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

In the Matter of
IT&E OVERSEAS, INC., Transferor,
and
PTI PACIFICA INC., Transferee.

WC Docket No. 08-54

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FEDERAL COMMUNICATIONS COMMISSION

MEMORANDUM OPINION AND ORDER AND DECLARATORY RULING

Adopted: May 12, 2009

Released: May 12, 2009

By the Acting Chief, Wireline Competition Bureau; Acting Chief, Wireless Telecommunications Bureau;
Acting Chief, International Bureau:

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I. INTRODUCTION

1. In this Memorandum Opinion and Order and Declaratory Ruling, we consider a series of applications filed by IT&E Overseas, Inc. (IT&E) and PTI Pacifica Inc. (PTI Pacifica, and together with IT&E, the Applicants) pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (Act).¹ In these applications, the Applicants seek Federal Communications Commission (Commission) approval for the assignment and transfer of domestic and international section 214 assets and authorizations and Title III licenses from IT&E to PTI Pacifica.² Pacific Telecom Inc. (PTI), the indirect parent company of PTI Pacifica, also requests a declaratory ruling under section 310(b)(4) of the Communications Act that the proposed acquisition by PTI Pacifica of IT&E's common carrier satellite earth station and Local Multipoint Distribution Service (LMDS) licenses is consistent with the public interest.³ Based on the record, we find that Applicants have met their burden and that grant of this transfer of assets, licenses, and authorizations, and grant of the petition for declaratory ruling will serve the public interest, convenience, and necessity. We also deny the petition to condition the transaction filed by Guam Cellular and Paging Inc., GTA TeleGuam, LLC (GTA), Pacific Data Systems, and Choice Phone, LLC (collectively, Petitioners),⁴ but condition the grant of the application and associated petition for declaratory ruling on compliance by PTI Pacifica with the provisions of the agreement between the Micronesian Telecommunications Corporation (MTC) and PTI, and the Federal Bureau of Investigation (FBI), the United States Department of Justice (DOJ), the United States Department of Defense (DOD), and the United States Department of Homeland Security (DHS), dated October 6, 2003 (2003 Executive Branch Agreement). We further condition the grant of the application on Applicants' voluntary commitment not to raise 1+ presubscribed wireline rates for three years from the date of this Order.

II. BACKGROUND

A. The Applicants

1. The Transferor

2. IT&E, a Guam corporation, provides presubscribed and prepaid interstate and

¹ 47 U.S.C. §§ 214, 310(d).

² See Application of IT&E Overseas, Inc., Transferor, and PTI Pacifica Inc., Transferee, for Joint International and Domestic Section 214 Consent to Assignment/Acquisition of Assets and Title III Wireless Licenses, ULS File No. 0003356838; ITC-ASG-20080404-00164, SES-ASG-20080404-00423, ISP-PDR-20080403-00007, WC Docket No. 08-54 (filed Apr. 7, 2008) (together, the Application). The overall Application consists of three separate applications: an Application for Authority to Transfer Domestic Section 214 Authorizations (Domestic Authorizations Application), an Application for Authority to Assign International Section 214 Authorizations (International Authorizations Application), and an Application for Authority to Assign Title III Wireless Licenses (Wireless Licenses Application). On April 22 and 25, 2008, attorneys for Applicants filed letters submitting supplemental information on the Domestic Authorizations Application. See Letter from Kenneth D. Patrich and Timothy J. Cooney, Counsel for PTI Pacifica, and Mary J. Sisak, Counsel for IT&E, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated April 22, 2008 (PTI Pacifica April 22, 2008 *Ex Parte* Letter); Letter from Kenneth D. Patrich and Timothy J. Cooney, Counsel for PTI Pacifica, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated April 25, 2008 (PTI Pacifica April 25, 2008 *Ex Parte* Letter). Appendix A to this Memorandum Opinion and Order and Declaratory Ruling lists the authorizations and licenses associated with the Application.

³ 47 U.S.C. § 310(b)(4). See Petition of Pacific Telecom Inc. for Declaratory Ruling under Section 310(b)(4) of the Communications Act of 1934, As Amended, File No. ISP-PDR-20080403-00007 (filed Apr. 3, 2008). PTI filed an updated Petition for Declaratory Ruling on May 2, 2008 (Updated PTI Petition for Declaratory Ruling). All citations herein are to the Updated PTI Petition for Declaratory Ruling.

⁴ Petition to Condition, WC Docket No. 08-54 (filed May 12, 2008) (Joint Petition).

international service in Guam and the Commonwealth of the Northern Mariana Islands (CNMI) and is a competitive local exchange carrier (LEC) in Guam.⁵ IT&E holds PCS and LMDS licenses on Guam and the CNMI, private microwave licenses and an earth station license in Guam, and an international and domestic section 214 authorization in both the CNMI and Guam.⁶ IT&E, by virtue of holding PCS licenses, holds 40 megahertz of Commercial Mobile Radio Service (CMRS) spectrum in both the Guam Basic Trading Area (BTA) (BTA490) and the CNMI BTA (BTA493).⁷ IT&E provides wireless services to its customers in Guam using both Code Division Multiple Access (CDMA) and Global Systems of Mobile Communications (GSM) network.⁸ IT&E's GSM network is equipped with General Packet Radio Services (GPRS) to provide wireless data services to its customers.⁹ Two U.S. citizens own directly a 10 percent or greater interest in IT&E: Jose D. Perez (74.7%) and John M. Borlas (23.9%).¹⁰

2. The Transferee

3. PTI Pacifica, a CNMI corporation,¹¹ provides presubscribed and prepaid interstate service in Guam and the CNMI¹² and provides wireless services to customers in CNMI.¹³ PTI Pacifica holds PCS, 700 MHz,¹⁴ and microwave licenses in both the CNMI and Guam and a cellular license in Guam. PTI Pacifica currently holds 42 megahertz of CMRS spectrum in the Guam BTA (BTA490) and 67 megahertz of CMRS spectrum in the CNMI BTA (BTA493).¹⁵ Using its wireless licenses, PTI Pacifica states that it provides wireless services to customers in the CNMI using both CDMA and GSM technology.¹⁶ Recently, PTI Pacifica announced that it had deployed Evolution Data Optimized (EV-DO)

⁵ Domestic Authorizations Application at 3.

⁶ *Id.*

⁷ Wireless Licenses Application, Spectrum Aggregation at 1. IT&E Overseas holds the 30 megahertz C-Block PCS license and 10 megahertz D-Block PCS license in the Guam BTA (BTA490) and CNMI BTA (BTA493). *See* Wireless Licenses Application, Status of CMRS Competition in Transaction Markets at 1.

⁸ IT&E, About Digital PCS, <http://www.ite.net/help/wireless/about.php#pcs> (last visited May 12, 2009); IT&E, About GSM, http://www.ite.net/help/wireless/about_gsm.php#1 (last visited May 12, 2009) (IT&E About GSM).

⁹ IT&E About GSM at 2.

¹⁰ PTI April 22, 2008 *Ex Parte* Letter at 1.

¹¹ Domestic Authorizations Application at 2.

¹² PTI April 22, 2008 *Ex Parte* Letter at 1.

¹³ Wireless Licenses Application at 1.

¹⁴ PTI Pacifica was also the high bidder for the 12 MHz A-Block 700 MHz license covering the Guam-Northern Mariana Islands Basic Economic Area (BEA) in Auction 73. Wireless Licenses Application, Description of Transaction and Public Interest Statement at 3. *See also* Application, File No. 0003381416. This license was granted on February 20, 2009. *See Wireless Telecommunications Bureau Grants 700 MHz Band Licenses*, Public Notice, DA 09-420 (rel. Feb. 20, 2009)

¹⁵ Wireless Licenses Application, Description of Transaction and Public Interest Statement at 3. PTI Pacifica holds the 30 megahertz A-Block PCS license in the Guam BTA (BTA490) and the 25 megahertz B-Block Cellular license and 30 megahertz A-Block PCS license in CNMI BTA (BTA493). *See* Wireless Licenses Application, Status of CMRS Competition in Transaction Markets at 1.

¹⁶ Wireless Licenses Application, Description of Transaction and Public Interest Statement at 1. *See also* PTI, About PTI, http://www.pticom.com/global/about_pti.cfm (last visited May 12, 2009); PTI, PTI Signs Purchase Agreement for IT&E Assets and Brand, at 1 (Feb. 27, 2008) (PTI Press Release), *available at* http://www.pticom.com/global/news_and_info.cfm?vzid=1 (last visited May 12, 2009).

technology on the islands of Saipan, Tinian, and Rota in the CNMI.¹⁷

4. PTI Pacifica is a wholly owned subsidiary of MTC, a CNMI corporation that provides incumbent LEC service in the CNMI.¹⁸ MTC, in turn, is wholly owned by PTI, a holding company incorporated in the CNMI.¹⁹ The following entities own at least 10 percent of the equity of PTI: Prospector Investments Ltd. (Prospector) (75%) and Sumitomo Corporation (Sumitomo) (25%).²⁰ Prospector, a Cayman Islands investment entity, is directly owned by two related individuals, both of whom are citizens of the Philippines: Ricardo C. Delgado (60%) and Jose Ricardo Delgado (40%).²¹ Applicants state that Sumitomo, a Japanese holding company, is publicly traded in Japan, and no entity owns 10 percent or more of the equity of this company.²² Applicants further state that Prospector and Sumitomo do not hold a greater than 10 percent direct or indirect interest in any other U.S. telecommunications provider.²³

B. The Transaction

5. On February 26, 2008, Applicants reached an agreement by which IT&E would sell to PTI Pacifica all of its telecommunications assets, including its FCC licenses and authorizations, on CNMI and Guam. On April 4, 2008, Applicants filed an application to assign wireless²⁴ and international assets from IT&E to PTI Pacifica.²⁵ Three days later, on April 7, 2008, Applicants filed a joint international and domestic section 214 application for consent to assign certain authorizations, infrastructure, and subscriber bases pursuant to sections 63.03, 63.04, 63.12, and 63.24(e) of the Commission's rules.²⁶ IT&E also notified the Commission that it intends to relinquish its designation as an Eligible Telecommunications Carrier (ETC) for all of its service areas, pursuant to section 214(e)(4) of the Act.²⁷ PTI Pacifica has stated that it intends to honor IT&E's existing customer contracts²⁸ and will not raise

¹⁷ See PTI, PTI Launches EV-DO in CNMI (Aug. 12, 2008), available at http://www.pticom.com/global/news_and_info.cfm?vzid=10 (last visited May 12, 2009).

¹⁸ Domestic Authorizations Application at 2.

¹⁹ *Id.*

²⁰ *Id.* Sumitomo Corporation owns 20 percent of PTI, and Sumitomo Corporation's wholly owned subsidiary, Sumitomo Corporation of America, owns 5 percent of PTI. See *infra* para. 65 and note 207.

²¹ *Id.*

²² PTI April 25, 2008 *Ex Parte* Letter.

²³ PTI April 25, 2008 *Ex Parte* Letter; PTI April 22, 2008 *Ex Parte* Letter at 2.

²⁴ Applicants filed an amendment to their Wireless Licenses Application on May 2, 2008.

²⁵ See *supra* note 2.

²⁶ 47 C.F.R. §§ 63.03, 63.04, 63.12, 63.24(e); see 47 U.S.C. § 214.

²⁷ It states that such relinquishment will take place upon the completion of IT&E's license transfers to PTI Pacifica. Letter from Benjamin H. Dickens, Jr. and Mary J. Sisak, Counsel for IT&E, to Marlene H. Dortch, Secretary, FCC (filed Aug. 4, 2008) (IT&E August 4, 2008 *Ex Parte* Letter). Pursuant to section 214(e)(4) of the Act, IT&E provided notice of its intent to relinquish its designation as an eligible telecommunications carrier (ETC) in Guam upon completion of IT&E's license transfers to PTI Pacifica. 47 U.S.C. § 214(e)(4). IT&E demonstrated that four other carriers, including PTI Pacifica, are designated as ETCs for the entirety of IT&E's designated area in Guam, and that PTI Pacifica will continue providing service without interruption to all of IT&E's customers. IT&E August 4, 2008 *Ex Parte* Letter. Therefore, IT&E is permitted to relinquish its ETC designation in Guam.

²⁸ Domestic Authorizations Application at 3 n.4.

long distance rates for presubscribed customers as part of the transaction.²⁹

6. On April 9, 2008, the Wireless Telecommunications Bureau announced that the application seeking consent to the assignment of wireless licenses from IT&E Overseas to PTI Pacifica was accepted for filing and set the pleading cycle.³⁰ On April 28, 2008, the Wireline Competition Bureau issued a public notice establishing a non-streamlined pleading cycle for this transaction.³¹ The International Bureau issued a public notice of the petition for declaratory ruling, applications to assign the earth station license, and international section 214 authorization on April 29, 2008, May 2, 2008, and May 14, 2008, respectively.³² On April 16, 2009, the Wireless Telecommunications Bureau released a public notice announcing that the relevant Numbering Resource Utilization and Forecast (NRUF) reports and local number portability (LNP) data for all wireless telecommunications providers as of June 30, 2008 would be placed into the record and adopted a protective order pursuant to which Applicants and third parties would be allowed to review the specific NRUF reports and LNP data placed into the record.³³

C. Filings on the Transfer Application

7. *Executive Branch Agencies.* In response to the public notices described above, several filers have made various requests in regards to this transaction. As described below, the DOJ, FBI, and DHS (collectively, Executive Branch Agencies) made several filings addressing potential national security, law enforcement, and public safety issues and stated that they have no objection to grant of the applications and petition for declaratory ruling.³⁴ The Executive Branch Agencies, however, based their

²⁹ PTI Pacifica April 22, 2008 *Ex Parte* Letter at 2.

³⁰ See *Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and De Facto Transfer Lease Applications, and Designated Entity Reportable Eligibility Event Applications Accepted for Filing*, Public Notice, Report No. 3974, at 2 (rel. April 9, 2008). Petitions to deny were due on April 23, 2008. See *id.*

³¹ *Domestic Section 214 Application Filed for the Transfer of Assets of IT&E Overseas, Inc. to PTI Pacifica Inc.*, WC Docket No. 08-54, Public Notice, 23 FCC Rcd 6942 (WCB 2008).

³² See *Non Streamlined International Applications/Petitions Accepted for Filing*, Public Notice, Report No. TEL-01262NS, File No. ISP-PDR-20080403-00007 (rel. Apr. 29, 2008) (petition for declaratory ruling); *Satellite Communications Services Re: Satellite Radio Applications Accepted for Filing*, Public Notice, Report No. SES-01032, File Nos. SES-ASG-20080404-00424, SES-AMD-20080502-00527 (rel. May 14, 2008) (Satellite Earth Station Application); *Streamlined International Applications Accepted for Filing*, Public Notice, Report No. TEL-01270S, File No. ITC-ASG-20080404-00164 (rel. May 16, 2008) (International Authorizations Application).

³³ *Applications of PTI Pacifica Inc. and IT&E Overseas, Inc. for Consent to Assign Licenses; Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports Placed into the Record, Subject to Protective Order*, ULS File No. 0003356838, CC Docket No. 99-200, Public Notice, DA 09-844 (rel. Apr. 16, 2009).

³⁴ Letter from John Connors, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-54, ITC-ASG-20080403-00164, SES-ASG-20080404-00423, ISP-PDR-20080403-00007, ULS 003356838 (filed May 12, 2008) (Executive Branch May 12, 2008 *Ex Parte* Letter) (requesting that the Commission defer action on the applications and petition for declaratory ruling regarding the assignment of international and domestic section 214 authorizations so that DOJ, FBI, and DHS could complete their review for any national security, law enforcement, and public safety issues); Letter from John Connors, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-54, ITC-ASG-20080403-00164, SES-ASG-20080404-00423, ISP-PDR-20080403-00007, ULS 003356838 (filed June 5, 2008) (Executive Branch June 5, 2008 *Ex Parte* Letter) (withdrawing the request of DOJ, including the FBI, with the concurrence of DHS, to defer action on the applications and petition for declaratory ruling regarding the assignment of international and domestic section 214 authorizations).

approval on Applicants' request that the Commission condition its grant subject to compliance with the terms set forth in the 2003 Executive Branch Agreement.³⁵

8. *Joint Petition.* On May 12, 2008, Guam Cellular and Paging Inc., GTA TeleGuam, LLC (GTA), Pacific Data Systems, and Choice Phone, LLC (collectively, Petitioners) filed jointly a Petition to Condition the Transaction (Joint Petition).³⁶ Applicants filed a Reply on May 19, 2008.³⁷ GTA filed a supplement to the Joint Petition on June 19, 2008.³⁸

9. The Joint Petition requested that the Commission expressly grant the transaction subject to safeguards to ensure fair and competitive rates and to prevent competitive harms.³⁹ The Petitioners argue that the transaction will reduce competition by consolidating market power in the interstate wireline and wireless telecommunications markets and increase existing barriers to entry.⁴⁰ They also assert that "the proposed transaction will increase . . . spectrum concentration for PTI."⁴¹ They also emphasize that PTI controls the only fiber-optic submarine cable between the CNMI and Guam and argue that the transaction "raises the potential for competitive harm through further vertical integration."⁴² As evidence of the likely anticompetitive conduct, the Joint Petition states that rates charged for use of PTI's submarine cable are exceedingly high.⁴³ To protect against the harms from this new vertical integration, the Petitioners state that PTI should have to "partially divest a portion of its cable capacity to a competing provider or providers . . ."⁴⁴ Alternatively, they request that the Commission take measures to ensure access to PTI's submarine cable at fair and competitive rates.⁴⁵

10. On May 19, 2008, the Applicants replied to the Joint Petition. The Applicants argue that the submarine cable is not a part of the current transaction,⁴⁶ that the interstate long distance market is competitive,⁴⁷ and that the vague contention that the transaction would lessen wireless competition is not supported by evidence.⁴⁸ The Applicants further argue that the Commission should not impose conditions or special rates on the submarine cable because the cable at issue in the Joint Petition is not a part of the current transaction,⁴⁹ and because the Commission has previously denied what was essentially the same

³⁵ Executive Branch June 5, 2008 *Ex Parte* Letter at 1-2.

³⁶ Petition to Condition, WC Docket No. 08-54 (filed May 12, 2008).

³⁷ Joint Opposition to Petition to Condition Grant of Domestic Section 214 Application, WC Docket No. 08-54 (filed May 19, 2008) (Applicant Reply).

³⁸ Letter from Andrew D. Lipman and Paul O. Gagnier, Counsel for GTA Telecom, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-54 (filed June 19, 2008) (GTA June 19, 2008 *Ex Parte* Letter).

³⁹ Joint Petition at 4-11

⁴⁰ *Id.* at iii.

⁴¹ *Id.* at 7.

⁴² *Id.* at 8, 10.

⁴³ *Id.* at iii, 9.

⁴⁴ *Id.* at 11.

⁴⁵ *Id.*

⁴⁶ Applicant Reply at 1.

⁴⁷ *See id.* at 3.

⁴⁸ *Id.* at 5.

⁴⁹ *See id.* 1-2, 6-9.

request for this cable in a prior transaction.⁵⁰ Finally, the Applicants replied to the assertion that the transaction would lead to a combined 107 megahertz of spectrum, triggering the FCC's 95 megahertz spectrum aggregation screen. The Applicants argue that the Commission has previously approved spectrum aggregation of 107 MHz in other markets where there is significant competition, as there is in the CNMI. The Applicants further claim that the Petitioners do not argue that there is a lack of spectrum in the CNMI, especially given that the Commission recently had a spectrum auction in this market.⁵¹

III. DISCUSSION

A. Framework of Analysis

11. Pursuant to sections 214(a) and 310(d) of the Act,⁵² the Commission must determine whether the proposed assignment and transfer of assets, licenses, and authorizations held and controlled by IT&E to PTI Pacifica will serve the public interest, convenience, and necessity.⁵³ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules. If the proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes. The Commission then employs a balancing test weighing any potential public interest harms of the proposed transaction against the potential public interest benefits.⁵⁴ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.⁵⁵ If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we must designate the application for hearing.⁵⁶

⁵⁰ See *id.*

⁵¹ See *id.* at 5-6.

⁵² 47 U.S.C. §§ 214(a), 310(d).

⁵³ 47 U.S.C. § 310(d) requires that we consider applications for transfer of Title III licenses under the same standard as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. See, e.g., *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, Memorandum Opinion and Order & Declaratory Ruling, 23 FCC Rcd 17444, 17460-61, para. 26 (2008) (*Verizon/ALLTEL Order*); *Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc.*, WT Docket No. 06-96, Memorandum Opinion and Order and Declaratory Ruling, 21 FCC Rcd 13580, 13588, para. 13 (2006) (*DoCoMo/Guam Cellular Order*); *SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18300, n.60 (2005) (*SBC/AT&T Order*).

⁵⁴ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17460-61, para. 26; *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13589, para. 13; *SBC/AT&T Order*, 20 FCC Rcd at 18300, para. 16.

⁵⁵ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17460-61, para. 26; *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13589, para. 13; *SBC/AT&T Order*, 20 FCC Rcd at 18300, para. 16.

⁵⁶ We are not required to designate for hearing applications for the transfer or assignment of Title II authorizations when we are unable to find that the public interest would be served by granting the applications. See *ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979). We may do so if we find that a hearing would be in the public interest. However, with respect to the applications to transfer licenses subject to Title III of the Act, if we are unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact, section 309(e) of the Act requires that we designate the application for hearing. 47 (continued....)

12. Our public interest evaluation necessarily encompasses the “broad aims of the Communications Act,”⁵⁷ which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing the spectrum in the public interest.⁵⁸ Our public interest analysis may also entail assessing whether the proposed transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.⁵⁹ In conducting this analysis, the Commission may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.⁶⁰

13. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.⁶¹ The Commission and DOJ each have independent authority to examine the competitive impacts of proposed communications mergers and transactions involving transfers of Commission licenses, but the standards governing the Commission’s competitive review differ somewhat from those applied by DOJ.⁶² Like DOJ, the Commission considers how a transaction will affect competition by defining a relevant market, looking at the market power of incumbent competitors, and analyzing barriers to entry, potential competition, and the efficiencies, if any, that may result from the transaction. DOJ, however, reviews telecommunications mergers pursuant to section 7 of the Clayton Act, and if it wishes to block a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.⁶³ Under the Commission’s review, the Applicants must show that the transaction will serve the public interest; otherwise the application is set for hearing. DOJ’s review is also limited solely to an examination of the competitive effects of the acquisition, without reference to other public interest considerations.⁶⁴ The Commission’s

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U.S.C. § 309(e); *Verizon/ALLTEL Order*, 23 FCC Rcd at 17461, para. 26; see *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13589, para. 13.

⁵⁷ See *Verizon/ALLTEL Order*, 23 FCC Rcd at 17461, para. 27; *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13591, para. 15; *SBC/AT&T Order*, 20 FCC Rcd at 18301, para. 17.

⁵⁸ See 47 U.S.C. §§ 157 nt. (incorporating section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act)), 254, 332(c)(7); 1996 Act, Preamble; *Verizon/ALLTEL Order*, 23 FCC Rcd at 17461, para. 27; *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13591, para. 15; *SBC/AT&T Order*, 20 FCC Rcd at 18301, para. 17; see also *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18030-31, para. 9 (1998) (*WorldCom/MCI Order*); *2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services*, Report and Order, FCC 01-328, 16 FCC Rcd 22668, 22696, para. 55 (2001) (citing 47 U.S.C. §§ 301, 303, 309(j), 310(d)); cf. 47 U.S.C. §§ 521(4), 532(a).

⁵⁹ See *Verizon/ALLTEL Order*, 23 FCC Rcd at 17461, para. 27; *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13591, para. 15; *SBC/AT&T Order*, 20 FCC Rcd at 18301, para. 17.

⁶⁰ See *Verizon/ALLTEL Order*, 23 FCC Rcd at 17461, para. 27; *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13591, para. 15; *SBC/AT&T Order*, 20 FCC Rcd at 18301-02, para. 17.

⁶¹ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17462, para. 28; *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13591, para. 16; *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5673, para. 21 (2007) (*AT&T/BellSouth Order*).

⁶² See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17462, para. 28.

⁶³ 15 U.S.C. § 18.

⁶⁴ See *Verizon/ALLTELL Order*, 23 FCC Rcd. at 17462, para. 28; *Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, MB (continued...)

competitive analysis under the public interest standard is somewhat broader, for example, considering whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant market.⁶⁵

14. Our analysis recognizes that a proposed transaction may lead to both beneficial and harmful consequences.⁶⁶ For instance, combining assets may allow a firm to reduce transaction costs and offer new products, but it may also create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.⁶⁷ Our public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.⁶⁸ Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.⁶⁹ Similarly, section 214(c) of the Act authorizes the Commission to attach to the certificate “such terms and conditions as in its judgment the public convenience and necessity may require.”⁷⁰ Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to rely upon our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits.⁷¹ Despite this broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission’s responsibilities under the Communications Act and related statutes.⁷² Thus, we generally will not impose conditions to remedy pre-existing harms or harms that are unrelated to the

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Docket No. 07-57, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12365-66, para. 32 (2008) (*XM/Sirius Order*).

⁶⁵ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17462, para. 28; *XM/Sirius Order*, 23 FCC Rcd at 12365-66, para. 32.

⁶⁶ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17462, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 21; *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13592, para. 16.

⁶⁷ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17462, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 21; *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13592, para. 16.

⁶⁸ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22; *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13592, para. 16.

⁶⁹ 47 U.S.C. § 303(r); see also *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22; *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13592, para. 17.

⁷⁰ 47 U.S.C. § 214(c); see also *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22; *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13592, para. 17.

⁷¹ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22; *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13592, para. 17. See also *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043, 1049 (7th Cir. 1992) (discussing Commission’s authority to trade off reduction in competition for increase in diversity in enforcing public interest standard).

⁷² See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22; *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13592, para. 17.

transaction.⁷³

15. Our analysis starts with an examination of whether the Applicants are qualified to hold and assign licenses.⁷⁴ Next, we consider the arguments raised by commenters regarding the potential harms and benefits of the proposed transaction, as well as its effects on competition. We then consider foreign ownership issues. Finally, we consider issues related to national security, law enforcement, foreign policy, and trade policy.

B. Qualifications of the Applicants

16. As a threshold matter, we must determine whether the Applicants meet the requisite qualifications to hold and assign and transfer licenses under section 310(d) of the Act and the Commission's rules. In general, when evaluating assignments under section 310(d), we do not re-evaluate the qualifications of the transferor.⁷⁵ The exception to this rule occurs where issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.⁷⁶ This is not the case here, so we need not re-evaluate IT&E's basic qualifications.

17. Section 310(d) also requires that the Commission consider the qualifications of the proposed transferee as if the transferee were applying for the license directly under section 308 of the

⁷³ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22; *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13592, para. 17.

⁷⁴ See 47 U.S.C. §§ 214(a), 310(d).

⁷⁵ See *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13590, para. 14; *Applications of Midwest Wireless Holdings, L.L.C. and Alltel Communications, Inc.*, WT Docket No. 05-339, Memorandum Opinion and Order, 21 FCC Rcd 11526, 11536, para. 17 (2006) (*Alltel/Midwest Wireless Order*); *Applications of Nextel Partners, Inc., Transferor, And Nextel Wip Corp. and Sprint Nextel Corporation, Transferees*, Memorandum Opinion and Order, 21 FCC Rcd 7358, 7362, para. 10 (*Sprint Nextel/Nextel Partners Order*); *SBC/AT&T Order*, 20 FCC Rcd at 18379, para. 171; *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18526, para. 183 (2005) (*Verizon/MCI Order*); *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, Memorandum Opinion and Order, 20 FCC Rcd 13967, 13979, para. 24 (2005) (*Sprint/Nextel Order*); *Applications of Western Wireless Corporation and Alltel Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-50, Memorandum Opinion and Order, 20 FCC Rcd 13053, 13063-64, para. 18 (2005) (*Alltel/Western Wireless Order*); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket 04-70, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21546, para. 44 (2004) (*Cingular/AT&T Wireless Order*); *Applications of VoiceStream Wireless Corporation and Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, IB Docket No. 00-187, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9790, para. 19 (2001) (*Deutsche Telekom/VoiceStream Order*); *Verizon/ALLTEL Order*, 23 FCC Rcd at 17464, para. 31; *Applications of Sprint Nextel Corporation and Clearwire Corporation For Consent to Transfer Control of Licenses, Leases and Authorizations*, WT Docket No. 08-94, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17570, 17582-82, para. 23 (2008) (*Sprint Nextel/Clearwire Order*).

⁷⁶ See *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13590, para. 14; *Alltel/Midwest Wireless Order*, 21 FCC Rcd 11536, para. 17; *Sprint Nextel/Nextel Partners Order*, 21 FCC Rcd at 7362, para. 10; *SBC/AT&T Order*, 20 FCC Rcd at 18379, para. 171; *Verizon/MCI Order*, 20 FCC Rcd at 18526, para. 183; *Sprint/Nextel Order*, 20 FCC Rcd at 13979, para. 24; *Alltel/Western Wireless Order*, 20 FCC Rcd at 13063-64, para. 18; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21546, para. 44; *Deutsche Telekom/VoiceStream Order*, 16 FCC Rcd at 9790, para. 19; *Verizon/ALLTEL Order*, 23 FCC Rcd at 17464, para. 31; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd 17582-83, para. 23.

Act.⁷⁷ In this proceeding, no issues have been raised with respect to the basic qualifications of PTI Pacifica or IT&E, both of which previously have been found qualified to hold FCC licenses and authorizations in the past. Thus, we find that, at this time, there is no reason to re-evaluate the qualifications of these entities.

C. Effect on Competition

1. Analytical Framework

18. In this section, we consider the potential public interest harms, including potential harms to competition, arising from this assignment and transfer of assets. Consistent with Commission precedent, in addition to considering whether the transaction will reduce existing competition, we also focus on its likely effect on future competition.⁷⁸ We consider the potential public interest harms, including potential harms to competition, arising from the merger. Because IT&E and PTI Pacifica currently compete in some of the same product markets and for some of the same groups of customers, we must consider the potential horizontal effects of this merger.⁷⁹

19. With respect to the horizontal effects, consistent with Commission precedent, we first perform a structural analysis of the merger to examine whether it is likely to result in anticompetitive effects.⁸⁰ We begin by defining the relevant product markets⁸¹ and relevant geographic markets.⁸² We next identify market participants and examine market concentration and how concentration will change as a result of the merger. If our structural analysis suggests that the merger may have anticompetitive effects, we must then examine, in more detail, whether and how the merger might affect competitive

⁷⁷ Section 308 requires that applicants for Commission licenses set forth such facts as the Commission may require as to citizenship, character, and financial, technical, and other qualifications. See 47 U.S.C. § 308. Our rules implementing the provisions of section 308 regarding an applicant's qualifications to hold the Commission licenses involved in this transfer are set forth in Parts 5, 25, and 63 of the Commission's rules. See 47 C.F.R. Parts 5, 25, 63. See also *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13590, para. 14; *Alltel/Midwest Wireless Order*, 21 FCC Rcd at 11536, para. 17; *Sprint Nextel/Nextel Partners Order*, 21 FCC Rcd at 7362, para. 10; *SBC/AT&T Order*, 20 FCC Rcd at 18379, para. 171; *Verizon/MCI Order*, 20 FCC Rcd at 18526, para. 183; *Alltel/Western Wireless Order*, 20 FCC Rcd at 13063-64, para. 18; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21546, para. 44.

⁷⁸ See *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 21; *SBC/AT&T Order*, 20 FCC Rcd at 18302, para. 18.

⁷⁹ A transaction is said to be horizontal when the firms in the transaction sell products that are in the same relevant markets and are therefore viewed as reasonable substitutes by purchasers of the products. *AT&T/BellSouth Order*, 22 FCC Rcd at 5675, para. 23 n.82.

⁸⁰ Structural merger analysis, as the name suggests, considers structural characteristics of the merging firms and the relevant markets, such as market shares and entry conditions, to make predictions about the likely competitive effects of a proposed merger.

⁸¹ A relevant product market has been defined as the smallest group of competing products for which a hypothetical monopoly provider of the products would profitably impose at least a "small but significant and nontransitory" increase in price." Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, (Apr. 2, 1992, revised Apr. 8, 1997) §§ 1.11, 1.12 (*DOJ/FTC Guidelines*); see also *AT&T/BellSouth Order*, 22 FCC Rcd at 5675, para. 24 n.85.

⁸² A relevant geographic market has been defined "as the region where a hypothetical monopolist that is the only producer of the relevant product in the region would profitably impose at least a 'small but significant and nontransitory' increase in the price of the relevant product, assuming that the prices of all products provided elsewhere do not change." *AT&T/BellSouth Order*, 22 FCC Rcd at 5675, para. 24 n.86 (citing *DOJ/FTC Guidelines* § 1.21).

behavior.⁸³

2. Wireline Services - Long Distance Market

20. *Relevant Product Market*: The relevant wireline product markets involved in this transaction concern long distance service. As the Commission previously explained, in defining the relevant market for long distance service, it is necessary to consider both the demand for access and the demand for usage because both types of demand affect whether consumers view products as reasonable substitutes.⁸⁴

21. The Commission previously has found that long distance service purchased on a stand-alone basis is becoming a fringe market.⁸⁵ The Commission also has found that focusing on presubscribed long distance by itself is overly narrow and can overstate market position, because it ignores the fact that all presubscribed interexchange customers can also make long distance calls using transaction services (*e.g.*, prepaid calling cards, dial around services, calling centers) and mobile voice services.⁸⁶ Evidence adduced by the Applicants convinces us that, in the case of Guam and the CNMI, long distance customers rely primarily on transaction services and mobile voice services in making long distance calls, and that they only infrequently use a presubscribed interexchange carrier.⁸⁷ For example, the Applicants point out that calls made using a presubscribed interexchange carrier make up less than 11 percent of overall wireline switched access long distance calls.⁸⁸ More generally, the Applicants assert that the unique demographics of the CNMI and Guam play a significant role in customers choosing not to use presubscribed long distance services. They contend that a large segment of consumers, including low income, foreign itinerant workers, and military personnel, use services other than presubscribed interexchange service to make long distance calls and that they will likely continue to do so after the transaction.⁸⁹ They explain that non-resident workers and military personnel living in barrack housing often rely on calling cards and calling centers, and that callers whose home countries are accessible only by satellite service and are therefore more expensive to call, prefer to use pre-paid calling cards to monitor their usage.⁹⁰ The Applicants also point out that many extended families live in one home with one residential line and that because payment responsibility issues may arise, households choose not to

⁸³ *Id.* at 5676, para. 25. The Commission has explained that competition may be harmed either through unilateral actions by a merged entity or through coordinated interaction among firms competing in the relevant market. See *Verizon/ALLTEL Order*, 23 FCC Rcd at 17484, para. 82. Unilateral effects “are those that result when a merged firm finds it profitable to alter its behavior by increasing prices or reducing output.” See *id.* n.298 (citing *DOJ/FTC Horizontal Merger Guidelines* § 2.2) 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 *id.* n.299 (citing *DOJ/FTC Horizontal Merger Guidelines* § 2.1).

⁸⁴ *Verizon/MCI Order*, 20 FCC Rcd at 18336-37, paras. 83-84.

⁸⁵ See *id.* at 18483, para. 92.

⁸⁶ *SBC/AT&T Order*, 20 FCC Rcd at 18342-44, paras. 92-99; *Verizon/MCI Order*, 20 FCC Rcd at 18484-85, paras. 93-95; *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules as They Apply After Section 272 Sunsets*, WC Docket No. 05-333, Memorandum Opinion and Order, 22 FCC Rcd 5207, 5218-19, paras. 17-18 (2007).

⁸⁷ PTI Pacifica April 22, 2008 *Ex Parte* Letter at I-2; Applicant Reply at 4; Letter from Kenneth D. Patrich and Timothy J. Cooney, Counsel for PTI Pacifica, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-54, at 2, 4 (filed Apr. 27, 2009) (PTI Pacifica April 27, 2009 *Ex Parte* Letter).

⁸⁸ PTI Pacifica April 27, 2009 *Ex Parte* Letter at 3.

⁸⁹ Applicant Reply at 4.

⁹⁰ PTI Pacifica April 27, 2009 *Ex Parte* Letter at 4, n.13.

use 1+ dialing.⁹¹

22. The Applicants assert that both facilities-based and non-facilities-based carriers provide transaction services, and that non-facilities-based carriers offer their own pre-paid calling cards and operate local calling centers that resell private lines, wireline switched service, mobile voice, and/or Voice over Internet Protocol (VoIP) to provide low cost calling.⁹² In addition, the Applicants state that, with the exception of an agreement in Guam, PTI Pacifica has no agreements to resell its long distance service.⁹³ The Applicants further assert that some prepaid card competitors use local numbers connected to Internet-based long distance services.⁹⁴

23. The Petitioners respond that we should not consider prepaid services or calling centers to be part of a competitive market because it is not clear whether the providers offer actual competitive options.⁹⁵ We agree with the Applicants that this argument ignores the specific demographics in these territories, as explained above.⁹⁶ In fact, the Commission previously has found that consumers who cannot otherwise afford long distance, wireless, home phone service, or who have targeted calling needs often use prepaid cards instead of subscribing to a long distance service.⁹⁷ While we recognize that the Commission previously stated that prepaid services may be less significant in other parts of the United States,⁹⁸ we find, based on the record here, that such services are a practical competitive alternative in Guam and the CNMI.⁹⁹

24. We also find it appropriate to include mobile voice services in the relevant market at least to some extent based upon usage substitution between wireless and wireline long distance service. The Commission previously explained that a consumer who subscribes to both a mobile wireless service and a wireline long distance service generally will allocate minutes between these services in an optimal manner, *i.e.*, the consumer will seek the lowest possible charge, consider service quality, and consider the time the call is placed.¹⁰⁰ The Commission also has found that consumers are increasingly using wireless service for long distance calls.¹⁰¹ The record evidence in this case suggests that consumers in Guam and the CNMI are even more likely to use mobile wireless service to make long distance calls. In particular,

⁹¹ *Id.*

⁹² Applicant Reply at 4; PTI Pacifica April 27, 2009 *Ex Parte* Letter at 2. Applicants primarily focus on the CNMI in their description of transaction services to refute arguments by the Petitioners that IT&E's and PTI Pacifica's combined market share for presubscribed long distance services would be anti-competitive.

⁹³ Letter from Kenneth D. Patrich and Timothy J. Cooney, Counsel for PTI Pacifica, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-54, at 1 (filed May 1, 2009) (PTI Pacifica May 1, 2009 *Ex Parte* Letter).

⁹⁴ *Id.* at 2-3. Applicants state that calling centers and some prepaid calling cards that used to be based on reselling switched services now use Internet cafes or service centers that use Skype, Magic Jack, or other Internet-based long distance service. There is insufficient information in this record to assess the precise extent to which consumers use VoIP services specifically for long distance calls.

⁹⁵ Joint Petition at 6, n.20.

⁹⁶ Applicant Reply at 4.

⁹⁷ *AT&T/BellSouth Order*, 22 FCC Rcd at 5716-17, para. 100; *SBC/AT&T Order*, 20 FCC Rcd at 18343, para. 94.

⁹⁸ Applicant Reply at 4.

⁹⁹ See PTI Pacifica April 22, 2008 *Ex Parte* Letter at 3 (stating that it provides a non-exhaustive list of long distance competitors in Guam and CNMI).

¹⁰⁰ *Verizon/MCI Order*, 20 FCC Rcd at 18484-85, para. 94.

¹⁰¹ See *AT&T/BellSouth Order*, 22 FCC Rcd at 5716, paras. 98-99.

the Applicants have submitted evidence indicating that facilities-based wireless carriers offer rate plans with long distance service to the U.S. mainland and other destinations for free.¹⁰² They also maintain that the number of incumbent LEC lines in both Guam and the CNMI have declined between 10 and 15 percent.¹⁰³ We agree with the Applicants that this decrease suggests that consumers may be taking advantage of wireless calling alternatives and will continue to have competitive choices after the merger. Indeed, the Petitioners have not disputed the Applicants' assertion that the availability of free calling plans by the wireless carriers may account for the decrease in access lines.¹⁰⁴

25. *Relevant Geographic Market:* Although the Applicants, citing the *LEC Classification Order*, argue that we should consider the long distance market to be a national market,¹⁰⁵ we note that the Commission previously has stated that it would consider a smaller relevant geographic market if it found evidence that there is, or could be, a lack of competition in a particular market.¹⁰⁶ Because the Applicants here, IT&E and PTI Pacifica, serve island populations that are remote from the U.S. mainland, and the issue before us is whether there will be a lessening of long distance competition, we find it appropriate to consider Guam and the CNMI as a narrower relevant geographic market for purposes of this analysis.

26. *Market Participants:* As the foregoing illustrates, PTI Pacifica faces competition from retail mass market long distance providers. These include facilities-based wireline providers, non-facilities based providers that offer transaction services, and wireless service providers.

27. *Competitive Analysis:* There is no dispute that, if one performs a structural analysis that considers only 1+ presubscribed long distance services in the CNMI, then the proposed transaction will result in an extremely high level of concentration.¹⁰⁷ Petitioners state that, as of 2003, PTI Pacifica controlled 70 percent of the CNMI 1+ long distance market and IT&E controlled over 20 percent, and that this makes it likely that the combined company will have a 90 percent 1+ market share in the CNMI.¹⁰⁸ The Applicants have submitted updated market share data indicating that the combined companies would have a substantial share of the 1+ market in the CNMI.¹⁰⁹ In Guam, the Petitioners have stated that they believe IT&E has at least 54 percent of the 1+ presubscribed market.¹¹⁰ PTI Pacifica submitted information indicating that the combined companies will have a much less substantial share of the 1+ long distance market in Guam than in CNMI, and that, in any event, adding PTI Pacifica's

¹⁰² PTI Pacifica April 27, 2009 *Ex Parte* Letter at 2, 5.

¹⁰³ Applicant Reply at 3.

¹⁰⁴ PTI Pacifica April 22, 2008 *Ex Parte* Letter at 2; PTI Pacifica April 27, 2009 *Ex Parte* Letter at 2.

¹⁰⁵ PTI Pacifica April 27, 2009 *Ex Parte* Letter at 3 (referring to *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15794, para. 66 (1997) (*LEC Classification Order*)). See *WorldCom/MCI Order*, 13 FCC Rcd at 18119-20, para. 166.

¹⁰⁶ *LEC Classification Order*, 12 FCC Rcd at 15794, para. 66.

¹⁰⁷ We discuss the Applicants' market shares before and after the merger instead of the Herfindahl-Hirschman Index (HHI) because we do not have sufficient market share information for all of the competitors.

¹⁰⁸ Joint Petition at 6-7 (citing *Bell Atlantic New Zealand Holdings, Inc. and Pacific Telecom, Inc. Applications for Consent to Transfer Control*, IB Docket No. 03-115, Order and Authorization, 18 FCC Rcd 23140 (IB, WCB, WTB 2003) (*BANZHI/PTI Order*) and Joint Opposition to Petitions to Deny and Comments, IB Docket No. 03-115 (filed June 24, 2003)). See also Petition of Pacific Telecom Inc. for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, As Amended, IB Docket No. 03-115, at 13 and Att. C (filed Apr. 18, 2003).

¹⁰⁹ PTI Pacifica April 27, 2009 *Ex Parte* Letter at 4.

¹¹⁰ Joint Petition at 5, n.17.

customers does not appreciably add to the IT&E market share in Guam.¹¹¹

28. Although we agree with the Petitioners that the Applicants' post merger market share for 1+ presubscribed services is high in the CNMI, we find that this measure greatly overstates the likely competitive impact of the merger. Our analysis is limited to the information in this record. First, as discussed above, 1+ calls represent only 11 percent of overall wireline switched access long distance services in the CNMI. The discussion above also indicates that, because of the unusual demographic conditions in Guam and the CNMI, consumers rely much more on transaction services. According to the Applicants, if one broadens the market analysis to consider all originating wireline long distance minutes, the Applicants' combined companies would have a significantly lower share of the market in the CNMI, and this combined share is primarily due to PTI's pre-merger share of the market.¹¹²

29. There is other record evidence that presubscribed 1+ service is becoming less and less important. For example, PTI Pacifica's average revenue per minute for wireline long distance calls has dropped significantly since 2003, which the Applicants assert is due to intense price competition, including the free long distance calling plans offered by wireless carriers, and the use of transaction services.¹¹³ In addition, the Applicants maintain that the number of wireless subscribers in the CNMI is approximately double the number of wireline loops.¹¹⁴ We note that this argument is consistent with the Commission's prior finding that consumers are increasingly using wireless service for long distance calls,¹¹⁵ and it is reasonable to assume that these subscribers take advantage of long distance wireless calling plans. Although PTI Pacifica also provides wireless services in the CNMI, we find that PTI Pacifica faces significant competition from other facilities-based wireless carriers, Guam Cellular d/b/a Saipancell and Choice Phone d/b/a I-Connect, which both offer free long distance plans to the U.S. mainland and other destinations, in addition to competition from facilities-based wireline carriers, Telepacific Network, Inc. (TNI) (which Applicants state is affiliated with GTA TeleGuam, an affiliate of the incumbent LEC in Guam), and MCI.¹¹⁶

30. We recognize that originating long distance calls in the CNMI that competitors carry likely will be routed via leased capacity on PTI Pacifica's undersea cable to the competitors' facilities on Guam. Because the proposed transaction will not result in an increase in concentration on this cable, however, we do not find this to be a merger-specific harm.¹¹⁷

31. Thus, given the special characteristics of Guam and the CNMI – in particular, consumers' heavy reliance on transaction and mobile voice services and relatively limited use of 1+ services, and the continued presence of competitors providing transaction and mobile voice services – we find that the

¹¹¹ PTI Pacifica April 27, 2009 *Ex Parte* Letter at n.11 and Confidential Table 3.

¹¹² *Id.* at 5 and Confidential Table 1; PTI May 1, 2009 *Ex Parte* Letter at 2-3 (stating that the overall wireline market share does not take into account competitive, Internet-based long distance service like Skype and Magic Jack, which has a significant presence on CNMI).

¹¹³ PTI Pacifica April 27, 2009 *Ex Parte* Letter at 5-6.

¹¹⁴ *Id.* at 5.

¹¹⁵ *AT&T/BellSouth Order*, 22 FCC Rcd at 5716, paras. 98–99.

¹¹⁶ PTI Pacifica April 27, 2009 *Ex Parte* Letter at Table 1; PTI Pacifica May 1, 2009 *Ex Parte* Letter at 1-2.

¹¹⁷ PTI Pacifica May 1, 2009 *Ex Parte* Letter at 3, n.6. With respect to other facilities, the Applicants state that PTI Pacifica has Commission authority for microwave facilities between Guam and the CNMI that it uses as a back-up to the undersea cable, and that microwave facilities owned by IT&E on Guam provide only backhaul for the wireless network and cannot be used for CNMI-Guam traffic. Applicants also state that competitors can apply for their own CNMI-Guam authorizations, and that the Commission granted a competitive undersea cable application in 1997. *Id.*

proposed transaction is unlikely to have anticompetitive effects on long distance services. We are further assured by the fact that the Applicants have also voluntarily committed not to raise 1+ presubscribed wireline rates for three years from the date of this Order,¹¹⁸ and we adopt this commitment as a binding condition of our approval of this transaction.

3. Mobile Telephony/Broadband Services Market

32. Consistent with the Commission's practice when reviewing proposed wireless transactions affecting the mobile telephony/broadband services market, we consider the potential competitive harms associated with this assignment application.¹¹⁹ First, we establish the appropriate market definitions for our evaluation of the proposed transaction. We define the relevant product and geographic markets, the input market for spectrum, and identify market participants that would compete with the combined firm in the provision of mobile telephony/broadband services.

33. *Product Market.* In reviewing this proposed spectrum transfer application, we apply the same product market definition for mobile telephony/broadband services as applied by the Commission in recent transactions.¹²⁰ Although the Commission has determined that there are separate relevant product markets for interconnected mobile voice services and mobile data services, and also for residential services and enterprise services,¹²¹ it nevertheless analyzes all of these product markets under the combined market for mobile telephony/broadband services.¹²² Based on consideration of various factors, including the nature of these services and their relationship with each other, the Commission has determined that this approach provides a reasonable assessment of any potential competitive harm resulting from transactions.¹²³

34. *Geographic Market.* The Commission applies the "hypothetical monopolist test" to relevant geographic markets and has found that they 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.¹²⁴

¹¹⁸ PTI Pacifica April 27, 2009 *Ex Parte* Letter at 6; PTI Pacifica April 22, 2008 *Ex Parte* Letter at 2.

¹¹⁹ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17468-94, paras. 40-113; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17583-604, paras. 24-84.

¹²⁰ *Verizon/ALLTEL Order*, 23 FCC Rcd at 17469-70, paras. 45-47; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17586-89, paras. 38-45.

¹²¹ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17470, para. 45 n.198; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17586, para. 38 n.106; *Applications of Celco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases and Petitions for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 07-208, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 12463, 12483-84, para. 37 (*Verizon/RCC Order*); *Applications of AT&T Inc. and Dobson Communications Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 07-153, Memorandum Opinion and Order, 22 FCC Rcd 20295, 20308, para. 21 (2007) (*AT&T/Dobson Order*).

¹²² See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17469-70, paras. 45-47; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17579, para. 19 n.69; *Verizon/RCC Order*, 23 FCC Rcd at 12483-84, para. 37; *AT&T/Dobson Order*, 22 FCC Rcd at 20308, para. 21.

¹²³ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17469-70, paras. 45-47; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17579, para. 19 n.69; *Verizon/RCC Order*, 23 FCC Rcd at 12483-84, para. 37; *AT&T/Dobson Order*, 22 FCC Rcd at 20308, para. 21.

¹²⁴ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17470-71, para. 49; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17579, para. 19 n.69; *Verizon/RCC Order*, 23 FCC Rcd at 12484, para. 38; *AT&T/Dobson Order*, 22 FCC Rcd at 20309, para. 23.

The Commission uses two sets of geographic areas that effectively may be used to define local markets – Component Economic Areas (CEAs) and Cellular Market Areas (CMAs).¹²⁵ Because these two sets of geographic areas come separately from the demand and supply sides – demand in the case of CEAs, supply in the case of CMAs – the Commission finds 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.¹²⁶

35. *Input Market for Spectrum.* Consistent with the Commission’s recent wireless transaction orders, we also examine this transaction in light of the input market for spectrum associated with the provision of mobile telephony/broadband services in the affected markets. In the *Verizon/ALLTEL Order* and the *Sprint Nextel/Clearwire Order* adopted in November 2008, the Commission determined that the input market would vary depending on the “suitable” spectrum available in the particular market affected by the transaction. Specifically, the Commission found that spectrum suitable for the provision of mobile telephony/broadband services includes approximately 280 megahertz of cellular, broadband PCS, Specialized Mobile Radio (SMR), and 700 MHz band spectrum that is available for the provision of mobile telephony/broadband services on a nationwide basis,¹²⁷ as well as the 90 megahertz of Advanced Wireless Service spectrum in the 1.7/2.1 GHz band (AWS-1) and the 55.5 megahertz of contiguous Broadband Radio Service (BRS) spectrum in the 2.5 GHz band to the extent such spectrum also is available for the provision of mobile telephony/broadband services.¹²⁸

36. *Market Participants.* Consistent with recent wireless transaction orders, when computing initial measures of market concentration, we limit our analysis of transactions involving mobile telephony/broadband services to cellular, PCS, and SMR facilities-based service providers, and exclude satellite service providers, nomadic wireless VoIP providers, mobile virtual network operators (MVNOs), and resellers from consideration.¹²⁹ We find that mobile telephony/broadband services offered by

¹²⁵ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17471 n.200; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17591 n.136; *Verizon/RCC Order*, 23 FCC Rcd at 12484 n.151; *AT&T/Dobson Order*, 22 FCC Rcd at 20309, para. 23.

¹²⁶ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17470-7, para. 49; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17579, para. 19 n.69; *Verizon/RCC Order*, 23 FCC Rcd at 12484-85, para. 39; *AT&T/Dobson Order*, 22 FCC Rcd at 20309, para. 23.

¹²⁷ *Verizon/ALLTEL Order*, 23 FCC Rcd at 17473, para. 53; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17591-92, para.53.

¹²⁸ *Verizon/ALLTEL Order*, 23 FCC Rcd at 17473-74, paras. 53-55; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17591-92, paras. 53-55.

¹²⁹ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17480-81, para. 71; *Sprint/Clearwire Order*, 22 FCC Rcd at 17600, para. 75; *AT&T/Dobson Order*, 22 FCC Rcd at 20316, para. 36. 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 (last visited May 12, 2009); GlobalStar, Airtime Pricing, Voice Pricing, at <http://www.globalcomsatphone.com/satellite/services/globalstar.html> (last visited May 12, 2009). See also *Verizon/ALLTEL Order*, 23 FCC Rcd at 17480 n.274; *Sprint/Clearwire Order*, 22 FCC Rcd at 17600 n.204; *AT&T/Dobson Order*, 22 FCC Rcd at 20316 n.130. 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, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17480 n.274; *Sprint/Clearwire Order*, 22 FCC Rcd at 17600 n.204; *AT&T/Dobson Order*, 22 FCC Rcd at 20316 n.130. 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, e.g., *Verizon/ALLTEL Order*, 23 FCC (continued....)

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.¹³⁰ In addition, 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.¹³¹

37. The Applicants propose that providers of WiMAX services at 2.5 GHz, resellers, wireless VoIP providers, and satellite carriers should be considered market participants because of the evolving competitive mobile services market in Guam and the CNMI.¹³²

38. Under Commission precedent, we generally limit our analysis to facilities-based service providers, either nationwide or regional, excluding MVNOs and resellers from consideration when computing initial concentration measures. While the Commission has acknowledged that non-facilities based service options have an impact in the marketplace and in some instances may provide additional constraints against anticompetitive behavior, to date, in evaluating proposed transactions involving mergers of wireless service providers, the Commission has not included resellers or MVNOs in its initial screen.¹³³ 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.

39. *Initial Screen.* When examining the effect of proposed transactions, the Commission applies a two-part 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 in today’s generally competitive marketplace.¹³⁴ For those markets that are not eliminated by the initial screen, we then conduct, on a market-by-market basis, an analysis of other market factors that pertain to competitive effects, including the incentive and ability of other existing firms to react and of new firms to enter the market, in response to attempted exercises of market power by the merged entity. Ultimately, we must assess whether the combined firm could likely exercise market power in any particular market.¹³⁵

40. The first part of this screen examines changes in the measures of the HHI of market concentration in each affected market, which is calculated based on providers’ subscriber market

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Rcd at 17480 n.274; *Sprint/Clearwire Order*, 22 FCC Rcd at 17600 n.204; *AT&T/Dobson Order*, 22 FCC Rcd at 20316 n.130.

¹³⁰ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17480-81, para. 71; *Sprint/Clearwire Order*, 22 FCC Rcd at 17600, para. 75; *AT&T/Dobson Order*, 22 FCC Rcd at 20316, para. 36.

¹³¹ See *Verizon/ALLTEL Order*, 23 FCC Rcd at 17480-81, para. 71; *Sprint/Clearwire Order*, 22 FCC Rcd at 17600-0, para. 75; *AT&T/Dobson Order*, 22 FCC Rcd at 20316, para. 36.

¹³² Wireless Licenses Application, Description of Transaction and Public Interest Statement at 4.

¹³³ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17481, para. 74; *Verizon Wireless/RCC Order*, 22 FC Rcd at 12488-89, para. 50; *AT&T/Dobson Order*, 22 FCC Rcd at 20317, para. 38.

¹³⁴ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17481-82, para. 75; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17601, para. 76; *Verizon Wireless/RCC Order*, 22 FCC Rcd at 12489, para. 51; *AT&T/Dobson Order*, 22 FCC Rcd at 20317, para. 39.

¹³⁵ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17468-69, para. 41; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17583, para. 24; *Verizon Wireless/RCC Order*, 23 FCC Rcd at 12482, para. 32; *AT&T/Dobson Order*, 22 FCC Rcd at 20307, para. 16.

shares.¹³⁶ Our initial HHI screen identifies, for further case-by-case analysis, those markets in which, post-transaction: (1) the HHI would be greater than 2800 and the change in HHI would be 100 or greater or (2) the change in HHI would be 250 or greater, regardless of the level of the HHI.¹³⁷

41. The Petitioners claim that both PTI Pacifica and IT&E provide mobile telephony/broadband services in Guam and the CNMI, and therefore market concentration would increase and competition would be reduced because IT&E would no longer be competing against PTI Pacifica.¹³⁸ The Petitioners conclude that the proposed assignment of wireless licenses will create “significant anti-competitive effects for the wireless markets in the CNMI and Guam.”¹³⁹ However, the Applicants argue that the HHI screen is not triggered in either Guam or the CNMI.¹⁴⁰ Specifically, the Applicants claim that PTI Pacifica does not provide facilities-based mobile telephony service in Guam, and that the HHI screen is not implicated in the CNMI based on IT&E’s subscriber data submitted on a confidential basis in the DoCoMo/Guam Cellular proceeding in September and October of 2006.¹⁴¹ According to the Applicants, the subscriber data IT&E submitted in that proceeding has not changed in the CNMI CMA.¹⁴²

42. In evaluating market concentration in the Guam CMA, we note that only IT&E, and not PTI Pacifica, is providing facilities-based mobile telephony/broadband services in Guam. Thus, the proposed transaction will not result in a change in market concentration. In the CNMI CMA, both PTI Pacifica and IT&E are facilities-based providers of mobile telephony/broadband services; therefore we apply the initial HHI screen. In applying the initial HHI screen, we use NRUF data for June 2008 supplied by wireless service providers in the CNMI CMA (CMA734).¹⁴³ Based on this data, we find that the HHI screen does not indicate that this proposed transaction is likely to result in competitive harm. Although the NRUF data have been a reliable indicator of the number of subscribers in a given relevant geographic market in past transactions, we have concerns regarding the accuracy of the HHIs in the CNMI CMA. In evaluating the NRUF data in the CNMI, we are concerned that some of the wireless service providers in the CNMI may not have reported their numbering information consistently. Thus, out of an abundance of caution, we will analyze the CNMI CMA as if the initial HHI screen was triggered and perform an in-depth analysis to evaluate whether competitive harm could occur as a result of the proposed transaction.

43. The second part of the two-part initial screen examines the input market for spectrum available for the provision of mobile telephony/broadband services in each of the affected markets.¹⁴⁴

¹³⁶ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17468-69, para. 41; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17601, para. 76; *Verizon/RCC Order*, 23 FCC Rcd at 12482, para. 32; *AT&T/Dobson Order*, 22 FCC Rcd at 20306, para. 15.

¹³⁷ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17482-83, para. 78; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17601, para. 76; *Verizon/RCC Order*, 23 FCC Rcd at 12489-90, para. 52; *AT&T/Dobson Order*, 22 FCC Rcd at 20317-18, para. 40.

¹³⁸ Joint Petition at 7.

¹³⁹ *Id.* at 7.

¹⁴⁰ Wireless Licenses Application, Description of the Transaction and Public Interest Statement at 3.

¹⁴¹ *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13599, paras. 12, 30, n.58.

¹⁴² Wireless Licenses Application, Description of Transaction and Public Interest Statement at 3, n.9.

¹⁴³ We decline to use the data submitted in the DoCoMo/Guam Cellular proceeding, because it is over two years old. Although the applicants state that the IT&E subscriber data has not changed, we do not know whether the subscriber data is accurate for the other wireless service providers in the Guam and CNMI CMAs.

¹⁴⁴ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17468-69, para. 41; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17601, para. 76; *Verizon/RCC Order*, 23 FCC Rcd at 12482, para. 32; *AT&T/Dobson Order*, 22 FCC Rcd at 20306, para. 15. (continued....)

This spectrum aggregation screen varies depending on whether, in addition to the 280 megahertz of cellular, broadband PCS, SMR, and 700 MHz spectrum, there also is AWS-1 and/or BRS spectrum available *locally* in the affected market.¹⁴⁵ In markets in which neither AWS-1 nor BRS spectrum is available, the spectrum screen identifies for further competitive review each market in which the proposed spectrum aggregation would amount to 95 megahertz or more of spectrum.¹⁴⁶ In other markets where AWS-1 and/or BRS spectrum is in fact available, the Commission applies a higher spectrum screen.¹⁴⁷

44. With regard to AWS-1 spectrum, it appears that there is no required relocation of transmitters or receivers by government users in the Guam or CNMI CMAs.¹⁴⁸ As a result, AWS-1 spectrum in these CMAs is available for deployment by commercial licensees and is included in the analysis of the competitive effects of this transaction.¹⁴⁹ With regard to BRS spectrum, no BRS licenses have been issued in the Guam or CNMI BTAs that coincide with these CMAs;¹⁵⁰ therefore, BRS spectrum is not included in the analysis of the competitive effects for the Guam and CNMI CMAs. In the Guam and CNMI CMAs, the total amount of spectrum suitable for the provision of mobile telephony/broadband service is 370 megahertz, which includes approximately 200 megahertz of cellular, PCS, and SMR spectrum, 80 megahertz of 700 MHz spectrum, and 90 megahertz of AWS-1 spectrum. This translates to a spectrum aggregation screen of 125 megahertz.¹⁵¹

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Rcd at 17591-92, 17607, paras. 53-55, 77.

¹⁴⁵ See *Verizon/ALLTEL Order*, 23 FCC Rcd at 17468-69, para. 41; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17591-92, para. 53. For markets in which only cellular, PCS, SMR, and 700 MHz spectrum is available, and neither AWS-1 nor BRS spectrum is available, the Commission applies a 95 megahertz spectrum screen. For markets in which AWS-1 and BRS spectrum is available, the applicable screen is 145 megahertz. For markets in which AWS-1 is available but BRS is not available, the Commission applies a spectrum screen of 125 megahertz. Finally, for markets in which BRS is available but AWS-1 is not available, the Commission applies a spectrum screen of 115 megahertz. *Verizon/ALLTEL Order*, 23 FCC Rcd at 17477-78, para. 64; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17600, para. 74.

¹⁴⁶ *Verizon/ALLTEL Order*, 23 FCC Rcd at 17477-78, para. 64; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17600, para. 74.

¹⁴⁷ See *supra* note 145.

¹⁴⁸ See <http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm> (providing information on AWS-1 relocation, including a relocation schedule and cost summary for AWS-1 relocation) (last visited May 12, 2009). See also *Wireless Licenses Application, Description of the Transaction and Public Interest Benefits* at 4 n.15.

¹⁴⁹ AWS-1 spectrum is considered available if the relocation schedule provided by the National Telecommunications and Information Administration is 24 months or less. See *Verizon/ALLTEL Order*, 23 FCC Rcd at 17478-79, para. 66; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17599, para. 72; *Verizon/RCC Order*, 23 FCC Rcd at 12486-87, para. 44; *AT&T/Dobson Order*, 22 FCC Rcd at 20314-15, para. 33. We note the DOJ/FTC Merger Guidelines state that a significant market impact from entry must result within two years for the entry to be considered "timely," and thus potentially a factor ameliorating the enhancement of market power or hindering its exercise. *DOJ/FTC Guidelines* § 3.2.

¹⁵⁰ The Guam BTA (BTA490) and the Guam CMA (CMA732) are coterminous, and the CNMI BTA (BTA493) and the CNMI CMA (CMA734) are also coterminous.

¹⁵¹ Both the Applicants and the Petitioners make arguments regarding the application of an initial spectrum screen. See *Joint Petition* at 8 (citing *BANZHI/PTI Order*, 21 FCC Rcd at 12087, para. 23 (stating that, post transaction, PTI Pacifica's spectrum holdings would exceed the 70 megahertz spectrum aggregation threshold used by the Commission in the *BANZHI-PTI Order* that permitted PTI Pacifica to offer mobile telephone service in both Guam and the CNMI.); *Applicant Reply* at 5, n.21 (acknowledging that they will exceed the 95 megahertz spectrum (continued....))

45. After applying the initial spectrum screen, we find it indicates that neither the Guam nor the CNMI CMAs warrant further competitive analysis because of spectrum aggregation. Upon consummation of the proposed transaction, PTI Pacifica would hold attributable interests in 82 megahertz of spectrum in Guam and 107 megahertz in the CNMI.¹⁵² Thus, PTI Pacifica will not hold or exceed 125 megahertz of spectrum in either market.

46. With respect to the Guam CMA, since neither the HHI nor the initial spectrum aggregation screen indicate that this transaction is likely to result in significant competitive harm to the mobile telephony/broadband services market, we conclude that further analysis is not necessary for this market. We will, however, conduct a further analysis of the CNMI market, for the reasons discussed above, to evaluate whether competitive harm could occur as a result of the proposed transaction.

47. *In-Depth Analysis.* We determine that a detailed competitive analysis of the CNMI CMA is appropriate based on the unique circumstances, as discussed above, and characteristics of the market. Our determination of whether there is competitive harm in a market is not based on our initial market concentration measures. Instead, we apply a multi-factor, market-specific analysis, which draws competitive conclusions based on the totality of the circumstances present in a given market, including market shares, carrier launch and coverage information, spectrum holdings, and any unique characteristics of the market of concern.

48. The Petitioners assert that the proposed transaction would reduce competition because of the increase in the amount of spectrum to be controlled by PTI Pacifica post transaction.¹⁵³ The Applicants argue that the Petitioners make no specific showing to indicate how the proposed transaction would lessen wireless competition, nor do they claim that, post-transaction, insufficient spectrum would be available for other competitors to serve this market.¹⁵⁴ The Applicants contend that there is significant competition in the CNMI and that the Commission has approved spectrum aggregation of 107 megahertz in larger markets where, as in the CNMI, there is significant competition.¹⁵⁵ Further, the Applicants argue that there is 114 megahertz of unclaimed spectrum in the CNMI¹⁵⁶ and that the recently concluded auction of PCS and AWS-1 spectrum (Auction 78) would make 90 of the 114 megahertz of spectrum available to current and potential wireless competitors.¹⁵⁷ Therefore, the Applicants argue that, post transaction, there

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aggregation limit in the CNMI and arguing that the 95 megahertz screen as established in the *AT&T/Dobson Order* is too strict because it does not take into account the 80 megahertz of AWS-1 spectrum that the Commission is auctioning.). We note that these pleadings were filed prior to the revisions to the spectrum screen in the *Verizon/ALLTEL Order* and the *Sprint Nextel/Clearwire Order*.

¹⁵² In the Guam CMA, PTI Pacifica holds the PCS A-block (30 megahertz) and 700 MHz A-block (12 megahertz) licenses, and IT&E holds the PCS C-block (30 megahertz) and the PCS D-block (10 megahertz) licenses. In the CNMI CMA, PTI Pacifica holds the Cellular B-block (25 megahertz), PCS A-block (30 megahertz), and 700 MHz A-block (12 megahertz) licenses, while IT&E holds the PCS C-block (30 megahertz) and PCS D-block (10 megahertz) licenses.

¹⁵³ Joint Petition at 7.

¹⁵⁴ Applicant Reply at 5-6.

¹⁵⁵ Wireless Licenses Application, Description of Transaction and Public Interest Benefit at 3; Applicant Reply at 5.

¹⁵⁶ The 114 megahertz of spectrum includes 10 megahertz of PCS, 24 megahertz of 700 MHz, and 80 megahertz of AWS-1 spectrum. Wireless Licenses Application, Description of Transaction and Public Interest Benefit at 4.

¹⁵⁷ See Applicant Reply at 6. On August 20, 2008, the Commission completed its auction of Broadband PCS and AWS-1 licenses (Auction 78) including the 10 MHz of PCS spectrum and 80 MHz of AWS-1 spectrum that cover the CNMI. Winning bids were placed for all of the licenses covering the CNMI by wireless service providers other than PTI, including Club 42 CM Limited Partnership (Club 42), Pulse Mobile LLC (Pulse Mobile), and Choice (continued....)

would be sufficient spectrum available to new entrants or to a service provider that may be capacity constrained.¹⁵⁸ The Applicants assert that the CNMI market is small, and therefore capacity demands are less than for more populated markets making it less likely that mobile telephony/broadband service providers would be capacity constrained.¹⁵⁹

49. The relevant area of the CNMI consists of limited geography, with three major inhabited islands (Saipan, Tinian, and Rota) and eleven other islands.¹⁶⁰ The fourteen islands of the CNMI have a total geographic area of 176.5 square miles.¹⁶¹ Saipan, Tinian, and Rota alone have a combined total geographic area of 118.5 square miles,¹⁶² while the other eleven islands have a total geographic area of 58 square miles and are either uninhabited or have extremely small populations.¹⁶³ The 2000 Census reported that the CNMI had a population of 69,221 and estimates that the population in 2008 would be approximately 86,616 people.¹⁶⁴ IT&E and PTI Pacifica provide service only on the island of Saipan, and therefore the service overlap in this market is limited to Saipan. Additionally, upon consummation of the transaction, there will remain three facilities-based competitors¹⁶⁵ – Guamcell/Saipancell (a DoCoMo subsidiary), Wave Runner/Choice Phone, and PTI Pacifica – operating on the island of Saipan in the CNMI CMA.

50. We find that, in the CNMI market, there is sufficient spectrum and comparable coverage from other competitive providers in the market. The total combined spectrum available in the market is 370 MHz¹⁶⁶; therefore, the amount of spectrum held by the merged company would constitute 28.9 percent of the spectrum available in the market.¹⁶⁷ With the recently completed auction of PCS and AWS-1 spectrum, an additional 90 megahertz of “new spectrum” became available in the market for

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Phone LLC (Choice Phone). See Auction of AWS-1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, *Public Notice*, 23 FCC Rcd 12749 (2008).

¹⁵⁸ Wireless Licenses Application, Description of Transaction and Public Interest Benefit at 4. We note that Club 42 was also the high bidder for the C-block license in the 700 MHz Band Auction 73. See Wireless Licenses Application, Description of Transaction and Public Interest Benefit at 4; *Auction of 700 MHz Band Closes, Winning Bidders Announced for Auction 73*, Public Notice, 23 FCC Rcd 2574 (2008) (*Auction 73 Winning Bidders PN*). Choice Phone also won the B-block license and Thomas K. Kurian won the E-block license in Auction 73. *Auction 73 Winning Bidders PN*, 23 FCC Rcd at 2574.

¹⁵⁹ Wireless Licenses Application, Description of Transaction and Public Interest Benefit at 4; Applicant Reply at 5-6.

¹⁶⁰ The CNMI Guide, Islands Information, <http://www.cnmi-guide.com/info/> (last visited May 12, 2009) (CNMI Guide); *CIA World Factbook*, available at <https://www.cia.gov/library/publications/the-world-factbook/> (last visited May 12, 2009).

¹⁶¹ See CNMI Guide; see also *CIA World Factbook* (stating it has a total land area of 477 square kilometers).

¹⁶² Saipan, Rota, and Tinian have total land areas of 46.5, 32.8, and 39.2 square miles, respectively. See CNMI Guide.

¹⁶³ See CNMI Guide.

¹⁶⁴ U.S. Census Bureau, 2000.

¹⁶⁵ As noted above, Club 42 purchased the Upper 700 MHz C-Block license for the Guam-Northern Mariana Islands REAG making it a potential fourth competitor in the market. See also discussion *supra* notes 157-58 (discussing Club 42 and other spectrum winners in Auctions 73 and 78).

¹⁶⁶ See *supra* para. 44.

¹⁶⁷ See *supra* para. 45 (stating that, upon consummation of the transaction, PTI Pacifica would hold 107 megahertz of spectrum).

either new entrants or for current facilities-based providers in order to increase their capacity or augment their current spectrum holdings for next generation networks.¹⁶⁸ Therefore in the CNMI CMA, there is approximately 156 to 214 megahertz of spectrum currently available that is not being utilized for the provision of mobile telephony/ broadband services.¹⁶⁹

51. We find that this transaction is unlikely to result in significant competitive harm in the CNMI CMA. The geographic overlap is limited to only a portion of the CNMI CMA—the island of Saipan— and post-transaction there would be three mobile telephony/broadband service providers PTI Pacifica, Guamcell/Saipancell, and Wave Runner/Choice Phone, with spectrum holdings and network coverage that would likely be sufficient to limit the ability and incentive of the combined entity to raise prices unilaterally, reduce service quality, or restrict output. Also, there is at least 150 megahertz of spectrum available in the market either for current service providers to expand capacity or for new entry into the market, further reducing the likelihood of unilateral effects as a result of the transaction. Also, we conclude from our analysis of the various factors we have considered in recent mobile telephony transactions that this transaction is unlikely to alter conditions in the CNMI in such a way as to make coordinated interaction more likely, more successful, or more complete. Post-transaction, three mobile telephony/broadband providers will remain in the CNMI CMA, and each carrier has spectrum holdings and network coverage sufficient to continue to compete vigorously in the provision of mobile telephony services.

4. Issues Related to the Submarine Cable

52. Petitioners argue that PTI's ownership of the submarine cable system connecting Guam and CNMI¹⁷⁰ magnifies the anticompetitive concerns raised by the transaction.¹⁷¹ They request that the Commission condition grant of the transaction either to require PTI to partially divest its interest in the submarine cable system or, alternatively, to impose safeguards ensuring access to the submarine cable system at fair and competitive rates.¹⁷² IT&E has no ownership interest in the MTC Interisland Cable System, so the proposed transaction will not change PTI's ownership in the cable system. Accordingly, the transaction raises no competitive issues in this regard. Further, as discussed above, we find that the proposed transaction is unlikely to result in anticompetitive effects in any other telecommunications market. Consequently, we do not find any need to impose the conditions requested by the Petitioners.

53. Petitioners also argue that the rates charged by PTI for service over the submarine cable system are significantly higher than the rates posted by the National Exchange Carrier Association (NECA).¹⁷³ The Applicants reply that the NECA pool rates cited by the Petitioners are for terrestrial services on the mainland and do not reflect the specific costs of providing submarine cable services in

¹⁶⁸ See discussion *supra* note 157 and accompanying text (discussing recently auctioned spectrum and the winning bidders in Auction 78).

¹⁶⁹ Available spectrum for the provision of mobile telephony/broadband services is as follows on the three major islands: (1) Saipan, 214 megahertz; (2) Rota, 164 megahertz; and (3) Tinian, 164 megahertz .

¹⁷⁰ The MTC Interisland Cable System connects Guam to the CNMI's three primary islands, Saipan, Tinian, and Rota. See *Micronesian Telecommunications Corporation Application For a License To Land and Operate a High Capacity Digital Submarine Cable System Extending Between the Commonwealth of the Northern Mariana Islands and Guam*, File No. S-C-L-92-003, Cable Landing License, 8 FCC Rcd 748 (CCB 1993) (*MTC Interisland Cable Landing License Order*).

¹⁷¹ Joint Petition at 8-10.

¹⁷² *Id.* at 10-11.

¹⁷³ *Id.* at 9.

areas like Guam and the CNMI.¹⁷⁴ We agree that the Petitioners have not shown that the costs of providing terrestrial service are comparable to those for providing service over a submarine cable nor is there any evidence of the costs associated with the building and maintenance of a submarine cable system in an area like Guam and the CNMI. Consequently, there is no evidence in this proceeding that the rates are unjust or unreasonable. In any event, this is not the proper forum for contesting the reasonableness of the rates for the MTC Interisland Cable System.

54. Because the MTC Interisland Cable System is a common carrier facility,¹⁷⁵ Petitioners can raise a claim that the rates for DS3 capacity are unjust and unreasonable through a section 208 complaint alleging a violation of section 201(b) of the Act.¹⁷⁶ Such a remedy will adequately protect the public interest from any anti-competitive concerns without denying the public the benefits of this transaction.

D. Potential Public Interest Benefits

55. In addition to assessing the competitive harms of the proposed transaction, we also consider whether the merger between the Applicants is likely to generate verifiable, transaction-specific public interest benefits.¹⁷⁷ In doing so, we ask whether the combined entity will be able to, and is likely to, pursue business strategies resulting in demonstrable and verifiable benefits that they could not pursue but for the combination.¹⁷⁸ In examining benefits, the FCC applies a “sliding scale approach” to evaluating benefit claims. Where potential harms appear “both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.” On the other hand, where potential harms appear less likely and less substantial, the FCC will accept a lesser showing.¹⁷⁹ As shown below, we find that the proposed transaction is likely to generate transaction-specific public interest benefits, although it is difficult to precisely quantify them.

56. Applicants assert that PTI Pacifica’s acquisition of IT&E’s wireless assets will yield significant public interest benefits.¹⁸⁰ Specifically, the Applicants state that PTI Pacifica will deploy seamless voice and data roaming amongst Guam and the three main CNMI islands.¹⁸¹ They also state that the combined infrastructure and assets will allow PTI Pacifica to offer the latest technology as well as a wider range of products and services to its customers both in Guam and the CNMI.¹⁸² Further, the Applicants state that PTI Pacifica plans to invest several million dollars into IT&E’s wireless network in

¹⁷⁴ Applicant Reply at 7.

¹⁷⁵ See *MTC Interisland Cable Landing License Order*, 8 FCC Rcd 748; *Micronesian Telecommunications Corporation Application For Authority Under Section 214 of the Communications Act of 1934, As Amended, To Construct And Operate the MTC Interisland Cable Between the Commonwealth of the Northern Mariana Islands and Guam*, File No. I-T-C-92-140, Memorandum Opinion, Order and Authorization, 8 FCC Rcd 750 (CCB 1993).

¹⁷⁶ See 47 U.S.C. §§ 201(b), 208.

¹⁷⁷ See, e.g., *SBC/AT&T Order*, 20 FCC Rcd at 18384, para. 182; *Application of GTE Corporation and Bell Atlantic Corporation*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14130, para. 209 (2000) (*Bell Atlantic/GTE Order*).

¹⁷⁸ See *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14130, para. 209.

¹⁷⁹ See, e.g., *Verizon-Alltel Order*, 23 FCC Rcd. at 17497 para. 118; *AT&T/BellSouth Order*, 22 FCC Rcd at 5761–62, para. 203.

¹⁸⁰ Wireless Licenses Application, Description of Transaction and Public Interest Statement at 2.

¹⁸¹ *Id.*

¹⁸² PTI Press Release at 1-2.

the next year to supplement IT&E's CDMA and GSM networks with EVDO Rev A on the CDMA network and expanded GPRS coverage on the GSM network.¹⁸³ The Applicants argue that this upgrade will "constitute Guam's most advanced wireless network, with the fastest wireless broadband speeds."¹⁸⁴ The Applicants also assert that PTI Pacifica's acquisition of IT&E's spectrum will strengthen PTI Pacifica's ability to roll-out spectrum intensive advanced wireless services and allow it to compete more vigorously in the Guam and CNMI markets.¹⁸⁵ Finally, they argue that the proposed transaction would result in PTI Pacifica realizing significant economies of scale allowing it greater flexibility to respond quickly to changing market conditions in order to better service its customer base.¹⁸⁶

57. The Applicants further assert that approval of the proposed transfer will further the public interest in the domestic and international wireline markets in Guam and CNMI by allowing them to respond quickly to competitive offers and by ensuring a seamless transition for customers.¹⁸⁷ We agree with the Applicants that PTI Pacifica, an established and qualified carrier that is accustomed to providing service in the unique markets of Guam and the CNMI, will be able to make substantial investments in IT&E's telecommunications business and infrastructure, as well as realize economies of scale from the transaction so that consumers in both territories will have access to a strong, viable competitor in all the markets in which it provides service.¹⁸⁸

E. Foreign Ownership

58. PTI requests a declaratory ruling under section 310(b)(4) of the Communications Act that PTI Pacifica's acquisition of IT&E's common carrier earth station for Guam and LMDS licenses for Guam and the CNMI is consistent with the public interest.¹⁸⁹ In support of its request, PTI notes that the International Bureau, under delegated authority, previously approved the indirect foreign ownership of PTI Pacifica in two decisions issued in 2003 and 2006.¹⁹⁰ According to PTI, PTI Pacifica's ultimate ownership is substantively the same as it was in 2006, and the proposed transaction raises no new foreign ownership issues. PTI therefore requests that the Commission extend the previous section 310(b)(4) findings to permit PTI's proposed acquisition of IT&E's common carrier earth station license for Guam

¹⁸³ Wireless Licenses Application, Description of Transaction and Public Interest Statement at 2. *See also* PTI Press Release at 1, 2 (stating that PTI Pacifica plans to invest over \$10 million in Guam in the next two years).

¹⁸⁴ Wireless Licenses Application, Description of Transaction and Public Interest Statement at 2.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ Domestic Authorizations Application at 3-4; PTI Pacifica April 22, 2008 *Ex Parte* Letter at I-2.

¹⁸⁸ Domestic Authorizations Application at 3-4.

¹⁸⁹ *See* Updated PTI Petition for Declaratory Ruling at 1. PTI Pacifica will also acquire IT&E's common carrier PCS licenses for Guam and the CNMI. PTI Pacifica states that, because it has already received approval under section 310(b)(4) to hold PCS licenses for Guam and the CNMI in the 2006 Assignment Order (*Application of Bell Atlantic New Zealand Holdings, Inc., Assignor, and GTE Pacifica, Inc., Assignee, for the Assignment of Personal Communications Service (PCS) License WQCV808 (MTA 050)*), Order, DA 06-2197, 21 FCC Rcd 12079 (WTB/IB 2006) (2006 Assignment Order), it has not requested a specific section 310(b)(4) ruling with respect to the PCS licenses it will acquire from IT&E. *See* Updated Pacific Telecom Petition for Declaratory Ruling at 4 n.5.

¹⁹⁰ *See* Updated PTI Petition for Declaratory Ruling at 3 (citing *BANZHI-PTI Order*, 18 FCC Rcd at 23140 and 2006 Assignment Order, 21 FCC Rcd at 12079). PTI Pacifica was named GTE Pacifica, Inc. at the time of the *BANZHI-PTI Order*. It notified the Commission of the name change during the course of the 2006 Assignment proceeding. *See BANZHI-PTI Order*, 18 FCC Rcd at 12079, para. 1 n.1.

and LMDS licenses for Guam and the CNMI.¹⁹¹

1. Legal Standard for Foreign Ownership of Radio Licensees

59. We review the foreign ownership of PTI Pacifica under sections 310(b)(4) of the Act and the Commission's foreign ownership policies established in the *Foreign Participation Order*.¹⁹² As part of that analysis, we consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the proposed assignment of licenses.¹⁹³ Relying on Commission precedent, we find that the proposed assignments do not raise any issues under section 310(a) or 310(b)(1)–(b)(3) of the Act.¹⁹⁴ Our analysis focuses on issues raised under section 310(b)(4) of the Act. Based on the record before us, we conclude for the reasons stated below that it would not serve the public interest to deny consent to the proposed transaction because of the foreign equity and voting interests that are held indirectly in PTI Pacifica as a result of foreign investment in its U.S.-organized parent, PTI.

60. Section 310(b)(4) of the Act establishes a 25 percent benchmark for investment by foreign individuals, corporations, and governments in U.S.-organized entities that control U.S. common carrier radio licensees. This section also grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.¹⁹⁵ The presence of aggregated alien equity or voting interests in a common carrier licensee's parent in excess of

¹⁹¹ See Updated PTI Petition for Declaratory Ruling at 4.

¹⁹² See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997) (*Foreign Participation Order*), Order on Reconsideration, 15 FCC Rcd 18158 (2000).

¹⁹³ The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing foreign investment pursuant to sections 310(b)(4) and 310(d). *Foreign Participation Order*, 12 FCC Rcd at 23918–21 paras. 59–66. See also *infra* Section III.F. (National Security, Law Enforcement, Foreign Policy, and Trade Concerns).

¹⁹⁴ Section 310(a) of the Communications Act prohibits any radio license from being “granted to or held by” a foreign government or its representative. 47 U.S.C. § 310(a). In this case, no foreign government or its representative will hold any of the radio licenses. Section 310(b)(1)–(2) of the Communications Act prohibits common carrier, broadcast, and aeronautical fixed or aeronautical en route radio licenses from being “granted to or held by” aliens, or their representatives, or foreign corporations. 47 U.S.C. § 310(b)(1)–(2). We find that no alien, representative, or foreign corporation will hold any of the common carrier licenses in this case. Accordingly, we find that the proposed assignments are not inconsistent with the foreign ownership provisions of section 310(a) or 310(b)(1)–(2) of the Communications Act. See *Applications of VoiceStream Wireless Corp., Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, IB Docket No. 00-187, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9804–9809 paras. 38–48 (2001). Additionally, because the foreign investment in PTI Pacifica is held through a controlling U.S. parent company, PTI, the proposed assignments do not trigger section 310(b)(3) of the Communications Act, which places a 20% limit on alien, foreign corporate, or foreign government ownership of entities that themselves hold common carrier, broadcast, and aeronautical fixed or aeronautical en route Title III licenses. Compare 47 U.S.C. § 310(b)(3) with § 310(b)(4). See *Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended*, Declaratory Ruling, 103 F.C.C. 2d 511 (1985) (*Wilner & Scheiner I*), recon. in part, 1 FCC Rcd 12 (1986).

¹⁹⁵ See 47 U.S.C. § 310(b)(4) (“No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by ... any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government, or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest would be served by the refusal or revocation of such license.”).

25 percent triggers the applicability of section 310(b)(4)'s statutory benchmark.¹⁹⁶ Once the benchmark is triggered, section 310(b)(4) directs the Commission to determine whether the "public interest will be served by the refusal or revocation of such license."¹⁹⁷

61. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by individuals or entities from World Trade Organization (WTO) Member countries in U.S. common carrier and aeronautical fixed and aeronautical en route radio licensees.¹⁹⁸ Therefore, with respect to indirect foreign investment from WTO Members, the Commission adopted a rebuttable presumption that such investment generally raises no competitive concerns.¹⁹⁹

62. Because PTI requests that we extend our previous section 310(b)(4) findings to permit PTI Pacifica's proposed acquisition of IT&E's common carrier licenses, we consider in this proceeding whether it remains in compliance with the foreign ownership ruling issued in the 2003 *BANZHI-PTI Order* and, if so, whether it is appropriate to extend that ruling to encompass the common carrier wireless licenses that will be assigned to PTI Pacifica.²⁰⁰ We examine these issues below.

2. Review of Foreign Ownership Issues

63. As discussed in Section II.A.2., PTI Pacifica is wholly owned by MTC, which is, in turn, wholly owned by PTI. Each of these companies is organized under the laws of the CNMI.²⁰¹ PTI is majority-owned (75%) by Prospector, a company organized under the laws of the Cayman Islands, British

¹⁹⁶ The calculation of foreign ownership interests under section 310(b)(4) is a two-pronged analysis in which the Commission examines separately the equity interests and the voting interests in the licensee's direct or indirect parent. See *BBC License Subsidiary L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 10968, 10973 para. 22 (1995) (*BBC License Subsidiary*). The Commission calculates the equity interest of each foreign investor in the parent and then aggregates these interests to determine whether the sum of the foreign equity interests exceeds the statutory benchmark. Similarly, the Commission calculates the voting interest of each foreign investor in the parent and aggregates these voting interests. *Id.* at 10972 para. 20, 10973-74 paras. 22-25.

¹⁹⁷ 47 U.S.C. § 310(b)(4).

¹⁹⁸ *Foreign Participation Order*, 12 FCC Rcd at 23896, para. 9, 23913, para. 50, 23940, paras. 111-112. In evaluating an applicant's request for approval of foreign ownership interests under section 310(b)(4), the Commission uses a "principal place of business" test to determine the nationality or "home market" of foreign investors. See *Foreign Participation Order*, 12 FCC Rcd at 23941, para. 116 (citing *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd 3873, 3951 para. 207 (1995)).

¹⁹⁹ *Foreign Participation Order*, 12 FCC Rcd at 23913, para. 50, 23940, paras. 111-112. The Commission stated, in the *Foreign Participation Order*, that it will deny an application if it finds that more than 25 percent of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding. See *id.* at 23946 para. 131.

²⁰⁰ The Applicants have also applied for the assignment to PTI Pacifica of IT&E's private microwave licenses. See Updated PTI Petition for Declaratory Ruling at 4 n.5. We note that section 310(b)(4) governs only common carrier, broadcast, aeronautical en route, and aeronautical fixed radio licenses. Therefore, we do not consider under section 310(b)(4) the foreign ownership of PTI Pacifica as it relates to the private microwave licenses. Our findings in this Memorandum Opinion and Order and Declaratory Ruling with respect to competitive effects, our public interest determination for the common carrier licenses, and the Executive Branch's resolution of any national security and law enforcement concerns, collectively suffice to resolve any other public interest implications, outside of our review under section 310(b)(4), to the extent there are any, for the non-common carrier licenses.

²⁰¹ See Updated PTI Petition for Declaratory Ruling at 2.

West Indies. Prospector is owned by two related individuals: (1) Ricardo C. Delgado, a citizen of the Philippines, holds a 60 percent equity and voting interest in Prospector; and (2) Jose Ricardo Delgado, also a citizen of the Philippines, holds a 40 percent equity and voting interest in Prospector.²⁰² The remaining ownership interest in PTI is held by Sumitomo Corporation, a company organized under the laws of Japan (20%) and its wholly-owned, U.S.-incorporated subsidiary, Sumitomo Corporation of America (5%).²⁰³

64. At the time of the *BANZHI-PTI Order*, Prospector owned 100 percent of the equity and voting interests in PTI.²⁰⁴ We found in the *BANZHI-PTI Order* that Prospector is entitled to a rebuttable presumption that its ownership of PTI Pacifica does not pose competition concerns because Prospector's principal place of business is in the Philippines, a WTO Member country.²⁰⁵ The foreign ownership ruling issued in that proceeding permits PTI Pacifica to be owned indirectly by "Prospector (up to and including 100 percent of the equity and voting interests) and by Prospector's shareholders Ricardo C. Delgado (up to and including 60 percent of the equity and voting interests) and Jose R. Delgado (up to and including 40 percent of the equity and voting interests)."²⁰⁶ Thus, Prospector's current 75 percent equity and voting interests in PTI, and the respective equity and voting interests held in Prospector by the Delgado's, which remain unchanged, fall within the parameters of PTI Pacifica's existing foreign ownership ruling.

65. The 25 percent equity and voting interests acquired directly and indirectly in Pacific Telecom by Sumitomo Corporation also complies with the terms of PTI Pacifica's foreign ownership ruling.²⁰⁷ In accordance with our usual policy, the ruling permits PTI Pacifica "to accept up to and including an aggregate 25 percent indirect equity and/or voting interest from other foreign investors without obtaining prior Commission approval under section 310(b)(4) of the Act."²⁰⁸ Because Sumitomo Corporation's aggregate direct (20%) and indirect (5%) equity and voting interests in PTI do not exceed 25 percent, and no other foreign individual or entity holds a direct or indirect equity or voting interest in PTI, we find that PTI Pacifica's current foreign ownership complies with its existing foreign ownership ruling. Accordingly, we find that PTI Pacifica continues to be entitled to a rebuttable presumption that its indirect foreign ownership does not pose a risk to competition in the U.S. market. We find no evidence in the record of this proceeding that rebuts this presumption and, as we explain above, we find no basis to conclude that the assignment of IT&E's common carrier earth station license and LMDS licenses to PTI Pacifica is likely to harm competition.²⁰⁹ In addition, the Executive Branch has reviewed the transaction. As we discuss below, the Executive Branch Agencies advise that they do not object to grant of the petition for declaratory ruling and applications, provided, as Applicants request, that we condition our

²⁰² See *id.* at 2-3.

²⁰³ See *id.* at 1-2.

²⁰⁴ See *BANZHI-PTI Order*, 18 FCC Rcd at 23143 para. 4.

²⁰⁵ *Id.* at 23152-53 para. 25.

²⁰⁶ *Id.* at 23153 para. 28.

²⁰⁷ Sumitomo Corporation acquired a direct 25 percent equity and voting interest in PTI effective July 31, 2006. See *2006 Assignment Order*, 21 FCC Rcd 12084, para. 15, 12085-86, para. 19; see also *id.* at 12085-86, para. 19 (finding Sumitomo Corporation's direct investment in Pacific Telecom to be in compliance with the terms of the foreign ownership ruling issued to PTI Pacifica in the *BANZHI-PTI Order*). Sumitomo Corporation subsequently assigned to its wholly-owned U.S.-incorporated subsidiary, Sumitomo Corporation of America, a 5 percent equity and voting interest in PTI. See Updated PTI Petition for Declaratory Ruling at 4.

²⁰⁸ See *BANZHI-PTI Order*, 18 FCC Rcd at 23153, para. 28.

²⁰⁹ See *infra* paras. 32-51.

grant subject to PTI Pacifica's compliance with the 2003 Executive Branch Agreement.²¹⁰ We therefore find it is in the public interest to extend PTI Pacifica's section 310(b)(4) ruling to cover its acquisition of IT&E's common carrier earth station and LMDS licenses. We emphasize that, as a Commission licensee, PTI Pacifica has an affirmative duty to monitor its foreign equity and voting interests and to calculate these interests consistent with the attribution principles enunciated by the Commission.²¹¹

F. National Security, Law Enforcement, Foreign Policy, and Trade Concerns

66. When analyzing a transfer of control or assignment application in which foreign ownership is involved, we also consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the Executive Branch.²¹² On May 12, 2008, the Executive Branch Agencies requested that the Commission defer action in this proceeding to allow them an opportunity to complete their review for any national security, law enforcement, and public safety issues.²¹³ On June 5, 2008, the Executive Branch Agencies withdrew their request to defer action.²¹⁴ They advise that, based on information provided to the Executive Branch Agencies by the Applicants and analysis by the Executive Branch Agencies of potential national security, law enforcement and public safety issues, they have no objection to the applications and petition for declaratory ruling based on Applicants' request that the Commission condition grant subject to PTI Pacifica's compliance with the terms of the 2003 Executive Branch Agreement, which is designed to address national security, law enforcement, and public safety issues.²¹⁵

67. In addition, GTA TeleGuam, LLC filed an *ex parte* letter raising national security concerns.²¹⁶ GTA, which provides local, long distance, broadband, and wireless services in Guam, questions whether it is appropriate for IT&E to be foreign-owned given the significance of U.S. military operations in Guam.²¹⁷ It urges the Commission to work closely with the Executive Branch to take steps

²¹⁰ See *infra* paras. 66-68. We also address in Section III.F the *ex parte* filing by GTA TeleGuam, LLC, which raises national security concerns with the proposed transaction.

²¹¹ *Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc. Petition for Declaratory Ruling Under Section 310(b) of the Communications Act of 1934, as Amended; Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P. Petition for Expedited Action for Declaratory Ruling Under Section 310(b) of the Communications Act of 1934, as Amended*, File No. ISP-PDR-20070314-00004 and File No. ISP-PDR-200801111-00001, Order and Declaratory Ruling, 23 FCC Rcd 4436, 4443, para. 16 (2008); *Verizon Communications, Inc., Transferor and América Móvil, S.A. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRJ)*, WT Docket No. 06-113, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 6195, 6225, para. 68 (2007).

²¹² See *Foreign Participation Order*, 12 FCC Rcd at 23918, para. 59, 23919-21, paras. 61-66; *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24170, para. 178 (1997).

²¹³ Executive Branch May 12, 2008 *Ex Parte* Letter.

²¹⁴ Executive Branch June 5, 2008 *Ex Parte* Letter.

²¹⁵ See Executive Branch June 5, 2008 *Ex Parte* Letter. The October 6, 2003 Agreement is appended to the *BANZHI-PTI Order* as Appendix B, 18 FCC Rcd at 23166-23200. It is also publicly available on the FCC Web site and may be viewed through the International Bureau Filing System (IBFS) by searching for ISP-PDR-20080403-00007 and accessing the Attachment Menu from the Document Viewing Area.

²¹⁶ See GTA June 19, 2008 *Ex Parte* Letter.

²¹⁷ *Id.* at 1. GTA argues that Guam is of critical and strategic importance to the national security of the United States. It states that, while Guam has long had a large military presence, the island is in the process of being transformed into the epicenter of U.S. military operations in the Western Pacific. *Id.* According to GTA, in addition to the planned expansion of Naval Base Guam and Anderson Air Force Base, the U.S. Government is constructing a (continued....)

to ensure that the proposed foreign ownership does not threaten national security. Specifically, GTA submits that “the combined IT&E/PTI should be required to divest any business that it does with the U.S. Armed Forces and should be prevented from providing services to the military in the future.”²¹⁸

68. In assessing the public interest, we take into the account the record and accord deference to Executive Branch expertise on national security and law enforcement issues.²¹⁹ As the Commission stated in the *Foreign Participation Order*, foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch.²²⁰ Although the Commission presumes, subject to rebuttal, that an application from a WTO Member applicant does not pose a risk of anticompetitive harm that would justify denial of the application, the Commission does not presume that an application poses no national security, law enforcement, foreign policy, or trade concerns.²²¹ In the context of this particular proceeding, we considered these concerns independent of our competition analysis and, at the request of the Executive Branch Agencies, we deferred action on the applications and petition until resolution of their concerns. As explained above, the Executive Branch Agencies now state that, based on information provided to the Agencies by the Applicants, they do not object to grant of the applications and petition for declaratory ruling based on the Applicants’ request that the Commission condition its grant on compliance by PTI Pacifica with the terms of the 2003 Executive Branch Agreement. In view of the Executive Branch’s scrutiny of the transaction, and the resolution of its concerns, we find no basis in the arguments raised by GTA to adopt the condition it requests. Given the discussion above, and in accordance with the request of the Applicants, we condition our grant of the applications and petition for declaratory ruling on compliance by PTI Pacifica with the commitments set forth in the 2003 Executive Branch Agreement.²²²

IV. CONCLUSION

69. Upon review of the Application and the record in this proceeding, we conclude that approval of this transaction, as limited by the conditions, is in the public interest. We find that competitive harm is unlikely in markets for wireline and mobile telephony in Guam as a result of this transaction. Accordingly, we deny the Joint Petition’s request for conditions, except for the condition relating to long distance prices in CNMI. Moreover, based on the Executive Branch’s review of the transaction and the resolution of its concerns, we deny any action sought by GTA in the GTA June 19, 2008 *Ex Parte* Letter. However, as requested by the Executive Branch Agencies, we condition our grant of the Application on PTI Pacifica’s compliance with the 2003 Executive Branch Agreement.²²³

(Continued from previous page)

new base for the Marine Corps, expanding Guam’s naval facilities to accommodate aircraft carriers, and building missile defense facilities for the Army. *Id.* at 1–2 (citing Pacific Daily News, “Gates arrives on Guam: Governor talks buildup with Secretary of Defense,” available at <http://www.guampdn.com/apps/pbcs.dll/article?AID=/20080530/NEWS01/805300306/1002> (May 30, 2008)). It states that nearly 40,000 military personnel, contractors, and dependents are expected to be transferred to the territory from other military facilities between now and 2014. *Id.* (citing Washington Post, “Guam Braces for Peaceful Military Incursion,” available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/01/24/AR2008012403509.html> (Jan. 25, 2008)).

²¹⁸ GTA June 19, 2008 *Ex Parte* Letter at 2.

²¹⁹ See *Foreign Participation Order*, 12 FCC Rcd at 23919–21 paras. 61–66.

²²⁰ *Id.* at 23919 para. 62.

²²¹ *Id.* at 23920–21 para. 65.

²²² See *infra* para. 66.

²²³ See *BANZHI-PTI Order*, 18 FCC Rcd at app. B.

V. ORDERING CLAUSES

70. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 4(i)–(j), 214, 309, and 310(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)–(j), 214, 309, 310(b), 310(d), the applications and associated petition for declaratory ruling set forth in Appendix A ARE GRANTED.

71. IT IS FURTHER ORDERED that, pursuant to sections 4(i)–(j), 214, 309, and 310(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)–(j), 214, 309, 310(b), 310(d), that grant of the applications and associated petition for declaratory ruling IS CONDITIONED UPON compliance by PTI Pacifica with the provisions of the Agreement between the Micronesian Telecommunications Corporation and Pacific Telecom Inc., and the Federal Bureau of Investigation, the U.S. Department of Justice, the U.S. Department of Defense, and the U.S. Department of Homeland Security, dated October 6, 2003, which is appended to the Order and Authorization adopted in IB Docket No. 03-115, 18 FCC Rcd 23140, Appendix B (IB, WCB, WTB 2003).²²⁴

72. IT IS FURTHER ORDERED that, pursuant to sections 1, 4(i), 4(j), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155(c), 214, and 254, and pursuant to the authority delegated in sections 0.91, 0.291, and 63.03 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 63.03, and sections 0.51 and 0.261 of the Commission's rules, 47 C.F.R. §§ 0.51, 0.261, grant of the applications is conditioned upon Applicants' compliance with the commitment that PTI Pacifica will not raise its 1+ presubscribed wireline rates for three years from the date of this Order.²²⁵

73. IT IS FURTHER ORDERED that, pursuant to sections 4(i)–(j), 214, 309, and 310(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)–(j), 214, 309, 310(b), 310(d), that the Petition to Condition and the GTA June 19, 2008 *Ex Parte* Letter ARE DENIED.

74. This action is taken pursuant to delegated authority under Sections 0.204, 0.261, 0.291, and 0.331, of the Commission's Rules, 47 C.F.R. §§ 0.204, 0.261, 0.291, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Acting Chief, Wireline Competition Bureau

James D. Schlichting
Acting Chief, Wireless Telecommunications Bureau

John V. Giusti
Acting Chief, International Bureau

²²⁴ See *id.*

²²⁵ See PTI Pacifica April 27 *Ex Parte* Letter at 6.

APPENDIX A

SECTION 214 AUTHORIZATIONS

A. International

File No.	Authorization Holder	Authorization Number
ITC-ASG-20080404-00164	PTI Pacifica, Inc.	ITC-214-19970326-00172

B. Domestic

Docket No.	Authorization Holder
WC Docket No. 08-54	IT&E Overseas, Inc.

SECTION 310(b)(4) PETITION FOR DECLARATORY RULING

File No.	Applicant
ISP-PDR-20080403-00007	Pacific Telecom, Inc.

SECTION 310(D) AUTHORIZATIONS

File No.	Licensee	Call Signs
0003356838	IT&E Overseas, Inc.	KNLF923 KNLG849 WPLM240 WPLM241 WPLM242 WPLM243 WPOK677 WPOK678 WPYQ892 WPYQ894 WQAZ587 WQCY611 WQDH227