers and process with respect to license transfers and assignments and the terms of the agreements contained in the DOJ Stipulation and DOJ Proposed Final Judgment.[371]

116. Verizon Wireless filed, on July 31 and August 1, 2008, applications to enter into short-term *de facto* transfer spectrum leasing and spectrum manager subleasing arrangements in order to transfer certain Divestiture Assets in CMA248, CMA560, CMA679, CMA680, CMA694, and CMA695 into the trust with the Management Trustee, and these applications include, as we require, a request to approve the identity of the Management Trustee and the terms of the trust agreement ("Management Trustee Agreement").[372] We require that all of the Divestiture Assets shall be transferred to the trust in accordance with the terms of this Order no later than upon consummation of this proposed transaction. The Management Trustee Agreement includes all reasonable and necessary rights, powers, and authorities to permit the Management Trustee to perform his duties of day-to-day management of the Divestiture Assets, in the ordinary course of business, in order to run the businesses carried on in those CMAs and to permit expeditious divestiture.[373] The Management Trustee will serve at the cost and expense of the Applicants.[374]

117. From the date of release of this Order, and until the divestitures ordered herein have been consummated, both the Applicants and the Management Trustee shall preserve, maintain, and continue to support the Divestiture Assets and shall take all steps to manage them in a way as to permit prompt divestiture. We require that the Applicants and the Management Trustee abide by the same provisions relating to the duties of the Management Trustee and the preservation of the Divestiture Assets as those contained in the DOJ Stipulation.[375] We also require that, to the extent the DOJ Stipulation or the Management Trustee Agreement requires the Applicants or the Management Trustee to provide DOJ with any reports, affidavits, notifications, or statements of compliance or requires that the Applicants seek any approvals from DOJ, the Applicants will also provide such reports, affidavits, notifications, and statements to, and seek such approvals from, the Commission.[376]

118. The Applicants will be allowed 120 days from the closing of their transaction or five days after notice of entry of the Final Judgment, whichever is later (the "Management Period"), to divest the Divestiture Assets prior to the second stage of the divestiture procedures becoming operative.[377] Upon

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[371] DOJ Stipulation at 8-20; DOJ Proposed Final Judgment at 7-20.

[372] *See supra* ¶ 23 & notes 97, 98.

[373] The duties and responsibilities of the Management Trustee and the terms relating to how the Divestiture Assets are to be preserved during the term of the trust are more fully set forth in the DOJ Stipulation filed in the District Court for the District of Columbia on June 10, 2008, and in the Management Trustee Agreement. *See supra* ¶¶ 24-25. Except to the extent that any provisions herein conflict, we require that the Applicants and the Management Trustee fully comply with such provisions as if they were set forth herein *in extenso*.

[374] DOJ Stipulation at 9; *see also* Management Trustee Agreement.

[375] DOJ Stipulation at 8-20.

[376] *Id.* at 11, 16-17; *see also* DOJ Proposed Final Judgment at 19; Management Trustee Agreement.

[377] DOJ Proposed Final Judgment at 7.