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

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In the Matter of)
Applications of Celco Partnership d/b/a Verizon)
Wireless and Atlantis Holdings LLC)
For Consent to Transfer Control of Licenses,)
Authorizations, and Spectrum Manager and De)
Facto Transfer Leasing Arrangements)
and)
Petition for Declaratory Ruling that the)
Transaction is Consistent with Section 310(b)(4))
of the Communications Act)
WT Docket No. 08-95
File Nos. 0003463892, et al., ITC-T/C-
20080613-00270, et al.
File No. ISP-PDR-20080613-00012

MEMORANDUM OPINION AND ORDER AND DECLARATORY RULING

Adopted: November 4, 2008

Released: November 10, 2008

By the Commission: Chairman Martin and Commissioner Tate issuing separate statements; Commissioner McDowell approving in part, concurring in part and issuing a statement; Commissioners Copps and Adelstein concurring in part, dissenting in part and issuing separate statements.

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION 1
II. BACKGROUND 5
A. Description of Applicants 5
1. Verizon Wireless 5
2. ALLTEL Corporation and Atlantis Holdings LLC 9
B. Description of Transaction 11
C. Transaction Review Process 14
1. Commission Review 14
2. Department of Justice Review 23
III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK 26
IV. QUALIFICATIONS OF APPLICANTS 31
V. COMPETITIVE ANALYSIS 40
A. Market Definitions 44
1. Product Market 45
2. Geographic Market 49
3. Input Market for Spectrum 53
4. Market Participants 71
B. Initial Screen 75

| | |
|--|-----|
| C. Horizontal Issues..... | 82 |
| 1. Unilateral Effects..... | 84 |
| 2. Coordinated Effects..... | 88 |
| D. Market-by-Market Analysis..... | 91 |
| 1. Analytical Standard..... | 91 |
| 2. Result of Analysis..... | 93 |
| VI. POTENTIAL PUBLIC INTEREST BENEFITS..... | 114 |
| A. Analytical Framework..... | 116 |
| B. Discussion..... | 119 |
| 1. Increased Wireless Footprint and Network Coverage..... | 122 |
| 2. Expanded and Improved Services and Features, Particularly in Rural Areas..... | 128 |
| 3. Expanded Roll-Out of Broadband and Next Generation Services..... | 136 |
| 4. Improvements in Service Quality..... | 137 |
| 5. Efficiencies and Economies of Scale and Scope..... | 147 |
| 6. Strengthened Competition..... | 155 |
| C. Conclusion..... | 156 |
| VII. DIVESTITURE OF MARKETS..... | 157 |
| A. Operating Unit Divestitures..... | 159 |
| B. Operation of Divestitures..... | 163 |
| VIII. OTHER ISSUES..... | 171 |
| A. Roaming..... | 171 |
| B. Handset Availability and Exclusive Handset Agreements..... | 182 |
| C. Open Development Initiative (ODI)..... | 186 |
| D. Network Openness..... | 189 |
| E. Universal Service Support..... | 192 |
| F. E911..... | 198 |
| G. Radiofrequency Exposure..... | 202 |
| H. Violation of Anti-Trafficking Rules..... | 209 |
| I. Independent Resellers..... | 213 |
| J. Procedural Matters..... | 215 |
| IX. FOREIGN OWNERSHIP..... | 221 |
| A. Review of Foreign Ownership Issues..... | 222 |
| B. Declaratory Ruling..... | 232 |
| X. CONCLUSION..... | 233 |
| XI. ORDERING CLAUSES..... | 234 |
| APPENDIX A – Petitioners and Commenters | |
| APPENDIX B – Markets to be Divested Voluntarily by Verizon Wireless | |
| APPENDIX C – Markets Identified by the Initial Screen | |

I. INTRODUCTION

1. Cellco Partnership d/b/a Verizon Wireless (“Cellco Partnership”) and its wholly-owned subsidiary AirTouch Cellular (“AirTouch”) (collectively, “Verizon Wireless”) and Atlantis Holdings LLC (“Atlantis”) have filed a series of applications pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended (“Communications Act” or “Act”).¹ In these applications, Verizon Wireless and Atlantis (the “Applicants”) seek Commission approval of the transfer of licenses, authorizations, and spectrum manager and *de facto* transfer leasing arrangements through the transfer of control of subsidiaries of ALLTEL Corporation (“ALLTEL”) and partnerships in which ALLTEL has

¹ 47 U.S.C. §§ 214, 310(d).

either controlling or non-controlling general partnership interests (collectively, "ALLTEL Subsidiaries and Partnerships").

2. These transfer of control applications pertain to licenses for the Part 22 Cellular Radiotelephone Service ("cellular"), the Part 22 Paging and Radiotelephone Service, the Part 24 Personal Communications Service ("PCS"), the Part 27 700 MHz Band Service, the Part 27 700 MHz Guard Band Service, the Part 90 Industrial/Business Pool Service, the Part 90 Private Carrier Paging Service, the Part 90 Specialized Mobile Radio ("SMR") Service, the Part 101 Common Carrier Fixed Point-to-Point Microwave Service, the Part 101 Fixed Point-to-Point Microwave Service, the Part 101 39 GHz Auctioned Service, the Part 101 Local Television Transmission Service, and the Part 101 Local Multipoint Distribution Service,² as well as domestic and international Section 214 authorizations.³ The Applicants also have filed a petition for declaratory ruling that the public interest would be served by extending to the ALLTEL Subsidiaries and Partnerships and to their wireless licenses and spectrum leasing arrangements, the foreign ownership ruling that the Commission has previously issued to Verizon Wireless under section 310(b)(4) of the Communications Act.⁴

3. Pursuant to sections 214(a), 310(b)(4), and 310(d) of the Communications Act,⁵ we must determine whether the approval of these applications seeking consent to the transfer of licenses, spectrum leasing arrangements, and authorizations to Verizon Wireless and the grant of the petitions for declaratory ruling would serve the public interest, convenience, and necessity. Based on the record before us, we find that the Applicants have generally met that burden, with certain conditions. Because the proposed transaction would result in the combination of overlapping mobile communications coverage and services, we apply an initial screen to identify those markets in which there clearly is no competitive harm. The initial screen indicates that there is no competitive harm in many of the overlap markets,⁶ but identified 218 markets⁷ in which a market-by-market competitive analysis is necessary. Of

² File No. 0003463892 has been designated the lead application ("Application") for the wireless radio services. The other applications contain an exhibit referring to the exhibits attached to file no. 0003463892. Thus, for convenience, when referring to these applications, we only cite to the lead Application. For a complete list of applications involved in this transaction, see Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer Licenses, Spectrum Manager and *De Facto* Transfer Leasing Arrangements, and Authorizations, and Request a Declaratory Ruling on Foreign Ownership, WT Docket No. 08-95, *Public Notice*, 23 FCC Rcd 10004 (2008). Some applications have been amended to reflect the cancellation of licenses and/or to add after-acquired licenses. See File No. 0003464703 (amended Oct. 31, 2008) (removing a canceled microwave license); File No. 0003464848 (amended Oct. 31, 2008) (removing a canceled microwave license); File No. 0003463892 (amended Oct. 31, 2008 and Nov. 4, 2008) (removing canceled paging and microwave licenses); File No. 0003464857 (amended Oct. 31, 2008) (adding after-acquired microwave licenses); File No. 0003465010 (amended Oct. 31, 2008) (removing a canceled microwave license); File No. 0003464786 (amended Oct. 31, 2008) (adding after-acquired microwave licenses); File No. 0003464784 (amended Oct. 31, 2008) (removing a canceled microwave license and adding after-acquired microwave licenses); File No. 0003464776 (amended Oct. 31, 2008) (removing canceled microwave licenses).

³ See File Nos. ITC-T/C-20080613-00270, ITC-T/C-20080613-00271, ITC-T/C-20080613-00272.

⁴ 47 U.S.C. § 310(b)(4). See Request for Declaratory Ruling on Foreign Ownership, File Nos. ISP-PDR-20070928-00012 ("Petition for Declaratory Ruling").

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

⁶ The Applicants state that there are 395 Cellular Market Areas ("CMAs") in which Verizon Wireless and ALLTEL have spectrum overlaps. See Application, Exhibit 4: Spectrum Aggregation.

⁷ The markets identified by the initial screen were 218 CMAs and 116 Component Economic Areas ("CEAs"). The 218 CMAs and 116 CEAs are listed in Appendix C. For convenience, in this Memorandum Opinion and Order and Declaratory Ruling we simply refer to the 218 CMAs. See Appendix C.

the 218 markets identified by the initial screen, Verizon Wireless has voluntarily committed to divest 100 markets. For the remaining 118 markets, we conduct a market-by-market competitive analysis to determine the potential consequences of increasing Verizon Wireless's market share and spectrum holdings in those markets. We find that competitive harm is unlikely in most of these markets, primarily because multiple other service providers currently in these markets would be an effective competitive constraint on the behavior of the merged entity. With regard to five local areas, however, our analysis indicates that absent a remedy, competitive harms would likely result. In these areas, we impose narrowly-tailored conditions that will effectively remedy the potential for these particular harms.

4. With the voluntary divestitures which we impose as conditions, plus the additional divestitures we require, this Memorandum Opinion and Order and Declaratory Ruling essentially enforces the same limits on consolidation that we have applied since we adopted our case-by-case approach to evaluating proposed mobile transactions. Thus, it prevents entirely consolidation in individual markets from advancing to a point at which it would threaten competition and potentially harm consumers. Further, we find that it is in the public interest to impose additional conditions regarding Roaming, Universal Service Fund receipts, and E911 location accuracy, as described herein.

II. BACKGROUND

A. Description of Applicants

1. Verizon Wireless

5. Verizon Wireless is a joint venture of Verizon Communications Inc. ("Verizon") and Vodafone Group Plc. ("Vodafone").⁸ Verizon, as a holder of 55 percent ownership interest,⁹ has majority control of Cellco Partnership and its subsidiaries, including AirTouch.¹⁰

6. Verizon Wireless is a general partnership headquartered in Basking Ridge, New Jersey.¹¹ It is the largest wireless company in the United States based on revenues,¹² as well as the number of retail customers.¹³ For the fiscal year of 2007, Verizon Wireless had revenues of approximately \$43.9 billion.¹⁴ At the end of the second quarter in 2008, Verizon Wireless had 68.7 million customers,

⁸ See Verizon Communications Inc., Form 10-K, at 7 (filed Feb. 28, 2008) ("Verizon Form 10-K"), available at <http://www.sec.gov/Archives/edgar/data/732712/000119312508042027/d10k.htm> (last visited Aug. 4, 2008); Verizon Communications, 2007 Annual Report, at 26 ("Verizon Annual Report"), available at http://investor.verizon.com/financial/quarterly/pdf/07_annual_report.pdf (last visited Aug. 1, 2008). While Verizon Wireless is not a reporting company under the Securities Exchange Act of 1934 and does not make SEC filings, information about Verizon Wireless is included in earnings announcements and SEC filings by Verizon Communication, Inc. See Verizon Wireless, Investors, <http://news.vzw.com/investor/index.html> (last visited Aug. 1, 2008).

⁹ See Verizon Form 10-K at 7; Verizon Annual Report at 26.

¹⁰ See Application, Public Interest Statement at 1.

¹¹ Application, Public Interest Statement at 3; Verizon Wireless, About Us, Facts-at-a-Glance, <http://aboutus.vzw.com/ataglance.html> ("Verizon Wireless Facts") (last visited Aug. 1, 2008).

¹² See Verizon Form 10-K at 7; Verizon Wireless, About Us, Overview, <http://aboutus.vzw.com/aboutusoverview.html> ("Verizon Wireless Overview") (last visited Aug. 1, 2008); Verizon Wireless Facts at 1.

¹³ See Verizon Form 10-K at 7; Verizon Wireless Overview at 1; Verizon Wireless Facts at 1.

¹⁴ Verizon Annual Report at 2, 26; Verizon Wireless, Press Kit, at 2 (May 30, 2008) ("Verizon Wireless Press Kit"), available at http://news.vzw.com/pdf/Verizon_Wireless_Press_Kit.pdf (last visited Aug. 1, 2008); Verizon Wireless Overview at 1; Verizon Wireless Facts at 1.

including 66.7 million retail customers (who are directly served and managed by the company and who buy its branded services).¹⁵ Verizon Wireless provides wireless voice and data services and equipment sales across the United States.¹⁶ Verizon Wireless utilizes Code Division Multiple Access ("CDMA") technology, along with CDMA 2000 1xRTT ("1xRTT"), Evolution-Data Optimized ("EvDO") and EvDO Revision A ("EvDO Rev. A")¹⁷ technology for wireless broadband services, operating on 800 MHz cellular and 2 GHz PCS spectrum.¹⁸ Its digital network, as of the second quarter of 2008, covers a total aggregate population ("POPs") of almost 268 million in approximately [REDACTED] of the geographic area of the United States,¹⁹ provides service in 49 of the 50 largest metropolitan areas,²⁰ and covers 333 rural service areas ("RSAs").²¹ Verizon Wireless's licenses cover approximately 298 million POPs in [REDACTED] of the U.S. geographic area, including in 435 RSAs.²² Verizon Wireless was also the high bidder for licenses in the recent 700 MHz Auction 73.²³

7. Verizon is headquartered in New York and incorporated in Delaware.²⁴ It provides wireline, wireless, and broadband services to mass market, business, government and wholesale customers.²⁵

¹⁵ See Verizon Communications Inc., Form 8-K, Exhibit 99.1 at 1 (filed July 22, 2008), available at <http://www.sec.gov/Archives/edgar/data/732712/000119312508155338/dex99.htm> (last visited Aug. 4, 2008); Verizon Wireless, Investor Relations, Business Units, Domestic Wireless, <http://investor.verizon.com/business/wireless.aspx> ("Verizon Domestic Wireless") (last visited Aug. 1, 2008). At the time it filed the Application seeking consent to the proposed transaction, Verizon Wireless stated that it had 67 million customers. See Application, Public Interest Statement at 2.

¹⁶ See Verizon Domestic Wireless at 1.

¹⁷ Verizon Wireless's EvDO network is available in 248 major metropolitan areas and 232 major airports across the United States. Application, Public Interest Statement at 12. Verizon Wireless has deployed EvDO Rev. A technology wherever it has deployed EvDO technology. See Letter from Kathleen Q. Abernathy, Counsel for Atlantis Holdings LLC, and Nancy J. Victory, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 3 (Sept. 17, 2008) ("Information Request Response").

¹⁸ See Application, Public Interest Statement at 2; Verizon Form 10-K at 8. At the end of second quarter 2008, Verizon Wireless's network provided 1xRTT and EvDO/EvDO Rev. A technology to 267.8 and 256.5 million POPs in approximately [REDACTED] and [REDACTED] of the U.S. geographic area, including in 333 and 287 RSAs, respectively. See Information Request Response at 3. Verizon reported that, as of December 2007, EvDO Rev. A was available to more than 240 million Americans. See Verizon Form 10-K at 8; Verizon, Investor Relations, Company Profile, Corporate History, Recent History, http://investor.verizon.com/profile/history/history_001.aspx ("Verizon Recent History") (last visited Aug. 4, 2008); Verizon Press Kit at 3.

¹⁹ See Information Request Response at 3. As of December 30, 2007, Verizon Wireless reported that its digital network covered approximately 265 million POPs. See Verizon Form 10-K at 8; Verizon Wireless Press Kit at 3.

²⁰ Verizon Form 10-K at 8; see also Verizon Recent History at 1.

²¹ See Information Request Response at 3. The Applicants state that the network coverage data includes only the network using 800 MHz cellular and 2 GHz broadband PCS spectrum. *Ex Parte* Letter from Eric W. DeSilva and Tom W. Davidson, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (Oct. 14, 2008) ("Verizon Wireless October 14, 2008 Informational *Ex Parte* Letter.")

²² See Information Request Response at 3. The Applicants state that the license coverage data includes 800 MHz cellular, 2 GHz broadband PCS spectrum, 700 MHz, and Advanced Wireless Services ("AWS") spectrum. Verizon Wireless October 14, 2008 Informational *Ex Parte* Letter at 1.

²³ See Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73, *Public Notice*, 23 FCC Rcd 4572 (WTB 2008). This spectrum is not included in the license coverage data provided in the Information Request Response. See Verizon Wireless October 14, 2008 Informational *Ex Parte* Letter at 1.

²⁴ Verizon Form 10-K at 3; Verizon Recent History at 1.

Verizon operates two network-based business units – the wireline unit, which includes Verizon Telecom and Verizon Business, and Verizon Wireless.²⁶ Verizon Telecom provides communications services, including local telephone services and nationwide long distance, broadband, video and data, and entertainment and information services over a fiber-optic network in 28 states and Washington, D.C. for residential and small business customers.²⁷ Verizon Business provides voice, data, and Internet communications services, along with advanced communications solutions in networking, security, mobility, hosting, and information technology solutions to medium and large businesses and government entities.²⁸ At the end of December 2007, Verizon's wireline network included more than 41 million wireline access lines and 8.2 million broadband connections nationwide.²⁹ Verizon's network also includes approximately 13 million miles of local inner-city and long-distance all-digital fiber-optic systems ("FiOS").³⁰ For the fiscal year of 2007, Verizon's wireline operations generated approximately \$50.3 billion in gross revenues,³¹ and Verizon, which is traded on the New York Stock Exchange,³² generated consolidated operating revenues of approximately \$93.5 billion.³³

8. Vodafone, a public limited company incorporated in England with a registered office in Newbury, England,³⁴ holds a non-controlling 45 percent interest in Cellco Partnership.³⁵ Vodafone provides mobile voice and data, paging, and internet services in 25 countries in Europe, Asia, the Middle East, and the United States through its subsidiaries, joint ventures, and other investments.³⁶ It holds interests in 33 licensed network operators in 27 countries.³⁷ Since 2006, Vodafone has entered into agreements in the development and marketing services under dual brand logos with network operators in countries where it does not have an equity stake.³⁸ As of March 31, 2008, Vodafone had 260 million

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²⁵ Verizon, Investor Relations, Company Profile, Overview, <http://investor.verizon.com/profile/overview.aspx> ("Verizon Overview") (last visited Aug. 4, 2008).

²⁶ See Verizon Annual Report at 18, 44; Verizon, Investor Relations, Business Units, <http://investor.verizon.com/business/index.aspx> ("Verizon Business Units") (last visited Aug. 4, 2008).

²⁷ See Verizon Form 10-K at 3; Verizon Annual Report at 23, 24; Recent History at 2; Verizon, Investor Relations, Business Units, Wireline – Verizon Telecom, <http://investor.verizon.com/business/wireline.aspx> (last visited Aug. 4, 2008).

²⁸ See Verizon Form 10-K at 3; Verizon Annual Report at 23, 24.

²⁹ Verizon Form 10-K at 5; Verizon Recent History at 1.

³⁰ See Verizon Recent History at 1-2.

³¹ Verizon Form 10-K at 3; Verizon Annual Report at 20, 24.

³² Verizon Form 10-K at 16; Verizon, Corporate History, <http://investor.verizon.com/profile/history/index.aspx> (last visited Aug. 4, 2008).

³³ Verizon Annual Report at 2, 5, 20; Verizon Recent History at 2.

³⁴ Vodafone, About Vodafone, http://www.vodafone.com/start/investor_relations/vodafone_at_a_glance0.html (last visited Aug. 4, 2008) ("About Vodafone").

³⁵ Verizon Form 10-K at 7.

³⁶ See About Vodafone; Vodafone, Fact Sheet, http://www.vodafone.com/start/investor_relations/vodafone_at_a_glance0/fact_sheet.html (last visited Aug. 4, 2008).

³⁷ See Vodafone, Structure and Management, http://www.vodafone.com/start/investor_relations/structure_and_management.html (last visited Aug. 4, 2008).

³⁸ See About Vodafone.

subscribers worldwide calculated on a proportionate basis with Vodafone's interests.³⁹ Its ordinary shares are listed on the London Stock Exchange and its American Depository Shares are listed on the New York Stock Exchange.⁴⁰ Its revenue for the year ending March 31, 2008 was £35,478 million.⁴¹

2. ALLTEL Corporation and Atlantis Holdings LLC

9. ALLTEL, incorporated in Delaware and headquartered in Little Rock, Arkansas, provides wireless communication services to individuals and businesses, primarily in non-major metropolitan and rural markets.⁴² Based on revenues earned and the number of customers served, it is the fifth largest wireless company in the United States.⁴³ For the fiscal year of 2007, ALLTEL reported revenues of \$8.8 billion.⁴⁴ At the end of the first quarter in 2008, ALLTEL reported that it provides voice and advanced data services to 13 million customers in 34 states,⁴⁵ primarily throughout the Southwest and portions of the Northeast, Southwest, and upper Midwest.⁴⁶ Operating on 800 MHz cellular and 2 GHz PCS spectrum, ALLTEL provides wireless voice and advanced data communication services across the United States,⁴⁷ utilizing CDMA technology, including 1xRTT and EvDO (both EvDO Rev. A and its slower variant EvDO Revision 0 ("EvDO Rev. 0")) in order to provide enhanced wireless data services.⁴⁸ Its digital network covers almost 76 million POPs in a geographic area covering almost [REDACTED] of the United States, including in 254 RSAs.⁴⁹ ALLTEL also provides roaming services using a Global System for Mobile Communications ("GSM") network (including General Packet Radio Service ("GPRS") and Enhanced Data Rates for GSM Evolution ("EDGE") technology) to approximately 8.5 million POPs in a geographic area covering almost [REDACTED] of the U.S., including in 113 RSAs.⁵⁰

³⁹ *Id.*; Vodafone Group Plc, Annual Report For the year ended March 31 2007, at 1, 4 ("Vodafone Annual Report"), available at http://www.vodafone.com/etc/medialib/attachments/agm_2008.Par.77336.File.dat/2008_Annual_Report_FINAL.pdf (last visited Aug. 4, 2008).

⁴⁰ Vodafone Annual Report at 1, 4.

⁴¹ *Id.* at 1, 4, 30.

⁴² See ALLTEL Corporation, Form 10-K (Amendment No. 1) at 1, 2 (filed June 16, 2008) ("ALLTEL Form 10-K"), available at <http://www.sec.gov/Archives/edgar/data/65873/000006587308000016/alltel10ka061608.htm> (last visited Aug. 5, 2008).

⁴³ *Id.* at 1.

⁴⁴ ALLTEL Fact Sheet at 1.

⁴⁵ See ALLTEL Corporation, Form 8-K, Exhibit 99.A at 1 (filed May 15, 2008) ("ALLTEL May 15, 2008 Form 8-K"), available at <http://www.sec.gov/Archives/edgar/data/65873/000006587308000012/alltelex99a051508.htm> (last visited Aug. 5, 2008); Application, Public Interest Statement at 4.

⁴⁶ Application, Public Interest Statement at 4.

⁴⁷ See ALLTEL Form 10-K at 1: ALLTEL May 15, 2008 Form 8-K at 1.

⁴⁸ See Application, Public Interest Statement at 4-5. As of December 31, 2007, 1xRTT and EvDO Rev. 0 data coverage by ALLTEL was available to 96% and 76% of its customer base, respectively. See Application, Public Interest Statement at 5; ALLTEL Form 10-K at 2. 1xRTT, EvDO, and EvDO Rev. A technology was available to 76, 57.9, and [REDACTED] POPs in a geographic area covering [REDACTED], [REDACTED], and [REDACTED] of the U.S., including 254, 211, and [REDACTED] RSAs, respectively. See Information Request Response at 4.

⁴⁹ See Information Request Response at 4; see also discussion *supra* note 21 (discussing network coverage data).

⁵⁰ See Information Request Response at 5. ALLTEL has deployed GPRS throughout its entire GSM network and EDGE technology to approximately [REDACTED] POPs in a geographic area covering [REDACTED] of the U.S., which includes [REDACTED] RSAs. See *id.*

ALLTEL's licenses cover approximately 83.4 million POPs in [REDACTED] of the U.S. geographic area, including in 269 RSAs.⁵¹

10. On November 16, 2007, ALLTEL was acquired by Atlantis, a Delaware limited liability company ultimately controlled by the principals of TPG Capital, L.P. ("TPG") and The Goldman Sachs Group, Inc. ("Goldman Sachs").⁵² Atlantis is a holding company for certain investment funds ultimately controlled by the principals of TPG and Goldman Sachs.⁵³ TPG and Goldman Sachs each have negative control of Atlantis, because TPG and Goldman Sachs each control one of Atlantis's two managing members, TPG Media 5 - AIV 1, L.P.⁵⁴ and GS Capital Partners VI Parallel, L.P. (collectively, "Managing Members"), respectively.⁵⁵ Moreover, the Managing Members, which are responsible for the management, operation, and control of the business and affairs of Atlantis, also have negative control of ALLTEL by virtue of each company's negative control of Atlantis's board of directors.⁵⁶ Since the merger, ALLTEL common stock is no longer publicly traded on any stock exchange.⁵⁷

B. Description of Transaction

11. On June 5, 2008, Verizon Wireless, AirTouch, Abraham Merger Corporation ("Merger Sub"), ALLTEL, and Atlantis entered into an Agreement and Plan of Merger ("Merger Agreement") which would result in AirTouch acquiring ALLTEL in a cash merger.⁵⁸ AirTouch will pay

⁵¹ See *id.* at 4; see also discussion *supra* note 22 (discussing license coverage data). The Applicants note that ALLTEL's cellular and PCS licenses cover an area that includes 267 RSAs. In the Application, the Applicants state that ALLTEL had cellular and PCS licenses that covered 265 RSAs, but they informed the Commission in the Joint Opposition that they had not included two additional RSAs in the original footprint calculations. See Information Request Response at 4.

⁵² See ALLTEL Corporation, Form 602, File No. 0003382148, at Attachments 1, 2, 5 (April 2, 2008) ("ALLTEL Form 602"); Applications of ALLTEL Corporation, Transferor, and Atlantis Holdings LLC, Transferee, For Consent To Transfer Control of Licenses, Leases and Authorizations, WT Docket No. 07-128, *Memorandum Opinion and Order*, 22 FCC Rcd 19517, 19518 ¶ 3 (2007) ("ALLTEL-Atlantis Order"); ALLTEL May 15, 2008 Form 8-K at 7. See, e.g., Lead Application, File No. 0003040113 (filed June 6, 2007); Notification of Consummation, File No. 0003257136 (filed Dec. 12, 2007) (notifying the Commission of the consummation of lead application, File No. 0003040113, on November 16, 2007). The transaction was completed through the merger of Atlantis Merger Sub, Inc., a wholly-owned subsidiary of Atlantis, with and into ALLTEL, with ALLTEL surviving as a privately-held, wholly-owned subsidiary of Atlantis. See ALLTEL-Atlantis Order, 22 FCC Rcd at 19518 ¶ 3; ALLTEL Form 10-K at 1; ALLTEL May 15, 2008 Form 8-K at 7.

⁵³ ALLTEL-Atlantis Order, 22 FCC Rcd at 19518 ¶ 3.

⁵⁴ The managing member controlled by TPG, as discussed in the ALLTEL-Atlantis Order, was TPG Atlantis V-A, L.P. See *id.* The Applicants state that the name of this partnership was changed to TPG Media V - AIV 1, L.P. See Verizon Wireless October 14, 2008 Informational *Ex Parte* Letter at 1.

⁵⁵ ALLTEL Form 602 at Attachment 5; ALLTEL-Atlantis Order, 22 FCC Rcd at 19518 ¶ 3. TPG Media 5 - AIV 1, L.P. replaced the TPG managing member of Atlantis, TPG Atlantis V-A, L.P., at the time of the consummation of the merger.

⁵⁶ ALLTEL Form 602 at Attachment 5; ALLTEL-Atlantis Order, 22 FCC Rcd at 19518 ¶ 3. Other investment funds ultimately controlled by the principals of TPG and/or Goldman Sachs hold non-controlling interests in Atlantis. ALLTEL Form 602 at Attachment 5; ALLTEL-Atlantis Order, 22 FCC Rcd at 19518 ¶ 3.

⁵⁷ See ALLTEL Form 10-K at 1 (stating that, on November 30, 2007, ALLTEL's common stock was deregistered and is no longer listed on any stock exchange or quotation system).

⁵⁸ See ALLTEL Corporation, Form 8-K at 1 (filed June 11, 2008) ("ALLTEL June 11, 2008 Form 8-K"), available at <http://www.sec.gov/Archives/edgar/data/65873/000089882208000656/eightk.htm> (last visited Aug. 5, 2008); (continued....)

approximately \$5.9 billion for 100 percent of the equity of ALLTEL,⁵⁹ and assume ALLTEL's outstanding long-term debt.⁶⁰ Merger Sub, a Delaware corporation and a wholly-owned subsidiary of AirTouch, will merge with and into ALLTEL.⁶¹ ALLTEL will continue its corporate existence as a direct wholly-owned subsidiary of AirTouch, an indirect wholly-owned subsidiary of Verizon Wireless.⁶² At the effective time of the merger, ALLTEL's issued and outstanding common stock and options will be canceled and converted into the right to receive cash as calculated according to a formula specified in the Merger Agreement.⁶³ Each share of Merger Sub's common stock will be converted into one share of common stock in ALLTEL, the surviving corporation.⁶⁴

12. Upon consummation of the transaction, all licenses, spectrum leasing arrangements, and authorizations currently held by Atlantis through ALLTEL and its subsidiaries will be controlled by Verizon Wireless.⁶⁵ The combined licenses of the Applicants, before any divestitures, will cover almost 300.8 million POPs in [REDACTED] of the U.S. geographic area, including 446 RSAs. Further, the CDMA networks of the Applicants, before any divestitures, will cover approximately 287.5 million POPs in [REDACTED] of the U.S. geographic area, including 400 RSAs.⁶⁶

13. The Applicants assert that the proposed transaction is in the public interest and would provide considerable benefits for both ALLTEL's and Verizon Wireless's customers.⁶⁷ The Applicants' state their footprints are complementary, with ALLTEL being present predominantly in the center and rural parts of the United States,⁶⁸ while Verizon Wireless operates mostly in large metropolitan areas.⁶⁹ The Applicants further claim that the proposed transaction also will be beneficial to Verizon Wireless's customers, because it will allow Verizon Wireless to enter 11 new CMAs and parts of 43 other CMAs, therefore creating a larger, seamless national network footprint.⁷⁰ As a result of the proposed merger, the Applicants state that Verizon Wireless will be able to add additional spectrum capacity, and thus better support the high demand for broadband services and applications.⁷¹ The Applicants further state that Verizon Wireless will be able to bring to ALLTEL's rural customers its advanced broadband technology

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Verizon Communications Inc., Form 8-K at 1 (filed June 11, 2008) ("Verizon June 11, 2008 Form 8-K"), available at <http://www.sec.gov/Archives/edgar/data/732712/000119312508131890/d8k.htm> (last visited Aug. 5, 2008).

⁵⁹ See ALLTEL June 11, 2008 Form 8-K at 1; Verizon June 11, 2008 Form 8-K at 1.

⁶⁰ See ALLTEL Form 10-K at 2.

⁶¹ See ALLTEL June 11, 2008 Form 8-K at 1; Verizon June 11, 2008 Form 8-K at 1; Application, Public Interest Statement at 5.

⁶² See ALLTEL June 11, 2008 Form 8-K at 1; Verizon June 11, 2008 Form 8-K at 1; Application, Public Interest Statement at 5-6.

⁶³ See Application, Public Interest Statement at 6; Merger Agreement at 3.

⁶⁴ Merger Agreement at 4.

⁶⁵ Application, Public Interest Statement at 7.

⁶⁶ Information Request Response at 6.

⁶⁷ See Application, Public Interest Statement at 9-29.

⁶⁸ ALLTEL's footprint covers 265 RSAs and 1,455 counties having a population density of less than 100 persons per square mile. See *id.* at 11.

⁶⁹ See *id.* at 9.

⁷⁰ See *id.* at 13-14, 23.

⁷¹ See *id.* at 11, 24.

and services, especially EvDO Rev. A, which is currently unavailable in most ALLTEL markets.⁷² They maintain that ALLTEL's customers will be able to enjoy improved service, expanded network coverage, a greater choice of wireless service, devices, and rate plans.⁷³ The Applicants highlight that ALLTEL's customers will also benefit from the Open Development Initiative ("ODI"), which will allow them to use any device on Verizon Wireless's network that meets the company's published technical standards.⁷⁴ In addition, the Applicants note that using the recently won 700 MHz spectrum, Verizon Wireless will be able to swiftly deploy Long Term Evolution ("LTE") technology in the rural ALLTEL markets.⁷⁵ Lastly, the Applicants state that the proposed transaction will not cause material harm to competition in any geographic or product market.⁷⁶ They maintain that the proposed transaction's combination of Verizon Wireless's and ALLTEL's complementary assets and capabilities will create a stronger and more efficient wireless competitor with a larger wireless footprint and a broader variety of broadband and data services and content offerings.⁷⁷

C. Transaction Review Process

1. Commission Review

14. On June 13, 2008, pursuant to section 310(d) of the Communications Act,⁷⁸ the Applicants filed applications seeking consent to the proposed transfer of control of licenses and *de facto* transfer and spectrum manager leasing arrangements held by ALLTEL Subsidiaries and Partnerships from Atlantis to Verizon Wireless.⁷⁹ The Applicants also filed an application, pursuant to section 214 of the Communications Act,⁸⁰ seeking consent to the transfer of control of three international and one domestic section 214 authorizations to Verizon Wireless,⁸¹ and a petition seeking declaratory rulings that it is in the public interest for ALLTEL's subsidiaries and partnerships to have indirect foreign ownership in excess of the 25 percent benchmark under section 310(b)(4) of the Communications Act.⁸² On June 25, 2008, the Commission released a Public Notice seeking comment on the proposed transaction.⁸³ The

⁷² See *id.* at 9, 12-13. Specifically, the Applicants state that 1xRTT, EvDO, and EvDO Rev. A technology will be available to 287.5, 268.4, and 257.8 million POPs, representing 400, 373, and 293 RSAs, respectively. See Information Request Response at 6. The combined entity will continue to provide a GSM network to 8.5 million POPs. See *id.*

⁷³ See Application, Public Interest Statement at 10.

⁷⁴ See *id.* at 10, 18-22.

⁷⁵ See *id.* at 13-14, 23-25.

⁷⁶ See *id.* at 28-30.

⁷⁷ See *id.* at 27-30.

⁷⁸ 47 U.S.C. § 310(d).

⁷⁹ See discussion of wireless radio service applications filed *supra* note 2.

⁸⁰ 47 U.S.C. § 214.

⁸¹ File No. ITC-T/C-20080613-00270 (Kin Network Inc.) seeks Commission approval for the transfer of an international and domestic section 214 from Atlantis to Verizon Wireless. File nos. ITC-T/C-20080613-00271 (ALLTEL Communications, LLC) and ITC-T/C-20080613-00272 (Western Wireless, LLC) seek Commission approval for the transfer of international section 214s from Atlantis to Verizon Wireless.

⁸² 47 U.S.C. § 310(b)(4). See *supra* note 4.

⁸³ See Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer Licenses, Spectrum Manager and De Facto Transfer Leasing Arrangements, and Authorizations, and Request a Declaratory Ruling on Foreign Ownership, WT Docket No. 08-95, Public Notice, 23 FCC Rcd 10004 (2008) ("Public Notice").

Public Notice established a pleading cycle for the applications and petitions for declaratory ruling, with petitions to deny due July 25, 2008, oppositions due August 4, 2008, and replies due August 11, 2008.

15. On July 22, 2008, Verizon Wireless filed an *ex parte* letter describing preliminary discussions that it had had with the United States Department of Justice (“DOJ”) and committing to divest 85 cellular markets.⁸⁴ In the letter, 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.”⁸⁵ In addition, Verizon Wireless made certain commitments to regional, small and/or rural wireless providers with which it has entered into roaming agreements.⁸⁶ Specifically, Verizon Wireless stated that each “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,” and each “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.”⁸⁷

16. In response to the Verizon Wireless July 22, 2008 *Ex Parte* Filing, the Rural Telecommunications Group, Inc. (“Rural Telecommunications Group”) filed a motion, on July 23, 2008, requesting an extension of the petition to deny deadline, along with an extension of the opposition and reply deadlines, of seven days “in order to give interested parties sufficient time to analyze and respond to new information submitted by the applicants.”⁸⁸ The Rural Telecommunications Group’s request for a seven-day extension of the pleading cycle was supported by The National Telecommunications Cooperative Association (“NTCA”) and the Law Firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP (“Blooston *et al.*”), on behalf of its clients, in their comments filed on July 24, 2008.⁸⁹ Additionally, on July 24, 2008, the Consumers Union, Free Press, Media Access Project, and Public Knowledge (“Consumers Union *et al.*”) submitted a letter requesting that the Commission establish a pleading cycle with petitions to deny due August 22, 2008, oppositions due September 2, 2008, and

⁸⁴ *Ex Parte* Letter from John T. Scott, III, Vice President & Deputy General Counsel Regulatory Law, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 22, 2008) (“Verizon Wireless July 22, 2008 *Ex Parte* Filing”).

⁸⁵ Verizon Wireless July 22, 2008 *Ex Parte* Filing at 1. In regard to these divestitures, Verizon Wireless stated that “[t]he specific spectrum, operations and other assets that will be divested in each market will be determined as part of ongoing discussions with the Department of Justice.” *Id.* at 1-2. For a list of the markets that Verizon Wireless voluntarily committed to divest, see *infra* Appendix B.

⁸⁶ Verizon Wireless July 22, 2008 *Ex Parte* Filing at 2.

⁸⁷ *Id.*

⁸⁸ Motion for Extension of Time, filed by Rural Telecommunications Group, Inc., WT Docket No. 08-95, at 1 (filed July 23, 2008) (“Rural Telecommunications Group Extension Motion”). Rural Telecommunications Group also filed an erratum to the Rural Telecommunications Group Extension Motion in order to correct contact information. Erratum to Motion for Extension of Time, filed by Rural Telecommunications Group, Inc., WT Docket No. 08-95 (filed July 24, 2008).

⁸⁹ Comments in Support of Rural Telecommunications Group Motion for Extension of Time, filed by National Telecommunications Cooperative Association, at 1 (filed July 24, 2008); Comments in Support of Rural Telecommunications Group Motion for Extension of Time, filed by Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, at 1 (filed July 24, 2008).

replies due September 9, 2008.⁹⁰ On July 24, 2008, the Applicants filed an opposition to the Rural Telecommunications Group Extension Motion⁹¹ and the *ex parte* presentation opposing the request for an extension of time filed by Consumers Union *et al.*⁹² The Rural Telecommunications Group subsequently filed a reply to the Applicants' opposition.⁹³

17. The Wireless Telecommunications Bureau ("Bureau"), on July 24, 2008, released an order extending the deadlines to file petitions to deny, oppositions, and replies by 15 days.⁹⁴ The Bureau found that the justification offered by the Rural Telecommunications Group for an extension of the pleading cycle was valid, and further found that it was in the public interest to extend the petition to deny deadline, along with the opposition and reply deadlines, by fifteen days to allow interested parties time to consider and analyze the information in the Verizon Wireless July 22, 2008 *Ex Parte* Filing and file petitions to deny.⁹⁵ Accordingly, the revised deadline to file petitions to deny was August 11, 2008, oppositions were due August 19, 2008, and replies were due August 26, 2008.⁹⁶

18. Following release of the Extension Order, the Commission received 16 petitions to deny by the revised deadline of August 11, 2008; 25 comments were also filed by that date.⁹⁷ The Applicants filed a Joint Opposition to Petitions to Deny and Comments ("Joint Opposition") on August 19, 2008.⁹⁸ On August 26, 2008, the Commission received 14 replies to the Joint Opposition.⁹⁹ In addition, the Commission received 26 other comments regarding the transaction.¹⁰⁰

19. On October 7, 2008, Verizon Wireless filed an *ex parte* letter reporting that Verizon Wireless, following additional discussions with DOJ, offered to divest assets in 15 additional markets.¹⁰¹ In the letter, Verizon Wireless stated that it was committing to divest one of the overlapping properties in 15 additional cellular markets.¹⁰² These 15 markets are located in Alabama, Arizona, Georgia, Iowa,

⁹⁰ Letter from Larry A. Blosser, Attorney, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 08-95 (July 24, 2008).

⁹¹ Opposition of Atlantis Holdings LLC and Celco Partnership d/b/a Verizon Wireless to Motion for Extension of Time of Rural Telecommunications Group, Inc., WT Docket No. 08-95 (filed July 24, 2008).

⁹² Written *Ex Parte* Presentation from Kathleen Q. Abernathy, Counsel to Atlantis Holdings LLC, and Nancy J. Victory, Counsel to Celco Partnership, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 08-95 (July 24, 2008).

⁹³ Reply to Atlantis and Verizon Wireless Opposition to RTG Motion for Extension of Time (filed July 24, 2008).

⁹⁴ Applications of Celco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to *Transfer* Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Order*, 23 FCC Rcd 11210 (WTB 2008) ("Extension Order").

⁹⁵ *See id.* at 11214 ¶ 11.

⁹⁶ *See id.*

⁹⁷ *See* Appendix A.

⁹⁸ Joint Opposition to Petition to Deny and Comments (filed Aug. 19, 2008) ("Joint Opposition").

⁹⁹ *See* Appendix A.

¹⁰⁰ *See id.*

¹⁰¹ *Ex Parte* Letter from John T. Scott, III, Vice President & Deputy General Counsel Regulatory Law, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (Oct. 7, 2008) ("Verizon Wireless October 7, 2008 *Ex Parte* Filing").

¹⁰² Verizon Wireless October 7, 2008 *Ex Parte* Filing at 2.

Minnesota, Nebraska, New Mexico, North Carolina, South Carolina, and Utah.¹⁰³ Verizon Wireless further clarified that “[a]s with the initial 85 markets, Verizon Wireless is voluntarily committing to divest one of the overlapping properties in each of the 15 markets, together with the spectrum, customers and other assets used by that property. Accordingly, the Commission’s approval of the merger may be conditioned on fulfilling that divestiture commitment in these additional markets.”¹⁰⁴

20. *Confidential Materials*. On July 29, 2008, the Bureau issued a Protective Order to ensure that any confidential or proprietary documents submitted to the Commission would be adequately protected from public disclosure.¹⁰⁵ The Bureau received four requests to review the proprietary or confidential information that is in the record. Also on July 29, 2008, the Bureau released a public notice announcing that Numbering Resource Utilization and Forecast (“NRUF”) reports and local number portability (“LNP”) data for all wireless telecommunications providers as of December 31, 2006, June 30, 2007, and December 31, 2007 would be placed into the record and adopted a protective order pursuant to which the Applicants and third parties would be allowed to review the specific NRUF reports and LNP data placed into the record.¹⁰⁶ The Bureau received 14 requests to review the NRUF and LNP data that is in the record.

21. *Commission Request for Documents*. On September 11, 2008, pursuant to section 308(b) of the Communications Act,¹⁰⁷ the Bureau requested a number of documents and additional information from the Applicants.¹⁰⁸ Among other things, the Bureau asked the Applicants to provide further information regarding the public interest benefits of the transaction, including license and network coverage, services provided, timelines for roll out of EvDO Rev. A and LTE, and the merged entity’s improved ability to meet public safety requirements.¹⁰⁹ The Bureau also requested information on the Applicants’ plans for its GSM network post-transaction.¹¹⁰ The Applicants provided responsive

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Protective Order*, 23 FCC Rcd 11154 (WTB 2008) (“Protective Order”).

¹⁰⁶ Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports Placed into the Record, Subject to Protective Order, WT Docket No. 08-95, CC Docket No. 99-200, *Public Notice*, 23 FCC Rcd 11398 (WTB 2008); Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, CC Docket No. 99-200, *Protective Order*, 23 FCC Rcd 11401 (WTB 2008) (“NRUF Protective Order”).

¹⁰⁷ 47 U.S.C. § 308(b).

¹⁰⁸ Letter from James D. Schlichting, Acting Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Kathleen Q. Abernathy, Akin Gump Strauss Hauer & Feld LLP, and Nancy J. Victory, Wiley Rein LLP (Sept. 11, 2008) (“Information Request”).

¹⁰⁹ *See id.* at Attachment.

¹¹⁰ *See id.* The Commission requested that the response to the Information Request be filed by September 22, 2008. *See id.*

documents and information on September 17, 2008, some of which was provided subject to the provisions of the Protective Order.¹¹¹

22. Verizon Wireless provided additional information, at the request of Bureau Staff, on October 1, 2008, regarding the state of wireless competition in three markets – CMA085 Johnson City-Kingsport-Bristol, TN/VA, CMA646 Tennessee 4-Hamblen, and CMA650 Tennessee 8-Johnson.¹¹² Further, on October 14, 2008, Verizon Wireless filed two additional *ex parte* letters in response to inquiries from Commission Staff.¹¹³ In one *ex parte* letter, it provided additional information regarding the figures provided regarding license and network coverage areas in the Information Request Response and clarified the organizational structure of Atlantis.¹¹⁴ It also submitted an *ex parte* letter stating that, “[I]n response to an inquiry and request initiated by staff of the International Bureau, . . . Verizon Wireless will place into a trust the voting rights associated with ALLTEL’s interests in Illinois Valley Cellular RSA # 2-II Partnership (“Illinois Valley”), Northwest Missouri Cellular Limited Partnership (“Northwest Missouri”), and Pittsfield Cellular Telephone Company (“Pittsfield”), thereby precluding Vodafone’s interest in Verizon Wireless from any voting rights in the partnerships.”¹¹⁵ Verizon Wireless filed another *ex parte* letter on November 3, 2008, in which it made additional commitments regarding roaming, the “phase down” of competitive eligible telecommunications carriers (“ETC”) high cost support, and compliance with improved wireless E911 location accuracy measures.¹¹⁶

2. Department of Justice Review

23. The Antitrust Division of DOJ reviews telecommunications mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that may substantially lessen competition.¹¹⁷ The Antitrust Division’s review is limited solely to an examination of the competitive effects of the acquisition, without reference to national security, law enforcement, or other public interest considerations. The Antitrust Division reviewed the proposed merger between Verizon Wireless and ALLTEL.¹¹⁸ As a result

¹¹¹ See *id.* at 1.

¹¹² *Ex Parte* Letter from Kathleen Q. Abernathy, Akin Gump Strauss Hauer & Feld LLP, and Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 1, 2008) (“Verizon Wireless October 1, 2008 *Ex Parte* Letter”).

¹¹³ Verizon Wireless October 14, 2008 Informational *Ex Parte* Letter; *Ex Parte* Letter from Nancy J. Victory, Wiley Rein LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 14, 2008) (“Verizon Wireless October 14, 2008 Trust *Ex Parte* Letter”).

¹¹⁴ Verizon Wireless October 14, 2008 Informational *Ex Parte* Letter at 1.

¹¹⁵ Verizon Wireless October 14, 2008 Trust *Ex Parte* Letter at 1.

¹¹⁶ *Ex Parte* Letter from John T. Scott, III, Vice President & Deputy General Counsel Regulatory Law, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 3, 2008) (“Verizon Wireless November 3, 2008 *Ex Parte* Letter”).

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

¹¹⁸ Department of Justice, *Press Release*, Justice Department Requires Divestitures in Verizon’s Acquisition of ALLTEL (Oct. 30, 2008), available at <http://www.usdoj.gov/opa/pr/2008/October/08-at-970.html> (last visited Oct. 31, 2008). DOJ also reviewed some markets, as part of the proposed transaction, that ALLTEL and the predecessors of Verizon had divested in the prior ALLTEL-Midwest and Bell Atlantic-GTE transactions, respectively. Some of the business units and licenses that were divested as part of the ALLTEL-Midwest transaction were acquired by Verizon Wireless and some of the business units and licenses that were divested as part of the Bell Atlantic-GTE transaction were subsequently acquired by ALLTEL. The DOJ final judgments in the ALLTEL-Midwest and Bell Atlantic-GTE transactions preclude the reacquisition of the business units in these markets by the combined entity. (continued....)

of its analysis, DOJ concluded that the proposed merger was likely to substantially lessen competition in certain markets where Verizon Wireless and ALLTEL are among the most significant competitors,¹¹⁹ and entered into a settlement with the Applicants designed to eliminate the anticompetitive effects of the transaction in these markets.¹²⁰ On October 30, 2008, DOJ filed a series of documents, including complaints and preservation of assets stipulations and orders, with the United States District Court for the District of Columbia ("DC District Court") and United States District Court for the District of Minnesota ("Minnesota District Court" and, together with DC District Court, "District Courts") reflecting this settlement,¹²¹ and the parties jointly filed proposed Final Judgments with the District Courts.¹²² DOJ will allow the merger to proceed subject to the Applicants' divestiture of the business

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After review of these markets and to facilitate the consummation of the proposed transaction, DOJ will allow the combined entity to reacquire the wireless system assets in 4 CMAs divested as part of the ALLTEL-Midwest Wireless transaction provided it sells these reacquired assets. See *United States of America and State of Minnesota v. ALLTEL Corporation and Midwest Wireless Holdings L.L.C.*, Memorandum of Plaintiff United States in Support of Joint Motions to Modify Final Judgment, Case No. 06-3631, at 3, 6-8 (filed Oct. 30, 2008) ("DOJ ALLTEL-Midwest Memorandum"). DOJ will also allow the combined entity to reacquire the wireless system assets in 25 CMAs divested as part of the Bell Atlantic-GTE transaction provided it sells the reacquired assets in 3 CMAs. See *United States of America v. Bell Atlantic Corporation, GTE Corporation, and Vodafone AirTouch PLC*, Memorandum of Plaintiff United States in Support of Joint Motions to Modify Final Judgment and to Establish Procedures to Modify Final Judgment, Case No. 1:99-cv-01119, at 7 (filed Oct. 30, 2008) ("DOJ Bell Atlantic-GTE Memorandum").

¹¹⁹ See *United States of America et al. v. Verizon Communications Inc. and ALLTEL Corporation*, Complaint, Case No. 08-cv-1878, at 1, 8-10 ¶¶ 1, 17-20, 21 (filed Oct. 30, 2008) ("DOJ Verizon-ALLTEL Complaint"); *United States of America et al. v. Verizon Communications Inc. and ALLTEL Corporation*, Competitive Impact Statement, Case No. 08-cv-1878, at 6-12 (filed Oct. 30, 2008) ("DOJ Verizon-ALLTEL Competitive Impact Statement"); DOJ ALLTEL-Midwest Memorandum at 1-2, 6-8. Because the settlement agreement between DOJ and the Applicants has already been executed, we consider moot the argument of Cellular South, Inc. that the Commission should dismiss the applications without prejudice to resubmission "once Verizon Wireless gets its ducks in order with DOJ." *Petition to Deny of Cellular South, Inc.* at 5-6 (filed Aug. 11, 2008) ("Cellular South Petition to Deny"). Nevertheless, the Commission has independent authority to review the transaction separate and apart from DOJ's review. See, e.g., *Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., Transferor to Sirius Satellite Radio Inc., Transferee*, MB Docket No. 07-57, *Memorandum Opinion and Order and Report and Order*, 23 FCC Rcd 12348, 12365-66 ¶ 32 (2008) ("*XM-Sirius Order*"). The Commission need not await DOJ's determination regarding the proposed transaction before acting.

¹²⁰ See DOJ Verizon-ALLTEL Complaint at 7-12; DOJ Bell Atlantic-GTE Memorandum at 14-15; DOJ ALLTEL-Midwest Memorandum at 6-8. All DOJ filings regarding this matter are available at <http://www.usdoj.gov/atr/cases/verizon3.htm>, <http://www.usdoj.gov/atr/cases/alltel2.htm>, or <http://www.usdoj.gov/atr/cases/indx133.htm>.

¹²¹ See generally DOJ Verizon-ALLTEL Complaint; DOJ Verizon-ALLTEL Competitive Impact Statement; *United States of America et al. v. Verizon Communications Inc., and ALLTEL Corporation*, Preservation of Assets Stipulation and Order, Case No. 08-cv-1878 (filed Oct. 30, 2008) ("DOJ Verizon-ALLTEL Stipulation and Order"); DOJ Bell Atlantic-GTE Memorandum; *United States of America v. Bell Atlantic Corporation, GTE Corporation, and Vodafone AirTouch PLC*, Order and Stipulation with respect to Modified Final Judgment and Preservation of Assets, Case No. 1:99-cv-01119 (filed Oct. 30, 2008) ("DOJ Bell Atlantic-GTE Modified Stipulation and Order"); DOJ ALLTEL-Midwest Memorandum; *United States of America and State of Minnesota v. ALLTEL Corporation and Midwest Wireless Holdings L.L.C.*, Modified Preservation of Assets Stipulation, Case No. 06-3631 (filed Oct. 30, 2008) ("DOJ ALLTEL-Midwest Stipulation"); *United States of America and State of Minnesota v. ALLTEL Corporation and Midwest Wireless Holdings L.L.C.*, Modified Preservation of Assets Order, Case No. 06-3631 (filed Oct. 30, 2008) ("DOJ ALLTEL-Midwest Order").

¹²² See *United States of America et al. v. Verizon Communications Inc., and ALLTEL Corporation*, Final Judgment, Case No. 08-cv-1878 (filed Oct. 30, 2008) ("DOJ Verizon-ALLTEL Proposed Final Judgment"); *United States of America v. Bell Atlantic Corporation, GTE Corporation, and Vodafone AirTouch PLC*, Modified Final Judgment, Case No. 1:99-cv-01119 (filed Oct. 30, 2008) ("DOJ Bell Atlantic-GTE Proposed Modified Final Judgment"); (continued...)

units and related assets of either Verizon Wireless or ALLTEL in 100 markets.¹²³ These 100 markets are the same markets that Verizon Wireless voluntarily committed to divest based on initial discussions with DOJ.¹²⁴

24. Specifically, under the terms of the settlement between the Applicants and DOJ, Verizon Wireless and ALLTEL have agreed to divest certain cellular licenses and related operational and network assets (including certain employees, retail sites, and subscribers) in 100 markets.¹²⁵ These assets will be transferred to a court-appointed management trustee ("Management Trustee"), who will manage them while Verizon Wireless seeks a third-party buyer.¹²⁶ The buyer must be someone who, in DOJ's sole judgment, has the intent and capability of being an effective competitor to Verizon Wireless.¹²⁷ Verizon Wireless has a period of 120 days from consummation of the transaction (which can be extended for up to 60 days) to sell the assets to a third-party buyer or divest the assets to a divestiture trustee ("Divestiture Trustee"), who will both manage and market the assets for sale to a third party.¹²⁸

25. The settlement also requires that a single purchaser acquire all of the divested business units and related assets in each of eighteen separate regions.¹²⁹ DOJ states that these "CMAs have been grouped to reflect the fact that carriers frequently are more competitive where they serve contiguous areas."¹³⁰ DOJ also states that "in deciding on the particular packages . . . , [it] recognized that selling areas with significant linkages across these areas provides greater assurance that the buyer will be an

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United States of America and State of Minnesota v. ALLTEL Corporation and Midwest Wireless Holdings L.L.C., Modified Final Judgment, Case No. 06-3631 (filed Oct. 30, 2008) ("DOJ ALLTEL-Midwest Proposed Modified Final Judgment").

¹²³ The divestiture of the operating business and related assets in 94 markets is required in the Verizon-ALLTEL filings in case no. 08-cv-1878 filed in DC District Court on October 30, 2008. See DOJ Verizon-ALLTEL Proposed Final Judgment at 3-5; DOJ Verizon-ALLTEL Complaint at 3, 19-21 ¶ 1, Appendix A; DOJ Verizon-ALLTEL Competitive Impact Statement at 12-15. The divestiture of the operating business and related assets in 3 markets is required in the Bell Atlantic-GTE filings in case no. 1:99-cv-01119 filed in DC District Court on October 30, 2008. See DOJ Bell Atlantic-GTE Proposed Modified Final Judgment at 31, 34-36; DOJ Bell Atlantic-GTE Memorandum at 7, 14-15. The divestiture of the operating business and related assets in 4 markets is required in the ALLTEL-Midwest filings in case no. 1:99-cv-01119 filed in DC District Court on October 30, 2008. See DOJ ALLTEL-Midwest Proposed Modified Final Judgment at 3, 24-26; DOJ ALLTEL-Midwest Memorandum at 3, 6-8. One of the markets required to be divested in the ALLTEL-Midwest filings is also required to be divested in the Verizon-ALLTEL filings. Thus, there are 100 DOJ divestiture markets in total.

¹²⁴ See Verizon Wireless July 22, 2008 *Ex Parte* Filing at 1; Verizon Wireless October 7, 2008 *Ex Parte* Filing at 1-2; see also discussion *supra* paras. 15, 19; Appendix B.

¹²⁵ See DOJ Verizon-ALLTEL Proposed Final Judgment at 3-6, 9; DOJ Verizon-ALLTEL Competitive Impact Statement at 2, 7-10; DOJ Bell Atlantic-GTE Proposed Modified Final Judgment at 1-2, 30-36; DOJ ALLTEL-Midwest Proposed Modified Final Judgment at 1-2, 24-27; see also Verizon Wireless July 22, 2008 *Ex Parte* Filing at 1; Verizon Wireless October 7, 2008 *Ex Parte* Filing at 1-2; Appendix B.

¹²⁶ See DOJ Verizon-ALLTEL Stipulation and Order at 9-15; DOJ Bell Atlantic-GTE Modified Stipulation and Order at 8-14; DOJ ALLTEL-Midwest Stipulation at 8-16; DOJ ALLTEL-Midwest Order at 9-19.

¹²⁷ DOJ Verizon-ALLTEL Proposed Final Judgment at 11; Bell Atlantic-GTE Proposed Modified Final Judgment at 34; DOJ ALLTEL-Midwest Proposed Modified Final Judgment at 27.

¹²⁸ See DOJ Verizon-ALLTEL Proposed Final Judgment at 9; Bell Atlantic-GTE Modified Final Judgment at 34-35; DOJ ALLTEL-Midwest Proposed Modified Final Judgment at 8-18.

¹²⁹ See DOJ Verizon-ALLTEL Proposed Final Judgment at 12-16; DOJ Verizon-ALLTEL Competitive Impact Statement at 13-17; see also Bell Atlantic-GTE Proposed Modified Final Judgment at 35; DOJ ALLTEL-Midwest Proposed Modified Final Judgment at 27.

¹³⁰ DOJ Verizon-ALLTEL Competitive Impact Statement at 16.

effective competitor.”¹³¹ In recognizing that these packages could dissuade potential buyers from attempting to acquire the divested business units,¹³² DOJ states that they struck “a balance between these potential issues by creating bundles that are geographically linked but allowing potential buyers to effectively suggest larger packages by bidding conditionally on multiple packages.”¹³³ Further, DOJ has the sole discretion, upon consultation with the states that joined in the settlement, to “allow even smaller packages of assets as appropriate to ensure successful divestiture.”¹³⁴

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

26. Pursuant to sections 214(a) and 310(d) of the Communications Act, we must determine whether the Applicants have demonstrated that the proposed transfers of control of licenses and authorizations will serve the public interest, convenience, and necessity.¹³⁵ In making this assessment, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act,¹³⁶ other applicable statutes, and the Commission’s rules.¹³⁷ If the transaction does not violate a statute or rule, we next consider whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.¹³⁸ We then employ a balancing test weighing any potential public interest harms of the

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* at 16-17.

¹³⁴ *Id.* at 17.

¹³⁵ 47 U.S.C. §§ 214(a), 310(d).

¹³⁶ Section 310(d), 47 U.S.C. § 310(d), requires that we consider the applications as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. *See, e.g., XM-Sirius Order* 23 FCC Rcd at 12363-64 ¶ 30; Applications of Celco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases, WT Docket No. 07-208, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 12463, 12476-77 ¶ 26 (rel. Aug. 1, 2008) (“*Verizon Wireless-RCC Order*”); Applications of AT&T Inc. and Dobson Communications Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-153, *Memorandum Opinion and Order*, 22 FCC Rcd 20295, 20301 ¶ 10 (2007) (“*AT&T-Dobson Order*”); *ALLTEL-Atlantis Order*, 22 FCC Rcd at 19519-20 ¶ 7; AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74, *Memorandum Opinion and Order*, 22 FCC Rcd 5662, 5672 ¶ 17 (2007) (“*AT&T-BellSouth Order*”); Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc., WT Docket No. 05-339, *Memorandum Opinion and Order*, 21 FCC Rcd 11526, 11535 ¶ 16 (2006) (“*ALLTEL-Midwest Wireless Order*”); Applications of Nextel Communications, Inc. and Sprint Corporation, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 13976 ¶ 20 (2005) (“*Sprint-Nextel Order*”); Applications of Western Wireless Corporation and ALLTEL Corporation, WT Docket No. 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13053, 13062 ¶ 17 (2005) (“*ALLTEL-Western Wireless Order*”); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21542 ¶ 40 (2004) (“*Cingular-AT&T Wireless Order*”).

¹³⁷ *See, e.g., XM-Sirius Order*, 23 FCC Rcd at 12363-64 ¶ 30; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20301 ¶ 10; *ALLTEL-Atlantis Order*, 22 FCC Rcd at 19519-20 ¶ 7; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21542-43 ¶ 40.

¹³⁸ *See, e.g., XM-Sirius Order*, 23 FCC Rcd at 12363-64 ¶ 30; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20301 ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20.

proposed transaction against any potential public interest benefits.¹³⁹ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.¹⁴⁰ If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we must designate the application for hearing under section 309(e) of the Communications Act.¹⁴¹

27. Our public interest evaluation also necessarily encompasses the “broad aims of the Communications Act,” which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest.¹⁴² Our public interest analysis may also entail assessing whether the proposed transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.¹⁴³ In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.¹⁴⁴

¹³⁹ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12363-64 ¶ 30; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062-63 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

¹⁴⁰ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12363-64 ¶ 30; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976-77 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

¹⁴¹ 47 U.S.C. § 309(e). See *XM-Sirius Order*, 23 FCC Rcd at 12363-64 ¶ 30; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672-73 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543-44 ¶ 40; see also Application of EchoStar Communications Corporation (A Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (A Delaware Corporation) (Transferee), CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559, 20620 ¶ 153 (2002). Section 309(e)'s requirement applies only to those applications to which Title III of the Act applies, i.e., radio station licenses. We are not required to designate for hearing applications for the transfer or assignment of Title II authorizations when we are unable to find that the public interest would be served by granting the applications, see *ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979), but of course may do so if we find that a hearing would be in the public interest.

¹⁴² E.g., *XM-Sirius Order*, 23 FCC Rcd at 12364-65 ¶ 31; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12479 ¶ 28; *AT&T-Dobson Order*, 22 FCC Rcd at 20303 ¶ 12; *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

¹⁴³ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12364-65 ¶ 31; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12479 ¶ 28; *AT&T-Dobson Order*, 22 FCC Rcd at 20303-04 ¶ 12; *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064-65 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

¹⁴⁴ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12364-65 ¶ 31; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12479 ¶ 28; *AT&T-Dobson Order*, 22 FCC Rcd at 20304 ¶ 12; *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

28. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.¹⁴⁵ The Commission and DOJ each have independent authority to examine the competitive impacts of proposed communications mergers and transactions involving transfers of Commission licenses, but the standards governing the Commission's competitive review differ somewhat from those applied by DOJ.¹⁴⁶ Like DOJ, the Commission considers how a transaction will affect competition by defining a relevant market, looking at the market power of incumbent competitors, and analyzing barriers to entry, potential competition and the efficiencies, if any, that may result from the transaction. DOJ, however, reviews telecommunications mergers pursuant to section 7 of the Clayton Act, and if it wishes to block a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.¹⁴⁷ Under the Commission's review, the Applicants must show that the transaction will serve the public interest; otherwise the application is set for hearing. DOJ's review is also limited solely to an examination of the competitive effects of the acquisition, without reference to diversity, localism, or other public interest considerations.¹⁴⁸ The Commission's competitive analysis under the public interest standard is somewhat broader, for example, considering whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant market.¹⁴⁹

29. Our analysis recognizes that a proposed transaction may lead to both beneficial and harmful consequences.¹⁵⁰ For instance, combining assets may allow a firm to reduce transaction costs and offer new products, but it may also create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.¹⁵¹ Our public

¹⁴⁵ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12365-66 ¶ 32; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12479-80 ¶ 29; *AT&T-Dobson Order*, 22 FCC Rcd at 20304 ¶ 13; *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 21; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13977-78 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42.

¹⁴⁶ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12365-66 ¶ 32; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12479-80 ¶ 29; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42.

¹⁴⁷ 15 U.S.C. § 18.

¹⁴⁸ See *XM-Sirius Order*, 23 FCC Rcd at 12365-66 ¶ 32; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12479-80 ¶ 29.

¹⁴⁹ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12365-66 ¶ 32; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12479-80 ¶ 29; *AT&T-Dobson Order*, 22 FCC Rcd at 20305 ¶ 13; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11538 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42. The detailed explanation of the differences between the scopes of the competitive analyses performed by the Commission and DOJ refutes the argument of one commenter that "there is no reason for the FCC to duplicate the effort of DOJ in evaluating the competitive effects of the merger." Comments of Randolph J. May at 3-4 (filed Aug. 19, 2008).

¹⁵⁰ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12366 ¶ 33; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12480-81 ¶ 30; *AT&T-Dobson Order*, 22 FCC Rcd at 20305 ¶ 13; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

¹⁵¹ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12366 ¶ 33; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12480-81 ¶ 30; *AT&T-Dobson Order*, 22 FCC Rcd at 20305 ¶ 13; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21;

(continued...)

interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.¹⁵² Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.¹⁵³ Similarly, section 214(c) of the Act authorizes the Commission to attach to the certificate "such terms and conditions as in its judgment the public convenience and necessity may require."¹⁵⁴ Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to rely upon our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits.¹⁵⁵ Despite this broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes.¹⁵⁶ Thus, we generally will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.¹⁵⁷

30. This Memorandum Opinion and Order and Declaratory Ruling is set forth, as follows, in six principal components. First, we address the issues raised regarding the qualifications of the Applicants. Second, we assess the potential horizontal and vertical harms presented by the transaction. Third, we evaluate the public interest benefits that Applicants claim will result from the transaction. Fourth, we

(Continued from previous page) _____

ALLTEL-Midwest Wireless Order, 21 FCC Rcd at 11538 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

¹⁵² See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12366 ¶ 33; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12480-81 ¶ 30; *AT&T-Dobson Order*, 22 FCC Rcd at 20305 ¶ 14; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 22; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 20; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

¹⁵³ 47 U.S.C. § 303(r). See also *XM-Sirius Order*, 23 FCC Rcd at 12366 ¶ 33; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12480-81 ¶ 30; *AT&T-Dobson Order*, 22 FCC Rcd at 20305 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 20; *Sprint-Nextel Order*, 20 FCC Rcd at 13978-79 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

¹⁵⁴ 47 U.S.C. § 214(c). See also *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12480-81 ¶ 30; *AT&T-Dobson Order*, 22 FCC Rcd at 20305-06 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 20; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

¹⁵⁵ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12366 ¶ 33; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12480-81 ¶ 30; *AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 14; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 22; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538-39 ¶ 20; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43. See also *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043, 1049 (7th Cir. 1992) (discussing Commission's authority to trade off reduction in competition for increase in diversity in enforcing public interest standard).

¹⁵⁶ See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12480-81 ¶ 30; *AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 14; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674-75 ¶ 22; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11539 ¶ 20; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

¹⁵⁷ See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12480-81 ¶ 30; *AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11539 ¶ 20; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

weigh the public interest harms posed by, and the benefits to be gained from, the transaction and, to the extent that likely competitive harms exceed the likely benefits of the transaction, discuss the remedies required to ameliorate the public interest harms posed by the transaction. Next, we discuss other issues that were raised by commenters and petitioners (collectively, "commenters") in this proceeding. We conclude by examining whether the public interest would be served by extending to the ALLTEL Subsidiaries and Partnerships and to their wireless licenses and spectrum leasing arrangements, the foreign ownership ruling that the Commission has previously issued to Verizon Wireless under section 310(b)(4) of the Communications Act.

IV. QUALIFICATIONS OF APPLICANTS

31. When evaluating applications for consent to transfer control of licenses, spectrum leasing arrangements, and authorization, section 310(d) of the Communications Act requires the Commission to determine whether the proposed transaction will serve "the public interest, convenience and necessity."¹⁵⁸

Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite "citizenship, character, financial, technical, and other qualifications."¹⁵⁹ Therefore, as a threshold matter, the Commission must determine whether the applicants to the proposed transaction meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission's rules.¹⁶⁰

32. In determining whether applicants have the requisite character to be Commission licensees, we look to the Commission's character policy initially developed in the broadcast area as guidance in resolving similar questions in common carrier license transfer proceedings.¹⁶¹ Under this policy, the Commission previously has stated that it will review allegations of misconduct directly before it,¹⁶² as

¹⁵⁸ 47 U.S.C. § 310(d).

¹⁵⁹ *Id.* §§ 308, 310(d). See also *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12477-78 ¶ 27; *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 11; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

¹⁶⁰ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see also *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12477-78 ¶ 27; *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 11; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

¹⁶¹ See, e.g., *WorldCom, Inc. and Its Subsidiaries (Debtors-in-Possession), Transferor, and MCI, Inc., Transferee*, WC Docket No. 02-215, *Memorandum Opinion and Order*, 18 FCC Rcd. 26484, 26493 ¶ 13 (2003) ("WorldCom Order"). See also *Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, Report, Order and Policy Statement*, 102 F.C.C.2d 1179, 1210-11 ¶¶ 60-61 (1986), *Memorandum Opinion and Order*, 1 FCC Rcd 421 (1986); *Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications, Policy Statement and Order*, 5 FCC Rcd 3252 (1990), *Memorandum Opinion and Order*, 6 FCC Rcd 3448 (1991), *Memorandum Opinion and Order*, 7 FCC Rcd 6564 (1992). The Commission applies its broadcast character standards to applicants and licensees in the other radio services. See, e.g., *1990 Character Policy Statement*, 5 FCC Rcd at 3253 ¶ 10 (adopting 47 C.F.R. § 1.17 to apply prohibition against misrepresentations and material omissions to applicants, licensees, and permittees in all radio services).

¹⁶² See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12477-78 ¶ 27; *AT&T-Dobson Order*, 22 FCC Rcd at 20303 ¶ 11; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

well as conduct that takes place outside of the Commission.¹⁶³ With respect to Commission-related conduct, the Commission has stated that all violations of provisions of the Act, or of the Commission's rules or policies, are predictive of an applicant's future truthfulness and reliability, and thus have a bearing on an applicant's character qualifications.¹⁶⁴ The Commission previously has determined that in its review of character issues, it will consider forms of adjudicated, non-Commission related misconduct that include: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition.¹⁶⁵

33. When evaluating transfers of control or assignments under section 310(d), the Commission does not, as a general rule, re-evaluate the qualifications of the transferor, unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.¹⁶⁶ Commenters have raised concerns about Atlantis's qualifications, so we will address these allegations below. Conversely, section 310(d) obligates the Commission to consider whether the proposed transferee is qualified to hold Commission licenses.¹⁶⁷ However, no issues have been raised with respect to the basic qualifications of the transferee, Verizon Wireless, which was found qualified to hold Commission licenses as recently as August 1, 2008.¹⁶⁸ We therefore find that there is no reason to re-evaluate the basic qualifications of Verizon Wireless at this time.

¹⁶³ See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12477-78 ¶ 27; *AT&T-Dobson Order*, 22 FCC Rcd at 20303 ¶ 11; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

¹⁶⁴ *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12478 n.119; *AT&T-Dobson Order*, 22 FCC Rcd at 20303 n.60; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 172; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 184; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 n.85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47; Policy Regarding Character Qualifications In Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, Gen. Docket No. 81-500, *Report and Order and Policy Statement*, 100 F.C.C. 2d 1179, 1209-10 ¶ 57 (1986), *modified*, 5 FCC Rcd 3252 (1990), *recon. granted in part*, 6 FCC Rcd 3448 (1991), *modified in part*, 7 FCC Rcd 6564 (1992).

¹⁶⁵ See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12478 n.120; *AT&T-Dobson Order*, 22 FCC Rcd at 20303 n.61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 n.86; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

¹⁶⁶ See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12477-78 ¶ 27; *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 11; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063-64 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44. See also Stephen F. Sewell, Assignment and Transfers of Control of FCC Authorizations under Section 310(d) of the Communications Act of 1934, 43 FED. COMM. L.J. 277, 339-40 (1991). The policy of not approving assignments or transfers when issues regarding the licensee's basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. See *id.* The hearing designation is required under Section 309(e) of the Communications Act, 47 U.S.C. § 309(e), only if the record presents a "substantial and material question of fact" whether grant of the application would serve the public interest, convenience, and necessity.

¹⁶⁷ See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20302-03 ¶ 11; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13590 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362 ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

¹⁶⁸ See generally *Verizon Wireless-RCC Order*, 23 FCC Rcd 12463.

34. *The Record*. Ritter Communications, Inc. and Central Arkansas Rural Cellular Limited Partnership (collectively, "Arkansas Limited Partners") allege that Atlantis made misrepresentations and/or lacked candor in its previous application to acquire ALLTEL, which demonstrates that it lacks the requisite character qualifications to be a Commission licensee.¹⁶⁹ Arkansas Limited Partners claim that the short period of time between the Commission's consent to the Atlantis-ALLTEL merger and the filing of the current applications indicates that Atlantis never intended to provide any of the planned benefits to rural areas that the Commission relied upon in consenting to the merger.¹⁷⁰ Arkansas Limited Partners further argue that this short timeframe between Atlantis's acquisition of ALLTEL and the filing of the applications to transfer control of ALLTEL to Verizon Wireless indicates that Atlantis acquired ALLTEL principally for the purpose of a profitable resale to Verizon Wireless, not providing services to the public.¹⁷¹ Arkansas Limited Partners therefore request that the applications be denied or designated for hearing.¹⁷²

35. The Applicants, in their Joint Opposition, dismiss Arkansas Limited Partners' allegations of misrepresentation and lack of candor as frivolous and unfounded, arguing that they rely only on speculation and inference.¹⁷³ They claim that the facts stated in the Arkansas Limited Partners' petition are untrue and submit a detailed explanation of the chronology of the events leading to the beginning of the merger negotiations between Atlantis and Verizon Wireless.¹⁷⁴ Specifically, they explain that the capital markets crisis at the end of 2007 caused a credit crunch that resulted in unanticipated difficulties in raising the necessary capital for their planned future investments in ALLTEL.¹⁷⁵ The Applicants state that, while sufficient funds were raised to finance the growth and operations of ALLTEL for several years, including its participation, albeit unsuccessful, in the 700 MHz auction, TPG and Goldman Sachs were concerned about Atlantis's ability to finance costly, long-term investments in ALLTEL's growth in rural markets.¹⁷⁶ They further state that banks were unable to sell all of ALLTEL's debt despite aggressive marketing efforts, and, in early 2008, had to resort to selling the debt at discounted prices.¹⁷⁷ The Applicants assert that this attracted potential investors, including Verizon Wireless, which first approached TPG and Goldman Sachs to discuss a potential acquisition of ALLTEL in April 2008.¹⁷⁸

36. Arkansas Limited Partners respond that the Applicants failed to sufficiently refute the facts raised in Arkansas Limited Partners' petition and that the applications should therefore be designated for

¹⁶⁹ Petition to Deny of Ritter Communications, Inc. and Central Arkansas Rural Cellular Limited Partnership at 7 (filed Aug. 11, 2008) ("Arkansas Limited Partners Petition to Deny").

¹⁷⁰ *Id.* at 7. Rural Telecommunications Group, which does not raise specific allegations regarding the character qualifications of Atlantis or ALLTEL, states that ALLTEL "hoodwinked" the Commission "when it promised that the infusion of equity investors would bring new and improved services to rural America." Reply to Joint Opposition to Petitions to Deny of the Rural Telecommunications Group at 6, n.11 (filed Aug. 26, 2008) ("Rural Telecommunications Group Reply").

¹⁷¹ Arkansas Limited Partners Petition to Deny at 5. *See also* Arkansas Limited Partners' discussion of trafficking *infra* Part VIII.H.

¹⁷² Arkansas Limited Partners Petition to Deny at 7.

¹⁷³ *See* Joint Opposition at 85.

¹⁷⁴ *See id.* at 85-87.

¹⁷⁵ *See id.* at 87.

¹⁷⁶ *See id.*

¹⁷⁷ *See id.* at 87 n.280.

¹⁷⁸ *See id.*

a hearing.¹⁷⁹ Specifically, Arkansas Limited Partners claim that the facts presented in their petition (*e.g.*, Atlantis's behavior post-acquisition, Verizon Wireless's previous attempts to buy ALLTEL, Atlantis's failure to obtain spectrum in the 700 MHz auction) clearly demonstrate that Atlantis did not intend to hold and develop ALLTEL.¹⁸⁰ Arkansas Limited Partners maintain that ALLTEL's failure to win any spectrum in the 700 MHz auction and the need to invest more of the private equity investors' own capital in ALLTEL constitute further evidence that Atlantis decided to cut its losses by "flipping" ALLTEL to Verizon Wireless.¹⁸¹ Arkansas Limited Partners also question the Applicants' explanation of a credit crunch being the major contributing factor in Atlantis's decision to sell ALLTEL.¹⁸²

37. Similarly, Rural Telecommunications Group suggests that Atlantis's "true motivation to buy ALLTEL was to flip the entire company in the first place,"¹⁸³ and further questions its assertion that Verizon Wireless approached Atlantis only in April 2008.¹⁸⁴ In the alternative, Rural Telecommunications Group argues that, even if true, Atlantis's explanation that it faced unprecedented financial pressure following its acquisition of ALLTEL should not receive any weight in the Commission's analysis of the proposed transaction, because Atlantis seemed to have entered into discussions concerning the sale of ALLTEL only with Verizon Wireless, and failed to seek and consider investment or partnership alternatives with rural operators.¹⁸⁵

38. *Discussion.* Applicants' and licensees' truthfulness and candor before the Commission, as well as their compliance with its rules, are paramount concerns in determining whether they should acquire licenses or continue to hold existing authorizations.¹⁸⁶ Section 1.17 of the Commission's Rules prohibits misrepresentations and lack of candor in Commission filings.¹⁸⁷ Misrepresentations are false statements of fact made with an intent to deceive, while lack of candor involves concealment, evasion, and other failures to be fully informative, also accompanied by deceptive intent.¹⁸⁸ Such intent may be found from the false statement of fact, coupled with proof that the party making it had knowledge of its falsity.¹⁸⁹

¹⁷⁹ Reply to Joint Opposition by Ritter Communications, Inc. and Central Arkansas Rural Cellular Limited Partnership (filed Aug. 26, 2008) ("Arkansas Limited Partners Reply"). On August 27, 2008, Arkansas Limited Partners filed an *ex parte* presentation enclosing a copy of an article stating that private equity investors expect a 15 to 25% average annual return over several years and have a well-earned reputation for secrecy. *Ex Parte* Letter from Kenneth E. Hardman, Attorney for Ritter Communications Inc. and Central Arkansas Rural Cellular Limited Partnership, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 27, 2008).

¹⁸⁰ See Arkansas Limited Partners Reply at 4-9. Arkansas Limited Partners assert that because private equity investors typically do not intend to hold the acquired business for more than 5 to 7 years, the Applicants' explanation that it decided to sell ALLTEL because it failed to raise sufficient long-term capital is inadequate. *See id.* at 5-6.

¹⁸¹ *See id.* at 8.

¹⁸² *See id.* at 6-7 (stating that this information was available to the Applicants well before the consummation of the Atlantis-ALLTEL merger).

¹⁸³ Comments of Rural Telecommunications Group, Inc., WT Docket No. 08-95, at 3 (filed Oct. 22, 2008) ("Rural Telecommunications Group Comments").

¹⁸⁴ *Id.* at 3.

¹⁸⁵ *Id.* at 3-4.

¹⁸⁶ *See* *WHW Enterprises, Inc. v. FCC*, 753 F.2d 1132, 1139 (D.C. Cir. 1985).

¹⁸⁷ 47 C.F.R. § 1.17.

¹⁸⁸ *See* *Fox River Broadcasting, Inc., Order*, 93 F.C.C.2d 127, 129 ¶ 6 (1983).

¹⁸⁹ *See* *David Ortiz Radio Corp v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991).

39. The evidence before us indicates that Atlantis did not omit or misrepresent facts or lack candor when describing its future business plans in the applications seeking consent to the transfer of control of ALLTEL's licenses, leasing agreements, and authorizations to Atlantis. There is no concrete evidence in the record contradicting Atlantis's assertion that, at the time of ALLTEL's acquisition, it had every intention of developing ALLTEL's business. Instead, Atlantis's assertion is supported by a detailed explanation and chronology of the events leading towards the commencement of the negotiations between Atlantis and Verizon Wireless in April 2008. We do not attach any probative value to Verizon Wireless's two previous unsuccessful attempts to acquire ALLTEL, albeit for a similar price. To the contrary, this only provides support that the credit crunch in the capital markets in late 2007 and early 2008 forced Atlantis to sell ALLTEL at this time and at a lower price than anticipated. We note that it is not the objective of the character qualifications inquiry to evaluate applicants' business acumen, scrutinize their business plan for safety and soundness, or judge their every business decision against other alternatives. The allegations of misconduct offered by Arkansas Limited Partners and Rural Telecommunications Group are based solely on speculation and unfounded inferences and thus fall short of "a substantial and material question of fact" that would warrant a designation of the applications for a hearing and trigger an exception from our policy of not re-evaluating the qualifications of the transferor or assignor.

V. COMPETITIVE ANALYSIS

40. Consistent with our practice when reviewing proposed wireless transactions affecting the mobile communications market, our analysis of the proposed transaction considers the potential competitive effects that might result from increased concentration.¹⁹⁰ Horizontal transactions raise competitive concerns when they reduce the availability of choices to the point that the resulting firm has the incentive and the ability, either by itself or in coordination with other firms, to raise prices. A fundamental tenet of the Commission's public interest review is that, absent significant offsetting efficiencies or other public interest benefits, a transaction that creates or enhances significant market power or facilitates its use is unlikely to serve the public interest.¹⁹¹

41. As we have discussed in several recent wireless transaction orders, transactions, such as mergers, can diminish competition and allow firms to exercise market power in a number of ways.¹⁹² A

¹⁹⁰ See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12481-82 ¶ 3; *AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 15; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11539 ¶ 22; *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 30; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68; Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, at § 0.1, n.6. (Apr. 2, 1992, revised Apr. 8, 1997) ("*DOJ/FTC Merger Guidelines*").

Silver Star Communications urges that we delay the consideration of the applications until the Commission and DOJ have had an opportunity to examine the impact of the recent downturn in the nation's economy on the telecommunications industry. Comments of Silver Star Communications at 1-2 (filed Oct. 15, 2008). We find that the Commission has sufficient information to perform its competitive analysis at the present time.

¹⁹¹ See *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12481-82 ¶ 31; *AT&T-Dobson Order*, 22 FCC Rcd at 20301 ¶ 10; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11540 ¶ 22; *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 30; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68; *DOJ/FTC Merger Guidelines* § 0.1, n.6. The ability to raise prices above competitive levels is generally referred to as "market power." Market power may also enable sellers to reduce competition on dimensions other than price, including innovation and service quality.

¹⁹² See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12482 ¶ 32; *AT&T-Dobson Order*, 22 FCC Rcd at 20307 ¶ 16; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11541 ¶ 24; *Sprint-Nextel Order*, 20 FCC Rcd at 13982 ¶ 32; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 70.

horizontal transaction or merger is unlikely to create or enhance market power or facilitate its exercise, however, unless the transaction significantly increases concentration and results in a concentrated market, properly defined and measured. Transactions that do not significantly increase concentration or do not result in a concentrated market ordinarily require no further competitive analysis. Thus, when examining the effect of proposed transactions, we apply a two-part initial "screen" that identifies those local markets in which no competitive harm clearly arises from the transaction. The first part of the screen is based on the size of the post-transaction Herfindahl-Hirschman Index ("HHI") market concentration and the change in the HHI. The final part of this screen examines the input market for spectrum available on a nationwide basis for the provision of "mobile telephony/broadband services" (as defined below).¹⁹³ For those markets that are not eliminated by the initial screen, we then conduct, on a market-by-market basis, an analysis of other market factors that pertain to competitive effects, including the incentive and ability of other existing firms to react and of new firms to enter the market, in response to attempted exercises of market power by the merged entity. Ultimately, we must assess whether the combined firm could likely exercise market power in any particular market.¹⁹⁴

42. Our competitive analysis is set forth below. We begin our competitive analysis by determining the appropriate market definitions for this transaction,¹⁹⁵ including a determination of the product market, geographic markets, market participants, and the input market for spectrum available for the provision of mobile telephony/broadband services.

43. We next apply the Commission's initial screen to this transaction, through which we identify those markets that we subject to further case-by-case review. We then examine any potential competitive harms associated with horizontal concentration and both unilateral and coordinated effects resulting from the merger. We address other concerns raised by commenters in response to this transaction, including the potential adverse impact of the transaction with regard to the provision of roaming services, and examine the public interest benefits of the proposed transaction.¹⁹⁶ Finally, we adopt various conditions and remedies to prevent any harms.

A. Market Definitions

44. We establish at the outset the appropriate market definitions for our evaluation of the proposed transaction. This includes establishing the product and geographic market definitions that we will apply. We also discuss the input market for spectrum and identify market participants that would compete with the proposed merged entity in the provision of mobile telephony/broadband services.

¹⁹³ We examine the product market for mobile telephony/broadband services in this proposed transaction. This definition updates the mobile telephony services product market definition used in the Commission's prior wireless transaction orders. See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12482 ¶ 32; *AT&T-Dobson Order*, 22 FCC Rcd at 20307 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

¹⁹⁴ See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12482 ¶ 32; *AT&T-Dobson Order*, 22 FCC Rcd at 20307 ¶ 16; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11540 ¶ 23; *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 31; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 69; *DOJ/FTC Merger Guidelines* § 1.0.

¹⁹⁵ See *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12482-83 ¶ 33; *AT&T-Dobson Order*, 22 FCC Rcd at 20307 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 28; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558 ¶ 74.

¹⁹⁶ *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12483 ¶ 34; *AT&T-Dobson Order*, 22 FCC Rcd at 20308 ¶ 18.