

## 1. Product Market

45. Because of the substantial ongoing developments in the evolution of the provision of wireless services, especially the increasing prominence of mobile broadband services being offered consumers, we revisit the product market definition that the Commission has employed in previous transactions. In particular, we evaluate this proposed transaction using a combined “mobile telephony/broadband services” product market (as defined herein),<sup>197</sup> which is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services). This combined product market for “mobile telephony/broadband services” encompasses the combined product market for “mobile telephony services” that we used in previous wireless transactions, while emphasizing the recent significant mobile broadband advances to better reflect this component of emerging, next-generation wireless services. Recognizing that mobile broadband data services is a rapidly evolving market, out of an abundance of caution we will analyze the markets for mobile telephony services and mobile broadband services as a combined market, similar to what we have done when evaluating other proposed wireless mergers.<sup>198</sup> In transactions such as this one, we conclude that there are risks associated with defining product markets too narrowly, since doing so may thwart this and future pro-competitive deals that take place in the context of rapidly evolving markets and services.

46. We delineate the scope of a combined market for mobile telephony/broadband services broadly to include mobile voice and data services provided over wireless broadband networks (mobile broadband services), as well as mobile voice and data services provided over less advanced, earlier generation (*e.g.*, 2G, 2.5G) legacy wireless networks. In addition, the market includes a wide array of mobile data services, ranging from handset-based mobile data services marketed primarily as an add-on to mobile voice services to standalone mobile Internet access services for laptop users. We find that analyzing the various older voice and data services as well as the emerging mobile broadband product markets under the combined market for mobile telephony/broadband services is appropriate in order to ensure a reasonable assessment of any potential competitive harm resulting from the proposed transaction under review. As we noted above, we conclude that there are risks associated with defining product markets too narrowly in the context of rapidly evolving markets and services such as those for mobile broadband services.

47. We treat the provision of mobile broadband services using more recent and advanced networks (*e.g.*, 3G, 4G) and the provision of mobile voice and data services over earlier generations of wireless networks as part of a combined mobile telephony/broadband services market, rather than separate markets, based on consideration of various factors, including the nature of these services and their relationship with each other, and our finding that this approach provides a reasonable assessment of any potential competitive harm resulting from the mobile wireless transactions under review. This approach also recognizes that the mobile telecommunications industry is in the process of transitioning from the provision of interconnected mobile voice and add-on mobile data services over legacy wireless networks to the provision of mobile voice and data services over wireless broadband networks (*e.g.*,

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<sup>197</sup> See Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, WT Docket No. 08-94, *Memorandum Opinion and Order*, FCC 08-259, at ¶¶ 38-45 (rel. Nov. 7, 2008) (“*Sprint Nextel-Clearwire Order*”).

<sup>198</sup> Previously, the Commission found that there are separate relevant product markets for interconnected mobile voice services and mobile data services, and also for residential services and enterprise services. It nevertheless analyzed all of these product markets under the combined market for “mobile telephony service.” See *Verizon-RCC Order*, 23 FCC Rcd at 12483-84 ¶ 37; *AT&T-Dobson Order*, 22 FCC Rcd at 20308 ¶ 21; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 29; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558 ¶ 74.

EvDO, Wideband CDMA/High Speed Downlink Packet Access (WCDMA/HSDPA), mobile Worldwide Interoperability for Microwave Access (“WiMAX”), and LTE networks).

48. We find that both Verizon Wireless and ALLTEL provide services in the product market for mobile telephony/broadband services, and we will apply this definition in our analysis of this transaction. Accordingly our analysis herein focuses only on the potential competitive effects that relate to the mobile telephony/broadband services market.

## 2. Geographic Market

49. In its recent wireless transaction orders, the Commission applied the “hypothetical monopolist test” and found that the relevant geographic markets are local, larger than counties, may encompass multiple counties, and, depending on the consumer’s location, may even include parts of more than one state.<sup>199</sup> The Commission in these orders identified two sets of geographic areas that effectively may be used to define local markets – CEAs and CMAs.<sup>200</sup> Because these two sets of geographic areas come from different sides of the equation – demand in one case, supply in the other – the Commission found them to be useful cross-checks on each other and, together, they help ensure that the Commission’s analysis does not overlook local areas that require more detailed analysis.<sup>201</sup> Consistent with other transactions, we conclude that the most appropriate geographic level for market analysis is comprised of CMAs and CEAs.

50. The Applicants undertake their competitive analysis at the CMA level “in the interest of expedited processing.”<sup>202</sup> Nonetheless the Applicants argue that the market for mobile telephony/broadband services is increasingly national in scope.<sup>203</sup> Although the Applicants acknowledge that the Commission has rejected a national geographic scope in prior proceedings,<sup>204</sup> they argue that

<sup>199</sup> See *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12484-85 ¶ 39; *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542-43 ¶¶ 29-30; *Sprint-Nextel Order*, 20 FCC Rcd at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562-63 ¶¶ 89-90.

<sup>200</sup> We have chosen CEAs and CMAs for our data analysis because both are consistent in order of magnitude with the local market definition we have adopted and because each brings a different consideration to the analysis. CEAs are designed to represent consumers’ patterns of normal travel for personal and employment reasons and may therefore capture areas within which groups of consumers would be expected to shop for wireless service. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURVEY OF CURRENT BUSINESS, February, 1995, at 75. In addition, CEAs should be areas within which any service providers present would have an incentive to market—and actually provide—service relatively ubiquitously. Conversely, CMAs are the areas in which the Commission initially granted licenses for the cellular service. Although partitioning has altered this structure in many license areas, CMAs represent the fact that the Commission’s licensing programs have to a certain degree shaped this market by defining the initial areas in which wireless providers had spectrum on which to base service offerings, and they may therefore serve as a reasonable proxy for where consumers face the same competitors. See *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12484 n.151; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105; see also *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542 ¶ 29; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 57; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072-73 ¶¶ 44-45.

<sup>201</sup> See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12484-85 ¶ 39; *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11546 ¶ 35; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105.

<sup>202</sup> Application, Public Interest Statement at 31.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

Verizon Wireless and other national wireless providers increasingly advertise and set prices on a national basis, with very little local or regional variation in pricing.<sup>205</sup> Thus, they contend local market conditions are less relevant to Verizon Wireless's competitive strategy than actions taken by other national wireless providers.<sup>206</sup> The Applicants also emphasize the industry's increasing reliance on national rate plans and argue that consumers shop for national plans and national rates, as evidenced by the large (87 percent) share of mobile communications customers who subscribe to a national wireless provider or an affiliate of a national wireless provider.<sup>207</sup>

51. Several commenters disagree with the Applicants and respond that the Commission should continue to conduct its competitive analysis on a local level.<sup>208</sup> Commenters assert that analyzing this transaction using a national market is inappropriate because many affected wireless providers – including ALLTEL – are not national and do not engage in national pricing.<sup>209</sup> Commenters also argue against considering this transaction in the context of a national market because (1) Verizon Wireless can offer different promotions and discounts in different markets, (2) the Commission has already rejected the notion of a national market,<sup>210</sup> and (3) an analysis on a national basis could harm consumers in local, and particularly rural, markets by the decrease in competition.<sup>211</sup> Other commenters add (as detailed below) that that the competitive analysis provided by the Applicants in the Public Interest Statement is inadequate.<sup>212</sup>

52. *Discussion.* We conclude that the most appropriate geographic level for market analysis is comprised of CMAs and CEAs. We determine that the geographic market is the area within which a consumer is most likely to shop for mobile telephony/broadband services.<sup>213</sup> For most individuals, this market will be a local area, as opposed to a larger regional or nationwide area.<sup>214</sup> This is because “in

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<sup>205</sup> *Id.* at 31-32; *see also* Joint Opposition at 18.

<sup>206</sup> Application, Public Interest Statement at 31-32.

<sup>207</sup> *Id.*

<sup>208</sup> *See, e.g.,* South Dakota Telecommunications Association, Reply to Joint Opposition at 3-4 (filed Aug. 26, 2008) (“South Dakota Telecommunications Association Reply”).

<sup>209</sup> Petition to Deny of Leap Wireless International, Inc. at 16-17 (filed Aug. 11, 2008) (“Leap Wireless Petition to Deny”); South Dakota Telecommunications Association Reply at 3-5.

<sup>210</sup> Reply Comments of Leap Wireless International, Inc. at 9-11 (filed Aug. 26, 2008) (“Leap Wireless Reply”).

<sup>211</sup> Reply to Joint Opposition of Rural Carriers at 3-7, 10, 13 (filed Aug. 26, 2008) (“Rural Carriers Reply”); South Dakota Telecommunications Association Reply at 3-6.

<sup>212</sup> Reply of North Dakota Network Co. at 4-6 (filed Aug. 26, 2008) (“North Dakota Network Co. Reply”); Petition to Dismiss or Deny of the Ad Hoc Public Interest Spectrum Coalition at 3-4 (filed Aug. 11, 2008) (“PISC Petition to Deny”); Petition to Condition Transaction Approval of the Rural Carriers at 4-7 (filed Aug. 11, 2008) (“Rural Carriers Petition”); South Dakota Telecommunications Association Petition to Condition Transactional Approval at 4-6 (filed Aug. 11, 2008) (“South Dakota Telecommunications Association Petition”); Reply to Joint Opposition to Petition to Deny of Chatham Avalon Park Community Council Reply at 5 (filed Aug. 26, 2008) (“Chatham Reply”).

<sup>213</sup> *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12485 ¶ 41; *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23. *See also ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542 ¶ 30; *Sprint-Nextel Order*, 20 FCC Rcd at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 89.

<sup>214</sup> *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12485 ¶ 41; *AT&T-Dobson Order*, 22 FCC Rcd at 20310-11 ¶ 25; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542 ¶ 30; *Sprint-Nextel Order*, 20 FCC Rcd at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 89. *See also Twelfth Competition Report*, 23 FCC Rcd at 2331-32 ¶ 174 (indicating that the average person (continued....))

response to a small but not insignificant price increase by providers” that offer service where consumers live, work or travel, most consumers are unlikely to switch to alternative wireless providers that operate only outside of such a locality.<sup>215</sup> Further, the Applicants’ argument that prices are set on a national level, and that consumers shop for national plans and national rates, does not undercut the finding of a local geographic market. We conclude that their assertions regarding the behavior of nationwide service providers and consumers do not establish the existence of a national market.<sup>216</sup> Accordingly, we will use the same geographic market definition in our analysis for this transaction as the Commission has used in its recent wireless transaction orders discussed above.

### 3. Input Market for Spectrum

53. In evaluating these transactions, we consider the aggregation of spectrum by Verizon Wireless. In previous Commission orders, the Commission made a determination to include, in its evaluation of potential competitive harm, spectrum in particular bands that is “suitable” for the provision of mobile telephony services.<sup>217</sup> In connection with these transactions and consistent with our determination to evaluate the broader product market for mobile telephony/broadband services, we will include all spectrum suitable for the provision of wireless broadband over broadband networks, in addition to spectrum suitable for mobile voice and data services. As previously explained by the Commission, suitability is determined by whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its uses for mobile telephony/broadband service.<sup>218</sup> For the purposes of evaluating spectrum aggregation issues associated with this transaction we include in both our updated market-specific spectrum screen as well as our market-by-market analysis those spectrum bands designated for cellular, PCS, SMR, and 700 MHz services, as well as AWS-1 and Broadband Radio Service (“BRS”) spectrum where available.

54. *Background.* In the *AT&T-Dobson Order*, we applied a 95 megahertz initial nationwide spectrum aggregation screen prior to our market-by-market review of the proposed transaction.<sup>219</sup> In the *AT&T-Dobson Order*, adopted in November of 2007, the Commission found that, in light of recent developments, spectrum “suitable” for the provision of mobile telephony services includes not only approximately 200 megahertz of cellular, broadband PCS, and SMR spectrum, but also an additional 80 megahertz of 700 MHz band spectrum (in the 698-806 MHz band) throughout the nation, bringing the total amount of spectrum suitable for mobile telephony/broadband services on a nationwide basis to

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shops for mobile communications services in markets that include place of work, place of residence, and surrounding areas that are economically related; such areas generally are larger than counties).

<sup>215</sup> *DOJ/FTC Merger Guidelines* §§ 1.11, 1.12.

<sup>216</sup> *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12485 ¶ 41; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562 ¶ 88.

<sup>217</sup> See *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12489 ¶ 51; *AT&T-Dobson Order*, 22 FCC Rcd at 20311 ¶ 26; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21560-61 ¶ 81; see also *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11543 ¶ 31; *Sprint-Nextel Order*, 20 FCC Rcd at 13992 ¶ 61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 41.

<sup>218</sup> *AT&T-Dobson Order*, 22 FCC Rcd at 20311 ¶ 26; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21560-61 ¶ 81; see also *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11543 ¶ 31; *Sprint-Nextel Order*, 20 FCC Rcd at 13992 ¶ 61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 41.

<sup>219</sup> See *AT&T-Dobson Order*, 22 FCC Rcd at 20312-13 ¶ 30.

approximately 280 megahertz.<sup>220</sup> Applying the Commission's previous determination that a spectrum aggregation screen should be based approximately on one-third of the total bandwidth available for mobile telephony services, we revised the spectrum aggregation screen from 70 megahertz to 95 megahertz, approximately one-third of the 280 megahertz of the spectrum designated as being available for mobile telephony/broadband services. We explained that setting this screen at approximately one-third of the total suitable spectrum is designed to be conservative and ensure that any markets in which there is potential competitive harm based on spectrum aggregation are identified and subjected to more in-depth analysis.<sup>221</sup> Under the revised screen, the Commission found that there was no need for additional analysis where there was at least 185 megahertz of spectrum (of the 280 megahertz of mobile communications spectrum) available to other firms to compete in the provision of mobile telephony/broadband services.<sup>222</sup>

55. At the time of the *AT&T-Dobson Order*, we did not find it appropriate to include certain other spectrum bands – particularly AWS-1 and BRS spectrum – in the initial spectrum screen because this spectrum was committed to another use which precluded its use for mobile telephony and was not available nationwide.<sup>223</sup> We determined in the *AT&T-Dobson Order* that excluding this spectrum on this basis was appropriate since the initial screen was intended to be conservative, that is, erring in the direction of identifying more rather than fewer markets for in-depth review.<sup>224</sup> However, the Commission did consider the extent to which AWS-1 or BRS licenses were in fact available in specific markets, and included them in the local spectrum input market, in our detailed, case-by-case analysis of markets caught by the initial screen.<sup>225</sup> In the *Verizon Wireless-RCC Order*, released on August 1, 2008, we determined that the spectrum screen established in the *AT&T-Dobson Order* was still appropriate.<sup>226</sup>

56. The Applicants raise similar proposals as the applicants in the Verizon Wireless-RCC transaction, arguing that additional spectrum bands should be included in the spectrum input market.<sup>227</sup> The Applicants agree that the Commission should include in the spectrum screen the approximately 200 megahertz of spectrum in the cellular, PCS, and SMR bands that the Commission had determined to be suitable for the provision of mobile telephony/broadband services prior to adoption of the *AT&T-Dobson Order*.<sup>228</sup> The Applicants contend, however, that the Commission should adjust the spectrum screen to reflect developments in the provision of mobile telephony services of AWS-1, BRS, and Educational Broadband Service (“EBS”) spectrum.<sup>229</sup> While acknowledging that the Commission declined to include BRS, EBS and AWS-1 spectrum in both the *AT&T-Dobson Order* and the *Verizon Wireless-RCC Order*, the Applicants contend that this spectrum should now be considered because it either is already available for commercial use or soon will be.<sup>230</sup> The Applicants add that the suitability of Mobile Satellite Service

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<sup>220</sup> See *id.*

<sup>221</sup> See *id.*

<sup>222</sup> See *id.* at 20313 ¶ 30.

<sup>223</sup> See *id.* at 20314-20315 ¶¶ 32-34.

<sup>224</sup> *Id.* at 20314 ¶ 32.

<sup>225</sup> *Id.* at 20315 ¶ 35.

<sup>226</sup> *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12486-87 ¶ 44.

<sup>227</sup> See *id.* at 12487 ¶ 45.

<sup>228</sup> See *id.*

<sup>229</sup> Application, Public Interest Statement at 33-40.

<sup>230</sup> *Id.*

("MSS")/Ancillary Terrestrial Components ("ATC") spectrum has also developed recently,<sup>231</sup> and that spectrum in the 2155-2175 MHz band should be included because press reports indicate that the Commission intends to license this spectrum for wireless broadband services.<sup>232</sup>

57. Specifically with regard to AWS-1 spectrum, the Applicants contend that the band could be deployed nationwide because government incumbents no longer encumber the spectrum in over 76 percent – 1369 of 1788 counties – of the ALLTEL footprint.<sup>233</sup> Moreover, the Applicants argue, wireless providers have announced services in many markets, including New York, Philadelphia, Boston, and Las Vegas, that will use the AWS-1 spectrum.<sup>234</sup> The Applicants also contend that a number of AWS-1 licensees have initiated services since the Commission declined in the *AT&T-Dobson Order* to include AWS-1 spectrum.<sup>235</sup> For instance, the Applicants point out that T-Mobile USA, Inc. ("T-Mobile") plans to commence broadband AWS-1 services in 25 markets by the end of 2008, that almost half of MetroPCS Communications, Inc.'s ("MetroPCS") covered POPs will be able to access AWS-1 networks, and that other providers, such as Leap Wireless International, Inc. ("Leap Wireless") and Stelera Wireless, LLC, have also been reported to offer commercial services using AWS-1 spectrum.<sup>236</sup>

58. With regard to BRS/EBS spectrum, the Applicants contend that services using those bands have matured substantially since the *AT&T-Dobson Order* and add that wireless providers will complete their transition by February 2009 in Basic Trading Areas ("BTAs") representing 83 percent of the country's population.<sup>237</sup> The Applicants note that Sprint Nextel Corporation ("Spring Nextel") and Clearwire Corporation ("Clearwire") hope to offer soon a WiMAX network using those bands to compete with Verizon Wireless's mobile broadband services.<sup>238</sup> According to the Applicants, Sprint Nextel and Clearwire plan to offer mobile broadband services to up to 140 million people by the end of 2010.<sup>239</sup>

59. Several commenters oppose the Applicants' proposal to add more spectrum to the 95 megahertz screen. These commenters suggest spectrum should be included in the screen only after wireless providers deploy services using those frequencies and that AWS-1 and BRS/EBS should not be included because the status of those bands has not significantly changed since the Commission rejected their inclusion in the screen in the *AT&T-Dobson Order*.<sup>240</sup> Chatham Avalon Park Community Counsel

<sup>231</sup> *Id.* at 38-39; Joint Opposition at 18-22, 28-29. The Applicants contend that the suitability of MSS/ATC spectrum has recently developed by citing developments such as: Mobile Satellite Ventures ("MSV") received ATC authority; Globalstar, Inc. announced that the Commission had expanded its ATC authority to include almost 20 megahertz of spectrum; the Commission has assigned 20 megahertz of 2 GHz MSS spectrum to ICO Global Communications (Holdings) Limited; and TerreStar Networks, Inc. has pending a request for ATC authority. Joint Opposition at 28-29.

<sup>232</sup> Application, Public Interest Statement at 39.

<sup>233</sup> Joint Opposition at 22-23 n.67.

<sup>234</sup> *See id.* at 23-24.

<sup>235</sup> Application, Public Interest Statement at 36-37.

<sup>236</sup> *See id.*

<sup>237</sup> Joint Opposition at 24-27.

<sup>238</sup> Application, Public Interest Statement at 34-36.

<sup>239</sup> *See id.* at 35-36.

<sup>240</sup> Chatham Reply at 3-4; Petition to Deny of the Rural Telecommunications Group, Inc. at 5 n.12 (filed Aug. 11, 2008) ("Rural Telecommunications Group Petition to Deny"); Rural Telecommunications Group Reply at 8-9; Reply to Opposition to Petition to Deny of the *Ad Hoc* Public Interest Spectrum Coalition at 2-3 (filed Aug. 26, 2008) ("PISC Reply").

("Chatham") contends, specifically, that the Commission should not use the BRS/EBS spectrum because WiMAX will be difficult to deploy nationally in those bands.<sup>241</sup> Commenters also assert that the Commission should not include AWS-1 in the spectrum screen because services using AWS-1 spectrum are still not available on a nationwide basis, wireless providers will not actually use much of the AWS-1 spectrum for mobile telephony,<sup>242</sup> and the government classified the locations of systems using AWS-1 thereby preventing the public from determining its availability in any particular market.<sup>243</sup> Chatham adds that existing market participants will control most AWS-1 and BRS spectrum, so its use will not increase competition in the market.<sup>244</sup> Commenters also contest that satellite services be included in the spectrum screen because the services rely on bulky, expensive handsets and, thus, are not a comparable to other mobile services,<sup>245</sup> and because ATC services are not available outside of sparsely populated rural areas and, even there, the Department of Agriculture subsidized the services.<sup>246</sup>

60. Some commenters argue that, while spectrum, including the spectrum the Applicants assert should be added to the screen, may be suitable for mobile telephony, all wireless spectrum is not equal and should not be treated as fungible by the Commission.<sup>247</sup> With regard to the other spectrum bands that the Applicants assert should be included in the spectrum screen, Leap Wireless and other commenters argue that the Commission added spectrum from the 700 MHz band to the screen because it has similar characteristics to the 800 MHz band (which is already included in the screen), but the bands that the Applicants ask to include do not.<sup>248</sup> Leap Wireless suggests that "if 2 GHz spectrum is to be pooled together with 800 MHz spectrum for purposes of calculating a screen, spectrum with different properties should be given different weights."<sup>249</sup> Further, it argues that the Commission, in evaluating how much spectrum any one entity can hold in a market, should consider how much spectrum will remain and whether that amount is enough to enable competition, because newer services require more bandwidth, thus increasing the amount of spectrum required for new entrants to compete in a market.<sup>250</sup>

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<sup>241</sup> Petition to Deny of Chatham Avalon Park Community Council Reply at 6-8 (filed Aug. 11, 2008) ("Chatham Petition to Deny"); Chatham Reply at 4.

<sup>242</sup> Chatham Petition to Deny at 6-8; Chatham Reply at 4.

<sup>243</sup> PISC Reply at 2-3

<sup>244</sup> Chatham Petition to Deny at 9.

<sup>245</sup> Rural Telecommunications Group Petition to Deny at 5 n.12; Rural Telecommunications Group Reply at 8-9.

<sup>246</sup> Chatham Reply at 5.

<sup>247</sup> See, e.g., Leap Wireless Petition to Deny at 2, 12; Leap Wireless Reply at 12-13; Comments of the Rural Cellular Association at i, 4-5 (filed Aug. 11, 2008) ("Rural Cellular Association Comments"); Cellular South Petition to Deny at i-ii, 9-11; Rural Telecommunications Group Petition to Deny at 5 n.12, 19-21; Petition to Deny of Palmetto Mobilenet, L.P. at 5 n.6, 22-23 (filed Aug. 11, 2008) ("Palmetto Petition to Deny").

<sup>248</sup> See Leap Wireless Reply at 12; see also Cellular South Petition to Deny at 9-10; Reply of Cellular South, Inc. to Joint Opposition to Petitions to Deny and Comments at 15-16 (filed Aug. 26, 2008) ("Cellular South Reply"); Rural Cellular Association Comments at 4; Rural Telecommunications Group Petition to Deny at 5 n.12, 19-21; Rural Telecommunications Group Reply at 8-9; Palmetto Petition to Deny at 22-23. Leap Wireless also argues that the Commission should include 700 MHz spectrum in the denominator of the screen only if it is also included in the numerator. Leap Wireless Petition to Deny at 8.

<sup>249</sup> Leap Wireless Reply at 12. See also Leap Wireless Petition to Deny at 2, 12; Rural Telecommunications Group Petition to Deny at 19-21; Reply to Joint Opposition to Petitions to Deny of Palmetto Mobilenet, L.P. at 16-18 (filed Aug. 26, 2008) ("Palmetto Reply").

<sup>250</sup> Leap Wireless Reply at 12-13. See also Palmetto Petition to Deny at 6-7.

61. Similarly, several commenters contend that the Commission should apply heightened scrutiny to any markets in which the merged entity will monopolize the cellular spectrum in a market.<sup>251</sup> These commenters maintain that cellular spectrum is superior for mobile communications, because it provides wider coverage and better signal penetration with less attenuation than other bands, and that cellular systems are more fully developed with a greater customer base.<sup>252</sup> The Rural Cellular Association states that the Commission should find that the anticompetitive effect of Verizon Wireless holding all 50 megahertz of cellular spectrum will be exacerbated by its access to between 55 to 65 percent of the 700 MHz spectrum in those CMAs.<sup>253</sup> The Applicants respond that the HHI screen should identify any markets in which a competitive issue arises.<sup>254</sup>

62. *Discussion.* As noted above, in light of recent developments and our determination to evaluate the broader mobile telephony/broadband services market in our competitive analysis, we decide to include AWS-1 and certain BRS spectrum in an updated, market-specific initial spectrum screen where that spectrum is available. The Commission has previously said with respect to mobile communications that suitability for provision of these services “is determined by the physical properties of the spectrum, the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its uses for mobile telephony.”<sup>255</sup> We find that the same factors apply to mobile telephony/broadband services. With respect to spectrum that may become suitable for mobile telephony/broadband services in the near future, we consider that spectrum to be a relevant input if it will meet the criteria for suitable spectrum within two years.<sup>256</sup> We also revise our initial spectrum screen so that it applies on a market-by-market basis, rather than on a nationwide basis. This revised, market-specific screen allows us to apply the screen so as to reflect more accurately the availability of spectrum

<sup>251</sup> See, e.g., Rural Cellular Association Comments at ii, 5-9 (stating that divestitures should be ordered in any market where Verizon Wireless would control all cellular spectrum or, alternatively, presume that cellular monopolies are presumptively anticompetitive and place a heavy burden to overcome the presumption); Cellular South Petition to Deny at ii, 11-15 (stating that transactions resulting in an entity holding both cellular licenses should receive a higher degree of scrutiny and should be considered to be presumptively anticompetitive); see also Rural Carriers Reply at i, 5. The Rural Cellular Association also expresses concern that the Applicants may not have made DOJ aware of its ownership of 50 megahertz of cellular spectrum. Reply of Rural Cellular Association to Joint Opposition to Petitions to Deny and Comments at 5 (filed Aug. 26, 2008) (“Rural Cellular Association Reply”). See also Supplement to Petition to Deny of Cellular South, Inc. at 12-13 (filed Oct. 24, 2008) (“Cellular South Supplement”).

<sup>252</sup> See, e.g., Cellular South Petition to Deny at ii, 9-10; Cellular South Reply at 15-17; Rural Cellular Association Comments at i-ii, 4-5; South Dakota Telecommunications Association Reply at ii, 2; Petition of MetroPCS Communications, Inc. and NTELOS Inc. to Condition Consent or Deny Application at 2 n.2, 38-39 (filed Aug. 11, 2008) (“MetroPCS and NTELOS Petition to Deny”); Rural Carriers Petition at 7, 9, Attachment B; PISC Reply at 3; see also *Ex Parte* Letter from John A. Prendergast, Counsel for the Rural Carriers to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1-2 (Oct. 28, 2008) (“Rural Carriers October 28, 2008 *Ex Parte* Filing”). The Rural Telecommunications Group contends that a material issue of fact exists about whether spectrum below 1 GHz is superior to higher frequency bands. Rural Telecommunications Group Reply at 9.

<sup>253</sup> Rural Cellular Association Reply at i, 2. See also Cellular South Reply at iv; Cellular South Supplement at 15.

<sup>254</sup> Joint Opposition at 19 n.52.

<sup>255</sup> See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21560-21561 ¶ 81; see also *Verizon-RCC Order*, 23 FCC Rcd at 12486 ¶ 43; *AT&T-Dobson Order*, 22 FCC Rcd at 20311 ¶ 26; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11543 ¶ 31; *Sprint-Nextel Order*, 20 FCC Rcd at 13992 ¶ 61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 41.

<sup>256</sup> See *AT&T-Dobson Order*, 22 FCC Rcd at 20313 ¶ 30. That time frame is consistent with the DOJ/FTC Merger Guidelines, which “state that a significant market impact from entry must result within two years for the entry to be considered ‘timely.’” *Id.* at 20313 n.117 (citing *DOJ/FTC Merger Guidelines* § 3.2).

in particular markets when considering possible spectrum aggregation issues, and results in our considering the same spectrum bands when applying our initial screen and conducting any subsequent, more detailed market-by-market analysis.<sup>257</sup>

63. As discussed below, based on the current state of the market for mobile telephony/broadband services, we find it appropriate to include 55.5 megahertz of contiguous BRS spectrum (excluding BRS spectrum associated with the Middle Band Segment (MBS) channels, BRS Channel 1, and the J and K guard bands) in a market-specific initial spectrum screen. Particularly, we treat this BRS spectrum as available in markets in which the transition has been completed. We further conclude that sufficient progress has been made in clearing AWS-1 spectrum to include such spectrum in a market-specific spectrum screen in those markets where the spectrum has been cleared and is available for use by the AWS-1 licensees.

64. Accordingly, the spectrum screen will vary in a particular market depending on the availability of AWS-1 and BRS spectrum in that market. For markets in which AWS-1 and BRS spectrum is available, we revise the screen to 145 megahertz. For markets in which AWS-1 is available but BRS is not available, we use a spectrum screen of 125 megahertz. For markets in which BRS is available but AWS-1 is not available, we use a spectrum screen of 115 megahertz. Finally, for markets in which neither BRS nor AWS-1 is available, we use a 95 megahertz spectrum screen.

65. *Inclusion of BRS spectrum.* We are including the 55.5 megahertz of contiguous BRS spectrum (excluding BRS spectrum associated with the MBS channels, BRS Channel 1, and the J and K guard bands), where available, in the initial spectrum screen, consistent with our approach in the Sprint Nextel-Clearwire order.<sup>258</sup> As mentioned above, we are revising the initial spectrum screen to apply on a market-specific, rather than a nationwide, basis. This revised, market-specific screen will reflect more accurately the availability of spectrum in particular markets when considering possible spectrum aggregation issues, and will result in the Commission's consideration of the same spectrum bands when applying the initial screen and conducting any subsequent, more detailed market-by-market analyses. In the *AT&T-Dobson Order* adopted last year, we examined the availability of BRS spectrum in particular. We noted that the availability of BRS spectrum for mobile uses was dependent on the process of transitioning to the new band plan. We determined, in the context of a uniform nationwide initial spectrum screen, that we could not yet conclude that sufficient BRS spectrum would be available nationwide soon enough to affect current behavior,<sup>259</sup> and therefore decided not to include BRS spectrum as part of the initial spectrum screen. We did, however, include BRS spectrum as part of our market-specific analysis of competitive harm that might result through spectrum aggregation when BRS spectrum was in fact available in a particular market.<sup>260</sup> Furthermore, in the time since release of the *AT&T-Dobson Order*, significant additional progress has been made in completing the transition of BRS

<sup>257</sup> Compare *AT&T-Dobson Order*, 22 FCC Rcd at 20315 ¶ 35 (stating that, although AWS-1 and BRS was not included in the initial spectrum screen, we considered this spectrum, to the extent that this spectrum was locally available, in our case-by-case analysis of those markets identified by the initial screen).

<sup>258</sup> See *Sprint Nextel-Clearwire Order*, FCC 08-259, at ¶¶ 62-70.

<sup>259</sup> See *AT&T-Dobson Order*, 22 FCC Rcd at 20315 ¶ 34.

<sup>260</sup> See *id.* at 20347 Appendix A (Market-Specific Analysis of Markets Involving Divestiture), Texas 10-Navarro. Although we also did not include AWS-1 spectrum as part of the initial spectrum screen in these orders, when AWS-1 spectrum was in fact available in a particular market, we similarly found it appropriate to include AWS-1 spectrum as part of our analysis of potential competitive harm that might result through spectrum aggregation. See *id.* at 20347 Appendix A (Market-Specific Analysis of Markets Involving Divestiture), Texas 10-Navarro; see also *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12541 (Appendix B Market-Specific Analysis of Markets Involving Divestiture), Vermont 1-Franklin.

spectrum to the new band plan. Currently, the transition has been completed in 337 out of 493 BTAs.<sup>261</sup> Indeed, all BRS licensees must be operating and be able to demonstrate substantial service by May 1, 2011 or lose their licenses,<sup>262</sup> a requirement that should further accelerate completion of the transition. Under these circumstances, we are including BRS spectrum in a market-specific spectrum screen in those markets where the transition has been completed.

66. *Inclusion of AWS-1.* With respect to AWS-1 spectrum in the 1.7/2.1 GHz band, we conclude that sufficient progress has been made in clearing AWS-1 spectrum to consider that spectrum suitable for mobile telephony/broadband services in those markets where the spectrum has been cleared and is available for use. In the *AT&T-Dobson Order*, we concluded, in the context of potentially adopting a nationwide spectrum screen, that AWS-1 spectrum – while meeting the other requirements for suitability – was not generally available for mobile use throughout the country because of the need to clear governmental and non-governmental incumbent users.<sup>263</sup> As with BRS spectrum, in the *AT&T-Dobson Order* we also included AWS-1 spectrum as part of our market-specific analysis of competitive harm that might result through spectrum aggregation when BRS spectrum was in fact available in a particular market.<sup>264</sup> Furthermore, recent information available to us now indicates that substantial progress continues to be made in clearing AWS-1 spectrum and that widespread deployment of mobile services using AWS-1 spectrum will be occurring in the near term. Our records show that AWS-1 spectrum has been cleared in approximately two-thirds of all counties. Furthermore, T-Mobile USA, an AWS-1 licensee, recently reported that it intends to offer wireless broadband service using AWS-1 spectrum in 25 markets by the end of 2008 and that it has “placed about one million AWS-ready handsets either into customer hands or the supply chain.”<sup>265</sup> Under these circumstances, we find it appropriate also to consider AWS-1 spectrum in our initial market-specific screen in those markets that have already been cleared.

67. *Inclusion of other spectrum.* We decline to make any additional changes to the spectrum screen at this time. Specifically, we decline to include EBS in the spectrum screen.<sup>266</sup> The primary purpose of EBS is to further the educational mission of accredited public and private schools, colleges and universities providing a formal educational and cultural development to enrolled students through video, data, or voice transmissions.<sup>267</sup> While licensees are allowed to lease their excess capacity to commercial operators, leasing is subject to various special requirements designed to maintain the primary educational character of services provided using EBS.<sup>268</sup> In addition, other elements of the EBS licensing regime, such as its solely site-specific character, with the absence of any licensee in various unassigned EBS “white spaces,” complicate use of this spectrum for commercial purposes. Accordingly, we will not consider spectrum associated with EBS spectrum leases as part of the spectrum screen.

68. In addition, with regard to satellite services, in previous Commission orders we stated that although satellite providers offer facilities-based mobile voice and data services, the price of these

<sup>261</sup> At the time of the *AT&T-Dobson Order*, the transition had been completed in only 113 BTAs. See *AT&T-Dobson Order*, 22 FCC Rcd at 20315 n.128.

<sup>262</sup> See 47 C.F.R. § 27.14(o).

<sup>263</sup> See *AT&T-Dobson Order*, 22 FCC Rcd at 20314 ¶¶ 32-33.

<sup>264</sup> See *id.* at 20342 Appendix A (Market-Specific Analysis of Markets Involving Divestiture); see also *Verizon-RCC Order*, 23 FCC Rcd at 12532 Appendix B (Market-Specific Analysis of Markets Involving Divestiture).

<sup>265</sup> See *Ex Parte* Presentation, T-Mobile USA, WT Docket No. 07-195 at 3 (Jul. 18, 2008).

<sup>266</sup> See *Sprint Nextel-Clearwire Order*, FCC 08-259, at ¶ 71.

<sup>267</sup> See 47 C.F.R. § 27.1203(b).

<sup>268</sup> See generally *id.* § 27.1214.

services is, at present, significantly higher than for services offered by cellular, PCS, or SMR providers. Therefore, most consumers would not view satellite phones as substitutes for mobile telephony/broadband services.<sup>269</sup> The record in this proceeding does not provide any basis for revisiting that conclusion. With regard to ATC, we have insufficient evidence of the availability and nature of ATC service to justify placing it in the screen at this time. As for spectrum in the 2155-2175 MHz band,<sup>270</sup> the Commission has not yet finalized either the applicable rules or the date for assignments of licenses in the spectrum. Therefore, we find that inclusion of this band in the spectrum screen is premature.

69. *Other issues.* We decline to implement Leap Wireless's suggestion to differentiate between the types of spectrum suitable for the provision of mobile telephony/broadband services.<sup>271</sup> Since the Commission first determined to evaluate potential spectrum aggregation of 800 MHz cellular spectrum, 800/900 MHz SMR, and 1.9 GHz broadband PCS spectrum for purposes of competitive review, it has not differentiated among these bands. Nor did we do so last year when we expanded the initial spectrum aggregation screen to include 700 MHz band spectrum. We decline to do so here with respect to the particular 2.5 GHz BRS spectrum or the 1.7/2.1 GHz AWS-1 spectrum that we find suitable for mobile telephony/broadband services. This initial spectrum screen is designed to be a trigger for further competitive analysis, in which we examine the each of the identified markets to ensure that no competitive harm would result from the proposed transaction.

70. Also, consistent with existing precedent, we decline to apply any heightened scrutiny to spectrum aggregation involving cellular overlaps. The Commission has previously found that reliance on case-by-case review for aggregation of spectrum and cellular-cross interests better serves the public interest than utilizing a prophylactic rule,<sup>272</sup> because "case-by-case review [has a] greater degree of flexibility to reach the appropriate decision in each case, reduced likelihood of prohibiting beneficial transactions or levels of investment both in urban and rural areas, and ability to account for the particular attributes of a transaction or market."<sup>273</sup> In the case-by-case analysis of this transaction that we perform, we make particularized judgments regarding any potential harms and the need for any remedies in each of these markets that we examine.

#### 4. Market Participants

71. In its recent wireless transaction orders, when computing initial measures of market concentration, the Commission limited its analysis of transactions involving mobile telephony services to cellular, PCS, and SMR facilities-based service providers, and excluded satellite service providers, nomadic wireless Voice over Internet Protocol ("VoIP") providers, mobile virtual network operators

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<sup>269</sup> See Global Com, Iridium Satellite Phone Service Plans, at [http://www.globalcomsatphone.com/satellite/services/iridium\\_service\\_plans.html](http://www.globalcomsatphone.com/satellite/services/iridium_service_plans.html) (last visited Sept. 17, 2008); GlobalStar, Airtime Pricing, Voice Pricing, at <http://www.globalcomsatphone.com/satellite/services/globalstar.html> (last visited Sept. 17, 2008). See also *AT&T-Dobson Order*, 22 FCC Rcd at 20316 n.130; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38.

<sup>270</sup> Application, Public Interest Statement at 39.

<sup>271</sup> See discussion *supra* para. 60.

<sup>272</sup> Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 02-381, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 19078, 19113 ¶ 63 (2004) ("*Rural Report and Order*").

<sup>273</sup> See *id.* at 19115 ¶ 67.

("MVNOs"), and resellers from consideration.<sup>274</sup> We find that mobile telephony/broadband services offered by facilities-based providers using cellular, PCS, and SMR spectrum and employing various technologies offer similar voice and data functionalities and are indistinguishable to the consumer.<sup>275</sup> Accordingly, we consider cellular, PCS, and SMR facilities-based mobile telephony/broadband service providers to be market participants. Similarly, to the extent that entities provide facilities-based mobile telephony/broadband services using 700 MHz, AWS-1, and BRS spectrum, we also consider them to be market participants.<sup>275</sup>

72. The Applicants propose that the Commission include several other service providers, such as satellite providers with ATC authority<sup>277</sup> and providers in the 2155-2175 MHz band,<sup>278</sup> when computing initial measures of market concentration. But as discussed above, we have insufficient evidence of the availability and nature of ATC service to justify considering providers using this spectrum as market participants. Further, inclusion of the 2155-2175 MHz band would be premature given that the Commission has not finalized the service rules for assignment of licenses in this band.

73. The Applicants also propose that national resellers/MVNOs should be included because they have recently emerged to compete successfully on branded packaged voice and data services,<sup>279</sup> and that cable operators should be included because cable operators may bundle wireless services with their video and VoIP offerings.<sup>280</sup>

74. Under Commission precedent, we generally limit our analysis to facilities-based service providers, either nationwide or regional, excluding MVNOs and resellers from consideration when computing initial concentration measures. While the Commission has acknowledged that non-facilities

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<sup>274</sup> See *AT&T-Dobson Order*, 22 FCC Rcd at 20316 ¶ 36; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶¶ 38-39; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92. Although satellite providers offer facilities-based mobile voice and data services, the price of these services is, at present, significantly higher than for services offered by cellular, PCS, or SMR providers. Therefore, most consumers would not view satellite phones as substitutes for mobile communications services. See Global Com, Iridium Satellite Phone Service Plans, at [http://www.globalcomsatphone.com/satellite/services/iridium\\_service\\_plans.html](http://www.globalcomsatphone.com/satellite/services/iridium_service_plans.html) (last visited June 26, 2008); GlobalStar, Airtime Pricing, Voice Pricing, at <http://www.globalcomsatphone.com/satellite/services/globalstar.html> (last visited June 26, 2008). See also *AT&T-Dobson Order*, 22 FCC Rcd at 20316 n.130; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38. We also do not consider wireless VoIP providers as providing the same functionality as mobile communications services providers because the service they provide now is nomadic rather than mobile. See *AT&T-Dobson Order*, 22 FCC Rcd at 20316 n.130; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38. Wireless VoIP services are nomadic in the sense that one can use them from a number of different locations (for example, by using a laptop at different internet cafes all over a town). See *AT&T-Dobson Order*, 22 FCC Rcd at 20316 n.130; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 n.108; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 n.104; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544-45 n.134; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 n.151.

<sup>275</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20316 ¶ 36; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 32; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 91.

<sup>276</sup> See *AT&T-Dobson Order*, 22 FCC Rcd at 20316 ¶ 36.

<sup>277</sup> Application, Public Interest Statement at 38-39; Joint Opposition at 28-29.

<sup>278</sup> Application, Public Interest Statement at 39.

<sup>279</sup> See *id.* at 40.

<sup>280</sup> See *id.*

based service options have an impact in the marketplace and in some instances may provide additional constraints against anticompetitive behavior, to date, in evaluating proposed transactions involving mergers of wireless service providers, the Commission has not included resellers or MVNOs in its initial screen.<sup>281</sup> Accordingly, we will consider facilities-based entities providing mobile telephony/broadband services using cellular, PCS, SMR, 700 MHz, AWS-1, and BRS spectrum to be market participants.

## B. Initial Screen

75. Having determined the appropriate market definitions for this transaction, our competitive analysis next applies the Commission's initial screen, followed by a further case-by-case review of the markets identified by that screen. As discussed in previous wireless transaction orders, the purpose of this initial screen is to eliminate from further review those markets in which there is clearly no competitive harm relative to today's generally competitive marketplace.<sup>282</sup> The Commission designed the initial screen to be conservative and ensure that we do not exclude from further scrutiny any geographic areas in which the potential for anticompetitive effects exists. In addition to market concentration, which we measure with market share data, we consider the input market of spectrum that is suitable for the provision of mobile telephony/broadband services because spectrum is a necessary resource for wireless service providers to compete effectively. This initial screen is only the beginning of our competitive analysis. Subsequent sections examine on a case-by-case analysis those markets identified by the screen, where potential harm is possible, to determine whether harm is likely and a remedy needed.

76. The Applicants include a statement from an economist who argues that the Commission should not use a spectrum screen for three reasons: the screen can act as a *de facto* spectrum cap thereby distorting competition, a poorly designed screen can lead to misallocation of Commission resources, and the public interest rationales for the screen are unsound.<sup>283</sup> Alternatively, the economist contends, the Commission should increase the spectrum used in the screen to minimize these harms.<sup>284</sup> Leap Wireless contests the assertion of the Applicants' economist that the Commission should no longer use a spectrum screen, arguing that eliminating the screen would allow anticompetitive effects to escape scrutiny.<sup>285</sup> Leap Wireless also argues that the Commission should include spectrum that Verizon Wireless won in Auction 73 in the numerator of the screen.<sup>286</sup>

77. We reject the arguments of the Applicants that this transaction should not be reviewed under a spectrum screen. With respect to the Applicants' general arguments, we continue to believe that the spectrum screen is a useful tool for identifying markets where there may be competitive issues. The argument that the screen can act as a *de facto* spectrum cap is inconsistent with precedent and our use of the screen. We therefore apply our spectrum screen to the proposed transaction. The licenses won by Verizon Wireless in Auction 73 have been included in our initial spectrum screen.

<sup>281</sup> See *Verizon Wireless-RCC Order*, 22 FC Rcd at 12488-89 ¶ 50; *AT&T-Dobson Order*, 22 FCC Rcd at 20317 ¶ 38; *GCI- ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶¶ 38-39; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92.

<sup>282</sup> See, e.g., *Verizon Wireless-RCC Order*, 22 FC Rcd at 12489 ¶ 51; *AT&T-Dobson Order*, 22 FCC Rcd at 20317 ¶ 39; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11547 n.151; *Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 62; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073-74 ¶ 48; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69 ¶¶ 106-109.

<sup>283</sup> Joint Opposition, Attachment 3: Declaration of Michael L. Katz at 3-8.

<sup>284</sup> See *id.* at 10-14.

<sup>285</sup> Leap Wireless Reply at 13-14.

<sup>286</sup> Leap Wireless Petition to Deny at 8-9.

78. For this transaction, we use our December 2007 NRUF database, which tracks phone number usage by all telecommunications services providers, including wireless service providers, to estimate mobile communication subscribership levels, market shares, and concentration for various geographic markets.<sup>287</sup> Consistent with our discussion of the geographic market definition above, in calculating market shares and market concentration, we analyze wireless provider data using two sets of geographic areas, CEAs<sup>288</sup> and CMAs.<sup>289</sup> Our initial screen criteria identifies, for further case-by-case market analysis, those markets in which, post-transaction: (1) the HHI would be greater than 2800 and the change in HHI will be 100 or greater, or the change in HHI would be 250 or greater, regardless of the level of the HHI, and (2) the Applicants would have, on a market-by-market basis, a 10 percent or greater interest in 95 megahertz, 115 megahertz, 125 megahertz or 145 megahertz or more of cellular, PCS, SMR, 700 MHz, AWS-1 and BRS spectrum, depending upon the availability of AWS-1 and BRS spectrum in any given market.<sup>290</sup> This initial screen is only the beginning of our competitive analysis. Subsequent sections examine on a case-by-case analysis those markets identified by the screen, where potential harm is possible, to determine whether harm is likely and a remedy needed.

79. The Applicants did not identify markets that the initial screens would capture based on the post-transaction HHI and the change in the HHI, or the change in the HHI alone. The Applicants attach to the Joint Opposition a market-by-market analysis of 50 markets where they claim that the combined

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<sup>287</sup> These data indicate the number of assigned phone numbers that a wireless carrier has in a particular wireline rate center. Rate centers are geographic areas used by local exchange carriers for a variety of reasons, including the determination of toll rates. See HARRY NEWTON, *NEWTON'S TELECOM DICTIONARY: 19<sup>TH</sup> EXPANDED & UPDATED EDITION* 660 (July 2003). All mobile wireless providers must report to the FCC the quantity of their phone numbers that have been assigned to end users, thereby permitting the Commission to calculate the total number of mobile subscribers. For purposes of geographical analysis, the rate center data can be associated with a geographic point, and all of those points that fall within a county boundary can be aggregated together and associated with much larger geographic areas based on counties. In the Cingular-AT&T Wireless and Sprint-Nextel transactions, the Commission also used billing data submitted by the nationwide wireless service providers. See *Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 63; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 103. Although we may decide to collect such billing data as part of our review of future transactions, we found that the competitive situation associated with this proposed transaction was such that collection of third-party billing data was unnecessary.

<sup>288</sup> CEAs are defined by the Bureau of Economic Analysis ("BEA"), and are composed of a single economic node and surrounding counties that are economically related to the node. There are 348 CEAs in the 50 states and the District of Columbia. Of the 3,141 U.S. counties, 2,267 are non-nodal counties that are assigned to a CEA based first on county-to-county commuting flows from the 1990 Census and second on locations of the most widely read regional newspapers. Three quarters of non-nodal counties were assigned based on commuting patterns. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURV. OF CURRENT BUS., Feb. 1995, at 75-81. In November 2004, the BEA updated definitions for CEAs. The total number of CEAs decreased from 348 to 344. Non-nodal county assignment continued to be based on county-to-county commuting flows and locations of the most widely read regional newspapers. See Kenneth P. Johnson & John R. Kort, *2004 Redefinition of the BEA Economic Areas*, SURV. OF CURRENT BUS., Nov. 2004, at 68-71. For purposes of this transaction, we did not adopt the new CEA definitions.

<sup>289</sup> See, e.g., *Verizon Wireless-RCC Order*, 22 FC Rcd at 12489-90 ¶ 52; *AT&T-Dobson Order*, 22 FCC Rcd at 20317-18 ¶ 40; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11545 ¶ 35; *Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 63; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072 ¶ 44; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 104. CMAs are the regions originally used by the Commission for issuing cellular licenses. There are 734 CMAs, made up of 305 Metropolitan Statistical Areas ("MSAs"), 428 RSAs, and a market for the Gulf of Mexico. See *Twelfth Competition Report*, 23 FCC Rcd at 2277 ¶ 78. RSAs are regions defined by the Commission for the purpose of issuing spectrum licenses. See *Twelfth Competition Report*, 23 FCC Rcd at 2277 n.145. See discussion justifying the use of CEAs and CMAs *supra* para. 49 and note 200.

<sup>290</sup> See discussion *supra* para. 64.

attributable spectrum held by the merged entity would exceed 95 megahertz.<sup>291</sup> Within each market, the Applicants analyzed the amount of spectrum attributable to the merged entity following the transaction, whether BRS/EBS spectrum is available in the market, the number of competitors in the region and the competitors' spectrum holdings, and potential new entrants into the local market. The Applicants conclude that because the three other national wireless providers, landline replacement carriers, rural telephone companies, and other licensees will all compete with Verizon Wireless after the transaction, none of the markets involved in this transaction raise competitive issues.<sup>292</sup>

80. As noted above, several commenters allege that the Applicants' spectrum analysis was incorrect or incomplete. Some argue that the analysis incorrectly included spectrum from the AWS-1, BRS, EBS, and MSS ATC bands, rather than only the bands used in the 95 megahertz screen.<sup>293</sup> Several commenters also argue that the Joint Opposition does not sufficiently analyze the HHI impact or the market share on several markets.<sup>294</sup> Others argue that the analysis ignores that Verizon Wireless and ALLTEL are the two dominant wireless providers in many markets and once the transaction is complete, the merged entity will be capable of exercising undue leverage on the market.<sup>295</sup> The *Ad Hoc* Public Interest Spectrum Coalition ("PISC") contends that the transaction would result in Verizon Wireless's HHI changing 261 points and that the Applicants' market analysis ignores financial issues that may face new market entrants.<sup>296</sup> Palmetto Mobilenet, L.P. ("Palmetto") contends that the initial screen will possibly capture all CMAs in South Carolina.<sup>297</sup>

81. Our initial HHI screen identifies a total of 218 CMAs and 116 CEAs that require further competitive review. The initial spectrum screen identifies a total of 27 CMAs and 15 CEAs that require competitive review. All of these 27 CMAs and 14 of the 15 CEAs were also flagged by the HHI initial screen.

### C. Horizontal Issues

82. This section examines how the transaction could affect competitive behavior in the 218 CMAs and 116 CEAs identified by the initial screen as requiring additional analysis to determine whether the proposed transaction would result in competitive harm. As discussed in the Commission's

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<sup>291</sup> Joint Opposition at Attachment 2.

<sup>292</sup> *See id.* at 16.

<sup>293</sup> Rural Carriers Petition at 4-6, 8; South Dakota Telecommunications Association Petition at 5-6; PISC Reply at 2-3; *see also* Chatham Petition to Deny at 4-5 (contending that the merged entity will trigger the 95 MHz screen in 330 markets, concentrated in Minnesota, Montana, North Dakota, South Dakota, and Texas).

<sup>294</sup> Rural Carriers Reply at 15-16; Leap Wireless Reply at 15-17. Palmetto also argues that the markets in South Carolina that Verizon Wireless offered to divest do not correspond to their market-by-market analysis. Palmetto Reply at Exhibit A.

<sup>295</sup> Rural Carriers Petition at 6.

<sup>296</sup> PISC Petition to Deny at 12 n.12, Appendix B; PISC Reply at 3.

<sup>297</sup> Palmetto Petition to Deny at 4-5.

recent wireless transaction orders, competition may be harmed either through unilateral actions<sup>298</sup> by the merged entity or through coordinated interaction<sup>299</sup> among firms competing in the relevant market.

83. In this Memorandum Opinion and Order and Declaratory Ruling, we find that extended discussions of unilateral and coordinated effects are unnecessary.<sup>300</sup> First, many aspects of our previous analyses in wireless transaction orders are unchallenged here.<sup>301</sup> Second, we provide a market-by-market discussion of each CMA where we are requiring business unit divestitures.<sup>302</sup> We therefore discuss unilateral effects and coordinated interaction at a general level only to the extent issues are raised by the parties to this proceeding.<sup>303</sup>

### 1. Unilateral Effects

84. Verizon Wireless's acquisition of ALLTEL could lead to changes in the structure of the markets in 218 CMAs and 116 CEAs identified above by our initial screen as needing further analysis. Thus, with regard to these markets, we examine in more detail the possibility that the proposed transaction may lead to competitive harm through unilateral actions by the merged entity.<sup>304</sup> Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by

<sup>298</sup> Unilateral effects are those that result when a merged firm finds it profitable to alter its behavior by increasing prices or reducing output. *DOJ/FTC Horizontal Merger Guidelines* § 2.2. See *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12491 ¶ 57; *AT&T-Dobson Order*, 22 FCC Rcd at 20318-19 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11550 ¶ 47; *Sprint-Nextel Order*, 20 FCC Rcd at 14001 n.199; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13076 n.155; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 n.341.

<sup>299</sup> Coordinated interaction consists of actions by a group of firms that are profitable for each of the firms involved only because the other firms react by accommodating these actions rather than attempting to undercut them. See *DOJ/FTC Horizontal Merger Guidelines* § 2.1; *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12491 ¶ 57; *AT&T-Dobson Order*, 22 FCC Rcd at 20318-19 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11554 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 n.167; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 n.211; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151.

<sup>300</sup> See, e.g., *Verizon-RCC*, 22 FCC Rcd at 12492-93 ¶ 58; *AT&T-Dobson Order*, 22 FCC Rcd at 20319 ¶ 43; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21569 ¶ 110; *Sprint-Nextel Order*, 20 FCC Rcd at 13994 ¶ 63.

<sup>301</sup> For unilateral effects, the unchallenged aspects include: (1) product differentiation and substitutability; (2) network effects; (3) marginal cost reductions; (4) spectrum and advanced wireless services; and (5) penetration. See, e.g., *Verizon Wireless-RCC*, 22 FCC Rcd at 12492-93 ¶ 58; *AT&T-Dobson Order*, 22 FCC Rcd at 20321 ¶ 47; *Sprint-Nextel Order*, 20 FCC Rcd at 14002-07, 14009 ¶¶ 94-107, 115; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13077-85, 13819-21, ¶¶ 59-64, 73-83; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21571-80 ¶¶ 119-133, 138-149; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11553-54 ¶¶ 58-59. For coordinated interaction, the unchallenged aspects include: (1) firm and product homogeneity; (2) existing cooperative ventures; (3) number of firms; (4) technology development; (5) response of rivals; (6) transparency of information; and (7) presence of mavericks. See *Verizon Wireless-RCC*, 22 FCC Rcd at 12492-93 ¶ 58; *AT&T Dobson Order*, 22 FCC Rcd at 20321 ¶ 47; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 13996-400 ¶¶ 71-88; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13086-87 ¶¶ 89-92; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21581-85 ¶¶ 154-163.

<sup>302</sup> See discussion *infra* paras. 102-113.

<sup>303</sup> See *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12492-93 ¶ 58; *AT&T-Dobson Order*, 22 FCC Rcd at 20320 ¶ 43; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893-94 ¶ 68; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549-50 ¶ 46.

<sup>304</sup> See *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12493 ¶ 59; *AT&T-Dobson Order*, 22 FCC Rcd at 20320 ¶ 44; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11550 ¶ 47; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075 ¶ 54; *Cingular-AT&T Wireless*, 19 FCC Rcd at 21570 ¶ 115; see also *DOJ/FTC Merger Guidelines* § 2.

“elevating price and suppressing output.”<sup>305</sup> In the case of mobile telephony/broadband services, as defined above, this might take the form of delaying improvements in service quality or adversely adjusting plan features without changing the plan price.<sup>306</sup> Incentives for such unilateral competitive actions vary with the nature of competition in the relevant markets.

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

86. In their application, the Applicants do not discuss the unilateral effects of the proposed transaction on particular CMAs, but argue that the national “commercial mobile radio service market” is highly competitive.<sup>307</sup> Even on a CMA basis, they argue, counties with fewer providers are likely to be adjacent to counties with four or more competitors such that an existing firm in any market could respond quickly to an exercise of unilateral market power by another.<sup>308</sup> Moreover, they contend that spectrum-related barriers to entry for the market are relatively low because over 600 megahertz of spectrum are available for competing commercial mobile radio services (“CMRS”) and many competitors that hold spectrum licenses can rapidly enter local markets.<sup>309</sup> Finally, they contend that based on past trends, the number of potential subscribers is likely to increase, thus decreasing the likelihood of competitive harms; they do not provide, however, any data on subscriber shares for any CMAs.<sup>310</sup>

87. The Roaming Petitioners argue that the proposed transaction will eliminate a major wireless provider and will eliminate the possibility that ALLTEL will combine with other wireless providers to create a new major wireless provider. These losses, according to the Roaming Petitioners, will lessen competition in areas where Verizon Wireless and ALLTEL compete.<sup>311</sup> The South Dakota Telecommunications Association also contends that the transaction will decrease competition in South Dakota because Verizon Wireless and ALLTEL are the two dominant wireless providers in the state,

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<sup>305</sup> See *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12493 ¶ 59; *AT&T-Dobson Order*, 22 FCC Rcd at 20320 ¶ 44; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11550 ¶ 47; *Sprint-Nextel Order*, 20 FCC Rcd at 14001 ¶ 91; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075 ¶ 54; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115; *DOJ/FTC Merger Guidelines* § 2.2.

<sup>306</sup> The term “unilateral” refers to the method used by firms to determine strategy, not to the fact that the merged entity would be the only firm to change its strategy. The term unilateral is used to indicate that strategies are determined unilaterally by each of the firms in the market and not by explicit or tacit collusion. Other firms in the market may find it profitable to alter their behavior as a result of the merger-induced change in market structure by, for example, repositioning their products, changing capacity, or changing their own prices. These reactions can alter the total effect on the market and must be taken into account when evaluating potential unilateral effects. See *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12493 n.205; *AT&T-Dobson Order*, 22 FCC Rcd at 20320 n.150; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11550 n.176; *Sprint-Nextel Order*, 20 FCC Rcd at 14001 n.199; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13076 n.155; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 n.341.

<sup>307</sup> Application, Public Interest Statement at 47.

<sup>308</sup> *Id.* at 47-48.

<sup>309</sup> See *id.* at 48-49.

<sup>310</sup> Application, Public Interest Statement at 50; Application, Exhibit 3: Declaration of Dennis Carlton, Allan Shampine, and Hal Sider, at 17.

<sup>311</sup> Petition to Deny of the Roaming Petitioners at 5 (filed Aug. 11, 2008) (“Roaming Petitioners Petition to Deny”).

holding licenses for over 95 megahertz of spectrum in more than half the state's counties.<sup>312</sup> We address these concerns in more detail below.<sup>313</sup>

## 2. Coordinated Effects

88. As discussed in previous wireless transaction orders, in markets where only a few firms account for most of the sales of a product, those firms may be able to exercise market power by either explicitly or tacitly coordinating their actions.<sup>314</sup> Accordingly, one way in which a transaction may create or enhance market power or facilitate its exercise is by making such coordinated interaction among firms more likely, more successful, or more complete.<sup>315</sup> Successful coordination depends on two key factors. The first is the ability to reach terms that are profitable for each of the firms involved, and the second is the ability to detect and punish deviations that would undermine the coordinated interaction.<sup>316</sup>

89. The Applicants assert that the transaction does not pose any risk of coordinated interaction in the markets in which Verizon Wireless and ALLTEL have overlapping spectrum.<sup>317</sup> They assert that no risk will arise because the overall market for mobile services is highly competitive and a substantial number of competitors will remain after the transaction.<sup>318</sup> The Applicants do not identify any specific constraints on the ability of the remaining competitors to reach terms of coordination or to detect and punish deviations following the transaction.<sup>319</sup>

90. The Applicants' arguments on coordinated interaction do not cause us to alter our general views on this topic, as set out in the Commission's recent wireless transaction orders.<sup>320</sup> Specifically, we continue to find that a number of market conditions may affect one or both elements of coordination, including the availability of information about market conditions, the extent of firm and product

<sup>312</sup> South Dakota Telecommunications Association Petition at 7-9.

<sup>313</sup> See *infra* Part VIII.A (Roaming).

<sup>314</sup> See *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12496 ¶ 67; *AT&T-Dobson Order*, 22 FCC Rcd at 20321 ¶ 48; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11554 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 ¶ 69; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150; *DOJ/FTC Merger Guidelines* § 0.1.

<sup>315</sup> See *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12496 ¶ 67; *AT&T-Dobson Order*, 22 FCC Rcd at 20321 ¶ 48; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11554 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 ¶ 69; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150.

<sup>316</sup> See *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12496 ¶ 67; *AT&T-Dobson Order*, 22 FCC Rcd at 20321-22 ¶ 48; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11554 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 ¶ 69; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151; *DOJ/FTC Merger Guidelines* § 2.11.

<sup>317</sup> Application, Public Interest Statement at 51. *But see* Comments of Consumers Union and Consumer Federation of America at 1 (filed Oct. 28, 2008) ("Consumers Union Comments") (expressing concern over increased prices for text messaging, which "seem to come in parallel . . . in a market dominated by two firms").

<sup>318</sup> Application, Public Interest Statement at 51.

<sup>319</sup> See *id.* at 51-52.

<sup>320</sup> See *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12496 ¶ 69; *AT&T-Dobson Order*, 22 FCC Rcd at 20322 ¶ 50; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555 ¶ 62; *Sprint-Nextel Order*, 20 FCC Rcd at 13995-01 ¶¶ 69-89; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085-87 ¶¶ 85-93; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580-86 ¶¶ 150-164.

homogeneity, and the presence of maverick providers in the market.<sup>321</sup> As discussed in the previous transactions, these general findings underpin the market-by-market analysis to which we now turn.<sup>322</sup>

#### D. Market-by-Market Analysis

##### 1. Analytical Standard

91. In this section, we examine the local markets consistent with the approach the Commission has applied in its recent wireless transaction orders.<sup>323</sup> Although the 100 markets that Verizon Wireless has committed to divest were identified by our initial screen, we do not undertake a market-by-market analysis of these markets because they will be divested. Therefore, we examine the remaining 118 CMAs identified by the Commission's initial screen examining both HHI market concentration and spectrum input. In undertaking this market-by-market analysis, we consider variables that the general analyses in these orders have shown are important for predicting the incentive and ability of service providers to successfully restrict competition on price or non-price terms through coordinated interaction, and the incentive and ability of the merged entity unilaterally to elevate prices or suppress output.<sup>324</sup> These include: the total number of rival service providers; the number of rival firms that can offer competitive nationwide service plans; the coverage of the firms' respective networks; the rival firms' market shares; the merged entity's post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum holdings of each of the rival service providers. In reaching determinations, we balance these factors on a market-specific basis, and consider the totality of the circumstances in each market.

92. Thus, for example, if our count of the number of rival service providers and our scrutiny of their spectrum holdings and network coverage indicates that the response of rival service providers will likely be sufficient to limit the ability and incentive of the combined entity to raise prices unilaterally, we would find that the transaction is not harmful to competition in a specific market even in the presence of a relatively high post-transaction market share of the combined entity.<sup>325</sup> We also scrutinize, and base our determinations on, the uniformity of competitive conditions in local markets. Thus, in some instances, we may find that the transaction is not harmful to competition in a particular market if the

<sup>321</sup> See *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12496 ¶ 69; *AT&T-Dobson Order*, 22 FCC Rcd at 20322 ¶ 50; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555 ¶ 62; *Sprint-Nextel Order*, 20 FCC Rcd at 13995-01 ¶¶ 69-89; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085-87 ¶¶ 85-93; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580-86 ¶¶ 150-164.

<sup>322</sup> See *id.*

<sup>323</sup> See, e.g., *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12496-97 ¶ 70; *AT&T-Dobson Order*, 22 FCC Rcd at 20322 ¶ 51; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555, 11574-75 ¶ 63, App.; *Sprint-Nextel Order*, 20 FCC Rcd at 14046-14053 App. C; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13120-36 App. C, App. D; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21649 App. D.

<sup>324</sup> See, e.g., *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12496-97 ¶ 70; *AT&T-Dobson Order*, 22 FCC Rcd at 20322 ¶ 51; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555 ¶ 63; *Sprint-Nextel Order*, 20 FCC Rcd at 13995-14009 ¶¶ 68-116; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075-87 ¶¶ 54-93; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570-86 ¶¶ 115-164.

<sup>325</sup> See, e.g., *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12497 ¶ 71; *AT&T-Dobson Order*, 22 FCC Rcd at 20322-23 ¶ 52; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555 ¶ 64; *Sprint-Nextel Order*, 20 FCC Rcd at 14010 ¶ 118; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13096 ¶ 118; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 190.

potential harm from the transaction is confined to a small enclave within the market, and this harm is likely to be ameliorated by the more favorable competitive conditions in most of the market.<sup>326</sup>

## 2. Result of Analysis

93. Our market-by-market analysis finds that there would be a significant likelihood of harm in the proposed transaction, either from unilateral effects or coordinated interaction, in five of the 118 CMAs identified by the initial screen.<sup>327</sup> As the Commission determined in its previous wireless transaction orders, this multi-factor, market-specific analysis, which employs a combination of data sources, provides a reliable basis for making our determinations herein.<sup>328</sup>

94. For these 118 markets identified by the initial screen, we derive the market share and HHI information from our analysis of data compiled in our NRUF database, which tracks phone number usage by all telecommunications services providers, including wireless service providers. However, our analysis does not rely solely on market shares to determine which markets are likely to experience competitive harm resulting from this transaction. In combination with the other factors in our multi-factor, market-specific analysis, which draws competitive conclusions based on the totality of the circumstances present in a given market, we are confident that these ranges are a reliable basis for our determinations.

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<sup>326</sup> See, e.g., *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12497 ¶ 71; *AT&T-Dobson Order*, 22 FCC Rcd at 20322-3 ¶ 52; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555 ¶ 64; *Sprint-Nextel Order*, 20 FCC Rcd at 14010 ¶ 118; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13095-96 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 190.

<sup>327</sup> In its September 9, 2008, *ex parte* meeting with Commission staff, Verizon Wireless raised the issue of its reacquisition of licenses in markets that the Commission required them to divest in prior transactions. Specifically, in the *Bell Atlantic/Vodafone Order*, the Commission required the merged entity (Verizon Wireless) to divest cellular licenses under the cellular cross-ownership rule in effect at that time. Applications of Vodafone AirTouch, Plc, and Bell Atlantic Corporation for Consent to Transfer of Control or Assignment of Licenses and Authorizations, *Memorandum Opinion and Order*, 15 FCC Rcd 16507, 16517 ¶ 26 (2000). The following cellular licenses were subsequently divested to ALLTEL: CMA026 Phoenix, AZ; CMA077 Tucson, AZ; CMA077 Tucson, AZ; CMA086 Albuquerque, NM; and CMA319 Arizona 2-Coconino. Likewise, in the *Bell Atlantic-GTE Order*, the Commission required the merged entity to divest cellular licenses under the cellular cross-ownership rule. GTE Corp, Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, CC Docket No. 98-184, *Memorandum Opinion and Order*, 15 FCC Rcd 14032, 14207-08 ¶¶ 385-386 (2000). The Commission required a further divestiture of licenses under its spectrum cap (45 megahertz of CMRS spectrum in urban areas, and 55 megahertz in rural areas). *Bell Atlantic-GTE Order*, 15 FCC Rcd at 14207-08 ¶¶ 385-86. Bell Atlantic, which later became part of Verizon Wireless, also entered into a Consent Decree with the Department of Justice that required divestitures. The assets that Verizon Wireless proposes acquiring as part of the current transaction did not rely on the Consent Decree with the DOJ and were divested without additional conditions.

As noted above, following these changes the Commission began using the case-by-case analysis of proposed wireless transactions it is using here to determine the competitive effects and implications for the public interest. See 200 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, *Report and Order*, 16 FCC Rcd 22668, 22695-97 ¶¶ 54-58 (2001). We will therefore evaluate these markets as part of our market-by-market analysis.

<sup>328</sup> *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12497 at ¶ 72; *AT&T-Dobson Order*, 22 FCC Rcd at 20323 ¶ 53; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11556 ¶ 65; *Sprint-Nextel Order*, 20 FCC Rcd at 14010 ¶ 118; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13095-96 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 190.

95. In addition, we examine data from our LNP database through December 30, 2006, June 30, 2007, and December 30, 2007. This information includes each instance of a customer porting a phone number from one mobile provider to another, and indicates both the origin and destination provider.<sup>329</sup> We also analyze launch and coverage information for wireless providers available from a variety of public sources, as well as information regarding spectrum holdings, which we obtained from our licensing databases and from the Application.

96. *Divestitures Proposed by Verizon Wireless.* The Applicants argue that the voluntary divestitures eliminate the primary overlap areas between their networks, leaving only complementary assets.<sup>330</sup> They contend the divestitures of assets in North and South Dakota, as well as others, should alleviate all the commenters' concerns about local competition.<sup>331</sup> The Applicants argue generally that the Commission should not revert to a spectrum cap and should continue to use a spectrum screen.<sup>332</sup>

97. While most commenters support Verizon Wireless's offer to divest spectrum in these markets, they ask the Commission to add further conditions to the offer.<sup>333</sup> Some commenters question whether the merged entity should be allowed to retain more than 95 megahertz or otherwise excessive spectrum in any market.<sup>334</sup> These commenters propose several methods for the Commission to determine which spectrum should be divested, such as that the Commission require that: the merged entity divest

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<sup>329</sup> This data was provided to the Commission by NeuStar.

<sup>330</sup> Joint Opposition at 36.

<sup>331</sup> *See id.* at 36-37.

<sup>332</sup> *See id.* at 39-40.

<sup>333</sup> Several commenters asked for divestiture conditions that address specific issues in their regions. The South Dakota Telecommunications Association argues that the merged entity should divest all of ALLTEL's assets in South Dakota that overlap with Verizon Wireless's assets because the two companies are the dominant competitors in the state and the merged entity would control an anti-competitive amount of spectrum with a divestiture. South Dakota Telecommunications Association Petition at 8-9.

Palmetto contends that Verizon Wireless should divest spectrum in 13 CMAs in South Carolina. Palmetto Petition to Deny at 23. Palmetto identifies CMA67 Greenville-Spartanburg, SC; CMA90 Charleston-North Charleston, SC; CMA95 Columbia, SC; CMA108 Augusta, GA/SC; CMA227 Anderson, SC; CMA264 Florence, SC; CMA625 South Carolina 1-Oconee; CMA626 South Carolina 2-Laurens; CMA627 South Carolina 3-Cherokee; CMA630 South Carolina 6-Clarendon; CMA631 South Carolina 7-Calhoun; CMA632 South Carolina 8-Hampton; and CMA633 South Carolina 9-Lancaster. Palmetto expresses concern that without these conditions, competitors would not have a strong enough market presence to counterbalance the merged entities market power and the merged entity will face only three competitors in one third of South Carolina counties. *See also* Palmetto Reply at 2, 17; *see also id.* at 4-15, Exhibit A (analyzing each South Carolina market).

Chatham argues in its reply that Verizon Wireless should divest markets in Minnesota, Montana, North Dakota, and South Dakota because the markets are particularly concentrated in those states. Chatham Reply at 6-7.

The Rural Carriers ask for divestitures in CMA153 Columbus, GA; CMA261 Albany, GA; CMA311 Alabama 5-Cleburne RSA; CMA314 Alabama 8-Lee RSA; CMA375 Georgia 5-Haralson RSA; CMA376 Georgia 6-Spalding; CMA392 Idaho 5-Butte; and CMA393 Idaho 6-Clark. Rural Carriers Reply at 15, 17; Rural Carriers October 28, 2008 *Ex Parte* Filing at 2.

<sup>334</sup> PISC Petition to Deny at 6; Chatham Petition to Deny at 5-6, 15-19 (arguing nearby competition will not suffice to constrain anticompetitive actions); Chatham Reply at 7-8; Rural Carriers Reply at 2 n.3, 8, 11; Petition to Deny of the National Telecommunication Cooperative Association at 6-7 (filed Aug. 11, 2008) ("NTCA Petition to Deny"); PISC Reply at 1-2 n.4.

spectrum in excess of 95 megahertz in any market in which it holds more than 115 megahertz;<sup>335</sup> the merged entity divest CMAs in which it would hold both cellular spectrum blocks;<sup>336</sup> the merged entity divest all spectrum in excess of 55 megahertz (at the county level) that it would hold below 1 GHz and all spectrum in excess of 110 megahertz that it would hold below 2.3 GHz;<sup>337</sup> or Verizon Wireless divest the ALLTEL cellular systems (including network assets and customers) where it overlaps with Verizon Wireless's cellular spectrum or where spectrum would become excessively concentrated.<sup>338</sup> The Applicants respond that the Commission rejected these sorts of spectrum limits when it abolished its 1999 decision to impose a 55 megahertz cap of cellular, PCS, and SMR spectrum.<sup>339</sup>

98. *Market-Specific Analysis.* In performing our market-by-market analysis, we find that, in the great majority of the 118 markets identified by the initial screen, no competitive concerns were raised. For instance, in most of these markets, there would be four or more competitors present post-transaction with thoroughly built-out networks, adequate bandwidth, and the ability to offer competitive nationwide services. For each of these markets we determine, consistent with our findings in previous transaction orders, that competitive harm is unlikely.<sup>340</sup> In several other of these markets, we conclude that based on the various particular facts in each of these markets, the proposed transaction would be unlikely to make it profitable for the combined entity to raise price and restrict output. The presence and capacity of rival service providers, taking into account near-term opportunities to obtain access to additional spectrum, are such in these markets as well that the response of these rival service providers would likely be sufficient to deter any unilateral actions or anticompetitive behavior by the merged entity.

99. In ten of the 118 markets, however, we conclude that further discussion herein is merited regarding the factors and particularities associated with our determination as to whether there would be competitive harm in each of these specific markets. As indicated below, in five of these markets we find that divestiture is appropriate, while in the other five we conclude that it is not necessary in order to prevent the likelihood of competitive harm.

100. *Specific Markets in Which Competitive Harm Is Likely.* We list below the markets in which our case-by-case analysis indicates that competitive harm is likely as a result of this transaction.

<sup>335</sup> Chatham Petition to Deny at ii; see also Petition to Deny of Organization for the Promotion and Advancement of Small Telecommunications Companies and the Rural Independent Competitive Alliance at 7-8 (filed Aug. 11, 2008) ("OPASTCO and RICA Petition to Deny") (arguing the Commission should prevent concentration of spectrum with nationwide carriers and proposing that the merged entity divest, to rural carriers, its spectrum assets in any county in which it hold licenses for more than 110 megahertz of spectrum).

<sup>336</sup> Rural Carriers Petition at 9-10. Specifically, the Rural Carriers expressed concern about CMA153 Columbus, GA-AL; CMA261 Albany, GA; CMA31 Alabama 5-Cleburne; CMA314 Alabama 8-Lee; CMA375 Georgia 5-Haralson; CMA376 Georgia 6-Spalding; CMA392 Idaho 5-Butte; and CMA393 Idaho 6-Clark. *Id.*

<sup>337</sup> Rural Telecommunications Group Petition to Deny at 19-21; Palmetto Petition to Deny at 5-7, 22-23; Palmetto Reply at 15-16; Rural Telecommunications Group Reply at 10-12 (clarifying that the commenters are not requesting a new rule, but only suggesting a method for determining how much ALLTEL spectrum Verizon Wireless should be required to divest); see also Rural Telecommunications Group Petition to Deny at 19 n.43 (claiming that the Commission can determine the appropriate markets for divestiture using information from the Universal Licensing System ("ULS") database). Similarly, the Rural Carriers suggest that the Commission should require divestiture of all spectrum in excess of 95 megahertz that it would hold below 2 GHz. Rural Carriers Petition at 9 n.18.

<sup>338</sup> Rural Carriers Petition at 9. In particular, the Rural Carriers suggest the Commission require Verizon Wireless to divest CMA153 Columbus, GA-AL; CMA261 Albany, GA; CMA311 Alabama 5-Cleburne; CMA314 Alabama 8-Lee; CMA375 Georgia 5-Haralson; CMA376 Georgia 6-Spalding; CMA392 Idaho 5-Butte; and CMA393 Idaho 6-Clark. Rural Carriers Petition at 10.

<sup>339</sup> Joint Opposition at 39-40.

<sup>340</sup> *Sprint-Nextel Order*, 20 FCC Rcd at 14010 ¶ 119.

Most of these five markets are smaller markets with relatively high market shares for the merged entity and few competing service providers. In these markets, we are concerned that, post-transaction, competing service providers would not be sufficiently numerous to deter anticompetitive behavior by the merged entity.<sup>341</sup>

<u>Market</u>	<u>Market Name</u>
CMA181	Muskegon, MI
CMA427	Iowa 16-Lyon
CMA476	Michigan 5-Manistee
CMA478	Michigan 7-Newaygo
CMA650	Tennessee 8-Johnson

101. Generally, we find that, in any market in which the transaction would reduce the number of genuine competitors to three or fewer, the proposed transaction may result in a significant likelihood of successful unilateral effects and/or coordinated interaction.<sup>342</sup> The following five markets, which are the markets where we are requiring business unit divestitures, represent markets in which the acquisition would reduce the number of competitors and result in a significant likelihood of anticompetitive behavior of the combined firm. In fact, in one of these five markets, the number of fully constructed operators will be reduced from two to one.<sup>343</sup> In four of these markets, we expect that the post-transaction market share of the combined entity likely would make it profitable for the entity to raise prices and restrict output. We conclude that the presence and capacity of rival service providers, taking into account near-term opportunities to obtain access to additional spectrum, are such that the response of rival service providers is likely to be insufficient to deter successful unilateral effects and/or coordinated interaction by the merged entity.

102. *Iowa Market.* CMA427 Iowa 16-Lyon is contiguous to several markets that the Applicants have voluntarily agreed to divest.<sup>344</sup> We have competitive concerns relating to this market because of a high combined market share that would result with the merged entity, and because there is insufficient coverage by other nationwide service providers or large regional providers that could prevent anticompetitive behavior.<sup>345</sup> In this market, the Applicants currently have [REDACTED] market shares, and post transaction the combined entity would have a market share of [REDACTED], [REDACTED] times greater than the nearest competitor. In addition, the transaction would reduce the number of other service providers with market share greater than [REDACTED] to two providers, neither of which offers

<sup>341</sup> Application of the initial screen on a CEA basis shows that no potential markets of concern are identified that are not also identified by CMA application of the screen. For convenience, we limit our discussion of the markets of concern to CMAs because, upon completing our competitive analysis, we find that the most exact divestiture area to eliminate concerns of competitive harm would be CMAs. Therefore, we undertake our in-depth analysis on the basis of CMA areas only.

<sup>342</sup> *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 191.

<sup>343</sup> For purposes of this determination, we define fully built-out as having coverage of at least 70% of the population in the CMA.

<sup>344</sup> These contiguous markets are CMA253 Sioux City-IA-NE, CMA267 Sioux Falls, SD, CMA419 Iowa 8-Monona, CMA490 Minnesota 9-Pipestone, and CMA642 South Dakota 9-Hanson.

<sup>345</sup> We conclude that spectrum aggregation in this market does not raise concerns of competitive harm. AWS-1 is included in the spectrum aggregation screen, while BRS spectrum is not. Post-transaction, the merged entity would hold 87 to 114 megahertz in this CMA out of a possible 370 megahertz, reflecting approximately 23.5% to 30.8% of this spectrum. There are many other licensees in the market as well as significant other spectrum available for use.

nationwide service plans that could discipline anticompetitive behavior by the merged entity with respect to offering nationwide service. Also, although there would be four service providers, including the merged entity, post-transaction that would cover 70 percent of the CMA population and land area, Verizon Wireless would be the only nationwide or larger regional service provider with this degree of coverage in CMA427 Iowa 16-Lyon.

103. We find that absent divestiture, it is likely that the merged entity could behave in an anticompetitive manner because of its high combined market share and that it would be the only nationwide service provider covering 70 percent or more of the CMA population and more than 50 percent of the CMA land area. Given the demographics of the area, it is unlikely that in the near term a nationwide service provider or large regional provider would be able to enter the market to discipline the combined entity, and therefore a divestiture of this market would provide the opportunity for an additional competitor to enter the market. Therefore, we conclude that there is substantial risk that the proposed transaction, without a divestiture, would lead to anticompetitive harms in the Iowa 16-Lyon CMA.

104. *Michigan Cluster.* This cluster includes three CMAs in Michigan – CMA181 Muskegon, MI, CMA476 Michigan 5-Manistee, and CMA478 Michigan 7-Newaygo – none of which are contiguous to markets being voluntarily divested. These three markets raise specific concerns that relate to the combined market share that would result, as well as the lack of network coverage in terms of both land area and population.<sup>346</sup> The combined market share for this cluster ranges from [REDACTED] in CMA181 Muskegon, MI to [REDACTED] in CMA476 Michigan 5-Manistee.<sup>347</sup> In terms of market share there is a reduction from four to three service providers in CMA181 Muskegon, MI. Further, in CMA181 Muskegon, MI, there is a reduction from four to three service providers that cover 70 percent or more of the CMA population.

105. We find that absent divestiture, it is likely that the merged entity could behave in an anticompetitive manner. In this cluster, there is a reduction in terms of market share and population coverage from four to three service providers in a non-rural CMA (CMA181 Muskegon, MI). Although the reduction in the number of service providers with sufficient network coverage is less in the two rural CMAs, the merged entity's combined market share in these two markets, coupled with the reduction in competition in CMA181 Muskegon, may facilitate anticompetitive behavior by the merged entity.

106. *CMA650 Tennessee 8-Johnson.* In this CMA, which is contiguous to two markets that are voluntarily being divested,<sup>348</sup> we are primarily concerned that because of lack of network coverage by other providers, there is likelihood of competitive harm.<sup>349</sup> The transaction as proposed would consolidate the only two service providers covering more than 25 percent or more of this CMA's land area. The transaction also would reduce from three to two the number of service providers covering

<sup>346</sup> For CMA181 Muskegon, MI and CMA478 Michigan 7-Newaygo, AWS-1 and BRS spectrum is included in the spectrum aggregation screen. Post-transaction, the merged entity would hold 94 to 119 megahertz in these CMAs out of a possible 425 megahertz, and therefore spectrum aggregation is unlikely in and of itself to result in competitive harms. For CMA476 Michigan 5-Manistee, AWS-1 spectrum is included in the spectrum aggregation screen. Post-transaction, the merged entity would hold 82 to 87 megahertz in this CMA out of a possible 370 megahertz, and therefore spectrum aggregation is unlikely in and of itself to result in competitive harms.

<sup>347</sup> Verizon Wireless's market share in CMA476 Michigan 5-Manistee is [REDACTED].

<sup>348</sup> The two CMAs are CMA566 North Carolina 2-Yancey and CMA681 Virginia 1-Lee.

<sup>349</sup> We conclude that spectrum aggregation in this market does not raise concerns of competitive harm. If all relevant spectrum holdings in this CMA were combined, the merged entity's total spectrum aggregation on a county-by-county basis in this CMA would come to 107 megahertz of a total of 370 megahertz of cellular, PCS, SMR, 700 MHz, AWS-1 spectrum available for mobile telephony/broadband services within the CMA, reflecting approximately 28.9% of this spectrum. There are many other licensees in the market as well as significant other spectrum available for use.

significant percentages of the population. In sum, we find that this transaction would substantially reduce the number of providers covering a significant percentage of the population and land area in this market. Therefore, we find it unlikely that other providers with network coverage in this market could effectively discipline the merged entity, and conclude that divestiture is appropriate.

107. *Specific Markets in Which Competitive Harm Is Not Likely.* We find, as discussed below, that business unit divestitures are not required in the other five markets.

108. *Alabama Cluster.* This cluster includes two CMAs – CMA310 Alabama 4-Bibb and CMA314 Alabama 8-Lee. These CMAs are contiguous to several voluntary divestiture markets.<sup>350</sup> Of concern in both of these CMAs is the level of network coverage.<sup>351</sup> In CMA310 Alabama 4-Bibb, we are primarily concerned with a reduction in the number of service providers that cover more than 70 percent of the population and more than 50 percent of the land area from three service providers to two. For CMA314 Alabama 8-Lee, the merged entity would have a combined market share of [REDACTED], but the transaction would reduce the number of service providers with market share greater than [REDACTED] from six providers to five.

109. Even though these markets raise these concerns, we nonetheless find that, on the balance, it is unlikely that this transaction would result in competitive harm. While in CMA310 Alabama 4-Bibb, there are only three providers that cover more than 70 percent of the population, Sprint Nextel covers approximately 63 percent and T-Mobile 60 percent, and both have sufficient capacity to expand their network to cover 70 percent or more of the population in the near term. Also, both Sprint Nextel and T-Mobile have market shares greater than [REDACTED] in CMA310 Alabama 4-Bibb. Further, the porting data suggests that in this CMA neither ALLTEL's nor Verizon Wireless's customers consider the other as their next best choice of service provider.<sup>352</sup> In CMA314 Alabama 8-Lee, we note that, although the combined entity would hold a greater than [REDACTED] market share, two of the other three nationwide service providers hold market shares greater than [REDACTED] and cover more than 70 percent of the CMA population, and therefore would likely be able to discipline the market in the event that the combined firm attempted to behave in an anticompetitive manner. In addition, for both of these Alabama markets, we find that the significant presence of major service providers in nearby metropolitan markets, such as Montgomery, Alabama, and Columbus, Georgia, with their ability to extend their presence, also is likely to provide a check on possible anticompetitive behavior by the merged entity post transaction.

110. *North Carolina Market.* In CMA573 North Carolina 9-Camden, our primary concern is that there would be a loss of a competitor that covers a significant portion of the CMA, leaving only two service providers that cover around 70 percent or more of the CMA population.<sup>353</sup> Specifically, two

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<sup>350</sup> Both CMAs in the Alabama Cluster are contiguous to CMA313 Alabama 7-Butler. Also, CMA314 Alabama 8 is also contiguous to several other divestiture markets – CMA246 Dothan, AL; CMA379 Georgia 9-Marion; and CMA383 Georgia 13-Early.

<sup>351</sup> For both of these CMAs, AWS-1 and BRS spectrum is included in the spectrum aggregation screen. Post-transaction, the merged entity would hold 92 to 127 megahertz in these CMAs out of a possible 425 megahertz, and therefore spectrum aggregation is unlikely in and of itself to result in competitive harms.

<sup>352</sup> [REDACTED] of Verizon Wireless's customers have ported to ALLTEL and [REDACTED] of ALLTEL's customers have ported to Verizon Wireless.

<sup>353</sup> We conclude that spectrum aggregation in this market does not raise concerns of competitive harm. AWS-1 and BRS are included in the spectrum aggregation screen for this CMA. Post-transaction, the merged entity would hold 87 to 97 megahertz in these CMAs out of a possible 425 megahertz, and therefore spectrum aggregation is unlikely in and of itself to result in competitive harms.

service providers – ALLTEL and U.S. Cellular – currently cover 70 percent or more of the CMA population and 50 percent or more of the land area.

111. Examination of other factors, however, leads us to conclude that, on balance, it is unlikely that this transaction would result in competitive harms. Both Sprint Nextel and T-Mobile have market share greater than [REDACTED] in this market, and all of the other three nationwide providers' network coverage overlaps the majority of the network overlap between Verizon Wireless and ALLTEL. Therefore, the nationwide service providers and U.S. Cellular should be able to effectively discipline the merged entity if it attempts to behave in an anticompetitive manner. Further, in this market more than [REDACTED] of ports for both Verizon Wireless and ALLTEL went to U.S. Cellular, which has a market share of [REDACTED] and covers more in terms of both population and land area than either of the merging entities. Therefore, the transaction may provide a stronger competitor in this market to U.S. Cellular.

112. *Tennessee/North Carolina/Virginia Cluster.* This cluster includes two CMAs – CMA085 Johnson City and CMA646 Tennessee 4-Hamblen. CMA085 Johnson City is contiguous to two voluntary divestiture markets,<sup>354</sup> while CMA646 Tennessee 4-Hamblen is not contiguous to any of the markets being voluntarily divested. Our chief concern regarding CMA646 Tennessee 4-Hamblen is that there is a reduction in competition in terms of population covered by the network, while in CMA085 Johnson City our concerns relate to market share and land area coverage.<sup>355</sup> The combined market share is [REDACTED] in CMA085 Johnson City and there is a reduction in the number of service providers from five to four in this CMA. In terms of population coverage, there is a reduction from four to three service providers in CMA646 Tennessee 4-Hamblen. In terms of land area coverage there is a reduction from four to three in CMA085 Johnson City. For CMA085 Johnson City, AWS-1 is included in the analysis; however, BRS is not. In this CMA, post transaction, the merged entity would hold 107 megahertz out of a possible 370 megahertz.

113. Although these markets raise these concerns, we conclude, on balance that it is unlikely that this transaction would result in competitive harms. In both CMAs, the nationwide service providers have sufficient market share coverage, and capacity to counter any anticompetitive actions of the combined firm. Specifically in CMA085 Johnson City, the other three nationwide service providers have market share greater than [REDACTED], and extensive network coverage of the population. In CMA646 Tennessee 4-Hamblen, AT&T Mobility LLC (“AT&T Mobility”) has a market share of over [REDACTED] and Sprint Nextel's share is over [REDACTED]. Therefore, these firms should be able to discipline the merged entity if it behaves in an anticompetitive manner.

## VI. POTENTIAL PUBLIC INTEREST BENEFITS

114. In addition to assessing the potential competitive harms of the proposed Verizon Wireless-ALLTEL transaction, we also consider whether the respective combination of these companies' wireless operations is likely to generate verifiable, transaction-specific public interest benefits.<sup>356</sup> In

<sup>354</sup> The two CMAs are CMA566 North Carolina 2-Yancey and CMA681 Virginia 1-Lee.

<sup>355</sup> For CMA646 Tennessee 4-Hamblen, AWS-1 and BRS are included in the analysis, and post-transaction the merged entity would hold 102 to 107 megahertz in this CMA out of a possible 425 megahertz. Therefore, spectrum aggregation is unlikely in and of itself to result in competitive harms.

<sup>356</sup> See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12383 at ¶ 75; *Verizon Wireless-RCC Order*, 22 FCC Rcd at 12504 ¶ 91; *AT&T-Dobson Order*, 22 FCC Rcd at 20330 ¶ 73; *AT&T-BellSouth Order*, 22 FCC Rcd at 5760 ¶ 200; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 105; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13100 ¶ 132; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.