Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Applications of	)	
	)	
ATLANTIS HOLDINGS LLC, Transferor,	)	
	)	
and	)	WT Docket No. 08-95
	)	
CELLCO PARTNERSHIP d/b/a	)	
VERIZON WIRELESS, Transferee,	)	
	)	
for Consent to the Transfer of Control of	)	
Commission Licenses and Authorizations	)	
Pursuant to Sections 214 and 310(d) of the	)	
Communications Act	)	

JOINT OPPOSITION TO PETITIONS TO DENY AND COMMENTS

CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS

John T. Scott, III
Vice President and Deputy General Counsel - Regulatory Law
Verizon Wireless
1300 Eye Street, NW, Suite 400 West
Washington, DC 20005

Richard E. Wiley
Nancy J. Victory
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
Counsel to Cellco Partnership

ATLANTIS HOLDINGS LLC

Kathleen Q. Abernathy
Tom W. Davidson
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036
Counsel to Atlantis Holdings LLC

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SUMMARY

The prompt approval of the Verizon Wireless merger with ALLTEL will permit American consumers, particularly those in rural areas, to receive substantial merger-specific benefits that include:

- Aggressive delivery of high-speed wireless broadband services to areas served by ALLTEL, much of which is rural America, and expanded deployment of new technologies throughout the country.
- Improved, award-winning, quality of service and seamless network coverage throughout the country from Verizon Wireless, which has a track record of outstanding network service and customer care.
- A greater variety of services, content, handsets and service plans for ALLTEL customers that Verizon Wireless is able to provide.
- Efficiency gains from resulting synergies that, pre-divestiture, exceed $9 billion in net present value.

In recognition of these substantial public interest benefits, a large number of groups representing consumers (Consumers for Competitive Choice), senior citizens (National Hispanic Council on Aging and National Indian Council on Aging), minorities (League of United Latin American Citizens, The Latino Coalition, Women Impacting Public Policy, National Black Chamber of Commerce, U.S. Hispanic Chamber of Commerce, U.S. Cattlemen's Association, and Hispanic Alliance for Prosperity Institute), business organizations (Nebraska Chamber of Commerce & Industry, Michigan Chamber of Commerce, U.S.-Mexico Chamber of Commerce, Dominican American National Roundtable, Lansing Regional Chamber of Commerce, and Small Business & Entrepreneurship Council), research institutions (FreedomWorks Foundation, the Free State Foundation, and Pacific Research Institute for Public Policy) and public safety interests (NENA, New York State Police, FBI LEEDA, and FBI NAA) have filed comments in support of the transaction.

In contrast, of those entities opposing the merger, only one petitioner even attempts to contest the public interest showing in the Applications. And, that petitioner (Leap Wireless International, Inc.) mistakenly assumes that Verizon Wireless would not deploy next generation wireless services faster than current ALLTEL ownership – an incorrect assumption that is laid to rest in this submission. In such respects, this merger involves the transfer of ownership of ALLTEL to an experienced and award-winning wireless operator, Verizon Wireless, which is committed to expanding and improving service to all of its customers nationwide, including in rural America.

As detailed in the Applications and confirmed herein, the transaction will not raise competitive issues in any market. The Commission has previously found that the wireless market is competitive at all levels and that such competition inures to the benefit of consumers. No petitioner has seriously challenged the competitiveness of the national market or, for that matter, the Applicants' showing that competition at the national level constrains the potential for competitive issues to arise at the local level. Nevertheless, the Applicants have provided a detailed analysis on a CMA basis confirming that there are no adverse competitive effects for markets where the transaction results in spectrum aggregation in excess of the FCC's current 95 MHz spectrum screen. In addition, to expedite approval and end competitive concerns, Verizon Wireless also is committed to divesting business units in 85 local markets as a condition of this merger.

Since the merger will bring improved services from an experienced operator to rural Americans, it is not surprising that opposition to the merger flows almost exclusively from regional and rural wireless carriers and their trade associations. In general, these carriers are concerned that, as a result of the merger, they will face increased competition; therefore they

seek to block, limit or condition the merger by asking for divestitures to themselves or entities of their choosing and merger conditions that uniquely burden Verizon Wireless with obligations borne by no other competing carrier.

Despite the highly competitive marketplace and the divestiture commitments, regional and rural competitors argue that the FCC should resurrect the previously rejected spectrum cap rules or invent new rules to expand the divestiture markets or limit the amount of spectrum held by Verizon Wireless in any given market. These claims, however, are fundamentally misplaced, ignoring substantial precedent that hard limits on spectrum aggregation do not serve the public interest. Petitioners also ignore the fact that the amount of spectrum available for commercial mobile wireless services has more than doubled, with well over 600 MHz of spectrum now available. Indeed, in another pending merger that would result in far larger spectrum holdings being aggregated, Clearwire Corporation and Sprint Nextel Corporation showed 625.5 MHz of spectrum available even if part of their spectrum holdings (BRS/EBS) were ignored.

A number of ALLTEL's roaming partners have expressed concerns about the effects of the merger on their existing agreements. In response to those concerns, Verizon Wireless had previously committed to forego any rights to terminate agreements before their term expires and to offer regional, small and/or rural carriers with roaming agreements with both Verizon Wireless and ALLTEL to select either agreement to govern all of their roaming traffic with the combined company – whichever they find most beneficial. Several roaming partners however, have identified concerns about agreements that are expiring soon or that are now on a month-to-month status. To allay these concerns, Verizon Wireless is now committing to keep the rates set forth in ALLTEL's existing agreements with each regional, small and/or rural carrier for the full term of the agreement or for two years from the closing date, which ever occurs later.

A number of regional and rural carriers, in order to impede competition and block improved services to rural areas, seek to saddle Verizon Wireless, and just Verizon Wireless, with home market and data roaming obligations and special restrictions on exclusive handset agreements that are not required today of any mobile service provider. The proposed merger conditions sought here are the very same requirements that petitioners/commenters are pursuing in pending general industry petitions or proceedings, which offer the Commission more appropriate vehicles for evaluation of the merits, if any, of the concerns raised therein. Indeed, the Commission has repeatedly held that the focus of its roaming concerns is on retail customers, rather than the parochial interest of carriers, and has thus rejected similar requests based on similar facts in prior merger decisions. The Commission, faced with these self-serving demands, must summarily dismiss them as unrelated to this merger, inappropriate attempts to end run pending industry-wide proceedings, and unlawful efforts to impose anti-competitive and discriminatory burdens on just one of many competitors in the wireless marketplace

Aside from the parochial demands of competing regional and rural wireless carriers, one other petitioner, the Ad Hoc Public Interest Spectrum Coalition ("PISC"), in the name of promoting "neutrality" in the provision of mobile broadband services, asks the Commission to impose discriminatory and decidedly "non-neutral" merger conditions on Verizon Wireless alone. Ironically, PISC recognizes that Verizon Wireless, through its Open Development Initiative, is at the forefront of marketplace efforts to provide consumers with choices in applications and equipment. In any event, this merger does not provide any basis for imposing new open access obligations on Verizon Wireless or for importing to its wireless services Internet policies developed for wireline services. Indeed, any such expansion to the wireless

context would require more inquiry than this or any merger review properly allows. Accordingly, PISC's request must be summarily denied.

Finally, some petitioners attempt to convert this transfer proceeding into a vehicle to raise a variety of issues that either have nothing to do with this merger, or are totally lacking in any legal or policy merit. As discussed in this Joint Opposition, there is no basis for the Commission to act on requests related to Universal Service, non-U.S. ownership surveys, trafficking, obligations to third party workers in the workplace or other demands unrelated to the merger. Such requests are neither relevant nor warranted.

Based on the record in this merger proceeding, the Commission should approve the transaction on an expedited basis. The Applicants have fully and satisfactorily demonstrated the public interest benefits from the merger and the absence of significant competitive harms. The petitions and comments opposing the transaction have been either answered by commitments previously made and supplemented herein; or, their requests are unrelated to the merger and are the subject of general industry proceedings. Therefore, the Applicants respectfully urge the Commission to rapidly grant the Applications for the transfer of the licenses and authorizations held by ALLTEL to Verizon Wireless.

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JOINT OPPOSITION TO PETITIONS TO DENY AND COMMENTS

Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless"), Atlantis Holdings LLC ("Atlantis Holdings"), and ALLTEL Corporation ("ALLTEL"), by their attorneys, hereby submit their joint opposition to petitions to deny and comments opposing, or seeking that conditions be imposed upon, the above-captioned transaction. As made plain in the Applications,[1] the proposed merger will result in substantial benefits for consumers in the areas served by ALLTEL. Further, commitments made by Verizon Wireless in the record of this proceeding satisfactorily address any reasonable basis for any of the concerns raised or conditions proposed by the filers. Given the benefits to consumers and the commitments Verizon Wireless has made

[1] Applications of Atlantis Holdings LLC and Cellco Partnership d/b/a Verizon Wireless for Consent to the Transfer of Control of Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act, WT Docket No. 08-95, Lead File No. 0003463892, at Exhibit 1, Description of Transaction, Public Interest Showing and Related Requests and Demonstrations (filed June 13, 2008) ("Public Interest Statement").

to strengthen competition, the Commission should move forward promptly to grant the Applications on an expedited basis.

I. THE PROPOSED TRANSACTION PLAINLY WILL YIELD SUBSTANTIAL PUBLIC INTEREST BENEFITS.

As detailed in the Applications, the proposed transaction will generate substantial and tangible benefits for existing ALLTEL customers and existing and future Verizon Wireless customers, particularly those in rural areas. A large number of commenters have recognized the importance of the merger benefits and have filed in support of prompt Commission approval.[2] In contrast, some regional and rural wireless carriers and their trade associations have responded by seeking to block, limit or condition the merger on the patently implausible grounds that the transaction will "destroy the availability of commercial mobile radio services in rural America,"[3] and lead to "the loss of rural wireless service."[4] As documented in the Applications and supplemented below, the regional and rural carriers' reaction has much to do with rural customers being able to receive new, expanded and improved service choices not available from ALLTEL today, as opposed to any potential anti-competitive abuses arising in what is clearly a robustly competitive wireless marketplace. However, their desire to thwart aggressive

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[2] A large number of filers in this proceeding express support for the transaction. They encompass a broad array of public safety organizations, business associations, public interest groups, research institutions, and consumer advocates.

[3] Petition to Deny of the Rural Telecommunications Group, Inc., WT Docket No. 08-95, at 2 (filed Aug. 11, 2008) ("RTG Petition"). To the extent RTG suggests that a hearing on the Applications is required, RTG Petition at 5-6, it has cited no material questions of fact that would give rise to such a step.

[4] Petition to Deny of the National Telecommunications Cooperative Association, WT Docket No. 08-95, at 4 (filed Aug. 11, 2008) ("NTCA Petition").

competition for rural customers[5] does not constitute a legitimate basis for denying or conditioning the transaction.

In contrast to the petitioners' characterization, the primary focus of the proposed transaction is to bring benefits to rural America through the delivery of new and expanded wireless services by an experienced, nationwide provider. The transaction will permit Verizon Wireless to access numerous rural markets it currently does not serve or where it has only limited spectrum. While some petitioners take issue with the competitive effects of the transaction, they do not – with only one exception discussed below – challenge the substantial benefits the transaction will yield for consumers in rural areas as well as elsewhere throughout the country.

As described in the Applications and elaborated on herein, the merger will enable the aggressive deployment of cutting-edge, high-speed wireless broadband technology faster, better and more extensively than otherwise possible, particularly for rural areas. The transaction will also result in a multitude of benefits for customers of both companies, such as seamless national coverage, improved customer care, and a greater variety of services, devices and service plans for ALLTEL customers, as well as more continuous coverage and expanded wireless data services for Verizon Wireless customers. Contrary to the assertion of one petitioner,[6] the rapid deployment of Evolution-Data Optimized Revolution A ("EvDO Rev. A") and Long Term Evolution ("LTE") technologies is a tangible and substantial benefit of the transaction. Further, the cost savings generated by the transaction are significant and the Applicants further detail these savings in this filing. These benefits identified by the Applicants are merger-specific,

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[5] *See, e.g.*, Petition to Deny of Cellular South, Inc., WT Docket No. 08-95, at 3 (filed Aug. 11, 2008) ("Cellular South Petition") (noting that the merger will cause Cellular South "to face a 'stronger competitor,'" which could cause Cellular South "economic injury").

[6] Petition to Deny of Leap Wireless International, Inc., WT Docket No. 08-95, at 15-16 (filed Aug. 11, 2008) ("Leap Petition").

concrete and substantial. Indeed, a large number of commenters specifically recognize and cite the transaction's benefits as the basis for prompt approval of the Applications.[7]

A. **The Proposed Transaction Will Benefit the Customers of Both Companies, Particularly Those in Rural Areas.**

As detailed in the Applications and recognized by various filers, the proposed transaction will yield substantial benefits for ALLTEL and Verizon Wireless customers, particularly those in rural areas.[8] ALLTEL's licensed footprint covers 265 RSAs and 1,455 counties defined as "rural." The transaction will yield numerous benefits for existing ALLTEL customers in these areas, including:

- *Aggressive delivery of high speed wireless broadband services to the current ALLTEL footprint, much of which covers rural areas*.[9] Today, ALLTEL's customers generally do

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[7] *See* notes 8-9, 12, 14, 16, 18-19, *infra.*

[8] Public Interest Statement at 11-22. *See also* Comments of the Small Business and Entrepreneurship Council, WT Docket No. 08-95, at 3 (filed Aug. 11, 2008) ("In particular, small businesses in the rural areas served by Alltel should experience tremendous gains in terms of wireless speed and services."); Comments of Consumers for Competitive Choice, WT Docket No. 08-95, at 1 (filed July 30, 2008) ("Consumers for Competitive Choice Comments") (" [This merger] will . . . speed the spread of wireless broadband technology, especially to consumers in rural areas. . . . Of all the mergers we have seen over the last 25 years . . . Verizon/Alltel is one of the strongest in terms of consumer benefits . . . ."); Comments of the Dominican American National Roundtable, WT Docket No. 08-95, at 1 (filed July 30, 2008) ("Verizon Wireless also has the scale and scope to invest in network facilities in both urban and rural areas – many areas in which there is a dense Dominican population."); Letter from Jon Wooster, U.S. Cattlemen's Association, to Marlene H. Dortch, FCC, WT Docket No. 08-95, at 2 (filed July 24, 2008) ("We believe that the merger between Verizon Wireless and Alltel will boost competition in the cell phone industry while bringing broadband and its innovations to all Americans – whether they live in downtown or on the farm.").

[9] Public Interest Statement at 11-14. *See also* Comments of the National Hispanic Council on Aging, WT Docket No. 08-95, at 2 (filed Aug. 11, 2008) ("Furthermore, with Verizon Wireless continually investing in its technology and network, the merger is the fastest way Alltel's 13 million customers, including concentrations of Hispanics in key markets, will gain access to next-generation wireless services."); Comments of Women Impacting Public Policy, WT Docket No. 08-95, at 1 (filed Aug. 11, 2008) ("[E]xtending the advanced Verizon Wireless network to Alltel customers would speed the arrival of 4G wireless broadband services in rural as well as urban areas, and to small as well as large businesses."); Comments of the United States-Mexico Chamber of Commerce, WT Docket No. 08-95, at 1 (filed Aug. 7, 2008) ("The Verizon/Alltel merger would accelerate the benefits of wireless broadband by extending Verizon's advanced wireless network technology into areas currently served by Alltel."); Comments of the Alliance for Prosperity Institute, to Marlene H. Dortch, FCC, WT Docket No. 08-95, at 1 (filed Aug. 1, 2008) (noting that the combination of Verizon Wireless and ALLTEL

not have access to high speed services, such as EvDO Rev. A. As noted in the Applications, the merged company plans to upgrade all of ALLTEL's EvDO Rev. 0 cell sites to EvDO Rev. A within one year of the closing of the transaction.[10] This will significantly improve ALLTEL customers' uplink and downlink speeds and quickly increase EvDO Rev. A availability to more than three-quarters of ALLTEL's covered POPs.[11]

- *Improved quality of service and seamless network coverage throughout the country.* ALLTEL's customers will benefit from Verizon Wireless' commitment to quality of service and proven track record of technical innovation. They will also benefit from a network that will have substantial population coverage in every state with the exception of Alaska (where Verizon Wireless is not currently licensed to operate).[12]

- *Industry-leading policies and priorities.* Verizon Wireless has repeatedly been recognized for its award-winning commitment to customer care and its service policies directly related to meeting customer needs.[13] Further, as noted by the National

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will "spur innovation and bring fascinating new inventions and technologies to the Hispanic community nationwide").

[10] Public Interest Statement at 13.

[11] *See* Section I.B., *infra*, discussing more specifically the nature of this benefit.

[12] Public Interest Statement at 14-17. *See also* Letter from Martin J. Wright, FBI National Academy Associates, Inc., West Virginia Chapter, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-95, at 1 (filed Aug. 11, 2008) ("the merger . . . will improve service coverage and eliminate poor connections, dropped calls and otherwise unreliable wireless services – wireless basics that are critically important to law enforcement."); Letter from Richard K. Studley, President & CEO, Michigan Chamber of Commerce, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-95, at 1 (filed Aug. 6, 2008) ("Allying with Verizon Wireless will give Alltel customers in Michigan and all across the country access to a strong, trusted wireless network."); Comments of the Dominican American National Roundtable, WT Docket No. 08-95, at 1 (filed July 25, 2008) (noting that "Verizon Wireless is well known for having one of the largest and most reliable national wireless networks in the country, so Alltel's customers will benefit from its size, reach and quality . . . [and from] ever-greater choices – in plans and phones – than before for these customers as well as one of the most advanced broadband networks"); Comments of FreedomWorks Foundation, WT Docket No. 08-95, at 2 (filed July 25, 2008) ("FreedomWorks Foundation Comments") ("Overall, we believe the acquisition would allow expanded service, a larger network, and competitive affordability to current ALLTEL network users.").

[13] For example, Verizon Wireless has been recognized for providing the wireless industry's highest ranking customer care by J.D. Power and Associates in its 2008 Wireless Customer Care Performance Study, *available at* http://www.jdpower.com/telecom/ratings/wireless-customer-care-ratings-(volume-2). In addition, Verizon Wireless was the first wireless carrier to pro-rate its early termination fees; it has rolled out a "test drive" program, which allows new subscribers to sample the company's service for 30 days and, if they are not satisfied, to take their number to another carrier without paying for calls and the monthly access and activation fees; and it has expanded its "Worry-Free Guarantee" so customers can now change their voice and data plans to select different minute allowances or text messaging and data use options at any time during

Emergency Number Association and other commenters, Verizon Wireless has long been "a good corporate '9-1-1 citizen'" and a "consistent leader in promoting public safety through the provision of wireless enhanced 9-1-1 (E9-1-1)."[14] After the merger, ALLTEL customers will benefit from these policies and priorities.[15]

- *Access to a Greater Variety of Services and Content.* The transaction will enable ALLTEL customers to access the much broader range of mobile music, video, television and other multimedia services offered by Verizon Wireless, as opposed to the more limited options offered by ALLTEL.[16]

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their contract without changing the end date of their contract or signing up for a new contract term.

[14] *Ex parte* letter from Brian Fontes, CEO, National Emergency Numbering Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-95, at 2 (filed Aug. 12, 2008) ("The merger will enable Verizon Wireless to expand their proven commitment to public safety and specifically E9-1-1 to many parts of the country including rural areas that would particularly benefit from Verizon Wireless' commitment."). *See also* Letter from Tom Stone, FBI – Law Enforcement Development Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-95, at 1 (filed Aug. 12, 2008) ("Verizon Wireless has a long and proven track record of assisting law enforcement and providing them with the tools needed to complete their jobs. . . . The transaction with Alltel will help extend this corporate ethic to more areas of the country."); Letter from Leslie T. Hyman, New York State Police, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-95, at 1 (filed Aug. 11, 2008) ("The full spectrum of emergency and forensic communication services and an active training commitment provided by Verizon Wireless to Law Enforcement will be augmented by this merger and will certainly be a massive upgrade to the services currently provided by Alltel.").

[15] In its generally supportive comments regarding the transaction, the American Association of People with Disabilities seeks confirmation that the combined company will comply with the Communications Act's disability requirements, such as Sections 225, 255 and other pertinent sections, both during the transition and when control is complete. Comments of the American Association of People with Disabilities, WT Docket No. 08-95, at 3 (filed July 25, 2008). Verizon Wireless hereby confirms it will meet these statutory requirements. Indeed, Verizon Wireless is committed to providing accessible products and services that meet the communications needs of its customers with disabilities. Verizon Wireless has developed its "Forward Access" online newsletter specifically to address the unique needs and interests of the disabled community. Further, with regard to transition plans for the proposed transaction, to the extent that ALLTEL's customer records indicate that a customer has special needs, Verizon Wireless intends to reach out to that customer during the transition by appropriate means (*e.g.*, Braille, large print format, 3.5 diskette, CD-ROM). In addition, Verizon Wireless has a dedicated team of customer service representatives that will work with disabled customers to the extent the customer requests special assistance. No further condition on the transaction is required or appropriate.

[16] Public Interest Statement at 18-19. *See also* Comments of the United States Hispanic Chamber of Commerce, WT Docket No. 08-95, at 1 (filed Aug. 15, 2008) (The transaction "places into the hands of US Hispanic small businesses the best available and innovative wireless services on the market, increasing their competitiveness and their chances for profitability and success.)"; Letter from Traci L. McClellan, Ex. Dir., National Indian Council on Aging, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-95, at 1 (filed July 25, 2008) ("This

- *Access to a Greater Variety of Wireless Devices.* ALLTEL's customers will have access to the greater variety of wireless devices Verizon Wireless traditionally offers to its customers,[17] in addition to third party devices because of the company's groundbreaking Open Development Initiative.[18]

- *Access to Enhanced Service Plans.* Finally, ALLTEL's customers will have access to an expanded unlimited mobile-to-mobile calling base, as well as enjoy the wide variety of service plans with data bundles and packaged offerings that Verizon Wireless provides.[19]

The proposed transaction also will yield extensive benefits for existing and future Verizon Wireless customers, including:[20]

- *Service area expansion.* The transaction will expand Verizon Wireless' coverage area into all or portions of 54 new cellular market areas ("CMAs") where the company currently has no cellular or PCS spectrum.[21] This will provide customers with more

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merger will open up new and increased wireless service choices to consumers living in areas with heavier concentrations of American Indians."); Comments of the League of United Latin American Citizens, WT Docket No. 08-95, at 1 (filed July 29, 2008) ("[W]hen the merger is complete, even more consumers will enjoy the innovations Verizon Wireless plans to bring to market in years to come.").

[17] Among other things, ALLTEL's customers will have access to a greater number of devices with which to access the EvDO Rev. A network. Currently, ALLTEL has two wireless Internet cards and two PDAs that are EvDO Rev. A capable. Many of Verizon Wireless' handsets are EvDO Rev. A capable, as well as seven modems or wireless Internet cards and two new push-to-talk handsets.

[18] Public Interest Statement at 19-21. *See also* Comments of the National Black Chamber of Commerce, WT Docket No. 08-95, at 1 (filed July 30, 2008) ("NBCC Comments") ("Alltel customers will also realize the advantages of the Verizon Wireless Open Development Initiative, which gives entrepreneurs a chance to bring the latest high-tech devices and creative new services to the public."); Consumers for Competitive Choice Comments at 1 ("If this merger is allowed to go ahead, the 13 million Alltel consumers in 34 states will benefit from significantly increased choices in wireless devices, services and calling plans.").

[19] Public Interest Statement at 21-22. *See also* Consumers for Competitive Choice Comments at 1; Letter from William Sepic, CEO, Lansing Regional Chamber of Commerce, to Marlene H. Dortch, FCC, WT Docket No. 08-95, at 1 (filed July 31, 2008) ("This transaction would make available to Alltel's Michigan customers the latest technologies, an improved selection of calling plans and the benefits of a nationwide network.").

[20] Public Interest Statement at 22-27.

[21] Verizon Wireless' current customers will also benefit from the merger through the expansion of Verizon Wireless' EvDO markets. ALLTEL currently offers EvDO in several areas where Verizon Wireless does not, including West Texas, the Oklahoma panhandle, Oklahoma City Area, eastern Oklahoma, most of Arkansas, most of Kansas, southern and large portions of eastern Nebraska, northern Louisiana, central and southeastern Mississippi, portions of southwestern Alabama, southeastern New Mexico, central Nevada, portions of Michigan,

continuous seamless network access and wireless broadband services throughout the United States and, in particular, in the rural areas that comprise a large portion of ALLTEL's footprint.[22]

- *Expanded deployment of wireless broadband services.* The acquisition of additional capacity will permit Verizon Wireless to deploy new capacity-intensive wireless broadband services in the mostly rural areas where it previously lacked adequate spectrum.[23] This greater spectrum availability will translate into faster broadband access as demand for that service continues to grow. The acquisition of ALLTEL infrastructure will also facilitate the roll-out of new technologies such as LTE.[24]

- *Improved quality of service.* The integration of ALLTEL network assets will benefit customers by enhancing Verizon Wireless' signal strength in some areas and enabling more efficient allocation of network resources in others.

Additionally, as noted in the Applications, Verizon Wireless expects to realize synergies with a net present value, after integration costs and prior to divestitures, of approximately $9 billion.[25] These synergies result from the reduction of both the variable and fixed costs of the combined company. These savings, explained in more detail in the Compass Lexecon Declaration, attached as Attachment 1,[26] will inure to the benefit of customers as they will

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portions of northern Wisconsin, the Florida panhandle and southeastern Ohio. The merger would thus allow Verizon Wireless customers to enjoy expanded EvDO services throughout the country.

[22] Public Interest Statement at 10. *See also* FreedomWorks Foundation Comments at 2 ("existing customers of both Verizon and ALLTEL will benefit as the expanded coverage will reduce roaming charges and allow access to the complementary networks for customers").

[23] Public Interest Statement at 24.

[24] *See, e.g.*, Comments of Pacific Research Institute, WT Docket No. 08-95, at 1 (filed Aug. 11, 2008) ("Because Verizon and Alltel already utilize compatible technologies, they are well-positioned to integrate their networks and ensure that the roll-out of LTE simultaneously reaches both rural and urban customers.").

[25] Public Interest Statement at 25-27.

[26] Reply Declaration of Dennis Carlton, Allan Shampine and Hal Sider, attached hereto as Attachment 1, at 16-22 (Aug. 19, 2008) ("Compass Lexecon Declaration"). *See also* NBCC Comments at 1 ("The new network created will be able to use economies of scale and their combined resources to offer their customers affordable, state-of-the-art services.").

provide the merged company with incentives to increase investment, expand output and increase the value of services offered to end users.[27]

Finally, the merger of ALLTEL's wireless properties into Verizon Wireless also creates a stronger and more efficient competitor with greater coverage.[28] Vigorous competition, in turn, will benefit all consumers in the combined company's footprint by encouraging better quality of service, more choices in service, applications, rate plans and wireless devices, and lower prices.[29] Except as discussed in the next section, no filer in this proceeding disputes these numerous benefits of the transaction.

B. Verizon Wireless' Plans to Deploy EvDO Rev. A Throughout ALLTEL's Broadband Footprint and Deploy LTE Constitute a Substantial Benefit of the Transaction.

In its Petition to Deny, Leap Wireless International, Inc. ("Leap") asserts that Verizon Wireless' planned EvDO Rev. A deployment in the ALLTEL territory is really not a benefit of the merger since ALLTEL is already deploying this technology.[30] However, what Leap chooses to ignore is that the transaction will permit this deployment to occur much more rapidly and

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[27] Although Leap suggests that the Applicants have not made the requisite demonstration of the tangible nature of the numerous benefits cited, Leap Petition at 15, the Applications and this Joint Opposition plainly contain ample information to make the requisite showing.

[28] *See, e.g.*, Comments of The Latino Coalition, WT Docket No. 08-95, at 1 (filed July 31, 2008) ("The Latino Coalition is confident that a healthy, competitive market is the best assurance that the greatest number of Americans will have access to this new generation of technology at the lowest possible prices. The Verizon Wireless/ALLTEL merger will reinforce such a market. It would mean the presence of an expanded wireless carrier with the market size, financial strength and technology base to make competitive offers nationwide, all while keeping costs low for the consumer."); FreedomWorks Foundation Comments at 2 ("The acquisition would also allow ALLTELL's [sic] customers the security and stability of a large market provider without undermining their current contractual structure.").

[29] *See, e.g.*, FreedomWorks Foundation Comments at 2 (filed July 25, 2008) ("On a larger scale, the competitive measures of the ODI and 3G expansion would allow consumer benefits to increase in the aggregate as competitive initiatives are matched by alternative providers.").

[30] Leap Petition at 15-16.

broadly, given Verizon Wireless' technical expertise and experience as well as its greater financial capabilities.

ALLTEL's EvDO coverage currently extends to approximately 76 percent of its covered POPs, with plans to reach approximately 82 percent of its POPs by year end.[31] However, the vast majority of ALLTEL's EvDO coverage is achieved using EvDO Rev. 0, which offers substantially slower uplink and downlink speeds than the EvDO Rev. A technology Verizon Wireless has deployed throughout much of its network.

	Published Download Speed	**Increase in speed**	**Published Uplink Speed**	**Increase in speed**
1xRTT	60-80 Kbps	N/A	60-80 Kbps	N/A
EvDO Rev 0	400-700 Kbps	6-8.75x	60-80 Kbps	0
EvDO Rev A	600 Kbps-1.4 Mbps	1.5-2x	500-800 Kbps	8-10x

Table 1: Broadband Speeds

As Table 1 illustrates, there are three successively faster versions of CDMA wireless broadband – 1xRTT, EvDO Rev. 0, and EvDO Rev. A. EvDO Rev. A users experience typical download speeds in the range of 600 Kbps-1.4 Mbps and uplink speeds in the range of 500-800 Kbps – broadband speeds that are comparable to DSL rates. By contrast, EvDO Rev. 0, which is the version ALLTEL has deployed throughout most of its network, provides typical download speeds in the range of 400-700 Kbps and uplink speeds in the range of 60-80 Kbps. While EvDO Rev. A download speeds are 1.5 to 2 times faster than EvDO Rev. 0 download speeds,

[31] Press Release, Alltel Wireless, "Alltel Wireless rolls out faster broadband network; 'Rev. A' launch means faster access to Internet, video, music and more" (June 23, 2008) ("ALLTEL June 23rd Press Release"), *available at* http://computershopper.com/cellphones/review/s4829/Alltel+Wireless+rolls+out+faster+broadband+network/1.

which would provide a noticeable difference in websurfing and downloading documents, EvDO Rev. A customers also experience significantly faster uplink speeds. EvDO Rev. A uplink speeds are as much as 8 to 10 times faster than EvDO Rev. 0. These faster uplink speeds are particularly beneficial to customers who are, for example, emailing or uploading data-intensive files such as graphics, photos and videos. In fact, a video that takes a few minutes to upload using EvDO Rev. 0 is transferred via EvDO Rev. A in a matter of seconds.

While ALLTEL began deployment of EvDO Rev. A in June of this year, ALLTEL intends to cover portions of only 18 markets by year end 2008.[32] Indeed, as was indicated in the Applications, ALLTEL's deployment will primarily be limited to cities within those markets and, at this time, ALLTEL has made no announcements regarding whether and when it will extend EvDO Rev. A further into its broadband footprint.

In contrast, Verizon Wireless has indicated its intent to convert all of ALLTEL's EvDO Rev. 0 cell sites – approximately 82 percent of its POPs – to EvDO Rev. A within a year of the deal closing.[33] As additional capital is available, Verizon Wireless will also begin to deploy EvDO Rev. A in other parts of ALLTEL's network, including sites where ALLTEL currently offers only 1xRTT or no broadband at all.[34] Thus, contrary to Leap's assertions, the proposed

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[32] ALLTEL June 23rd Press Release.

[33] Public Interest Statement at 13.

[34] The Ad Hoc Public Interest Spectrum Coalition ("PISC") has asked that the Commission adopt similar buildout timelines and benchmarks as it did for the A and B Blocks in Auction 73, and with similar penalties. Petition to Dismiss or Deny of the Ad Hoc Public Interest Spectrum Coalition, WT Docket No. 08-95, at 16 (filed Aug. 11, 2008) ("PISC Petition"). As was the case in Verizon Wireless's acquisition of Rural Cellular Corporation (in which the Commission declined to impose a build-out requirement), there is nothing specific to this transaction that would provide any basis for geographic build-out requirements. Such a condition is, moreover, totally inappropriate in the merger context. *See* Opposition to Petitions to Deny and Comments of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation, WT Docket No. 07-208, at 19 (filed Feb. 21, 2008). *See also Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of Licenses,*

merger will benefit consumers within ALLTEL's coverage areas by significantly speeding the widespread deployment of EvDO Rev. A, particularly in rural areas where EvDO Rev. A deployment would otherwise be potentially years away. Given the substantial increases in download and upload speed inherent in this upgrade, this broader, more rapid deployment of EvDO Rev. A is a substantial benefit of the transaction. Accordingly, the transaction would advance the goals of the President and others to expand the availability of broadband services.[35]

An additional benefit of the merger to ALLTEL's customers will be the earlier introduction of fourth-generation LTE services by Verizon Wireless. Although ALLTEL announced in May of this year that it too would commit to use LTE for its fourth generation wireless services, it stated that its LTE deployment was at least three to five years in the future.[36] In contrast, Verizon Wireless intends to begin launching LTE in 2010 and beyond. Although Leap argues that accelerated LTE deployment is not a merger-specific benefit because ALLTEL does not possess 700 MHz spectrum,[37] Leap misunderstands how this benefit is achieved. It is not solely due to the acquisition of ALLTEL's spectrum – which provides additional capacity for the introduction of new technologies – but also due to the acquisition of ALLTEL's network that will permit the more rapid deployment of LTE in rural areas. ALLTEL's customers will benefit because Verizon Wireless will be able to use its 700 MHz spectrum and ALLTEL's existing infrastructure to deploy LTE in ALLTEL markets.

Authorizations, and Spectrum Manager Leases, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-181 (2008) ("*Verizon Wireless/RCC Order*").

[35] *See* The White House, *A New Generation of American Innovation*, at 11-12 (April 2004), *available at* http://www.whitehouse.gov/infocus/technology/economic_policy200404/innovation.pdf.

[36] *See* "Alltel: We Will Deploy LTE," RCR Wireless (May 15, 2008), *available at* http://www.rcrnews.com/apps/pbcs.dll/article?AID=/20080515/FREE/237472331/1012.em.

[37] Leap Petition at 16.

II. CONTRARY TO SEVERAL PETITIONERS' CLAIMS, THE PROPOSED MERGER WILL NOT HARM COMPETITION IN ANY MARKET.

As detailed in the Applications and confirmed herein, the transaction will not harm competition in any market. The petitioners, for their part, ignore the highly competitive and increasingly national nature of the wireless marketplace and attempt to characterize the national market as irrelevant. However, the Applicants have documented empirical pricing and marketing evidence showing that, increasingly, national market forces should be predominant when assessing competition. Competition at the national market level is fierce, and, at a minimum, national forces must be seen as restraining unilateral or coordinated anti-competitive effects in localized markets. In any event, the Commission has consistently found that the market for wireless services is robustly competitive at all levels of the marketplace.

In focusing on the local market effects, the petitioners fail to provide any evidence of potential adverse competitive effects. Instead, they rely on arguments constructed around the Commission's current 95 MHz spectrum screen under the misguided notion that the screen – which is merely a trigger for competitive analysis – should be regarded as a cap. Remarkably, the petitioners also seize on Verizon Wireless' commitment to divest 85 overlapping markets – undertaken to avoid any competitive issues – as evidence of competitive problems. Petitioners also effectively ask the Commission to ignore the plain fact that the amount of spectrum available for commercial mobile radio services has more than doubled – a fact not reflected in screen adjustments.

Distilled to their essence, the petitioners' arguments can be boiled down to complaints that the Applicants have not submitted enough information about local competitive effects[38] or

[38] Petition to Deny of North Dakota Network Co., WT Docket No. 08-95, at 5 (filed July 31, 2008) ("NDNC Petition"); Petition to Deny of South Dakota Telecommunications Association, WT Docket No. 08-95, at 5 (filed Aug. 11, 2008) ("SDTA Petition"); and PISC

that the Commission's current spectrum screen – where exceeded – is a cap or irrebutable evidence of competitive harms – neither of which is the case.[39] They also ask the Commission to turn a blind eye to changes relevant to the setting of the processing screen[40] itself or advance idiosyncratic cap proposals tailored to their own self interest.[41] Many of the petitioners conclude by criticizing Verizon Wireless' commitment to divest certain markets as vague or inadequate,

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Petition at 8. These concerns should be addressed by Attachment 2 hereto, which analyzes the competitors in each of the Cellular Market Areas ("CMAs") where the post-transaction company would exceed 95 MHz in any county. Moreover, NDNC and SDTA ignore Verizon Wireless' commitment to divestitures in all North Dakota and South Dakota markets. *See infra* at 36-38.

[39] Petition to Deny of Chatham Avalon Park Community Council, WT Docket No. 08-95 at ii (filed Aug. 11, 2008) ("CAPCC Petition"); NTCA Petition at 6-7; RTG Petition at 19; Petition to Deny of Palmetto Mobilenet, L.P., WT Docket No. 08-95, at i, 22 (filed Aug. 11, 2008) ("Palmetto Petition"); SDTA Petition at 10; Petition to Deny of Rural Carriers, WT Docket No. 08-95, at 11 (filed Aug. 11, 2008) ("Rural Carriers Petition"); PISC Petition at 7. Notably, while Palmetto explains that it has been seeking avenues to enter the mobile market in South Carolina, it in fact exited the wireless business in 2006 by selling its company's interests in 10 South Carolina partnerships to ALLTEL.

[40] *See, e.g.*, SDTA Petition at 5-6, Rural Carriers Petition at 5-6 (stating "the applicants have not limited themselves to the 280 MHz of spectrum available for mobile telephone endorsed by the Commission for use in merger analyses, but have instead performed the analysis on the basis of 646 MHz of available spectrum – a standard which the Commission has never endorsed"). The identical statements by these two filers are incorrect, as the FCC has, in fact, used BRS and AWS-1 spectrum in considering local market competition in both the *AT&T/Dobson Order* and the *Verizon Wireless/RCC Order*. *See Applications of AT&T Inc. and Dobson Communications Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd 20295, Appendix A (2007) ("*AT&T/Dobson Order*") (noting, for example, "[w]ith regard to AWS-1 spectrum, it does not appear that there is any required relocation of transmitters or receivers by government users in the CMA. As a result, AWS-1 spectrum in this CMA is available for deployment by commercial licensees. With regard to BRS spectrum, a transition plan has been filed for the BTA that coincides with this CMA. Therefore, BRS spectrum is included in the analysis of the competitive effects of this transaction for this CMA."); *Verizon Wireless/RCC Order* at Appendix B (stating, for example, "[a]t this step of the analysis, we examine whether – in addition to the cellular, SMR, PCS, and 700 MHz spectrum considered as part of the initial screen – either Advanced Wireless Services ("AWS-1") or Broadband Radio Services ("BRS") spectrum is available in this CMA").

[41] RTG Petition at 19, Palmetto Petition at i, 22.

often with the added self-serving "suggestion" – unsupported by any Commission precedent – that divestitures should go to them, their members or some preferred class of recipients.[42]

As detailed below, the record before the Commission clearly shows that that national marketplace is highly competitive, that the merger will strengthen competition at the national level by permitting Verizon Wireless to achieve a national footprint comparable to other national competitors, and that national competition constrains the potential for anti-competitive actions at the local level. With isolated exceptions,[43] none of the petitioners dispute or contest the merger's effects with respect to the national market.

Turning to the local market, contrary to the arguments of certain petitioners,[44] the record before the Commission shows that the current 95 MHz spectrum screen no longer reflects true marketplace conditions. At a minimum, Advanced Wireless Services spectrum at 1710-1755 MHz/2110-2155 MHz ("AWS-1"), Broadband Radio Service ("BRS"), Educational Broadband Service ("EBS"), and Mobile Satellite Service Ancilliary Terrestrial Component ("MSS/ATC")

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[42] CAPCC Petition at ii ("[t]he Commission should not grant the Merger Applications unless the Commission[,] . . . for the purpose of encouraging investment and participation in the telecommunications industry by heretofore excluded parties, . . . grant[s] a right of first negotiation for the acquisition of these businesses or assets to companies owned or controlled by members of minority or socially disadvantaged groups"); NTCA Petition at 6-7 ("It is essential that the Commission ensure that any spectrum divested because of the Verizon merger not end up in the hands of other nationwide providers"); RTG Petition at 20 ("[r]equiring Verizon (and the other three large carriers to whom they may seek to divest) to have a spectrum cap of 55 MHz below 1 GHz is consistent with the FCC's 1999 decision to impose a 55 MHz cap on ownership of cellular, PCS and SMR spectrum"); Palmetto Petition at i, 22 (identical verbiage as Rural Telecommunications Group); SDTA Petition at 10 ("the Commission should require that such divestiture be done pursuant to procedures that would ensure a realistic opportunity for rural carriers to acquire the divested operations in and around their telephone service areas"); Rural Carriers Petition at 11 (identical verbiage as SDTA); PISC Petition at 7 ("the Commission should require, as a condition of approval of any divestitures, that spectrum be divested to a carrier other than one of the national wireless providers and, preferably, to a new entrant to the geographic market in question").

[43] *See* n.48, *infra.*

[44] CAPCC Petition at 6-8; Leap Petition at 11; Comments of Rural Cellular Association, WT Docket No. 08-95 at i, ii, 4 (filed Aug. 11, 2008) ("RCA Comments").

spectrum should be considered as available nationally and part of the initial evaluation. A consistent application of principles underlying the screen methodology requires such changes in the relevant input markets and resulting screen number. Under any spectrum screen reflecting current conditions, this merger would not require detailed local market analysis.

Nonetheless, to avoid frivolous complaints by petitioners that there is inadequate evidence of no harms at local levels, the Applicants have attached, as Attachment 2, a detailed CMA-by-CMA competitive analysis for all markets where the current 95 MHz spectrum screen would be exceeded.[45] As that attachment confirms, none of the markets involved in this transaction raise competitive issues, since Verizon Wireless generally faces competition from the other three "national" carriers, landline replacement carriers, rural telephone companies, and other licensees. Other powerful entities with national, or near national, spectrum footprints also stand poised to enter the market at any time. Indeed, New Clearwire intends to compete directly and aggressively with Verizon Wireless on a local and national basis. The analysis reinforces the showings in the Applications that there are no adverse effects from this transaction.

Finally, as also detailed below, Verizon Wireless has voluntarily committed to business unit divestitures in 85 markets as a condition of approval of this merger by the Commission. There is nothing ambiguous or uncertain about the company's commitment. Moreover, in divesting these markets, Verizon Wireless is prepared to consider interested buyers on an open and equitable basis. In view of these showings, as detailed below, the Commisison should expeditiously determine that this proposed transaction poses no threat to competition in any wireless market not so divested.

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[45] Verizon Wireless has not included in this analysis the CMAs it has committed to divest.

A. **The Wireless Market Is Robustly Competitive, with National Competition Restraining Any Potential for Competitive Issues on a Local Basis.**

As the Applicants documented in their original public interest showing, today's wireless market is competitive – a conclusion that has been challenged by only two filers.[46] The Commission has repeatedly found that "U.S. consumers continue to reap significant benefits – including lower prices, new technologies, improved service quality, and choice among providers – from competition in the Commercial Mobile Radio Services ("CMRS") marketplace, both terrestrial and satellite CMRS."[47] Indeed, approximately 95.5 percent of the U.S. population has access to at least three mobile telephone operators and 89.9 percent of the U.S. population has access to at least four mobile telephone operators.[48] On a nationwide basis, these operators generally include Verizon Wireless, AT&T Mobility, T-Mobile, and Sprint Nextel, all of which

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[46] Leap argues that increases to the input spectrum market "have very broad implications for competition in CMRS markets across the nation and trigger a domino effect of questions that simply cannot be answered in an adjudication." Leap Petition at 9. The only effect cited by Leap is that market concentration in the top-25 markets has increased. *Id*., citing *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Eleventh Report, 21 FCC Rcd 10947, App. A, Tbl. 3 (2006) ("*11th Annual Competition Report*"). Both the *11th Annual Competition Report*, and the much more recent *12th Annual Competition Report*, however, found the CMRS marketplace to be competitive. *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Twelfth Report, FCC 08-28, ¶ 1 (Feb. 4, 2008) ("*12th Annual Competition Report*"). RTG also makes the assertion that "[Herfindahl-Hirschman Index ("HHI")] . . . data confirms that the CMRS market is becoming substantially less competitive," citing its own petition for rulemaking. RTG Petition at 7 (citing Rural Telecommunications Group, Inc., Petition for Rulemaking to Impose a Spectrum Aggregation Limit on All Commercial Terrestrial Wireless Spectrum Below 2.3 GHz, at 12-13 (filed July 16, 2008) ("RTG Petition for Rulemaking"). The cited discussion in that petition derives HHIs for certain markets based upon the older *11th Annual Competition Report*. This analysis, however, ignores the fact that HHIs are – like the spectrum screen – a processing tool and provide only the starting point for analyzing competition, as well as the fact that the ultimate conclusion of the new *12th Annual Competition Report* was that the CMRS marketplaces remains competitive. *See 12th Annual Competition Report* at ¶ 1 (stating "[t]he metrics below indicate that there is effective competition in the CMRS market"); *see also* United States Department of Justice and the Federal Trade Commission, HORIZONTAL MERGER GUIDELINES, at 2.0 (1992, rev'd 1997) ("DOJ/FTC Horizontal Merger Guidelines") (stating "market share and concentration data provide only the starting point for analyzing the competitive impact of a merger.").

[47] *12th Annual Competition Report* at ¶ 1.

[48] *Id*. at ¶ 2.

are strong competitors. The proposed transaction will do nothing to undermine this vigorous competition.

This strong national competition is evidence that the wireless market is increasingly national in scope. The Applicants believe that the Commission should judge the impact of the proposed transaction on competition on a nationwide basis rather than on any arbitrary localized basis. Today, for example, the vast majority of mobile customers subscribe to a national carrier or an affiliate of a national carrier in part so they can receive national coverage.[49] In addition, most pricing and advertising strategies are set at a national level, thereby minimizing the impact of local market conditions on the wireless industry as a whole.[50] While certain filers have argued that the mobile market is not national, they have done so solely by reference to prior – and dated – FCC statements.[51] No evidence has been filed refuting the Applicants' showings that strong national forces limit the potential for either unilateral action or coordinated interactions by carriers at the local level. National competition disciplines local competition; thus the existing national competition must be taken into account by the Commission when assessing the competitive effect of the proposed transaction.

B. Recent Developments Compel a Re-Examination of the Input Market for Mobile Telephony Spectrum.

As previously noted, the FCC typically begins its competitive review of transactions by applying a "spectrum screen," although that screen is only one of three prongs the FCC uses to

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[49] *Id.* at Table A-4 (noting that 87 percent of the nation's mobile customers subscribe to a national carrier or an affiliate of a national carrier).

[50] As indicated in the Applications, approximately 90.4 percent of current Verizon Wireless subscribers have service plans based on national pricing, and close to 100 percent of new subscribers enroll in plans with national pricing. Public Interest Statement at 31, n. 52.

[51] Comments of the North Dakota Attorney General, WT Docket No. 08-95, at 2-3 (filed Aug. 11, 2008); PISC Petition at 3-4; SDTA Petition at 5; Rural Carriers Petition at 5; Leap Petition at 16-17; NDNC Petition at 4-5; CAPCC Petition at 15.

identify markets where further review is unnecessary.[52] The spectrum screen, as described by the FCC, is a processing tool "to eliminate from further review those markets in which there is *clearly no competitive harm* relative to today's generally competitive marketplace."[53] The Commission has repeatedly explained that the screen is "designed *to be conservative* and ensure that any markets in which there is potential competitive harm based on spectrum aggregation is identified and subjected to more in-depth analysis."[54] Thus, the initial screen is not – as certain commenters appear to suggest – a spectrum cap or a presumption that aggregation beyond a

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[52] A number of filers ignore the fact that the FCC's screen also triggers markets for analysis based upon changes in the HHI – analysis also is required if the post-transaction HHI would be greater than 2800 and the change in HHI would be 100 or greater or the change in HHI would be 250 or greater regardless of the level of the HHI. Thus, any significant change in the competitive landscape would, in fact, trigger additional review. The proposed changes to the spectrum screen thus do not "allow Verizon Wireless to gain control of all 50 MHz of cellular spectrum in numerous . . . [CMAs] without [each CMA] having been scrutinized . . . for competitive harm." *See* RCA Comments at i. Indeed, some question whether a spectrum screen promotes consumer welfare and economic efficiency. In the attached declaration, Michael L. Katz concludes "[t]he number of MHz covered by licenses of the merging entities is not a useful measure for analyzing competitive effects." Michael L. Katz, An Economic Analysis of the Spectrum Component of the Federal Communications Commission's Merger Review Screen, attached as Attachment 3, at 1 (Aug. 19, 2008) ("Katz Declaration").

[53] *See AT&T/Dobson Order*, 22 FCC Rcd at 20317 (¶ 39) (emphasis added). *See, e.g., id.* at 20318 (¶ 40); *Applications of Midwest Wireless Holdings and Alltel Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 21 FCC Rcd 11526, 11546 (¶ 36) (2006) ("*ALLTEL/Midwest Order*"); *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd 13967, 13993 (¶ 63) (2006) ("*Sprint/Nextel Order*").

[54] *AT&T/Dobson Order*, 22 FCC Rcd at 20313 (¶ 30) (emphasis added). The fact that certain markets trigger the screen, moreover, requires additional analysis of that local market, not, as suggested by Palmetto, a trigger requiring "heightened" review of an entire transaction. *See* Palmetto Petition at 5 (stating "because the proposed acquisition will result in Verizon holding 95 MHz or more of spectrum in many markets throughout the country (including many markets in South Carolina), the proposed transaction as a whole warrants the Commission's heightened scrutiny").

certain level is anti-competitive,[55] but rather "only the beginning of [the FCC's] competitive analysis."[56]

Moreover, the Commission has recognized that the level of the screen will need to be modified from time to time to ensure that the screen reflects the amount of suitable spectrum at the time it conducts its case-be-case review, and it has in fact adjusted the screen that it applied to previous transaction as circumstances change.[57] It likewise should adjust the screen applied here to reflect current circumstances.

In the recent *Verizon Wireless/RCC Order*, the Commission applied the same screen as it used in the *AT&T/Dobson Order* almost one year ago. However, as Verizon Wireless documented in its original Applications, that screen should be increased to address the availability of AWS-1, BRS/EBS, and MSS/ATC spectrum, among other bands.[58] As explained in the *Verizon Wireless/RCC Order*, "the Commission has made a determination to include, in its evaluation of potential competitive harm, spectrum in particular bands that is 'suitable' for the provision of mobile telephony services" and defined "suitable," in this context, to mean "whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that

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55 PISC Petition at 7-8; SDTA Petition at 8-9; Rural Carriers Petition at 9.

56 *See, e.g., AT&T/Dobson Order*, 22 FCC Rcd at 20317 (¶ 39).

57 *See, e.g., ALLTEL/Midwest Order* at n. 129; *AT&T/Dobson Order* at ¶ 31.

58 In the declaration attached as Attachment 4, Dr. Charles L. Jackson concludes that the FCC's current spectrum screen excludes from consideration more than half of the spectrum available for CMRS. *See* Charles Jackson, The Supply of Spectrum for CMRS, attached as Attachment 4, at 16-17 (Aug. 19, 2008) ("Jackson Declaration").

effectively precludes its uses for mobile telephony."[59] As the Commission in fact determined, there can be no doubt "that AWS-1 and BRS spectrum is capable of supporting mobile telephony services given its physical properties and the state of equipment technology, and the spectrum is licensed with allocation and service rules that allow mobile uses."[60] However, the Commission found that "in many markets, this spectrum is committed to another use that effectively precludes its use for mobile telephony, and it was often unclear whether it will be available for mobile use in the sufficiently near-term."[61] Recent developments, however, confirm that AWS, BRS/EBS and MSS/ATC are no longer encumbered and are available in the near term.

In such regards, a number of filers incorrectly argue that the recent *Verizon Wireless/RCC Order* and the almost one year old *AT&T/Dobson Order* are dispositive as to what spectrum should or should not be considered in the input spectrum market,[62] or that changes in the input spectrum market are, for some reason, *per se* bad policy.[63] In fact, when the spectrum cap was

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59 *Verizon Wireless/RCC Order* at ¶ 42.

60 *Id*. at ¶ 44.

61 *Id*. CAPCC makes several errors regarding how the input spectrum market is defined. CAPCC states "much of both the AWS-1 and BRS spectrum will not be used for mobile telephony," based on the cited statement that "spectrum is committed to another use." CAPCC Petition at 7-8. The FCC, however, was speaking of existing encumbrances, not suitability for mobile use. CAPCC also argues that "[t]he Merger Applications also argue for the inclusion of . . . the as-yet-unauctioned 2175-2195 MHz band. . . . [and] the Commission has yet even to set the rules for the 2175-2195 MHz band." *Id*. at 8. CAPCC may be referring to the 2155-2180 MHz "AWS-3" band, but Verizon Wireless has not suggested that such spectrum be included within the input market. If CAPCC is actually referring to 2175-2195 MHz, that spectrum is licensed to Terrestar and ICO and available for MSS/ATC deployments. Finally, CAPCC indicates "the Merger Applications do not fully acknowledge that much of the 'new' spectrum actually will be under the control of existing market participants," *id*. at 9, but spectrum suitability for inclusion in the input market should not depend on whether it is under the control of any market incumbent, but rather the percentage held by a transaction proponent.

62 CAPCC Petition at 6-8; Leap Petition at 11.

63 Leap Petition at 6-8.

abolished, the Commission established a case-by-case review of spectrum aggregation[64] – case-by-case commonly being viewed as relying on market factors at the time a transaction occurs. Had the FCC believed a static rule was preferable or necessary, it had the power to create such a rule, yet it did not. In fact, the FCC affirmatively stated in the *ALLTEL/Midwest Order* that "the Commission may from time-to-time need to re-evaluate whether additional spectrum should be viewed as suitable for the provision of mobile telephony services."[65] Inasmuch as the *Verizon Wireless/RCC Order* passed upon a BRS/EBS, MSS/ATC and AWS factual record completed almost a year ago, revisiting those conclusions is entirely appropriate.[66]

1. AWS-1 Spectrum Should Be Considered Input Spectrum for CMRS.

Notwithstanding Chatham Avalon Park Community Council's ("CAPCC's") unsubstantiated arguments to the contrary,[67] NTIA's recent data showing government relocation

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[64] *2000 Biennial Regulatory Review: Spectrum Aggregation Limits for Commercial Mobile Radio Services*, Report and Order, 16 FCC Rcd 22668, ¶ 1 (2001) ("*Spectrum Cap Sunset Order*").

[65] *ALLTEL/Midwest Order*, 22 FCC Rcd at 11543 n. 129 (¶ 31). Notably, the Department of Justice ("DOJ") relies on a two-year window in conducting merger reviews: "In order to deter or counteract the competitive effects of concern, entrants quickly must achieve a significant impact on price in the relevant market," thus "[DOJ] generally will consider timely only those committed entry alternatives that can be achieved within two years from initial planning to significant market impact." DOJ/FTC Horizontal Merger Guidelines at § 3.2 (noting that "[f]irms which have committed to entering the market prior to the merger generally will be included in the measurement of the market"); *see also AT&T/Dobson Order*, n. 117 (citing DOJ's procedure).

[66] Application of Verizon Wireless and Rural Cellular Corporation, WT Docket No. 07-208, Description of Transaction, Public Interest Showing Attachment at 28-32 (filed Sept. 4, 2007).

[67] CAPCC states that "[a]nnouncements of some deployment of service using AWS-1 spectrum do not translate to a service that is 'available on a nationwide basis,'" and concludes "there is no reason to revisit an analysis of spectrum availability that was completed only a few months ago." CAPCC Petition at 7-8. The standard, however, is not that services have been deployed nationwide, but rather that the spectrum could be deployed nationwide, or at least could be deployed nationwide in response to an exercise of anti-competitive market power by a transaction proponent. In this case, the removal of U.S. Government incumbents offers that possibility, especially given the two-year window used by the DOJ for evaluating competitive

progress demonstrates that AWS should be regarded as being available for use in the sufficiently near-term. According to NTIA's data, dated as of July 17, 2008,[68] there are no U.S. government fixed operations in over 76 percent – 1369 of 1788 counties – of the ALLTEL footprint.[69] In addition, in many of those few counties where fixed links remain, the encumbrance affects only limited portions of the overall AWS-1 band and, in others, the link may be in an area that does not affect an operator's immediate deployment plans. This is borne out further by empirical evidence suggesting substantial AWS-1 deployment, as well as the attached Declaration of Charles Jackson:[70]

- On August 6, 2008, T-Mobile announced the launch of AWS operations in Las Vegas, Nevada, following rapidly on the heels of their May 5, 2008 service initiation in New York City. According to their press release, T-Mobile "plans to expand its 3G network to at least 20 additional markets by the end of 2008."[71]
- Cricket is offering AWS services in Las Vegas, Nevada; Oklahoma City, Oklahoma; St. Louis, Missouri; Houston, Laredo, Corpus Christi, McAllen and Brownsville,

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entry. By CAPCC's standards, 700 MHz would not be considered "available," since the spectrum is subject to continuing DTV incumbent operations, yet it was considered part of the input market as early as September of last year. In any event, the Applicants have documented far more than "announcements of some availability of service."

[68] *See* http://www.ntia.doc.gov/osmhome/reports/specrelo/pdf_20080717/data_20080717.htm (last visited August 17, 2008).

[69] In order to determine the counties where U.S. Government encumbrances continue to exist, Applicants obtained the relevant agency data from the NTIA website, *id*., and mapped all fixed locations where the months to relocation were greater than zero. Stations described as deleted were also removed. Applicants then determined the counties where either a transmitter or receiver was located – or were crossed by a microwave path.

[70] *See* Jackson Declaration, attached as Attachment 4, at 12-13, noting that there is evidence of suitable equipment technology to exploit this band, including that several licensees are in the process of building out their networks and that "[T-Mobile] has about one million AWS-ready handsets in customer hands or in the supply chain."

[71] *See* T-Mobile Launches 3G Network in Las Vegas (Aug. 6, 2008), *available at* http://www.marketwatch.com/news/story/t-mobile-usa-launches-3g-network/story.aspx?guid=%7BB68B7F19-3987-4D2E-8D99-9FF61B069FE0%7D&dist=hppr.

Texas. Cricket also appears to have launched AWS high speed services in Phoenix and Tucson, Arizona; Boise, Idaho; and Reno, Nevada.[72]

- In a recent SEC filing, MetroPCS stated that "[w]e currently plan to focus on building out approximately 40 million of the total population in our Auction 66 [AWS] Markets with a primary focus on the New York, Philadelphia, Boston and Las Vegas metropolitan areas." The company also stated that "[o]f the approximate 40 million total population, we are targeting launch of operations with an initial covered population of approximately 30 to 32 million by late 2008 through the first half of 2009."[73]

- According to a recent report by the CTIA Spectrum Clearinghouse, LLC, in the period from January 1, 2008 to June 1, 2008, AWS-1 licensees registered 294 links for cost-sharing reimbursement.[74] Given that this represents the reporting of only one of the two AWS Clearinghouses and that, with the broad AWS-1 license areas and license bands, many links may not be registered because no cost-sharing is ever implicated, this suggests a substantial amount of activity that is directly related to commercial deployment in the bands.

- The increasing value of AWS spectrum was underscored by the recent announcement by AWS Wireless that it would sell two-thirds of its AWS licenses for $150.1 million. AWS Wireless acquired its licenses for $115 million, so the sale of two-thirds of those licenses for the stated amount appears to be a doubling of the value of that spectrum.

Under these circumstances, the Commission should shift from considering AWS-1 solely in the local analysis and incorporate the 90 MHz of AWS-1 spectrum into the existing spectrum screen.

2. BRS/EBS Spectrum Should Be Considered Input Spectrum for CMRS.

BRS/EBS spectrum must also be included in the spectrum screen. As documented in Verizon Wireless' initial Applications, as well as in the attached declaration of Charles

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[72] *See* http://www.mycricket.com/cricketcoveragemaps (last visited August 17, 2008).

[73] MetroPCS 10-Q at 26 (May 9, 2008); *available at* http://ccbn.10kwizard.com/xml/download.php?repo=tenk&ipage=5656234&format=PDF.

[74] Report of the CTIA Spectrum Clearinghouse, LLC, Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, at 2 (filed July 31, 2007).

Jackson,[75] the BRS/EBS services have matured substantially since the *AT&T/Dobson Order*. After reviewing the transition initiation plans and completion notices filed in WT Docket No. 06-136, Verizon Wireless calculates that, with the 21-month timeline for completing a transition upon the filing of an initial plan, the transition will be complete in 324 of the 493 BTAs by February 17, 2009 – the date that 700 MHz spectrum, which is counted for purposes of the spectrum screen, will become available following the DTV cut-over. Notably, those 324 BTAs represent 83 percent of the U.S. population. Indeed, given the 21-month deadline for completing the transition, the transition of every one of the markets for which a transition plan has been initiated should occur within the two-year window typically used by the Department of Justice ("DOJ") in examining the potential for competitive entry.[76]

The potential of the BRS/EBS band is further underscored by the recent filing by Sprint Nextel Corporation ("Sprint Nextel") and Clearwire Corporation ("Clearwire") detailing the plans for their new joint venture. The New Clearwire, according to its application, "will compete head-to-head against the soon-to-be-launched 4G offerings of Verizon Wireless and AT&T."[77] Indeed, in the Clearwire Public Interest Statement, Sprint and Clearwire explicitly cite wireless

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[75] Public Interest Statement at 33-36; Jackson Declaration, attached as Attachment 4, at 5-12, in which he details the state of technology in the band.

[76] *See* n. 67, *supra*. CAPCC challenges including BRS/EBS spectrum because "even Clearwire expects not to reach about one third of the population when its deployment is complete." CAPCC Petition at 7-8. The population that Clearwire chooses to serve, however, is dictated by Clearwire, not the spectrum that Clearwire intends to use. Thus, the percentage of the U.S. served by Clearwire is irrelevant to the question of whether the spectrum belongs in the input market.

[77] Applications of Sprint Nextel Corporation and Clearwire Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 08-94, Lead File No. 0003462540, Description of the Transaction and Public Interest Statement, at 17 (filed June 6, 2008, amended June 24, 2008).

providers in the 700 MHz,[78] cellular,[79] and PCS[80] bands as New Clearwire's competitors in the market for wireless broadband and data services. And, New Clearwire intends to offer the proposed services "in urban, suburban and rural communities nationwide, with 60 to 80 million people covered by its network by the end of 2009, 120 to 140 million people covered by the network by the end of 2010, and the network ultimately covering more than 200 million people across the U.S."[81] New Clearwire plainly intends to deploy the types of services to which the Commission's spectrum screen analysis is designed to apply.

New Clearwire will also have significant spectrum with which to compete against other mobile carriers. Clearwire's Chief Executive Officer, Ben Wolff, recently stated that "[w]ith the closing of the combination with Sprint, our domestic spectrum holdings will substantially increase to more than 42 billion MHz/POPs of spectrum," and noted that "with the combination of our spectrum assets with Sprint's, we will be uniquely positioned to deliver next-generation wireless services with more than 100 megahertz of spectrum in most markets across the country."[82] Clearwire also indicated that "[c]ombining Sprint and Clearwire's 2.5 GHz spectrum holdings will give the new venture an average of 151 MHz of capacity in each of the top 100 U.S. markets."[83] Moreover, as explained by Sprint's Chief Executive Officer Dan Hesse, "[o]ur

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78 *Id.* at 54-55.

79 *Id*. at 56.

80 *Id*.

81 Reuters, UPDATE 1- Clearwire outlines growth for new Sprint venture (June 12, 2008) *available at* http://www.reuters.com/article/mediaNews/idUSN1241590520080612.

82 Clearwire CEO Ben Wolff, Clearwire Corporation Second Quarter 2008 Earnings Conference Call (Aug. 8, 2008), *available at* http://www.sec.gov/Archives/edgar/data/1285551/000095013408014752/v42937e425.htm.

83 "New Venture Seen Drawing Scant Regulatory Scrutiny," Communications Daily (May 8, 2008).

bountiful spectrum allows us to use advanced OFDM technology at a low cost because wide channels let us put more data through the same amount of physical equipment at substantial cost savings over today's 3G networks."[84]

Although Sprint and Clearwire have argued that BRS/EBS spectrum should not be attributed for purposes of the spectrum screen, or should be discounted, the companies correctly observe that "the 2.5 GHz band continues to represent only a portion of the spectrum that can be used to provide fixed and mobile broadband services."[85] Sprint and Clearwire specifically cite to "competitors … hav[ing] access to more than 500 MHz of spectrum in other licensed bands that could be used to provide wireless broadband services, including" (in addition to bands already considered in the spectrum input market) "130 MHz of AWS [s]pectrum," "30 MHz of WCS [s]pectrum," and "[a]pproximately 130 MHz of MSS ATC [s]pectrum."[86] The companies also note, appropriately, that "more than 150 MHz of unlicensed spectrum is available at 900 MHz, 2400 MHz, and 3650 MHz," and that "[a] number of these bands are used to provide wireless Internet access."[87] The Applicants concur that all spectrum bands that are suitable for mobile services should be considered if a spectrum screen is maintained, which would imply a screen in excess of 200 MHz that would allow either transaction to proceed without the need for unnecessary market by market reviews triggered by an outdated screen.

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[84] Sprint CEO Dan Hesse, Keynote Address, CTIA Wireless 2008 Conference (April 1, 2008), *available at* http://www2.sprint.com/mr/sp_dtl.do?id=360&ex_id=560.

[85] Joint Opposition to Petitions to Deny and Reply to Comments of Sprint and Clearwire, WT Docket No. 08-94, at 34 (filed Aug. 4, 2008).

[86] *Id*.

[87] *Id*. at 34-35.

3. MSS/ATC Should Be Considered Input Spectrum for CMRS.

In the Public Interest Statement, the Applicants also argued for inclusion of MSS/ATC spectrum in the spectrum screen.[88] As a basis for this, the Applicants cited a number of very recent developments in the MSS/ATC sphere that the Commission has not yet accounted for in its spectrum screen discussions:

- Mobile Satellite Ventures ("MSV") has already received ATC authority, and MSV "is currently authorized to use approximately 30 MHz of coordinated North American spectrum in a terrestrial wireless network with an integrated satellite overlay to provide ubiquitous and enhanced services."[89]

- Globalstar, Inc. ("Globalstar"), a 1.6/2.4 GHz MSS provider, also recently announced that the FCC had expanded its ATC authority to include almost 20 MHz of spectrum, and noted that the company had "an agreement with Open Range Communications Inc. ("Open Range") permitting Open Range to deploy wireless broadband service in rural America using Globalstar's ATC authority."[90] The press release further notes that Open Range had secured "a $267 million broadband service loan from the Department of Agriculture's Rural Utilities program," and proposes "to use the Globalstar spectrum to deploy wireless WiMAX services to over 500 rural American communities."[91]

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[88] In addition, Dr. Jackson questions the FCC's exclusion of this spectrum solely on the basis of the prices of the satellite-delivered service – "It is hard to fathom why prices for the satellite-delivered service would necessarily provide a guide to the prices that would be charged for services provided over the terrestrial component . . . pricing of these services would seem to be the result of business decisions, not an indication of whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology. . . ." Jackson Declaration, attached as Attachment 4, at 13.

[89] Mobile Satellite Ventures, Investor/Financial Company Fact Sheet, *available at* http://www.msvlp.com/investor/fact-sheet.cfm (last visited Aug. 17, 2008).

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

[91] *Id*. In this regard, CAPCC indicates that "[t]he Merger Applications also argue for the inclusion of various types of satellite spectrum, based on services that have yet to be deployed and that, in the case of Globalstar, appear to be focused on a small number of communities. . . . The satellite services are not yet available and it is not apparent how much spectrum actually will be devoted to these services." CAPCC Petition at 8. Again, these comments fundamentally misunderstand the import of the input spectrum market. The question is not whether Globalstar artificially restricts its service to "a small number of communities," but rather whether the spectrum could be used to provide mobile services in competition with the Applicants. And,

- "The FCC has assigned 20 MHz of 2 GHz MSS spectrum to ICO [Global Communications ("ICO"), a 2 GHz MSS provider,] with geographic coverage of all 50 states in the United States, as well as Puerto Rico and the U.S. Virgin Islands."[92] ICO recently filed for blanket authority to operate ATC base stations in that 20 MHz of spectrum.[93]

- TerreStar also has pending a request for ATC authority.[94] These ATC services clearly have the capability to compete with services provided over spectrum already included in the relevant product market and are receiving serious financial backing.[95]

Given these developments, any spectrum input analysis should, at a minimum, consider the nearly 90 MHz of ATC spectrum as input spectrum.[96]

4. The Input Market for Spectrum, and the Spectrum Screen, Should Be Substantially Increased.

In conclusion, the input market for mobile telephone spectrum should be substantially increased.[97] If the FCC were to rationally apply its criteria for input spectrum, in addition to the

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CAPCC's statement seems in apparent contradiction to Globalstar's statement that it will serve 500 communities in any event.

[92] ICO, MSS/ATC System, http://www.ico.com/_about/tech/na_mss_atc.php (last visited Aug. 17, 2008).

[93] *See Satellite Radio Applications Accepted for Filing*, Public Notice, Report No. SES-01012 (Mar. 5, 2008). Craig McCaw has attributable interests in both the Clearwire venture and ICO.

[94] *See Satellite Radio Applications Accepted for Filing*, Public Notice, Report No. SES-01018 (Mar. 26, 2008).

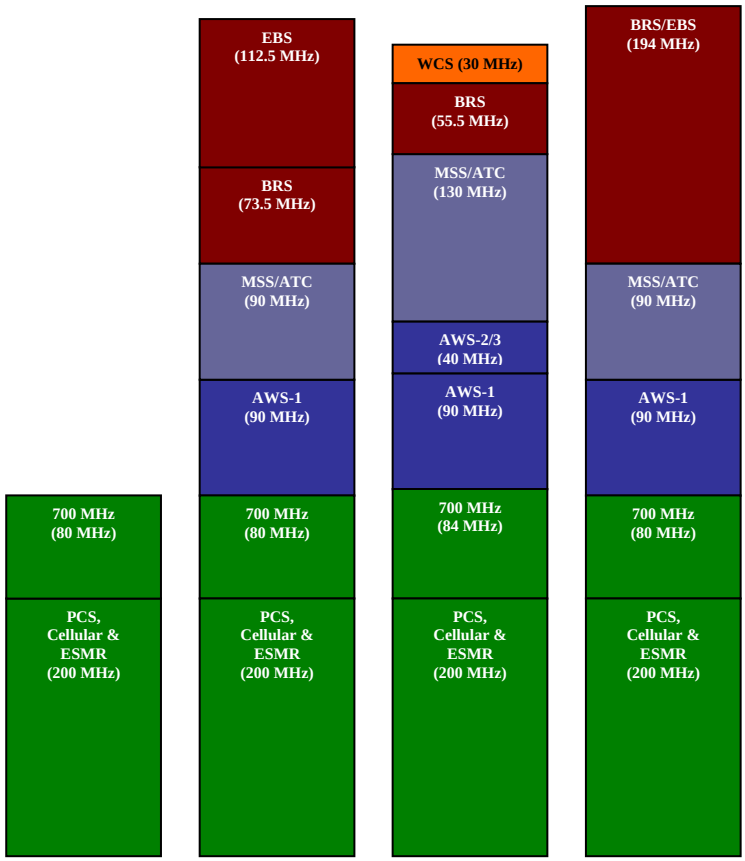
[95] *See* Press Release, TerreStar, TerreStar Announces Strategic Investment by EchoStar, Harbinger & Other Investors – Transaction Facilitates Funding through Satellite Launch and will Enhance TerreStar's Nationwide Spectrum Footprint (Feb. 7, 2008), *available at* http://www.terrestarnetworks.com/news/press/index.html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

[96] *See* Jackson Declaration, attached as Attachment 4, at 13-14.

[97] Dr. Jackson also notes that the FCC may soon make available additional spectrum suitable for CMRS. *Id*. at 14.

80 MHz of 700 MHz added in the *AT&T/Dobson Order*,[98] it is clear that 90 MHz of AWS-1 spectrum, 186 MHz of BRS/EBS spectrum, and 90 MHz of MSS/ATC spectrum should be included in the input market. Applicants have provided below a comparison of the existing input spectrum market with the market being advocated by other entities in other transactional proceedings, and it is clear that the spectrum considered available for commercial mobile services should be expanded considerably:

[98] Leap's discussion of the spectrum screen is flawed. Among other things, Leap accuses the "Commission's recent decision [of] . . . include[ing] the 68 MHz of recently auctioned 700 MHz spectrum in the denominator of the cap, but not . . . include[ing] any of the spectrum that Verizon won at that auction in the numerator because licenses for that spectrum have not been issued yet." Leap Petition at 8. In fact, the FCC included an additional 80 MHz of spectrum in the input spectrum market for the 700 MHz band, not 68 MHz. Moreover, for purposes of this analysis, Verizon Wireless has addressed the spectrum for which it was the high bidder in Auction No. 73 on the presumption that the auction application will be acted upon during the pendency of this transaction.



Proponent:	**FCC**	**Verizon Wireless**	**Clearwire**	**AT&T**
Spectrum Input Market:	280 MHz	646 MHz	625.5 MHz	654 MHz
Spectrum Screen:	95 MHz	215 MHz	208 MHz	218 MHz

Figure 1: Comparisons of Transaction Parties' Spectrum Input Market Definition[99]

Given that the input market should thus be a minimum of 646 MHz, Economist Michael L. Katz has submitted testimony herein questioning whether spectrum remains a barrier to entry and discussing the futility of a spectrum screen as a determinant of competitive activity.[100] In particular, Dr. Katz shows that a poorly designed spectrum screen can harm competition and

99 Clearwire data based on their definition of spectrum available to competitors, with Clearwire's own bands (BRS and ESMR) included. AT&T has not provided a specific figure for the amount of MSS/ATC spectrum to be included, so Applicants have used 90 MHz, the more conservative of the figures available.

100 Katz Declaration, attached as Attachment 3, at 1-2.

consumers can divert "scarce investigative resources" to the wrong issues.[101] While Katz believes that the Commission should drop the spectrum component of the merger review screen, if it retains the screen, it should be raised to reflect that its existing methodology is biased toward setting a too-low threshold and the amoutn of available spectrum has increased in recent years.[102]

C. Analysis of Local Markets Demonstrates No Competitive Issues Resulting from the Proposed Transaction.

1. With an Appropriate Screen, This Transaction Should Not Require Unnecessary Market-By-Market Review.

With the appropriate spectrum screen, the Commission would not need to undertake unnecessary market-by-market reviews triggered by an outdated screen. Indeed, if the input market were – as is appropriate – adjusted to account for the 186 MHz of BRS/EBS spectrum, the 90 MHz of AWS-1 spectrum, and the 90 MHz of MSS/ATC spectrum, the spectrum screen would not trigger further scrutiny in any county. Even if the screen were minimally adjusted to include any significant amount of BRS/EBS spectrum in those markets where the transition must be completed by the DTV transition date, and AWS-1 were included in those counties where U.S. Government encumbrances no longer exist, it would trigger additional review in only seven counties – three counties in the Columbus, GA-AL CMA (CMA153), two counties in Minnesota 2 - Lake of the Woods (CMA483), one county in Minnesota 5 – Wilkin (CMA486), and one county in Utah 4 – Beaver (CMA676).

If the FCC does not update the spectrum screen generally to consider the impact of BRS/EBS and AWS-1 spectrum, it should at least undertake a two-step process for determining whether a detailed market review is necessary. The Commission should first apply its 95 MHz

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101 *Id.* at 3-5.

102 *Id.* at 9-14.

screen, and then, for those markets where aggregation exceeds 95 MHz, consider whether BRS/EBS or AWS-1 is available. For example, if AWS spectrum is available, the FCC should require a local market analysis only if the applicants' aggregate spectrum, including AWS-1, did not exceed 95 MHz plus one-third of the AWS-1 band. Similarly, in markets where the BRS/EBS transition has been initiated, the FCC should limit the requirement to provide local market analyses to those places where the applicants held more than 95 MHz plus one third of the 186 MHz EBS/BRS band. Either of these solutions would limit the unnecessary and repetitive competitive review of markets where no real possibility of competitive harm exists, thus saving scarce Commission resources.

2. The Applicant's Review of All Post-Divestiture Local Markets Where Aggregate Spectrum Exceeds 95 MHz Demonstrates No Competitive Issues.

The Applicants have nonetheless provided, as Attachment 2, a competitive analysis of all CMAs where the post-transaction holdings would exceed the flat 95 MHz initial spectrum screen, not including the 85 markets Verizon Wireless has committed to divest. The results of Verizon Wireless' analysis demonstrate that, in every one of these counties, it will face substantial competition. Indeed, all three of the other national carriers – AT&T Mobility, Sprint Nextel, and T-Mobile – each hold spectrum in each of these counties, with AT&T Mobility averaging 58 MHz, Sprint Nextel averaging 54 MHz (not including BRS/EBS), and T-Mobile averaging 34 MHz. In general, the combined company's holdings are smaller than the New Clearwire, which will average over 100 MHz of spectrum in 128 of the 137 counties. Moreover, the combined company will also generally have competition from local carriers, such as Cricket, which holds spectrum in 84 percent of these counties; MetroPCS, which holds spectrum in 29 percent of these counties; as well as strong regional operators, such as U.S. Cellular. Across the entire region, licensees with national, or near national, footprints also are capable of entering the

market, including Frontier (Echostar) and SpectrumCo (a conglomerate of the nation's largest cable televison companies, many of which are also investors in the New Clearwire venture). Many rural telephone companies and small independent operators also hold spectrum assets in these markets, and many have existing assets that could be used to rapidly enter the market. In no case would competition be harmed by the combination presented in these Applications.

As a general matter, while the proposed transaction increases the Verizon Wireless footprint to include many rural markets, the company's post-merger spectrum holdings will remain – as the are today – in-line with its competitors and proportionate to its subscriber base. Nationally, the spectrum holdings of Verizon Wireless (post merger) average 89.4 MHz/BTA and AT&T averages 80.9 MHz/BTA. Sprint Nextel averages 151.7 MHz/BTA, not accounting for the Sprint/Clearwire transaction. While T-Mobile averages 48.7 MHz/BTA, this number is consistent with its smaller subscriber base. This information is depicted in *Figure 2* below:

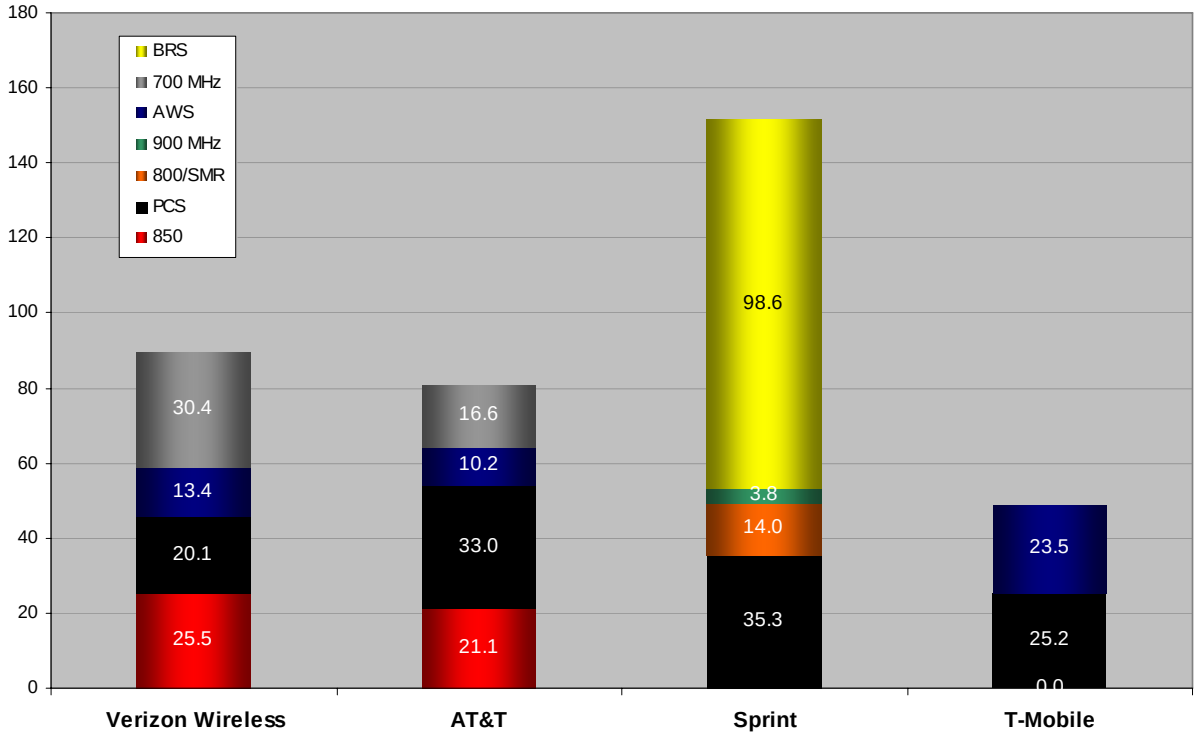

Figure 2: Nationwide Spectrum Capacity

A firm subject to competitive pressure must fully utilize its spectrum resources, and efficiency measures affirm that Verizon Wireless is making intensive use of its holdings. Efficiency metrics describe not just how much spectrum a firm holds but how it is being used and account for differences in spectrum needs based on the size of a provider's subscriber base. Using millions of subscribers served per MHz of spectrum as an efficiency metric, Verizon Wireless is an industry leader:

Carrier	VZW	AT&T	Sprint	T-Mobile
All Spectrum	89.4	80.9	151.7	48.7
PCS/Cellular/SMR	45.6	54.1	49.3	25.2
Customers (x1M, 2Q 2008)	82.8[103]	72.9	51.9	31.5
Efficiency w/ 4 G[104] (x1M, per MHz)	0.93	0.90	0.34	0.65
Efficiency w/o 4G (x1M, per MHz)	1.82	1.35	1.05	1.25

Table 2: Nationwide Spectrum Efficiency of National Carriers

As shown in Table 2, considering only spectrum extensively built-out and intensively used today – PCS, Cellular, and SMR – Verizon Wireless is the industry's most efficient user of spectrum, serving 1.82 million subscribers/MHz of spectrum, as opposed to 1.35 million/MHz for AT&T, 1.25 million/MHz for T-Mobile, and 1.05 million/MHz for Sprint Nextel. Verizon Wireless is also the most efficient user when spectrum intended primarily for next generation advanced services is added to the mix. By this standard, even before the next generation spectrum is built out and put to use, Verizon Wirelesss serves 0.93 million subscribers per MHz, followed closely by AT&T at 0.90 million/MHz, T-Mobile at 0.65 million/MHz and Sprint Nextel at 0.34 million/MHz. Such measurements make clear that Verizon Wireless is a very efficient spectrum

[103] Subscriber figure represents Verizon Wireless 2Q 2008 *pro forma* customers, including Rural Cellular customers and ALLTEL 2Q 2008 customers.

[104] For purposes of Table 2, 4G spectrum is considered to include AWS, 700 MHz, and BRS.

user relative to its competitors and that its spectrum holdings are appropriate in light of its large subscriber base.

D. Verizon Wireless' Divestiture Commitment Resolves Any Possible Competitive Issues In Those Markets.

1. Verizon Wireless' Divestiture Commitment Is Unambiguous.

In a letter to the FCC on July 22, 2008, Verizon Wireless informed the Commission that it would "accept divestiture requirements in 85 cellular markets."[105] Specifically, Verizon Wireless stated that it "was committing to divest overlapping properties comprising the entire states of North Dakota and South Dakota, as well as overlapping properties comprising partial areas within 16 additional states: California, Colorado, Georgia, Idaho, Illinois, Kansas, Minnesota, Montana, Nevada, New Mexico, North Carolina, Ohio, South Carolina, Utah, Virginia, and Wyoming."[106] This commitment eliminates the primary overlap areas between Verizon Wireless' and ALLTEL's networks leaving only the truly complementary assets and capabilities in the combined company.[107]

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[105] Letter from John T. Scott, III, Vice President & Deputy General Counsel Regulatory Law, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-95, at 1 (filed July 22, 2008) ("Verizon Wireless July 22nd Letter").

[106] *Id.*

[107] Notwithstanding that the Verizon Wireless proposal tracks the same procedural trajectory as countless transactions before it, Cellular South makes the argument that the divestiture commitment makes the transaction "contingent" and then argues the FCC should not process contingent applications. The transaction is not contingent; the only outstanding issue is whether and how the divestiture process will unfold. While some procedural options may require amendments to applications, amendments of pending applications are permitted and it is absurd to suggest that the possibility of an amendment creates a contingency warranting dismissal. Cellular South Petition at 5-6; *compare, e.g.*, *AT&T/Dobson Order*, 22 FCC Rcd at 20336 (¶ 88); *Verizon Wireless/RCC Order* at ¶ 113.

Yet, certain filers incorrectly argue that the divestitures show that the proposed transaction is anti-competitive in some respect,[108] or that the commitment to a divestiture in the 85 markets is ambiguous.[109] Those arguments are misplaced. As an initial matter, whatever competitive concerns may arise as a result of overlapping properties in those 85 markets are addressed by Verizon Wireless' divestiture commitment. In addition, the commitment to a divestiture is not ambiguous. To be clear, Verizon Wireless is voluntarily committing to divest one of the overlapping properties in each of the 85 markets, together with the spectrum, customers, and other assets used by that property.[110] Accordingly, approval here may be conditioned on fulfilling that commitment. That should be the end of the matter.

Given the straightforward divestiture commitment and the additional time petitioners sought in order to "analyze" the divestiture's impact,[111] it is disingenuous that the filings do not take the divestitures into consideration. For example, it appears that the concerns expressed by the South Dakota Telecommunications Association ("SDTA") and North Dakota Network Co.

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[108] *See* Cellular South Petition at 17-18 (stating "Cellular South submits that the likelihood of antitrust violations, as effectively conceded by Verizon Wireless' Divestiture Offer, precludes the Commission from finding that the grant of the Merger Application . . . will serve the public interest"). The commitment to divest certain properties is a voluntary one and is in no way linked to the likelihood of antitrust violations. As a separate matter, Cellular South also argues that an FCC consent conditioned on divestiture is a determination that the public interest would be harmed in the absence of a divestiture, and then goes on to argue that the Commission does not have the statutory authority to consent to an application conditioned upon divestitures. This argument also ignores a lengthy line of precedent concluding precisely the opposite. *See, e.g.*, *AT&T/Dobson Order*, 22 FCC Rcd at 20336 (¶ 88); *Verizon Wireless/RCC Order* at ¶ 113.

[109] RTG Petition at 17; NDNC Petition at 2, n.3.

[110] Such a divestiture condition would be fully consistent with other wireless divestitures that the Commission has ordered. *See, e.g.*, AT&T/Dobson Order at ¶ 88; Verizon Wireless/RCC Order at ¶ 113.

[111] *See* Motion for Extension of Time of Rural Telecommunications Group, Inc., WT Docket No. 08-95 (filed July 23, 2008). Although requesting the extension to "analyze" the impact of the divestitures, RTG's analysis of the divestitures extends to a single paragraph and one footnote (in which it determines, on some unspecified basis, that AT&T is most likely to acquire the divested markets). RTG Petition at 18, n. 41.

("NDNC") should be fully resolved, inasmuch as Verizon Wireless has committed to divestitures in all markets in North and South Dakota where there is overlapping service. In addition, based upon its statement that "it appears that many, and perhaps all, of the markets identified in this petition as having the greatest overlap are included in Verizon Wireless divestiture proposal," the competitive concerns of CAPCC appear resolved.[112] Still other filers attempt to create alarmist statistics of aggregation by citing to and creating analyses of markets Verizon Wireless will have no interest in post-transaction.[113]

2. Requests to Apply Previously Abolished or Rejected Spectrum Caps Are Unjustified and Unwarranted.

Certain petitioners have also advocated that the Commission create new rules with the intent of expanding the range of divestitures,[114] either by subjecting the proposed transaction to the previously abolished cellular cross-ownership ban[115] or by using this transaction to impose a new, unadopted and unjustified spectrum cap.[116] Yet, even these petitioners admit that the FCC has abolished the cellular cross-ownership rules and even granted applications involving cellular-

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[112] *See* CAPCC Petition at 10.

[113] Cellular South Petition at 15-16; Palmetto Petition at 23; SDTA Petition at Attachment B; Rural Carriers Petition at Attachment B; RCA Comments at Table 1; CAPCC Petition at Exhibit 3.

[114] *See* RCA Comments at 7; Cellular South Petition at 15; SDTA Petition at 7; Rural Carriers Petition at 7.

[115] The cellular cross-ownership rule was abolished for MSAs in 2001, *Spectrum Cap Sunset Order* at ¶ 84 (stating "[w]e conclude that the cellular cross-interest rule is no longer necessary in urban markets, given the presence of numerous competitive choices for consumers in such markets"), and abolished for RSAs in 2004, *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, Report and Order, 19 FCC Rcd 19078, 19113 (¶ 63) (2004) (stating "reliance on a uniform case-by-case review process for aggregations of spectrum and cellular cross interests in RSAs is currently the better approach as compared to prophylactic limits").

[116] CAPCC Petition at 19, NTCA Petition at 6-7; RTG Petition at 19; Palmetto Petition at i.

to-cellular overlaps.[117] There is no argument, therefore, that cellular cross-ownership is banned or unlawful.[118] Moreover, the Commission has found – repeatedly – that the appropriate product market is the market for mobile telephony, thus implicitly rejecting the argument that "cellular" is its own market or that a "cellular monopoly" could occur.[119]

Nor would it be appropriate, as some petitioners have suggested, to impose a spectrum cap in this transaction (assuming a cap were justified in any context).[120] In duplicative filings, RTG and Palmetto have called for divestiture of any spectrum below 1 GHz above 55 MHz, and any spectrum below 2.3 GHz above 110 MHz. They disingenuously argue that the lower figure is "consistent with the FCC's 1999 decision to impose a 55 MHz cap on ownership of cellular, PCS and SMR spectrum"[121] – without noting that the cited decision was abolished by the FCC in

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[117] *See, e.g.*, RCA Comments at 7 (noting "[a]lthough [the FCC] lifted the cellular cross-ownership ban…"). Notwithstanding RCA's attempt to read *In re Applications of E.N.M.R. Telephone Cooperative*, 22 FCC Rcd 4512 (2007), as standing for the proposition that the Commission has "express[ed] the view that there was little likelihood that it would approve the consolidation of two cellular providers in the same market," RCA goes on to note numerous instances where the Commission, in fact, did exactly that. *Id.* at 8.

[118] While acknowledging that the transaction involves cellular/cellular overlaps in 26 markets where DOJ has not yet requested divestiture or further proceedings, Cellular South illogically concludes that "the DOJ apparently is seeking divestiture if the spectrum includes 50 MHz of cellular spectrum," and that "the DOJ recognizes that Verizon Wireless should not be allowed access to all 50 MHz of that spectrum in one CMA." Cellular South Petition at 9. If the DOJ permits Verizon Wireless to hold cellular overlaps, the correct conclusion is that cellular overlaps are not a *per se* problem.

[119] *See* RCA Comments at 7-8, Cellular South Petition at i, 19.

[120] Katz Declaration, attached as Attachment 3. Such action is inconsistent with Commission precedent. *In re Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522 (¶ 257) (2004) ("*Cingular/AT&T Wireless Order*") ("We decline to require further limitation-based spectrum divestitures, as some commenters proposed, because we believe such limitations too closely resemble our former cap on spectrum aggregation.").

[121] RTG Petition at 19, Palmetto Petition at i, 22.

2001.[122] As support for the 110 MHz figure, RTG optimistically cites nothing other than its own, dormant petition for rulemaking – a petition that contains no empirical support for a 110 MHz threshold.[123] CAPCC, for its part, suggests that Verizon Wireless be required to divest "where [it] would have spectrum holdings in excess of 115 MHz," "at least 30 MHz[,] such that post-transaction holdings would not exceed 95 MHz"[124] – notwithstanding that divesting 30 MHz from 115 MHz would leave 85 MHz, not 95 MHz. Other petitioners also seek divestitures of "excessive" spectrum, without defining – or justifying – what might be considered "excessive."[125]

Petitioners have provided no basis for reversing policy and reverting to the previously-discredited hard spectrum cap. The spectrum screen, which constitutes only one of three possible triggers for competitive review,[126] cannot be viewed in isolation. The FCC has HHI trigger criteria specifically directed to ensure that its analysis captures combinations resulting in possible competitive issues. No basis exists to apply the abolished spectrum cap or to institute – in the limited context of the case-by-case review of this proposed transaction – a new rule capping spectrum aggregation.[127]

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122 *Spectrum Cap Sunset Order* at ¶ 1.

123 RTG Petition at 21 (citing RTG Petition for Rulemaking).

124 CAPCC Petition at ii.

125 NTCA Petition at 6-7; SDTA Petition at 10; Rural Carriers Petition at 11.

126 *See* n.52, *supra*.

127 Indeed, economist Michael Katz concludes that even a *de facto* cap limits competition by restricting output. "[I]t will be more difficult and costly (and in some cases, impossible) for a service provider to expand when it has developed, or – in the case of innovation – is contemplating the development of, a successful business model that requires additional spectrum to meet consumer demands for its services." Katz Declaration, attached as Attachment 3, at 4.

3. The Commission Should Not Intervene to Tilt the Divestiture Process In Favor of Any Special Interest Group.

The fact that all of these petitioners also seek to have the divestiture process gamed in a manner that would presumably allow them to acquire these divested assets should not go without notice. RTG and Palmetto, for example, seek to have their spectrum cap imposed upon "any of the remaining top three largest wireless carriers who purchase any divested spectrum from Verizon (i.e., AT&T, Sprint and T-Mobile),"[128] presumably restricting the secondary market to their members or similarly situated entities. SDTA and the Rural Carriers, for their part, state that "the Commission should require that such divestiture be done pursuant to procedures that would ensure a realistic opportunity for rural carriers to acquire the divested operations in and around their telephone service areas."[129] CAPCC argues that, to encourage minority "investment and participation in the telecommunications industry," the FCC should require the merging companies to agree "to grant a right of first negotiation for the acquisition of these businesses or assets to companies owned or controlled by members of minority or socially disadvantaged groups."[130]

No basis exists to restrict the eligibility of potential acquirors of divested properties, and the Commission should, as it has in countless transactions in the past,[131] allow market forces to determine an appropriate solution. Intervention in the open and fair secondary market is therefore unwarranted, and regulation should not be employed to tilt the process in favor of any

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128 RTG Petition at 19; Palmetto Petition at 22.

129 SDTA Petition at 10; Rural Carriers Petition at 11.

130 CAPCC Petition at ii.

131 *See, e.g.*, *AT&T/Dobson Order*, 22 FCC Rcd at 20336 (¶ 88); *Verizon Wireless/RCC Order* at ¶ 113.

entity. Should any issues arise in the context of a particular proposed divestiture, those issues are appropriately dealt with in the context of that application, not in the review of this transaction.

III. THE CONDITIONS PROPOSED BY THE PETITIONERS/COMMENTERS ARE NOT MERGER-SPECIFIC AND THEREFORE IRRELEVANT TO THE COMMISSION'S CONSIDERATION OF THE TRANSACTION.

A. Merger Proceedings Cannot Be Used to Circumvent the Commission's Rulemaking Processes or to Impose Conditions Unrelated to the Transaction Before It.

Petitioners/commenters, some of whom fail to show more than a generalized interest in this proceeding,[132] have proposed that the Commission impose a variety of self-serving conditions on the Verizon Wireless/ALLTEL merger that the petitioners acknowledge involve general wireless industry issues unrelated to this transaction.[133] Indeed, as several petitioners note,[134] in many instances there are pending rulemaking petitions or ongoing proceedings

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[132] Several petitioners, such as RTG, RCA, NTCA, and OPASTCO/RICA, attempt to articulate an interest based upon alleged competitive harm to their members despite the fact that they *fail to even identify their members* much less substantiate their claims of harm. Other petitioners, including Palmetto, NDNC, and SDTA, assert that they (or their members) will suffer competitive harm from the merger even though they will see no change in the competitive landscape from the merger because the merger will not affect the markets they compete in or because they are not even in the business of offering wireless services. Still many other petitioners fail to identify or to offer evidence in support of their claims of harm arising from the merger.

[133] *See, e.g.*, Petition to Deny of Centennial Communications Corp., WT Docket No. 08-95, at 2 (filed Aug. 11, 2008) (discussing "certain matters of general and growing concern with respect to . . . the wireless industry") ("Centennial Petition").

[134] *See, e.g.*, NDNC Petition at 9 ("NDNC recognizes that the provision of 3G and other broadband services on an automatic roaming basis is presently pending before the Commission"); Petition to Deny of the Organization for the Promotion of Advancement of Small Telecommunications Companies and the Rural Independent Competitive Alliance, WT Docket 08-95, at 9 (filed Aug. 11, 2008) ("OPASTCO/RICA Petition") (noting pending petitions for reconsideration of August 2007 Automatic Roaming Order and urging delay of transaction approval until resolution of roaming issues); Petition to Deny of Denali Spectrum LLC *et al*, WT Docket No. 08-95, at 3 (filed Aug. 11, 2008) ("Roaming Petitioners Petition") (arguing FCC should resolve home roaming in "existing docket" or in context of pending merger); RCA Comments at ii and 14-15 (noting that RCA's May 20, 2008 petition to investigate handset exclusivity arrangements "remains pending"); RTG Petition at 22 and n.49 (noting FCC will "decide the in-market roaming matter at its August 22, 2008 Open Meeting"); Petition of MetroPCS Communications, Inc., and NTELOS Inc. to Condition Consent or Deny Application,

concerning these very subjects. Accordingly, Commission precedent is clear that considering such conditions is not appropriate in the context of a merger proceeding.

The Commission routinely rejects attempts to raise non-merger-specific, industry-wide issues in the context of merger[135] and transfer-of-control proceedings.[136] Indeed, the Commission generally restricts its inquiry into whether the merger would violate the industry-wide regulations in place at the time of the merger.[137] This is particularly the case when there is an open proceeding on an industry-wide subject that encompasses the proposed condition. In

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WT Docket No. 08-95, at 15 (filed Aug. 11, 2008) ("MetroPCS/NTELOS Petition") (noting automatic roaming docket and purporting to incorporate all of MetroPCS' comments from that docket into this merger proceeding); Palmetto Petition at ii and 21 (noting "pending in-market roaming and data roaming issues" in rulemaking); SDTA Petition at 12 (same); PISC Petition at 2 and 11 (noting pendancy of text-messaging and roaming issues); Cellular South Petition at 19 (noting pending consideration of RCA petition re handset arrangements).

[135] *See, e.g.*, *Verizon Wireless/RCC Order* at ¶ 128 ("We reject Joint Petitioners' request that we mandate Verizon Wireless to offer analog service in RCC's service territories as a condition of consent to the proposed transaction. We concur with the Applicants that imposing such a requirement is in no way related to the transaction pending before us."); *In re Verizon Communications Inc. and MCI, Inc.*, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18462 (¶ 55), n. 157 (2005) ("*Verizon/MCI Order*") (rejecting "the claims of commenters seeking special access conditions or raising concerns unrelated to the merger"); *In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from; Southern New England Telecommunications Corporation, Transferor to SBC Communications, Inc., Transferee*, Memorandum Opinion and Order, 13 FCC Rcd 21292, 21306 (¶ 29) (1998) ("*SNET/SBC Order*") (stating that "Commission precedent" is to "decline to consider in merger proceedings" matters of "general applicability").

[136] *See In re Application of Echo Star Communications Corp.*, 17 FCC Rcd 20559, 20583 (¶ 48) (2002) (in transfer of license proceeding, declining to consider conditions requested by a commenter "that have application on an industry-wide basis").

[137] *In re Applications for Consent to the Transfer of Control of Licenses From Comcast Corp. and AT&T Corp.*, 17 FCC Rcd 23246, 23257 (¶ 31) (2002) ("*In re Comcast Corp.*") (concluding that the merger at issue would not result in any violations of the Commission's current rules and refusing to consider industry-wide rule changes in a merger proceeding), *aff'd sub nom Consumer Fed'n of Am. v. FCC*, 348 F.3d 1009 (D.C. Cir. 2008); *In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Telecommunications, Inc. to AT&T Corp.*, 14 F.C.C.R. 3160, 3183 (¶ 43) (1999) ("*TCI/AT&T Order*") (finding that the evidence in the merger record did not show any violation of current Commission rules or public policy, and therefore following "Commission precedent" and not considering matters more suitable for discussion "in a broader proceeding of general applicability").

such cases, the Commission has uniformly refused to impose the proposed conditions as requirements for merger approval.[138]

This approach makes good sense, as proceedings that include issues common to multiple providers allow the Commission to "develop a comprehensive approach based on a full record that applies to all similarly-situated" parties.[139] Where a proposal would change the Commission's general treatment of an issue, developing a comprehensive approach to a pressing industry-wide issue is the most efficient and fair way for the Commission to proceed.[140]

The Commission's established approach is the only one that does not prejudice the entities seeking to merge and, by doing so, create artificial regulatory disadvantages borne solely by one of many competitors. To create policy by imposing merger conditions on one party and not other similarly situated parties would put the merged firm at a competitive disadvantage by

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138 *See, e.g.*, *Verizon/MCI Order*, 20 FCC Rcd at 18462 (¶ 55) (refusing in merger proceeding to consider ability to discriminate against competitors because "such a concern is more appropriately addressed in our existing rulemaking proceedings"); *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21592 (¶ 183) (concerns that SBC and BellSouth had "the incentive and ability" to discriminate against competitors in the provisioning of special access services are "more appropriately addressed in our existing rulemaking proceedings on special access performance metrics and special access pricing."); *In re Comcast Corp.*, 17 FCC Rcd at 23257 (¶ 31) ("The Commission's pending rulemaking on cable horizontal ownership is the more appropriate forum for consideration of the potential effects of industry-wide clustering on the distribution of programming by MVPDs to consumers."); *TCI/AT&T Order*, 14 FCC Rcd at 3183 (¶ 43) ("We find that digital broadcast signal carriage requirements should be addressed in the Commission's pending rulemaking proceeding and not here. . . . [T]his is like other cases where the Commission has declined to consider, in merger proceedings, matters that are the subject of rulemaking proceedings before the Commission.").

139 *See Verizon/MCI Order*, 20 FCC Rcd at 18462 (¶ 55).

140 *See In re Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817, 15822 (¶ 13) (2007) ("*2007 Roaming Order*") ("Given the broad scope of some of the competitive concerns raised in the mergers, many of which seemed to call for a reevaluation of the Commission's roaming rules and policies, the Commission determined that it was appropriate to address those concerns in the context of a rulemaking proceeding to consider the Commission's roaming rules and requirements applicable to CMRS providers under current market conditions and developments in technology.") (citing *Western Wireless/ALLTEL Order*, 20 FCC Rcd at 13093 (¶ 109)).

subjecting it to burdens that no other party must observe. And because the parties proposing the conditions are fully able to participate in general proceedings, the Commission's approach does not put anyone on the sidelines. Indeed, once a transfer or merger is complete, the parties will be subject to whatever industry-wide regulations might be produced in the proceeding.[141]

As discussed below, the arguments for the proposed conditions pertaining to roaming, open access, handset agreements, and universal service high cost support are of interest to the industry as a whole and the subject of pending petitions and/or pending rulemakings that relate to general industry issues, rather than to the Verizon Wireless/ALLTEL merger in particular. Consistent with past precedent, the Commission cannot and should not countenance attempts to misuse the merger process. Indeed, conditioning the merger upon imposition of any kind of special conditions in these areas would create an unlawful regulatory disparity among competitors in the market.[142] Such discriminatory treatment would be arbitrary and capricious[143] and would be contrary to the Commission's express commitment to employing a "symmetrical regulatory structure" on wireless providers.[144]

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[141] *See TCI/AT&T*, at 3183 (¶ 43) ("We note . . . that the merged entity, like other cable operators, will be subject to the rules eventually adopted in the pending rulemaking proceeding.").

[142] *See Burlington N. & Sante Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 777 (D.C. Cir. 2005).

[143] *See id.*

[144] *See Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, 1418 (¶ 15) (1994) ("*Second CMRS Report and Order*"); *Petition of the Connecticut Department Public Utility Control to Regulate Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut*, Report and Order, 10 FCC Rcd 7025, 7033-34 (¶ 14) (1995); *see also* Appropriate Regulatory Treatment For Broadband Access to the Internet Over Wireless Networks, Declaratory Ruling, 22 FCC Rcd 5901, 5926 (2007) ("*Wireless Internet Access Order*") (statement of Chairman Kevin J. Martin stating that "the Commission must set the rules of the road so that players can compete on a level playing field" and that "all providers of the same service should be treated in the same manner regardless of the technology

B. **Petitioners' Roaming Proposals Are Either Unrelated to the Transaction or Misstate Facts Regarding Post-Merger Roaming Opportunities.**

As a matter of longstanding FCC precedent, the Commission focuses its competitive analysis on the retail market and does not consider roaming to be a separate product market.[145] This practice was reaffirmed only this month with the release of the *Verizon Wireless/RCC Order*.[146] As demonstrated above, the proposed transaction preserves retail competition and does not result in competitive harm in any market. These retail-level competitive market pressures will ensure that roaming rates remain just and reasonable.

Moreover – contrary to the assertions of some petitioners – in the vast majority of markets CDMA and GSM roaming opportunities will continue to exist post-merger. And in the future, roaming opportunities will only increase. The industry has largely converged around a common 4G standard – LTE – reducing the importance of air-interface technologies and increasing the number of potential roaming partners. Additionally, Verizon Wireless already has made voluntary commitments with respect to roaming that address any remaining concerns, including a new commitment – described below – to keep the rates set forth in ALLTEL's existing agreements with each regional, small and/or rural carrier for the full term of the agreement *or for two years from the closing date, which ever occurs later.* Even in the absence

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that they employ"); Statement of Commissioner Deborah Taylor Tate, *Wireless Internet Access Order*, 22 FCC Rcd at 5932 (stating that the Order "provides wireless broadband Internet access services a level playing field with other Internet access services").

[145] *See Verizon Wireless/RCC Order* at ¶ 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."); *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21591 (¶ 180); *2007 Roaming Order*, 22 FCC Rcd at 15822 (¶ 13); *see also Applications of Guam Cellular and Paging and DoCoMo Guam Holdings Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order and Declaratory Ruling, 21 FCC Rcd 13580, 13602 (¶ 36) (2006) ("*DoCoMo/Guam Order*"); *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11563-64 (¶ 104).

[146] *Verizon Wireless/RCC Order* at ¶¶ 88-89.

of these commitments, potential roaming partners treated in an unjust and unfair manner may avail themselves of the Section 208 complaint process. Accordingly, there is no basis for adopting any of the proposed roaming conditions.

Nonetheless, a number of petitioners now ask the Commission to impose merger conditions relating to home market and broadband data roaming. Their proposals are not only unrelated to this merger, they are under consideration in open, general industry proceedings advanced by the petitioners themselves. Accordingly, their proposed merger conditions should be rejected on procedural[147] and substantive grounds.

1. The Commission Should Reject the Proposed Roaming Conditions, Which Fail to Account for the Substantial Competition in the Retail Wireless Marketplace.

Certain petitioners propose roaming conditions that ignore longstanding FCC precedent that retail competition is the focus of the Commission's competitive analysis and that roaming is not a separate product market.[148] Specifically, the Commission has stated – as recently as the *Verizon Wireless/RCC Order* – that the focus of its review is *not* whether a transaction will "have an adverse effect on roaming arrangements," but whether it will "cause competitive harm due to a reduction of the number of competitors in general."[149] Here, the proposed transaction, as demonstrated above, preserves retail competition and does not result in competitive harm in any market. Absent harm to the competitive marketplace in general, conditions or divestitures – such as those proposed by certain petitioners – are inappropriate.

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147 *See* Section III.A., *supra*.

148 *See Verizon Wireless/RCC Order* at ¶ 88 (*citing 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).

149 *Verizon Wireless/RCC Order* at ¶¶ 88-89.

Moreover, the wireless marketplace cannot properly be divided into technology types under existing government policy and FCC precedent for defining a market. As Dr. Gregory Rosston explained in the roaming rulemaking proceeding, the Department of Justice/Federal Trade Commission Horizontal Merger Guidelines define a relevant product market as the "smallest set of products and geographic area such that control by a single entity could hypothetically be profitably monopolized."[150] Narrow technology-driven markets, such as the proposed roaming market, are not appropriate because consumers generally do not shop for services based on technology.[151] Indeed, a hypothetical monopolist could not increase prices profitably in a home market by raising roaming charges because consumers would react by simply choosing another service provider.[152]

Further, even if a CDMA provider were the only source of roaming in a particular market for another CDMA carrier, and that other carrier were forced as a result to pay high per-minute roaming charges and pass those charges onto its customers in the form of high roaming prices, customers in that market would be able to choose service from another carrier in the market rather than pay the high charges.[153] As a result, the carrier with market power would reap no benefit from its exercise of that market power.[154] Ultimately, this analysis demonstrates why the

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150 *See* Sprint Nextel Comments, WT Docket 05-265, Attachment, Gregory L. Rosston, "An Economic Analysis of How Competition Has Reduced High Roaming Charges," at 11-12 (filed Nov. 28, 2005) (citing DOJ/FTC Horizontal Merger Guidelines, §§ 1.11, 1.12).

151 *See* Reply Comments of Verizon Wireless, WT Docket 05-265, at 15-17 (filed Jan. 26, 2006) (citing Sprint Nextel Comments, WT Docket 05-265, Attachment, Gregory L. Rosston, "An Economic Analysis of How Competition Has Reduced High Roaming Charges" (filed Nov. 28, 2005)).

152 *Id*.

153 *Id*.

154 The Commission affirmed this analysis in the *Cingular/AT&T Wireless Order*. *See Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21591 (¶ 180) (explaining that "if any mobile

Commission has refused to divide the CMRS marketplace into separate retail roaming segments. Certain petitioners, however, ignore this precedent and ask the Commission to reverse course and impose roaming conditions in the face of a competitive retail wireless marketplace. The proposed conditions should thus be rejected.

2. Post-Merger Roaming Rates, Terms and Conditions Will Remain Just and Reasonable.

In the vast majority of markets, a number of CDMA and GSM roaming options will remain post-merger. In the very few markets where no roaming alternatives will be available post-merger, market and regulatory controls presently in place ensure that roaming rates will be just and reasonable. Moreover, Verizon Wireless already has made voluntary commitments with respect to roaming that address any remaining concerns, including a new commitment – described below – to keep the rates set forth in ALLTEL's existing agreements with each regional, small and/or rural carrier for the full term of the agreement or for two years from the closing date, which ever occurs later. In light of these market conditions and voluntary commitments, the proposed roaming conditions are not warranted.

a. Roaming Alternatives Will Remain Post-Merger and Will Increase Over Time.

Roaming alternatives are unaffected by the proposed transaction except for a few very small geographic areas amounting to a very small percentage of the population. Immediately following the merger, the petitioners will continue to have multiple alternatives for roaming partners, except in a few counties. As the Compass Lexecon Declaration (attached as Attachment 1) shows, petitioners will still have access to three or more CDMA roaming partners

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telephony consumers . . . were to find that the roaming aspects of their wireless service plans became less favorable (whether in terms of price or in terms of coverage) as a result of this merger, they would always have the option not only to upgrade to a GSM plan (in the case of TDMA or analog customers), but to switch to a CDMA-based carrier altogether").

in close to half of the counties where Verizon Wireless and ALLTEL overlap and no divestiture is contemplated.[155] Petitioners will have access to two or more CDMA roaming partners in nearly 97 percent of such counties.[156] Only in 20 counties, representing about one-tenth of one percent of the U.S. population, will the combined entity be the sole CDMA roaming partner.[157]

However, even in those markets, the roaming rates, terms and conditions will likely not be affected by the merger for multiple reasons.[158] First, in the 20 counties where the number of CDMA roaming partners will drop to one following this transaction, Verizon Wireless will continue to face significant retail competition from national, regional, and local wireless carriers. Indeed, the transaction will not trigger the initial spectrum screen in 19 of the 20 counties, and in the single county where the screen is triggered, Attachment 2 explains how the transaction will not adversely affect wireless competition.[159] Second, the Commission's *2007 Roaming Order* prohibits any carrier from denying roaming requests or imposing unreasonable rates, terms, and

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[155] Compass Lexecon Declaration, attached as Attachment 1, at Table 9. Petitioners fail to distinguish previous Commission merger decisions which suggest that the continued presence of two nationwide and numerous regional carriers using CDMA technology after the merger should be sufficient to "ensure the continued availability of roaming services at competitive rates" to Verizon Wireless's potential roaming partners. *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21588 (¶ 173).

[156] Compass Lexecon Declaration, attached as Attachment 1, at Table 9.

[157] *Id*.

[158] In the past, the Commission has not been particularly concerned with transactions that reduce the number of roaming options from two to one in certain markets, especially when carriers have been in the midst of technological transitions. *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21590 (¶ 177) ("Although the number of nationwide carriers using TDMA will decrease from two to one as a consequence of the proposed merger (because T-Mobile has no TDMA network), we are not overly concerned about the effect on Cingular's potential roaming partners because, like Cingular, those partners are transitioning their business from TDMA to GSM (or, in some cases, to CDMA)."). As described below, convergence around a common 4G standard ensures that the competitive landscape for roaming services and the number of potential roaming partners will increase nationwide.

[159] *See* CMA-by-CMA Analysis, attached as Attachment 2.

conditions in roaming agreements.[160] Third, Verizon Wireless negotiates nationwide roaming agreements and does not typically distinguish rates based on the geographic area served.[161] Fourth, in the few areas with limited post-merger roaming alternatives, other national and local wireless carriers – including carriers that currently offer CDMA service – have significant spectrum holdings and face no barriers to expansion.[162]

Indeed, wireless carriers may find that it makes economic sense to expand their CDMA networks into these markets or, alternatively, to sponsor entry of other entities into these local markets, in order to cut roaming costs or compete as a roaming provider.[163] AT&T, for example, recently increased its nationwide GSM footprint and sponsored entry by other parties to reduce its reliance on ALLTEL's GSM network. In just six quarters, the share of AT&T traffic accounted for by ALLTEL's GSM roaming network has fallen by approximately 45 percent.[164] Taken together, these factors will ensure that the roaming rates that Verizon Wireless and ALLTEL offer to CDMA carriers in these 20 counties will not be affected by the proposed transaction.

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[160] *See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817, 15826 (¶ 23) (2007) ("*2007 Roaming Order*").

[161] Consistent with the *2007 Roaming Order* home roaming exception, depending on competitive market conditions Verizon Wireless may negotiate different rates for markets where the roaming partner wants to roam on Verizon Wireless's network in the carrier's home market.

[162] Compass Lexecon Declaration, attached as Attachment 1, at 36-37. Sprint, for example, holds spectrum in all 20 counties where Verizon Wireless will be the only roaming partner following the transaction. *Id*. at Table 10.

[163] *Id*. at 36-39.

[164] *Id*. at Table 12.

Following the merger, the petitioners will also continue to have multiple alternatives for GSM roaming partners. As an initial matter, the combined company's GSM-roaming network will overlap in only 17 counties covering 0.2 percent of the population.[165] Second, competition from other GSM carriers within the merged firm's GSM footprint is significant. In fact, in close to 99 percent of the combined GSM footprint, both AT&T and T-Mobile either compete or hold the spectrum assets to compete.[166] Moreover, as explained above, AT&T's recent activities demonstrate that GSM carriers can quickly enter the roaming market by building out their own networks or sponsoring entry by other carriers in response to any increase in roaming rates. Third, Verizon Wireless has a strong economic incentive not to degrade or abandon the GSM roaming network.[167] ALLTEL generates significant revenue from GSM roaming, and Verizon Wireless would derive no benefit from GSM carriers moving off the ALLTEL network. To the contrary, such a migration would be a pure revenue loss and erode the value of acquired assets. These factors will ensure that GSM roaming rates that petitioners receive from the combined entity remain competitive.

Moreover, a condition nearly identical to certain petitioners' proposals for Verizon Wireless to divest the acquired company's GSM network, or alternatively, maintain the GSM network for a specified period of time was recently rejected by the Commission in the *Verizon*

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165 *See id.* at 38. ALLTEL provides GSM-based roaming service to counties covering 3.5 percent of the population, while Verizon Wireless – through its acquisition of RCC – only provides GSM-based roaming service to counties covering 1.8 percent of the population.

166 *See id*. at Table 11. In the remaining 1 percent of the combined company's GSM footprint, either AT&T or T-Mobile (but not both) hold spectrum resources.

167 *See id*. at 41.

Wireless/RCC Order and the *AT&T/Dobson Order*.[168] In both proceedings, the Commission stressed that "it is a long-standing principle of the Commission not to dictate licensees' technology choices."[169] Additionally, in the *Verizon Wireless/RCC Order*, the Commission refused to condition the merger or require any divestitures because of "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."[170] The Commission should adhere to this conclusion in the current transaction.

Regardless of air-interface, convergence around a common 4G standard ensures that the competitive landscape for roaming services and the number of potential roaming partners will increase in the future as carriers roll out next-generation wireless broadband services. The national wireless carriers – with the exception of Sprint Nextel – have announced or are expected to announce that they will implement LTE as their 4G technology, and small and regional wireless providers likely will follow suit.[171] As providers converge around a common standard,

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[168] *See, e.g.*, RTG Petition at 23-24 (Verizon Wireless should be required to divest the ALLTEL GSM network and sufficient spectrum to operate that network to a competitor offering GSM service; or divest the GSM network and sufficient spectrum in markets where Verizon Wireless is the only GSM provider; or commit to maintaining the GSM roaming network for five years.); Palmetto Petition at 24-26 (mirroring conditions proposed in the RTG Petition).

[169] *Verizon Wireless/RCC Order* at ¶ 89, n. 284 ("We emphasize, however, that the need for divestiture in this CMA, as well as 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."); *AT&T/Dobson Order* at ¶ 66, n. 196.

[170] *Verizon Wireless/RCC Order* at ¶¶ 88-89.

[171] Verizon Wireless, AT&T, and MetroPCS all have selected LTE. *See* Verizon Wireless Press Release, "Verizon Selects LTE as 4G Wireless Broadband Direction," (Nov. 29, 2007), *available at* http://investor.verizon.com/news/view.aspx?NewsID=872; "AT&T: It's LTE," DailyWireless.org (Feb. 6, 2008), *available at* http://www.dailywireless.org/2008/02/06/att-its-

the number of potential roaming partners will increase and air-interface compatibility will be less of a concern.[172] Competition among providers using the same 4G standard will likely result in increased pressure to lower roaming rates and shore up long term roaming relationships.

b. Verizon Wireless's Roaming Commitments Will Ensure that the Roaming Rates Are Just and Reasonable.

An additional level of assurance that roaming rates will remain just and reasonable is provided by Verizon Wireless' voluntary commitments with respect to existing roaming agreements. The merger will either leave the existing roaming terms available from Verizon Wireless and ALLTEL unchanged or, at the voluntary election of certain parties, *improve* available terms. Specifically, in the Applications and in a subsequent, clarifying *ex parte*, Verizon Wireless made commitments ensuring that Verizon Wireless' and ALLTEL's regional, small and/or rural roaming partners will continue to benefit from current roaming arrangements and, in some cases, may voluntarily elect more favorable terms. In the Applications, Verizon

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lte/; Marin Perez, "MetroPCS Chooses LTE For 4G Wireless Network," INFORMATIONWEEK (Aug. 13, 2008), http://www.informationweek.com/news/mobility/wifiwimax/showArticle.jhtml?articleID=210003630. Although T-Mobile has not announced its 4G technology, LTE makes the most sense given that LTE is the natural upgrade path for T-Mobile's GSM and UMTS technologies.

[172] *See generally* Bear Stearns, *January Broadband Buzz: A Monthly update on Critical Broadband Issues*, Feb. 4, 2008, at 9 ("One of the important characteristics of LTE technology is its interoperability with existing wireless networks, regardless of what wireless technology (e.g., GSM, CDMA, UMTS/HSPA, etc.) the legacy network operates on."); Mike Burton, *Think Technology: Wireless Components and Enabling Technologies*, ThinkEquity Partners LLC, Feb. 8, 2008, at 1 ("With Verizon's, Vodafone's and now AT&T's adoption of LTE as the 4G standard of choice we appear to be heading into the uncharted territory of technological agreement."); Simon Leopold, *et al*, *Technology: Insights from Verizon's Network and Technology Organization*, Morgan Keegan, June 12, 2008, at 1 ("The Long Term Evolution (LTE) Initiative Feels Real: Considering the timing and implications of LTE […] We think initial spending could begin in 2009, at least a year earlier than we imagined.").

Wireless committed to "honor ALLTEL's existing roaming agreements with other carriers, ensuring continuity for customers of those carriers."[173] It added further that:

> In addition to providing ALLTEL's (and Verizon Wireless') customers with much more seamless coverage across the nation, Verizon Wireless will continue to provide roaming services to customers of other wireless carriers. ALLTEL currently has various agreements with other carriers to provide roaming on ALLTEL's CDMA and GSM networks. Upon closing of the transaction, Verizon Wireless will honor all of the terms of those CDMA and GSM roaming agreements, thereby ensuring that other carriers' customers will continue to enjoy roaming service.[174]

In response to questions from roaming partners, Verizon Wireless offered additional clarification of these commitments in a July 22, 2008 *ex parte* letter.[175] First, Verizon Wireless clarified that it will not exercise certain contractual rights identified by regional, small and/or rural roaming partners that might otherwise enable Verizon Wireless to terminate roaming agreements prior to their expiration. Specifically, the *ex parte* stated:

> [E]ach regional, small, and/or rural carrier that has a roaming agreement with ALLTEL will have the option to keep the rates set forth in that roaming agreement in force for the full term of the agreement, notwithstanding any change of control or termination for convenience provisions that would give Verizon Wireless the right to accelerate the termination of such agreement.[176]

Verizon Wireless has also offered such roaming partners with agreements with both Verizon Wireless and ALLTEL to elect, in their own discretion, to have all of their traffic governed by the more favorable of the two agreements, stating:

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173 Public Interest Statement at ii.

174 *Id*. at 17.

175 *See* Verizon Wireless July 22nd Letter.

176 *Id*. at 2.

> [E]ach such regional, small, and/or rural carrier that currently has roaming agreements with both ALLTEL and Verizon Wireless will have the option to select either agreement to govern all roaming traffic between it and post-merger Verizon Wireless.[177]

In response to these commitments, some petitioners have requested further clarification regarding post-merger treatment of existing roaming agreements with ALLTEL that have a month-to-month term or are nearing expiration.[178] Because these petitioners have not negotiated future termination dates for their roaming agreements, they raise the concern that their existing agreements will be terminated post-merger. Verizon Wireless' policy is not to terminate roaming arrangements. Typically, month-to-month roaming agreements will remain in place until one of the parties seeks to negotiate different terms and the parties reach a new agreement. Nonetheless, to allay these concerns, Verizon Wireless offers the following additional commitment: upon closing of the transaction, Verizon Wireless will keep the rates set forth in ALLTEL's existing agreements with each regional, small and/or rural carrier for the full term of the agreement or for two years from the closing date, which ever occurs later.

In light of these commitments, roaming partners of ALLTEL will continue to enjoy rights under their existing roaming agreements and may have the opportunity to elect to switch to Verizon Wireless' roaming agreements if they so desire.

c. Available Remedies Will Ensure that the Roaming Rates Are Just and Reasonable.

Petitioners that – in spite of available roaming opportunities and Verizon Wireless' voluntary roaming commitments – view themselves as being subjected to unjust and unfair roaming practices post-merger may avail themselves of the Section 208 complaint process. As

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177 *Id*.

178 *See, e.g.*, Roaming Petitioners Petition at 18 (Verizon Wireless should be required to extend the term of the ALLTEL roaming agreements for five years from the date of closing or the expiration of the contract, whichever is longer); Leap Petition at 18-19.

petitioners well know, an arbitrary denial of roaming rights to any requesting carrier would be subject to Commission review and oversight. Pursuant to the *2007 Roaming Order*, Verizon Wireless – and every other wireless carrier – must provide roaming service to a requesting carrier with a compatible air-interface on terms that are just and reasonable and not unreasonably discriminatory.[179] A requesting carrier that is unable to obtain roaming on these terms may file a Section 208 complaint with the Commission.[180] Given the roaming commitments discussed above, the market incentives to provide roaming, and the availability of relief under Section 208 where roaming rights are not offered on just, reasonable and not unreasonably discriminatory terms, there is no basis for the relief sought by petitioners.

Heedless of these generally applicable procedural rights that ensure the availability of roaming on just and reasonable terms, some petitioners seize upon the proposed transaction as an opportunity to secure new or additional rights. Petitioners suggest a variety of means of tilting future roaming negotiations *against* a single carrier – Verizon Wireless. Suggestions include Commission regulation of roaming rates, forced disclosure of private contracts, "most-favored nation" requirements, and requirements relating to the terms of roaming agreements in divestiture markets.[181] Such proposed conditions should be rejected.

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179 *2007 Roaming Order*, 22 FCC Rcd at 15826 (¶ 23).

180 *Id.* at 15829-15830 (¶ 30).

181 *See, e.g.*, MetroPCS/NTELOS Petition at 31-33, 35-38 (proposing conditions relating to rate regulation, most favored nation requirements, and forced disclosure of private contract terms); OPASTCO/RICA Petition at 7 (proposing conditions relating to rate regulation); Rural Carriers Petition at 12-13 (proposing conditions relating to rate regulation and most favored nation requirements); SDTA Petition at 11 (proposing conditions relating to rate regulation); CAPCC Petition at n. 35 (proposing conditions relating to "terms of roaming agreements in divestiture markets").

As an initial matter, the Commission has refused to resolve individual contract disputes relating to roaming in the merger context – stressing instead that "[s]uch contractual matters are best resolved on a case-by-case basis."[182] Moreover, the Commission specifically rejected rate regulation and forced disclosure of private contracts in the *2007 Roaming Order* on the grounds that such regulation was unnecessary in a competitive market.[183] As shown above, the proposed transaction preserves competition in the wireless market and, accordingly, there is no basis for reversing the Commission's decision. With respect to the divestiture markets, the acquirer of the divested properties will have the spectrum and facilities necessary to serve the divestiture market without roaming, and will be a position no different than any other requesting carrier in seeking roaming rights from Verizon Wireless outside that market.

Proposed merger conditions are also not a substitute for a Section 208 complaint, to the extent such a complaint has merit. NDNC alleges – without providing a shred of evidence – that Verizon Wireless has refused to enter into good faith discussions concerning roaming agreements.[184] This allegation is patently false. In 2007, Verizon Wireless and NDNC began discussions to craft a new roaming agreement.[185] These discussions accelerated in April 2008,

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[182] *AT&T/Dobson Order* at ¶ 67 (concluding that a merger proceeding "is not the appropriate forum for determining other service providers' contractual rights" and that "[s]uch contractual matters are best resolved on a case-by-case basis").

[183] *2007 Roaming Order*, 22 FCC Rcd at 15832 (¶ 38-39) (concluding that "regulation of roaming rates is not warranted on economic grounds" and that "rate regulation has the potential to distort carriers' incentives and behavior with regard to pricing and investment in network build-out"); *id*., ¶ 62 (concluding that the public interest would not be served by requiring CMRS carriers to disclose their agreements and that "creating transparency in rates may have the effect of restricting competition and raising rates above competitive levels").

[184] *See* NDNC Petition at 7-8.

[185] As background, Verizon Wireless already has two existing, legacy roaming agreements with NDNC – one arrangement agreed to by NDNC and GTE, and a separate arrangement agreed to by Airtouch and NDNC.

and on June 11, 2008, Verizon Wireless provided NDNC a proposed agreement *to which NDNC has never responded*. In any event, the recent *Verizon Wireless/RCC Order* and *AT&T/Dobson Order* confirm longstanding Commission precedent that a merger proceeding is not the proper venue for a petitioner to raise a specific complaint regarding conduct unrelated to the transaction.[186] In those proceedings, the Commission stressed that the automatic roaming rules require that a petitioner alleging unfair roaming practices file a complaint pursuant to Section 208 and that the Commission address the complaint in a separate Section 208 complaint proceeding.[187]

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[186] *See, e.g.*, *In re Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Company Application for Transfer of Control of Eighty-Two Cellular Radio Licenses to Cellco Partnership*, Order, 10 FCC Rcd 13368, 13381 (¶ 37) (1995) (refusing to address in a merger proceeding allegations regarding anticompetitive acts of a transferor and concluding that "the proper forum for specific complaints against common carriers is a Section 208 complaint proceeding, not a license assignment/transfer of control proceeding"); *In re Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Co.*, Memorandum Opinion and Order, 12 FCC Rcd 22280, 22292 (¶ 26) (1997) (explaining that the "proper fora for adjudicating claims of isolated misconduct are the section 208 complaint process and the antitrust courts, not a license transfer proceeding"); *In re Applications of Craig O. McCaw & American Telephone and Telegraph Co.*, Memorandum Opinion & Order, 9 FCC Rcd 5836, 5919 (¶ 154) (1994) (concluding that alleged violations of the resale rules should be addressed in Section 208 complaint proceedings, not in the Commission's review of the merger), *corrected by* 1994 WL 52603 (FCC Sept. 27, 1994), *aff'd sub nom. SBC Commc'ns Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995); *Communications Satellite Corp.; Application for Consent to Transfer Control of and to Reissue Commission Authorizations*, Memorandum Opinion and Order, 3 FCC Rcd 7277, 7278 (¶ 6) (1988) (concluding that the "Commission's complaint procedure is the appropriate vehicle to redress alleged anticompetitive or otherwise unlawful tariff provisions that are currently in effect," not a transfer of control proceeding).

[187] *Verizon Wireless/RCC Order* at ¶ 90 (explaining that the Commission will address automatic roaming complaints on a "case-by-case basis"); *AT&T/Dobson Order* at ¶ 67 ("As noted in the *Roaming Report and Order*, we intend to address roaming related complaints on a case-by-case basis.").

3. Proposed Roaming Conditions Are Neither Merger-Specific Nor Warranted.

A number of petitioners seek merger conditions relating to home market[188] and broadband data roaming.[189] In addition, the Rural Cellular Association ("RCA") and Cellular South, Inc. ("Cellular South") seek to impose carrier-to-carrier "interoperability" requirements – a concept the proposing petitioners fail even to define.[190] These proposed conditions are not only unrelated to this transaction, but also under Commission consideration in pending proceedings.[191] There is no basis for preempting the rulemaking process or imposing discriminatory regulatory burdens on Verizon Wireless that do not apply to the rest of the industry. Indeed, in the *AT&T/Dobson Order*, the Commission stressed that "the proper venue to address concerns with the findings in the *Roaming Report and Order* (*e.g.*, home market roaming exclusion) is in the roaming rulemaking proceeding through pending petitions for reconsideration, and not in the merger."[192] Petitioners fail to distinguish, or even disclose, this precedent. Accordingly, the requested conditions should be dismissed on those grounds alone.

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188 *See, e.g.*, MetroPCS/NTELOS Petition at 15-17; NTCA Petition at 5-6; OPASTCO/RICA Petition at 9; Palmetto Petition at 24; Leap Petition at 4; Roaming Petitioners Petition at 17-18; Rural Carriers Petition at 17-18; RTG Petition at 22; SDTA Petition at 3.

189 *See, e.g.*, Cellular South Petition at 25; MetroPCS/NTELOS Petition at 29-31; Centennial Petition at 4-5; Leap Petition at 4; NTCA Petition at 5; NDNC Petition at 9-10; OPASTCO/RICA Petition at 7, 9; Palmetto Petition at 24; Rural Carriers Petition at 11, 13-14; RCA Comments at 13; Roaming Petitioners Petition at 17-18; RTG Petition at 22-23; SDTA Petition at 3.

190 *See* RCA Comments at 10-13; Cellular South Petition at 21-24.

191 "Home roaming" is the subject of petitions for reconsideration in the roaming docket. *See* Petitions for Reconsideration of Action in Rulemaking Proceeding, Public Notice, Report No. 2837 (Oct. 12, 2007). Broadband data roaming is the subject of a Notice of Proposed Rulemaking in the same docket. *See 2007 Roaming Order*, 22 FCC Rcd at 15845-47 (¶¶ 77-81).

192 *AT&T/Dobson Order* at ¶ 67.

The conditions proposed here are also unwise as a matter of policy and should be denied on the merits. The record developed in the open roaming proceeding shows that the broad home market roaming conditions proposed here, which would essentially create an unlimited right to home market roaming, unquestionably are contrary to the public interest. Just over a year ago, the Commission expressly rejected proposals to impose broad automatic roaming rules in home markets – finding that consumer choice and competition suffer where a competitor with spectrum elects to roam rather than build out.[193] Indeed, when a requesting carrier seeks to use a competitor's spectrum rather than build out and initiate service in its own home market, that requesting carrier seeks resale, not "home roaming."[194]

The Commission has made clear that "the mandatory resale rule was sunset in 2002, and automatic roaming obligations can not be used as a backdoor way to create *de facto* mandatory resale obligations or virtual reseller networks."[195] The Commission adopted the home roaming exception, which promotes build-out and innovation, benefiting consumers and serving the public interest. And the Commission found that allowing carriers to deny roaming agreements to competitors with spectrum in the same market fosters competition because it enables carriers to differentiate themselves on the basis of superior coverage, and it encourages competitors to build out facilities in the home market.[196] A year later, the grounds on which the Commission adopted

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[193] *2007 Roaming Order*, 22 FCC Rcd at 15835 (¶ 49) (explaining that "if a carrier is allowed to 'piggy-back' on the network coverage of a competing carrier in the same market, then both carriers lose the incentive to build-out into high-cost areas in order to achieve superior network coverage").

[194] *See also* Letter from Andre J. Lachance, Assistant General Counsel, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed Aug. 1, 2008).

[195] *2007 Roaming Order*, 22 FCC Rcd at 15836 (¶ 51).

[196] *Id.* at 15835 (¶ 49).

the home roaming exception remain unchanged and do not support imposition of a condition here. Even more fundamentally, nothing about the merger of Verizon Wireless and ALLTEL changes these incentives.

The intrusive broadband data roaming conditions proposed by certain petitioners also should be rejected.[197] The record developed in the roaming rulemaking proceeding shows that a broadband data roaming requirement condition would be unlawful under the Communications Act. As a threshold matter, the FCC lacks legal authority to extend the automatic roaming obligation to the services addressed.[198] The Commission has concluded that wireless broadband Internet access services are information services and not CMRS.[199] Indeed, neither Title I nor Title III provides a jurisdictional basis to extend the automatic roaming obligation to information and non-interconnected services.[200]

An automatic broadband data roaming obligation condition also would inhibit broadband deployment and harm competition and consumers. Under the current market-based broadband data roaming system, carriers have the incentive to rapidly deploy and make available advanced broadband data services, including through roaming. Verizon Wireless already has such

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[197] To the extent NDNC does not provide 3G services in its home market, its request for automatic broadband data roaming is inappropriate and is actually a request for a resale requirement. *See* NDNC Petition at 6-8.

[198] *See* Comments of Verizon Wireless, WT Docket. 05-265 (filed Oct. 28, 2007); Reply Comments of Verizon Wireless, WT Docket 05-265 (filed Nov. 28, 2007).

[199] *See Appropriate Regulatory Treatment for Broadband Access to the Internet over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901 (2007).

[200] Recent FCC decisions have consistently maintained that broadband Internet access services are information services and are exempt from mandatory Title II common carrier regulation. While Title III was used in part as a basis to impose manual roaming obligations on CMRS providers, the rudimentary data services available then, and the law governing them, have evolved. *See* Comments of Verizon Wireless, WT Docket No. 05-265 (filed Oct. 29, 2007); Reply Comments of Verizon Wireless, WT Docket No. 05-265 (filed Nov. 28, 2007).

agreements in place in some markets.[201] However, Verizon Wireless and other carriers are more likely to negotiate broadband data roaming agreements where the requesting carrier has implemented broadband technology in a significant portion of its market providing a reciprocal benefit to the roamed-on carrier. This incentive would disappear if the Commission adopted broadband data roaming requirements that allow a carrier to demand broadband data roaming the minute it deploys a single broadband facility in its home market. Moreover, if carriers can no longer be assured that they will be able to differentiate themselves from their competitors through offering advanced services, carriers' incentives to invest in developing and deploying such services will be significantly diminished.[202] Ultimately, the Commission's current market-based broadband data roaming policies – not the proposed broadband data roaming conditions – will best ensure the widespread availability of advanced wireless broadband data services for consumers.

Finally, the vague request from RCA and Cellular South that the Commission impose a condition mandating "interoperability" should be rejected.[203] As an initial matter, this proposal lacks sufficient cogency to be implemented. These petitioners fail to define "interoperability" in

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[201] Verizon Wireless, for example, recently completed a reciprocal roaming agreement for CDMA EvDO broadband data services with a roaming partner serving parts of Mississippi, Alabama, Florida, and Tennessee, and expects to implement EvDO roaming capabilities for subscribers this summer. *See* Letter from Andre J. Lachance, Assistant General Counsel, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed June 20, 2008). Verizon Wireless has other broadband data roaming agreements in place and will negotiate future agreements based on market conditions.

[202] As the FCC noted, "allowing competitors in a marketplace to gain competitive advantages from their own innovations results in value to subscribers…." *2007 Roaming Order*, 22 FCC Rcd at 15845 (¶ 78).

[203] *See* RCA Comments at 10-13; Cellular South Petition at 21-24.

any meaningful way[204] or to make clear either the obligation sought or the competitive harm it is intended to address. RCA indicates only that "a key component of interoperability is automatic roaming."[205] Even if there is a clear concept to be gleaned from these ill-defined requests, as RCA concedes, an "interoperability" condition involves something beyond automatic roaming and therefore seeks imposition of novel regulatory requirements on the merged firm that are not merger-specific. To the extent that RCA's and Cellular South's concerns regarding "interoperability" between carriers have any legitimacy, they should be addressed in a general industry-wide rulemaking proceeding.

C. Proposed Merger Conditions Submitted by PISC Purportedly to "Promote Neutrality in Mobile Wireless Services" Are Unrelated to the Transaction and Would Discriminate Against Verizon Wireless.

In the name of promoting "neutrality in mobile wireless services,"[206] PISC urges the FCC to use the merger approval process to impose a variety of discriminatory regulatory obligations on a single mobile wireless competitor – Verizon Wireless – while leaving the rest of the market free from those obligations. PISC not only asks the Commission to extend the targeted open access requirements that apply to the 700 MHz C Block to *all* of Verizon Wireless's spectrum, it also requests that the agency apply the inapposite *Internet Policy Statement* net neutrality principles[207] from the wireline context to wireless spectrum for the first time, and that it take this dramatic step only against Verizon Wireless. PISC's request to saddle a single competitor with "neutral" regulations should be rejected as unrelated to the merger, inappropriate for

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[204] *See* RCA Comments at 10-14; Cellular South Petition at 21-24.

[205] *See* RCA Comments at 10, 13.

[206] PISC Petition at 17.

[207] *In re Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, 20 FCC Rcd 14986 (2005) ("*Internet Policy Statement*").

consideration outside of general industry proceedings, and discriminatory and anti-competitive in its effect.

In its Petition to Deny, PISC recognizes that Verizon Wireless is at the forefront of openness with its voluntary Open Development Initiative ("ODI"), and has made a solid commitment in its Public Interest Statement to extend ODI to ALLTEL and its customers.[208] Puzzlingly, despite Verizon Wireless's class leading record in this area, PISC argues that the Commission must use this merger to impose sweeping and unprecedented obligations on "all [Verizon Wireless] systems,"[209] "to ensue [sic] that Verizon Wireless will honor its commitments post-acquisition."[210]

PISC's actions are even more puzzling since its Petition to Deny and demands for "neutrality" merger conditions in the Verizon Wireless/ALLTEL proceeding stand in stark contrast to its affirmative support for the Clearwire/Sprint merger without a similar demand for net neutrality or open access merger conditions.[211] Against this bizarre backdrop, PISC's claims that it is a champion of open access and net neutrality ring hollow. Whether intended or not, PISC is attempting to use the merger approval process to selectively impede the ability of one competitor (Verizon Wireless) to compete with another apparently preferred competitor (Sprint/Clearwire) and other industry competitors as well. Ironically, in the name of neutrality and openness, PISC seems to be engaging in a blatant and unlawful effort to manipulate the

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[208] Public Interest Statement at 10.

[209] PISC Petition at 14.

[210] *Id.* at 13.

[211] Additionally, PISC has refrained from seeking such conditions on other recent mergers, such as the AT&T/Dobson, AT&T/Aloha, and T-Mobile/SunCom deals.

merger process to speed up or slow down competitors based on its own distorted view of which company will best serve the public interest.

1. There Is No Basis For an Open Access Merger Condition.

Even though PISC "applaud[s]" Verizon Wireless's ODI, PISC simultaneously casts aspersions on the company's commitment[212] and seeks to convert this consumer-driven initiative into an unprecedented government-imposed mandate. PISC proposes that the FCC adopt a merger condition extending the open platform requirements in Section 27.16 of the Commission's rules[213] to the Verizon Wireless and ALLTEL spectrum already existing and in use.[214] Further, PISC urges the FCC to make Verizon Wireless's ODI a national, mandatory condition.[215]

As an initial matter, PISC purposely confuses ODI with the FCC's "open access" rules for the 700 MHz C Block and erroneously suggests that Verizon Wireless' actions with respect to the former and statements with respect to the latter demonstrate a lack of a commitment to

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212 *See generally* PISC Petition at 14-15. Verizon Wireless is obliged to respond to PISC's misstatements and mischaracterizations with respect to Verizon Wireless's ODI commitment. Contrary to the baseless suggestions of PISC, the ODI initiative is moving forward on schedule. Verizon Wireless published the technical standards for its ODI in March 2008, *see* Brad Reed, *Verizon releases open mobile access specs*, Network World, March 19, 2008, *available at* http://www.networkworld.com/news/2008/031908-verizon-open-mobile-access.html, and has held three conferences with various potential partners and device developers. Verizon Wireless has even begun certifying devices for use on the Verizon Wireless network. *See* Press Release, Verizon, Verizon's *open network gets first, unsexy device*, News Release (July 16, 2008), *available at* http://www.verizonwireless-opendevelopment.com/071608_news.php; *SupplyNet's Wireless Telemetry Device for Vendor Managed Inventory is First Certified Under New Open Development Program From Verizon Wireless*, SupplyNet Company News (July 1, 2008), *available at* http://www.supplynetsolutionsonline.com/news_details.aspx?id=448. Over one hundred developers have submitted proposals to Verizon Wireless and, as of this date, several dozen devices are making their way through the certification process. The ODI team continues to meet with manufacturers and other interested parties to pursue opportunities for new devices that can be used on the network.

213 47 C.F.R. § 27.16.

214 *See* PISC Petition at 14-15.

215 *Id.*

open development that should be remedied with a condition on the merger. First, the FCC's open access rules apply only to the 700 MHz C Block, and they provide specific rules for the licensees using that spectrum. Verizon Wireless is fully aware of and will comply with these requirements applicable to the C Block spectrum. On the other hand, Verizon Wireless is voluntarily implementing ODI on its current spectrum holdings, and Verizon Wireless provides guidelines for developers through published technical specifications consistent with its existing network. Verizon Wireless is under no obligation to supplement ODI with the C Block rules. Second, PISC has demonstrated no need for granting its request for a condition imposing the C Block rules on all of Verizon Wireless' spectrum holdings. Indeed, the FCC itself has already rejected PISC's request to expand the C Block rules to other spectrum bands.[216]

The extension of open platform requirements as requested by PISC would not only be improper in the merger context, but unjustified in any event. Although PISC identifies the open access conditions imposed on the 700 MHz Band C Block as the model to follow here, application of those conditions to this merger would directly contradict the Commission's stated justifications for adopting those very targeted conditions in the first instance. In the *700 MHz Second Report and Order*, the FCC emphasized that because it "generally prefer[s] to rely on marketplace forces as the most efficient mechanism for fostering competition,"[217] its decision was limited only to the C Block so as not to unduly burden legacy spectrum.[218] The Commission

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[216] *See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, FCC 07-132, at ¶ 205 (2007) ("*700 MHz Second Report and Order*"). PISC's Petition offers no reason for the FCC to change its prior conclusion that extending the C-block rules to other spectrum bands is unnecessary and unwarranted.

[217] *Id.* at ¶ 195.

[218] *See id.*

described its decision as a "measured step"[219] to encourage innovation and consumer choice, and declined to "apply open access requirements to wireless broadband services generally."[220] The Commission's stated rationale for the imposition of open access obligations thus extends only to greenfield spectrum and cannot support the imposition of open access obligations on the legacy spectrum that is the subject of this proposed merger.[221]

Moreover, there is simply no need to adopt heavy-handed regulations to "ensure" open access, because the fiercely competitive wireless market is already moving in this direction. Both Verizon Wireless and, to a lesser extent, Sprint/Clearwire have committed to adopt open access principles in their respective networks generally, and to allow the market to determine whether this model proves popular with customers. Government-imposed open access at this stage would remove open access from the crucible of a consumer preference-driven market and potentially distort the development of optimal access practices, informed by actual market conditions and consumer experiences. This would be particularly troubling here because the Commission has recognized that open access might not work: "While the open platform requirement for devices and applications in the C Block holds the potential to foster innovation, *we cannot rule out the possibility that such a requirement may have unanticipated drawbacks as well*."[222] Indeed, this is precisely why the Commission noted that the record "regarding the potential merits or drawbacks of the open platform requirement for devices and applications is

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219 *Id.* at ¶ 201.

220 *Id.* at ¶ 202 n.463.

221 As Chairman Martin explained, "[t]he auction provides a rare chance to promote innovation and consumer choice without disrupting existing networks or business plans. Indeed, the vast majority of spectrum used for wireless services will remain without such restrictions." *Id.* at Separate Statement of Chairman Kevin J. Martin.

222 *Id.* at ¶ 205 (emphasis added).

not so clear as to warrant adopting such conditions for the entire 700 MHz Band,"[223] and it is also why the Commission decided to observe the "real-world effects" of open access on the market before further extending open access requirements to other spectrum bands.[224]

2. There Is No Basis for Imposing a Wireline "Net Neutrality" Condition on a Wireless Merger.

Obviously, a proposal to impose wireline "net neutrality" conditions on a wireless merger is a request unrelated to the transaction itself. The Commission should reject any so-called "net neutrality" conditions, including PISC's requested "clarif[ication]" that the Commission's *Internet Policy Statement*[225] applies in the wireless context.[226] The *Internet Policy Statement*, which the Commission adopted only in the wireline context and on a record focused primarily on wireline services, has never before been applied to wireless broadband, making its application here without precedent.[227]

As Verizon Wireless has explained in the other pending industry-wide proceedings considering issues concerning net regulation, existing and growing competition for broadband services removes any need for regulation, and imposing such common carriage-like regulation would inhibit the innovation and investment that is benefiting consumers.[228] While this is true

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223 *Id.*

224 *Id.* Given that C Block licensees cannot even begin to deploy services in these spectrum blocks yet, the Commission has no evidence of the "real-world effects" of open access on the market.

225 *Internet Policy Statement* at ¶ 3.

226 PISC Petition at 17.

227 *See, e.g., AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, Appendix F at n. 1, n. 15 (2007) (excluding AT&T's wireless network from the merger's net neutrality condition).

228 *See* Comments of Verizon and Verizon Wireless, WC Docket No. 07-52 (June 15, 2007); Reply Comments of Verizon and Verizon Wireless, WC Docket No. 07-52 (July 16, 2007);

for all types of broadband services, it is particularly true in the context of wireless broadband services given the intense competition among providers of mobile broadband services and the particular technical constraints associated with such services.[229] For example, before the Commission could extend the *Internet Policy Statement* to wireless services, it would need to consider the technical aspects that distinguish wireless broadband services from many wireline Internet access services – such as the finite and shared nature of the spectrum over which the wireless services are delivered or the limited number of radio channels that may be simultaneously used at a single cell site.[230] Such features may require a heightened need for network management as compared to most wireline broadband services (*e.g.*, limitations on the use of certain bandwidth-intensive applications or devices with "stay alive" functions that occupy available channels even when not actively in use) in order to ensure a high-quality service for other users sharing the same spectrum, or even to ensure that broadband service is available to other users at all.

In any event, extending new net regulation to wireless carriers – including by applying the *Internet Policy Statement* to these carriers for the first time – would be illogical and improper in the context of this discrete merger. The Commission's current, pro-competitive policies are

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Comments of Verizon and Verizon Wireless, WC Docket No. 07-52 (Feb. 13, 2008) ("Verizon Wireless Network Management Comments"); Reply Comments of Verizon and Verizon Wireless, WC Docket No. 07-52 (Feb. 28, 2008).

[229] Because wireless communications occur through the transmission of RF energy over shared radio spectrum, wireless broadband technology requires users to share available bandwidth with other users in their vicinity. This bandwidth sharing results in users' individual actions affecting the quality of service for all other users of the bandwidth. *See, e.g.*, Verizon Network Management Comments at 32-33. For example, poor handset performance can lead to fewer connections per call or the need for increased cells to maintain capacity. *See* Opposition of CTIA – The Wireless Association®, RM-11361, at Attachment C, "Wireless Handsets Are Part of the Network" by Charles L. Jackson, at 3.1.1 (filed Apr. 30, 2007) ("Jackson Statement").

[230] *See* Verizon Wireless Network Management Comments at 43-45.

bringing increased investment, deployment and innovation for consumers of mobile broadband services, and there is no market failure justifying intrusive, new regulation.

3. PISC's Requests Would Preclude Neutrality in the Regulation of Wireless Services and Impose an Anti-Competitive Constraint on Only One Competitor While Leaving the Others Unrestrained.

Finally, it is both improper and unlawful to address either open platform or wireless "net neutrality" requirements in the context of a single, discrete transaction. The concerns raised by PISC are properly addressed, if at all, in an industry-wide proceeding.[231] Indeed, as noted above, the Commission has long been committed to resolving only merger-specific issues, rather than issues of far-reaching implication and industry-wide application, in evaluating proposed transactions.[232] Furthermore, the imposition of regulatory burdens on one out of many wireless competitors is the antithesis of neutrality and inherently results in anti-competitive effects.[233] Accordingly, PISC's Petition should be rejected.

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[231] *See generally Cmty Tel. v. Gottfried*, 459 U.S. 498, 511 (1983) (citation omitted) (rulemaking "is generally a 'better, fairer, and more effective' method of implementing a new industry-wide policy than is the uneven application of conditions in isolated [adjudicatory] proceedings.").

[232] *See* Section III.A., *supra*. Indeed, resolving these hotly contested issues in a license transfer proceeding "may lead to varying and arbitrary differences among like licenses and may place an excessive administrative burden on the agency." *Amendment of Parts 2 and 25 of Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in Ku-Band Frequency Range*, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, ¶ 218 (2002); *see also Application of Great Empire Broadcasting, Inc*., 14 FCC Rcd 11145, ¶ 8 (1999) (""It is generally inappropriate, however, to address this argument in a restricted adjudicatory proceeding, 'where third parties, including those with substantial stakes in the outcome, have had no opportunity to participate, and in which we, as a result, have not had the benefit of a full and well-counseled record.'" (citing *Community Television of Southern California v. Gottfried*, 459 U.S. 498, 511 (1983)).

[233] If, after establishing generally applicable rules for the wireless industry, there arise any credible claims of impropriety, the FCC is fully capable of dealing with them in appropriate complaint proceedings.

D. **Proposed Exclusive Handset Arrangements Conditions Are Neither Merger-Specific Nor Warranted.**

In their filings, some petitioners have requested that the Commission impose on the grant of the transaction a condition that prohibits exclusive handset arrangements between Verizon Wireless and handset suppliers.[234] In particular, RCA has requested that the Commission "condition the grant upon a termination of existing handset exclusivity agreements and a prohibition on new agreements of the same nature."[235] The Commission should reject such proposals on procedural grounds alone.[236] Should the Commission reach the merits, the proposals should be rejected because: (1) exclusive handset arrangements are pro-consumer and yield a number of competitive benefits; (2) a discriminatory condition on Verizon Wireless is not targeted to achieve petitioners' asserted objectives; (3) the proposals are inconsistent with longstanding Commission policies permitting technical diversity among wireless networks; and (4) it is within petitioners' discretion and ability to form purchasing consortia and obtain exclusive handset arrangements of their own. In addition, exclusive handset arrangements are not agreements for the provision of communications or common carrier services and do not implicate whether the handsets meet the Commission's RF or other technical requirements. Therefore, the Commission does not have a basis to regulate such arrangements pursuant to Titles I, II or III of the Act.

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[234] RCA Comments, at 14-17; *see also* Cellular South Petition at 19-20; OPASTCO/RICA Petition at 8; PISC Petition at 12-13; Palmetto Petition at 28-31; Rural Carriers Petition at 15-16.

[235] RCA Comments at 15.

[236] *See* Section II.A. *supra*. The proposals are focused on industry-wide practices and, if considered at all, should be considered in a Notice of Inquiry or rulemaking as RCA itself has requested. *See* Rural Cellular Association, "Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers" (filed May 20, 2008) ("RCA Rulemaking Petition").

First, exclusive handset arrangements[237] are pro-consumer and yield a number of competitive benefits. Innovation in wireless devices is the principal product of exclusivity. Manufacturers have no incentive to design new, innovative handset technologies if every provider uses exactly the same phone inventory. Moreover, wireless providers have little incentive to promote a phone that every other provider offers consumers. Exclusive arrangements also facilitate carrier differentiation. In the competitive market for wireless services, providers use many features to differentiate themselves from each other, including "exclusive" handset arrangements, whether for models or colors or screen design. Consumers are the beneficiaries as carriers compete to offer the next "must have" phone. And, exclusive arrangements help ensure that the manufacturer will build a handset with a consistent user experience. Such arrangements facilitate the provision of customer service and shorten the learning curve when a customer upgrades or switches phones.

Second, the imposition of this condition with respect to Verizon Wireless and ALLTEL would not achieve the desired result. A condition imposed on Verizon Wireless would have no impact on exclusive arrangements held by AT&T Mobility, Sprint or T-Mobile (or RCA's members), about which commenters also complain. Indeed, the centerpiece of RCA's pending petition for rulemaking – AT&T's exclusive arrangement with Apple for the iPhone – would be completely unencumbered by a condition on Verizon Wireless' acquisition of ALLTEL. The only result of imposing this condition in the context of the ALLTEL acquisition would be to hamper unfairly the ability of Verizon Wireless to compete with other market participants, to the

[237] "Exclusive" handset arrangements do not always involve one wireless provider offering a particular phone model. A provider could have an exclusive on "time to market," certain colors, a form factor, user interface, or a certain technical feature that is tied to a specific network offering (*e.g.*, music downloads, or location-based services).

detriment of Verizon Wireless' and ALLTEL's existing subscribers. Indeed, while RCA and others complain that exclusive arrangements prevent rural Americans from obtaining access to advanced handsets,[238] a significant benefit of granting the merger is that extension of the Verizon Wireless footprint will provide more rural consumers ready access to handsets available throughout Verizon Wireless' national footprint.[239]

Third, an inventory of "generic" mobile handsets, such as the petitioners apparently want, available to any and all providers, is not feasible in the United States without a radical shift in the wireless market. Based on the Commission's policies to allow technical diversity, U.S. wireless providers have built their networks to the standards they conclude will best serve consumers, and have made countless independent technical decisions about air interface (CDMA vs. GSM), application platforms (BREW vs. JAVA), E911 compliance (handset vs. network solutions), user interfaces, etc. Generally, for a handset to operate well on a U.S. wireless network, it has to be optimized to work on a specific network. Selling a handset built to accommodate all networks would result in an expensive phone, which would provide basic voice and data connectivity, or would incorporate features some subscribers could never use, because they are available only on certain networks, or would include the costs of meeting all such requirements, whether used or not, in the retail price of the phone. For example, if a wireless provider does not support a high speed data network, then offering its subscribers a smartphone that retails at $199.00 is pointless.[240]

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238 RCA Comments at 16-17; OPASTCO/RICA Petition at 8.

239 *See, supra,* at 7.

240 The problems with and harms to consumers in genericizing (or, "Carterfoning") the U.S. mobile device market and wireless networks have been fully vetted in the context of Skype's Petition for Declaratory Ruling (RM-11361). *See, e.g.*, Comments of Verizon Wireless (filed April 30, 2007).

Fourth, as RCA notes, simple economics plays a major role in exclusive arrangements.[241] A manufacturer wants to sell as many units as possible and to get a firm commitment from providers to buy as many units as possible. However, RCA members may readily do something themselves to address this concern. There is nothing to stop the members of RCA from banding together, and so representing potentially millions of subscribers, to get the same kinds of attention and exclusive arrangements as larger carriers. That is exactly what Bell Atlantic Nynex Mobile, AirTouch Cellular and US West New Vector Group, Inc. did when they were regional carriers to secure new and innovative handsets.[242] Such arrangements do, however, require a willingness to adopt compatible network specifications and agree on form factors for the reasons noted above. RCA's members' consumers would end up with much better handset choices were its members to work on using their collective market power to attract handset manufacturers, rather than attempting to force manufacturers to develop generic phones.

E. Proposed Universal Service Fund and Eligible Telecommunications Carrier Conditions Are Neither Merger-Specific Nor Warranted.

The Commission should reject some petitioners' requests that Verizon Wireless forgo ALLTEL's federal competitive eligible telecommunications carrier ("ETC") Universal Service Fund ("USF" or "the fund") high cost funding.[243] The Commission just addressed a reasonable limit on all competitive ETC funding in its *Interim Cap Order*, which caps support to

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[241] RCA Comments at 15-16.

[242] "Audiovox Furnishes 500,000 Phones to TomCom," Mobile Phone News, at 4 (Nov. 13, 1995), available at http://findarticles.com/p/articles/mi_m3457/is_n46_v13/ ai_17966418?tag=artBody;col1.

[243] *See, e.g.*, NTCA Petition at 7-8; Palmetto Petition at 26-27; Rural Carriers Petition at 16-17; RTG Petition at 24-26; SDTA Petition at 16-17.

competitive ETCs at March 2008 levels on a state-by-state basis.[244] Verizon Wireless supported the cap, and, like ALLTEL, is subject to it. There is no basis to further restrict, or eliminate altogether as the petitioners propose, high cost support in areas currently served by ALLTEL. Verizon Wireless has been, and continues to be, one of the most vocal proponents of even broader reforms to transition the high cost fund into an efficient, market-oriented system.[245] For example, Verizon Wireless has advocated for single winner reverse auctions to select service providers in high cost areas and an overall cap on the high cost fund, not just on competitive ETC support.[246] While the Commission considers industry-wide reforms, however, Verizon Wireless should not be singled out for discriminatory treatment in the context of a merger proceeding.

The petitioners argue that the Commission should require Verizon Wireless to give up ALLTEL's high cost support because Verizon Wireless is a large carrier, ALLTEL receives a significant amount of federal support, and because there are no assurances Verizon Wireless will use the ALLTEL support as the funding is intended.[247] If Verizon Wireless retains ALLTEL's high cost funding, these petitioners argue that the Commission should require Verizon Wireless

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[244] *See High Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Order, WC Dkt. No. 05-337, CC Dkt. No. 96-45, FCC 08-122, ¶ 1 (May 1, 2008) ("*Interim Cap Order*"). The cap took effect a few weeks ago.

[245] *See* Comments of Verizon and Verizon Wireless, WC Docket No. 05-337, CC Docket No. 96-45 (filed April 17, 2008) ("Verizon USF Comments"); Reply Comments of Verizon and Verizon Wireless, WC Docket No. 05-337, CC Docket No. 96-45 (filed June 2, 2008) ("Verizon USF Reply").

[246] *See* Verizon USF Comments and Verizon USF Reply.

[247] *See, e.g.*, NTCA Petition at 7-8; Palmetto Petition at 26-27; Rural Carriers Petition at 16-17; RTG Petition at 24-26; SDTA Petition at 16-17.

to file additional, state-specific cost data.[248] The Commission should reject all of these claims and requests.

The Commission should dismiss the petitioners' universal service-related requests because these petitioners' claims simply rehash previously rejected arguments. In two recent merger Orders, the Commission declined to revisit a carrier's competitive ETC designation in the context of a merger proceeding.[249] The Commission found that the Communications Act and Commission rules vest the states with primary authority over ETC designations in the majority of cases, and thus a merger proceeding before the FCC is an inappropriate venue for consideration of these issues.[250] Even in cases where the FCC had primary authority, the Commission has determined that the "the proposed transaction will not affect the ETC obligations of the companies at issue" and therefore it need not address concerns about hypothetical problems that might occur after the merger.[251] The Commission appropriately found that the relevant state public service commission, or the Commission, will continue to have authority to consider specific issues about the provision of service by a competitive ETC, and thus it need not consider these issues in the context of a merger proceeding. The Commission should follow its recent decisions and require the petitioners to bring their concerns to the attention of the relevant authority in a properly pleaded petition after the merger is complete.

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[248] Palmetto Petition at 28; Rural Carriers Petition at 19; RTG Petition at 27; SDTA Petition at 19.

[249] *Verizon Wireless/RCC Order at ¶¶ 124-126*; *AT&T/Dobson Order*, 22 FCC Rcd at 20329-30 (¶¶ 70-72).

[250] 47 U.S.C. § 214(e); 47 C.F.R. §54.201 *et seq.*; *see Verizon Wireless/RCC Order* at ¶ 124; *AT&T/Dobson Order*, 22 FCC Rcd at 20329-30 (¶¶ 70-72).

[251] *Verizon Wireless/RCC Order* at ¶ 125.

The petitioners cite no authority for their suggestion that Verizon Wireless should not receive federal high cost subsidies because of its size. Indeed, this suggestion is inconsistent with the Commission's own requirement that universal service decisions must be competitively neutral. This means "that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."[252] There is nothing competitively neutral about eliminating ALLTEL's high cost funding because of Verizon Wireless' size. This would be an unprecedented change in the Commission's approach to competitive ETC support. Other large national wireless carriers, including AT&T, Sprint, and U.S. Cellular, currently receive and will continue to receive substantial support from the fund. National wireless carriers compete with each other and directly with rural carriers for customers in high cost areas. The Commission has consistently refused to "unfairly advantage" one similarly situated carrier over another with its universal service policies.[253]

Universal service policy must also focus on the best interests of "*consumers* in all regions of the Nation" – and not on making value judgments between competitive ETCs willing to serve in the same high cost areas.[254] In that respect, it makes no sense to base competitive ETC support inversely on a carrier's size. The goal of the high cost program is to help consumers in "rural, insular, and high cost areas" stay connected.[255] The challenges that carriers face in

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[252] *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8801 (¶ 47) (1997), *rev'd in part on other grounds sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999); *see also* 47 U.S.C. § 254(b)(7).

[253] *Id*.

[254] 47 U.S.C. § 254(b)(3) (emphasis added).

[255] *Id*.

reaching consumers in high cost areas – including small population clusters and environmental hurdles – are similar for all competitive ETCs, regardless of their size.

The petitioners' suggestion that Verizon Wireless should be forced to give up ALLTEL's support because ALLTEL receives a substantial amount of high cost funding not only fails to comply with the Commission's stated goal of competitive neutrality, but is also irrational. As a threshold matter, the petitioners vastly overstate the amount of ALLTEL's federal high cost support in relation to other competitive ETCs. They claim that ALLTEL's approximately $320 million in total annual high cost support "represents the bulk of high-cost funds that flow to competitive eligible telecommunications carriers."[256] This is wrong. Total high cost support to competitive ETCs in 2007 was $1.18 billion, the substantial majority of which went to carriers other than ALLTEL.[257] Regardless, many carriers draw a substantial amount of support from the fund. But in making the fund more efficient the question for the Commission is whether high cost subsidies are necessary for consumers to realize affordable service in a particular area, not whether any one carrier should draw more aggregate high cost support than another.

In addition, the petitioners' argument that there is nothing to show that ALLTEL's support will flow to rural infrastructure rather than to Verizon Wireless shareholders is false.[258] In those situations where the Commission designates competitive ETCs, the Commission requires annual reporting and certifications regarding: (1) wire center-level progress on service quality improvements; (2) service outages; (3) service requests; (4) complaints per 1,000 handsets; (5) compliance with service quality standards; (6) emergency functionality; (7) local

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256 Palmetto Petition at 27; RTG Petition at 25.

257 *Interim Cap Order* at ¶ 6.

258 Palmetto Petition at 27; RTG Petition at 26.

usage plans; and (8) equal access acknowledgments.[259] Some individual states have different or additional federal universal service reporting requirements, and the Commission encourages states to adopt the requirements in section 54.209 as their own.[260] For two large high cost programs, interstate access support and interstate common line support, carriers must also file annual certifications with the Commission verifying that all support "will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[261] Further, the Universal Service Administrative Company and the Commission's Office of Inspector General conduct extensive carrier auditing of high cost receipts, and providers are required to comply with those audits.[262]

Finally, the petitioners' request that Verizon Wireless file cost data on a state-by-state basis if Verizon Wireless retains ALLTEL's high cost support is improper.[263] Petitioners essentially propose that the Commission establish an entirely new ETC designation process and reimbursement system applicable only to Verizon Wireless. Such a suggestion is wholly inconsistent with the Commission's competitive neutrality requirements, and, even if it were not, the Commission has consistently rejected self-serving calls to revisit its ETC processes through merger conditions.[264] A unique ETC program for just Verizon Wireless is also not workable from an administrative perspective and is an affront to those state commissions that already

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[259] 47 C.F.R. § 54.209.

[260] *Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371, 6402 (¶ 71) (2005).

[261] 47 C.F.R. §§ 54.809(a), 54.904(a).

[262] 47 C.F.R. § 54.707.

[263] *See, e.g.*, Palmetto Petition at 28; Rural Carriers Petition at 19; RTG Petition at 27.

[264] *Verizon Wireless/RCC Order* at ¶¶ 124-126; *AT&T/Dobson Order*, 22 FCC Rcd at 20329-30 (¶¶ 70-72).

determined that it served the public interest to designate ALLTEL as an ETC.[265] And, as a practical matter, the *Interim Cap Order* already imposes a more onerous process on competitive ETCs that seek relief from the new interim cap. To draw more support than the cap formula provides for, competitive ETCs must file cost data on a study area level.[266]

F. Proposed RF Exposure Conditions Are Neither Merger-Specific Nor Warranted.

The Commission should reject the requests of the EMR Policy Institute ("EMR") and the International Brotherhood of Electrical Workers ("IBEW") that the Commission deny or condition the proposed merger of ALLTEL and Verizon Wireless on radiofrequency ("RF") exposure grounds. EMR suggests that the proposed merger should not be permitted until the FCC updates its Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation requirements and asserts that the Commission has not addressed the effects of long-term exposure to RF radiation on human health.[267] IBEW appears to argue that Verizon Wireless and ALLTEL have failed to adhere to the FCC's RF exposure requirements and therefore asserts that any merger grant be conditioned on the merged company immediately adopting a nationwide RF safety system that protects all workers.[268] The requested conditions are neither appropriate nor warranted.

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[265] 47 C.F.R. § 54.202(c).

[266] *Interim Cap Order*, ¶ 31.

[267] Petition to Deny and Comment of The EMR Policy Institute, WT Docket No. 08-95, at 1 (filed Aug. 8, 2008).

[268] Petition to Deny of the International Brotherhood of Electrical Workers, WT Docket No. 08-95, at 3 (filed Aug. 11, 2008) ("IBEW Petition").

As it has repeatedly attempted to do in other instances, EMR is here again trying to introduce specious RF exposure issues into an inappropriate Commission proceeding.[269] RF exposure issues have no relevance to the Commission's consideration of the proposed transaction – they are plainly unaffected by the merger and EMR has not alleged that the Applicants are non-compliant with the current rules. EMR's industry-wide concerns are thus better addressed through a rulemaking process. The Commission would then be positioned to obtain the requisite technical data and full public comment, especially from agencies expert in the areas of human health, such as the FDA and EPA. Further, the Commission and the Courts have previously declined to address prior attempts by EMR to change the RF exposure rules.[270] The Commission should yet again reject EMR's inapposite request for modification of the RF exposure limitations.

IBEW appears to argue that Verizon Wireless and ALLTEL have not complied with federal RF exposure requirements set forth in Section 1.1310 of the Commission's rules.[271] While specifically recognizing that the Applicants have "aggressive safety campaigns,"

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[269] For example, EMR filed comments opposing the Commission's proposal to extend categorical RF exposure requirements for the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz, and 2175-2180 MHz spectrum bands in WT Docket No. 04-356. Comments of EMR, WT Dkt. No. 04-356 (filed Nov. 18, 2004). This filing was nothing more than a late-filed petition for reconsideration of the Commission RF exposure requirements and the decision to treat similar spectrum in the 1710-1755 MHz and 2110-2155 MHz bands in the same fashion. *See, e.g., Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands,* Report and Order, WT Docket No. 02-353, 18 FCC Rcd 25162, 25213 (¶ 133) (2003).

[270] *See, e.g., EMR Network Petition for Inquiry to Consider Amendment of Parts 1 and 2 Regarding Environmental Effects of Radiofrequency Radiation*, Order, 18 FCC Rcd 16822, 16827 (¶ 2) (2003), *aff'd. sub nom. EMR Network v. Fed. Commc'ns Comm'n*, 391 F.3d 269 (DC Cir. 2004).

[271] 47 C.F.R. § 1.1310. Section 1.1307(b) requires licensees to evaluate sites for compliance with the radiofrequency exposure limits set forth in 1.1310, and where the limits for general population/uncontrolled exposure may be exceeded, to work with building owners and other licensees with facilities at the same location to take steps to control access. 47 C.F.R. § 1.1307(b).

incorporating "extensive ongoing RF safety training" and other safeguards, IBEW nonetheless alleges that the Applicants do not afford the same level of RF precautions for third-party workers.[272] Contrary to this assertion, Verizon Wireless and ALLTEL fully comply with federal RF exposure requirements and IBEW has not presented any evidence to the contrary. Verizon Wireless has long had a comprehensive program not only for employees but also for third party workers, landlords and contractors. ALLTEL has a similar program. Under the program, each Verizon Wireless site is evaluated for RF compliance prior to activation or modification – with appropriate access restrictions, signage and/or barriers utilized to secure areas that exceed the General Population limits for Maximum Permissible Exposure ("MPE").[273] This required mitigation is communicated in writing and/or verbally to landlords, with third party audits conducted to monitor regional implementation of the program, compliance with FCC/OSHA regulations and overall effectiveness of the RF compliance program. Finally, safe work practices are communicated to contractors and landlords are instructed to contact Verizon Wireless should access to restricted areas be required. The rules require no more. As such, the IBEW assertions are clearly without merit. The requests of EMR and IBEW should thus both be rejected.

IV. OTHER ISSUES RAISED BY PETITIONERS/COMMENTERS ARE WITHOUT ANY MERIT.

Ritter Communications, Inc. and Central Arkansas Rural Cellular Limited Partnership (collectively, the "Arkansas Petitioners") and CAPCC raise two issues suggesting that Applicants do not meet the requisite legal qualifications to permit Commission approval of the transaction. However, neither Arkansas Petitioners' misrepresentation and trafficking claims,

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272 *See* IBEW Petition at 2.

273 *See* 47 C.F.R. §1.1310 for MPE requirements for the General Population.

nor CAPCC's attack on Verizon Wireless' foreign ownership showing, have any basis in fact or law.

A. **Misrepresentation and Trafficking Claims by Arkansas Petitioners Are Frivolous and Unfounded.**

Arkansas Petitioners allege that the circumstances surrounding the proposed transaction draw the inference that Atlantis Holdings misrepresented its intentions with respect to ALLTEL in its filing with the Commission when seeking authority to acquire ALLTEL.[274] The Arkansas Petitioners further allege that Atlantis Holdings' proposed sale of ALLTEL to Verizon Wireless raises inferences that Atlantis Holdings has engaged in impermissible trafficking of wireless licenses under the Commission's rules.[275] As set forth below, the allegations raised in the Arkansas Petitioners' petition to deny are spurious, and without factual support. Thus, the Arkansas Petitioners have failed to meet the standard for grant of a petition to deny and their petition should be summarily dismissed by the Commission. Moreover, there is no legal support for the Arkansas Petitioners' creative but baseless claims.

Commission rules require that a petition to deny "contain specific allegations of fact sufficient to make a *prima facie* showing . . . that a grant of the application would be inconsistent with the public interest, convenience and necessity."[276] The Arkansas Petitioners have not provided a single, specific allegation of fact and thus have not met this standard. Indeed, the Arkansas Petitioners rely on speculation and inference to conclude that Atlantis Holdings purchased ALLTEL with the intent to "flip" the company for a profit and lacked candor or made

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274 *See* Petition to Deny of Ritter Communications, Inc. and Central Arkansas Rural Cellular Limited Partnership, WT Docket No. 08-95 (filed Aug. 11, 2008) ("Ritter Petition").

275 *See id.*

276 47 C.F.R. § 1.939(d).

misrepresentations to the Commission to induce the Commission's approval of Atlantis Holdings' acquisition of ALLTEL.

For example, the Arkansas Petitioners speculate that negotiations for the sale of ALLTEL to Verizon Wireless "most likely would have commenced very soon after – if not actually *before* – Commission approval of the ALLTEL acquisition by Atlantis" and assert that the "fact that Atlantis switched so rapidly from the mode of acquiring Alltel to the mode of selling Alltel raises the overwhelming inference that Atlantis acquired Alltel principally for the purpose of a profitable resale to [Verizon Wireless], rather than for the purpose of providing service to the public."[277] The Arkansas Petitioners do not provide any factual support for these bare allegations, which they contend support their position that Atlantis both lacked candor in its application to acquire ALLTEL and engaged in trafficking of ALLTEL's licenses. In short, the Arkansas Petitioners have not satisfied the burden for grant of their petition to deny the proposed transaction.

The Arkansas Petitioners erroneously assert that the circumstances surrounding the instant transaction raise the inference that, at the time it acquired ALLTEL, Atlantis Holdings had no intention of developing the company but rather was focused solely on the profits Atlantis Holdings could reap from a quick sale of ALLTEL.[278] As further set forth below, this assertion is fundamentally speculative, unsupported by any facts, and simply untrue. Accordingly, the Arkansas Petitioners' allegation that any inference can be made that Atlantis Holdings lacked candor or made misrepresentations to the Commission is entirely without merit.[279] Indeed,

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[277] Ritter Petition at 5.

[278] *Id*.

[279] Moreover, the Arkansas Petitioners' assertions are fundamentally insufficient to be deemed a *prima facie* allegation of misrepresentation or lack of candor by Atlantis Holdings.

Atlantis Holdings had every intention of further developing ALLTEL's business when it acquired ALLTEL but believes that, due to the financial pressures from the ongoing credit crunch that has plagued the U.S. economy since the fall of 2007, it will be difficult to raise the capital to make the necessary future investments in the company.

TPG Capital, L.P. ("TPG") and GS Capital Partners VI Fund, L.P. ("Goldman Sachs"), the private equity funds that control and have an ownership interest in Atlantis Holdings, entered into a merger agreement to acquire ALLTEL in May 2007, several months after they had initially approached the company regarding an acquisition. TPG and Goldman Sachs believed ALLTEL was a well-run company with tremendous potential under the continued leadership of Scott Ford. In addition, TPG and Goldman Sachs had ready access to the capital necessary to grow ALLTEL's business and expand its service offerings, including in rural markets. Four major banks agreed with TPG and Goldman Sachs, and committed to provide financing for the transaction, subject to a twenty-day marketing period following FCC approval of the transaction during which the banks could syndicate ALLTEL's debt to additional investors.

Unfortunately, when the FCC approved the acquisition of ALLTEL by Atlantis Holdings at the end of October 2007, the capital markets had changed dramatically. Despite aggressive marketing of ALLTEL's debt by the banks, which included a road show presentation to nearly

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See In re Thomas K. Kurian, RF Data, Inc., Order, 18 FCC Rcd 21949, 21954 (¶ 16) (WTC 2003) (denying, *inter alia*, petitioners' trafficking allegation because of its "generalized, unfounded and speculative nature"); *In re Application of Manahawkin Communications Corporation*, Memorandum Opinion and Order, 17 FCC Rcd 342, 351 (¶ 17) (2001) (holding that petitioner's "speculative and wholly unsupported allegations [regarding trafficking of an unbuilt broadcast license] fail to establish a prima facie case that some deception occurred, much less [that applicant] intended to deceive the Commission"); *Applications of Celcom Communications Corporation*, Memorandum Opinion and Order, 61 Rad. Reg. 2d 353 (¶ 8) (1986) (quoting *United States v. FCC*, 652 F.2d 72, 88 (D.C. Cir. 1980) for the proposition that "[a]llegations consisting of generalized and unsupported criticisms" are not sufficient to demonstrate that grant of an application is not in the public interest) (internal quotations omitted).

200 potential investors across the country, the banks were unable to sell all of the debt. In addition, TPG and Goldman Sachs were not able to syndicate as much equity as had been originally anticipated and thus funded a more significant portion of Atlantis' equity than they initially intended. Nevertheless, TPG and Goldman remained committed to ALLTEL and raised sufficient capital at the time of the acquisition to finance the growth and operations of ALLTEL for several years. In addition, sufficient funds were raised for ALLTEL to participate in the 700 MHz auction. TPG and Goldman believed that access to 700 MHz spectrum would enable ALLTEL to enter new markets and enhance its scale and scope of consumer offerings. Accordingly, ALLTEL filed a short form application to participate in the 700 MHz auction, and hired auction consultants to assist with its bidding efforts. Ultimately, however, the auction prices proved too high, and ALLTEL was outbid by others in its efforts to obtain 700 MHz licenses.

Moreover, given current market conditions, TPG and Goldman Sachs are concerned that Atlantis Holdings may be constrained in the future (*e.g.*, four to five years from now) in its ability to raise the capital necessary to fund the costly, long-term investments necessary to grow ALLTEL's service in rural markets. As a result, when they were approached by Verizon Wireless in April 2008 (and, contrary to the speculation of the Arkansas Petitioners, almost six months following Commission approval of the acquisition of ALLTEL by Atlantis),[280] TPG and Goldman Sachs determined that the offer by Verizon Wireless to purchase ALLTEL was the best

[280] As noted above, the banks faced challenges selling the ALLTEL debt following the FCC's approval of the acquisition of ALLTEL by Atlantis Holdings. Nevertheless, following consummation of the transaction, the banks continued their efforts to sell the debt and, in early 2008, the banks initiated the process to sell the debt at discounted prices. As a result of this action, Verizon Wireless learned that there may be an opportunity to acquire ALLTEL, and approached TPG and Goldman Sachs to discuss a potential acquisition in April 2008.

vehicle available to ensure future capital intensive investments in wireless services that are important to rural America and to ALLTEL's customers.

Ironically, although the Arkansas Petitioners argue that the proposed merger is contrary to the public interest because Atlantis Holdings has not invested adequately in rural markets, the proposed merger, in fact, will provide the benefits the Arkansas Petitioners seek – namely, improved service to rural areas, deployment of advanced services in rural areas, and an increase of spectrum available in rural areas. As described above, the current credit crunch has caused Atlantis Holdings to become concerned that, in the future, it will be difficult to obtain the capital necessary to grow ALLTEL's rural presence. By contrast, Verizon Wireless is well-positioned to invest in, and provide additional services to, rural markets. Indeed, as a result of the proposed merger, customers in rural markets will be able to benefit from Verizon Wireless' access to capital, technological and managerial expertise, and experience in deploying state of the art broadband services.[281]

The Arkansas Petitioners also assert that the instant transaction raises inferences that Atlantis Holdings engaged in impermissible trafficking of the ALLTEL licenses.[282] The application of the Commission's anti-trafficking rule[283] proposed by the Arkansas Petitioners not only is novel and unsupported by Commission precedent, but also is inconsistent with the Commission's policy objectives underlying the rule. The rule consolidated various service-

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[281] For example, as discussed previously, Verizon Wireless has committed to deploy promptly EvDO Rev. A high-speed broadband technology to the rural areas served by ALLTEL. Moreover, Verizon Wireless has access to 700 MHz spectrum won during the Commission's recent auction, and intends to deploy LTE technologies using this spectrum. Post-merger, customers also will have access to Verizon Wireless' ODI pursuant to which customers will have the option of using any device that meets the company's published standards and to use any application the customer chooses on such devices.

[282] *See* Ritter Petition at 4-6.

[283] 47 C.F.R. § 1.948(i).

specific anti-trafficking rules that were aimed at preventing the speculative acquisition and abusive sale of *unbuilt* licenses *obtained via lotteries or using auction preferences*, such as set-asides, installment payments, and bidding credits.[284] With one exception, ALLTEL has complied with the Commission's construction requirements for cellular and PCS licenses.[285] Moreover, none of ALLTEL's licenses were obtained pursuant to set-asides or bidding credits[286] and, although several of ALLTEL's licenses were originally subject to the Commission's installment payment plan, all of ALLTEL's installment payment obligations have been paid in full. Notably, the Arkansas Petitioners do not cite to a single instance in which the Commission has applied the rule to prevent the sale of a single wireless license, much less an operating nationwide wireless system.

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[284] *See Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from Urban Comm-North Carolina, Inc., Debtor in-Possession, to Cellco Partnership d/b/a Verizon Wireless*, Memorandum Opinion and Order, 21 FCC Rcd 15050, 15059 (¶ 22) (2006) (holding that the "Commission's anti-trafficking rules were designed to prevent" the "rapid sale of licenses *acquired through the benefit of preference policies*") (emphasis added and internal quotations and citations omitted); *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, Order on Reconsideration of the Second Report and Order, 21 FCC Rcd 6703, n. 8 (2006) (noting that "the reason for imposing anti-trafficking restrictions . . . is to deter 'participation in the licensing process by those who have no intention of offering service to the public'") (quoting H.R. Rep No. 103-11, at 257-58 (1993)); *Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services*, Report and Order, 17 FCC Rcd 18401, 18346-48 (¶¶ 70-74) (2002) (repealing certain service-specific limitations on the sale of licenses due to the adoption of 47 C.F.R. 1.948(i) and noting that, in adopting "the anti-trafficking rules, the Commission sought to balance the public interest in liberal transferability of licenses with a means to deter insincere applicants from speculating on *unbuilt* facilities") (emphasis added).

[285] The only ALLTEL cellular license that has not been constructed is WQGM465, for New Mexico 3 – Catron (CMA555). This license was subject to protracted litigation and was awarded to ALLTEL on February 28, 2007. *See* Settlement Agreement and Request for Waiver of Section 1.935 of the Commission's Rules, 22 FCC Rcd 40277 (2007). The license was originally granted with a one year construction period (*i.e.*, February 18, 2008), but has been subsequently extended to January 14, 2009.

[286] Certain of the licenses that ALLTEL has acquired from third parties may initially have been obtained through the use of bidding credits, such as those awarded to designated entities. However, these licenses are no longer subject to any restrictions governing transfer as a result of originally being obtained by designated entities.

B. **The Commission Has Approved Verizon Wireless' Non-U.S. Ownership Survey Methodology.**

In its Petition to Deny, CAPCC asserts that Verizon Wireless has failed to establish that its foreign ownership permits a public interest determination under Section 310(b)(4) of the Communications Act because of the methodology the company used to show compliance with its existing Section 310(b)(4) declaratory ruling.[287] CAPCC's argument is without merit.

As noted in the Applications, the foreign ownership of Verizon Wireless has previously been reviewed and approved by the Commission on multiple occasions,[288] including less than three weeks ago in the Commission's approval of Verizon Wireless' acquisition of Rural Cellular Corporation.[289] The instant transaction makes no changes to Verizon Wireless' foreign ownership. The declaratory ruling is being sought solely to comply with the Commission's interpretation that prior Section 310(b)(4) rulings do not extend to newly acquired licensee entities. Instead, CAPCC takes issue with the methodology used by Verizon Wireless in conducting its review of foreign ownership in the Verizon Wireless/RCC proceeding. However, the Commission there specifically approved the methodology Verizon Wireless used.[290] Verizon Wireless is, therefore, entitled to the requested Section 310(b)(4) declaratory ruling. CAPCC's request that other parties be permitted to utilize the same methodology for purposes of demonstrating foreign ownership under different factual scenarios in other proceedings is not an appropriate issue for this proceeding.

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[287] CAPCC Petition at 23-32.

[288] Public Interest Statement at 53-54.

[289] *Verizon Wireless/RCC Order* at ¶¶ 139-151.

[290] *Verizon Wireless/RCC Order* at ¶¶ 147-149. CAPCC's argument is, in essence, a collateral attack on the Commission's decision in the *Verizon Wireless/RCC Order*, and should not be heard here.

V. CONCLUSION

For the foregoing reasons, the petitioners/commenters have failed to raise any basis for denying the transaction or imposing conditions beyond those the Applicants have already proffered. Accordingly, the Commission should move swiftly to recognize the public interest benefits associated with the proposed transaction and grant the Applications.

Respectfully submitted,

CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS

/s/ John T. Scott, III
John T. Scott, III
Vice President and Deputy General Counsel - Regulatory Law
Verizon Wireless
1300 Eye Street, NW, Suite 400 West
Washington, DC 20005

Richard E. Wiley
Nancy J. Victory
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
Counsel to Cellco Partnership

ATLANTIS HOLDINGS LLC

/s/ Kathleen Q. Abernathy
Kathleen Q. Abernathy
Tom W. Davidson
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036
Counsel to Atlantis Holdings LLC

August 19, 2008

DECLARATION OF STEVEN R. SMITH

I, Steven R. Smith, hereby declare under penalty of perjury that the facts contained in the foregoing Opposition related to the proposed transaction, Cellco Partnership d/b/a Verizon Wireless, and the combined company's operations post-consummation and about which official notice may not be taken are true and correct to the best of my knowledge, information, and belief.

Executed on August 19, 2008.

By: _____

Steven R. Smith
Verizon Wireless
VP - Transition Planning
One Verizon Way
Basking Ridge, NJ 07920
Phone: (908) 559-8109

DECLARATION OF CLIVE D. BODE

I, Clive D. Bode, hereby declare under penalty of perjury that the facts contained in the foregoing Opposition related to Atlantis Holdings LLC's existing operations and about which official notice may not be taken are true and correct to the best of my knowledge, information, and belief.

Executed on August 19, 2008.

By: _____

Clive Bode
General Counsel
Atlantis Holdings LLC
Phone: 817.871.4000

DECLARATION OF JOE GLEBERMAN

I, Joe Gleberman, hereby declare under penalty of perjury that the facts contained in Section IV.A of the foregoing Opposition and about which official notice may not be taken are true and correct to the best of my knowledge, information, and belief.

Executed on August 19, 2008.

By: _____
Joe Gleberman
Managing Director
The Goldman Sach Group Inc.
Phone: 212.902.5588

DECLARATION OF GENE FRANTZ

I, Gene Frantz, hereby declare under penalty of perjury that the facts contained in Section IV.A of the foregoing Opposition and about which official notice may not be taken are true and correct to the best of my knowledge, information, and belief.

Executed on August 19, 2008.

By: _____

Gene Frantz
Managing Director
TPG Capital, L.P.
Phone: 415.743.1568

CERTIFICATE OF SERVICE

I, Patricia Destajo, certify that on this 19th day of August, 2008, I caused the foregoing "Joint Opposition to Petitions to Deny and Comments" to be served, via First Class mail, postage pre-paid, upon:

* Denotes service by electronic mail

Best Copy and Printing, Inc.*
Portals II
445 12th Street, SW
Washington, DC 20554
Room CY-B402

David Krech*
Policy Division, International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Erin McGrath*
Mobility Division, Wireless Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Jodie May*
Policy Division, Wireless Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Susan Singer*
Spectrum Competition and Policy Division, Wireless Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Jim Bird*
Office of General Counsel
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Linda Ray*
Broadband Division, Wireless Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Jon Wooster, President
U.S. Cattlemen's Association
P.O. Box 339
San Lucas, CA 93954

Traci L. McClellan, JD, MA, Executive Director
National Indian Council on Aging
10501 Montgomery Blvd. NE, Suite 210
Albuquerque, NM 87111

Jenifer Simpson, Senior Director, Telecommunications and Technology Policy
American Association of People With Disabilities
1629 K Street, NW, Suite 503
Washington, DC 20006

Wayne T. Brough, Chief Economist and VP for Research
FreedomWorks Foundation
601 Pennsylvania Ave., NW, Suite 700
Washington, DC 20004

Harry Alford, President and CEO
National Black Chamber of Commerce
1350 Connecticut Avenue, NW, Suite 405
Washington, DC 20036

Robert K. Johnson, President
Consumers for Competitive Choice
PO Box 329
Greenwood, IN 46143

John A. Prendergast
Robert M. Jackson
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP
2120 L Street, NW, Suite 300
Washington, DC 20037
Counsel to North Dakota Network Co.

Leslie Sanchez, Co-Chair
Jose F. Nino, Co-Chair
Hispanic Alliance for Prosperity Institute
807 Brazos, Suite 316
Austin, TX 78701

Barry L. Kennedy, CAE, IOM, President
Nebraska Chamber of Commerce & Industry
1320 Lincoln Mall
Lincoln, NE 68509

Albert Zapanta, President & CEO
United States-Mexico Chamber of Commerce
1300 Pennsylvania Avenue, NW, Suite G-0003
Washington, DC 20004

Brent A. Wilkes, LULAC National Executive Director
League of United Latin American Citizens
2000 L Street, NW, Suite 610
Washington, DC 20036

Victor F. Capellan, President
Dominican American National Roundtable
1050 17th Street, NW, Suite 600
Washington, DC 20036

Hector V. Barreto, Chairman
The Latino Coalition
3255 Wilshire Blvd., #1850
Los Angeles, CA 90010

William Sepic, CCE, President and CEO
Kristin Beltzer, Vice President, Government Relations
Lansing Regional Chamber of Commerce
500 E. Michigan Avenue, Suite 200
Lansing, MI 48912

Richard K. Studley, President & CEO
Michigan Chamber of Commerce
600 S. Walnut Street
Lansing, MI 48933

Barbara Kasoff, President
Women Impacting Public Policy
1615 L Street, NW, Suite 650
Washington, DC 20036

Whitney North Seymour, Jr.
425 Lexington Avenue, Room 1721
New York, NY 10017
Attorney for the EMR Policy Institute

Yanira Cruz, MPH, DrPH, President & CEO
National Hispanic Council on Aging
734 15th Street, NW
Washington, DC 20005

Kenneth E. Hardman
2154 Wisconsin Avenue, NW, Suite 250
Washington, DC 20007
Attorney for Ritter Communications, Inc. and Central Arkansas Rural Cellular Limited Partnership

Pantelis Michalopoulos
Chung Hsiang Mah
Steptoe & Johnson LLP
1330 Connecticut Ave., NW
Washington, DC 20036
Counsel for Leap Wireless International, Inc.

Karen Kerrigan, President & CEO
Small Business & Entrepreneurship Council
2944 Hunter Mill Road, Suite 204
Oakton, VA 22124

Daniel Mitchell
Jill Canfield
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
Attorneys for the National Telecommunications Cooperative Association

Stuart Polikoff, Director of Government Relations
Brian Ford, Regulatory Counsel
The Organization for the Promotion and Advancement of Small Telecommunications Companies
21 Dupont Circle, NW, Suite 700
Washington, DC 20036

Daniel Alvarez
Willkie Farr & Gallagher LLP
1875 K Street, NW
Washington, DC 20006
Counsel for Denali Spectrum LLC et al (the Roaming Petitioners)

Edwin Hill, International President
International Brotherhood of Electrical Workers
900 Seventh Street, NW
Washington, DC 20001

Stephen G. Kraskin
2154 Wisconsin Avenue, NW
Washington, DC 20007
Attorney for the Rural Independent Competitive Alliance

David L. Nace
Lukas, Nace, Gutierrez & Sachs, Chartered
1650 Tysons Boulevard, Suite 1500
McLean, VA 22102
Counsel for the Rural Cellular Association

Daniel R. Ballon, Policy Fellow, Technology Studies
Pacific Research Institute for Public Policy
One Embarcadero Center
Suite 350
San Francisco, CA 94111

William L. Roughton, Jr., Vice President of Legal and Regulatory Affairs
Centennial Communications Corp.
3349 Route 138, Building A
Wall, NJ 07719

Patrick J. Whittle
Jean L. Kiddoo
Bingham McCutchen LLP
2020 K Street, NW
Washington, DC 20006
Counsel for MetroPCS Communications, Inc. and NTELOS Inc.

Caressa D. Bennet
Kenneth C. Johnson
Daryl Zakov
Bennet & Bennet, PLLC
4350 East West Highway, Suite 201
Bethesda, MD 20814
Counsel for the Rural Telecommunications Group

Wayne Stenehjem, Attorney General
State of North Dakota, Office of Attorney General
Consumer Protection & Antitrust Division
PO Box 1054
Bismarck, ND 58502-1054

Benjamin H. Dickens
John A. Prendergast
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP
2120 L Street, NW, Suite 300
Washington, DC 20037
Counsel to South Dakota Telecommunications Association

Benjamin H. Dickens
John A. Prendergast
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP
2120 L Street, NW, Suite 300
Washington, DC 20037
Counsel to the Rural Carriers

Donald L. Herman, Jr.
Michael R. Bennet
Bennet & Bennet, PLLC
4350 East West Highway, Suite 201
Bethesda, MD 20814
Counsel to Palmetto MobileNet, L.P.

David L. Nace
Lukas, Nace, Gutierrez & Sachs, Chartered
1650 Tysons Boulevard, Suite 1500
McLean, VA 22102
Counsel to Cellular South, Inc.

Larry A. Blosser
Law Office of Larry A. Blosser, P.A.
3565 Ellicott Mills Drive, Suite C-2
Ellicott City, MD 21043
Attorney for the Ad Hoc Public Interest Spectrum Coalition

Aaron Shainis, Esq.
Shainis & Peltzman, Chartered
1850 M Street, NW
Washington, DC 20036
Counsel for Chatham Avalon Park Community Council

Martin J. Wright, President
FBI National Academy Associates, Inc., West Virginia Chapter
17 Aster Drive
Terra Alta, WV 26764

Leslie T. Hyman, Senior Investigator, Troop "C" Major Crimes Unit
State of New York
New York State Police
Rt. 7 Box 300
Sidney, New York 13838-0300

Brian Fontes, CEO
National Emergency Number Association
4350 North Fairfax Drive, Suite 750
Arlington, VA 22203

Tom Stone, Executive Director
FBI Law Enforcement Executive Development
PO Box 2349
West Chester, PA 19380

David C. Lizarraga, Chair
United States Hispanic Chamber of Commerce
2175 K Street, NW, Suite 100
Washington, DC 20037

Randolph J. May, President
The Free State Foundation
10701 Stapleford Hall Dr.
Potomac, MD 20854

/s/ Patricia Destajo

Attachment 1:
Compass Lexecon Declaration

REPLY DECLARATION OF DENNIS CARLTON, ALLAN SHAMPINE AND HAL SIDER

August 19, 2008

I. INTRODUCTION AND SUMMARY

1. We submitted a declaration in this matter on June 13, 2008 in which we concluded that the proposed merger of Verizon Wireless and ALLTEL Holdings ("ALLTEL") is likely to result in significant benefits to consumers and is unlikely to have a significant adverse effect on competition.[1] Various parties have recently submitted comments to the FCC and we have been asked by counsel for Verizon Wireless and ALLTEL to respond to certain of these comments.[2]

2. This reply focuses on two major issues.

- First, we address claims that the benefits of the proposed transaction are either not fully documented, not merger-related or otherwise are "illusory."[3] We review the savings that Verizon Wireless expects that the transaction will generate and show that these expected savings provide incentives for the merged firm to expand output and lower prices. We also show the projected cost savings are credible and that

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1. Our qualifications are described in our June 13 declaration (hereafter, "Carlton, Shampine, Sider Declaration").
2. Given the limited time available to prepare a response, we focus on the major claims made in the comments recently submitted to the Commission and do not attempt to address all claims. As such, the absence of a response to any particular claim should not be interpreted to suggest that we accept its validity.
3. Petition to Deny of Leap Wireless International, Inc., August 11, 2008, p. 3.

experience from past transactions indicates that these savings are likely to be achieved.

- Second, we address claims that the proposed transaction will reduce competition in the provision of roaming services. We show that Verizon Wireless will continue to face substantial roaming competition in nearly all areas in which it operates; that many customers are protected by long-term contracts; and that technological changes promise to increase the scope of roaming rivals in the future.
- Third, we respond to several miscellaneous issues and comments on our June 13 declaration raised by commenters.

II. THE PROPOSED TRANSACTION IS EXPECTED TO RESULT IN SIGNIFICANT MERGER- SPECIFIC COST SAVINGS.

3. Some parties have claimed that the synergies expected to result from the transaction are "illusory" and have challenged Verizon Wireless to provide additional detail.[4] This section reviews the synergies that Verizon Wireless expects to result from its proposed merger with ALLTEL and evaluates from an economic perspective whether these cost savings are likely to benefit consumers. Our analysis is based on a review of the synergy model prepared by Verizon Wireless and Morgan Stanley prior to the signing of the transaction agreement, discussions with individuals at Verizon Wireless that prepared that analysis, and additional information on related transactions including discussions with Verizon business personnel involved in achieving merger synergies in prior transactions.

4. See, for example, Petition to Deny of Leap Wireless International, Inc., August 11, 2008, pp. 3, 14-16.

4. We conclude that the proposed transaction is expected to reduce both fixed and variable costs and will provide incentives for the merged firm to expand output and lower prices. We also show, based on Verizon's experience in realizing cost savings in prior transactions, that Verizon Wireless' synergy claims are credible.

A. OVERVIEW OF TRANSACTION AND ANTICIPATED SYNERGIES

5. As discussed in our prior declaration, the proposed transaction combines two carriers that use CDMA technology to provide wireless voice and data services. Verizon Wireless provides services to 67 million subscribers in every state except Alaska, and ALLTEL provides services to roughly 13 million subscribers in 34 states, most in the Southeast, Southwest and upper Midwest. In addition to retail services, both firms provide roaming services as well as services to resellers and mobile virtual network operators ("MVNOs").

6. Verizon Wireless has reported that the proposed transaction will result in synergies with an estimated after-tax present value of $[redacted] (including integration-related costs).[5] This estimate was based on analysis by Verizon Wireless and Morgan Stanley, investment bankers advising on the proposed transaction, and is summarized in Table 1.[6] In all, the expected cost savings are roughly one-third of the purchase price. (For purposes of calculating the savings, Verizon Wireless has assumed that output will be equal to the combined expected output of the two firms.)

5. Our discussion in the section is based on the synergy analysis prepared by Verizon Wireless and Morgan Stanley. The analysis is contained in the file Abraham Synergies_060408 Final.xls (hereafter, VzW Synergies Summary).
6. See VzW Synergies Summary, p. 1.

Table 1

Verizon Wireless' Estimate of Savings from Verizon Wireless/ALLTEL Transaction (Present Values in $ Millions)

	Cost Savings	Integration Expenditure	Net Cost Saving
Roaming	[redacted]		
Network Costs			
Network Operating Expenses			
Capital Expenditures			
Total Network			
Headcount (Net of Salary Adjustments)			
Advertising and Promotions			
Information Technology			
Sales and Distribution Overhead			
Customer Care Overhead			
Total Cost Savings			
Less Transaction Fees/ Taxes/ Other Exp.			
Net Cost Savings			

Source: VzW Synergy Summary (Abraham Synergies_060408 FINAL.xls), pg. 1.

7. As the table indicates, Verizon Wireless expects that, net of integration costs, the transaction will result in total net cost savings of $[redacted], of which $[redacted] come from capital expenditure savings. As discussed further below, the major sources of cost savings include reductions in (i) roaming costs, (ii) network costs (including reduced capital expenditures and operating costs), (iii) overhead costs, (iv) advertising costs, and (v) information technology ("IT") expenses.

B. DESCRIPTION OF MAJOR COST SAVINGS RESULTING FROM THE PROPOSED TRANSACTION

8. Verizon Wireless expects to realize significant cost savings related to a wide range of its activities. Each of the major categories is summarized below.

1. Reduced Roaming Costs

9. Due to the increased size of the network footprint resulting from the proposed transaction, the merged firm can reduce its reliance on roaming services provided by third parties. Verizon Wireless is currently a net buyer of roaming services in the U.S., purchasing [redacted] minutes of domestic roaming services from other carriers in May 2008 while selling [redacted] minutes. ALLTEL buys and sells similar volumes of domestic roaming services, purchasing [redacted] minutes in May 2008 and selling [redacted] minutes.

10. ALLTEL currently purchases [redacted] percent of its roaming minutes from Sprint and roughly [redacted] percent of its roaming minutes from Verizon Wireless. Verizon Wireless purchases [redacted] percent of its roaming minutes from [redacted] and roughly [redacted] percent of its minutes from [redacted].[7] In addition to keeping all roaming traffic between Verizon Wireless and [redacted] on the combined firm's network, Verizon Wireless expects that the transaction will enable it to keep on its own network traffic that currently roams on [redacted] and similarly [redacted] traffic that currently roams on [redacted].[8] In total, Verizon Wireless estimates that the transaction would enable it to keep on its own network more than [redacted] minutes of air time annually in 2010 and later years that otherwise would be served by Verizon Wireless' and ALLTEL's roaming partners

7. Data are for May 2008.
8. ALLTEL signed a roaming agreement with [redacted] in 2006. Verizon Wireless signed a roaming agreement with [redacted] in 2004.

(roughly [redacted] currently served by Sprint and U.S. Cellular with the remainder on each other's networks).

11. The ability to keep additional minutes on the merged firm's network results in a marginal cost savings because roaming services are priced on a per minute basis at a rate that exceeds the incremental cost of providing that traffic. Verizon Wireless' analysis of merger-related cost savings projects that the merger results in a net cost reduction of more than $[redacted] per minute for each minute shifted from these roaming partners onto the merged firm's network.[9] As we discuss later, these variable cost savings are likely to benefit consumers.

12. As summarized in Table 2, Verizon Wireless estimates that the present value of after-tax roaming synergies is approximately $[redacted].[10]

9. VzW Synergies Summary, pp. 11-12. Average costs reflect airtime and toll charges in 2010.
10. See VzW Synergies Summary, p. 12.

Table 2

Verizon Wireless' Estimate of Roaming Expenditure Savings from Verizon Wireless/ALLTEL Transaction ($ Millions)

	2009	2010	2011	2012
ALLTEL Savings (Shift Roaming from [redacted])				
Traffic Moved				
Voice (minutes)	[redacted]			
Voice -- Long Distance (minutes)				
1X Data Roaming (megabytes)				
Cost Savings				
Voice				
Voice -- Long Distance				
Cost Savings on 1X Data Roaming				
Total Pre-Tax Cost Savings				
After-Tax Savings from Alltel's Roam				
Present Value of Savings				
Verizon Savings (Shift Roaming from [redacted])				
Traffic Moved				
Voice (minutes)	[redacted]			
Voice -- Long Distance (minutes)				
1X Data Roaming (megabytes)				
Cost Savings				
Voice				
Voice -- Long Distance				
Cost Savings on 1X Data Roaming				
Pre-Tax Cost Savings				
After-Tax Savings from Alltel's Roam				
Present Value of Savings				
Total Present Value of Savings from Reduction in Roaming				

Source: VzW Synergy Summary (Abraham Synergies_060408 FINAL.xls), pgs. 11, 12.

2. Reductions in Network Costs

13. Verizon Wireless estimates that the proposed transaction will lower network costs by consolidating cell sites, filling in coverage gaps, and by reducing the cost of new network equipment. The transaction also is expected to reduce network operating expenses by reducing costs for transmission capacity and rent and lease expenses.

a. Network-Related Capital Expenditures

14. The combined firm expects to consolidate duplicative cell sites in certain overlap areas. In addition, the proposed transaction reduces the number of cell sites required for network expansions relative to those needed in the absence of the merger. The increased coordination resulting from the merger results in savings both for expansions of the firms' existing cellular/PCS networks as well as the planned build outs related to deployment of services using the 700 MHz spectrum. In total, the merged firm will be able to serve current and projected future demand expected for each firm on a standalone basis at a lower cost than would be realized if the firms operated independently.

15. More specifically:

- Verizon Wireless expects that the proposed transaction will enable it to redeploy and/or consolidate greater than [redacted] cell sites between 2009 and 2012. While these constitute a relatively small share of the total cells operated by the two companies – Verizon Wireless operates approximately [redacted] cells and ALLTEL operates more than [redacted] – the annual savings resulting from these reductions are significant.

- The transaction is expected to enable the combined firm to reduce the number of new cell sites required for future network expansion in overlap areas. Verizon Wireless expects that the merger will reduce the number of new cell towers required in overlap areas by [redacted] with additional reductions of [redacted].
- The transaction is also expected to enable the combined firm to reduce the number of cell sites required for the deployment of services using the 700 MHz spectrum by [redacted] cells per year between 2011 and 2014, and another [redacted] cells per years through 2018.
- The consolidation results in savings of roughly $[redacted] per new cell built out in the cellular/PCS network, savings of $[redacted] per cell for redeployed cells, and savings of $[redacted] per cell for the 700 MHz build out.

16. As discussed further below, these reductions in network costs lower the merged firm's cost of both expanding its network footprint and deploying new services, thereby creating incentives to expand output.

17. In addition, Verizon Wireless expects that the combined firm will be able to reduce capital expenditures by enabling it to negotiate lower prices for network equipment. Based on its past experience, Verizon Wireless expects that the transaction will enable it to lower equipment prices by [redacted] relative to the level that the firms would expect to pay on a stand alone basis. This reduction in price will likely lead to an expansion in investment since it lowers the cost of expansion.

18. Overall, Verizon Wireless expects that the transaction will reduce capital expenditures by [redacted] percent between 2011 and 2014 and by [redacted] percent in later

years relative to expenditures expected for both firms on a standalone basis. Net of integration costs, the projected merger-related reduction in capital expenditures has an after-tax present value of $[redacted].

b. Network-Related Operating Expenses

19. The proposed transaction also is estimated to generate significant reductions in network operating expenditures. These operating expenses relate principally to dedicated circuits used to transport traffic generated by the wireless network. The reduction in the required number of cell sites reduces the number of transport circuits required and, together with the increased size of the customer base, enables greater utilization of DS-3 circuits. The DS-3 circuits have higher capacity and lower cost per unit than DS-1 circuits. In addition, the proposed transaction is expected to result in cost reductions relating to cell site-related rent and lease expenses. In total, Verizon Wireless expects that on an after-tax net present value basis the proposed transaction will reduce network related operating expenses by $[redacted].

20. In addition, Verizon Wireless also expects that the proposed transaction will reduce headcount expenses related to network operations. More specifically, the consolidation of duplicative cell sites, including those currently in operation and those relating to planned build outs, will reduce the number of network engineers and technicians required, and will result in additional after-tax net present savings of $[redacted].

21. Project network-related cost savings, including capital expenditure and operating cost reductions, are summarized in Table 3.[11]

11. See VzW Synergies Summary, p. 29.

Table 3

Verizon Wireless' Estimate of Savings in Network Costs from Verizon Wireless/ALLTEL Transaction
($ Millions)

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Capital Expenditure Savings										
Lower Pricing from Vendors										
Capex Savings from Equipment Redeployment										
Elimination of Duplicate Expansion Plans + 700 MHz										
Total										
Less Additional Spend to Achieve Savings										
Less Increase/(Decrease) in Taxes										
Net Capital Expenditure Savings										
Present Value of Savings from Network Capex										
Network Operating Expense Savings										
Direct Network Operating Expenses										
Rent and Lease										
Total										
Less Integration Cost										
Net Operating Expense Savings										
After-Tax Savings from Network Operating Expenses										
Present Value of Savings from Network Operating Expenses										

Source: VzW Synergy Summary (Abraham Synergies_060408 FINAL.xls), pgs. 14, 15, 19, 20, 29.

3. Reduced Overhead Headcount Expenses

22. The proposed transaction is also expected to result in significant reductions in overhead costs such as accounting, finance and legal expenses. Verizon Wireless expects to reduce general and administrative (G&A) headcount by over in 2009 and by over by 2012. More specifically, Verizon Wireless projects that the merger will enable the combined firm to reduce its IT support staff by over , marketing support staff by over , operations support staff by more than and human resources staff by more than .

23. The estimated savings attributable to headcount reductions are summarized in Table 4. After accounting for integration costs, including severance and early retirement expenses, overhead headcount reductions are expected to result in cost

savings with a net present value of roughly $[redacted]. Verizon Wireless also anticipates salary increases for other employees that make the headcount savings, net of such adjustments, roughly $[redacted].[12]

Table 4

Verizon Wireless' Estimate of Headcount Cost Savings from Verizon Wireless/ALLTEL Transaction
($ Millions)

	2009	2010	2011	2012
Headcount Reduction	[redacted]			
G&A (Corp., Finance, HR, Legal, etc.)				
Network				
Sales and Distribution				
Customer Care				
Total Headcount Reduction				
Cost Savings				
Headcount Reduction Synergy				
Integration Costs				
Headcount Synergy -- Net of Int. Cost				
After-tax Network Headcount Synergy				
Present Value of Savings				

Source: VzW Synergy Summary (Abraham Synergies_060408 FINAL.xls), pgs. 22 - 28.

12. See VzW Synergies Summary, pp. 26, 28.

4. Reduced Advertising and Promotions Expenses

24. Verizon Wireless estimates that the combined firm will be able to reach the same customers with lower advertising expenditures relative to those that would be incurred by the firms in the absence of the proposed transaction. In light of the existing competition discussed below and in our prior declaration, along with the proposed divestitures, the reduction in advertising expenditures should not significantly affect competition.

25. Verizon Wireless estimates the merger-related savings in advertising expenses based on the difference between (i) ALLTEL's current expenditures and (ii) the incremental costs of reaching target customers in areas served by ALLTEL but not Verizon Wireless. As summarized in Table 5, Verizon Wireless projects that the proposed transaction will result in advertising related cost savings with an after-tax present value of $[redacted].[13]

13. See VzW Synergies Summary, p. 13.

Table 5

Verizon Wireless' Estimate of Advertising and Promotional Expense Savings from Verizon Wireless/ALLTEL Transaction
($ Millions)

	2009	2010	2011	2012
Estimated Standalone ALLTEL Wireless Advertising Costs	[redacted]			
Total Incremental Expense to Cover ALLTEL Pops				
Additional Advertising Required for ALLTEL Pops				
ALLTEL Contractual Commitments				
Additonal Marketing Costs				
Total Additional Advertising Required for Alltel Pops				
Cost Synergy				
Integration Cost				
Cost Synergy -- Net of Integration Costs				
After-Tax Cost Synergy Net of Integration Costs				
Present Value				

Source: VzW Synergy Summary (Abraham Synergies_060408 FINAL.xls), pg. 13.

5. Reduced Information Technology Costs

26. Verizon Wireless also estimates that the proposed transaction will reduce information technology (IT) costs. These costs relate to IT used in providing customer service (such as workstations used by call center staff), support of billing services, and in point-of-sale and other retail functions.

27. Verizon Wireless estimates that ALLTEL's IT expenses are higher than Verizon Wireless' on a subscriber basis. Verizon Wireless expects that after the merger, as a result of adoption of common technology platforms and expanded use of Verizon Wireless's customer service and billing methods, ALLTEL's technology expenses related to these functions will be reduced by $[redacted] per subscriber per month by 2010,

even as the combined firms' number of subscribers and total customer service expenditures increase. These estimates also reflect Verizon Wireless' assumption that, in the absence of the proposed transaction, ALLTEL would be able to improve its own IT platforms and thus decrease expenditures if it operated on a standalone basis. More specifically, Verizon Wireless assumes that IT-related savings will decrease from $[redacted] per ALLTEL subscriber per month in 2010 to $[redacted] per subscriber per month by 2014. In total, Verizon Wireless expects that the present value of IT savings is $[redacted].[14]

Table 6

Verizon Wireless' Estimate of IT Cost Savings from Verizon Wireless/ALLTEL Transaction
($ Millions)

	2009	2010	2011	2012
Pre-tax Synergy	[redacted]			
Integration Costs				
IT Synergy Net of Integration Costs				
After-tax Sales IT Synergy				
Present Value of IT Savings				

Source: VzW Synergy Summary (Abraham Synergies_060408 FINAL.xls), pg. 16.

14. See VzW Synergies Summary, p. 16.

6. Reduced Sales Overhead and Distribution Headcount Expenses

28. Verizon Wireless expects that the proposed merger will reduce the number of retail stores needed to serve current and prospective customers' needs. For current ALLTEL and Verizon Wireless retail locations that are in close proximity, Verizon Wireless will evaluate the best location to retain. The proposed transaction also will reduce sales and distribution costs by reducing the number of retail outlets planned by each firm in areas where network expansions are planned. In total, Verizon Wireless expects that overhead savings relating to distribution costs have a net present value of $[redacted], and related headcounts savings of $[redacted].[15]

7. Reduced Customer Care Expenses

29. The proposed transaction is expected to enable the combined firm to expand use of Verizon Wireless' best practices with respect to customer care, which is expected both to reduce the cost and to improve the quality of customer care services received by ALLTEL customers.

30. More specifically, Verizon Wireless expects it will serve a larger portion of ALLTEL's customer care functions for post-pay customers with U.S.-based facilities currently used by Verizon Wireless. [redacted] In total, Verizon Wireless expects that the expanded use of its best practices will enable the combined firm to reduce total personnel required to provide customer services. As discussed further below, there is no basis conclude that these savings come at the expense of the quality of

15. See VzW Synergies Summary, pp. 18, 22.

customer service as Verizon Wireless is widely recognized as providing high quality service.

31. Overall, Verizon Wireless estimates that the proposed transaction will result in customer care headcount savings with a net present value of roughly $[redacted] as well as customer care overhead savings with a net present value of $[redacted].[16]

C. THE PROPOSED TRANSACTION PROVIDES INCENTIVES FOR THE MERGED FIRM TO EXPAND OUTPUT AND REDUCE PRICE.

32. The previous section outlined the likely savings from the proposed merger. As the Merger Guidelines recognize, merger-related efficiencies can enhance a firm's "ability and incentive to compete."[17] This section discusses in more detail the effect of the expected cost savings on the incentives of the merged firm and shows that the proposed transaction is likely to benefit consumers by providing incentives to expand output and lower price.

1. The anticipated cost savings are merger-specific.

33. As a starting point, each of the efficiencies identified by Verizon Wireless and Morgan Stanley appear to be merger-specific. That is, neither company would be able to achieve these savings in the absence of the proposed transaction. For example, it is highly unlikely the savings attributable to network integration, elimination of duplicative facilities and plans, overhead cost reductions and the coordination of purchases required to achieve greater volume-related discounts could be achieved

16. See VzW Synergies Summary, pp. 17, 23.
17. *Merger Guidelines* at § 4, which states that cost savings provide the combined company with "ability and incentive to compete, which may result in lower prices, improved quality, enhanced service, or new products."

through contract alone or through a joint venture. Similarly, reductions in roaming costs resulting from reduced reliance on third-party suppliers of roaming services are the direct consequence of the expansion of the footprint resulting from network integration.

2. The proposed transaction results in significant reductions in variable costs.

34. The Merger Guidelines note that efficiencies which enable firms to realize reductions in marginal cost are most likely to benefit consumers by increasing incentives to compete. While, as discussed further below, many merger-related reductions in fixed costs are also likely to benefit consumers, the proposed transaction results in significant reductions in marginal costs. Some specific examples are discussed below.

a. Roaming

35. As discussed above, the proposed transaction is expected to generate reductions in roaming fees that have an after-tax net present value of $[redacted]. Due to the increased geographic scope of the combined firm's network, the transaction enables roaming traffic between Verizon Wireless and ALLTEL to be kept on the combined firm's network and Verizon Wireless' roaming traffic currently sent to U.S. Cellular and ALLTEL's roaming traffic current served by Sprint to be kept on the merged firm's network.

36. Roaming services are priced on a per minute basis. As discussed above, this rate exceeds the incremental cost of providing such traffic. Thus, the proposed transaction lowers the marginal cost faced by the Verizon Wireless and ALLTEL with respect to both roaming traffic shared between the companies as well as ALLTEL's roaming traffic served by [redacted] and Verizon Wireless' traffic served by [redacted]. The reduction in these incremental costs faced by Verizon Wireless and ALLTEL creates

an incentive for the merged firm to reduce prices charged to both existing and new customers through lower per minute rates and/or expanded "bundles" of minutes.[18]

b. Customer service related expenses

37. The proposed transaction also reduces the merged firm's cost of providing customer service including, for example, customer questions related to billing and service quality. We understand that the scale of customer service operations is related to the number of subscribers served by the carrier. As a result, substantial increases in the number of subscribers served by a carrier require increases in customer service personnel. Thus, customer service costs vary with the number of subscribers and have an important variable dimension.

38. As discussed above, Verizon Wireless provides customer service at a lower cost per subscriber compared to ALLTEL and the transaction enables Verizon Wireless to expand the use of its best practices. Verizon Wireless estimates that the transaction will result in significant savings in expenses relating to customer service, including customer care and IT expenses, which includes savings related to customer-oriented functions such as billing and retail operations as well as IT expenses for customer service representatives.

18. Note that although shifting roaming traffic shared between Verizon Wireless and ALLTEL does not change the firms' combined revenues or costs (since the firms pay each other), the transaction lowers the marginal cost faced by each firm for each roaming minute and thus provides an incentive to lower price. That is, the firms' economic incentives change in a way that is expected to benefit consumers.

3. Reductions in "fixed costs" resulting from the proposed transaction are also likely to benefit consumers.

39. The proposed transaction will result in a variety of additional cost reductions that, while not directly related to output, will benefit consumers by reducing the cost of upgrading the network and offering new services.

40. As discussed above, the proposed transaction is expected to result in net savings in capital expenditures of roughly $[redacted]. Much of these savings relates to consolidation of duplicative sites for cellular/PCS networks as well as deployment of facilities to utilize the 700 MHz spectrum. In addition, the transaction is expected to reduce equipment acquisition costs by roughly [redacted] percent.

41. By reducing the cost of network expansion, these projected savings increase the merged firm's incentive to accelerate and expand the deployment of new equipment and services. While network-related costs may be "fixed" in the short-run, the merger-related reductions in these costs benefit consumers by enabling them to realize consumer surplus associated with accelerated or expanded network deployment.

42. For example, the projected merger -related efficiencies lower the cost to Verizon Wireless of deploying wireless high speed data services using EV-DO Revision A technology. Verizon Wireless has upgraded its entire EV-DO network to EV-DO Revision A, which provides downstream speeds to 600 kbps – 1.4 million Mbps and uplink speeds of 350-800 kbps. In most areas, however, ALLTEL uses the older version of the EV-DO technology which has typical downstream data transfer speeds of 400-800 kbps. In some areas ALLTEL continues to use the older and slower 1xRTT technology. Thus, by lowering network-related costs, the proposed transaction increases Verizon Wireless' incentive to rapidly expand deployment of EV-DO Revision A technology to areas served by ALLTEL (but not Verizon Wireless).

43. In dynamic industries such as wireless telecommunications, reductions in fixed costs are equivalent to reductions in (forward looking) costs relating to new investments. This in turn benefits consumers by lowering the cost of expanding output.[19] In recent years, antitrust policymakers have increasingly stressed the importance to consumers of reductions in fixed costs.

44. As noted our prior declaration, the importance for accounting for fixed cost reductions in merger analysis has been recognized by in the report of the Antitrust Modernization Commission,[20] by antitrust enforcement officials[21] and academics.[22]

4. There is no basis to conclude that cost savings will be achieved at the expense of reduced service quality.

45. Verizon Wireless expects the proposed merger to result in significant savings in network expenses and customer service costs. There is no basis to conclude that expected savings come at the expense of reductions in the quality of service provided by Verizon Wireless. Indeed, by lowering the cost of providing quality, one would expect service quality to improve.

46. The high quality of Verizon Wireless service is reflected in its high levels of customer loyalty, responses to consumer surveys and awards received for service quality. More specifically:

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19. See our June 13 declaration ¶¶24-27.
20. Report and Recommendations of the Antitrust Modernization Commission, April 2007, p. 58.
21. Ken Heyer, "Welfare Standards and Merger Analysis: Why Not the Best?" Competition Policy International, Autumn 2006, pp. 37, 40.
22. Dennis W. Carlton, "Does Antitrust Need to be Modernized?" 21 Journal of Economic Perspectives 155 (2007). Also see Separate Statement of Dennis W. Carlton, Report and Recommendations of the Antitrust Modernization Commission, April 2007, p. 401.

- Verizon Wireless has consistently achieved the lowest rate of customer turnover ("churn") in the wireless industry.[23]
- Verizon Wireless was named "Carrier of the Year" for the last three years, J.D. Power and Associates, Vocal Laboratories, POPAI, the National Retail Federal Foundation and the Customer Respect Group.[24]
- A September 2007 Consumer Reports survey rated Verizon Wireless highest in 16 of the 20 metropolitan areas surveyed.[25] (ALLTEL was rated highest in three of the four areas in which Verizon Wireless was not the highest rated carrier.)
- J.D. Powers recently ranked Verizon Wireless highest in four of six regions among wireless contract customers in a survey that measured customer satisfaction with call quality, customer service and other factors.[26] Verizon Wireless also was ranked highest in a recent a J.D. Powers survey of business customers' satisfaction with call quality, customer service, billing, and other factors.[27]

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23. Merrill Lynch, "US Wireless Matrix 4Q07," April 14, 2008, Table 8.
24. See http://aboutus.vzw.com/awards.html.
25. http://www.consumerreports.org/cro/electornics-computers/ph...ngs-service/latest-ratings/cell-service-rate.htm (accessed 6/25/2008).
26. Verizon Wireless Ranks Highest in Wireless Contract Customer Satisfaction in Four Regions; ALLTEL and T-Mobile Each Rank Highest in a Region, J.D. Power Press Release, April 24, 2008; Verizon Wireless Ranks Highest in Wireless Customer Care Performance, J.D. Power Press Release, August 14, 2008.
27. Verizon Wireless Ranks Highest in Satisfying Business Customers in Both Large Enterprise and Small/Midsize Segments, J.D. Power Press Release, May 22, 2008.

D. THE MERGER-RELATED COST SAVINGS ESTIMATED BY VERIZON WIRELESS ARE CREDIBLE.

47. Some parties have claimed that the synergies resulting from the transaction are not credible.[28] This section addresses the credibility of the merger-related cost savings claimed by Verizon Wireless. We show: (i) that analysts recognize that the proposed transaction will result in significant cost savings and other consumer benefits; and (ii) that Verizon, the joint venture co-parent of Verizon Wireless, has realized efficiencies in excess of those claimed in prior transactions.

1. Analysts recognize that the proposed transaction will result in significant cost savings.

48. The credibility of the transaction-related cost savings projected by Verizon Wireless is reflected in investment analysts' comments about the proposed transaction. A variety of these comments highlighted cost savings that the transaction is expected to generate and the impact of the transaction on the merged firm's incentive to expand output.

49. For example, Oppenheimer Securities noted that:[29]

> Positively, the deal would likely help lower combined churn and make VZ a more powerful competitor versus T and Sprint. We also see tax benefits from the additional leverage. Negatively, the transaction will likely have a modest impact on tower companies, as network optimization initiatives will result in the elimination of duplicate facilities.
>
> We believe the transaction is positive financially and strategically due to: (1) Expected $9-plus billion NPV of synergies, of which approximately $1 billion is expense savings expected by year 2; (2) Complementary network footprints that will drive roaming benefits and expanded reach; (3) Identical technology platforms suggest seamless integration; (4) Benefits from scale, as the combined customer base is approximately 80 million subscribers.

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28. Petition to Deny of Leap Wireless International, Inc., August 11, 2008, p. 15.
29. ALLTEL Acquisition Positive Strategically and Financially, Oppenheimer Securities; June 6, 2008.

50. Wachovia Equity Research reached a similar conclusion, stressing opportunities for Verizon Wireless to expand utilization of high speed data services to ALLTEL's customers:

> Valuation [of proposed merger] attractive given expected high synergies. Synergies will be driven by lower G&A, cap-x, marketing, advertising, etc. [...]
>
> Large opportunity with wireless data—ALLTEL has lagged Verizon in wireless data. At the end of Q1, data revenue as a percent of ARPU was only 14% (about $7.50). This is significantly below VZ's level of over 20%. As a result, we believe VZ has much opportunity to improve AT's top-line performance on this metric alone.[30]

2. Verizon has successfully achieved and exceeded savings claimed in prior transactions.

51. While Verizon Wireless has not undertaken acquisitions comparable in size to the proposed transaction, Verizon – one of Verizon Wireless' two joint venture parents – has undertaken other large mergers and has successfully integrated the operations of the merging firms. In each case, Verizon has been successful in realizing (and exceeding) efficiencies claimed at the time of these transactions.

52. The Department of Justice's press release approving the merger of MCI and Verizon noted that "the transactions are likely to generate substantial efficiencies that should benefit consumers."[31] Available data indicate that Verizon met this objective and, in fact, achieved cost savings well in excess of those estimated at the time. Based on discussions with Verizon financial analysts responsible for tracking synergies generated by prior transactions, we understand that when the Verizon/MCI transaction was

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30. Verizon Communications Company Report, Wachovia Equity Research, June 6, 2008.
31. Department of Justice Press Release, October 27, 2005, Justice Department Requires Divestitures in Verizon's Acquisition of MCI and SBC's Acquisition of AT&T.

announced, Verizon expected to generate savings of $[redacted] in the first year following the transaction, $[redacted] in the second year, and $[redacted] annually thereafter. By March 2006, shortly after the merger was consummated, Verizon increased its estimate of cost savings for each of the first three years.[32] In January 2007, Verizon again increased its estimate of merger-related cost savings for 2007.[33] Table 7 summarizes the history of these projections of cost savings.

Table 7

Estimated and Realized Cost Savings from Verizon / MCI Transaction ($Millions)

Post-Merger Period	Date of Announced Savings Projection: Feb. 2005	Mar-06	Jan. 2007	Realized Savings
Year 1 (2006)	[redacted]			
Year 2 (2007)				
Year 3 (2008)				

Note: Year 3 figure for realized savings annualized but based on Q1 only.

53. In January 2007, at the same time that Verizon increased its estimate of Verizon/MCI 2007 cost savings, Verizon announced that it had achieved its cost savings target for 2006 relating to the Verizon/MCI transaction.[34] Subsequent internal analysis by Verizon indicates that merger-related cost savings for 2007 were $[redacted], more than $[redacted] more than its January 2007 target.[35] Internal Verizon analysis also

32. Statements by Verizon executives at March 30, 2006 Bank of America "Securities Media, Telecommunications and Entertainment" Conference.
33. Verizon 4Q06 Earnings Conference Call, January 29, 2007.
34. Verizon 4Q06 Earnings Conference Call, January 29, 2007.
35. Based on discussions with Verizon financial analysts.

indicates that the "run rate" for the first quarter of 2008, the most recent data available, also substantially exceeds the announced target.[36]

54. Verizon also succeeded in meeting its estimates of cost savings in prior mergers. In support of the proposed merger of Verizon and MCI, Verizon submitted a report to the Department of Justice that summarized the cost savings projected and realized from the Bell Atlantic/GTE and Bell Atlantic/NYNEX mergers. As detailed in that report, the savings realized from the Bell Atlantic/GTE merger exceeded those projected in each of the first three years following the merger.[37] In total, the projected savings for 2000-02 were $[redacted] and the realized savings were $[redacted].[38] Similarly, the savings realized from the Bell Atlantic/NYNEX merger in August 1997 exceeded the projected level. As summarized in the Verizon submission in the Verizon/MCI matter, Verizon officials testified before the New Jersey Board of Public Utilities that Bell Atlantic realized savings of $[redacted] in 1997-2000 compared to projected savings of $[redacted].

36. Based on discussions with Verizon financial analysis.
37. Submission of Verizon Communication, Inc., Verizon's Acquisition of MCI Will Lead to Substantial Efficiencies and Benefits for Customers (undated).
38. This is based in part on an estimate of 2002 merger-related cost savings.

III. THE PROPOSED MERGER DOES NOT RAISE SIGNIFICANT COMPETITIVE CONCERNS RELATED TO ROAMING SERVICES.

55. Several parties have raised concerns that the proposed merger will reduce competition in the provision of roaming services.[39] None of these parties, however, has submitted any analysis or data to support their claims that the proposed merger will adversely affect roaming competition. This section addresses this claim with evidence from a variety of sources and shows that the proposed merger will not have a significant adverse effect on competition in the provision of either CDMA or GSM roaming services. Available information instead indicates that Verizon Wireless will continue to face substantial roaming competition in nearly all areas in which it operates; that many customers are protected by long-term contracts; and that technological changes promise to increase the scope of roaming rivals in the future.

A. BACKGROUND

1. Verizon Wireless and ALLTEL roaming services

56. Verizon Wireless provides CDMA-based service in more than 2,300 counties (out of more than 3,000 in the U.S.) covering 94 percent of the U.S. population.[40] Verizon Wireless also recently became a supplier of GSM-based service through its acquisition of RCC and now provides GSM roaming in approximately 138 counties covering 1.8 percent of the U.S. population.

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39. See, for example, Petition to Deny of Cellular South, August 11, 2008, pp. 21-22; Centennial Communications Corp. Petition to Deny, August 11, 2008, pp. 4-8; Petition to Deny of Leap Wireless International, Inc., August 11, 2008, pp. 18-20; Petition of MetroPCS Communications Inc. and Ntelos Inc. to Condition Consent or Deny Application, August 11, 2008, pp. 6-7, 20-25.
40. Based on data from American Roamer / Verizon Wireless. The same network is used to provide retail and roaming CDMA services by Verizon Wireless and ALLTEL so roaming service is available where retail services is provided.

57. ALLTEL provides CDMA-based roaming service in more than 1,600 counties covering 28 percent of the U.S. population. It also operates a GSM-based "roaming only" network in nearly 600 counties covering 3.5 percent of the U.S. population.

58. Purchases and sales of roaming minutes for May 2008, the most recent month available for both firms, are summarized in Table 8. As the table indicates, both Verizon Wireless and ALLTEL are net purchasers of CDMA roaming minutes. However, as discussed above, the proposed transaction enables Verizon Wireless and ALLTEL to reduce reliance on roaming by moving some roaming traffic now provided by Sprint and U.S. Cellular back onto the combined firm's network. As a result, the combined firm is expected to become a net seller of CDMA roaming minutes following the proposed transaction.

Table 8

Verizon Wireless and ALLTEL Net Domestic Roaming Minutes
May 2008
(MM Minutes)

	Verizon Wireless			ALLTEL		
	CDMA	GSM	Total	CDMA	GSM	Total
Roaming Sales	[redacted]					
Roaming Purchases						
Net Roaming Minutes						

Note: VzW GSM Minutes are for RCC, excluding areas divested due to RCC-VzW transaction.
Negative minutes reflect payable minutes exceeding receivable minutes;
Positive minutes reflect receivable minutes exceeding payable minutes.

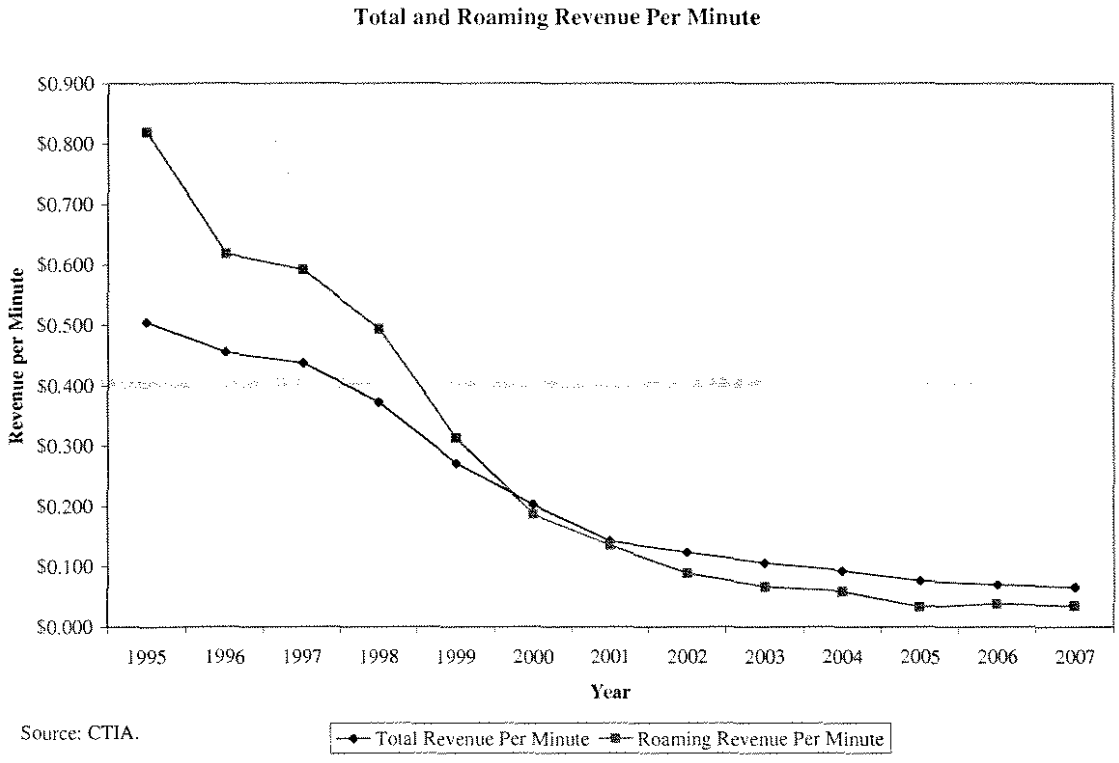
Source: Verizon Wireless; ALLTEL.

2. Roaming trends

59. While some parties commenting on the proposed transactions have expressed concern about the "recent dramatic trend toward oligopoly in the wireless market,"[41] roaming prices have fallen dramatically over time. As shown in Figure 1, data from the CTIA indicate that roaming prices per minute have fallen from roughly $0.80 per minute in 1995 to roughly $0.05 per minute in 2007.[42] The decline in roaming fees in recent years is similar to the dramatic decline in average retail revenue per minute earned by wireless carriers discussed in our prior declaration.[43] As discussed above, the parties' reduced reliance on roaming services purchased from both third parties and from each other that results from the proposed merger provides further incentives for the combined firm to reduce rates to retail customers.

41. Petition to Dismiss or Deny of the Ad Hoc Public Interest Spectrum Coalition, August 11, 2008, p. ii.
42. The reported roaming fee is based on airtime only and excludes toll charges and taxes. These data are reported in nominal terms and do not incorporate any adjustment for inflation over this period. Thus, the decline in real terms is larger than the reported nominal decline.
43. Carlton, Shampine, Sider Declaration, Figure 4.

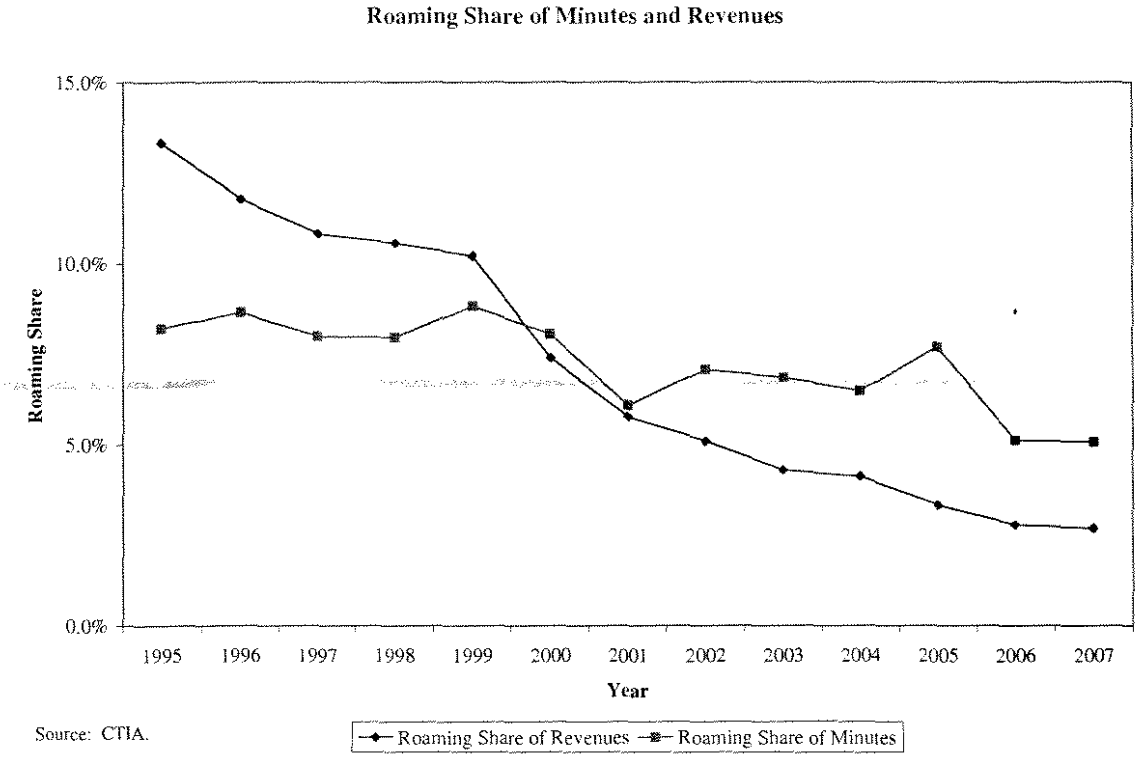
Figure 1



Source: CTIA.

60. At the same time, roaming accounts for a declining share of all wireless minutes and revenue. (See Figure 2.) This results in part from the expansion of network footprints and implies that roaming plays a substantially smaller role in the costs faced by the average carrier than in the past, thus reducing roaming-related competitive concerns.

Figure 2



Source: CTIA.

3. Characteristics of typical roaming arrangements[44]

61. Roaming agreements between carriers are bilateral contracts that enable a carrier's subscribers to access another carrier's network in areas and at times when the carrier's network cannot be accessed. The contracts establish a per-minute rate for services provided although the contract may establish differential rates for services purchased for each party.

62. Carriers typically establish relationships with multiple carriers that cover the same territories. Generally, a contract specifies the same price for all geographic areas covered by the contract, although there are two exceptions. First, contracts can establish priority among multiple potential roaming partners in a given area in exchange

44. This summary is based on our review of the terms of Verizon Wireless and ALLTEL roaming agreements.

for better roaming rates.[45] Second, contracts may set higher rates in "home roaming" areas (in which the purchaser of roaming services owns spectrum but does not have facilities) than in areas in which the purchaser does not own spectrum. However, contracts do not distinguish fees between areas with many and fewer roaming alternatives. Finally, contracts may incorporate volume discounts and are often multiple years in duration.

B. ALTERNATIVE ROAMING OPTIONS EXIST IN NEARLY ALL OVERLAP AREAS.[46]

63. Data that identify carriers offering CDMA service on a county-specific basis in the United States have been used to identify the counties in which both Verizon Wireless and ALLTEL offer service as well as the number of other carriers that offer services in each of these areas.[47]

64. These data indicate that there are alternative roaming options in nearly all overlap areas and that the scope of any potential competitive concern is limited. As summarized in Table 9, the merged firm's network will provide service (including roaming service) in counties that account for all but 1.6 percent of the U.S. population.

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45. Thus, the subscriber's phone has the ability to obtain service from multiple roaming providers as necessary. Carriers configure handsets and (in the case of GSM) networks to establish priority among potential roaming partners.
46. Our analysis takes into account Verizon Wireless' proposal to divest spectrum and assets in 85 CMAs served by both Verizon Wireless and ALLTEL. In these areas, the merged firm will divest the spectrum, customers and other assets used by that property. We assume for present purposes that these divestitures also remedy the Commission's concerns regarding the potential impact of the proposed merger on competition for retail subscribers to wireless services.
47. These data were provided by Verizon Wireless and are based on information from American Roamer. The data file includes supplemental information obtained by Verizon Wireless. These data are used in the ordinary course of Verizon Wireless' business for the purpose of identifying particular roaming partners in different areas. These data identify whether a carrier provides service in any part of a county and thus include some counties in which carriers provide service but do not have facilities.

However, there is no overlap in Verizon Wireless and ALLTEL service areas in counties that account for 75 percent of the U.S. population (= 70.5 + 4.5) and thus the transaction does not alter the number of CDMA carriers in these areas. Overlap areas that Verizon Wireless currently expects to divest account for 2.9 (=0.4 + 1.7 + 0.8) percent of the U.S. population.

65. Thus, the proposed transaction results in a reduction in the number of CDMA roaming providers in counties that account for 20.6 percent (= 13.4+ 7.1+ 0.1) of the U.S. population. Following the transaction, the merged firm will be the only CDMA roaming provider in only 20 counties which together account for 0.1 percent of the U.S. population. In overlap counties that account for another 7.1 percent of the population, there will be one roaming carrier in addition to the merged firm and there will be at least two other carriers in overlap areas which account for 13.4 percent of total U.S. population.

Table 9

Number of CDMA Providers in VzW and ALLTEL Service Areas

Type of Area	Number of Other Carriers	Number of Counties	Percent of Population
Areas with Neither Verizon Wireless or Alltel		211	1.6%
Verizon Wireless Only Areas		1,239	70.5%
ALLTEL Only Areas		575	4.5%
Overlap Areas / Divestiture Areas (85 CMAs)	2+	48	0.4%
	1	223	1.7%
	0	184	0.8%
Overlap Areas / Non-Divestiture Areas	2+	317	13.4%
	1	310	7.1%
	0	20	0.1%
Total		3,127	100.0%

Source: American Roamer Data; Census Bureau.

66. These data indicate that the scope of potential competitive concerns is limited. We limit our analysis of potential competitive concerns in the following sections to areas in which the number of CDMA roaming providers is reduced from either 3 to 2 or from 2 to 1 as a result of the proposed merger. This approach is perhaps overly inclusive given the Commission's prior conclusions about the state of competition in the provision of roaming services. In particular, the Commission has previously concluded that "competition in the retail market is sufficient to protect consumers against potential harm arising from intercarrier roaming arrangements and practices."[48] While roaming-

48. Federal Communications Commission, Memorandum Opinion and Order and

related competitive concerns have been raised in past mergers of wireless carriers, we understand that the Commission has not ordered any remedy based on such concerns beyond those ordered relating to concerns about the impact of wireless mergers on retail competition.

C. CONTRACTS LIMIT POTENTIAL COMPETITIVE HARM.

67. As noted above, roaming contracts are typically multiple years in duration and Verizon Wireless and ALLTEL's major customers have contracts that set prices and extend for multiple years. For example:

- Sprint, which is currently the largest third-party purchaser of roaming minutes from Verizon Wireless and ALLTEL, recently reached an agreement with Verizon Wireless that would extend the (low) rates in its current ALLTEL agreement through [redacted]. The agreement also lowers rates, provides volume discounts and extends the contract in Verizon Wireless served areas.
- AT&T's (GSM) contract with ALLTEL extends through [redacted].
- T-Mobile's (GSM) contract with ALLTEL extends through [redacted].
- Larger regional carriers also have long term contracts with Verizon Wireless. Cellular South's contract extends to [redacted], U.S. Cellular and

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Declaratory Ruling in WT Docket No. 07-208 (Application of Cellco Partnership d/b/a/ Verizon Wireless and Rural Cellular Corporation), August 1, 2008, ¶88. Also see FCC, Memorandum Opinion and Order, AT&T / Cingular, FCC 04-255, October 26, 2004, ¶180 and FCC, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143, August 16, 2007, ¶ 13. As noted above, we assume that Verizon Wireless' proposed divestitures in this matter also will satisfy the Commission's competitive concerns regarding retail competition.

MetroPCS have contracts to [redacted] and Bluegrass Cellular's contract runs to [redacted].

68. Finally, Verizon Wireless has made further commitments to non-national carriers which enable them to continue to maintain their current rate structure through the full contract term notwithstanding change in control provisions in existing contracts. In addition, all non-national carriers with agreements with both ALLTEL and Verizon Wireless can choose either agreement to govern all roaming traffic with the merged firm post-merger, and carriers with roaming agreements with ALLTEL may maintain those existing agreements for at least two years following the close of the merger.

69. As discussed further below, technological migrations planned by leading CDMA and GSM carriers promise to expand the range of roaming alternatives available at the same time or even before current long-term contracts expire.

D. CARRIERS PROVIDE SERVICE OR CAN READILY EXPAND INTO OVERLAP AREAS.

70. Carriers can also expand service in the relatively few areas where the proposed transaction reduces the number of CDMA roaming providers, as indicated by the fact that major wireless carriers operate tens of thousands of cell sites across a wide variety of areas. Our June 13 report noted, for example, that Verizon Wireless operates more than [redacted] cell sites while ALLTEL operates more than [redacted].

71. As shown in Table 10, Sprint already provides service in 298 of the 310 counties in which the number of CDMA providers is reduced from 3 to 2 as a result of the proposed transaction and has spectrum in the remaining areas. Sprint also currently owns spectrum in each of the 20 areas in which the proposed merger reduces the number

of CDMA carriers from 2 to 1. Similarly, a variety of other carriers possess spectrum in the counties where only one other CDMA provider would remain after the transaction.

Table 10

Spectrum Holdings of Other Carriers in Post-Divestiture 2-1 or 3-2 Areas

	Number of Counties		Population Coverage	
Type of Area	2-1 Areas	3-2 Areas	2-1 Areas	3-2 Areas
Total	20	310	344,605	21,327,235
Sprint				
Provides CDMA Service		298		99.2%
Has Spectrum	20	310	100.0%	100.0%
Other Spectrum Holders				
AT&T	19	307	98.8%	99.7%
T-Mobile	20	291	100.0%	96.6%
Leap/Cricket	7	73	36.0%	15.3%
Cook Inlet	1	40	4.7%	20.7%
Centennial		35		17.1%
US Cellular		20		5.4%
Vista	1	13	1.2%	2.7%
Metro PCS	1	7	8.0%	3.1%
Long Lines Wireless		7		0.8%
Cellular South	1	7	6.4%	0.6%
Ntelos	2	6	4.8%	0.9%
Comnet ATC/Syringa		2		0.8%
Pine Belt Wireless		1		0.1%

Source: American Roamer Data; Verizon Wireless Property File.

72. The major GSM carriers (AT&T and T-Mobile) can also expand service in the areas served by the combined company's GSM footprint. While we do not currently have information that identifies firms providing GSM services on a county-specific data, available data indicate that AT&T and T-Mobile own spectrum in all areas where Verizon Wireless and ALLTEL provide GSM service. As shown in Table 11, there are

419 counties in which the merged firm will offer GSM service following the proposed transaction. (This includes 17 counties covering 0.2 percent of the population in which both provide service.) Available data indicate that either AT&T or T-Mobile own spectrum in each of these counties and that both own spectrum in fully 414 of the 419 counties in the combined firm's GSM footprint.

Table 11

Spectrum Holdings of AT&T and T-Mobile in ALLTEL and RCC GSM Footprint

Type of Area	Number of Counties	Percent	Population	Percent
AT&T and T-Mobile Present	414	98.8%	10.98	99.6%
AT&T but not T-Mobile Present	2	0.5%	0.03	0.2%
T-Mobile but not AT&T Present	3	0.7%	0.02	0.1%
Neither AT&T Nor T-Mobile Present	0		0.00	
Total	419	100.0%	11.02	100.0%

Source: Verizon Wireless Property File; RCC License Data; ALLTEL; Census Bureau.

Note: Excludes counties in divestiture areas (85 CMAs).

E. CARRIERS' ACTIVE MANAGEMENT OF ROAMING RELATIONSHIPS LIMITS POTENTIAL EFFECTS OF A REDUCTION IN THE NUMBER OF ROAMING PROVIERS.

73. The potential adverse effect on roaming competition resulting from the proposed merger is limited by the ability of carriers to manage their multiple roaming relationships and shift traffic between roaming carriers. For example, attempts by carriers to raise price due to a reduction in the number of suppliers in a given area can be deterred by purchasers' ability to divert traffic from a roaming carrier in other areas.

74. Recent actions undertaken by AT&T highlight the ability of carrier customers to reduce their reliance on a particular roaming provider. More specifically,

AT&T has been a significant purchaser of ALLTEL's GSM roaming services and ALLTEL was a preferred provider of roaming services to AT&T over parts of ALLTEL's network. Beginning in late 2006, however, AT&T undertook a variety of actions to reduce its reliance on ALLTEL. These include expansion of its own network footprint; promoting expansion of non-preferred competitors (which has the effect of reducing purchases from ALLTEL),[49] and switching its preferred roaming provider in favor of carriers other than ALLTEL in areas where their ALLTEL contract enabled AT&T to take such actions.

75. As a result of these actions, [redacted] purchases of minutes from ALLTEL have fallen by roughly [redacted] percent in a year and a half, and the share of ALLTEL roaming minutes as a fraction of [redacted] total wireless traffic has fallen from [redacted] percent to [redacted] percent between 3rd quarter 2006 and 1st quarter 2008. (See Table 12.) [redacted] achieved this reduction in its reliance on ALLTEL despite having a preferential relationship with ALLTEL in parts of its network. This contractual preference expires at the end of 2008.

49. We understand based on discussions with ALLTEL that ALLTEL's roaming-only GSM network offers a relatively low level of coverage. As a result, ALLTEL may fail to serve all roaming requests even in areas where it is a preferred provider. AT&T-sponsored network expansions of non-preferred GSM partners thus may divert roaming traffic from ALLTEL to other carriers.

Table 12

[redacted] Roaming Minutes on ALLTEL's GSM Network As a Share of [redacted] Total Minutes of Use

(Million)

	AT&T			T-Mobile		
Quarter	Minutes of Use	ALLTEL-Provided Roaming Minutes	Share	Minutes of Use	ALLTEL-Provided Roaming Minutes	Share
06Q3	[redacted]					
06Q4						
07Q1						
07Q2						
07Q3						
07Q4						
08Q1						

Source: Merrill Lynch, US Wireless Matrix 1Q08, July 9, 2008 Tables 5 and 21; ALLTEL Wholesale Roaming FOAR, May 2008.

F. THE PROPOSED TRANSACTION DOES NOT ADVERSELY AFFECT THE MERGED FIRMS' INCENTIVE TO MAINTAIN ITS GSM ROAMING NETWORKS.

76. Some parties have claimed that ALLTEL will have an incentive to cease providing GSM roaming service after the transaction or otherwise to degrade such services.[50] These parties claim that the merger increases such incentives by enabling the merged firm to capture a larger share of any customers that abandon GSM services in response to degradation of the GSM network.

77. While parties raising such claims present no evidence to support their view, available data indicate that the merger does not adversely affect the merged firm's incentive to maintain its GSM roaming network.

50. Petition to Deny of the Rural Telecommunications Group, Inc., August 11, 2008, p. 16; Petition to Deny of Palmetto Mobilenet, L.P., August 11, 2008, pp. 18-19.

78. First, as shown in Table 12 above, only about [redacted] percent of minutes provided by [redacted] and [redacted] to retail customers are provided by ALLTEL's roaming network. As a result, degradation of the ALLTEL network would not affect the vast majority of AT&T and T-Mobile customers and would likely have only a small effect on others. Under these circumstances, it is unlikely that degradation of the GSM network would succeed in causing a significant number of customers to abandon their GSM service.

79. Second, the ALLTEL GSM network is profitable and abandoning the network would result in significant opportunity costs.

80. Third, ALLTEL's GSM carrier customers have alternatives for the vast majority of traffic carried on the ALLTEL GSM network. ALLTEL estimates that it faces at least one other GSM rival in counties that account for [redacted] percent of ALLTEL GSM roaming traffic. In other areas, AT&T's recent actions demonstrate that GSM roaming customers can readily increase their reliance on other carriers or expand deployment of services. As noted above, AT&T and T-Mobile own spectrum in nearly all areas where ALLTEL and Verizon Wireless provide GSM service.

G. NEW TECHNOLOGY PROMISES TO EXPAND ROAMING OPTIONS.

81. GSM and CDMA are incompatible technologies so subscribers to CDMA carriers cannot roam on GSM networks and vice-versa. However, Verizon Wireless, the largest CDMA provider, and AT&T, the largest GSM provide have indicated that they intend to migrate their networks to "Long Term Evolution" (LTE) technology.[51] This

51. See http://news.vzw.com/news/2007/11/pr2007-11-29.html and http://www.wirelessweek.com/at-t-to-run-with-lte.aspx (reporting statements by AT&T at a 2007 industry conference).

migration is expected to begin in or around 2010 and is expected to take place over a number of years. However, once completed firms that adopt this technology will be able to provide roaming services to each other.

82. Comments from a variety of analysts confirm these trends:

> One of the important characteristics of LTE technology is its interoperability with existing wireless networks, regardless of what wireless technology (e.g., GSM, CDMA, UMTS/HSPA, etc.) the legacy network operates on.[52]

> With Verizon's, Vodafone's and now AT&T's adoption of LTE as the 4G standard of choice we appear to be heading into the uncharted territory of technological agreement.[53]

> The Long Term Evolution (LTE) Initiative Feels Real: Considering the timing and implications of LTE [...] We think initial spending could begin in 2009, at least a year earlier than we imagined.[54]

IV. RESPONSE TO OTHER ISSUES RAISED BY COMMENTERS

1. Leap's claim that data presented in our June 13 declaration show "very high substitutability" between Verizon Wireless and ALLTEL.

83. Leap Wireless suggests that the number porting data summarized in our earlier declaration show "very high substitutability" between ALLTEL and Verizon Wireless.[55] This appears to reflect Leap Wireless' misunderstanding of our analysis and data.

84. Our analysis showed that:

> ...less than 20 percent of new Verizon Wireless subscribers are drawn from ALLTEL and less than 20 percent of subscribers leaving Verizon Wireless go to ALLTEL. If flows into and from Verizon Wireless

52. Bear Stearns, February 4, 2008, p. 9.
53. Mike Burton, Think Technology: Wireless Components and Enabling Tech, ThinkEquity Partners LLC, February 8, 2008, p. 1.
54. Simon Leopold, et al., Technology: Insights from Verizon's Network and Technology Organization, Morgan Keegan, June 12, 2008, p. 1.
55. Petition to Deny of Leap Wireless International, Inc., August 11, 2008, p. 18.

> occurred prorate based on market shares alone in these overlap areas, roughly 22 percent of such churn would involve ALLTEL. These data indicate that new customers moving to or from Verizon Wireless to ALLTEL do so less often than would be suggested based on ALLTEL's share of subscribers.[56]

85. The Leap petition mischaracterizes these data. If the customers leaving Verizon Wireless have similar preferences to the average consumer (as reflected in market shares) then one would expect that customers leaving Verizon Wireless would go to those other carriers proportionally to those carriers' overall subscriber shares (excluding Verizon Wireless). In fact, Verizon Wireless customers go to ALLTEL less often than expected based on ALLTEL's share alone. Moreover, Verizon Wireless customers go to other carriers (individually and collectively) more often than to ALLTEL. This suggests that other carriers are closer substitutes with Verizon Wireless than ALLTEL.[57]

86. Leap presents no data or analysis that is inconsistent with that presented in our June 13 declaration.

2. Leap's claim that movement to national pricing is not documented.

87. In our June 13, 2008 declaration we discussed how the pricing of wireless voice services has become increasingly national in scope. Leap Wireless claims, in response, that we "do not document the claim that Verizon 'increasing[ly]' engages in national pricing."[58]

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56. Declaration of Dennis Carlton, Allan Shampine and Hal Sider, June 13, 2008, ¶ 43.
57. Other carriers identified in the underlying data include Sprint, AT&T, T-Mobile and "others."
58. Petition to Deny of Leap Wireless International, Inc., August 11, 2008, p. 16.

88. There is no basis for Leap's assertion. Our prior declaration noted that while "Verizon Wireless historically established separate pricing schedules by geographic area and region," today:

> ... roughly 90 percent of current Verizon Wireless subscribers have service plans based on national pricing and that close to 100 percent of new subscribers are enrolled in national pricing plans. These plans offer customers in all areas the same rate and do not include roaming charges. In addition, Verizon Wireless sets handset pricing and subsidies on a national basis.[59]

Leap and other commenters do not present any data or analysis that is inconsistent with the data we cited.

3. Commenters advocate a variety of remedies that are unrelated to competitive issues raised by the proposed transaction.

89. Commenters ask that the Commission impose a variety of remedies that appear to be wholly unrelated to competitive issues raised by the proposed transaction. These requests are more appropriately made in the context of the Commission's regulatory proceedings, not merger review proceedings.

90. For example, the *Ad Hoc* Public Interest Spectrum Coalition has suggested that the "Commission must mandate the extension of [Verizon Wireless'] Open Development Initiative."[60] The Open Development Initiative, or ODI, is a Verizon Wireless program intended to allow customers to use any device that meets the company's published technical standards and applications of the customer's choice on those devices.[61] As noted in our June 13 declaration, the transaction expands the number

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59. Declaration of Dennis Carlton, Allan Shampine and Hal Sider, June 13, 2008, ¶¶ 37-38.
60. Petition to Dismiss or Deny of the *Ad Hoc* Public Interest Spectrum Coalition, August 11, 2008, p. iv.
61. See http://www.verizonwireless-opendevelopment.com/.

of potential subscribers affected by ODI because ALLTEL has not participated in this effort to date.[62] There is no competition-based rationale for the Commission to mandate extension of ODI.

91. Similarly, the *Ad Hoc* Public Interest Spectrum Coalition argues that that:

> [T]he Commission should clarify that the Internet Policy Statement applies to wireless networks as well as wireline networks; that Verizon may not block or degrade content or applications running over its wireless broadband networks; and that parties may bring complaints in the event a wireless carrier does so.[63]

Again, there is no relationship apparent between the Commission's application of the Internet Policy Statement to wireless networks and the transaction, and the Coalition does not suggest that the transaction would have any effect on the parties' ability or incentives to block or degrade Internet content.

92. Some parties have suggested that the merger be conditioned on a waiver of exclusivity rights to handsets.[64] Again, this issue appears to be wholly unrelated to competitive issues raised by the proposed transaction and Commenters do not present any analysis or data to suggest that the merger affects incentives related to handset exclusivity or that handset exclusivity is anticompetitive.

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62. Carlton, Shampine, Sider Declaration, p. 10
63. Petition to Dismiss or Deny of the *Ad Hoc* Public Interest Spectrum Coalition, August 11, 2008, p. iv.
64. See Centennial Communications Corp. Petition to Deny, August 11, 2008, p. 8; Petition to Deny of the National Telecommunications Cooperative Association, August 11, 2008, p. 8; Comments of the Rural Cellular Association, August 11, 2008, p. 14; Petition to Deny of the Rural Telecommunications Group, Inc., August 11, 2008, p. 28; Petition to Dismiss or Deny of the *Ad Hoc* Public Interest Spectrum Coalition, August 11, 2008, p. 12.

I declare under penalty of perjury that the foregoing is true and correct.

Dennis W. Carlton

Dennis W. Carlton

Executed August 19, 2008

I declare under penalty of perjury that the foregoing is true and correct.

Allan S. Shampine

Executed August 19, 2008

I declare under penalty of perjury that the foregoing is true and correct.

Hal Sider

Hal S. Sider

Executed August 19, 2008

Attachment 2:
CMA-by-CMA Analysis

ATTACHMENT 2: LOCAL MARKET ANALYSIS

In this Exhibit, the applicants have identified all of those counties where the combined attributable spectrum held by the post-transaction company would exceed the Commission's 95 MHz spectrum screen.[1] The applicants discuss below the methodology employed to determine the status of the Broadband Radio Service ("BRS") transition and U.S. Government ("USG") relocation in Advanced Wireless Service ("AWS") bands on a county-by-county basis and the results of that analysis. The applicants then discuss, in further detail, the competitive conditions in each of the markets where the combined spectrum exceeds the relevant screen.

Method of Analysis

In order to determine the counties in which the combined entity would hold spectrum in excess of the FCC's revised screen, the analysis started with the aggregation data provided in Exhibit 4 of the original application, with some minor modifications.[2] The applicants have also reviewed the transition plan notice filings in WT Docket 06-136 and indicated the date the BRS transition was complete or initiated, if applicable. In order to determine the status of the USG relocations for AWS licenses, the applicants downloaded the results of the most recent NTIA reporting on USG activities.[3] The combined data was then filtered to exclude all fixed links that had a timeline to relocation of 0 months or were assignments "deleted" for other reasons. Applicants had no practical means to address classified systems or systems without fixed locations, and consequently those systems were not included in the analysis. Applicants then mapped the locations of all remaining USG fixed systems. If a link had endpoints in a county, or the link itself crossed into the county, the county was considered to be encumbered, even though substantial deployment in the county—either on alternative AWS spectrum blocks or by coordinating deployment around the USG link—could occur. A map showing the links and the county-by-county data is attached hereto. For data on the number of operational carriers and the

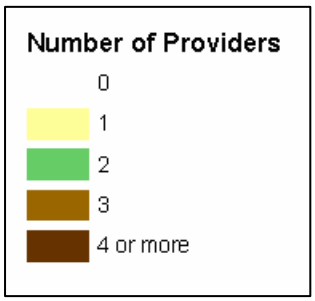

Figure 1: Legend

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[1] Although the 95 MHz spectrum screen does not include AWS-1 or BRS/EBS spectrum, the Commission has considered such spectrum in local market analyses in prior transactions. Accordingly, applicants have discussed AWS-1 and BRS/EBS holdings where applicable.

[2] In reviewing the data provided in Exhibit 4, the applicants have found certain minor errors relating to cellular coverage. The analysis herein utilized the Exhibit 4 data with the corrections noted below. In Butler and Sedgwick counties (FIPS 20015 and 20172), Kansas; and Elbert county (FIPS 08039), Colorado; applicants have determined that ALLTEL's Cellular Geographic Service Area ("CGSA") does include portions of the counties, so ALLTEL should be attributed with 25 MHz in those places. In addition, several new overlap counties should be added based upon further information regarding ALLTEL's CGSA footprint: Mohave, Arizona (FIPS 04015); Monroe, Florida (FIPS 12087); and Rio Arriba and Taos counties (FIPS 35039 and 35055), New Mexico. Supplemental information on Mohave, Arizona and Monroe, Florida has been attached hereto as Supplement A. Applicants have not provided supplemental information on the two New Mexico counties as those counties are being divested.

[3] See http://www.ntia.doc.gov/osmhome/reports/specrelo/data_20080317.htm (downloadable data as of March 3, 2008).

extent of market coverage, Applicants have excerpted maps from the FCC's *12th Annual Competition Report*.[4] The color coding of such maps is shown in the sidebar; the red dots indicate population density, with each dot representing a population of 7,500. The applicants have also provided data based upon their own competitive data regarding the status of certain licensees in the market.[5]

Minneapolis-St. Paul, MN-WI (CMA015)

The combined company would be attributed with 124 MHz of cellular, Personal Communications Service ("PCS"), AWS, and 700 MHz spectrum in the six counties comprising the Minneapolis-St. Paul, MN-WI Cellular Market Area ("CMA") (CMA015). Verizon Wireless holds, or has applied for, a 25 MHz B Block cellular license, a 10 MHz D Block PCS license, a 10 MHz F Block PCS license, a 12 MHz A Block Lower 700 MHz license, a 22 MHz C Block Upper 700 MHz license, and a 20 MHz F Block AWS license. Alltel holds a 25 MHz A Block cellular license.

The BRS/EBS transition was completed on November 6, 2007, for the Minneapolis-St. Paul, MN BTA (BTA298), which encompasses Dakota, Scott, Carver, Wright, Chisago, and St. Croix counties. New Clearwire will own or lease 186 MHz of BRS/EBS spectrum in Dakota and Scott counties, 163.5 MHz in Carver county, 141 MHz in Wright county, 73.5 MHz in Chisago county, and 68 MHz in St. Croix county.

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[4] 12th Annual Competition Report, Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, WT Docket No. 07-71 (Feb. 4, 2008) at 136-52 (Maps B-3 through B-19). The FCC's data is attributed to its own resources, Census Bureau data, and, presumably for coverage, American Roamer data dated as of July 2007. According to CTIA data, over the last 10 year period, carriers have averaged a 21.8% annual increase in the number of cell sites, which would tend to indicate that the coverage data significantly understates the level of build-out in these markets as of the current date. See CTIA, *Background on CTIA's Semi-Annual Wireless Industry Survey (available at* http://files.ctia.org/pdf/CTIA_Survey_Year_End_2006_Graphics.pdf).

[5] The applicants have assumed that, if a competitor's network covers more than 50% of the pops in a county, the carrier is offering service plans in that county. If a competitor's network covers less than 20% of the pops, the Applicants have assumed the carrier is not offering service plans in that county. If the competitor's network covers between 20% and 50% of the pops, carrier may only be offering roaming service so the applicants have verified if carrier is offering service plans in that county by either checking major zipcodes on the carrier's web site or matching store locations to major zipcodes.

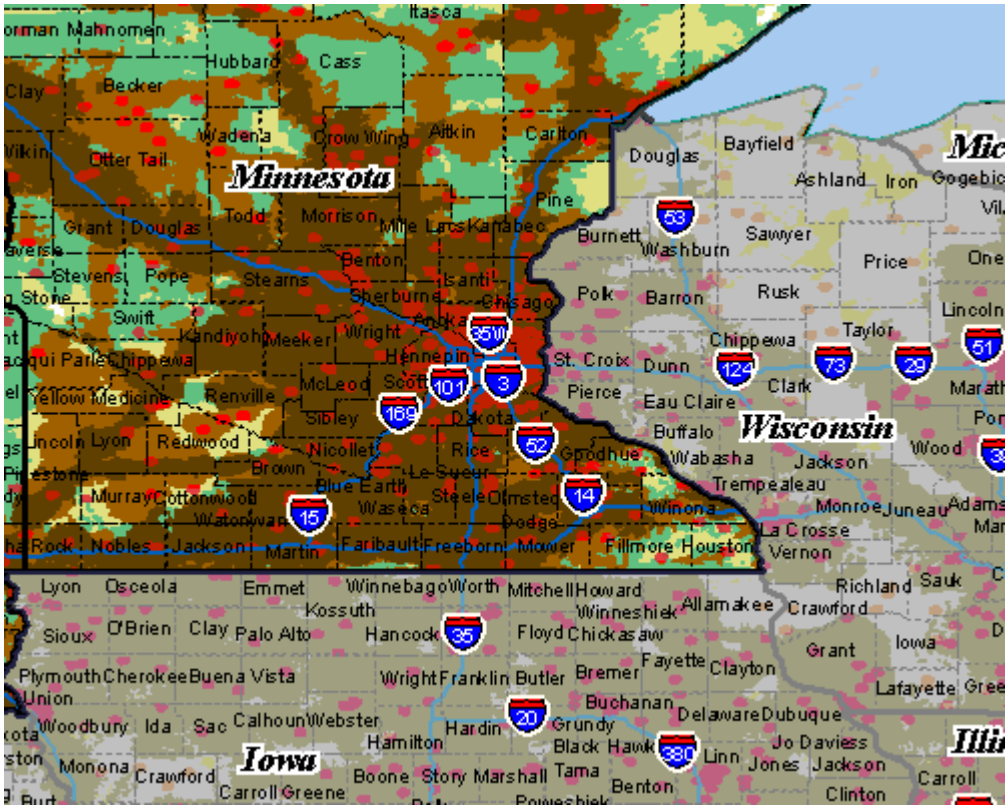

Figure 2: Southern Minnesota Map

As shown in the map above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout most of these areas, which is correlated by applicant's own data showing five operational carriers including Verizon Wireless and ALLTEL. Other national wireless carriers – AT&T, Sprint, and T-Mobile each compete vigorously in this market. In all six counties, AT&T is operational. Throughout the CMA, AT&T holds a 25 MHz A Block cellular license, a 10 MHz C Block PCS license, a 10 MHz PCS E Block license, a 12 MHz B Block Lower 700 MHz license, and a 10 MHz C Block AWS license. In the entire CMA, except Wright county, AT&T also holds a 10 MHz A Block PCS license. Additionally, in Carver, Chisago, and Scott counties, AT&T holds 10 MHz B Block PCS licenses. In all six counties, Sprint is operational and holds 18.5 MHz of ESMR spectrum and the 10 MHz "G Block" license. In the entire CMA, except Wright county, Sprint holds a 20 MHz A Block PCS license; in Wright county, Sprint holds a 30 MHz A Block PCS license. T-Mobile and its affiliates are operational in all relevant counties and hold a 10 MHz C Block PCS license and a 10 MHz E Block AWS license. T-Mobile also holds 30 MHz B Block PCS licenses in Dakota, St. Croix, and Wright counties; it holds 20 MHz licenses in Carver, Chisago, and Scott counties.

In all six counties, other potential entrants include new national or near national carriers with spectrum such as QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum, Frontier Wireless (EchoStar), with 6 MHz of E Block Lower 700 MHz spectrum, and SpectrumCo, with 20 MHz of B Block AWS spectrum. Additionally, in all three counties, Cricket Licensee, a landline replacement competitor that has proven itself successful on a local basis, holds a 20 MHz A Block AWS license and a 10 MHz D Block AWS license; US

Cellular's affiliate Carroll Wireless holds a 10 MHz C Block PCS license, and Redwood Wireless holds a 12 MHz C Block Lower 700 MHz license.

Greensboro-Winston-Salem-High Point, NC (CMA047)

In the six counties comprising the Greensboro-Winston-Salem-High Point, NC CMA (CMA47), the combined companies would be attributed with 124 MHz of cellular, PCS, AWS, and 700 MHz spectrum. Verizon Wireless holds, or has applied for, a 25 MHz A Block cellular license, a 10 MHz C Block PCS license, a 12 MHz B Block Lower 700 MHz license, a 22 MHz C Block Upper 700 MHz license, and a 20 MHz F Block AWS license. Alltel holds a 25 MHz B Block cellular license and a 10 MHz E Block PCS license.

The BRS/EBS transition for the Greensboro-Winston/Salem-High Point, NC BTA (BTA174), which encompasses Davidson, Forsyth, Stokes, Guilford, Randolph, and Yadkin counties, was initiated by Clearwire on January 16, 2007, and must be completed by October, 7, 2008. New Clearwire will own or lease 169.5 MHz of BRS/EBS spectrum in Davidson, Forsyth, and Stokes county, 163.5 MHz in Guilford county, 157.5 MHz in Randolph county, and 73.5 MHz in Yadkin county. No USG encumbrances are known to exist in the relevant counties.

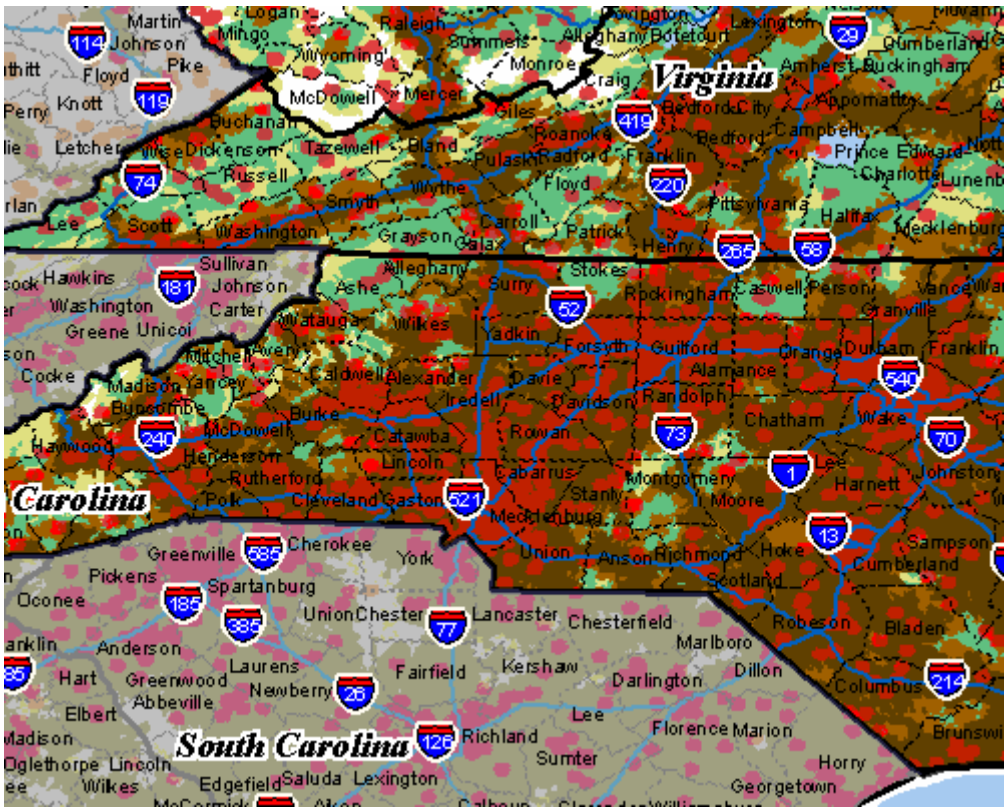

Figure 3: Central North Carolina Map

As shown in the map above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout most of these areas, which correlates with applicant's data that six carriers are operating in the majority of the areas. The combined company will face significant competition in the Greensboro-Winston-Salem-High Point, NC CMA from both

national and regional carriers. AT&T is operational throughout the relevant counties and holds a 30 MHz B Block PCS license, a 12 MHz C Block Lower 700 MHz license, and a 20 MHz A Block AWS license. Sprint is operational throughout the relevant counties and holds 17.75 MHz of ESMR spectrum in every county except Stokes (where it holds 17.5 MHz), a 10 MHz A Block PCS license, a 10 MHz D Block PCS license, and the 10 MHz "G" Block license, and leases 5 MHz of C Block PCS spectrum from its affiliate, Wirefree Partners III, which holds a 10 MHz C Block PCS license. T-Mobile is operational throughout the relevant counties, except Stokes county, and holds 20 MHz of A Block PCS spectrum, 10 MHz of D Block AWS spectrum, and 10 MHz of E Block AWS spectrum. Cricket, a landline replacement competitor that has proven itself successful on a local basis, holds a 10 MHz F Block PCS license and a 10 MHz C Block AWS license, and provides service in every county except Stokes and Yadkin.

Other potential entrants include new national or near national carriers with spectrum such as QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum, Frontier Wireless (EchoStar), with 6 MHz of E Block Lower 700 MHz spectrum, and SpectrumCo, with 20 MHz of B Block AWS spectrum. Additionally, Cavalier Wireless holds a 12 MHz A Block Lower 700 MHz license and US Cellular's affiliate Carroll Wireless holds a 10 MHz C Block PCS license.

Toledo, OH-MI (CMA048)

The combined company will have 117 MHz of cellular, PCS, 700 MHz, and AWS spectrum in Fulton, Lucas, Ottawa, and Wood counties in the Toledo, OH-MI CMA (CMA15). Verizon Wireless holds, or has applied for, a 25 MHz A Block cellular license, a 15 MHz C Block PCS license, a 10 MHz E Block PCS license, a 22 MHz C Block Upper 700 MHz license, and a 20 MHz F Block AWS license. Alltel holds a 25 MHz B Block cellular license.

The BRS/EBS transition was completed on August 31, 2007, for the Toledo, OH BTA (BTA444), which encompasses Lucas, Ottawa, Wood, and Fulton counties. New Clearwire will own or lease 174.5 MHz of BRS/EBS spectrum in Lucas and Ottawa counties, 163.5 MHz in Wood county, and 107 MHz in Fulton county. No USG encumbrances are known to exist in the relevant counties.

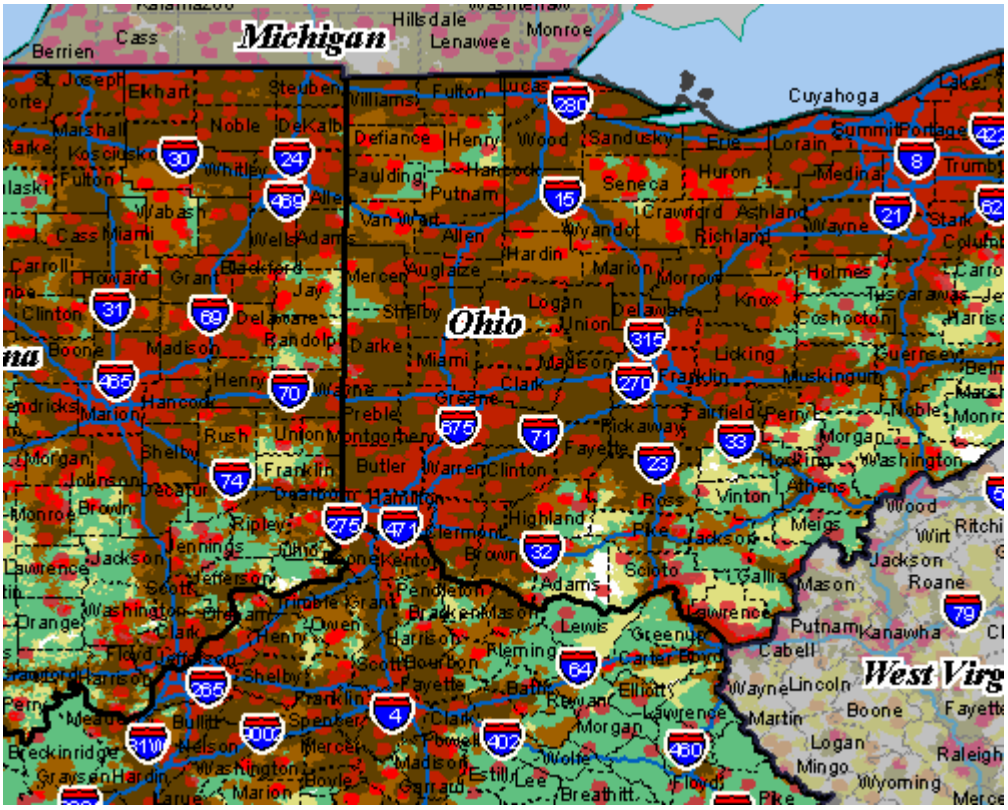

Figure 4: Western Ohio Map

As shown in the map above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout most of these areas, which correlates with applicants' data showing six operational carriers including Verizon Wireless and ALLTEL. The combined company would face significant competition and the prospect of rapid entry by numerous other competitors. AT&T is operational in each of the relevant counties and holds a 30 MHz A Block PCS license, a 12 MHz B Block Lower 700 MHz license, a 12 MHz C Block Lower 700 MHz license, and a 20 MHz A Block AWS license. Sprint holds 17.75 MHz of ESMR spectrum in Lucas and Wood counties, 17.25 in Fulton county, and 16.875 in Ottawa county. Sprint is operational in each of the relevant counties and holds a 30 MHz B Block PCS license and the 10 MHz "G Block" license. T-Mobile is operational in each of the relevant counties and holds a 10 MHz D Block PCS license, a 10 MHz F Block PCS license, and a 10 MHz E Block AWS license. Cleveland Unlimited, a joint venture of Columbia Capital and M/C Venture Partners, holds a 15 MHz C Block PCS license and is operational in each of the relevant counties except Fulton county.

Other potential entrants include new national or near national carriers with spectrum such as QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum, Frontier Wireless (EchoStar), with 6 MHz of E Block Lower 700 MHz spectrum, and SpectrumCo, with 20 MHz of B Block AWS spectrum. Additionally, in all three counties, Cricket, a landline replacement competitor that has proven itself successful on a local basis, holds a 10 MHz D Block AWS license, Cavalier Wireless holds a 12 MHz A Block Lower 700 MHz license, and Atlantic Wireless holds a 10 MHz C Block AWS license.

Charlotte, NC (CMA061)

In the three counties comprising the Charlotte, NC CMA (CMA061), the combined company would have 134 MHz of attributed cellular, PCS, 700 MHz, and AWS spectrum. Verizon Wireless holds, or has applied for, a 25 MHz A Block cellular license, a 10 MHz C Block PCS license, a 12 MHz B Block Lower 700 MHz license, a 22 MHz C Block Upper 700 MHz license, and a 20 MHz F Block AWS license. In addition, Vista License Holdings, L.L.C. holds a 10 MHz C Block PCS license.[6] Alltel Communications holds a 25 MHz B Block cellular license and a 10 MHz E Block PCS license.

The BRS/EBS transition for the Charlotte-Gastonia, NC BTA (BTA074), which encompasses Gaston, Mecklenburg, and Union counties, was initiated January 16, 2007, by Clearwire and must be complete by October 7, 2008. New Clearwire will own or lease 168.5 MHz of BRS/EBS spectrum in Mecklenburg and Union counties and 157.5 MHz in Gaston county. No USG encumbrances are known to exist in the relevant counties.

As shown in *Figure 3* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout most of these areas, which correlates with applicants' data showing six operational carriers including Verizon Wireless and ALLTEL. AT&T and its affiliates are operational in each of the relevant counties and hold a 30 MHz B Block PCS license, a 12 MHz C Block Lower 700 MHz license, and a 20 MHz A Block AWS license. Sprint is operational in each of the relevant counties and holds 17.75 MHz of ESMR spectrum, a 10 MHz A Block PCS license, a 10 MHz D Block PCS license, and the 10 MHz "G Block". T-Mobile and its affiliates are operational in each of the relevant counties hold a 20 MHz A Block PCS license, a 10 MHz D Block AWS license, and a 10 MHz E Block AWS license. Cricket, a landline replacement competitor that has proven itself successful on a local basis, holds a 10 MHz F Block PCS license and a 10 MHz C Block AWS license and operates in each of the relevant counties.

Other potential entrants include new national or near national carriers with spectrum such as QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum, Frontier Wireless (EchoStar), with 6 MHz of E Block Lower 700 MHz spectrum, and SpectrumCo, with 20 MHz of B Block AWS spectrum. Additionally, Cavalier Wireless holds a 12 MHz A Block Lower 700 MHz license, and US Cellular's affiliate Carroll Wireless holds a 10 MHz C Block PCS license.

Grand Rapids, MI (CMA064)

In the two counties comprising the Grand Rapids, Michigan CMA (CMA064), the combined company would have 119 MHz of attributed cellular, PCS, 700 MHz, and AWS spectrum. Cellco Partnership holds a 25 MHz A Block cellular license, a 15 MHz PCS C Block

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[6] Vista is a designated entity in which Verizon Wireless holds an 80 percent equity (but not voting) interest. Verizon Wireless does not control Vista and, absent a contractual relationship, the spectrum held by Vista is not available to Verizon Wireless. Nonetheless, Verizon Wireless has attributed to itself spectrum held by Vista based upon the Commission's prior spectrum cap rule, which attributed any spectrum held by any licensee in which the entity held an equity interest of 20 percent or more, regardless of voting rights or control.

license, a 12 MHz A Block Lower 700 MHz license, a 22 MHz C Block Upper 700 MHz license, and a 20 MHz AWS F Block license. Alltel Communications, LLC, for its part, holds a 25 MHz B Block cellular license.

The BRS/EBS transition was completed August 29, 2007, by Sprint/Nextel for the Grand Rapids, MI BTA (BTA169). The proposed New Clearwire will own or lease 180 MHz of BRS and EBS spectrum. No USG encumbrances are known to exist in the relevant counties.

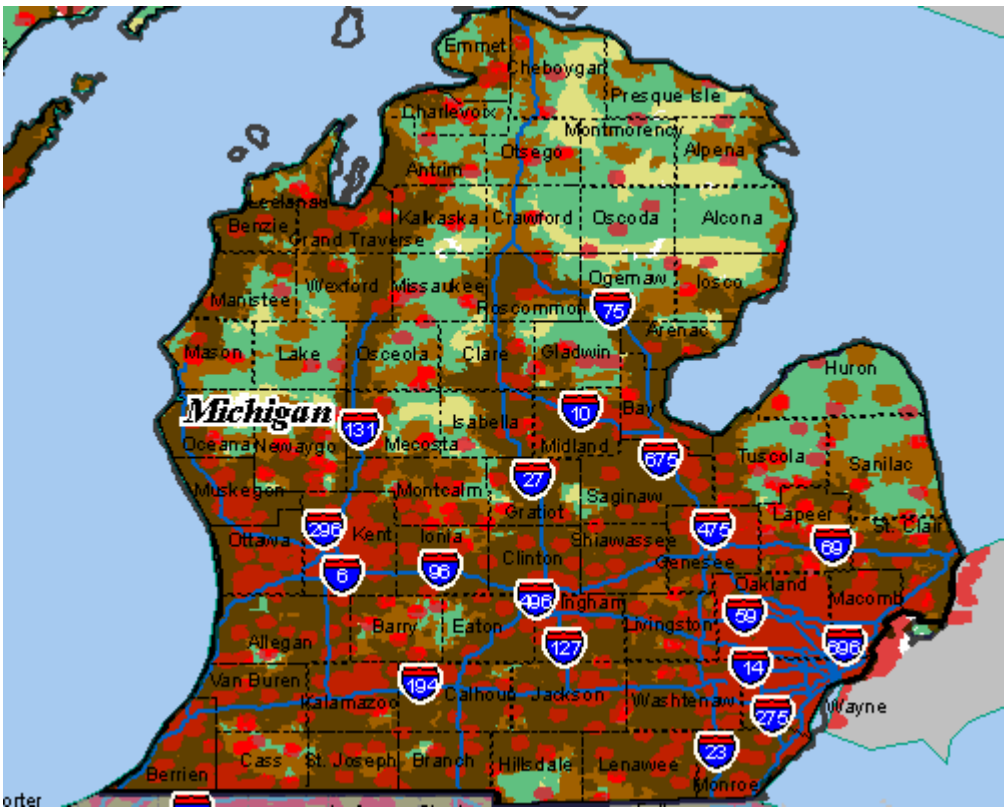


Figure 5: Lower Michigan Map

As shown in the map above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout most of these areas, which correlates with applicants' data showing six operational carriers including Verizon Wireless and ALLTEL. AT&T and its affiliates are operational in each of the relevant counties and hold a 20 MHz PCS A Block license, a 10 MHz PCS D Block license, and a 12 MHz of both B and C Block Lower 700 MHz license. Sprint is operational in each of the relevant counties and holds 18 MHz of ESMR spectrum in Ottawa County and 18.5 MHz of ESMR spectrum in Kent County, a 30 MHz PCS B Block license, and the 10 MHz "G Block." T-Mobile and its affiliates are operational in each of the relevant counties and hold a 15 MHz PCS C Block license, a 10 MHz PCS E Block license, a 10 MHz PCS F Block license, and a 10 MHz AWS E Block license. Finally, Centennial Michiana License Company LLC holds a 10 MHz PCS A Block license and a 20 MHz AWS A Block license, and is operational in each of the relevant counties.

Other potential entrants include new national or near national carriers with spectrum such as QUALCOMM Incorporated, with 6 MHz of D Block Lower 700 MHz spectrum and Frontier Wireless LLC (Echostar), with 6 MHz of E Block Lower 700 MHz spectrum. Additionally, SpectrumCo LLC holds a 20 MHz AWS B Block license. MetroPCS holds a 10 MHz AWS C Block license, and Cricket Communications, through Denali Spectrum License, holds a 10 MHz AWS D Block license.

Raleigh-Durham, NC (CMA071)

The combined company will be attributed with 134 MHz of cellular, PCS, 700 MHz, and AWS spectrum in the three counties comprising the Raleigh-Durham, NC CMA (CMA071). Cellco Partnership holds a 25 MHz A Block cellular license, a 12 MHz Lower 700 MHz B Block license, a 22 MHz Upper 700 MHz C Block license, a 20 MHz C Block PCS license, and a 20 MHz AWS F Block license. Alltel Communications, LLC holds a 25 MHz B Block cellular license and a 10 MHz E Block PCS license.

The BRS/EBS transition was completed on June 10, 2008, by Clearwire for the Raleigh-Durham, NC BTA (BTA368). The proposed New Clearwire would hold 174 MHz of BRS and EBS spectrum in Durham and Wake Counties, as well as 135 MHz of BRS and EBS spectrum in Orange County. No USG encumbrances are known to exist in the relevant counties.

As shown in *Figure 3* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout most of these areas, which correlates with applicants' data showing six operational carriers including Verizon Wireless and ALLTEL. AT&T is operational in each of the relevant counties and holds a 12 MHz Lower 700 MHz C Block license, a 30 MHz B Block PCS license, and a 20 MHz AWS A Block license. Sprint is operational in each of the relevant counties and holds 17.75 MHz of ESMR spectrum, a 10 MHz A Block PCS license, a 10 MHz D Block PCS license, and the 10 MHz "G Block" license. T-Mobile is operational in each of the relevant counties and holds a 20 MHz A Block PCS license and 20 MHz of AWS spectrum in the D and D Blocks. Leap Wireless holds a 10 MHz C Block PCS license and a 10 MHz AWS C Block license and is operational each of the relevant counties.

Potential new entrants include QUALCOMM Incorporated, which holds 6 MHz of Lower 700 MHz D Block spectrum, Frontier Wireless, LLC, which holds 6 MHz of Lower 700 MHz E Block spectrum, US Cellular's affiliate King Street Wireless, L.P., which holds 12 MHz of Lower 700 MHz D Block spectrum, and Comscape Telecommunications of Raleigh-Durham License, Inc., which holds the 10 MHz PCS F Block license. SpectrumCo LLC also holds a 20 MHz AWS B Block license.

Columbia, SC (CMA095)

In the two counties comprising the Columbia, SC CMA (CMA95), the combined companies would be attributed with 122 MHz of cellular, PCS, AWS, and 700 MHz spectrum. Verizon Wireless holds, or has applied for, a 25 MHz A Block cellular license, a 10 MHz C Block PCS license, a 10 MHz F Block PCS license, a 22 MHz C Block Upper 700 MHz license,

and a 20 MHz F Block AWS license. Alltel holds a 25 MHz B Block cellular license and a 10 MHz E Block PCS license.

The BRS/EBS transition for the Columbia, SC BTA (BTA091), which encompasses Lexington and Richland counties, was initiated March 19, 2007, by Clearwire and must be completed by December 8, 2008. New Clearwire will own or lease 28.5 MHz of BRS/EBS spectrum. No USG encumbrances are known to exist in the relevant counties.

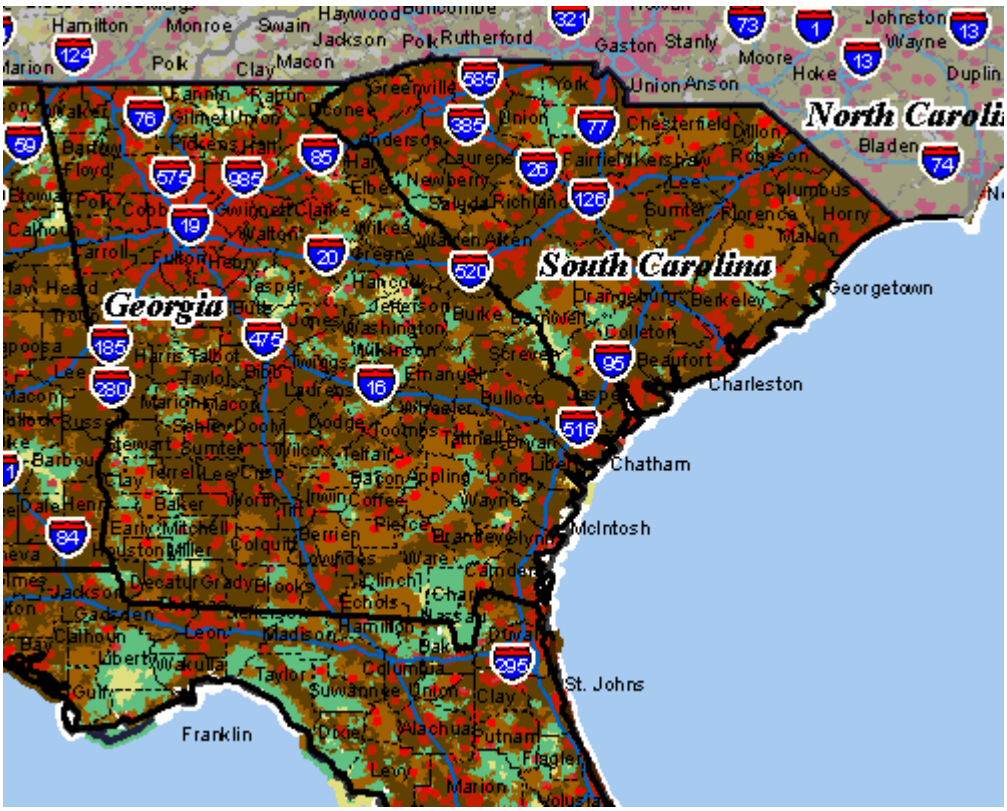


Figure 6: Georgia/South Carolina Map

As shown in the map above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout most of these areas, which correlates with applicants' data showing five operational carriers including Verizon Wireless and ALLTEL. AT&T is operational in each of the relevant counties and holds a 30 MHz B Block PCS license, a 10 MHz A Block PCS license, a 12 MHz B Block Lower 700 MHz license, and a 12 MHz C Block Lower 700 MHz license. Sprint is operational in each of the relevant counties and holds 17.75 MHz of ESMR spectrum in Richland county and 17.5 MHz of ESMR spectrum in Lexington, and in both counties holds a 10 MHz D Block PCS license and the 10 MHz "G Block" license. T-Mobile is operational in each of the relevant counties and holds 20 MHz of A Block PCS spectrum, 20 MHz of C Block PCS spectrum, 10 MHz of D Block AWS spectrum, and 10 MHz of E Block AWS spectrum.

Potential entrants include new national or near national carriers with spectrum such as QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum, Frontier Wireless (Echostar),

with 6 MHz of E Block Lower 700 MHz spectrum, and SpectrumCo, with 20 MHz of B Block AWS spectrum. Cricket, a landline replacement competitor that has proven itself successful on a local basis, holds a 20 MHz A Block AWS license. Additionally, AWS Wireless (NextWave) holds a 10 MHz C Block AWS license, and Cavalier Wireless holds a 12 MHz A Block Lower 700 MHz license.

Fayetteville, NC (CMA149)

The combined company will be attributed with 132 MHz of cellular, PCS, AWS, and 700 MHz spectrum in the Fayetteville, NC CMA (CMA149). Verizon Wireless and its affiliates hold, or have applied for, a 25 MHz A Block cellular license, 30 MHz of C Block PCS spectrum, 20 MHz of F Block AWS spectrum and the 22 MHz C Block Upper 700 MHz license. Alltel holds a 25 MHz B Block cellular license and a 10 MHz E Block PCS license.

The BRS/EBS transition for the Fayetteville-Lumberton, NC BTA (BTA141), which encompasses Cumberland county, was initiated January 16, 2007, by Clearwire and must be complete by October 7, 2008. New Clearwire will own or lease 162 MHz of BRS/EBS spectrum in Cumberland county. No USG encumbrances are known to exist in the relevant county.

As shown in *Figure 3* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout most of these areas, which correlates with applicants' data showing five operational carriers including Verizon Wireless and ALLTEL. AT&T is operational in the relevant county and holds the 30 MHz B Block PCS license, 12 MHz of C Block Lower 700 MHz spectrum, and the 20 MHz B Block AWS license. Sprint is operational in the relevant county and holds 17.75 MHz of ESMR spectrum, a 10 MHz A Block PCS license, the 10 MHz D Block PCS license, and the 10 MHz "G Block" license. T-Mobile is operational in the relevant county and holds 20 MHz of A Block PCS spectrum, 10 MHz of F Block PCS spectrum, 20 MHz of A Block AWS spectrum, 10 MHz of D Block AWS spectrum, and 10 MHz of E Block AWS spectrum.

Potential new entrants include QUALCOMM, which holds 6 MHz of D Block Lower 700 spectrum, Frontier Wireless, which holds 6 MHz of E Block Lower 700 MHz spectrum, AWS Spectrum, LLC, which holds 12 MHz of A Block Lower 700 MHz spectrum, AWS Wireless, which holds 10 MHz of C Block AWS spectrum, and US Cellular's affiliate King Street Wireless, which holds 12 MHz of B Block Lower 700 MHz spectrum.

Columbus, GA-AL (CMA153)

In the three counties comprising the Columbus, GA-AL CMA (CMA153), the combined companies would be attributed with 124 MHz of cellular, PCS, 700 MHz, and AWS spectrum. Verizon Wireless holds, or has applied for, a 25 MHz A Block cellular license, a 10 MHz A Block PCS license, a 12 MHz B Block Lower 700 MHz license, a 22 MHz C Block Upper 700 MHz license, and a 20 MHz F Block AWS license. Alltel holds a 25 MHz B Block cellular license and a 10 MHz F Block PCS license.

The BRS transition for Columbus, GA BTA (BTA092) was initiated on March 3, 2008, by Clearwire and must be complete by January 3, 2010. New Clearwire will own or lease 163.5

MHz of BRS/EBS spectrum in Russell and Chattahoochee counties and 158 MHz in Muscogee county.

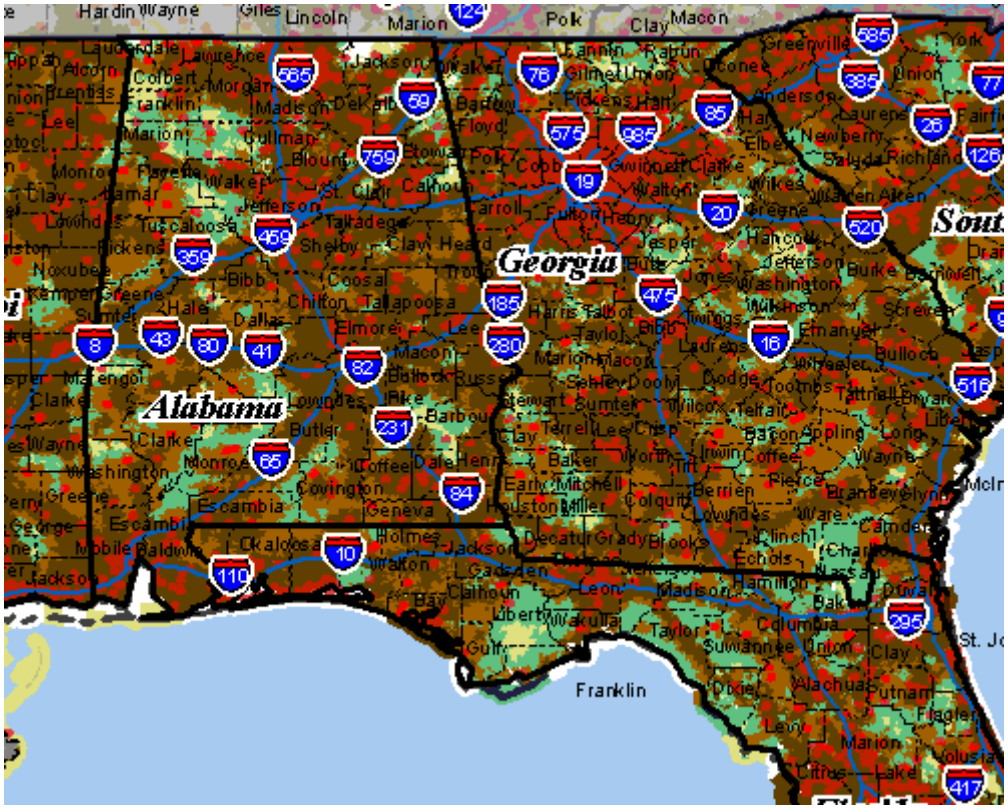


Figure 7: Alabama/Georgia Map

As shown in the map above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout most of these areas, which correlates with applicants' data showing six operational carriers including Verizon Wireless and ALLTEL, with as many as seven in Muscogee county. AT&T is operational in each of the relevant counties and holds a 20 MHz A Block PCS license, a 15 MHz C Block PCS license, and a 10 MHz E Block PCS license. Sprint is operational in each of the relevant counties and holds 18.25 MHz of ESMR spectrum, a 10 MHz D Block PCS license, and the 10 MHz "G Block" license. T-Mobile is operational in each of the relevant counties and holds 30 MHz of D Block PCS spectrum, 10 MHz of D Block AWS spectrum, and 10 MHz of E Block AWS spectrum. Cricket, a landline replacement competitor that has proven itself successful on a local basis, holds a 15 MHz C Block PCS license and a 10 MHz C Block AWS license and is operational in Muscogee county. Additionally, SouthernLinc holds 800 MHz ESMR spectrum and operates in each of the relevant counties.

New national or near national carriers with spectrum include QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum and Frontier Wireless (Echostar), with 6 MHz of E Block Lower 700 MHz spectrum. Additionally, Cellular South Licenses holds a 12 MHz A Block Lower 700 MHz license and a 20 MHz B Block AWS license, Public Service Wireless Services

holds a 12 MH C Block Lower 700 MHz license and a 20 MHz A Block AWS license, and Phillieco leases 5 MHz of C Block PCS spectrum.

Lubbock, TX (CMA161)

In the single county comprising the Lubbock, TX CMA (CMA161), the combined companies would be attributed with 104 MHz of cellular, PCS, and 700 MHz spectrum. Verizon Wireless and its affiliates hold, or have applied for, a 30 MHz A Block PCS license, a 12 MHz B Block Lower 700 MHz license, and a 22 MHz C Block Upper 700 MHz license. Alltel holds a 25 MHz A Block cellular license, a 10 MHz D Block PCS license, and a 5 MHz E Block PCS license in portions of the county.

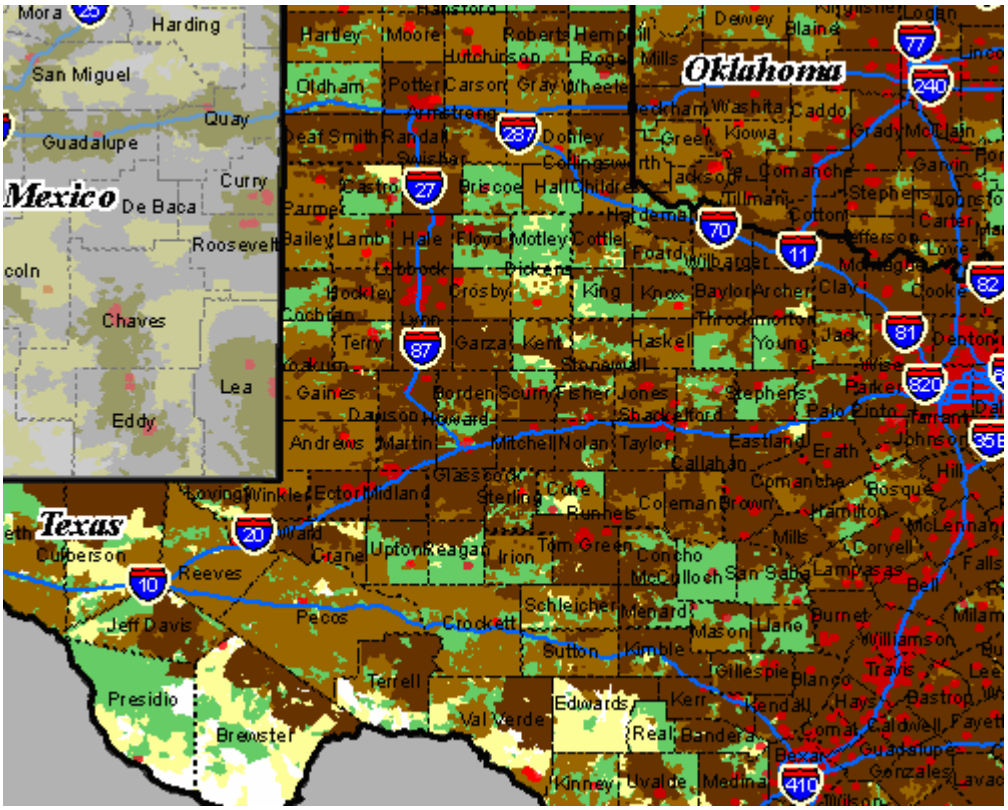


Figure 8: Western Texas Map

The BRS/EBS transition for the Lubbock, TX BTA (BTA264) was initiated May 22, 2007, by Clearwire and must be complete by February 10, 2009. New Clearwire will own or lease 118.5 MHz of BRS/EBS spectrum in the county. No USG encumbrances are known to exist in the relevant counties.

As shown in the map above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout the area, which correlates with applicants' data showing four operational carriers including ALLTEL. Notably, Verizon Wireless does not operate in Polk county. Because Verizon Wireless does not operate, there can be no reduction in facilities-based competition. Verizon Wireless will face experienced, well financed wireless operators with substantial spectrum holdings capable of absorbing significant capacity. AT&T and its affiliates

are operational and hold a 25 MHz B Block cellular license, 30 MHz of C Block PCS spectrum, a 10 MHz F Block PCS license, and a 10 MHz D Block AWS license. Sprint is operational and holds 18 MHz of ESMR spectrum, a 30 MHz B Block PCS license, and the 10 MHz "G Block" license. T-Mobile is operational and holds 10 MHz of E Block PCS spectrum and 20 MHz of E Block AWS spectrum.

New national or near national carriers with spectrum include QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum and Frontier Wireless (EchoStar), with 6 MHz of E Block Lower 700 MHz spectrum. Cricket, a landline replacement competitor that has proven itself successful on a local basis, holds a 10 MHz E Block AWS license. Additionally, AWS Wireless (NextWave) holds a 10 MHz C Block AWS license, Flat Wireless holds a 20 MHz A Block AWS license, Stelera Wireless holds a 20 MHz B Block AWS license, and XIT Telecommunication & Technology LTD holds a 12 MHz C Block Lower 700 MHz license.

Muskegon, MI (CMA181)

The combined company will be attributed with 119 MHz of cellular, PCS, 700 MHz, and AWS spectrum in Muskegon County, MI and Oceana County, MI. Verizon Wireless, along with its affiliates and subsidiaries, hold a 25 MHz A Block cellular license, a 12 MHz Lower 700 MHz A Block license, a 22 MHz Upper 700 MHz C Block license, 15 MHz of C Block PCS spectrum, and a 20 MHz AWS F Block license. Alltel Communications, for its part, holds a 25 MHz B Block cellular license.

The BRS/EBS transition was completed on August 29, 2007, by Clearwire for the Muskegon, MI BTA (BTA310). The proposed New Clearwire would hold 96 MHz of BRS and EBS spectrum in both Muskegon and Oceana counties.

As shown in *Figure 5* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout most of these areas, which correlates with applicants' data showing four operational carriers including Verizon Wireless and ALLTEL, and five carriers in Muskegon county. AT&T is operational in both of the relevant counties and holds the 12 MHz Lower 700 MHz C Block, 20 MHz of A Block PCS spectrum, 15 MHz of C Block PCS spectrum, the 10 MHz E Block PCS license, the 10 MHz F Block PCS license and 20 MHz AWS A Block license. Sprint is operational in both of the relevant counties and holds 18.5 MHz of ESMR spectrum, a 30 MHz B Block PCS license, and the 10 MHz "G Block" license. Centennial Communications is operational in Muskegon county and holds 10 MHz of A Block PCS spectrum.

T-Mobile holds a 10 MHz AWS E Block license, while MetroPCS holds a 10 MHz AWS C Block license. Other potential new entrants include QUALCOMM Incorporated, which holds 6 MHz of Lower 700 MHz D Block spectrum, Frontier Wireless, LLC, which holds 6 MHz of Lower 700 MHz E Block spectrum, Agri-Valley Communications, which holds 12 MHz of Lower 700 MHz B Block spectrum, and Cricket Communications, which holds 10 MHz of D Block PCS spectrum and a 10 MHz AWS D Block license through Denali Spectrum License. SpectrumCo, LLC holds a 20 MHz AWS B Block license.

Amarillo, TX (CMA188)

The combined company will hold 114 MHz of cellular, PCS, and 700 MHz spectrum in the Amarillo, TX CMA (CMA188). Cellco Partnership holds a 12 MHz Lower 700 MHz B Block license, a 22 MHz Upper 700 MHz C Block license, and a 30 MHz A Block PCS license. Alltel Communications, through its subsidiaries, holds a 25 MHz A Block cellular license, a 10 MHz E Block PCS license, a 10 MHz F Block PCS license, and 5 MHz of D Block PCS spectrum in undefined areas of the two counties.

The BRS/EBS transition was completed on March 18, 2008, by Sprint for the Amarillo, TX BTA (BTA013). The proposed New Clearwire would hold 118.5 MHz of BRS and EBS spectrum in both counties. No USG encumbrances are known to exist in the relevant counties.

As shown in *Figure 8* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout the area, which correlates with applicants' data showing four operational carriers including ALLTEL. Notably, Verizon Wireless does not operate in Potter and Randall county. Because Verizon Wireless does not operate, there can be no reduction in facilities-based competition. AT&T is operational and holds a 25 MHz B Block cellular license and a 30 MHz C Block PCS license. AT&T also holds 30 MHz of AWS spectrum in the B and D Blocks. Sprint is operational and holds 18 MHz of ESMR spectrum, 30 MHz of B Block PCS spectrum, and the 10 MHz "G Block" PCS license. T-Mobile is operational and holds 10 MHz of D Block PCS spectrum and 20 MHz of AWS F Block spectrum.

Leap Wireless holds a 10 MHz AWS E Block license, and Flat Wireless, LLC holds 20 MHz of AWS A Block spectrum. Potential new entrants include XIT Telecommunications, Ltd., which holds 12 MHz of Lower 700 MHz C Block spectrum, QUALCOMM Incorporated, which holds 6 MHz of Lower 700 MHz D Block spectrum, and Frontier Wireless, LLC, which holds a 6 MHz Lower 700 MHz E Block license. Finally, David Miller holds 12 MHz of Lower 700 MHz A Block spectrum, and Nextwave holds 10 MHz of AWS C Block spectrum.

Waco, TX (CMA194)

In the single county comprising the Waco, TX CMA (CMA194), the combined companies would be attributed with 101 MHz of cellular, PCS, and 700 MHz spectrum. Verizon Wireless and its affiliates hold, or have applied for, a 30 MHz A Block PCS license, a 12 MHz A Block Lower 700 MHz license, a 12 MHz B Block Lower 700 MHz license, and a 22 MHz C Block Upper 700 MHz license. Alltel holds a 25 MHz B Block cellular license.

The BRS/EBS transition for the Waco, TX BTA (BTA 459), which encompasses McLennan county, was initiated by Sprint/Nextel on February 12, 2007, and must be complete by November 3, 2008. New Clearwire will own or lease 118.5 MHz of BRS/EBS spectrum. No USG encumbrances are known to exist in the relevant counties.

As shown in *Figure 8* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout the area, which correlates with applicants' data

showing five operational carriers including Verizon Wireless and ALLTEL. The combined company faces significant competition throughout the entire Waco, TX CMA. AT&T is operational and holds a 25 MHz A Block cellular license, 10 MHz of D Block PCS spectrum, a 10 MHz E Block PCS license, a 12 MHz C Block Lower 700 MHz license, and a 10 MHz D Block AWS license. Sprint is operational and holds 18 MHz of ESMR spectrum, a 30 MHz B Block PCS license, and the 10 MHz "G Block" license. T-Mobile is operational and holds a 30 MHz C Block PCS license, a 10 MHz F Block PCS license, and 20 MHz of F Block AWS spectrum.

New national or near national carriers with spectrum include QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum, Frontier Wireless (EchoStar), with 6 MHz of E Block Lower 700 MHz spectrum, and SpectrumCo, with 20 MHz of B Block AWS spectrum. MetroPCS and Cricket, landline replacement competitors that have proven themselves successful on a local basis, hold a 10 MHz C Block AWS license and a 10 MHz E Block AWS license, respectively. Additionally, AWS Wireless (NextWave) holds a 20 MHz A Block AWS license.

Longview-Marshall, TX (CMA206)

In the Longview-Marshall, TX CMA (CMA206), the combined company would have 101 MHz of cellular, PCS, and 700 MHz spectrum. Cellco Partnership holds a 12 MHz Lower 700 MHz A Block license, a 12 MHz Lower 700 MHz B Block license, a 22 MHz Upper 700 MHz C Block license, and a 30 MHz A Block PCS license. Alltel Communications, through Tyler/Longview/Marshall MSA Limited Partnership, holds a 25 MHz B Block cellular license.

The BRS/EBS transition was completed on May 30, 2008, by Clearwire for the Longview-Marshall, TX BTA (BTA260). The proposed New Clearwire would hold 73.5 MHz of BRS and EBS spectrum in Gregg County and 163.5 MHz in Harrison County. No USG encumbrances are known to exist in the relevant counties.

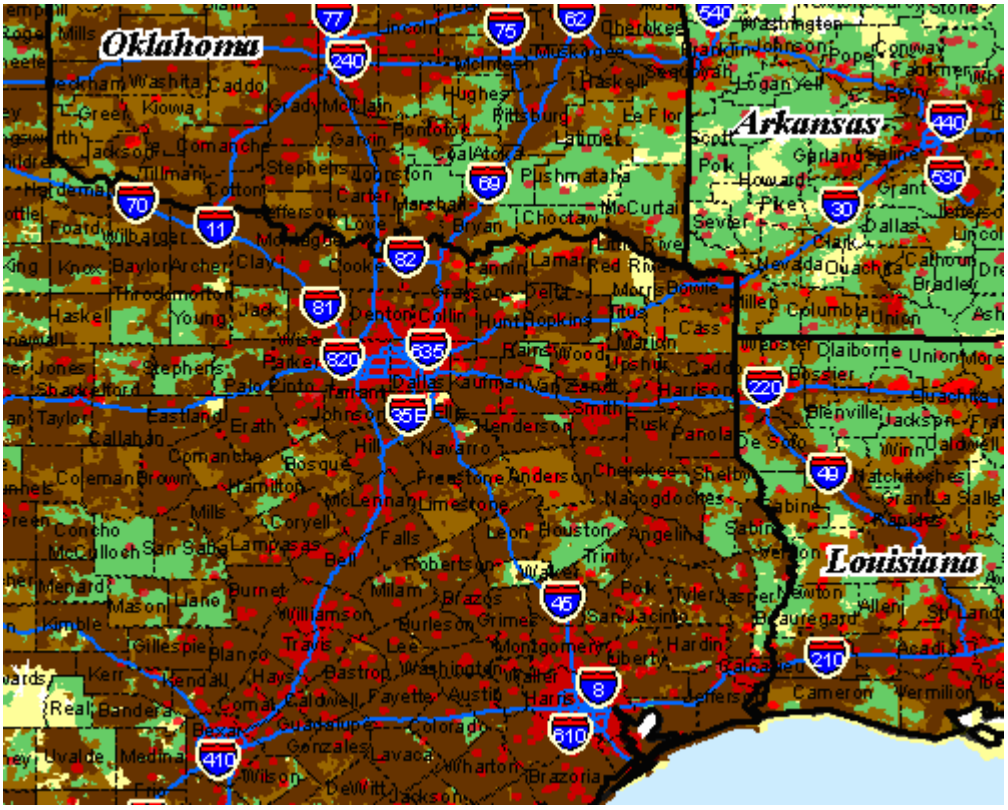


Figure 9: Eastern Texas Map

As shown in the map above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout the area, which correlates with applicants' data showing five operational carriers including Verizon Wireless and ALLTEL. AT&T is operational and holds a 25 MHz A Block cellular license, a 10 MHz D Block PCS license, a 10 MHz E Block PCS license, and a 10 MHz F Block PCS license. AT&T also holds 10 MHz of AWS D Block spectrum. Sprint is operational and holds 18 MHz of ESMR spectrum, a 30 MHz B Block PCS license, and the 10 MHz PCS "G Block" license. T-Mobile is operational and holds a 30 MHz C Block PCS license.

Leap Wireless holds 10 MHz of AWS E Block spectrum, while MetroPCS holds 10 MHz of AWS C Block spectrum. Potential new entrants include Peoples Telephone Cooperative, which holds a 12 MHz Lower 700 MHz C Block license, QUALCOMM Incorporated, which holds a 6 MHz Lower 700 MHz D Block license, and Frontier Wireless LLC, which holds a 6 MHz Lower 700 MHz E Block license. Nextwave and SpectrumCo LLC each hold 20 MHz of AWS spectrum in the A and B Blocks respectively.

Anderson, SC (CMA227)

In the single county comprising the Anderson, SC CMA (CMA227), the combined company would be attributed with 122 MHz of cellular, PCS, 700 MHz, and AWS spectrum. Verizon Wireless and its affiliates hold, or have applied for, a 25 MHz A Block cellular license, a 10 MHz C Block PCS license, a 22 MHz C Block Upper 700 MHz license, and a 20 MHz F

Block AWS license. Alltel holds a 25 MHz B Block cellular license, a 10 MHz E Block PCS license, and a 10 MHz F Block PCS license.

No USG encumbrances are known to exist in the relevant counties.

As shown in *Figure 6* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout the area, which correlates with applicants' data showing five operational carriers including Verizon Wireless and ALLTEL. Verizon Wireless will face tough competition from AT&T, Sprint, and T-Mobile – each of which operate in the Anderson, SC CMA. AT&T holds a 30 MHz B Block PCS license, a 10 MHz A Block PCS license, and a 12 MHz C Block Lower 700 MHz license. Sprint holds 17.75 MHz of ESMR spectrum, a 10 MHz D Block PCS license, and the 10 MHz "G Block" license. T-Mobile holds a 20 MHz A Block PCS license, 20 MHz of C Block PCS spectrum, a 10 MHz D Block AWS license, and a 10 MHz E Block AWS license.

New national or near national carriers with spectrum include QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum and Frontier Wireless (EchoStar), with 6 MHz of E Block Lower 700 MHz spectrum. Cricket, a landline replacement competitor that has proven itself successful on a local basis, holds a 20 MHz B Block AWS license, AWS Wireless (NextWave) holds a 10 MHz C Block AWS license, Cavalier Wireless holds a 12 MHz A Block Lower 700 MHz license, West Carolina Communications holds a 12 MHz B Block Lower 700 MHz license and a 10 MHz A Block AWS license, and Piedmont Rural Telephone Cooperative holds a 10 MHz A Block AWS license.

Tyler, TX (CMA237)

The combined company will hold 101 MHz of cellular, PCS, and 700 MHz spectrum in the Tyler, TX CMA (CMA237). Cellco Partnership holds a 12 MHz Lower 700 MHz A Block license, a 12 MHz Lower 700 MHz B Block license, a 22 MHz Upper 700 MHz C Block license, and a 30 MHz A Block PCS license. Alltel Communications, through Tyler/Longview/Marshall MSA Limited Partnership, holds a 25 MHz B Block cellular license.

The BRS/EBS transition was completed on November 15, 2007, by Sprint for the Tyler, TX BTA (BTA452). The proposed New Clearwire would hold 34.5 MHz of BRS and EBS spectrum in Smith County. No USG encumbrances are known to exist in the relevant counties.

As shown in *Figure 9* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout the area, which correlates with applicants' data showing five operational carriers including Verizon Wireless and ALLTEL. AT&T is operational and holds a 25 MHz A Block cellular license, a 10 MHz D Block PCS license, a 10 MHz E Block PCS license, a 10 MHz F Block PCS license, and a 10 MHz AWS D Block license. Sprint is operational and holds 18 MHz of ESMR spectrum, a 30 MHz B Block PCS license, and the 10 MHz PCS "G Block" license. T-Mobile is operational and holds a 30 MHz C Block PCS license and a 20 MHz AWS F Block license.

Potential new entrants include Peoples Telephone Cooperative, which holds a 12 MHz Lower 700 MHz C Block license, QUALCOMM Incorporated, which holds a 6 MHz Lower 700 MHz D Block license, and Frontier Wireless LLC, which holds a 6 MHz Lower 700 MHz E Block license. Leap Wireless and MetroPCS each hold 10 MHz of AWS spectrum in the E and C Blocks, respectively. Nextwave holds a 20 MHz AWS A Block license and SpectrumCo LLC holds a 20 MHz AWS B Block license.

Texarkana, TX - Texarkana, AR (CMA240)

In the three counties comprising the Texarkana, TX - Texarkana, AR CMA (CMA 240), the combined companies would be attributed with 111 MHz of cellular, PCS, and 700 MHz spectrum. Verizon Wireless and its affiliates hold, or have applied for, a 30 MHz A Block PCS license, a 12 MHz A Block Lower 700 MHz license, a 12 MHz B Block Lower 700 MHz license, and a 22 MHz C Block Upper 700 MHz license. Alltel holds a 25 MHz B Block cellular license and a 10 MHz D Block PCS license.

The BRS/EBS transition was completed by Clearwire on July 17, 2008, for the Texarkana, TX-AR BTA (BTA443), which encompasses Little River, Miller, and Bowie counties. New Clearwire will own or lease 73.5 MHz of BRS/EBS spectrum in the relevant counties. No USG encumbrances are known to exist in the relevant counties.

As shown in *Figure 9* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least three carriers are operational throughout the most of the area, with at least four carriers in significant parts of Bowie. Applicants' data indicates there are four operational carriers in Miller and Bowie counties, and three in Little River county, including ALLTEL. Notably, Verizon Wireless does not operate in Little River, Miller, or Bowie counties. Because Verizon Wireless does not operate in these counties, there can be no reduction in facilities-based competition. AT&T is operational and holds a 25 MHz A Block cellular license, a 10 MHz E Block PCS license, a 10 MHz F Block PCS license, and a 10 MHz D Block AWS license. Sprint is operational and holds 18 MHz of ESMR spectrum, a 30 MHz B Block PCS license, and the 10 MHz "G Block" license. T-Mobile is operational in Miller and Bowie counties, and holds a 30 MHz C Block PCS license and 20 MHz of F Block AWS spectrum.

New national or near national carriers with spectrum include QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum, Frontier Wireless (Echostar), with 6 MHz of E Block Lower 700 MHz spectrum, and SpectrumCo, with 20 MHz of B Block AWS spectrum. MetroPCS and Cricket, landline replacement competitors that have proven themselves successful on a local basis, hold a 10 MHz C Block AWS license and a 10 MHz E Block AWS license, respectively. Cable One holds a 20 MHz A Block AWS license, and Peoples Telephone Cooperative holds a 12 MHz C Block Lower 700 MHz license.

Pueblo, CO (CMA241)

The combined company will hold 104 MHz of cellular, PCS, and 700 MHz spectrum in the Pueblo, CO CMA (CMA241). Verizon Wireless and its affiliates hold a 25 MHz B Block cellular license, a 12 MHz Lower 700 MHz B Block license, a 22 MHz Upper 700 MHz C Block

license, and a 10 MHz E Block PCS license. Alltel Communications, through WWC Holding Company, holds a 25 MHZ A Block cellular license and 10 MHz of B Block PCS spectrum in an undefined area of Pueblo County.

The BRS/EBS transition was completed on December 7, 2007, by Sprint for the Pueblo, CO BTA (BTA366). The proposed New Clearwire would operate on 141 MHz of BRS and EBS spectrum.

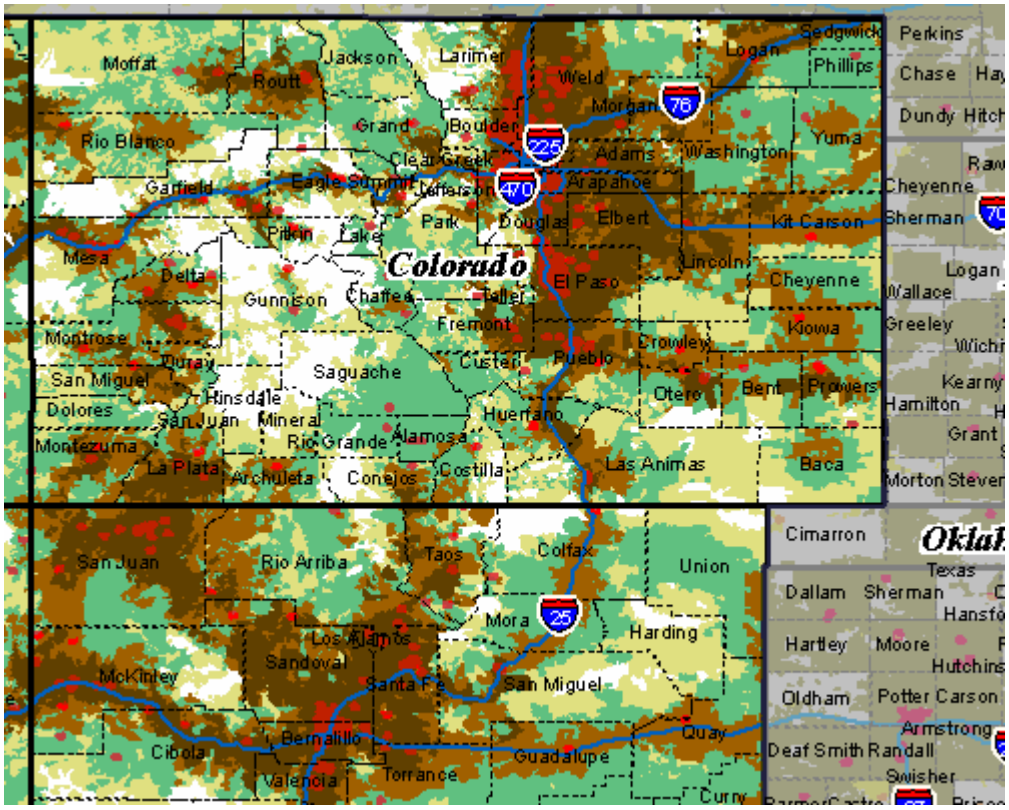


Figure 10: Colorado Map

As shown in the map above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout significant parts of the area, which correlates with applicants' data showing six operational carriers including Verizon Wireless and ALLTEL. The combined company will face significant competition from other national and regional carriers. AT&T is operational and holds a 10 MHz D Block PCS license and a 10 MHz AWS D Block license. Sprint is operational and holds 16.5 MHz of ESMR spectrum, a 30 MHz A Block PCS license, and the 10 MHz PCS "G Block" license. T-Mobile is operational and holds 30 MHz of B Block PCS spectrum and a 20 MHz AWS F Block license. Leap Wireless is operational and holds 20 MHz of C Block PCS spectrum and a 10 MHz AWS E Block license.

Other operators in the Pueblo, CO CMA include Commnet Four Corners, which holds 10 MHz of C Block PCS spectrum and Poplar PCS – Pueblo, which holds a 10 MHz PCS F Block license. Potential new entrants include CenturyTel Broadband Wireless, which holds a 12 MHz Lower 700 MHz A Block license, Beulahland Communications, which holds 12 MHz of Lower

700 MHz C Block spectrum, QUALCOMM Incorporated, which holds a 6 MHz Lower 700 MHz D Block license, and Frontier Wireless, which holds a 12 MHz Lower 700 MHz E Block license. Stelera Wireless and SpectrumCo LLC each hold 20 MHz of AWS spectrum in the A and B Blocks respectively, while Command Connect, LLC holds a 10 MHz AWS C Block license.

Ocala, FL (CMA245)

The combined company will hold 119 MHz of cellular, PCS, 700 MHz, and AWS spectrum in the Ocala, FL CMA (CMA245). Verizon Wireless and its affiliates hold a 12 MHz Lower 700 MHz A Block license, a 22 MHz Upper 700 MHz C Block license, a 30 MHz B Block PCS license, and a 10 MHz F Block PCS license. Cellco Partnership also holds a 20 MHz AWS F Block license. Alltel Communications, for its part, holds a 25 MHz B Block cellular license.

The BRS/EBS transition was completed on December 31, 2007, by Sprint for the Ocala, FL BTA (BTA326). The proposed New Clearwire would hold 130 MHz of BRS and EBS spectrum.

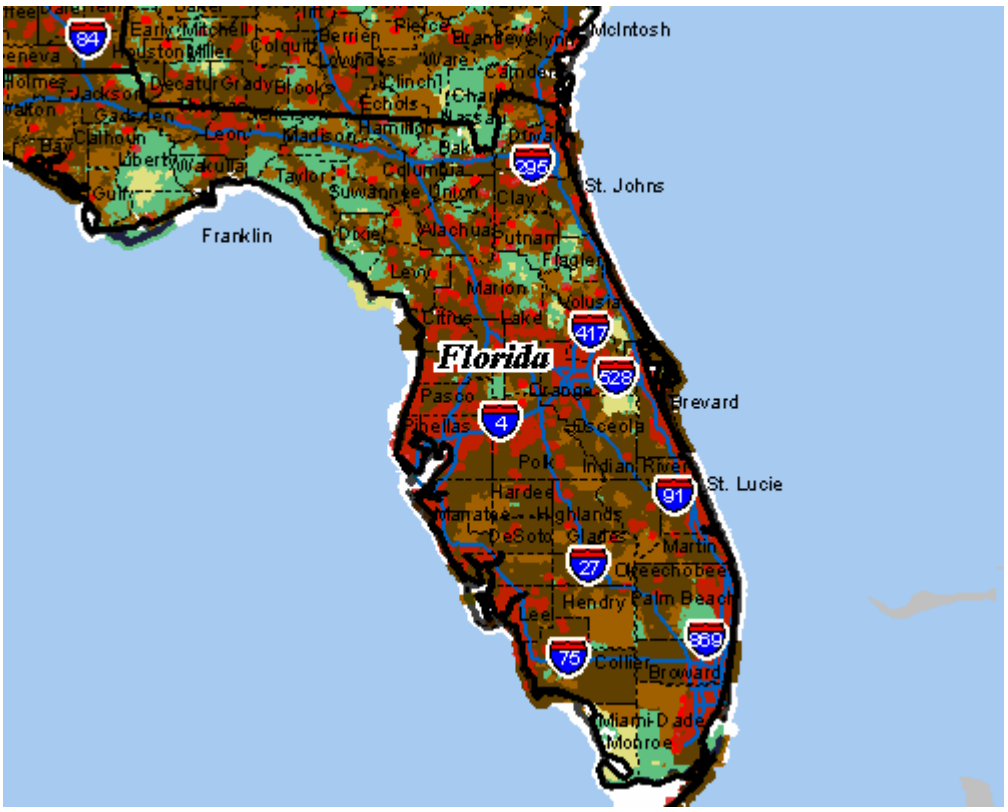


Figure 11: Florida Map

As shown in the map above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational in parts of county, with at least three throughout most of the county. Applicants' data shows five operational carriers including Verizon Wireless and ALLTEL. Other national and regional carriers will continue to be strong competitors to the combined

company. AT&T is operational and holds a 25 MHz A Block cellular license, a 20 MHz C Block PCS license, a 10 MHz E Block PCS license, and a 10 MHz AWS C Block license. Sprint is operational and holds 17 MHz of ESMR spectrum, 5 MHz of PCS A Block spectrum, 10 MHz of D Block PCS spectrum, and the 10 MHz PCS "G Block." T-Mobile is operational and holds 25 MHz of A Block PCS spectrum and 20 MHz of AWS spectrum in the D and E Blocks.

Potential new entrants include Cox Wireless, which holds a 12 MHz Lower 700 MHz B Block license, MilkyWay Broadband, which holds a 12 MHz Lower 700 MHz C Block license, QUALCOMM Incorporated, which holds a 6 MHz Lower 700 MHz D Block license, and Frontier Wireless LLC, which holds a 6 MHz Lower 700 MHz E Block license. MetroPCS holds 10 MHz of C Block PCS spectrum. Nextwave and SpectrumCo LLC each hold 20 MHz of AWS spectrum in the A and B Blocks respectively.

Dothan, Alabama (CMA246)

In the Dothan, Alabama CMA (CMA246), the combined company will hold 127 MHz of cellular, PCS, 700 MHz, and AWS spectrum. Verizon Wireless and its affiliates hold or have applied for a 25 MHz A Block cellular license, a 22 MHz Upper 700 MHz C Block license, 15 MHz of C Block PCS spectrum, a 10 MHz F Block PCS license, and a 20 MHz AWS F Block license. Alltel Communications, for its part, holds a 25 MHz B Block cellular license and a 10 MHz D Block PCS license.

The BRS/EBS transition was completed on April 21, 2008, by Sprint for the Dothan, AL BTA (BTA115). The proposed New Clearwire will hold 96 MHz of BRS and EBS spectrum in the two counties.

As shown in *Figure 6* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers appear to be operational throughout most of the area, which correlates with applicants' data showing six operational carriers including Verizon Wireless and ALLTEL. The combined company will continue to face competition from several national and regional carriers. AT&T is operational and holds a 10 MHz E Block PCS license. Sprint is operational and holds 16.75 MHz of ESMR spectrum in Houston County and 17.75 MHz of ESMR spectrum in Dale County, as well as 30 MHz of A Block PCS spectrum, 15 MHz of C Block PCS spectrum, and 10 MHz of PCS "G Block" spectrum in both counties. T-Mobile is operational and holds a 30 MHz B Block PCS license and a 10 MHz AWS D Block license. SouthernLinc is also operational on 800 MHz ESMR spectrum.

Cellular South holds a 20 MHz AWS A Block license, and U.S. Cellular, through Barat Wireless, holds a 10 MHz AWS F Block license. Potential new entrants include CenturyTel Broadband Wireless, which holds a 24 MHz of Lower 700 MHz A and B Block spectrum, MilkyWay Broadband, LLC, which holds 12 MHz of Lower 700 MHz C Block spectrum, QUALCOMM Incorporated, which holds a 6 MHz Lower 700 MHz D Block license, and Frontier Wireless LLC, which holds a 6 MHz Lower 700 MHz E Block license. SpectrumCo LLC holds a 20 MHz AWS B Block license and Nextwave holds a 20 MHz AWS C Block license.

Odessa, TX (CMA255)

In the Odessa, TX CMA (CMA255), the combined company would hold a total of 99 MHz of cellular, PCS, and 700 MHz spectrum in Ector County. Verizon Wireless and its subsidiaries hold a 12 MHz Lower 700 MHz B Block license, a 22 MHz Upper 700 MHz C Block license, and a 30 MHz A Block PCS license. Alltel Communications, through WWC Texas RSA Limited Partnership and WWC Texas Limited Partnership, holds a 25 MHz A Block cellular license and 10 MHz of E Block PCS spectrum in an undefined area.

The BRS/EBS transition was completed on September 10, 2007, by Clearwire for the Odessa, TX BTA (BTA327). In Ector County, the proposed New Clearwire would hold 118.5 MHz of BRS and EBS spectrum. No USG encumbrances are known to exist in the relevant counties.

As shown in *Figure 8* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout a majority of the area, which correlates with applicants' data showing four operational carriers including ALLTEL. Notably, Verizon Wireless does not operate in Ector county. Because Verizon Wireless does not operate in this county, there can be no reduction in facilities-based competition. AT&T is operational and holds a 25 MHz B Block cellular license, a 12 MHz Lower 700 MHz C Block license, 30 MHz of C Block PCS spectrum, 10 MHz of E Block PCS spectrum, and a 10 MHz AWS D Block license. Sprint is operational and holds 18 MHz of ESMR spectrum, as well as a 30 MHz B Block PCS license and 10 MHz of PCS "G Block" spectrum. T-Mobile is operational and holds 10 MHz of D Block PCS spectrum, 10 MHz of E Block PCS spectrum, and 20 MHz of AWS A Block spectrum.

Other potential entrants include QUALCOMM Incorporated, which holds a 6 MHz Lower 700 MHz D Block license, and Frontier Wireless, which holds a 6 MHz Lower 700 MHz E Block license. Leap Wireless holds 10 MHz of AWS E Block spectrum. Cable One, Inc. holds a 20 MHz AWS A Block license, Central Texas Telephone Investments, LP holds a 20 MHz AWS B Block license, and Nextwave holds a 10 MHz AWS C Block license. David Miller holds a 12 MHz Lower 700 MHz A Block license.

Midland, TX (CMA295)

In the single county comprising the Midland, TX CMA (CMA 295), the combined companies would be attributed with 99 MHz of cellular, PCS, and 700 MHz spectrum. Verizon Wireless and its affiliates hold, or have applied for, a 30 MHz A Block PCS license, a 12 MHz B Block Lower 700 MHz license, and a 22 MHz C Block Upper 700 MHz license. Alltel holds a 25 MHz A Block cellular license, and a 10 MHz D Block PCS license in portions of the county.

The BRS/EBS transition was completed by Clearwire on July 31, 2008, for the Midland, TX (BTA296), which encompasses Midland county. New Clearwire will own or lease 79.5 MHz of BRS/EBS spectrum in that county. No USG encumbrances are known to exist in the relevant counties.

As shown in *Figure 8* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout the area, which correlates with applicants' data showing four operational carriers including ALLTEL. Notably, Verizon Wireless does not operate in Midland county. Because Verizon Wireless does not operate in this county, there can be no reduction in facilities-based competition. Substantial competition will continue to exist in the Midland, TX CMA following the proposed transaction. AT&T, through its subsidiaries, is operational and holds a 25 MHz B Block cellular license, 30 MHz of C Block PCS spectrum, a 10 MHz F Block PCS license, a 10 MHz D Block AWS license, and a 12 MHz C Block Lower 700 MHz license. Sprint is operational and holds 18 MHz of ESMR spectrum, a 30 MHz B Block PCS license, and the 10 MHz "G Block" license. T-Mobile is operational and holds a 10 MHz E Block PCS license and a 20 MHz F Block AWS license.

New national or near national carriers with spectrum include QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum and Frontier Wireless (Echostar), with 6 MHz of E Block Lower 700 MHz spectrum. Cricket, a landline replacement competitor that has proven itself successful on a local basis, holds a 10 MHz E Block AWS license, AWS Wireless (NextWave) holds a 10 MHz C Block AWS license, Stelera Wireless holds a 20 MHz A Block AWS license, Central Texas Telephone Investments holds a 20 MHz AWS B Block license, and David Miller holds a 12 MHz Lower 700 MHz A Block license.

Alabama 7 – Butler (CMA313)

The combined company will hold a total of 127 MHz of cellular, PCS, 700 MHz, and AWS spectrum in Coffee and Geneva counties, which are part of the Alabama 7 – Butler CMA (CMA313). Cellco Partnership holds or has applied for a 25 MHz A Block cellular license, a 22 MHz Upper 700 MHz C Block license, 15 MHz of C Block PCS spectrum, a 10 MHz E Block PCS license, and a 20 MHz AWS F Block license. Alltel Communications holds a 25 MHz B Block cellular license and a 10 MHz D Block PCS license.

The BRS/EBS transition was completed on April 21, 2008, by Sprint for the Dothan, AL BTA (BTA115). The proposed New Clearwire would hold 73.5 MHz of BRS and EBS spectrum in Coffee County and 96 MHz in Geneva County.

As shown in *Figure 7* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout most of the area, which correlates with applicants' data showing five operational carriers in Geneva county and six in Coffee county, including Verizon Wireless and ALLTEL. AT&T is operational and holds 10 MHz of E Block PCS spectrum. Sprint is operational and holds 18.25 MHz of ESMR spectrum in Coffee County and 17 MHz of ESMR spectrum in Geneva County, as well as 30 MHz of A Block PCS spectrum, 15 MHz of C Block PCS spectrum, and the 10 MHz PCS "G Block" in both counties. T-Mobile is operational in Coffee county and holds a 30 MHz B Block PCS license and a 10 MHz AWS D Block license.

Potential new entrants include U.S. Cellular, which through Barat Wireless holds a 10 MHz AWS E Block license, CenturyTel Broadband Wireless, which holds a 24 MHz of Lower

700 MHz A and B Block spectrum as well as 20 MHz of AWS A Block spectrum, MilkyWay Broadband, LLC, which holds 12 MHz of Lower 700 MHz C Block spectrum, QUALCOMM Incorporated, which holds a 6 MHz Lower 700 MHz D Block license, and Frontier Wireless LLC, which holds a 6 MHz Lower 700 MHz E Block license. SpectrumCo LLC holds a 20 MHz AWS B Block license and Nextwave holds a 10 MHz AWS C Block license.

Alabama 8 – Lee (CMA314)

The combined company will hold a total of 127 MHz of cellular, PCS, 700 MHz, and AWS spectrum in Henry County, AL, part of the Alabama 8 – Lee CMA (CMA314). Verizon Wireless holds a 25 MHz A Block cellular license, a 22 MHz Upper 700 MHz C Block license, 15 MHz of C Block PCS spectrum, 10 MHz of F Block PCS spectrum, and a 20 MHz AWS F Block license. Alltel, for its part, holds a 25 MHz B Block cellular license and a 10 MHz D Block PCS license.

The BRS/EBS transition was completed on April 21, 2008, by Sprint for the Dothan, AL BTA (BTA115). The proposed New Clearwire would hold 96 MHz of BRS and EBS spectrum in Henry County.

As shown in *Figure 7* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout most of the area, which correlates with applicants' data showing five operational carriers including Verizon Wireless and ALLTEL. Sprint is operational and holds 17.75 MHz of ESMR spectrum, a 30 MHz A Block PCS license, 15 MHz of C Block PCS spectrum, and the 10 MHz PCS "G Block." T-Mobile is operational and holds a 30 MHz B Block PCS license and a 10 MHz AWS D Block license. SouthernLinc is also operational on 800 MHz ESMR spectrum.

Other potential entrants are AT&T, which holds a 12 MHz Lower 700 MHz C Block license and a 10 MHz E Block PCS license, CenturyTel Broadband Wireless, which holds a 24 MHz of Lower 700 MHz A and B Block spectrum, QUALCOMM Incorporated, which holds a 6 MHz Lower 700 MHz D Block license, and Frontier Wireless LLC, which holds a 6 MHz Lower 700 MHz E Block license. Public Service Wireless Services holds a 20 MHz AWS A Block license, SpectrumCo LLC holds a 20 MHz AWS B Block license, Nextwave holds a 10 MHz AWS C Block license, and U.S. Cellular, through Barat Wireless, holds a 10 MHz AWS E Block license.

Arizona 4 – Yuma (CMA321)

The Arizona 4 – Yuma CMA (CMA321) is comprised of two counties and overlaps two BTAs. Specifically, Yuma county lies in BTA486 and La Paz county lies in BTA347. The combined company would hold 104 MHz of cellular, PCS, and 700 MHz spectrum in the two counties. Verizon Wireless holds a 25 MHz B Block cellular license, a 12 MHz Lower 700 MHz A Block license, and a 22 MHz Upper 700 MHz C Block license in both counties. It also holds a 10 MHz D Block PCS license in La Paz County. Alltel holds a 25 MHz A Block cellular license, a 10 MHz of C Block PCS spectrum, and 10 MHz of E Block PCS spectrum in portions

of Yuma County. In La Paz County, Alltel holds a 25 MHz A Block cellular license, and also holds a 10 MHz E Block PCS license through WWC Holding Co. in an undefined area.

The BRS/EBS transition was initiated on March 3, 2007, for the Yuma, AZ BTA (BTA486), which encompasses Yuma county and must be completed by Sprint/Nextel by December 2, 2008. The BRS/EBS transition was completed on December 14, 2007, by Sprint for the Phoenix, AZ BTA (BTA347), which encompasses La Paz County. The proposed New Clearwire will hold 73.5 MHz of BRS and EBS spectrum in La Paz County and 34.5 MHz in Yuma County.

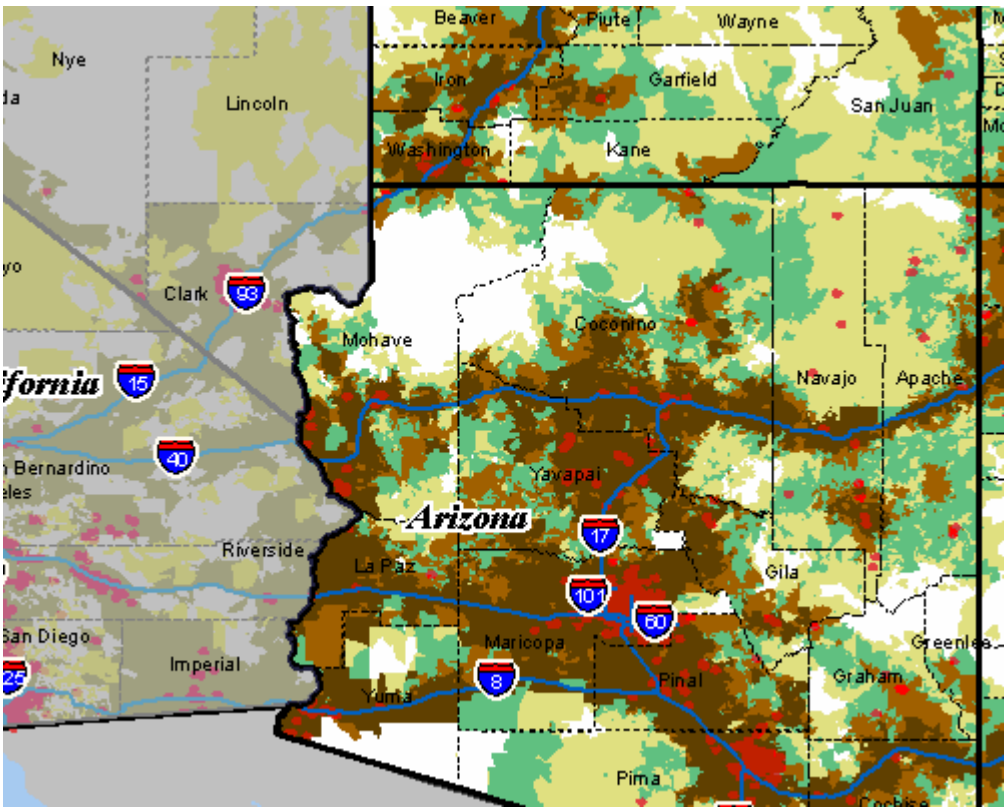


Figure 12: Arizona Map

As shown in the map above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout significant parts of the area, which correlates with applicants' data showing five operational carriers in La Paz county and six in Yuma county, including Verizon Wireless and ALLTEL. In Yuma County, AT&T is operational and holds a 30 MHz A Block PCS license. In La Paz County, AT&T, through New Cingular Wireless PCS, LLC, is operational and holds 20 MHz of disaggregated A Block PCS spectrum, as well as 20 MHz of disaggregated C Block PCS spectrum. AT&T holds a 10 MHz AWS E Block license in both counties. Sprint is operational and holds 15.25 MHz of ESMR spectrum in Yuma County and 16 MHz of ESMR in La Paz County, as well as a 30 MHz B Block PCS license, and the 10 MHz "G Block" license in both counties. T-Mobile is operational and holds 10 MHz of C Block AWS spectrum and 20 MHz of F Block AWS spectrum in both counties. In La Paz County, T-Mobile License LLC holds 10 MHz of disaggregated A Block PCS spectrum and a 10 MHz F Block

PCS license. In Yuma County, T-Mobile holds 10 MHz of E Block PCS spectrum, which it leases to Commnet of Four Corners. In Yuma County, NTCH-CA is operational and holds a 10 MHz D Block PCS license.

New national or near national carriers with spectrum in Yuma include QUALCOMM, which holds 6 MHz of D Block Lower 700 spectrum and 6 MHz of E Block Lower 700 spectrum in both counties, and SpectrumCo, which holds 20 MHz of B Block AWS spectrum in both counties. MetroPCS, a landline replacement competitor that has proven itself successful on a local basis, holds 10 MHz of D Block AWS spectrum in both counties. Further, Cricket Licensee holds 10 MHz of disaggregated C Block PCS spectrum in La Paz County. Additionally, Stelera Wireless holds 20 MHz of A Block AWS spectrum in both counties and PCS Partners holds 12 MHz of B Block Lower 700 MHz spectrum in both counties. In Yuma County, FB Communications holds a 10 MHz F Block PCS license. David Gates holds a 12 MHz C Block Lower 700 MHz license in both counties.

Arkansas 9 – Polk (CMA332)

The Arkansas 9 – Polk CMA (CMA332) is comprised of five counties, but only in Sevier county will the combined company trigger a 95 MHz initial spectrum screen. Specifically, the combined company would be attributed with 99 MHz of cellular, PCS, and 700 MHz spectrum. Verizon Wireless and its affiliates hold, or have applied for, a 30 MHz A Block PCS license, a 12 MHz A Block Lower 700 MHz license, and a 22 MHz C Block Upper 700 MHz license. Alltel holds a 25 MHz B Block cellular license and a 10 MHz D Block PCS license.

The BRS/EBS transition was completed by Clearwire on July 17, 2008, for Texarkana, TX-AR BTA (BTA443), which encompasses Sevier county. New Clearwire will own or lease 73.5 MHz of BRS/EBS spectrum in Sevier county.

As shown in *Figure 9* above, the combined company will face competition from another operational carrier in the market; the Commission's own data shows that at least two carriers are operational throughout most of the area, one of which is ALLTEL. Notably, Verizon Wireless does not operate in Polk county, and the two operational carriers are AT&T and ALLTEL. Because Verizon Wireless does not operate, there can be no reduction in facilities-based competition. AT&T is operational and holds a 25 MHz A Block cellular license, a 10 MHz E Block PCS license, a 10 MHz F Block PCS license, a 12 MHz C Block Lower 700 MHz license, and a 10 MHz D Block AWS license.

Other potential entrants include Sprint, which holds 16.75 MHz of ESMR spectrum, a 30 MHz B Block PCS license, and the 10 MHz "G Block" license, and T-Mobile, which holds a 30 MHz C Block PCS license and 20 MHz of F Block AWS spectrum. New national or near national carriers with spectrum include QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum, Frontier Wireless (Echostar), with 6 MHz of E Block Lower 700 MHz spectrum, and SpectrumCo with 20 MHz of B Block AWS spectrum. MetroPCS and Cricket, landline replacement competitors that have proven themselves successful on a local basis, hold a 10 MHz C Block AWS license and a 10 MHz E Block AWS license, respectively. Additionally, Pines Cellular Phones holds a 12 MHz B Block Lower 700 MHz license and a 20 MHz A Block AWS license.

Arkansas 11 – Hempstead (CMA334)

The Arkansas 11 – Hempstead CMA (CMA334) is comprised of four counties, but only in Hempstead and Lafayette counties will the combined company trigger a 95 MHz initial spectrum screen. In Hempstead, the combined company would be attributed with 137 MHz of cellular, PCS, 700 MHz, and AWS spectrum, and in Lafayette the combined company would be attributed with 117 MHz of cellular, PCS, 700 MHz, and AWS spectrum. In both counties, Verizon Wireless and its affiliates hold, or have applied for, a 30 MHz A Block PCS license, a 22 MHz C Block Upper 700 MHz license, a 20 MHz A Block AWS license, and Alltel holds a 25 MHz B Block cellular license, a 10 MHz C Block PCS license, and a 10 MHz D Block PCS license. In Hempstead alone, Verizon Wireless holds a 20 MHz F Block AWS license.

The BRS/EBS transition was was completed by Clearwire on July 17, 2008, for Texarkana, TX-AR BTA (BTA443), which encompasses Hempstead and Lafayette counties. In Lafayette, New Clearwire will own or lease 141 MHz of BRS/EBS spectrum, and in Hempstead, New Clearwire will own or lease 73.5 MHz.

As shown in *Figure 9* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least three carriers are operational throughout significant portions of the area, which correlates with applicants' data. Notably, Verizon Wireless does not operate in the subject counties, and accordingly there can be no reduction in facilities-based competition as a result of the proposed transaction. In both counties, AT&T is operational and holds a 25 MHz A Block cellular license, a 10 MHz E Block PCS license, a 10 MHz F Block PCS license, and a 12 MHz C Block Lower 700 MHz license. In Lafayette, AT&T also holds a 10 MHz D Block AWS license. In both counties, Sprint is operational and holds 16.75 MHz of ESMR spectrum, a 30 MHz B Block PCS license, and the 10 MHz "G Block" license.

Other potential entrants include T-Mobile, which holds a 20 MHz C Block PCS license and a 20 MHz F Block AWS license in Lafayette county and a 20 MHz C Block PCS license and a 10 MHz D Block AWS license in Hempstead county, and U.S. Cellular, which through Barat Wireless, holds a 10 MHz E Block AWS license in Hempstead county. In both counties, new national or near national carriers with spectrum include QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum, Frontier Wireless (Echostar), with 6 MHz of E Block Lower 700 MHz spectrum, and SpectrumCo, with 20 MHz of B Block AWS spectrum. Additionally, in both counties, CenturyTel Broadband Wireless holds a 12 MHz A Block Lower 700 MHz license and a 12 MHz B Block Lower 700 MHz license. In Lafayette, MetroPCS and Cricket, landline replacement competitors that have proven themselves successful on a local basis, hold a 10 MHz C Block AWS license and a 10 MHz E Block AWS license, respectively. Additionally, in Hempstead, AWS Wireless (NextWave) holds a 10 MHz C Block AWS license.

Florida 3 – Hardee (CMA362)

In Hardee County, the combined company would hold 121 MHz of cellular, PCS, 700 MHz, and AWS spectrum. Cellco Partnership holds a 12 MHz Lower 700 MHz A Block license, a 12 MHz Lower 700 MHz B Block license, a 22 MHz Upper 700 MHz C Block license, and a 20 MHz AWS F Block license. Further, Verizon Wireless Personal Communications LP

holds a 30 MHz B Block PCS license. For its part, Alltel Wireless Holdings holds a 25 MHz B Block cellular license.

The BRS/EBS transition was completed on August 27, 2007, by Sprint for the Tampa-St. Petersburg-Clearwater, FL BTA (BTA440). The proposed New Clearwire will hold 163.5 MHz of BRS and EBS spectrum in Hardee County.

As shown in *Figure 11* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout most of the area, which correlates with applicants' data showing five operational carriers including Verizon Wireless and ALLTEL. AT&T, through New Cingular Wireless PCS, LLC, is operational and holds a 25 MHz A Block cellular license, 20 MHz of disaggregated C Block PCS spectrum, a 10 MHz E Block PCS license, and a 10 MHz F Block PCS license. AT&T also holds a 10 MHz AWS C Block license. Sprint is operational and holds 17.25 MHz of ESMR spectrum and the 10 MHz PCS "G Block." Sprint also holds 5 MHz of disaggregated A Block PCS spectrum through APC PCS, LLC, as well as a 10 MHz D Block PCS license. T-Mobile is operational and holds 25 MHz of disaggregated A Block PCS spectrum in Hardee County and 20 MHz of AWS spectrum in the D and E Blocks. Further, MetroPCS holds 10 MHz of disaggregated C Block PCS spectrum.

Other potential entrants are MilkyWay Broadband, LLC, which holds 12 MHz of Lower 700 MHz C Block spectrum, along with QUALCOMM Incorporated, which holds 6 MHz of Lower 700 MHz D Block spectrum. Further, Frontier Wireless LLC holds a 6 MHz Lower 700 MHz E Block license. Nextwave and SpectrumCo LLC each hold 20 MHz of AWS spectrum in the A and B Blocks respectively.

Georgia 6 – Spalding (CMA376)

In the seven counties comprising the Georgia 6 – Spalding CMA (CMA376), the combined companies trigger a 95 MHz initial spectrum screen only in Talbot county. There, the combined company will be attributed with 124 MHz of cellular, PCS, AWS, and 700 MHz spectrum. Verizon Wireless holds, or has applied for, a 25 MHz A Block cellular license, a 10 MHz A Block PCS license, a 12 MHz B Block Lower 700 MHz license, a 22 MHz C Block Upper 700 MHz license, and a 20 MHz F Block AWS license. Alltel holds a 25 MHz B Block cellular license and a 10 MHz F Block PCS license.

The BRS transition for Columbus, GA BTA (BTA092) was initiated on March 3, 2008, by Clearwire and must be completed by January 3, 2010. New Clearwire will own or lease 96 MHz of BRS/EBS spectrum in Talbot county. No USG encumbrances are known to exist in Talbot county.

As shown in *Figure 6* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout significant portions of the area, which correlates with applicants' data showing four operational carriers including Verizon Wireless and ALLTEL. T-Mobile is operational and holds a 30 MHz B Block PCS license, 10 MHz of D

Block AWS spectrum, and 10 MHz of E Block AWS spectrum. SouthernLinc is also operational on 800 MHz ESMR spectrum.

Other potential entrants include AT&T, which a 20 MHz A Block PCS license, a 15 MHz C Block PCS license, a 10 MHz E Block PCS license, and a 10 MHz C Block AWS license (although AT&T leases 5 MHz of C Block PCS spectrum to Phillieco), and Sprint, which holds 18.25 MHz of ESMR spectrum, a 10 MHz D Block PCS license, and the 10 MHz "G Block" license. New national or near national carriers with spectrum include QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum, Frontier Wireless (EchoStar), with 6 MHz of E Block Lower 700 MHz spectrum, and SpectrumCo., with a 20 MHz B Block AWS license. Additionally, Cricket, a landline replacement competitor that has proven itself successful on a local basis, holds a 15 MHz C Block PCS license, Public Service Wireless Services holds a 12 MHz B Block Lower 700 MHz license, a 12 MHz C Block Lower 700 MHz license, and a 20 MHz A Block AWS license.

Iowa 8 – Monona (CMA419)

In the four counties comprising the Iowa 8 – Monona CMA (CMA419), the combined companies trigger a 95 MHz initial spectrum screen only in Monoma county. There, the combined company will be attributed with 117 MHz of cellular, PCS, AWS, and 700 MHz spectrum. Verizon Wireless and its affiliates hold, or have applied for, a 25 MHz B Block cellular license, a 10 MHz E Block PCS license, a 22 MHz C Block Upper 700 MHz license, and a 20 MHz F Block AWS license. Alltel holds a 25 MHz A Block cellular license, a 5 MHz A Block PCS license, and a 10 MHz D Block PCS license.

No USG encumbrances are known to exist in Monoma county.

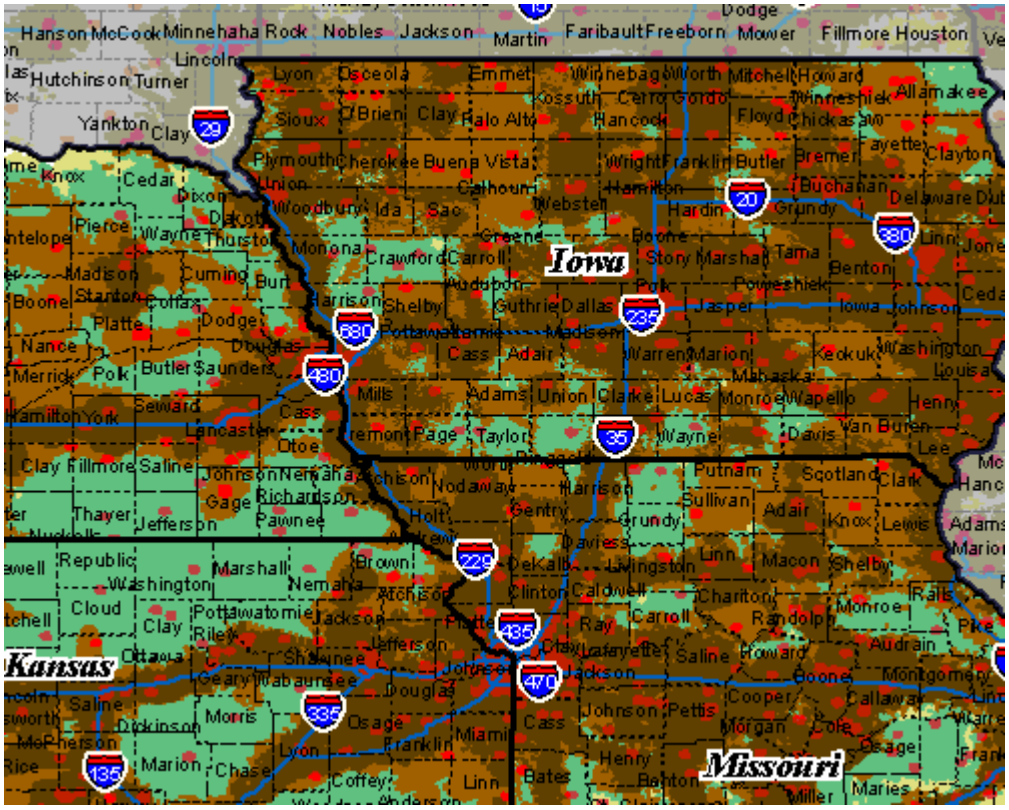


Figure 13: Iowa Map

As shown in the map above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout significant portions of the area, which correlates with applicants' data showing five operational carriers including Verizon Wireless and ALLTEL. Substantial competition will remain after this merger from both national and regional entities. AT&T is operational and holds a 20 MHz C Block PCS license and a 10 MHz F Block PCS license. Sprint is operational and holds 15.25 MHz of ESMR spectrum, a 20 MHz PCS B Block license, and the 10 MHz "G Block" license. Long Lines, through LL License Holdings, is operational and holds a 10 MHz C Block PCS license, a 12 MHz A Block Lower 700 MHz license, a 20 MHz A Block AWS license, and a 10 MHz C Block AWS license.

Other potential entrants include T-Mobile, which holds a 5 MHz A Block PCS license and a 10 MHz E Block AWS license. New national or near national carriers with spectrum include QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum, Frontier Wireless (Echostar), with 6 MHz of E Block Lower 700 MHz spectrum, and SpectrumCo., with a 20 MHz B Block AWS license. Cricket, a landline replacement competitor that has proven itself successful on a local basis, holds a 10 MHz D Block AWS license. Additionally, Iowa Wireless Services Holding Corporation holds a 20 MHz A Block PCS license, Brookings Municipal Utilities (d/b/a Swiftel Communication) holds a 10 MHz PCS B Block license, US Cellular's affiliate King Street Wireless holds a 12 MHz B Block Lower 700 MHz license, and MilkyWay Broadband holds a 12 MHz C Block Lower 700 MHz license.

Minnesota 2 - Lake of the Woods (CMA483)

The combined companies trigger a 95 MHz initial spectrum screen in Clearwater, Lake of the Woods, Mahnomen, and Norman counties in the Lake of the Woods CMA (CMA483). However, in all four counties, the combined company will face substantial competition from both national and regional competitors.

The BRS/EBS transition for the Bemidji, MN BTA (BTA037), which encompasses Clearwater county was initiated on November 3, 2006 by Clearwire and must be completed by August 1, 2008. The BRS/EBS transition for the Grand Forks BTA (BTA166), which encompasses Lake of the Woods county, was initiated by Polar on March 26, 2007, and must be completed by December 15, 2008. New Clearwire will own or lease 73.5 MHz of BRS/EBS spectrum in Clearwater Mahnomen, and Norman counties. No USG encumbrances are known to exist in the relevant counties.

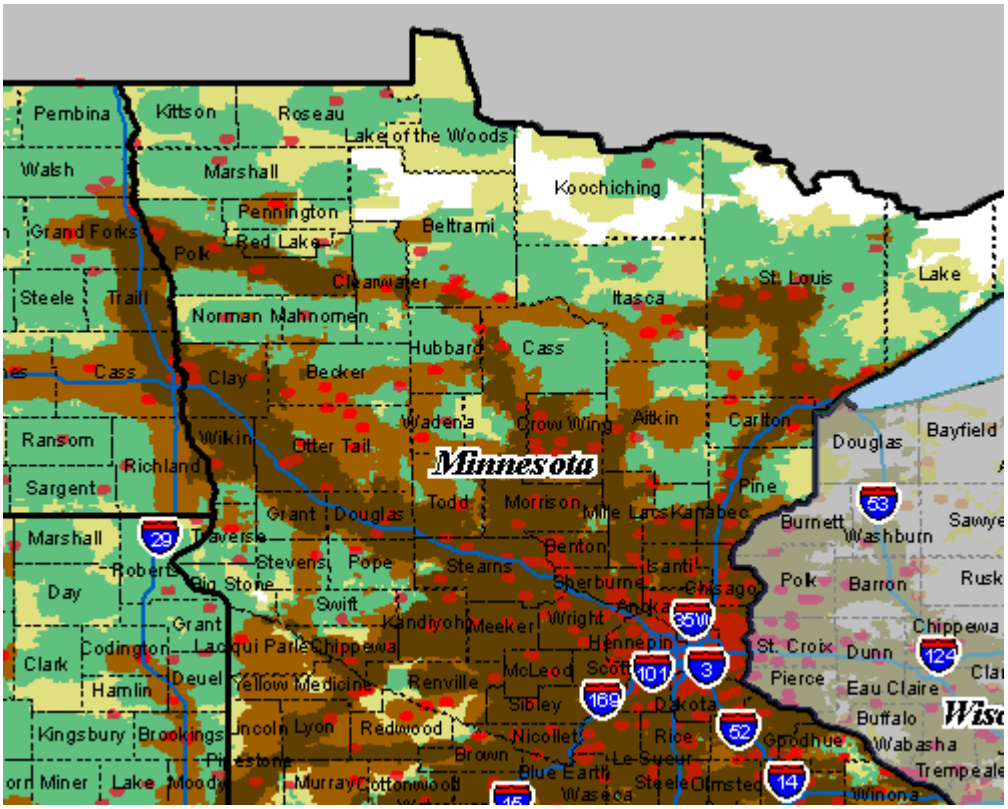


Figure 14: Northern Minnesota Map

As shown in the map above, the Commission's own data shows that at least two carriers are operational throughout most of the area, with at least four carriers operation in small parts of the Clearwater county. This correlates with applicants' data showing two operational carriers, and three in Clearwater county, including Verizon Wireless and ALLTEL. In Clearwater county, the combined company will be attributed with 144 MHz of cellular, PCS, AWS, and 700 MHz spectrum. Verizon Wireless holds, or has applied for, a 25 MHz B Block cellular license, a 10 MHz E Block PCS license, a 12 MHz A Block Lower 700 MHz license, a 22 MHz C Block Upper 700 MHz license, and a 20 MHz F Block AWS license. Alltel holds a 25 MHz A Block

cellular license, a 10 MHz B Block PCS license, a 10 MHz D Block PCS license, and a 10 MHz F Block PCS license.

The combined company will face competition in Clearwater county. Sprint is operational and holds 18.5 MHz of ESMR spectrum, a 30 MHz A Block PCS license, and the 10 MHz "G Block" license.

Other potential entrants include AT&T, which holds a 10 MHz B Block PCS license and a 10 MHz C Block AWS license, and T-Mobile, which holds a 10 MHz B Block PCS license and 10 MHz of E Block AWS spectrum. New national or near national carriers with spectrum include QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum, Frontier Wireless (EchoStar), with 6 MHz of E Block Lower 700 MHz spectrum, and SpectrumCo., with a 20 MHz B Block AWS license. Cricket, a landline replacement competitor that has proven itself successful on a local basis, holds a 10 MHz D Block AWS license, FB Communications holds a 15 MHz C Block PCS license, Wireless Communications Venture holds a 15 MHz C Block PCS license, Paul Bunyan Rural Telephone Cooperative holds a 12 MHz B Block Lower 700 MHz license and a 20 MHz A Block AWS license, and Red Lake Band of Chippewa Indians holds a 12 MHz C Block Lower 700 MHz license.

In Mahnomen and Norman counties, the combined company will be attributed with 147 MHz of cellular, PCS, AWS, and 700 MHz spectrum. Verizon Wireless holds, or has applied for, a 25 MHz B Block cellular license, a 10 MHz D Block PCS license, a 10 MHz F Block PCS license, a 22 MHz C Block Upper 700 MHz license, and a 20 MHz F Block AWS license, and Vista holds a 15 MHz C Block PCS license. In Norman county, Verizon Wireless also holds 20 MHz of B Block PCS spectrum. Alltel holds a 25 MHz A Block cellular license in both counties, a 20 MHz B Block PCS license in Mahnomen county, and a 10 MHz B Block PCS license in Norman county.

In Mahnomen and Norman counties, AT&T holds a 25 MHz A Block cellular license and a 20 MHz B Block AWS license. Sprint holds 18.5 MHz of ESMR spectrum, a 30 MHz A Block PCS license, and the 10 MHz "G Block" license. T-Mobile holds a 10 MHz E Block AWS license in both counties, and a 10 MHz B Block PCS license in Mahnomen county. New national or near national carriers with spectrum include QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum and Frontier Wireless (Echostar), with 6 MHz of E Block Lower 700 MHz spectrum. Cricket, a landline replacement competitor that has proven itself successful on a local basis, holds a 15 MHz C Block PCS license and a 10 MHz D Block AWS license. Additionally, LL License Holdings holds a 10 MHz E Block PCS license and a 10 MHz C Block AWS license, Paul Bunyan Rural Telephone Cooperative holds a 12 MHz B Block Lower 700 MHz license and a 20 MHz A Block AWS license, Red Lake Band of Chippewa Indians holds a 12 MHz C Block Lower 700 MHz license, and Thomas Kurian holds a 12 MHz A Block Lower 700 MHz license.

In Lake of the Woods county, the combined company will be attributed with 137 MHz of cellular, PCS, AWS, and 700 MHz spectrum. Verizon Wireless holds, or has applied for, a 25 MHz B Block cellular license, a 10 MHz E Block PCS license, a 22 MHz C Block Upper 700 MHz license, and a 20 MHz F Block AWS license. Vista also holds a 15 MHz C Block PCS license. Alltel holds a 25 MHz A Block cellular license and a 20 MHz B Block PCS license.

In Lake of the Woods county, AT&T holds a 25 MHz A Block cellular license and a 20 MHz B Block AWS license. Sprint holds 16.25 MHz of ESMR spectrum, a 30 MHz A Block PCS license, and the 10 MHz "G Block" license. T-Mobile holds a 10 MHz B Block PCS license and a 10 MHz E Block AWS license. New national or near national carriers with spectrum include QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum and Frontier Wireless (Echostar), with 6 MHz of E Block Lower 700 MHz spectrum. Cricket, a landline replacement competitor that has proven itself successful on a local basis, holds a 15 MHz C Block PCS license and a 10 MHz D Block AWS license. Additionally, LL License Holdings holds a 10 MHz D Block PCS license and a 10 MHz C Block AWS license, Paul Bunyan Rural Telephone Cooperative holds a 12 MHz B Block Lower 700 MHz license and a 20 MHz A Block AWS license, Red Lake Band of Chippewa Indians holds a 12 MHz C Block Lower 700 MHz license, Justkake Investment holds a 10 MHz F Block PCS license, and Thomas Kurian holds a 12 MHz A Block Lower 700 MHz license.

Minnesota 5 – Wilkin (CMA486)

Out of the eleven counties comprising the Minnesota 5 – Wilkin CMA (CMA486), the combined companies trigger a 95 MHz initial spectrum screen only in Big Stone, Traverse, and Swift counties. In Big Stone and Traverse counties, the combined company will be attributed with 117 MHz of cellular, PCS, AWS, and 700 MHz spectrum. In Swift county, the combined company will be attributed with 129 MHz of cellular, PCS, AWS, and 700 MHz spectrum. In all three counties, Verizon Wireless holds, or has applied for, a 25 MHz B Block cellular license, a 22 MHz C Block Upper 700 MHz license, and a 20 MHz F Block AWS license. In addition, in Big Stone and Traverse counties, Verizon holds a 30 MHz C Block PCS license. In Swift county, Verizon Wireless also holds a 10 MHz D Block PCS license and a 12 MHz A Block Lower 700 MHz license. In Big Stone and Traverse counties, Alltel holds 10 MHz of D Block PCS spectrum and 10 MHz of F Block PCS spectrum. In Swift county, Alltel holds a 30 MHz C Block PCS license and a 10 MHz E Block PCS license.

In Swift county, New Clearwire will own or lease 73.5 MHz of BRS/EBS spectrum. No USG encumbrances are known to exist in Big Stone and Traverse counties.

As shown in *Figure 14* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout significant portions of the area, which correlates with applicants' data showing between two and four operational carriers including Verizon Wireless and ALLTEL. In all three counties, AT&T holds a 25 MHz A Block cellular license, a 20 MHz A Block AWS license, and a 10 MHz C Block AWS license. In Big Stone and Traverse counties, AT&T also holds a 10 MHz E Block PCS license, although AT&T is operational in Big Big Stone and Swift counties. In Swift county, AT&T holds a 10 MHz B Block PCS license. In all three counties, Sprint holds 18.5 MHz of ESMR spectrum and the 10 MHz "G Block" license. In Big Stone and Traverse counties, Sprint also holds 20 MHz of A Block PCS spectrum, and in Swift it holds 30 MHz, and it is operational in Swift county.

Other potential entrants include T-Mobile, which holds a 10 MHz E Block AWS license in all three counties. In Big Stone and Traverse counties, T-Mobile holds a 30 MHz B Block PCS license, and in Swift County it holds 20 MHz of B Block PCS spectrum. In all three

counties, new national or near national carriers with spectrum include QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum, Frontier Wireless (Echostar), with 6 MHz of E Block Lower 700 MHz spectrum, and SpectrumCo, with 20 MHz of B Block AWS spectrum. Additionally, in all three counties, Cricket, a landline replacement competitor that has proven itself successful on a local basis, holds a 10 MHz D Block AWS license, and Sky Com 700 MHz holds a 12 MHz B Block Lower 700 MHz license and a 12 MHz C Block Lower 700 MHz license. In Big Stone and Traverse counties, LL License Holdings holds a 12 MHz A Block AWS license and Brookings Municipal Utilities (d/b/a Swiftel Communication) holds a 10 MHz PCS A Block license. In Swift county, Redwood Wireless Corp. holds a 10 MHz F Block PCS license.

Minnesota 11 – Goodhue (CMA492)

The combined company would hold more than 95 MHz of cellular, PCS, 700 MHz, and AWS spectrum in seven counties in the Minnesota 11 – Goodhue, CMA (CMA492): Dodge, Fillmore, Goodhue, Houston, Mower, Wabasha, and Winona. The combined company would hold 137 MHz of spectrum in Dodge and Wabasha Counties, 127 MHz of spectrum in Fillmore and Mower Counties, 124 MHz of spectrum in Goodhue County, and 122 MHz of spectrum in Houston and Winona counties.

In the Rochester-Austin-Albert Lea, MN BTA (BTA378), which encompasses Dodge, Fillmore, Mower, and Wabasha counties, Sprint completed the BRS/EBS transition on November 20, 2007. In the Lacrosse, WI-Winona, MN BTA (BTA234), which encompasses Houston and Winona counties, Sprint completed the BRS/EBS transition on November 1, 2007. In the Minneapolis-St. Paul, MN BTA (BTA298), which encompasses Goodhue County, Sprint completed the BRS/EBS transition on November 6, 2007. New Clearwire would hold 96 MHz of BRS and EBS spectrum in Dodge, Houston, Mower, and Winona counties, 118.5 MHz in Goodhue and Wabasha counties, and 73.5 MHz in Fillmore County. No USG encumbrances are known to exist in the relevant counties.

In Fillmore and Mower counties, Cellco Partnership holds a 22 MHz Upper 700 MHz C Block license and a 20 MHz AWS F Block license. Verizon Wireless also holds 10 MHz of disaggregated A Block PCS spectrum through Verizon Wireless Telecom Inc. Alltel, for its part, holds the 25 MHz A and B Block cellular licenses through Great Western Cellular Holdings and Midwest Wireless Communications, respectively. Alltel also holds 15 MHz of disaggregated C Block PCS spectrum through Midwest Wireless Communications, L.L.C., and a 10 MHz E Block PCS license through WWC Holding Co., Inc. In Wabasha and Dodge counties, the companies' spectrum holdings are consistent, except that Verizon Wireless VAW (LLC) also holds a 10 MHz D Block PCS license. In Houston and Winona counties, Cellco Partnership holds a 22 MHz Upper 700 MHz C Block license and a 20 MHz AWS F Block license, and Verizon Wireless Personal Communications holds a 30 MHz B Block PCS license. Alltel, in Houston and Winona counties, holds the 25 MHz A and B Block cellular licenses through Great Western Cellular Holdings and Midwest Wireless Communications, respectively. Alltel also holds these cellular licenses in Goodhue County, while Cellco Partnership holds a 12 MHz Lower 700 MHz A Block license and a 22 MHz Upper 700 MHz C Block license in Goodhue County, as well as a 20 MHz AWS F Block license. Verizon Wireless (VAW) LLC holds a 10 MHz D Block PCS license and a 10 MHz F Block PCS license in Goodhue county.

As shown in *Figure 1, supra,* the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout significant portions of the area, which correlates with applicants' data showing a minimum of four operational carriers, and as many as six. ALLTEL operates in each of the relevant counties, but Verizon Wireless operates only in Dodge, Fillmore, and Goodhue counties. Therefore, there will be no reduction in facilities-based competition as a result of the proposed transaction in Houston, Mowever, Wabasha, and Winona counties. AT&T is operational in all of the relevant counties except Winona, holding 20 MHz of PCS spectrum in Goodhue, Houston, and Winona counties, and 15 MHz of PCS spectrum in Dodge, Fillmore, Mower, and Wabasha counties. AT&T also holds a 10 MHz AWS C Block licenses in Goodhue county. T-Mobile operates on 30 MHz of B Block PCS spectrum in Dodge, Fillmore, Goodhue, Mower, and Wabasha counties. T-Mobile is operational except in Houston and Winona county, where it holds10 MHz of disaggregated A Block PCS spectrum. T-Mobile also holds 10 MHz of disaggregated C Block PCS spectrum in Goodhue County. Sprint is operational throughout the market and, individually and through WirelessCo, L.P., holds 40 MHz of PCS spectrum in Goodhue County and 30 MHz of PCS spectrum in the remaining six counties. Additionally, Sprint has ESMR spectrum holdings totaling 18.5 MHz in Dodge, Goodhue, Houston, Wabasha, and Winona Counties and 16.25 MHz in Fillmore and Mower counties. US Cellular, through USCOC of Rochester, operates on 10 MHz of PCS spectrum in Dodge, Fillmore, Mower, and Wabasha counties. US Cellular also holds 10 MHz of F Block spectrum in Dodge, Mower, Fillmore and Wabasha counties, and operates in each of those except Wabasha. US Cellular's affiliate, Carroll Wireless, holds 10 MHz of disaggregated PCS spectrum in Goodhue County. Another US Cellular affiliate, Barat Wireless, also holds the AWS B Block license in Houston County and a third, King Street Wireless, L.P., holds the 12 MHz Lower 700 MHz A Block spectrum in Dodge, Fillmore, Mower, Wabasha, and Winona counties. Airadigm Communications is operational on 30 MHz of PCS spectrum in Houston and Winona counties.

In all seven counties, Midwest AWS Limited Partnership holds a 20 MHz AWS A Block license and Cricket's affiliate Denali Spectrum License, LLC holds a 10 MHz AWS D Block license. SpectrumCo LLC holds the 20 MHz AWS B Block license in Dodge, Fillmore, Goodhue, Mower, Wabasha, and Winona counties. Further, NEIT Wireless, LLC holds 10 MHz of PCS spectrum in Fillmore and Mower Counties and also holds the 10 MHz AWS C Block license in Dodge, Fillmore, Mower, Wabasha, and Winona counties. Nsighttel Wireless, LLC operates on 10 MHz of PCS spectrum in Houston and Winona counties and the 10 MHz AWS C Block in Houston County.

Potential new entrants include QUALCOMM Incorporated, which holds a 6 MHz Lower 700 MHz D Block license in all seven counties, as well as Frontier Wireless LLC, which holds a 6 MHz Lower 700 MHz E Block license in all seven counties. Redwood Wireless, Corp. holds 24 MHz of Lower 700 MHz spectrum in all seven counties. CenturyTel Broadband Wireless LLC holds 12 MHz of Lower 700 MHz A Block spectrum in Houston county.

Mississippi 4 – Yalobusha (CMA496)

In Calhoun, Chickasaw, and Monroe counties, the combined company will hold 127 MHz of cellular, PCS, 700 MHz, and AWS spectrum. Cellco Partnership holds a 22 MHz Upper

700 MHz C Block license and a 20 MHz AWS F Block license, while RCC Minnesota, Inc. holds 25 MHz of A Block cellular spectrum and 30 MHz of C Block PCS spectrum. ALLTEL Newco LLC holds 30 MHz of disaggregated B Block PCS spectrum.

In the Tupelo-Corinth, MS BTA (BTA449), Sprint completed the BRS/EBS transition on October 3, 2007. The proposed New Clearwire would hold 78.5 MHz of BRS and EBS spectrum in Calhoun County and 84 MHz in Chickasaw and Monroe counties. No USG encumbrances are known to exist in Calhoun and Monroe counties.

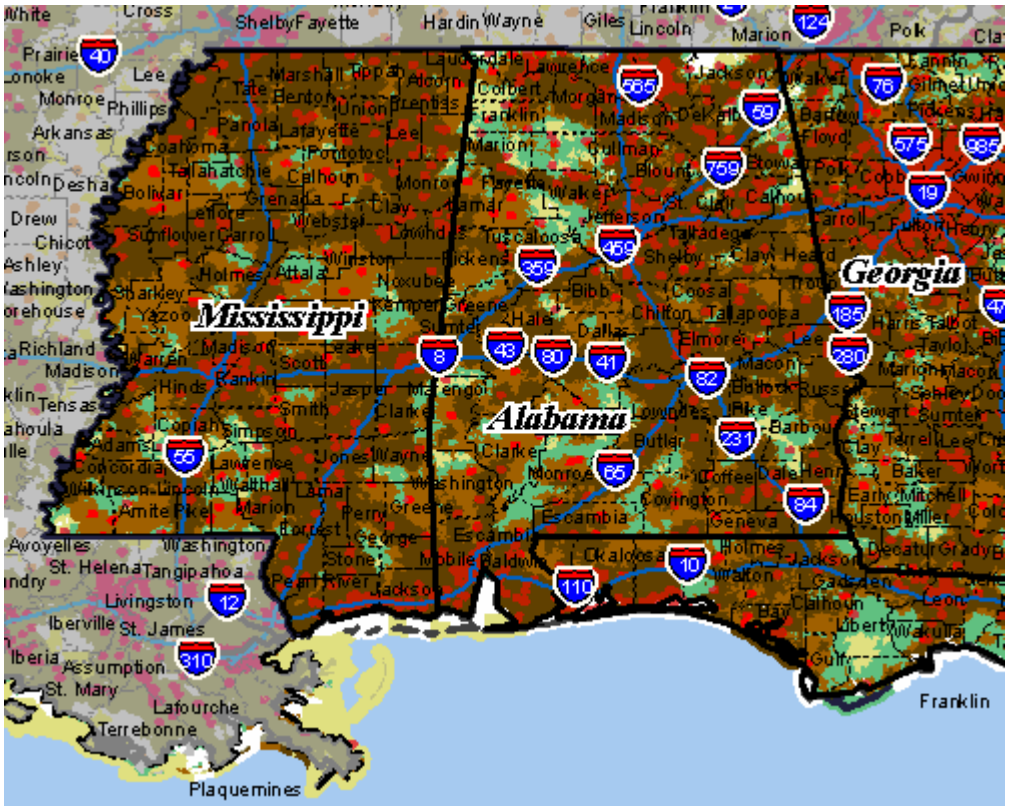


Figure 15: Mississippi/Alabama Map

As shown in the map above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout significant portions of the area, which correlates with applicants' data showing three operational carriers in Big Stone county and five operational carriers in the other relevant counties, including Verizon Wireless. ALLTEL does not operate in any of the three counties and accordingly there will be no reduction in facilities-based competition as a result of the proposed transaction in Calhoun, Chickasaw and Monroe counties. AT&T is operational and, through New Cingular Wireless PCS, LLC, holds 25 MHz of B Block cellular spectrum. Sprint is operational in Chickasaw and Monroe counties, and holds 18.25 MHz of ESMR spectrum, as well as the 10 MHz PCS "G Block" in all three counties. Sprintcom, Inc. holds 10 MHz of D Block PCS spectrum. T-Mobile is operational in Chickasaw and Monroe counties, and, through Powertel Memphis Licenses, Inc., holds a 30 MHz A Block PCS license. T-Mobile also holds a 10 MHz AWS D Block license. Cellular South Licenses,

Inc., is operational, and holds the 10 MHz E Block PCS and 10 MHz F Block PCS licenses in all three counties, as well as 12 MHz of Lower 700 MHz A Block spectrum.

Other potential entrants include U.S. Cellular, which through Barat Wireless holds a 10 MHz AWS E Block license, CenturyTel Broadband Wireless, LLC, which holds a 12 MHz Lower 700 MHz B Block license, Waller, Inc., which holds a 12 MHz Lower 700 MHz C Block license, QUALCOMM Incorporated, which holds a 6 MHz Lower 700 MHz D Block license, and Frontier Wireless, LLC, which holds a 6 MHz E Block PCS license. Other competitors are Cable One, Inc., which holds 20 MHz of AWS A Block spectrum, SpectrumCo LLC, which holds a 20 MHz AWS B Block license, and Nextwave, which holds a 10 MHz AWS C Block license.

Missouri 9 – Bates (CMA512)

The combined company will hold 129 MHz of cellular, PCS, 700 MHz, and AWS spectrum in Cedar County, MO, and 104 MHz of spectrum in St. Clair County, MO. In Cedar County, Cellco Partnership holds a 12 MHz Lower 700 MHz C Block license, a 22 MHz Upper 700 MHz C Block license, 10 MHz of disaggregated C Block PCS spectrum, and a 20 MHz AWS F Block license. Cellco Partnership's 700 MHz holdings are consistent in St. Clair County, but instead of holding PCS C Block spectrum it holds a 10 MHz D Block PCS license. In Cedar County, Alltel Communications holds a 25 MHz B Block cellular license and a 10 MHz E Block PCS license, as well as a 25 MHz A Block cellular license and 5 MHz of disaggregated F Block PCS spectrum held through WWC License L.L.C. In St. Clair County, Alltel Communications holds a 25 MHz B Block cellular license. WWC License L.L.C. holds a 25 MHz A Block cellular license and 10 MHz of B Block PCS spectrum in an undefined area.

In the Kansas City, MO BTA (BTA226), which encompasses St. Clair County, Sprint completed the BRS/EBS transition on April 27, 2007. In the Springfield, MO BTA (BTA428), which encompasses Cedar county, Sprint completed the BRS/EBS transition on January 10, 2008. The proposed New Clearwire will hold 73.5 MHz of BRS and EBS spectrum in both counties. No USG encumbrances are known to exist in the relevant counties.

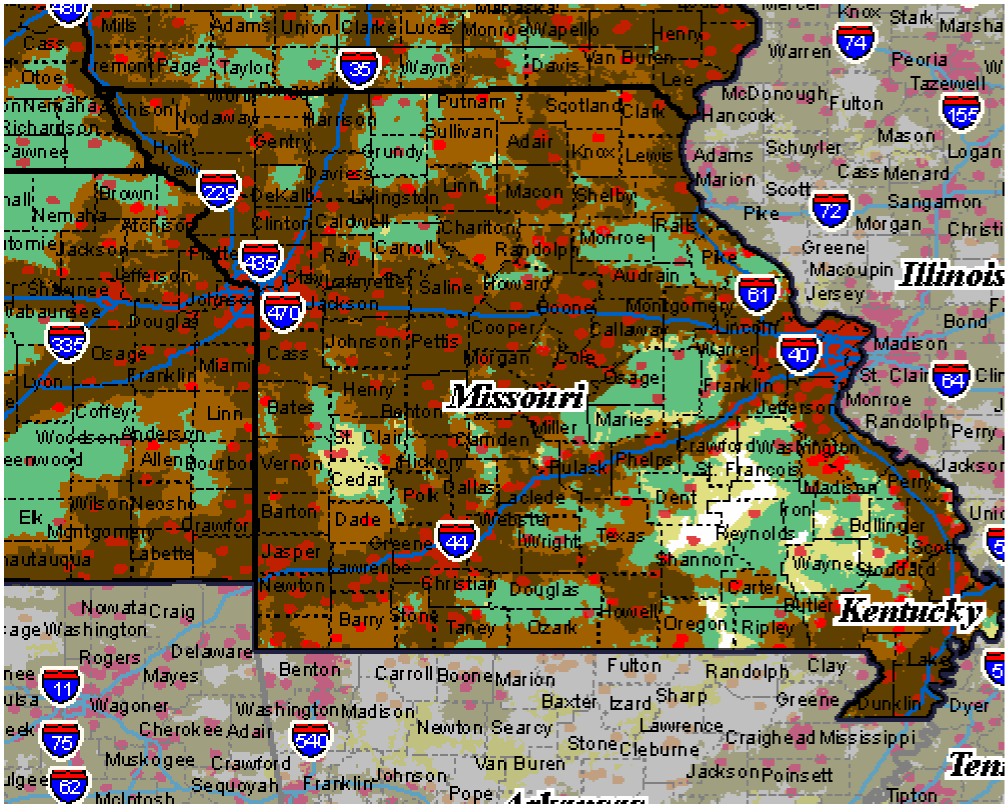


Figure 16: Missouri Map

As shown in the map above, the Commission's own data shows that at least four carriers are operational throughout significant portions of the area. Applicants' data shows that ALLTEL is the only operational carrier in Cedar county, but that there are four operational carriers in St. Clair county. Verizon Wireless does not operate in either Cedar or St. Clair county and, accordingly, there will be no reduction in facilities-based competition as a result of the proposed transaction. In both counties, AT&T holds a 25 MHz B Block cellular license through Missouri RSA 9B1 Limited Partnership, as well as a 12 MHz Lower 700 MHz B Block license, although it is operational only in Cedar county. AT&T also holds 20 MHz of PCS spectrum in Cedar County through New Cingular Wireless PCS, LLC. In St. Clair County, AT&T, through New Cingular Wireless PCS, LLC and Edge Mobile, LLC, holds 30 MHz of PCS spectrum in the C, E, and F Blocks, though the E Block spectrum is currently leased to Commnet Midwest, LLC. AT&T also holds 10 MHz of AWS C Block spectrum in both counties. Sprint is also operational in Cedar county and holds 16.75 MHz of ESMR spectrum and 10 MHz of "G Block" PCS spectrum in both counties. It also holds, through WirelessCo L.P., 30 MHz of PCS spectrum in the A and B Blocks in St. Clair and Cedar counties, respectively. T-Mobile holds 5 MHz of F Block PCS spectrum in Cedar County and 30 MHz of B Block PCS spectrum in St. Clair County. T-Mobile also holds a 10 MHz AWS D Block license in both counties. Finally, T-Mobile is operational in Cedar county and, through Cook Inlet/VS GSM VII PCS, LLC, holds 10 MHz of disaggregated C Block PCS spectrum in both counties. U.S. Cellular operates on 20 MHz of disaggregated A Block PCS spectrum in Cedar County, and its affiliate Barat Wireless holds a 10 MHz AWS E Block license, while Leap Wireless uses 10 MHz of C Block PCS spectrum in St. Clair County. Commnet Midwest, LLC is licensed to operate on 10 MHz of C

Block PCS spectrum in Cedar County and leases 10 MHz of E Block PCS spectrum in St. Clair County.

Other potential entrants are Craw-Kan Telephone Cooperative, which holds a 12 MHz Lower 700 MHz C Block license, QUALCOMM Incorporated, which holds a 6 MHz Lower 700 MHz D Block license, and Frontier Wireless, LLC, which holds a 6 MHz Lower 700 MHz E Block license. CenturyTel Broadband Wireless holds a 20 MHz AWS A Block license and SpectrumCo LLC holds the 20 MHz AWS B Block license.

New Mexico 2 – Colfax (CMA554)

In Union County, NM, the combined company will hold 102 MHz of cellular, PCS, and 700 MHz spectrum. Cellco Partnership and its subsidiaries hold a 22 MHz Upper 700 MHz C Block license and a 30 MHz A Block PCS license. Alltel Communications, through its subsidiaries, holds 25 MHz of A Block cellular spectrum, 5 MHz of disaggregated D Block PCS spectrum, a 10 MHz PCS E Block license, and a 10 MHz PCS F Block license.

In the Amarillo, TX BTA (BTA013) which encompasses Union county, NM, Sprint completed the BRS/EBS transition on March 18, 2008. No USG encumbrances are known to exist in the relevant counties.

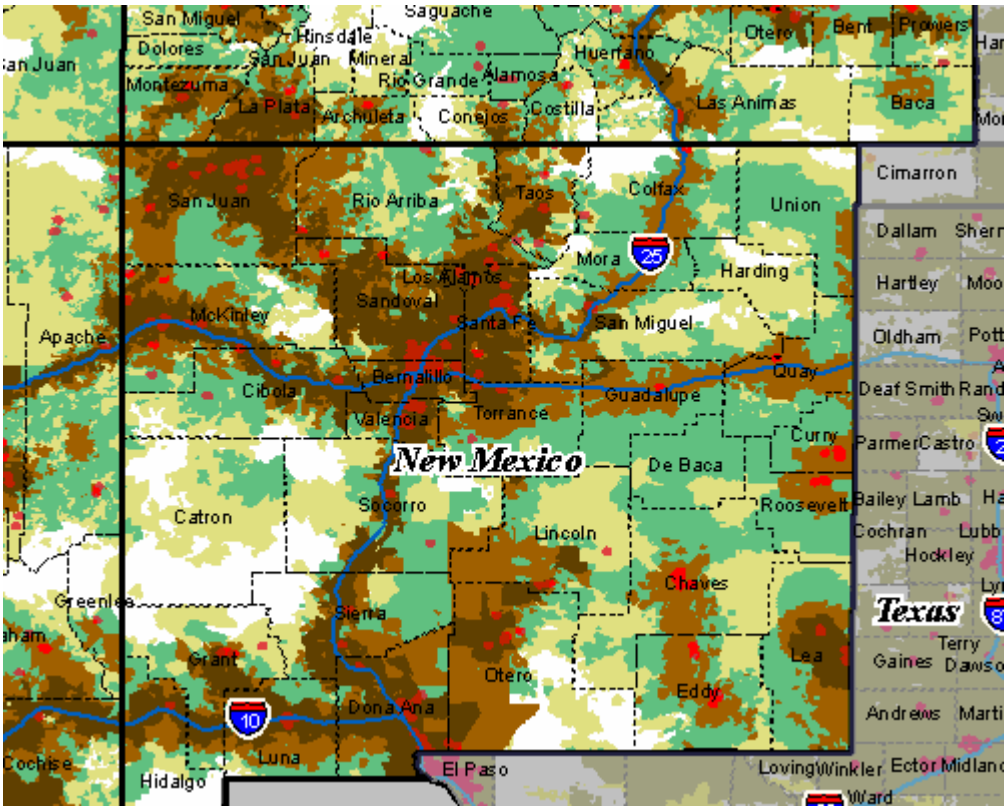


Figure 17: New Mexico Map

As shown in the map above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least two carriers are operational throughout significant portions of the area, with three operating along the

Texas border, which correlates with applicants' data showing two operational carriers including ALLTEL. Verizon Wireless does not operate in Union county and, accordingly, there will be no reduction in facilities-based competition as a result of the proposed transaction. E.N.M.R. Telephone Cooperative holds the B Block cellular license and is operational.

Other potential entrants include AT&T, which holds a 30 MHz C Block PCS license and 30 MHz of AWS spectrum in the B and D Blocks. Sprint holds 18 MHz of ESMR spectrum, 30 MHz of B Block PCS spectrum, and the 10 MHz PCS "G Block." T-Mobile holds 5 MHz of disaggregated D Block PCS spectrum and a 20 MHz AWS F Block license. E.N.M.R. Telephone Cooperative holds the 25 MHz B Block cellular license. Leap Wireless, through Cricket Licensee, holds a 10 MHz AWS E Block license. PCS Partners, L.P. holds a 12 MHz Lower 700 MHz B Block license, Northern New Mexico Telecom, Inc. holds a 12 MHz Lower 700 MHz C Block license, QUALCOMM Incorporated holds a 6 MHz Lower 700 MHz D Block license, and Frontier Wireless, LLC holds a 6 MHz Lower 700 MHz E Block license. Further, Nextwave holds a 10 MHz AWS C Block license. Plateau Telecommunications, Inc. holds a 20 MHz AWS A Block license. David Miller holds a 12 MHz Lower 700 MHz A Block license.

New Mexico 4 – Santa Fe (CMA556)

In Quay County, New Mexico, the combined company will hold 102 MHz of cellular, PCS, and 700 MHz spectrum. Cellco Partnership and its subsidiaries hold a 22 MHz Upper 700 MHz C Block license and a 30 MHz A Block PCS license. Alltel Communications and its subsidiaries hold a 25 MHz A Block cellular license, 5 MHz of disaggregated D Block PCS spectrum, a 10 MHz PCS E Block license, and a 10 MHz PCS F Block license.

In the Amarillo, TX BTA (BTA013) which encompasses Quay County, NM, Sprint completed the BRS/EBS transition on March 18, 2008. No USG encumbrances are known to exist in the relevant counties.

As shown in *Figure 17* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least three carriers are operational throughout significant portions of the area, and some portions of the CMA have at least four carriers. Applicants' data shows three operational carriers including ALLTEL in Quay county. Verizon Wireless does not operate in Quay county and, accordingly, there will be no reduction in facilities-based competition as a result of the proposed transaction. New Mexico RSA 4 East Limited Partnership is operational and holds a 25 MHz B Block cellular license and a 20 MHz AWS A Block license.

Other potential entrants include AT&T, which holds a 30 MHz C Block PCS license, as well as 30 MHz of AWS spectrum in the B and D Blocks. Sprint holds 17.5 MHz of ESMR spectrum, 10 MHz of PCS "G Block" spectrum, and a 30 MHz B Block PCS license. T-Mobile holds 5 MHz of disaggregated D Block PCS spectrum and a 20 MHz AWS F Block license. Leap Wireless, through Cricket Licensee, holds a 10 MHz AWS E Block license, and Nextwave holds a 10 MHz AWS C Block license. PVT Networks, Inc. holds a 12 MHz Lower 700 MHz B Block license, Plateau Telecommunications, Inc. holds a 12 MHz Lower 700 MHz C Block license, QUALCOMM Incorporated holds a 6 MHz Lower 700 MHz D Block license, and

Frontier Wireless, LLC holds a 6 MHz Lower 700 MHz E Block license. David Miller holds a 12 MHz Lower 700 MHz A Block license.

North Carolina 4 – Henderson (CMA568)

Out of the six counties comprising the North Carolina 4 – Henderson CMA (CMA568), the combined companies trigger a 95 MHz initial spectrum screen in only Cleveland and Lincoln counties. In both counties, the combined company would be attributed with 122 MHz of cellular, PCS, AWS, and 700 MHz spectrum. Verizon Wireless holds, or has applied for, the 25 MHz A Block cellular license, a 10 MHz C Block PCS license, a 22 MHz C Block Upper 700 MHz license, and a 20 MHz F Block AWS license. Vista holds a 10 MHz C Block PCS license. Alltel holds a 25 MHz B Block cellular license and a 10 MHz E Block PCS license.

The BRS/EBS transition was initiated January 16, 2007, for the Charlotte-Gastonia, NC BTA (BTA074), which encompasses Cleveland and Lincoln counties, and must be complete by October 7, 2008. New Clearwire will own or lease 118.5 MHz of BRS/EBS spectrum in Cleveland county and 180 MHz in Lincoln county. No USG encumbrances are known to exist in the relevant counties.

As shown in *Figure 3* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout significant portions of the area, which correlates with applicants' data showing five operational carriers in Lincoln county and six in Cleveland county, including Verizon Wireless and ALLTEL. AT&T is operational and holds a 30 MHz B Block PCS license, a 12 MHz B Block Lower 700 MHz license, and a 12 MHz C Block Lower 700 MHz license. Sprint is operational and holds 17.75 MHz of ESMR spectrum, a 10 MHz A Block PCS license, a 10 MHz D Block PCS license, and the 10 MHz "G Block" license. T-Mobile is operational and holds 20 MHz of A Block PCS spectrum, 10 MHz of D Block AWS spectrum, and 10 MHz of E Block AWS spectrum. Additionally, Cricket, a landline replacement competitor that has proven itself successful on a local basis, is operational in Cleveland county and holds a 10 MHz F Block PCS license and a 10 MHz C Block AWS license

New national or near national carriers with spectrum include QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum, Frontier Wireless (Echostar), with 6 MHz of E Block Lower 700 MHz spectrum, and SpectrumCo, with 20 MHz of B Block AWS spectrum. Cavalier Wireless holds a 12 MHz A Block Lower 700 MHz license, US Cellular's affiliate Carroll Wireless holds a 10 MHz C Block PCS license, and Carolina West Wireless holds a 20 MHz A Block AWS license.

North Carolina 15 – Cabarrus (CMA579)

In Cabarrus, Iredell, Rowan, and Stanly counties in the North Carolina 15 – Cabarrus CMA (CMA579), the combined companies would be attributed with 122 MHz of cellular, PCS, AWS, and 700 MHz spectrum. Verizon Wireless holds, or has applied for, the 25 MHz A Block cellular license, a 10 MHz C Block PCS license, a 22 MHz C Block Upper 700 MHz license, and a 20 MHz F Block AWS license. Vista holds a 10 MHz C Block PCS license. Alltel holds a 25 MHz B Block cellular license and a 10 MHz E Block PCS license.

The BRS/EBS transition was initiated on January 16, 2007, for the Charlotte-Gastonia, NC BTA (BTA074), which encompasses Cabarrus, Rowan, Stanly, and Iredell counties, and must be completed by Clearwire on October 7, 2008. New Clearwire will own or lease 168.5 MHz of BRS/EBS spectrum in Cabarrus, Rowan, and Stanley counties, and 168 MHz in Iredell county. No USG encumbrances are known to exist in the relevant counties.

As shown in *Figure 3* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout significant portions of the area. Applicants' data shows six carriers operating in four counties, including Verizon Wireless and ALLTEL. AT&T is operational in Iredell county and holds a 12 MHz B Block Lower 700 MHz license and a 12 MHz C Block Lower 700 MHz license in each county, and a 30 MHz B Block PCS license in Iredell county. Sprint is operational and holds, in each county, 17.75 MHz of ESMR spectrum, a 10 MHz A Block PCS license, a 10 MHz D Block PCS license, and the 10 MHz "G Block" license. T-Mobile is operational and holds, in each county, 20 MHz of A Block PCS spectrum, 10 MHz of D Block AWS spectrum, and 10 MHz of E Block AWS spectrum. Cricket, a landline replacement competitor that has proven itself successful on a local basis, is operational and holds a 10 MHz F Block PCS license and a 10 MHz C Block AWS license. Carolina Personal Communications is operational in Cabarrus, Rowan and Stanly counties and holds a 30 MHz B Block PCS license in Cabarrus, Rowan, and Stanly counties, as well as an undefined area in Iredell County.

In all four counties, new national or near national carriers with spectrum include QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum, Frontier Wireless (Echostar), with 6 MHz of E Block Lower 700 MHz spectrum, and SpectrumCo, with 20 MHz of B Block AWS spectrum. AWS Wireless (NextWave) holds a 20 MHz A Block AWS license, Cavalier Wireless holds a 12 MHz A Block Lower 700 MHz license, and US Cellular's affiliate Carroll Wireless holds a 10 MHz C Block PCS license.

Oklahoma 1 – Cimarron (CMA596)

The combined company will hold 102 MHz of cellular, PCS, and 700 MHz spectrum in Cimarron County, Oklahoma. Cellco Partnership and its subsidiaries hold a 22 MHz Upper 700 MHz C Block license and a 30 MHz A Block PCS license. Alltel Communications, through its subsidiaries, holds a 25 MHz A Block cellular license, 5 MHz of disaggregated D Block PCS spectrum, a 10 MHz E Block PCS license, and a 10 MHz F Block PCS license.

The BRS/EBS transition was completed on March 18, 2008, by Sprint for the Amarillo, TX BTA (BTA013). The proposed New Clearwire will operate on 28.5 MHz of BRS/EBS spectrum in Cimarron County. No USG encumbrances are known to exist in the relevant counties.

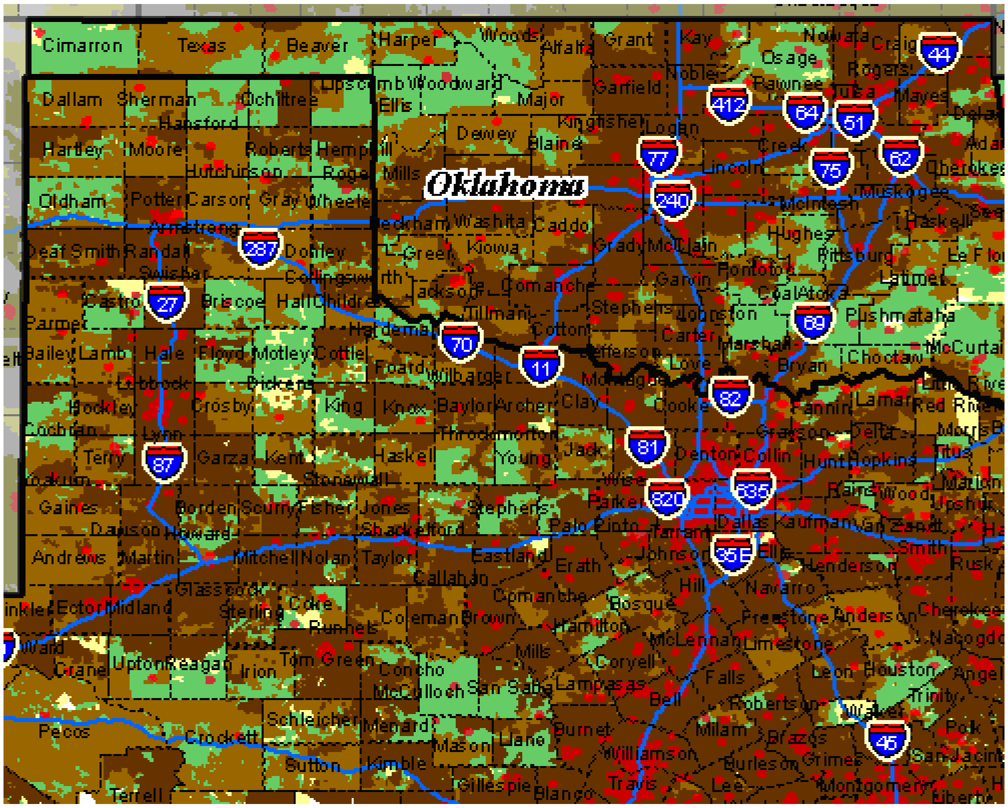


Figure 18: Western Oklahoma Map

As shown in the map above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least three carriers are operational throughout significant portions of the area. Applicants' data shows two operational carriers in Cimarron county, including ALLTEL. Verizon Wireless does not operate in Cimarron county and, accordingly, there will be no reduction in facilities-based competition as a result of the proposed transaction.

Panhandle Telecommunication Systems, Inc. holds a 25 MHz B Block cellular license, a 12 MHz Lower 700 MHz B Block license, and a 12 MHz Lower 700 MHz C Block license.

Other potential entrants include AT&T, which holds a 30 MHz C Block PCS license and a 10 MHz AWS D Block license, Sprint, which holds 16.25 MHz of ESMR spectrum, 30 MHz of B Block PCS spectrum, and the 10 MHz PCS "G Block," and T-Mobile, which holds 5 MHz of disaggregated D Block PCS spectrum, and 30 MHz of AWS spectrum in the C and F Blocks. Leap Wireless, through Cricket Licensee, also holds a 10 MHz AWS E Block license. Cox Wireless holds a 12 MHz Lower 700 MHz A Block license, QUALCOMM Incorporated holds a 6 MHz Lower 700 MHz D Block license, and Frontier Wireless, LLC holds a 6 MHz Lower 700 MHz E Block license. AWS Wireless Inc. and SpectrumCo LLC each hold 20 MHz of AWS spectrum in the A and B Blocks, respectively.

Oklahoma 4 – Nowata (CMA599)

In Delaware County, Oklahoma, the combined company will hold 124 MHz of cellular, PCS, 700 MHz, and AWS spectrum. Cellco Partnership and its subsidiaries hold a 12 MHz

Lower 700 MHz B Block license, a 22 MHz Upper 700 MHz C Block license, a 10 MHz F Block PCS license, and a 20 MHZ AWS F Block license. Alltel Communications, through its subsidiaries, holds 50 MHz of cellular spectrum in the A and B Blocks, as well as 10 MHz of D Block PCS spectrum in an undefined area in Delaware County.

The BRS/EBS transition was completed on September 28, 2007, by Sprint for the Tulsa, OK BTA (BTA448). The proposed New Clearwire will operate on 96 MHz of BRS and EBS spectrum.

As shown in *Figure 9* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout significant portions of the area, which correlates with applicants' data showing five operational carriers including Verizon Wireless and ALLTEL. AT&T is operational and, through its subsidiaries, holds a 30 MHz A Block PCS license and a 10 MHz E Block PCS license. Sprint is operational and holds 16 MHz of ESMR spectrum, a 20 MHz B Block PCS license, and a 10 MHz "G Block" PCS license. T-Mobile is operational and holds a 10 MHz D Block PCS license, a 15 MHz C Block PCS license, and a 10 MHz AWS D Block license.

There are a number of other potential entrants. US Cellular holds a 10 MHz B Block PCS license, and its affiliate Barat Wireless holds a 10 MHz AWS E Block license. Leap Wireless, through Cricket Licensee, holds 15 MHz of C Block PCS spectrum. Cox Wireless, Inc. holds 12 MHz of Lower 700 MHz A Block spectrum, Craw-Kan Telephone Cooperative holds 12 MHz of Lower 700 MHz C Block spectrum, QUALCOMM Incorporated, which holds a 6 MHz Lower 700 MHz D Block license, and Frontier Wireless, LLC, which holds a 6 MHz Lower 700 MHz E Block license. Cable One, Inc. holds a 20 MHz AWS A Block license, SpectrumCo LLC holds a 20 MHz AWS B Block license, and Nextwave holds a 10 MHz AWS C Block license.

South Carolina 9 – Lancaster (CMA633)

In the two counties comprising the South Carolina 9 – Lancaster CMA (CMA633) – Lancaster and York – the combined companies would be attributed with 122 MHz of cellular, PCS, AWS, and 700 MHz spectrum. Verizon Wireless holds, or has applied for, the 25 MHz A Block cellular license, a 10 MHz C Block PCS license, a 22 MHz C Block Upper 700 MHz license, and a 20 MHz F Block AWS license. Vista holds a 10 MHz C Block PCS license. Alltel holds a 25 MHz B Block cellular license and a 10 MHz E Block PCS license.

The BRS/EBS transition was initiated January 16, 2007, for the Charlotte-Gastonia, NC BTA (BTA074), which encompasses Lancaster and York counties, and must be completed by Clearwire on October 7, 2008. New Clearwire will own or lease 51 MHz of BRS/EBS spectrum in Lancaster county and 62.5 MHz in York county. No USG encumbrances are known to exist in the relevant counties.

As shown in *Figure 6* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least four carriers are operational throughout significant portions of the area, which correlates

with applicants' data showing five operational carriers in Lancaster county and six in York county, including Verizon Wireless and ALLTEL. AT&T is operational and holds a 12 MHz C Block Lower 700 MHz license in both counties, and a 30 MHz B Block PCS license in York county. Sprint is operational and holds, in both counties, 17.75 MHz of ESMR spectrum, a 10 MHz A Block PCS license, a 10 MHz D Block PCS license, and the 10 MHz "G Block" license. T-Mobile is operational and holds, in each county, 20 MHz of A Block PCS spectrum, 10 MHz of D Block AWS spectrum, and 10 MHz of E Block AWS spectrum. Cricket, a landline replacement competitor that has proven itself successful on a local basis, is operational in York county and holds a 10 MHz F Block PCS license and a 10 MHz C Block AWS license.

In both counties, new national or near national carriers with spectrum include QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum, Frontier Wireless (Echostar), with 6 MHz of E Block Lower 700 MHz spectrum, and SpectrumCo, with 20 MHz of B Block AWS spectrum. Comporium Wireless holds a 12 MHz B Block Lower 700 MHz license and a 20 MHz A Block AWS license, Cavalier Wireless holds a 12 MHz A Block Lower 700 MHz license, and US Cellular's affiliate Carroll Wireless holds a 10 MHz C Block PCS license. In Lancaster county, Carolina Personal Communications holds a 30 MHz B Block PCS license.

Texas 1 – Dallam (CMA652)

In the six counties comprising the Texas 1 – Dallam CMA (CMA652), the combined company will hold 102 MHz of cellular, PCS, and 700 MHz spectrum. Cellco Partnership holds a 22 MHz Upper 700 MHz C Block license. Verizon Wireless also holds, through Dallas MTA, LP, a 30 MHz A Block PCS license. For its part, Alltel holds, through WWC Texas RSA Limited Partnership, a 25 MHz A Block cellular license, 5 MHz of disaggregated D Block PCS spectrum, and a 10 MHz E Block PCS license. Alltel also holds a 10 MHz F Block PCS license through WWC License L.L.C.

The BRS/EBS transition was completed on March 18, 2008, by Sprint for the Amarillo, TX BTA (BTA013). The proposed New Clearwire will operate on 28.5 MHz of BRS and EBS spectrum in Dallam, Deaf Smith, Hartley, Oldham, and Sherman counties, and on 73.5 MHz in Moore County. No USG encumbrances are known to exist in the relevant counties.

As shown in *Figure 18* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least three carriers are operational throughout most of the area, with four or more carriers in portions of the market, which correlates with applicants' data showing four operational carriers in the relevant counties, with five in Sherman and Deaf Smith counties, including ALLTEL. Verizon Wireless does not operate in the relevant counties and, accordingly, there will be no reduction in facilities-based competition as a result of the proposed transaction. AT&T is operational in Deaf Smith and Oldham counties and holds 20 MHz of disaggregated C Block PCS spectrum, as well as 30 MHz of AWS spectrum in the B and D Blocks. Sprint is operational and holds 18 MHz of ESMR spectrum in all counties except Sherman County, where it holds 17.75 MHz of ESMR spectrum. Sprint also holds the 10 MHz "G Block" PCS license in all six counties, and through WirelessCo L.P. holds a 30 MHz B Block PCS license, except for a 10 MHz partition to Panhandle Telecommunications in Sherman county. Panhandle is operational. T-Mobile is operational except in Oldham county and holds 5 MHz of

disaggregated D Block PCS spectrum and a 20 MHz AWS F Block license. XIT Wireless is operational and holds 10 MHz of disaggregated C Block PCS spectrum and a 25 MHz B Block cellular license, while XIT Telecommunication & Technology holds 12 MHz of Lower 700 MHz C Block spectrum.

Potential new entrants include SAL Spectrum, LLC, which holds a 12 MHz Lower 700 MHz B Block license, QUALCOMM Incorporated, which holds a 6 MHz Lower 700 MHz D Block license, and Frontier Wireless LLC, which holds a 6 MHz Lower 700 MHz E Block license. Leap Wireless, through Cricket Licensee, holds a 10 MHz AWS E Block license. Stelera Wireless, LLC holds a 20 MHz AWS A Block license, while Nextwave holds a 10 MHz AWS C Block license. David Miller holds a 12 MHz Lower 700 MHz A Block license.

Texas 2 – Hansford (CMA653)

In the twelve counties that comprise the Texas 2 – Hansford RSA (CMA653), the combined company will operate on 114 MHz of cellular, PCS, and 700 MHz spectrum. Specifically, Cellco Partnership will hold 12 MHz of Lower 700 MHz B Block spectrum and a 22 MHz Upper 700 MHz C Block license. Verizon Wireless will also hold, through Dallas MTA, LP, a 30 MHz A Block PCS license. Alltel Communications, through various subsidiaries, will hold a 25 MHz A Block cellular license, a 10 MHz E Block PCS license, a 10 MHz F Block PCS license, and 5 MHz of disaggregated D Block PCS spectrum.

The BRS/EBS transition was completed on March 18, 2008, by Sprint for the Amarillo, TX BTA (BTA013). The proposed New Clearwire will hold 118.5 MHz of BRS and EBS spectrum in Carson County, 51 MHz in Armstrong County, and 28.5 MHz in the remaining ten counties. No USG encumbrances are known to exist in Armstrong, Collingsworth, Donley, Gray, Hansford, Hemphill, Hutchinson, Lipscomb, Ochiltree, Roberts, and Wheeler counties.

As shown in *Figure 18* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least three carriers are operational throughout large parts of the area, and four or more carriers are operational in substantial areas. Applicants' data shows between two and three operational carriers in the relevant counties, including ALLTEL. Verizon Wireless does not operate in the relevant counties and, accordingly, there will be no reduction in facilities-based competition as a result of the proposed transaction. In all twelve counties, AT&T is operational and, through its subsidiaries, operates on a 25 MHz B Block cellular license and a 30 MHz C Block PCS license. AT&T also holds 30 MHz of AWS spectrum in the B and D Blocks. Sprint is operational except in Collingsworth, Hansford, Hemphill, Lipscomb and Ochiltree counties, and holds 18 MHz of ESMR spectrum in Armstrong, Carson, Donley, Gray, Hansford, Hutchinson, and Roberts counties. It holds 17.75 MHz of ESMR spectrum in Collingsworth, Hemphill, Lipscomb, Ochiltree, and Wheeler counties. In all twelve counties, Sprint is licensed to operate in the 10 MHz PCS "G Block" and, through WirelessCo, L.P., holds a 30 MHz B Block PCS license. T-Mobile is operational in Armstrong, Carson and Wheeler counties, and holds 5 MHz of disaggregated D Block PCS spectrum through the entire CMA, as well as a 20 MHz AWS F Block license.

Other potential entrants are QUALCOMM Incorporated, which holds a 6 MHz Lower 700 MHz D Block license, and Frontier Wireless, LLC, which holds a 6 MHz Lower 700 MHz E Block license. Also, XIT Telecommunication & Technology, Ltd. holds a 12 MHz Lower 700 MHz C Block license through the entire CMA, and leases this spectrum to Panhandle Telecommunications Systems Inc. in Hansford, Lipscomb, and Ochiltree counties. Leap Wireless, through Cricket Licensee, holds a 10 MHz AWS E Block license. Cable One, Inc. holds a 20 MHz AWS A Block license, and Nextwave holds a 10 MHz AWS C Block license. David Miller holds a 12 MHz Lower 700 MHz A Block license.

Texas 3 – Parmer (CMA654)

The combined company's spectrum holdings will exceed 95 MHz in two counties (Castro and Swisher) in the Texas 3 – Parmer CMA (CMA654). Specifically, the combined company will hold 102 MHz of cellular, PCS, and 700 MHz spectrum in these counties. Cellco Partnership holds a 22 MHz Upper 700 MHz C Block license, and also holds, through Dallas MTA, LP, a 30 MHz A Block PCS license. Alltel, through various subsidiaries, operates on a 25 MHz A Block cellular license, a 10 MHz E Block PCS license, a 10 MHz F Block PCS license, and 5 MHz of disaggregated D Block PCS spectrum.

The BRS/EBS transition was completed on March 18, 2008, by Sprint for the Amarillo, TX BTA (BTA013). The proposed New Clearwire will operate on 28.5 MHz of BRS and EBS spectrum in both counties. No USG encumbrances are known to exist in the relevant counties.

As shown in *Figure 18* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least three carriers are operational throughout large parts of the area, and four or more carriers are operational in substantial areas, which correlates with applicants' data showing three operational carriers in Castro county and five in Swisher county, including ALLTEL. Verizon Wireless does not operate in the relevant counties and, accordingly, there will be no reduction in facilities-based competition as a result of the proposed transaction. AT&T is operational in Swisher county and, through its subsidiaries, operates on a 25 MHz B Block cellular license and a 30 MHz C Block PCS license. AT&T also holds a 10 MHz AWS D Block license in both counties and a 20 MHz AWS B Block license in Castro County. Sprint is operational and holds a total of 58 MHz of spectrum in the CMA: 18 MHz of ESMR, 30 MHz in the PCS C Block, and 10 MHz in the PCS "G Block." T-Mobile is operational in Swisher county and holds 5 MHz of disaggregated D Block PCS spectrum in Castro County and 10 MHz of D Block PCS spectrum in Swisher County. T-Mobile also holds a 20 MHz AWS F Block license in both counties. Plateau Wireless is operational, holding the B Block cellular license and a 12 MHz Lower 700 MHz C Block license.

Leap Wireless, through Cricket Licensee, holds a 10 MHz AWS E Block license in both counties. Additional competitors are Texas RSA 3 Limited Partnership, which holds 20 MHz of AWS A Block spectrum, Stelera Wireless, LLC, which holds a 20 MHz AWS B Block license in Swisher County, and Nextwave, which holds a 10 MHz AWS C Block license. Other potential entrants are QUALCOMM Incorporated, which holds a 6 MHz Lower 700 MHz D Block license, and Frontier Wireless, LLC, which holds a 6 MHz Lower 700 MHz E Block license. David Miller holds a 12 MHz Lower 700 MHz B Block license.

Texas 4 – Briscoe (CMA655)

In three counties in the Texas 4 – Briscoe CMA (CMA655), the combined company will hold 102 MHz of cellular, PCS, and 700 MHz spectrum. Cellco Partnership holds a 22 MHz Upper 700 MHz C Block license in Briscoe, Childress, and Hall counties, and also holds through Dallas MTA, LP, a 30 MHz A Block PCS license. Alltel Communications, through various subsidiaries, holds a 25 MHz A Block cellular license, 5 MHz of disaggregated D Block PCS spectrum, a 10 MHz E Block PCS license, and a 10 MHz F Block PCS license.

The BRS/EBS transition was completed on March 18, 2008, by Sprint for the Amarillo, TX BTA (BTA013). The proposed New Clearwire will own or lease 28.5 MHz of BRS/EBS spectrum in the three counties. No USG encumbrances are known to exist in the relevant counties.

As shown in *Figure 18* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least three carriers are operational throughout large parts of the area, and four or more carriers are operational in substantial areas. Applicants' data shows two operational carriers in Briscoe county and three in Childress and Hall counties, including ALLTEL. Verizon Wireless does not operate in the relevant counties and, accordingly, there will be no reduction in facilities-based competition as a result of the proposed transaction. Sprint is operational in Childress and Hall counties , and holds 18 MHz of ESMR spectrum in Briscoe and Hall counties and 17.75 MHz in Childress County. Sprint also holds the 10 MHz PCS "G Block" and, through WirelessCo, L.P., holds a 30 MHz B Block PCS license. T-Mobile operates on 5 MHz of disaggregated D Block PCS spectrum and holds a 20 MHz AWS F Block license. U.S. Cellular is operational in Childress and Hall counties, where it holds the B Block cellular license, and Caprock Cellular Limited Partnership is operational in Briscoe county where it holds the B Block cellular spectrum.

There are numerous other potential entrants. AT&T is licensed to operate on 30 MHz of C Block PCS spectrum, of which it leases 10 MHz in Childress and Hall Counties to Caprock Cellular Limited Partners HIP. AT&T also holds 30 MHz of AWS spectrum in the B and D Blocks in Childress and Hall Counties. Finally, AT&T holds 10 MHz of AWS spectrum in the D Block in Briscoe county. Leap Wireless, through Cricket Licensee, holds 10 MHz of AWS E Block spectrum. Stelera Wireless holds a 20 MHz AWS A Block license in all three counties, as well as a 20 MHz AWS B Block license in Briscoe County. There are several other potential entrants that could compete with the combined company in these counties. Poka Lambro Telecommunications holds a 12 MHz Lower 700 MHz C Block license. Other potential entrants are QUALCOMM Incorporated, which holds a 6 MHz Lower 700 MHz D Block license, and Frontier Wireless, LLC, which holds a 6 MHz Lower 700 MHz E Block license. David Miller holds a 12 MHz Lower 700 MHz B Block license in all three counties, as well as a 12 MHz Lower 700 MHz A Block license in Childress and Hall counties. Nextwave holds a 10 MHz AWS C Block license.

Texas 5 – Hardeman (CMA656)

In Stephens and Throckmorton counties in the Texas 5 – Hardeman CMA (CMA656), the combined company would be attributed with 99 MHz of cellular, PCS, and 700 MHz spectrum. Verizon Wireless and its affiliates hold, or have applied for, a 30 MHz A Block PCS license, a 12 MHz A Block Lower 700 MHz license, and a 22 MHz C Block Upper 700 MHz license. Alltel holds a 25 MHz A Block cellular license and a 10 MHz E Block PCS license.

The BRS/EBS transition was initiated by Clearwire on February 14, 2007, for the Abilene, TX BTA (BTA003), which encompasses Stephens and Throckmorton counties, and must be complete by November 5, 2008. New Clearwire will own or lease 102 MHz of BRS/EBS spectrum in Stephens county and 34.5 MHz in Throckmorton county. No USG encumbrances are known to exist in the relevant counties.

As shown in *Figure 9* above, the combined company will face competition in the market; the Commission's own data shows that at least three carriers are operational throughout large parts of the area, and four or more carriers are operational in substantial areas. Applicants' data shows two operational carriers in the relevant counties, including ALLTEL. Verizon Wireless does not operate in the relevant counties and, accordingly, there will be no reduction in facilities-based competition as a result of the proposed transaction. AT&T is operational and holds a 25 MHz B Block cellular license, a 15 MHz C Block PCS license, a 10 MHz F Block PCS license, and a 10 MHz D Block AWS license.

There are numerous potential entrants. Sprint holds 18 MHz of ESMR spectrum, a 30 MHz B Block PCS license, and the 10 MHz "G Block" license. T-Mobile holds a 10 MHz D Block PCS license and 20 MHz of F Block AWS spectrum. Additionally, U.S. Cellular holds a 25 MHz B Block cellular license. New national or near national carriers with spectrum include QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum, Frontier Wireless (Echostar), with 6 MHz of E Block Lower 700 MHz spectrum, and SpectrumCo, with 20 MHz of B Block AWS spectrum. MetroPCS and Cricket, landline replacement competitors that have proven themselves successful on a local basis, hold a 10 MHz C Block AWS license and a 10 MHz E Block AWS license, respectively. Additionally, C T Cube L.P. holds a 15 MHz C Block PCS license, US Cellular's affiliate King Street Wireless holds a 12 MHz B Block Lower 700 MHz license, Poka Lambro Telecommunications holds a 12 MHz C Block Lower 700 MHz license, and Stelera Wireless holds a 20 MHz A Block AWS license.

Texas 6 – Jack (CMA657)

In all four counties in the Texas 6 - Jack CMA (CMA657) the combined company will trigger a 95 MHz initial spectrum screen. In Cooke and Palo Pinto counties, the combined companies would be attributed with 121 MHz of cellular, PCS, and 700 MHz spectrum. In Jack and Montague counties, the combined company would be attributed with 101 MHz of cellular, PCS, and 700 MHz spectrum. In all four counties, Verizon Wireless holds, or has applied for a 12 MHz A Block Lower 700 MHz license, a 12 MHz B Block Lower 700 MHz license, and a 22 MHz C Block Upper 700 MHz license. In addition, Verizon Wireless holds a 30 MHz A Block PCS license in Cooke and Palo Pinto counties, and a 20 MHz A Block PCS license in Jack and Montague counties. In all four counties, Alltel holds a 25 MHz A Block cellular license and a 10

MHz E Block PCS license, and in Cooke and Palo Pinto counties holds a 10 MHz D Block PCS license.

The BRS/EBS transition was initiated on January 23, 2007, for the Dallas-Fr. Worth, TX BTA (BTA101), which encompasses Cooke and Palo Pinto counties, and was completed by Sprint/Nextel on September 28, 2007. The BRS/EBS transition was initiated by Sprint/Nextel on February 13, 2007, for the Wichita Falls, TX BTA (BTA473), which encompasses Jack and Montague counties, and must be completed by November 4, 2008. New Clearwire will own or lease 118.5 MHz of BRS/EBS spectrum in Cooke county, 141 MHz in Palo Pinto county, 57 MHz in Jack county, and 102 MHz in Montague county. No USG encumbrances are known to exist in the relevant counties.

As shown in *Figure 9* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least three carriers are operational throughout large parts of the area, and four or more carriers are operational in substantial areas, which correlates with applicants' data showing three operational carriers in Jack county and five in Cooke, Montague and Palo Pinto counties, including Verizon Wireless and ALLTEL. Verizon Wireless does not operate in Montague county and, accordingly, there will be no reduction in facilities-based competition as a result of the proposed transaction in that county. AT&T is operational and holds a 25 MHz B Block cellular license, a 10 MHz F Block PCS license, and a 10 MHz D Block AWS license. Sprint is operational and holds 17.875 MHz of ESMR spectrum in Palo Pinto and Jack counties, 17.625 MHz in Montague county, and 17.25 MHz in Cooke county. Sprint also holds a 30 MHz B Block PCS license and the 10 MHz "G Block" license in the entire CMA. T-Mobile is operational in every county except Jack, and holds 20 MHz of F Block AWS spectrum. In Cooke and Palo Pinto counties, T-Mobile also holds 30 MHz C Block PCS licenses. In Jack and Montague counties, T-Mobile holds 10 MHz A Block PCS licenses and 10 MHz D Block PCS licenses.

New national or near national carriers with spectrum throughout the entire CMA include QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum, Frontier Wireless (EchoStar), with 6 MHz of E Block Lower 700 MHz spectrum, and SpectrumCo, with 20 MHz of B Block AWS spectrum. MetroPCS and Cricket, landline replacement competitors that have proven themselves successful on a local basis, hold a 10 MHz C Block AWS license and a 10 MHz E Block AWS license. Additionally, AWS Wireless (NextWave) holds a 20 MHz A Block AWS license and Nortex Communications Company holds a 12 MHz C Block Lower 700 MHz license. And in Jack and Montague counties, Choice Wireless holds a 30 MHz C Block PCS license.

Texas 7 – Fannin (CMA658)

The combined company will trigger a 95 MHz initial spectrum screen in fourteen counties in the Texas 7 – Fannin CMA. In Delta and Lamar counties, the combined company will be attributed with 104 MHz of cellular, PCS, and 700 MHz spectrum. In Camp, Franklin, Morris, and Titus counties, the combined company will be attributed with 124 MHz of cellular, PCS, and 700 MHz spectrum. In Red River county, the combined company will be attributed with 129 MHz of spectrum, and in Cass county, the combined company will be attributed with

134 MHz of spectrum. The combined company will hold 99 MHz of cellular, PCS, and 700 MHz spectrum in Hopkins, Hunt, Marion, Rains, Upshur, and Wood counties.

The BRS/EBS transition was completed by Sprint/Nextel on September 28, 2007, for the Dallas-Ft. Worth, TX BTA (BTA101), which encompasses Franklin, Titus, Hopkins, Hunt, and Rains counties. The BRS/EBS transition was completed by Clearwire on May 30, 2008, for the Longview-Marshall, TX BTA (BTA260), which encompasses Camp, Morris, Marion, and Upshur counties. The BRS/EBS transition was completed by Clearwire on July 17, 2008, for the Texarkana, TX BTA (BTA443), which encompasses Cass county. The BRS/EBS transition was initiated on February 16, 2007, for the Paris, TX BTA (BTA341), which encompasses Red River, Delta, and Lamar counties, and must be completed by Clearwire by November 7, 2008. The BRS/EBS transition was completed on November 15, 2007, by Sprint for the Tyler, TX BTA (BTA452, encompassing Wood County). New Clearwire will own or lease 141 MHz of BRS/EBS spectrum in Franklin, Titus, Camp, Morris, Hopkins, and Red River counties, 163.5 MHz in Marion County, 96 MHz in Hunt County, 152.5 MHz in Delta and Lamar counties, 73.5 MHz in Cass, Rains, and Upshur counties, and 34.5 MHz in Wood County. No USG encumbrances are known to exist in the relevant counties.

In each county, Verizon Wireless and its affiliates hold, or have applied for a 30 MHz A Block PCS license, a 12 MHz A Block Lower 700 MHz license, and a 22 MHz C Block Upper 700 MHz license. In each county, Alltel holds a 25 MHz A Block cellular license. In Franklin, Titus, Camp, Morris, Red River, and Cass counties, Alltel holds a 25 MHz B Block cellular license. In Franklin, Titus, Camp, Morris, Cass, Hopkins, Hunt, Marion, Rains, Upshur, and Wood counties, Alltel holds a 10 MHz C Block PCS license, and in Delta, Lamar, and Red River counties, Alltel leases 5 MHz of C Block PCS spectrum. Additionally, in Delta, Red River, and Cass counties, Alltel holds a 10 MHz D Block PCS license.

As shown in *Figure 9* above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least three carriers are operational throughout large parts of the area, and four or more carriers are operational in substantial areas, which correlates with applicants' data showing two operational carriers in Cass and Morris counties, three in Camp, Franklin, Red River, and Titus counties, four in Delta, Hopkins, Lamar, Marion and Upshur counties, and five in Hunt, Rains, and Wood counties, including ALLTEL. Verizon Wireless does not operate any of the fourteen counties except Hopkins and Hunt, and, accordingly, there will be no reduction in facilities-based competition as a result of the proposed transaction in Camp, Cass, Delta, Franklin, Lamar, Marion, Morris, Rains, Red River, Titus, Upshur, and Wood counties.

In each county, AT&T is operational in every county except Cass and Morris, and holds a 25 MHz B Block cellular license in Delta, Hopkins and Hunt counties, a 10 MHz E Block PCS license, a 10 MHz F Block PCS license, a 12 MHz B Block Lower 700 MHz license, and a 10 MHz D Block AWS license. In Delta, Lamar, and Red River counties, AT&T holds a 20 MHz C Block PCS license. And in Franklin, Titus, Camp, Hopkins, Hunt, Marion, Rains, Upshur, Wood, and Morris counties, AT&T holds a 10 MHz D Block PCS license. In each county, Sprint holds a 30 MHz B Block PCS license, and the 10 MHz "G Block" license. Sprint is operational also holds 18 MHz of ESMR spectrum in all counties except Hunt County (where it holds 17.625 MHz) and Rains County (where it holds 17.75 MHz). T-Mobile is operational in

Delta, Hopkins, Hunt, Rains, and Wood counties and holds 20 MHz of F Block AWS spectrum. In Franklin, Titus, Camp, Morris, Hopkins, Hunt, Marion, Rains, Upshur, Wood, and Cass counties, T-Mobile also holds a 20 MHz C Block PCS license. In Delta, Lamar, and Red River counties, T-Mobile holds a 10 MHz C Block PCS license. Additionally, Peoples Wireless Service (Rains and Woods counties), ETEX Communications (Marion and Upshur counties), and Lamar County Cellular (Lamar county) all hold 25 MHz B Block cellular licenses in the designated counties and are operational. Peoples Telephone Cooperative also holds a 12 MHz C Block Lower 700 MHz license.

New national or near national carriers with spectrum in each county include QUALCOMM, with 6 MHz of D Block Lower 700 MHz spectrum, Frontier Wireless (EchoStar), with 6 MHz of E Block Lower 700 MHz spectrum, and SpectrumCo, with 20 MHz of B Block AWS spectrum. Additionally, MetroPCS and Cricket, landline replacement competitors that have proven themselves successful on a local basis, hold a 10 MHz C Block AWS license and a 10 MHz E Block AWS license, respectively. AWS Wireless (NextWave) holds a 20 MHz A Block AWS license and

Utah 4 – Beaver (CMA676)

The combined company would be attributed with 109 MHz of cellular, PCS, and 700 MHz spectrum in the three counties comprising the Utah 4 – Beaver CMA (CMA676). Verizon Wireless and its affiliates hold, or have applied for, a 25 MHz B Block cellular license, a 15 MHz C block PCS license, a 12 MHz B Block Lower 700 MHz license, and a 22 MHz C Block Upper 700 MHz license. Alltel Communications holds a 25 MHz A Block Cellular license and a 10 MHz A Block PCS license in portions of the CMA.

No USG encumbrances are known to exist in Iron and Washington counties.

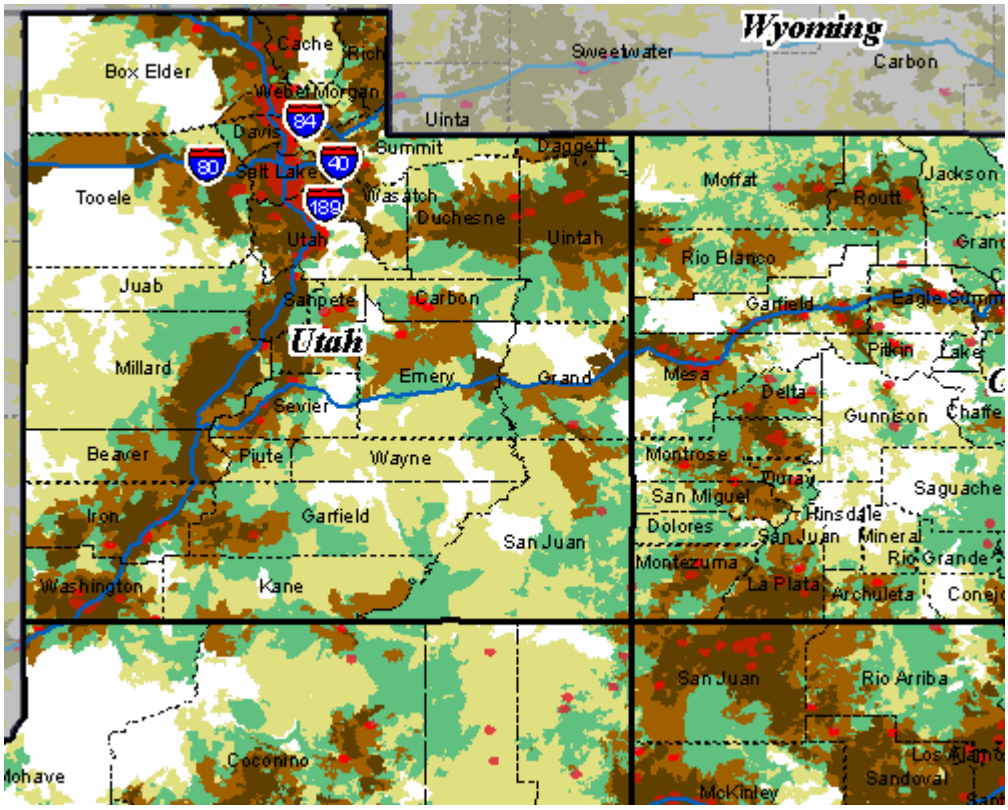


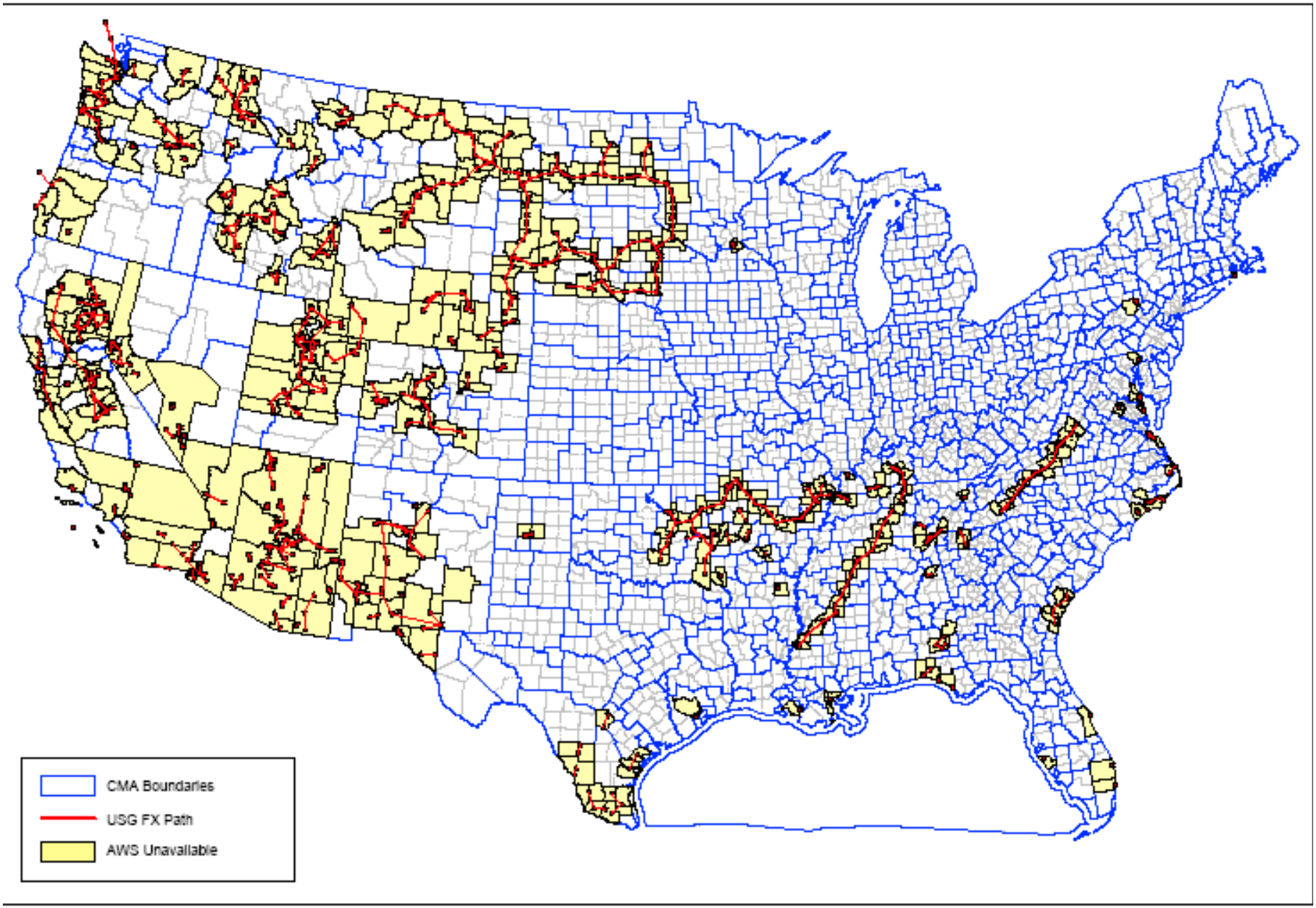
Figure 19: Utah Map

As shown in the map above, the combined company will face competition from a number of other operational carriers in the market; the Commission's own data shows that at least three carriers are operational throughout large parts of the area, and four or more carriers are operational in substantial areas. Applicants' data shows six operational carriers in the relevant counties, including Verizon Wireless and ALLTEL. AT&T is operational and holds a 15 MHz C Block PCS license, a 10 MHz D Block PCS license, and a 10 MHz E Block AWS license. Sprint is operational and holds 17 MHz of ESMR spectrum (except for 15.75 MHz in Washington county), a 30 MHz B Block PCS license, and the 10 MHz "G Block" license. T-Mobile is operational and holds a 30 MHz A Block PCS license, a 10 MHz E Block PCS license, and a 20 MHz F Block AWS license. South Central Utah Telephone Association is operational and holds a 10 MHz F Block PCS license

New national or near national carriers include QUALCOMM, which holds 6 MHz of D Block Lower 700 spectrum, Frontier Wireless (EchoStar), which holds 6 MHz of E Block Lower 700 spectrum, and SpectrumCo, which holds 20 MHz of B Block AWS spectrum. MetroPCS, a landline replacement competitor that has proven itself successful on a local basis, holds 10 MHz of C Block AWS spectrum and 10 MHz of D Block AWS spectrum. Additional competitors include, Cox Wireless, which holds 12 MHz of A Block Lower 700 MHz spectrum, Union Telephone Company, which holds a 12 MHz C Block Lower 700 MHz license, and Manti Telephone Company, which holds 20 MHz of A Block AWS spectrum.

USG Relocation Nationwide

1" = 275 mi.



Attachment 3:
Katz Declaration

AN ECONOMIC ANALYSIS OF THE SPECTRUM COMPONENT OF THE FEDERAL COMMUNICATIONS COMMISSION'S MERGER REVIEW SCREEN

Michael L. Katz

19 August 2008

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I. INTRODUCTION AND OVERVIEW

1. Under its current merger review process, the Federal Communications Commission (Commission) applies a three-part screen to identify those geographic areas that receive more detailed examination. The first two components are based on traditional market share measures and examine the level of market concentration and the change in concentration to which the transaction under consideration would give rise. The third component examines whether the merged entity would hold licenses covering more than 95 MHz of spectrum.[1]

2. I have been asked by counsel for Verizon Wireless to conduct an economic analysis of whether the spectrum component of the Commission's merger review screen promotes consumer welfare and economic efficiency. I conclude that it does not. Accordingly, as explained below, the Commission should cease using a spectrum screen for merger review, or, at a minimum, should significantly raise the screen to recognize the dramatic increases in the availability of spectrum suitable for Commercial Mobile Radio Services (CMRS).

3. Briefly, my findings are the following:

- *A properly designed screen can play a useful role in providing transparency and reducing the social and private costs of merger review. Conversely, a screen that identifies an excessive number of targets for additional investigation, or that focuses on the wrong criteria, can harm consumers and competition.* A poorly designed spectrum screen can harm competition and consumers by increasing the costs of expansion for a service provider that has developed a successful business

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[1] *Applications of AT&T Inc. and Dobson Communications Corporation For Consent To Transfer Control of Licenses and Authorizations*, 22 FCC Rcd 20295 (2007) (hereinafter, *AT&T-Dobson Order*), ¶ 30, and *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent To Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases*, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-181 (2008) (hereinafter *Verizon Wireless-RCC Order*),), ¶¶ 32 and 33.

model that requires additional spectrum to meet consumer demand for its services. In addition, a poorly designed screen can divert scarce investigative resources to the wrong issues, increasing the chance of enforcement errors. Importantly, the ill effects of a poorly designed screen can arise even if, ultimately, spectrum acquisition transactions are allowed to proceed.

- *A screen should be applied only if it is based on criteria that would be a sound basis for more detailed review; the spectrum threshold of the current screen does not meet this requirement.* Even when a screen is only a first step in a larger analysis, it should have a sound analytical base. To be informative, it must be based on measures that give a reasonable, if approximate, view of the likely competitive effects. The number of MHz covered by spectrum licenses held by the merging entities is not a useful measure for analyzing competitive effects. This is so for several reasons.

  — First, the focus on the ownership of a single input provides almost no information about the state of competition in the output market. A rival could be a weak competitor despite having a large amount of spectrum or a strong competitor despite having relatively little spectrum.

  — Second, the amount of spectrum held by a single entity is a poor measure of the spectrum available for rivals. To the extent that access to spectrum affects the possibility of entry, the licenses to spectrum that is *not* held by the merging parties are what matter. When the total of available spectrum is constantly increasing, it makes little sense to focus on a specific amount held by the merging parties.

  — Third, focus on contemporaneous license holdings ignores secondary markets for spectrum licenses, technological improvements, and the release of additional spectrum licenses.

  — Fourth, the value of a spectrum-based screen is seen to be even lower once one takes into account the rest of the Commission's merger review process. The spectrum component of the Commission's merger review screen is not a useful supplement to traditional concentration measures, such as those that serve as the basis for the other two components of the screen.

- *The current spectrum threshold does not have a sound public-interest rationale.* As summarized above and discussed in greater detail below, a spectrum threshold raises the costs of expansion for successful service providers and correspondingly weakens competition. In the light of these costs, it is vital that any threshold have a sound public-interest basis. The current threshold does not.

  — It would not be sound public policy to hold spectrum in reserve in anticipation that new entrants might arrive. Under such a policy, spectrum would not be put to its best use in the short run. In the long run, the policy would have little or no benefit in comparison with a policy of having put the spectrum on the

market earlier: later entrants could purchase spectrum on the secondary market if their entry was the highest value use of the spectrum.

— Given the current state of the industry, there is no need to put a brake on a single entity's spectrum ownership. There are other means to ensure competition. More important, it generally would be uneconomic for a service provider to obtain additional spectrum in order to warehouse it and deter entry or expansion by rivals.

— A policy of setting the threshold by dividing the amount of suitable spectrum into thirds does not have a sound basis. A fatal flaw with this approach as a means of preserving spectrum rights for actual and potential competitors is that it fails to account for the fact that two rival service providers with different business plans may need very different amounts of spectrum to compete successfully.

— *If the Commission retains the spectrum component of its merger review screen, then it should raise the threshold.* Ideally, the Commission would drop the spectrum component of its merger review screen. If it nevertheless retains the screen, then the Commission should raise the threshold significantly. The Commission could do this without a danger of competitive harms because: (a) the rest of the Commission's merger review process will remain in place; (b) there are flaws in the current methodology that result in a threshold that is too low even by the internal logic of a spectrum screen; and (c) the amount of suitable spectrum has been increasing.

4. The remainder of this white paper explains these findings in greater depth and provides details of the facts and analysis that led me to reach them.

II. A POORLY CONCEIVED SCREEN HARMS COMPETITION AND CONSUMERS

5. A properly designed screen can play a useful role in providing transparency and in reducing the social and private costs of merger review by focusing attention on those areas in which additional information would be most useful to making a proper assessment of the public-interest effects of a proposed transaction. However, a screen that identifies an excessive number of targets for additional investigation, or that focuses on the wrong criteria, can harm consumer welfare and efficiency through at least two mechanisms.

6. First, a poorly designed spectrum screen can distort and attenuate competition.[2] For instance, to the extent that the spectrum threshold in the screen serves as a *de facto* cap on the amount of spectrum for which a single service provider can have licenses in any relevant geographic area, the threshold limits competition by restricting output. Consumers will be harmed by a resulting combination of higher prices, lower service quality, and diminished innovation in service offerings. These effects arise because it will be more difficult and costly (and, in some cases, impossible) for a service provider to expand when it has developed, or—in the case of innovation—is contemplating the development of, a successful business model that requires additional spectrum to meet consumer demand for its services.

7. It is important to recognize that these ill effects can arise even if, ultimately, spectrum acquisition transactions are allowed to proceed. These harms to consumers and economic efficiency arise because the uncertainty caused by application of the screen, as well as the costs associated with addressing issues raised by the screen through participation in the regulatory process (including the often significant costs of delay), constitute a tax on expansion through business strategies that require additional spectrum. Economic analysis indicates that raising the marginal costs of successful service providers will reduce industry output and raise equilibrium prices, to the detriment of consumers. Moreover, in addition to the harm to consumers, there will be efficiency harms that result from the reallocation of output from service providers that have relatively low costs (and, thus, would tend to have

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[2] Appendix 2 presents a simple algebraic model to illustrate the mechanism by which a spectrum screen can harm competition and consumers, whether it is a *de facto* cap or not.

higher market shares and spectrum demands) to service providers that have relatively high costs (and, thus, tend to have low market shares and low spectrum demands).[3]

8. The second mechanism through which a poorly conceived screen can harm social welfare is by diverting scarce investigative resources to the wrong issues. This diversion increases the likelihood that the Commission will make an incorrect assessment of the true public interest effects of the proposed transaction and, consequently, increases the likelihood that the Commission will make the wrong decision regarding whether to approve the transaction or not.

III. THE RATIONALES FOR A SPECTRUM COMPONENT OF THE OVERALL SCREEN ARE UNSOUND

9. In the light of the social costs of a poorly conceived screen, it is important that a screen be applied only if it has a sound analytical base. This is so even in those instances where the screen is only the first step in a more extensive analytical process. A screen should be based on criteria that would constitute a sound basis for a more detailed review. To be informative, a screen must be based on measures that give a reasonable, if approximate, view of the likely competitive effects. The current spectrum screen does not meet this requirement.

10. A review of possible public-interest rationales for a spectrum-based screen demonstrates that the current screen is unsound, does not usefully contribute to the Commission's merger review process, and should be eliminated.

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[3] The relative costs refer to differences in costs after taking into account any differences in service qualities.

- *A focus on a single input is a poor—and likely misleading—substitute for a sound competitive analysis.* To oversimplify somewhat, consumer welfare depends on outputs, not inputs. Hence, if spectrum license holdings are to be a useful measure of competitive conditions, then it is essential to understand the link between spectrum license holdings and competition in the output market. Doing so requires making predictions about which business plans will be successful and how much spectrum they will need. However, it is difficult, if not impossible, to make such predictions with a high degree of confidence. The difficulties of such predictions are compounded when different service providers use different technologies and operate in different spectrum bands. The impossibility of making such predictions with any degree of confidence is illustrated by the ongoing arguments whether a MHz of spectrum in one band should be given more or less weight than a MHz of spectrum in another band even when both are suitable for providing CMRS.[4] Attempts to address this problem by designing ever more complicated thresholds and systems of spectrum weights would largely defeat the purpose of a screen and, in any event, would be unlikely to have a rigorous factual basis given the complexity of the problem. Moreover, various direct measures of output are available and are better indicators of competitive conditions.[5]

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[4] See, for example, Charles Jackson's discussion of the debate concerning the treatment of BRS/EBS spectrum, as well as the issue of how to account for unlicensed spectrum in its role as a complement to licensed spectrum. (Charles Jackson, *The Supply of Spectrum for CMRS*, August 19, 2008 (hereinafter, *Jackson Report*) at 6-12 and 14-16.

[5] That said, even output measures should be used with care.

- *The shortcomings of focusing on a single input as a measure of competitive conditions are made worse by focusing on the amount of the input to which a particular entity has access.* To the extent one is going to focus on a particular asset to assess the state of actual or potential competition, it makes more sense to focus on the availability of spectrum for rivals than on the amount controlled by any single entity. In a static world, one might argue that—because the amount of spectrum available for use by rivals is equal to the total amount available minus the amount controlled by the entity under consideration—it makes little difference whether policy focuses on the amount held by one entity or the amount available for use by others. But when the total of available spectrum is constantly increasing, it makes little sense to focus on a specific amount held by the merging parties.
- *Saving spectrum for entrants is an unsound rationale.* It is not sound public policy to hold spectrum in anticipation that new entrants might arrive. The spectrum would not be put to its best use in the short run. In the long run, even absent a public policy of holding spectrum in reserve, entrants could purchase spectrum on the secondary market if their entry was the highest value use of the spectrum.
- *Preventing warehousing is an unsound rationale.* An attempt to warehouse spectrum would be costly to an incumbent and subject to free riding by other incumbents. Attempts to warehouse spectrum are especially costly when an entrant needs only a small fraction of the available spectrum in order to be a viable competitor. This is so because the incumbent would have to purchase licenses to all of the blocks of spectrum that the entrant might utilize, while the entrant need purchase a license to

only one. A numerical example illustrates this point. Suppose that there are 270 MHz of suitable spectrum available for license in blocks of 30 MHz each. Also suppose that a service provider needs one such block in order to be a viable competitor. Lastly, suppose that incumbents currently hold licenses to 150 MHz of spectrum in some geographic market. Any one of the four remaining 30-MHz blocks could be used by an entrant to become a new competitor. Hence, an incumbent would have to purchase licenses for all four remaining blocks in order to deter entry. Thus, if an entrant were willing to bid up to $50 million in order to obtain a 30-MHz license, the incumbent would have to spend $200 million to block entry through spectrum warehousing.

Of course, as the total amount of spectrum available rises, it becomes even more costly for an incumbent to attempt to deter entry by warehousing spectrum. For example, if the total spectrum available is 650 MHz, then even if incumbents held 250 MHz of spectrum and an entrant needed 100 MHz to be a viable competitor, an incumbent would have to buy licenses for four times as much spectrum as would an entrant in order to get to the point where 650 – 250 – warehoused spectrum < 100. [6] Moreover, for the right price, another incumbent might be willing to sell some its licenses to a potential entrant, thus increasing the amount of spectrum that an incumbent attempting to deter entry through warehousing would have to purchase.

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[6] This point is also illustrated algebraically in Appendix 2.

IV. IF THE COMMISSION RETAINS THE SPECTRUM COMPONENT OF ITS MERGER REVIEW SCREEN, THEN IT SHOULD RAISE THE THRESHOLD

11. Ideally, the Commission would drop the spectrum component of its merger review screen in order to avoid the adverse consumer welfare effects identified above. If the Commission retains the spectrum screen, then it should raise the spectrum threshold in order to reduce the extent of these adverse welfare effects. The Commission can significantly raise the threshold without a danger of competitive harms because: (a) the rest of the Commission's merger review process will remain in place; (b) there are flaws in the current methodology that result in a threshold that is too low even by the internal logic of a spectrum screen; and (c) increasing amounts of spectrum have become—and are becoming—available for use to provide CMRS services.

12. The remainder of this section discusses points (b) and (c) in additional detail.

A. THE COMMISSION SHOULD RECOGNIZE THAT ITS CURRENT METHODOLOGY IS BIASED TOWARD SETTING A LOW THRESHOLD

13. There are flaws in the current methodology that result in a threshold that is too low even by the internal logic of a spectrum screen. Specifically, the Commission's "one-third rule" lacks a sound public-interest basis and is implicitly based on the false assumption that no service provider can successfully compete unless it holds licenses to at least as much spectrum as any other service provider. In reality, different service providers pursue different business models, and two different providers may have significantly different spectrum needs while both competing successfully.

14. In its first application of the spectrum screen (and the only place in which it has provided a rationale of the "one-third rule") the Commission stated that

> because spectrum is a necessary resource for wireless carriers to compete effectively, we also further analyzed those markets in which, post-transaction, the Applicants would have 70 MHz or more in at least part of the market. By selecting 70 MHz as the threshold, we ensured that we subjected to further review any market in which the level of spectrum aggregation will exceed what is present in the marketplace today. *As an initial matter, although 70 MHz represents a little more than one-third of the total bandwidth available for mobile telephony today, we emphasize that a market may contain more than three viable competitors even where one entity controls this amount of spectrum, because many carriers are competing successfully with far lower amounts of bandwidth today*.[7]

15. As an initial matter, setting the threshold based on what were levels of license holdings at the time runs a substantial risk of setting the threshold at too low a level. This type of historical approach provides, at best, a one-sided test. The Commission concluded that CMRS markets performed well and were competitive given the observed levels of license holdings. It does not, however, follow that market performance would deteriorate or that competition would be weakened if one or more service providers were to obtain licenses for greater amounts of spectrum. In fact, there is no reason to believe that increases in license holdings above the levels historically observed would suddenly trigger a weakening of competition. Moreover, as discussed above and in Appendix 2, policies that have the effects

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[7] *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, 19 FCC Rcd 215122 (2004) (hereinafter, *AT&T-Cingular Order*), ¶ 109 [emphasis added].

The Commission more recently stated:

> Also consistent with the Commission's previous reasoning for applying a spectrum aggregation screen based approximately on one-third of the total bandwidth available for mobile telephony, we revise the spectrum aggregation screen to 95 MHz, approximately one-third of the 280 MHz of the spectrum suitable for mobile telephony today.

AT&T-Dobson Order, ¶ 30.

of increasing a service provider's costs of expansion—such as spectrum threshold—will themselves weaken competition.

16. An argument that a spectrum threshold should have the property that every provider could be at the threshold and still ensure that there could be at least three providers is, upon inspection, unsound. If there would still be three providers after a proposed transaction had been completed, then the concern with the number of possible competitors would have already been satisfied without any reference to a spectrum threshold.[8] And if there would be fewer than three service providers after consummation of the proposed transaction, then the threshold could be set at a level higher than one-third of the total available spectrum and still leave room for a third competitor. As the Commission correctly emphasizes in the statement quoted above, "a market may contain more than three viable competitors even where one entity controls" a third of the available spectrum. It also follows that a market may contain three viable competitors even where one entity controls more than a third of the available spectrum. For example, using the Commission's most recent assessment of the amount of spectrum available for CMRS, if there were only two service providers, then even if each held licenses covering 120 MHz of spectrum, there would be 40 MHz for a third competitor.[9]

17. Increases in the amount of suitable spectrum have significant effects on the amount of spectrum available for competing service providers. When there are 500 MHz of suitable

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[8] As the Commission observed in the context of a specific transaction, a merger generally does not take spectrum licenses away from rival service providers. (See Commission quotation in paragraph 20 below.)

[9] The Commission most recently based the spectrum threshold on a total of 280 MHz of spectrum suitable for mobile telephony. (*Verizon Wireless-RCC Order,* ¶ 43.)

spectrum, a single entity could hold licenses to 300 MHz and there would still be room for two competitors even if they each needed 100 MHz to carry out their business plans. If—in the Commission's analysis—even more spectrum is suitable, then the threshold value for the spectrum screen increases 1-for-1 with the increase in the total suitable spectrum. For instance, if there is a total of 650 MHz of suitable spectrum, then a single entity could hold licenses to 450 MHz and room would remain for two competitors each requiring 100 MHz to carry out their business plans.

B. THE COMMISSION SHOULD TAKE INTO ACCOUNT THE INCREASE IN AVAILABLE SPECTRUM

18. As a result of actions taken by the Commission, as well as continuing technological innovation, increasing amounts of spectrum have become—and are becoming—available for use to provide CMRS services. If the Commission retains the spectrum screen, then the Commission's policy should recognize that spectrum availability has increased dramatically and raise the threshold accordingly.

19. The Commission has raised the threshold in response to the increased availability of suitable spectrum in the past, and the Commission has laid out principles for further expansion. The Commission should apply these principles to the current situation and raise the threshold further.

20. According to the Commission, it

> determined to include, in its evaluation of potential competitive harm, spectrum in particular bands that is "suitable" for the provision of mobile telephony services … [where] suitability is determined by whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is

> committed to another use that effectively precludes its uses for mobile telephony.[10]

Elsewhere, the Commission stated

> In this regard, we note that this merger does not take spectrum away from any competing carriers. Therefore, the spectrum-related harm, if any, would be that the merger could result in an imbalance in the availability of spectrum that would cause other carriers to be more spectrum-constrained than Cingular at a later point in the deployment of next-generation services. We believe, however, that the arrival of carriers' 3G-related needs for additional spectrum generally will align with the arrival of suitable spectrum in future auctions, including those for AWS, upper 700 MHz, and lower 700 MHz. We note also that the Commission is, in significant degree, in control of assuring that these auctions occur, and that clearance in these bands occurs, in a suitable timeframe.[11]

21. Several sound principles are stated or implied by these quotations.[12] However, the threshold's current level does not reflect those principles. Specifically, the quotations reflect the fact that a sound policy must be forward looking and recognize that the Commission can influence future spectrum availability.

22. Technology clearly is an important consideration in the assessment of which spectrum is suitable for the provision of competing services. But, as the Commission is well aware, technology is constantly evolving. Given that current Commission policies will affect future competitive conditions, the Commission's approach to the determination of what is technologically suitable should be forward looking and recognize that innovation is constantly improving the ability to use various bands to provide CMRS.

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[10] *AT&T-Dobson Order*, ¶ 26 [internal footnote omitted].

[11] *AT&T-Cingular Order*, ¶ 140.

[12] This comment applies solely to the general principles. I am not offering any opinion on the Commission's review of either the AT&T-Dobson or AT&T-Cingular transactions.

23. The Commission's policy should also be forward looking in terms of its assessment of the effects of service rules and allocations. Moreover, the Commission should—as it stated in the quotation above—take into account the fact that the Commission itself exercises a high degree of control over service rules and allocations and could—if competitive concerns warranted—change these rules and allocations in the future to mitigate those concerns.

24. Charles Jackson has conducted an analysis in which he reviews the spectrum available for providing CMRS.[13] As shown by his analysis, the pool of spectrum available for CMRS has expanded dramatically in recent years as the result of Commission actions. The current value of the spectrum threshold does not reflect this expansion and, thus, is even more seriously flawed than its methodological shortcomings alone would indicate. According to Dr. Jackson's analysis, there is a total of nearly 650 MHz of spectrum that can be used for CMRS.[14] Moreover, he concludes that CMRS providers have sufficient ability to utilize unlicensed spectrum as a complement to their licensed spectrum and that the Commission should take this spectrum into account as well, at least to a degree.[15] According to Mr. Jackson's analysis, more than half of the spectrum available for CMRS was excluded from consideration in calculating the current threshold value.

V. CONCLUSION

25. The present screen does not have a sound basis in economic theory or marketplace facts. Dropping the spectrum component of the Commission's merger review screen could be

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[13] *Jackson Report.*

[14] *Jackson Report* at 2, 16-17

expected to raise consumer welfare and promote economic efficiency. If the Commission nevertheless retains the spectrum threshold as a part of its merger review screen, the Commission should raise the threshold to account for biases in the methodology through which the threshold was set and to reflect the increase in available spectrum.

I declare under penalty of perjury that the foregoing is true and correct

Michael L. Katz
Executed August 19, 2008

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[15] *Jackson Report* at 14-16.

APPENDIX 1: QUALIFICATIONS

26. I am the Harvey Golub Professor of Business Leadership at New York University's Stern School of Business. I also hold the Sarin Chair in Strategy and Leadership at the University of California, Berkeley, where I have a joint appointment in the Haas School of Business Administration and the Department of Economics. I have served on the faculty of the Department of Economics at Princeton University. I received my A.B. from Harvard University *summa cum laude* and my doctorate from Oxford University. Both degrees are in Economics.

27. I specialize in the economics of industrial organization, which includes the study of antitrust and regulatory policies. I regularly teach courses on microeconomics and business strategy. I am the co-author of a microeconomics textbook, and I have published numerous articles in academic journals and books. I have written academic articles on issues regarding the economics of network industries, systems markets, antitrust enforcement, and telecommunications policy. I am recognized as one of the pioneers in extending the theory of network effects to competitive settings. I am a co-editor of the *Journal of Economics and Management Strategy* and serve on the editorial boards of *Information Economics and Policy* and the *Journal of Industrial Economics*. I recently completed a term on the Computer Science and Telecommunications Board of the National Academies.

28. In addition to my academic experience, I have consulted on the application of economic analysis to issues of antitrust and regulatory policy. I have served as a consultant to both the U.S. Department of Justice and the Federal Communications Commission on issues of antitrust and regulatory policy. I have served as an expert witness before state and federal

courts. I have also provided testimony before state regulatory commissions and the U.S. Congress.

29. From January 1994 through January 1996, I served as the Chief Economist of the Federal Communications Commission under the Clinton Administration. I participated in the formulation and analysis of policies toward all industries under Commission jurisdiction. As Chief Economist, I oversaw both qualitative and quantitative policy analyses.

30. From September 2001 through January 2003, I served as the Deputy Assistant Attorney General for Economic Analysis at the U.S. Department of Justice under the Bush Administration. I directed a staff of approximately fifty economists conducting analyses of economic issues arising in both merger and non-merger enforcement. Our principal professional focus was on understanding and projecting the impacts of various business practices and public policy decisions on consumers' economic welfare. My title as Deputy Assistant Attorney General notwithstanding, I am not an attorney.

APPENDIX 2: SOME SIMPLE ILLUSTRATIVE MODELS

A. A COURNOT EXAMPLE

31. Consider an *n*-firm Cournot oligopoly in which one service provider has costs c_L and the other $n-1$providers have costs c_H, where $c_L < c_H$. Assume that the inverse demand curve for the homogenous product is $P(X) = \alpha - X$, where X denotes industry output and α is a positive constant. Let $h(x)$ denote the costs imposed by the spectrum screen on a service provider whose output level is x, where $h(\cdot)$ is a non-negative, increasing function. The assumption that $h(\cdot)$ is increasing reflects the fact that a service provider seeking to offer greater output to consumers will tend to need additional spectrum licenses, *ceteris paribus*, and thus will be more likely to exceed the spectrum threshold.

32. For convenience, suppose that $h(x) = 0$ at the output levels that the higher cost firms would choose absent the policy that gives rise to $h(\cdot)$ and the policy affects only the costs of the provider with the lowest costs.[16] It is well known (and is easily shown through calculations in the present example) that an increase in the marginal costs of one supplier leads to a fall in the equilibrium output level of the provider whose costs have risen and of the industry as a whole.[17] The result will be higher prices and lower levels of consumer welfare. In addition, there will be a shift of production away from the low-cost provider and toward

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[16] If $h(x) > 0$ at the output level that the higher-cost firms would choose absent the policy that gives rise to $h(\cdot)$, then the adverse effects on consumers would be even greater.

[17] Rival providers will expand, but their collective output will rise by less than the fall in the amount output produced by the provider whose costs have risen.

the high-cost providers. The result will be higher costs for any given total amount of industry output.

B. THE ARITHMETIC OF SPECTRUM SCREEN THRESHOLDS

33. Let S denote the MHz threshold used in the spectrum portion of the merger review screen. Let T denote the total amount of spectrum suitable for provision of competing services. Lastly, let V denote the amount of spectrum necessary to be a viable competitor.

34. The maximal number of competitors given that the merged entity holds licenses to S MHz is

$$N = 1 + \frac{T - S}{V} \quad .$$ [18]

The Commission's approach implicitly assumes that $V = S$. In words, this approach implicitly assumes that if one competitor finds it privately optimal to obtain licenses to S MHz of spectrum, then other service providers must need that amount of spectrum as well in order to be viable competitors. Hence, this approach sets the spectrum threshold as if the only way to guarantee room for at least three competitors is to set $S = \frac{1}{3}T$.

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[18] In order to simplify the exposition, the discussion in this part treats spectrum licenses as infinitely divisible and the number of service providers as a continuous variable. In actuality, the Commission licenses spectrum in specific blocks, and the number of service providers is an integer. The fundamental points made in this part remain valid if one complicates the model to reflect reality. For example, the incumbent would have to obtain control of *all* of the licenses that an entrant would otherwise be able to obtain and use as the basis for a viable business, while the entrant would have to acquire only one. Thus, as in the analysis that concludes this part below, the cost of purchasing spectrum for warehousing would be a multiple of the cost of purchasing spectrum for entry.

35. In practice, different service providers have different business models, as well as different degrees of success for reasons not having to do with their spectrum licenses. Hence, the fact that one service provider has a business model that is most effective using licenses to *S* MHz does not imply that other service providers require licenses to the same amount of spectrum. Suppose, instead, that a service provider can be viable with spectrum licenses covering one n^{th} of the total. That is, suppose $V = \frac{1}{n}T$. Then the maximal number of competitors given that the merged entity has licenses to *S* MHz is

$$N = 1 + \frac{T - S}{V} = 1 + \frac{n(T - S)}{T} \quad .$$

Rearranging the terms of this equation reveals that the value of *S* that ensures sufficient spectrum for at least *N* rivals is

$$S = \frac{T(n - N + 1)}{n} \quad .$$

36. A numerical example illustrates the importance of the difference from the Commission's approach. Suppose that $N = 3$, $T = 270$, and $V = 30$. In this case, n = 9 and, thus,

$$S = \frac{270(9 - 3 + 1)}{9} = 210 \quad .$$

To see the effects of the continued growth in spectrum available for CMRS, suppose that $N = 3$, $T = 600$, and $V = 60$. Then n = 10 and

$$S = \frac{600(10 - 3 + 1)}{10} = 480 \quad .$$

37. Lastly, to see that attempts to warehouse spectrum are especially costly when an entrant needs only a small fraction of the available spectrum in order to be a viable

competitor, suppose that E MHz of spectrum are potentially available for use by an entrant and an incumbent attempts to purchase the spectrum solely to deny the entrant a necessary input. The entrant needs to obtain only V MHz. Because an entrant could use any block of spectrum comprising V MHz, the incumbent would have to control the licenses for all of the otherwise available blocks of spectrum in order to prevent entry. Thus, the incumbent would have to spend E/V times what the entrant does in order to deter the entrant.

Attachment 4:
Jackson Declaration

The Supply of Spectrum for CMRS

by

Charles Jackson

August 19, 2008

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Introduction

The FCC reviews transfers of radio licenses in order to assure that such license transfers meet the public interest standard of the Communications Act of 1934, as amended. For commercial mobile radio services (CMRS) licenses, that review includes a comparison of the potential spectrum holdings of the combined entity with a "spectrum screen" in order to identify local markets that could potentially raise any competitive issues. As the Commission said,

> The Commission has made a determination to include, in its evaluation of potential competitive harm, spectrum in particular bands that is 'suitable' for the provision of mobile telephony services.[1]

This report reviews the spectrum *suitable for providing CMRS* as that term is defined by the FCC. The Commission has defined that to mean "whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its uses for mobile telephony."[2] Below, I analyze spectrum bands capable of supporting mobility in light of their physical properties and the state of equipment technology.

The FCC has specifically identified and allocated several bands of spectrum, including 700 MHz, Broadband Radio Service (BRS)/Educational Broadcast Service (EBS), Advanced Radio Service (AWS) -1, -2 and -3, and Mobile Satellite Service – Ancillary Terrestrial Authority (MSS-ATC) to permit both new entry and expansion of existing CMRS offerings. Despite the FCC's having adopted rules for these services making them suitable for CMRS, particularly next generation services, all but the 700 MHz band are not currently recognized by the FCC as available for CMRS use for the purposes of the spectrum screen.

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[1] Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation, Memorandum Opinion and Order and Declaratory Ruling, FCC WT Docket 07-208, FCC 08-181, August 1, 2008 *(Verizon Wireless/RCC Order)*, at para. 42.

[2] Ibid. *Verizon Wireless/RCC Order* at para. 42.

For spectrum screen purposes, even though a licensee may choose to operate a fixed service in spectrum suitable for mobility, wireless mobile access must be distinguished from wireless fixed access. Wireless fixed access service providers can use frequencies that are restricted to line-of-sight propagation. The most widely used wireless fixed access service is probably satellite Internet access such as that provided by StarBand and HughesNet. Terrestrial fixed wireless services have been offered by firms such as Nextlink and FiberTower using frequencies above 20 GHz. These firms have access to hundreds of megahertz of spectrum. FiberTower claims to have access to an average of 640 MHz in its markets.[3] But, that spectrum is ill-suited for service to mobile and portable terminals.

Thus, a proper inventory of spectrum useful for CMRS must consider only those spectrum allocations that support mobile applications. As shown below, if one uses conservative criteria to classify spectrum, approximately 650 MHz of spectrum are available for CMRS service.[4] Expanding the criteria to include bands allocated and not yet licensed and mobile satellite spectrum for which the licensee has not yet requested the right to operate a terrestrial component in their system expands the total to 750 MHz. In addition, there are about 500 MHz of unlicensed spectrum that can be used to provide service to nomadic users.

In assessing the suitability of spectrum available for CMRS, I used the following criteria:

- Is the spectrum allocated and licensed for mobility?
- Do FCC rules permit CMRS services?
- Do the physical properties of the spectrum and the FCC technical rules governing the spectrum support mobile voice or broadband data applications?
- Does the state of equipment technology and equipment markets support the provision of CMRS?

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[3] http://www.fibertower.com/corp/company-spectrum-assets.shtml

[4] A total of 646 MHz is shown in Table 1. I have rounded to 650 for simplicity and to avoid spurious precision.

I omitted from my analysis bands for which the FCC has not yet finalized service rules. I discuss quality issues that have been raised with respect to particular spectrum bands and some competitive implications of the availability of unlicensed spectrum for the provision CMRS-like services.

The FCC's Estimate of Spectrum Available for CMRS

In its most recent CMRS competition report, the FCC presented a survey of the spectrum potentially available for CMRS service.[5] The FCC identified 800 MHz of spectrum that is allocated for CMRS, including 157.7 MHz of mobile satellite spectrum available for CMRS voice and data services. Not all of this spectrum is licensed, and some is governed by rules that make it ill-suited for mobile services or for services that can compete with existing voice or broadband CMRS offerings. Nevertheless, the FCC's inventory is a good starting point for identifying the spectrum that, from a technological point of view, should be considered in developing a spectrum screen. In the next section, I discuss factors that require adjustments from the FCC inventory.

Proposed Adjustments to the FCC's Estimates

Cellular, personal communications services (PCS), and specialized mobile radio service (SMRS) have long been included in the FCC's spectrum screen and before that the FCC's spectrum cap at approximately 200 MHz, so there is no need to discuss them further.[6] In my view, however, some blocks of spectrum should be excluded from the FCC's inventory in the CMRS Competition Report, because not all of it is technically suitable for mobile voice or broadband data services. For example, the 1670-1675 MHz and narrowband PCS spectrum should not be counted because it is unlikely to be useful, even for limited voice services that a CMRS operator would need to offer and would permit only limited data services and no broadband access. The 1670-1675 MHz band is isolated from other bands—making it a technological orphan and reducing the economies

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[5] See *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Federal Communications Commission, FCC 08-28, February 4, 2008, at para. 77 and Figure 8.

[6] *Verizon Wireless/RCC Order* at ¶43. I will use the FCC's figure of 200 MHz from that order for the total spectrum of these bands.

of scale possible in equipment manufacture—although it might otherwise appear suitable for CMRS service.

An additional adjustment may be appropriate—to not count spectrum where the FCC has not yet adopted service rules or has not issued licenses. Adjusting the inventory by removing spectrum allocated for CMRS use but where the FCC is currently considering rules and that the FCC has not yet licensed is ultimately a question of economic analysis; it is not an engineering issue. To be conservative, I have excluded such spectrum from my final inventory.

Adjusting the inventory for quality measures would be difficult because the technical differences among the remaining bands listed in Table 1 can be either advantages or disadvantages depending on the specific system architecture used. That is, a technical difference between bands that is an advantage for one application or technology can be a disadvantage for a different application or technology. On balance, there is no formula or rule that allows one to say that one band is 20% more useful or 30% less useful than another. Below I include a discussion of the quality issues in my analysis of the suitability of a few specific bands for the spectrum screen.

700 MHz

The 700 MHz spectrum meets all my criteria for inclusion in the spectrum screen. The spectrum is allocated and licensed (or soon to be licensed) for mobility, and both its physical properties and the state of equipment technology mean that this band is capable of supporting mobile services. The 700 MHz band includes four 1-MHz blocks called guardbands that would probably not be useful or suitable for CMRS unless they were combined with the neighboring licensees. Excluding the guardbands from the 84 MHz that the FCC identifies as “potentially available” for CMRS reduces the total to 80 MHz.

Aside from the guardband spectrum, the 700 MHz spectrum is well-suited for CMRS. The frequencies are near the well-developed cellular frequencies. This 80 MHz of CMRS spectrum together with the adjacent public safety spectrum is large enough to permit economies of scale in equipment production. Standards organizations are working

to support the 700 MHz band.[7] Manufacturers have announced the availability of 4G hardware for this band.[8] In addition, QUALCOMM has deployed its MediaFLO product in these bands.

The 700 MHz spectrum has been auctioned and is either licensed or soon to be licensed; hardware is available or will be available soon; there is sufficient spectrum to support economies of scale in manufacturing; the rules permit the provision of CMRS services; and licensees have announced their intention to invest. The 700 MHz spectrum should certainly be incorporated in any CMRS spectrum screen.

BRS/EBS

The largest block of spectrum that the FCC identifies as "potentially available" is the 194 MHz of EBS/BRS spectrum. To be consistent with my analysis of the 700 MHz spectrum, I excluded the guardbands that are on either side of the middle band segment (MBS) reducing the total "potentially available spectrum" to 186 MHz. This is a conservative adjustment for two reasons. First, in those regions where Sprint/Clearwire has the right to the whole band, they may well choose to use the entire band for low-power operations—an option that would permit using the guardbands. Second, even if they were to choose to operate high-power stations in the MBS, if they controlled the MBS channel adjacent to a guardband channel, they could internally coordinate and plan use of both channels. Their use of the guardband would not be subject to any uncertainty regarding the plans of their high-powered neighbor.

Even at a total of 186 MHz, a further quality adjustment of this spectrum could significantly impact the total spectrum identified. Both the BRS and EBS blocks of spectrum meet all my criteria for inclusion in the screen. The spectrum is allocated and

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[7] See *WiMAX Forum® Position Paper for WiMAX™ Technology in the 700 MHz Band*, WiMax Forum, March 2008, available at [7] See *WiMAX Forum® Position Paper for WiMAX™ Technology in the 700 MHz Band*, WiMax Forum, March 2008, available at http://www.wimaxforum.org/technology/downloads/wf_700mhz_messaging_white_paper_final.pdf.

[8] See *Motorola to Include Recently Auctioned LTE Spectrum Bands in First Commercial Product Release*, Motorola press release, 10 June 2008. Available at http://www.motorola.com/mediacenter/news/detail.jsp?globalObjectId=9745_9674_23&pageLocaleId=2026

licensed for mobility, and both the physical properties and the state of equipment technology mean that these bands are capable of supporting mobile services.[9]

Some have argued, however, that the EBS/BRS spectrum should not be weighed the same as other CMRS bands when one considers competition policy issues such as the FCC's spectrum screen. The public interest statement accompanying the Sprint/Clearwire application for transfer of control of their 2.5 GHz licenses and lease arrangements to New Clearwire contains a long discussion of the problems and handicaps of the BRS/EBS spectrum at 2.5 gigahertz. Sprint/Clearwire offers a number of suggestions for ways to adjust or weigh megahertz in the EBS/BRS band in order to review New Clearwire's spectrum holdings as an indicator of concentration—in every case, Sprint/Clearwire suggests that a megahertz of EBS/BRS spectrum provides less communications capability than does a megahertz of other CMRS spectrum.

One example of their suggested adjustments occurs in Manhattan. In Manhattan (New York County, New York), Sprint has the right to use 118.5 MHz of spectrum, and Clearwire has the right to use 16.5 MHz of spectrum. Thus, New Clearwire will have the right to use 135 MHz of 2.5 GHz spectrum in Manhattan. However, after a series of adjustments Sprint/Clearwire indicates that the proper measure of New Clearwire's spectrum in Manhattan is only 50 MHz. Sprint/Clearwire specifically suggests discounting 2.5 GHz spectrum when trying to understand the competitive consequences of spectrum ownership:

> In short, New Clearwire faces spectrum use challenges in the 2.5 GHz band that make impossible a simple megahertz-to-megahertz comparison of the 2.5 GHz spectrum band with other spectrum for purposes of the Commission's informal spectrum aggregation "screens."[10]

Sprint/Clearwire says that the rights to use the middle band segment of the EBS/BRS band should not be considered when their spectrum is totaled:

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[9] 47 CFR 27.50 (h)(2) permits EBS/BRS mobile transmitters to operate at powers up to 2 watts. This power is higher than many handsets use today. 27.53 (m)(4) sets out of band emission limits that are less restrictive than those in many other bands or those set by some industry standards.

[10] See the calculations in Appendix D of the Public Interest Statement and the discussion on pages 39 and 40 of the Public Interest Statement.

> The middle band segment (MBS) is designated principally for high-power, high-site television broadcast-type operations, which renders the 42 megahertz MBS of no immediate use for mobile wireless broadband operations.[11]

That statement appears overbroad. Clearly, the MBS fits the FCC's definition of spectrum suitable for CMRS. For example, there may be significant regions in which there is no high-power signal that creates a potential for interference. In such regions—much of which would be under the control of the single licensee, Clearwire—these channels could be used like any other EBS/BRS channel. In those cases, the spectrum is not committed to another use that effectively precludes its uses for mobile telephony."[12] High-power channels could also be used for macrocells and high-power services for New Clearwire's customers.

Sprint/Clearwire compares the 2.5 GHz spectrum with that in other bands and repeatedly finds the 2.5 GHz spectrum disadvantaged. For example, they say,

> The in-building and distance propagation characteristics in the 2.5 GHz band are materially less than those of the 700 MHz band recently auctioned.[13]

This statement is true in a restricted sense—but one must be careful not to take a propagation model that is true in some circumstances and apply it to all circumstances. The Sprint/Clearwire statement is consistent with the Friis propagation equation.[14] The Friis equation predicts that the path loss between dipole antennas increases as the square of the frequency—so the path loss at 2.5 GHz would be about a factor of 10 greater than at 700 MHz. This path loss disparity would occur if the antennas at the transmitter and the receiver were dipole antennas. But, if the antennas at the mobile transmitters were dipoles and the antenna of both the 700 MHz and 2.5 GHz base station receiver had the same area (say, 1 foot by 4 feet), then the path loss from the mobile transmitter to the base station antenna would be the same at both frequencies. The gain disparity shrinks

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[11] Ibid.

[12] *Verizon Wireless/RCC Order* at ¶ 42.

[13] Public Interest Statement, at p. 50.

[14] "A Note on a Simple Transmission Formula," Friis, H.T. *Proceedings of the IRE*, Volume 34, Issue 5, May 1946, pp. 254–256.

because the gain of an antenna of a given size increases as the frequency increases.[15] This base station antenna effect (that systems with equal size base station antennas do not follow the simple interpretation of the Friis rule) illustrates a more general principle—one needs to consider the entire system design in order to understand the performance of radio systems in different bands. Several closely related aspects of today's mobile technologies—specifically diversity antennas, smart antennas, and multiple-input, multiple-output (MIMO)—can be expected to work better at higher frequencies than at lower frequencies.

Skepticism about the utility of higher frequencies for mobile communications is long standing; I can remember skeptics saying that mobile could not work at 800 MHz and hearing similar skeptics a couple of decades later say mobile could not work at PCS frequencies. Of course, today we all know that mobile works fine at PCS frequencies and delivers services that compete with services offered on the 800 MHz cellular frequencies.

Intel, an investor in New Clearwire and a manufacturer of WiMAX equipment clearly recognizes that services delivered over the BRS/EBS spectrum will compete with other CMRS services. They said,

> Virtually all other commenters agree that the New Clearwire transaction promises substantial competitive benefits to consumers. They note, for instance, that the transaction will "benefit all Americans by bringing them another competitive broadband alternative to the current incumbent providers." This new broadband platform will compete with incumbents' robust wireline and cable broadband networks, *as well as advanced wireless broadband networks in the 700 MHz,*

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[15] This is not just a theoretical point. The parameters of base station antennas for 800 and 1900 MHz exhibit exactly this behavior. The Andrews LBX-9012DS-VTM has 13.7 dBi gain at 850 MHz and it is 51.1 inches high by 10.5 inches wide. The Andrews 948G40T4E-M antenna has 19.4 dBi gain at 1910 MHz and is 48 inches high by 11.8 inches wide.

The two antennas are almost exactly the same size but the one at 1910 MHz has 5.3 dB more gain. The usual free space path loss formula predicts a difference in paths loss of 7.03 dB between 850 and 1910 MHz. So, the increased antenna gain from keeping the base station antenna the same size makes up for all but 1.7 dB of that loss.

Of course, there is a catch. The 850 MHz antenna has a beamwidth of 90 degrees, and the 1910 antenna has a beamwidth of 40 degrees. So a service provider would need twice as many antennas per tower or would have to change to narrower but taller antennas at 1900 MHz and deal with any issues that would arise because of the narrower vertical pattern of the taller antenna.

Nevertheless, the theoretical conclusion (the same capture area at the base station implies same path loss in the Friis equation) is born out by the empirical antenna data.

> *advanced wireless service ("AWS"), personal communications service ("PCS"), Wireless Communications Service ("WCS"), Mobile Satellite Service/Ancillary Terrestrial Components ("MSS/ATC"), and other bands*. New Clearwire will provide an alternative platform that will enhance marketplace competition – leading to lower prices and better service for consumers.[16]

The 2.5 GHz band also has advantages—a fact that Sprint/Clearwire fails to mention in the Public Interest Statement.[17] One advantage arises from that fact that putting multiple antennas on consumer devices permits the use of MIMO technologies—technologies that can increase capacity or coverage substantially. Such antennas are most effective if they are well separated—where *well separated* is typically interpreted to mean by one-half wavelength or more. The wavelength at 2.5 GHz (about 5 inches) is much shorter than that at 700 MHz (about 16 inches); this shorter wavelength facilitates placing multiple antennas separated by one-half wavelength or more on consumer handsets and laptop computers. It is probable that, in many circumstances such as low-power urban cells, this wavelength difference will give a 2.5-GHz radio link more capacity than a link of the same bandwidth at 700 MHz. Others share this view of the superior efficiency of 2.5 GHz over 700 MHz. The WiMAX Forum white paper on 700 MHz states,

> Advanced Antenna Systems (AAS), that significantly improve link margin, capacity and interference in higher frequency bands, are not, or only at lower efficiency applicable for 700 MHz due to size and antenna spacing limitations.
>
> In urban environments, with high subscriber density and high-capacity demand, smaller cells are necessary. In these cases, the application of 700 MHz is very much constrained by available spectrum, interference, and channel capacity. Due to the absence or limited efficiency of AAS for interference mitigation, a cost-effective deployment approach would be to deploy 700 MHz umbrella cells for coverage and compliment them with 2500 or 3500 MHz macro- or micro-cells to meet capacity requirements.[18]

The WiMAX Forum is not alone in this view that the BRS/EBS band will deliver more capacity. Barry West, chief technical officer of Sprint Nextel Corp. and the designated president of New Clearwire, was quoted as saying,

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[16] Intel *Opposition to Petition to Deny* at p. 3, footnote omitted, emphasis added.

[17] New Clearwire's intent to use WiMax versus others' intent to use LTE, does not change the analysis. From a technical point of view, the two are quite comparable with respect to cost and performance. A variety of issues other than cost and spectrum efficiency, such as time-to-market and compatibility with embedded systems, are key factors in the choice between the technologies.

[18] Op. cit. at p. 11.

> *The 2.5 gigahertz band spectrum* Sprint Nextel' s WiMAX network will use *compares favorably to 700 megahertz* band spectrum. While the lower band enables coverage to be deployed more cheaply initially, *the upper band allows greater overall capacity* to handle more subscribers.[19]

The position put forth in Sprint/Clearwire's public interest statement is the conventional wisdom and is true for older technologies— but it does not reflect the state-of-the-art. Not surprisingly, other petitioners in this docket have also expressed such obsolete views. The Rural Telecommunications Group (RTG) offers a similar characterization of spectrum by frequency:

> RTG considers spectrum below 1 GHZ "beachfront" RF real estate because of the dynamic propagation characteristics associated with the spectrum in the lower bands.[20]

What Sprint/Clearwire, and even RTG with its statement above, fail to acknowledge is that spectrum at 2.5 GHz also has many advantages that are created by access to a large block of contiguous spectrum such as the need for fewer cell sites, higher peak data rates, and higher spectrum efficiency. To the extent that the EBS/BRS frequencies suffer from increased path loss due to factors other than antenna size, then wireless systems that are primarily interference-limited, such as urban systems, will see less cell-to-cell interference and less loss of capacity due to intercell interference.

Sprint/Clearwire recognizes such advantages in its press release describing the Sprint/Clearwire combination. That press release quoted Benjamin G. Wolff, chief executive officer of Clearwire as saying,

> The combination of robust next-generation mobile WiMAX technology and *nationwide spectrum that we believe is optimal for delivering mobile broadband services* - coupled with substantial new financial resources, a team of experienced wireless industry veterans, and distribution and technology agreements with some of our nation's leading communications, technology and content companies - creates what I believe to be a once-in-a-lifetime opportunity.[21]

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[19] *Telecommunications Reports Daily*, 22 April 2008 at p. 8. Emphasis added.

[20] *Petition to Deny of the Rural Telecommunications Group, Inc.*, WT 08-95, 11 August 2008, at p. 20 (footnote 44).

[21] *Sprint and Clearwire to Combine WiMAX Businesses, Creating a New Mobile Broadband Company*, Press Release, Sprint and Clearwire, May 7, 2008. Available at http://newsreleases.sprint.com/phoenix.zhtml?c=127149&p=irol-newsArticle_newsroom&ID=1141088&highlight=. Emphasis added.

The peak downlink speed available to users is another important attribute of a wireless service. A system operating in the BRS/EBS band can use a larger block of contiguous spectrum than is possible in the PCS and cellular bands—thus delivering higher peak download rates. Large blocks of contiguous spectrum also improve the performance of frequency diversity and multiuser diversity and thus allow for expanded capacity relative to the same amount of spectrum divided into multiple smaller blocks. Clearwire recognizes this advantage of contiguous spectrum. Mr. Wolff told investors in June,

> But when you look at expanding your spectrum footprint to include 120 megahertz of spectrum over on the right hand side of the slide, you can start talking about some pretty incredible services. Speeds of up to 6 to 15 megs down per user. HD video on demand, CD quality streaming audio and social networking services that include video conferencing and things like that on a mobile basis and significantly data intensive gaming applications. *Things that simply aren't possible on today's network. But with 120 megahertz of spectrum, that's all possible.*[22]

More recently, Mr. Wolff told investors,

> It is significant to note that the ITU has recommended that 4G technology needs at least 40 megahertz of spectrum, and preferably up to 100 megahertz of spectrum in each market, irrespective of the frequency used, in order to provide *sufficient channel width to enable the data throughput that 4G services will demand*.
>
> Importantly, after closing our transaction with Sprint, our spectrum position will exceed the high end of the ITU recommended range in most markets across the country, *making our 4G spectrum position the best in the U.S. for the delivery of 4G services.*
>
> In contrast, some of our largest competitors are talking about attempting to deploy 4G services on 20 or 22 megahertz of recently-acquired spectrum, since as one of them has recently stated, "Clearing Legacy technology from PCS and cellular spectrum can be a slow process and using narrow slivers of spectrum for LTE limit data rates and the number of customers that can be supported on the network."[23]

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[22] Transcript of June 12, 2008 Clearwire investor meeting. Available at http://sec.gov/Archives/edgar/data/1285551/000095013408011169/v41529e425.htm. Emphasis added.

[23] Transcript of August 8, 2008 Clearwire investor meeting. Available at http://sec.gov/Archives/edgar/data/1285551/000095013408014752/v42937e425.htm. Emphasis added.

Sprint/Clearwire, in arguing for a discounting of the EBS/BRS spectrum consistently compared that spectrum to the most disparate CMRS spectrum—the 700 MHz spectrum. But, the PCS spectrum at 1.9 GHz is also CMRS spectrum. The physical properties of the PCS band are quite similar to those of the EBS/BRS spectrum—the wavelength in the middle of the EBS/BRS band is about 75% the length of the wavelength in middle of the PCS band. Applying the FCC's tests of physical suitability and technology availability to the EBS/BRS spectrum should lead to the same conclusions as applying those tests to the PCS spectrum.

Summing up, the BRS/EBS band has strengths and weaknesses relative to the other CMRS bands. But, it is licensed spectrum, the technology to use it is available, and the physical properties are only slightly different from those of the broadband PCS band, which has long been part of the spectrum screen. The technical differences between this spectrum and other CMRS spectrum, such as 700 MHz or the cellular bands, provide both advantages and disadvantages. There is no technological basis for excluding this spectrum from the spectrum screen calculations.

AWS-1

The AWS-1 spectrum meets all my criteria for inclusion in the screen. The spectrum is allocated and licensed for mobility, and both its physical properties and the state of equipment technology mean that this band is capable of supporting mobile services. The FCC allocated the spectrum for mobility, adopted service rules, auctioned the 90 MHz of AWS-1 spectrum in 2006, and issued licenses over a year ago.

There is no controversy about the suitability of the spectrum for mobility—the 90 MHz of AWS-1 spectrum has physical properties essentially identical to those of the PCS spectrum. Moreover, the licensee actions to exploit this spectrum are evidence that there is suitable equipment technology. Several licensees, using both GSM and CDMA technologies, are in the process of building out their networks and clearing the incumbents off the band. T-Mobile has invested more than $2 billion to build out its AWS network; it is providing service today in New York City; it will deploy in 25 more cities by the end of 2008; and it has about one million AWS-ready handsets in customer

hands or in the supply chain.[24] Clearly, the technology is ready for use in the band. Given that this spectrum has been licensed and is coming into use, it should be considered in spectrum screen calculations.

Mobile Satellite Spectrum ATC

The MSS-ATC spectrum meets all my criteria for inclusion in the screen. The spectrum is allocated and licensed for mobility. The FCC has authorized terrestrial mobility for approximately 50 MHz and has pending applications for authority to offer terrestrial mobility for another 40 MHz. Despite this, the FCC does not treat the MSS-ATC spectrum as a relevant for the purposes of the spectrum screen and suggests that "because the price of these services is, at present, significantly higher than for services offered by cellular, PCS, or SMR providers . . . most consumers would not view satellite phones as substitutes for mobile telephony." [25] It is hard to fathom why prices for the satellite-delivered service would necessarily provide a guide to the prices that would be charged for services provided over the terrestrial component. Although I am not an economist, the pricing of these services would seem to be the result of business decisions, not an indication of "whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its uses for mobile telephony."[26] My analysis of the MSS-ATC bands shows that it clearly meets all the FCC's technical criteria for inclusion in the screen.

The spectrum is clearly suitable for mobility in that it is located in the same range as PCS and BRS/EBS (1.5, 1.7, 2.1 and 2.4 GHz). According to both news releases and FCC filings, technology is sufficiently advanced that this band is capable of supporting terrestrial mobile services. For example, in August 2008, TerreStar Corporation, a mobile satellite operator with ATC authorization, announced that it had signed a

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[24] T-Mobile ex parte filing in Docket 07-195, July 18, at p. 3 of the presentation.
[25] *Verizon Wireless/RCC Order* at ¶48.
[26] *Verizon Wireless/RCC Order* at ¶42.

reciprocal roaming agreement with AT&T.[27] TerreStar has also disclosed the development of multi-band WCDMA handsets for integrated satellite-terrestrial networks.[28]

To sum up, the FCC adopted new rules that permit mobile satellite service providers to supplement their mobile satellite system with an ancillary terrestrial component—a supplementary terrestrial radio capability complementing the space-based portion of the system. Under these rules, mobile satellite service providers can build more-or-less conventional CMRS systems for operation in urban areas while maintaining universal rural coverage from the satellite.

Again as with other bands, there is no technological reason for excluding the mobile satellite spectrum that can provide terrestrial CMRS services.

Future Bands: AWS-2 and AWS-3

The Commission has allocated this spectrum and indicated that it will be licensed under service rules that will permit it to be used for services that will compete with existing CMRS services. These bands have technical properties similar to those of other CMRS bands. However, at this writing it is uncertain when final service rules will be adopted and when licenses will be auctioned.[29] Thus, counting this spectrum would include an element of speculation not present in the other bands where rules are in place. Therefore, I have not included it as spectrum suitable for CMRS for purposes of the spectrum screen.

Counting Unlicensed and Lightly Licensed Spectrum

Substantial spectrum at 2.4 and 5 GHz is available for unlicensed use—83.5 MHz at 2.4 GHz and 525 MHz at 5 GHz. In addition, the FCC licenses the band 3650-3700 MHz on

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[27] *TerreStar Announces Nationwide Roaming Agreement with AT&T*, Press Release, TerreStar, August 1, 2008.

[28] *EB, TerreStar Networks Showcase First-ever Dual-mode Satellite-Terrestrial HSPA Handset Reference Design*, Press Release, EB, April 2, 2008. Available at http://www.elektrobit.com/index.php?id=597&news_id=128&archive=

[29] Note that some opponents of the currently proposed AWS III rules speak of the burdensome "potential litigation risk" that the current proposal creates. See *Ex Parte Comments of the Public Interest Coallition*, Docket WT 07-195, at p. 9.

a nonexclusive basis. For simplicity, I refer to all of this spectrum as *unlicensed spectrum*—recognizing that this is a slight misnomer for the 3650-3700 MHz spectrum.

Firms without CMRS licenses use unlicensed spectrum to offer services that compete with CMRS services. The most prominent example of this is the widespread availability of Wi-Fi hotspots operated by organizations other than the CMRS carriers. Google has built out a Wi-Fi network covering most of Mountain View, California.[30] In Montgomery County, Maryland, the county government supports a Wi-Fi network in Bethesda.[31] In 2003, the FCC installed a Wi-Fi network open to use by visitors without charge.[32] Duke University has installed more than 1,500 Wi-Fi access points on the Duke Campus covering most buildings and residences.[33] Many other universities have similar Wi-Fi coverage. Wi-Fi hotspots and coverage zones provide broadband wireless service to nomadic computer users and can be used by for voice calls by people who have Skype phones or similar VoIP terminals.[34]

It would be difficult to build a wide-area-coverage wireless business on the unlicensed spectrum alone.[35] But, highly reliable Wi-Fi coverage can be delivered inside buildings or on campuses where the property owner can exclude equipment that would create interfering signals.

CMRS carriers use unlicensed spectrum as an adjunct to their licensed spectrum. T-Mobile sells what it calls "HotSpot-enabled phones" that are handsets that can use a Wi-

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[30] See http://Wi-Fi.google.com/city/mv/apmap.html

[31] See "Free Wireless Internet Access Available in Downtown Bethesda," Bradford Pearson Gazette Staff Writer, Thursday, July 24, 2008; Page GZ05. Available at http://www.washingtonpost.com/wp-dyn/content/article/2008/07/23/AR2008072301794.html . See also http://www.bethesdaWi-Fi.com/index.html .

[32] See http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-237306A1.pdf

[33] See http://www.oit.duke.edu/network/wireless/wireless_install_updates.html.

[34] See http://accessories.skype.com/DRHM/servlet/ControllerServlet?Action=DisplayCategoryProductListPage&SiteID=skype&Locale=en_US&Env=BASE&categoryID=4141800&parentCategoryID=4141800

[35] The lack of interference protection would put capital investment in network infrastructure providing access over relatively long ranges at great risk. Because short range systems, such as wireless LANs or hot-spot services, interfere with longer-range services without suffering comparable interference, short-range systems could crowd out longer-range systems. A number of firms, known as wireless Internet service providers (WISPs), provide service using unlicensed spectrum but none of these firms has become a national presence.

Fi access point, operating in the unlicensed spectrum, to place and receive telephone calls. AT&T offers a service, Wi-Fi Connect, that is a complement to their CMRS data services.[36] Sprint offers an option they call Sprint PCS Wi-Fi Access.[37] VZAccess Manager, the software package provided by Verizon Wireless to support EV/DO cards on personal computers, also can control Wi-Fi hardware. VZAccess manager displays Wi-Fi networks and the Verizon Wireless EV/DO network in the same menu and automatically switches from the EVDO network to the Wi-Fi when Wi-Fi is available.

The GSM community has developed a capability named Unlicensed Mobile Access (UMA) that permits dual-mode Wi-Fi/GSM handsets to place calls over Wi-Fi access points and then to hand over such calls to GSM networks and vice versa.[38]

I see no easy way to account for the unlicensed spectrum for purposes of the spectrum screen. However, it would be improper to simply ignore it. The fact that a Skype user can place a phone call over Google's Wi-Fi network or that a visitor to the FCC can browse the Web over the Commission's Wi-Fi network is a competitive fact.

Conclusions

There is no technological reason to narrow the spectrum considered for purposes of the spectrum screen. In particular, the AWS-1, ATC, and EBS/BRS spectrum should be included in any attempt to understand the competitive effects of spectrum ownership. In its 12th Competition Report, the FCC identified 800 MHz of spectrum that has the potential to be used for CMRS. In addition, the use of unlicensed spectrum to provide CMRS-like services and to complement the licensed spectrum used for CMRS should be considered in any competitive analysis. Table 1 displays the inventory of spectrum available for CMRS use today that I have identified and discussed above.

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36 See http://www.wireless.att.com/businesscenter/solutions/wireless-laptop/Wi-Fi.jsp

37 See http://www1.sprintpcs.com/explore/ueContent.jsp?scTopic=pcsWi-FiAccessFromSprint

38 See http://www.umatoday.com/

Table 1. Inventory of Suitable and Available CMRS Spectrum

Spectrum Band	Megahertz
Cellular/Broadband PCS/SMR/ G- Block	Approximately 200
700 MHz (less guardbands)	80
AWS-1	90
BRS/EBS (less guardbands)	186
MSS-ATC– received or has pending request for terrestrial authority	90
Total	**646**

According to my analysis, there is a total of about 646 MHz of spectrum that can be used for mobile wireless broadband access. This 646 MHz does not include mobile satellite spectrum for which the licensee has not yet requested authority for terrestrial operations and does not include the AWS-2 and AWS-3 bands. In addition, the use of unlicensed spectrum to provide CMRS-like services and to complement the licensed spectrum used for CMRS should be considered in any competitive analysis. There is over 500 MHz of unlicensed spectrum—giving operators of hot-spots and networks covering campuses or industrial parks substantial opportunities to build and operate wireless networks.

I declare under penalty of perjury that the foregoing is true and correct

Charles L. Jackson
Executed August 19, 2008

About the Author

Dr. Charles L. Jackson is an electrical engineer who has worked extensively in telecommunications and wireless. He has been both a digital designer and a systems programmer. He works as a consultant and as an adjunct professor at George Washington University, where he has taught graduate courses on mobile communications, wireless networks, computer security, C programming, and the Internet. Dr. Jackson has consulted on spectrum and telecommunications policy issues for several governments, including New Zealand, Panama, Jamaica, United Kingdom, Germany, Latvia, and the United States. He has also consulted for major corporations and industry associations on those issues. He was the first to invent combinatorial auctions—formulating them in the context of radio license auctions. Dr. Jackson served three terms on the FCC's Technological Advisory Council. He has worked at both the FCC and the House Commerce Committee. He holds two U.S. patents and has one other patent pending. Dr. Jackson received his PhD from MIT.