

II. DESCRIPTION OF THE APPLICANTS AND THEIR EXISTING BUSINESSES

AT&T provides wireless, high-speed Internet access, local and long distance voice, video, and directory publishing and advertising services. Verizon Wireless provides wireless voice and data services. The Commission has concluded repeatedly that AT&T has the qualifications required by the Communications Act to control Commission authorizations,⁴ and nothing has changed to disturb this conclusion. There is also no question about Verizon Wireless's character or qualifications to hold Commission authorizations.⁵

⁴ See *In re Application of Aloha Spectrum Holdings Company LLC and AT&T Mobility II LLC Seeking FCC Consent for Assignment of Licenses and Authorizations*, Memorandum Opinion and Order, 23 FCC Rcd. 2234, 2236, ¶ 8 (2008) (“AT&T Mobility/Aloha Order”); *In re Applications of AT&T Inc. and Dobson Commc’ns Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd. 20,295, 20,303, ¶ 11 (2007) (“AT&T/Dobson Order”); *In re AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd. 5662, 5758, ¶ 194 (2007) (“AT&T/BellSouth Order”); *In re SBC Commc’ns Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd. 18,290, 18,379-81, ¶¶ 173-76 (2005) (“SBC/AT&T Order”); *In re Applications of AT&T Wireless Servs., Inc. and Cingular Wireless Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd. 21,522, 21,548, ¶ 48 (2004) (“Cingular/AT&T Wireless Order”); *In re Applications of SBC Commc’ns Inc. and BellSouth Corp.*, Memorandum Opinion and Order, 15 FCC Rcd. 25,459, 25,465-66, ¶¶ 14-17 (WTB & IB 2000) (“Cingular Order”); *In re Applications of Ameritech Corp. and SBC Commc’ns Inc.*, Memorandum Opinion and Order, 14 FCC Rcd. 14,712, 14,950, ¶¶ 571-73 (1999) (subsequent history omitted) (“SBC/Ameritech Order”).

⁵ See, e.g., *Verizon/ALLTEL Order* ¶ 33; *In re Applications of Northcoast Communications, LLC and Cellco Partnership d/b/a Verizon Wireless*, Memorandum Opinion and Order, 18 FCC Rcd. 6490 (CWD, WTB 2003) (“Northcoast Order”); *Wireless Telecommunications Bureau and International Bureau Grant Consent for Assignment or Transfer of Control of Wireless Licenses and Authorizations from Price Communications Corp. to Cellco Partnership d/b/a Verizon Wireless*, Public Notice, 16 FCC Rcd. 7155 (2001); *Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications Action*, Public Notice, Rpt. No. 2086, 2005 WL 486527 (Mar. 2, 2005) (granting applications of NextWave Telecommunication Inc. and Cellco Partnership d/b/a Verizon Wireless seeking FCC approval of the proposed transfer of control of licenses held by NextWave Personal Communications Inc., Debtor-In-Possession, and NextWave Power Partners Inc., Debtor-In-Possession); *Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications Action*, Public Notice, Rpt. No. 2018, 2004 WL 2913360 (Dec. 15, 2004) (granting applications of Qwest Wireless, LLC and Cellco Partnership d/b/a Verizon Wireless

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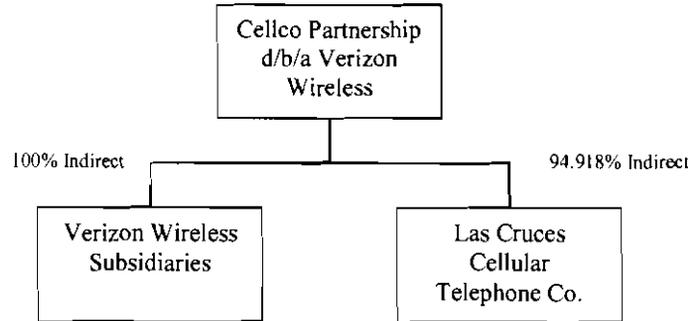
III. DESCRIPTION OF THE TRANSACTION

Verizon Wireless is selling wireless systems in 79 CMAs to AT&T. Of these, 65 are former ALLTEL systems, 11 are former systems of Rural Cellular Corporation (“RCC”), and three are Verizon Wireless systems. The sale includes not only wireless licenses and leases, but also related network and operational assets, including, among other things, certain employees, retail sites, and customers. These systems serve approximately 1.5 million customers in mostly rural areas in 18 states. As Appendix C illustrates, most of these systems are located in the Rocky Mountains and Great Plains states. This transaction fulfills the divestiture requirements of the *Verizon/ALLTEL Merger Order* in 79 of 105 CMAs.

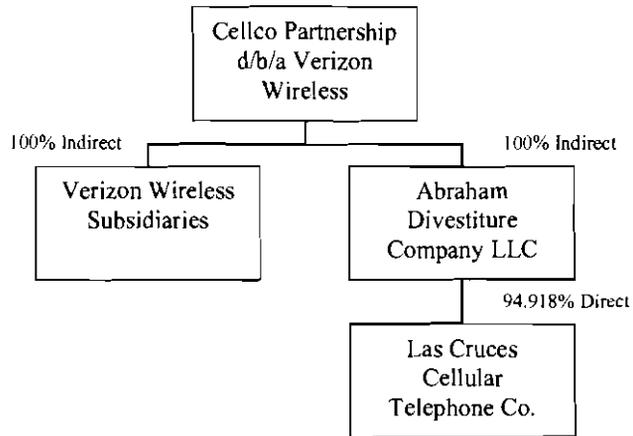
Under the proposed transaction, Verizon Wireless and its direct and indirect subsidiaries that hold the licenses and authorizations that are the subject of these Applications will contribute those licenses and authorizations (and related assets) to a wholly owned indirect subsidiary of Verizon Wireless called Abraham Divestiture Company LLC (“ADC”). Verizon Wireless also will cause its indirect subsidiaries that collectively hold a 94.9180% interest in Las Cruces Cellular Telephone Company to contribute that interest to ADC.

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seeking FCC consent to the assignment of 62 broadband Personal Communications Services
licenses).

Current Structure



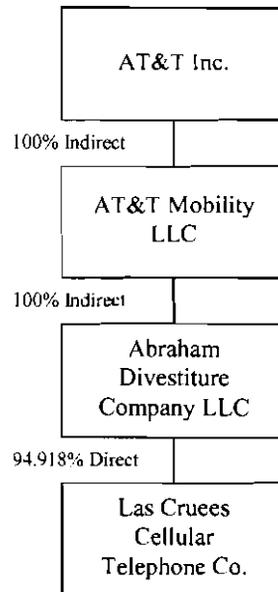
Post-Consummation of Step 1



Then, in exchange for \$2.35 billion in cash, the indirect Verizon Wireless subsidiary that is the parent of ADC will transfer its interest in ADC to an indirect subsidiary of AT&T, thereby causing ADC to become a wholly owned indirect subsidiary of AT&T.⁶

⁶ AT&T may elect to treat this transaction as part of a reverse like-kind exchange under 26 U.S.C. § 1031. If so, the indirect Verizon Wireless subsidiary that is the parent of ADC will transfer its interest in ADC not to an indirect subsidiary of AT&T but instead to Garden Acquisitions Inc. (“GAI”), which would function as an exchange accommodation title holder. GAI would hold title to the interest in ADC (and thus exercise *de jure* control, as that term has been used in the Commission’s precedents) over the licenses and authorizations that are the subject of these Applications for up to 180 days after the closing of this transaction. During this time period, AT&T would manage these licenses and authorizations pursuant to a lease (and, with respect to Las Cruces Cellular Telephone Company, AT&T would operate it pursuant to a management agreement) with ADC and thus exercise *de facto* control, as that term has been used in the Commission’s precedents. Under the contractual relationship among GAI, ADC, and AT&T, GAI will “have no discretion to act in regard to any aspect of [the] operations [of the systems being acquired], except as ordered by [AT&T] or with [AT&T]’s consent.” See *In re Media Gen. Communications, Inc. (Assignor) & MG Broad., LLC, as E.A.T.*, Memorandum Order and Opinion, 21 FCC Rcd. 7669, 7670, ¶ 4 (2006) (determining a similar arrangement left the managing party with *de facto* control). “[A]ll of the benefits and burdens of the [systems]’ operations will flow directly to [AT&T]. Revenue and losses will not flow through [GAI], but will instead flow directly to [AT&T]. The only [net]income [GAI] will receive is a flat fee from [AT&T].” See *id.* AT&T also will be responsible for all FCC and other regulatory filings associated with these systems. See *id.* Upon the completion of the like-kind exchange or after 180 days, whichever comes earlier, GAI would transfer title to the interest in ADC to an indirect subsidiary of AT&T and thereby relinquish *de jure* control over these licenses and authorizations. The lead Form 603 for this transaction contains an exhibit providing certain factual information about GAI. See File No. 0003840313. Likewise, ADC has filed a Form 602 detailing its proposed ownership immediately after closing if AT&T elects to treat this transaction as part of a reverse like-kind exchange. See File No. 0003848307. As demonstrated in these filings, GAI’s ownership of ADC raises no issues under Section 310(b) of the Act, 47 U.S.C. § 310(b) and GAI possesses the character qualifications to control a Commission licensee. Because AT&T will have full financial and technical responsibility for the systems, there likewise should be no question as to GAI’s financial and technical qualifications to control ADC. AT&T will notify the Commission promptly after the closing of this transaction whether it has elected to treat this transaction as part of a reverse like-kind exchange.

Post-Consummation of Step 2



IV. THE STANDARD OF REVIEW

In deciding whether to grant these applications under sections 214(a) and 310(d) of the Communications Act of 1934, as amended,⁷ the Commission must first assess whether the proposed transaction complies with the specific provisions of the Communications Act, other applicable statutes, the Commission’s rules, and federal communications policy. The Commission then weighs any potential public interest harms of the proposed transaction against the potential public interest benefits. The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.⁸

⁷ See 47 U.S.C. §§ 214(a), 310(d).

⁸ See, e.g., *AT&T/Dobson Order* at 20,302, ¶ 10; *AT&T/BellSouth Order* at 5672, ¶ 19; *SBC/AT&T Order* at 18,300, ¶ 16; *Cingular/AT&T Wireless Order* at 21,543, ¶ 40.

This transaction does not violate any law or rule. Nor does it impede the realization of the objectives of the Communications Act or the Commission's ability to implement the Act. To the contrary, this transaction implements government-ordered divestitures to protect the public interest and will result in a number of public interest benefits and increase competition. Accordingly, these Applications should be approved by the Commission expeditiously and without conditions.

V. THE TRANSACTION WILL SERVE THE PUBLIC INTEREST

The transaction's public interest benefits extend well beyond satisfaction of a substantial portion of the divestiture obligations imposed by the *Verizon/ALLTEL Order*. By enabling AT&T to enter numerous new service areas, the transaction will make available AT&T's 3G UMTS technology and other next-generation wireless services in rural areas, which is a key goal of the Administration's broadband policies. Customers in these areas will enjoy a wider range of service features, such as free mobile-to-mobile calling, rollover minutes, access to over 20,000 Wi-Fi hotspots in the United States, access to a wide variety of applications through AT&T's MEdia Net and MEdia Mall, and access to AT&T's 3G network. All AT&T customers will benefit from the transaction's expansion of GSM network coverage and the consequent improvement in the wireless calling experience. The Commission has repeatedly acknowledged near-term, verifiable, transaction-specific public interest benefits like these in prior merger analyses and should do so here.⁹

⁹ In the *Verizon/ALLTEL Order*, the Commission concluded that that transaction was likely to result in transaction specific public interest benefits very similar to those that will result here, including increased network coverage, expanded and improved services and features, roll-out of next generation services, improvements in service quality, and efficiencies and economies of scale and scope. See *In re Applications of Cellco P'ship 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*
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A. The Transaction Implements Government-Mandated Divestitures and Enhances Competition in the Divested Market Areas

This transaction satisfies the divestiture obligations of the *Verizon/ALLTEL Order* in 79 CMAs without any adverse effect on competition,¹⁰ and replaces the prior provider with a robust national competitor, AT&T, which has no or little presence in these 79 CMAs. Indeed, in 49 of the 79 divestiture CMAs, comprising most of the divestiture areas in Kansas, Montana, North Dakota, South Dakota and Wyoming, AT&T currently does not even offer retail wireless plans.

Consumers will benefit from the increased choices fostered by AT&T's offering its services in these areas, as well as by the enhanced competition, including head-to-head competition between the two largest national carriers, which benefits all consumers.

Moreover, with its national network, array of services, rate plans, handsets and resources, AT&T will provide the divested customers with more choices than they enjoy today, as described below,

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the Transaction is Consistent with Section 310(b)(4) of the Commc 'ns Act, WT Dkt No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-258, ¶ 156 (rel. Nov. 10, 2008) (“*Verizon/ALLTEL Order*”). See also *In re Applications of Cellco P'ship d/b/a Verizon Wireless and Rural Cellular Corp. 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 Commc 'ns Act*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd. 12,463, 12,504-06, ¶¶ 91-95 (2008) (“*Verizon/RCC Order*”); *AT&T/Dobson Order* at 20,330-32, ¶¶ 73-77; *In re Midwest Wireless Holdings, L.L.C. and ALLTEL Commc 'ns, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 21 FCC Rcd. 11,526, 11,564-66, ¶¶ 105-109 (2006) (“*Midwest Wireless Order*”); *In re Applications of Nextel Commc 'ns, Inc. and Sprint Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd. 13,967, 14,013-14, ¶¶ 129-130 (2005) (“*Sprint/Nextel Order*”); *In re Applications of W. Wireless Corp. and ALLTEL Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd. 13,053, 13,100-02, ¶¶ 132-137 (2005) (“*Western Wireless Order*”); *Cingular/AT&T Wireless Order* at 12,599-600, ¶¶ 201-06.

¹⁰ *Verizon/ALLTEL Order* ¶¶ 157, 159 (requiring divestiture in those markets where it found that the Verizon/ALLTEL merger “would be likely to cause significant competitive harm” and to “ensure that any potential harms posed by this transaction [would] be outweighed by the . . . public interest benefits”).

and will offer more vigorous competition to Verizon Wireless and other competitors than ALLTEL was able to provide in these areas.

B. The Transaction Will Enhance the Provision of Wireless Services and Improve the Customer Experience in Rural Communities

The Commission has long recognized that increasing the diversity and range of features and services available to customers, as well as increasing the geographic reach of a wireless carrier's network, is in the public interest.¹¹ This is clearly the case with this transaction, which will make available to customers in the rural communities affected by this transaction the range of services available on AT&T's national network, which serves more than 78 million customers in the United States.¹² In addition, AT&T's international roaming agreements will provide customers with voice service in more than 215 countries, data services in more than 170 countries, and 3G coverage in more than 80 countries.¹³ The benefits in the provision of wireless service to rural communities that this transaction creates -- including providing access to AT&T's 3G broadband network and the largest number of privately-owned Wi-Fi hotspots -- are summarized below.

¹¹ See, e.g., *AT&T/Dobson Merger Order* ¶ 73-82; *In re Midwest Wireless Holdings, L.L.C. and Alltel Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 21 FCC Rcd. 11,526, 11,564-67, ¶¶ 105-09, 111-12 (2006) ("*Midwest Wireless Order*"); *In re Applications of Western Wireless Corp. and Alltel Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd. 13,053, 13,101-04, ¶¶ 135-36, 138-40 (2005) ("*Western Wireless Order*"); *In re Applications of Nextel Communications, Inc. and Sprint Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd. 13,967, 14,013-14, ¶¶ 129-130 (2005) ("*Sprint/Nextel Order*"); *Cingular/AT&T Wireless Order* ¶¶ 216-20.

¹² AT&T Inc., Quarterly Report (Form 10-Q), at 18 (May 7, 2009).

¹³ AT&T Inc., 2008 Annual Report at 7 (2009) ("AT&T 2008 Annual Report"), available at http://www.att.com/Common/about_us/annual_report/pdfs/2008ATT_FullReport.pdf; News Release, AT&T to Acquire Divestiture Properties from Verizon Wireless, Enhance Network Coverage and Customer Service (May 8, 2009).

1. The Transaction Will Expand Network Coverage for Rural Communities

The public interest benefits in expanding the geographic reach of a wireless carrier's network are clear.¹⁴ As a result of this transaction, AT&T will gain a retail wireless network presence in numerous CMAs, covering a wide area of the Great Plains and Rocky Mountain states, where it currently does not offer retail service. AT&T will be able to integrate quickly ALLTEL's GSM network with its own, and AT&T will overbuild the divested CDMA networks to GSM to enable a smooth migration of those customers to GSM. The result will be improved network coverage for customers of both the divested systems and AT&T. Subscribers in these service areas will be able to enjoy the benefits of AT&T's 3G broadband network,¹⁵ which already serves nearly 350 major metropolitan areas, and plans call for continued growth with 20 more by the end of 2009.¹⁶ Subscribers will also have access to the nation's largest number of privately owned Wi-Fi hotspots. In addition, AT&T customers outside the 79 affected CMAs will benefit by being able to access additional geographic areas on-net rather than through roaming, which will give service a more consistent look and feel in these areas.

¹⁴ See, e.g., *Midwest Wireless Order* at 11,566-67, ¶¶ 111-12; *Western Wireless Order* at 13,102-04, ¶¶ 138-40; *Cingular/AT&T Wireless Order* at 21,604-05, ¶¶ 216-20. As the Commission has previously concluded, "operators with larger footprints[,] can achieve economies of scale and increased efficiencies compared to operators with smaller footprints." *Thirteenth CMRS Competition Report* (Jan. 16, 2009) at ¶ 52.

¹⁵ News Release, AT&T to Acquire Divestiture Properties from Verizon Wireless, Enhance Network Coverage and Customer Service (May 8, 2009).

¹⁶ AT&T 2008 Annual Report at 4; News Release, AT&T to Acquire Divestiture Properties from Verizon Wireless, Enhance Network Coverage and Customer Service (May 8, 2009).

2. The Transaction Will Improve 3G Networks in Rural Areas

AT&T will deploy the enhanced benefits of 3G UMTS services to customers across at least as broad a footprint as ALLTEL's.¹⁷ Because AT&T already has rolled out 3G services to nearly 350 major metropolitan areas,¹⁸ it has the experience, infrastructure, resources and supplier contacts in place to permit the swift rollout of 3G services. Moreover, AT&T is in the process of expanding the capacity of its 3G networks using additional spectrum at 850 MHz, which can offer improvements to in-building coverage.¹⁹ AT&T has announced plans to invest \$17 billion to \$18 billion in 2009, of which approximately two-thirds will be used to extend and enhance its wireless and wired broadband networks.²⁰ AT&T's broadband investment priorities include multiple projects designed to enhance its 3G network, including focusing in 2009 on enhancing coverage and reliability and adding more than 2,100 new cell sites across the country.²¹ In addition, AT&T has the motivation to roll out its 3G service to the additional affected CMAs to permit its customers with 3G handsets to obtain its broadband service over a broader geographic area.

¹⁷ Cf. *AT&T/Dobson Order* at 20,332, ¶ 78 (“Applicants state that the merger of AT&T and Dobson would expand and improve the services and features available to Dobson’s rural customers.”).

¹⁸ News Release, AT&T Inc., AT&T to Invest More Than \$17 Billion in 2009 to Drive Economic Growth, Wireless and Wired Broadband Investment Will Expand Service Coverage, Capacity, Quality available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26597>.

¹⁹ Kevin Fitchard, *AT&T Doubling 3G Capacity*, TelephonyOnline, Apr. 20, 2009, available at <http://telephonyonline.com/wireless/news/att-3g-network-capacity-increase-0420/index.html>.

²⁰ *Id.*; News Release, AT&T Inc., AT&T to Invest More Than \$17 Billion in 2009 to Drive Economic Growth, Wireless and Wired Broadband Investment Will Expand Service Coverage, Capacity, Quality available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26597>.

²¹ *Id.*

3. The Transaction Will Make Available to Divested Customers, Many of Whom Live in Rural Areas, a Greater Variety of Features and Services than They Currently Enjoy

a. Diverse Rate Plans

Following the transaction, ALLTEL's customers in the affected CMAs will have access to diverse rate plans with better features than are currently available to them. For instance, while AT&T and ALLTEL both offer unlimited mobile-to-mobile in-network calling, this transaction will enlarge the in-network calling community for ALLTEL customers from approximately 12.8 million to over 78 million.²² ALLTEL customers in these areas also will benefit from the ability to roll over unused minutes. AT&T is one of the few wireless carriers that permits its customers to do so.²³ ALLTEL did not allow its customers to roll over unused minutes. ALLTEL's customers in the CMAs involved in this transaction also will be able to take advantage of a wide variety of AT&T's plan offerings, including AT&T's unlimited calling rate plan, which includes roaming,²⁴ as well as a variety of prepaid options.²⁵

²² See Alltel 2007 10-K at 1; AT&T Inc., Quarterly Report (Form 10-Q), at 18 (May 7, 2009); AT&T Inc., Annual Report (Form 10-K), at 2 (Feb. 25, 2009) ("AT&T 2008 10-K").

²³ See AT&T.com, Rollover® Minutes, <http://www.wireless.att.com/learn/why/rollover.jsp?wtSlotClick=1-0018VS-0-1&WT.svl=title> (last visited Feb. 3, 2009).

²⁴ Compare AT&T Inc., Nation Unlimited, http://www.wireless.att.com/cell-phone-service/cell-phone-plan-details/?q_sku=sku1210009&q_planCategory=catI370011 (last visited Feb. 4, 2009) (listing no roaming charges for unlimited voice plan), and Alltel Corp., Individual & Family Plans, Unlimited Calling, <http://www.alltel.com/> (last visited Feb. 4, 2009) (showing roaming fees of \$0.59 and fees of \$0.40 for long distance while roaming). In fact all of AT&T's voice plans include no domestic roaming charges. See AT&T, Family Talk Cell Phone Plans, <http://www.wireless.att.com/cell-phone-service/cell-phone-plans/family-cell-phone-plans.jsp> (last visited Feb. 4, 2009), AT&T, Individual Cell Phone Plans, <http://www.wireless.att.com/cell-phone-service/cell-phone-plans/individual-cell-phone-plans.jsp> (last visited Feb. 4, 2009).

²⁵ See AT&T, GoPhone® Options, <http://www.wireless.att.com/cell-phone-service/gophones/gophone-options.jsp?wtSlotClick=1-00166N-0-2&WT.svl=calltoaction> (last visited Apr. 16, 2009). Unlike ALLTEL, AT&T's prepaid plans offer features such as unlimited talk options and unlimited web browsing. *Id.*

b. Handsets with Advanced Services Capabilities

AT&T will be able to offer ALLTEL customers in the CMAs involved in this transaction handsets with a variety of features that ALLTEL did not offer.²⁶ By converting ALLTEL's network in these areas to the global GSM standard, AT&T will provide customers with more choices of handsets and pricing plans compatible in more than 200 countries. Moreover, with AT&T's 3G Network already serving nearly 350 major metropolitan areas, and with AT&T planning for continued growth,²⁷ this superior network will support a more extensive range of 3G smartphones, as well as innovative services and applications. For example, customers will have access to over 90,000 pieces of mobile content, including mobile banking, social networking services, location based services, and international mapping.²⁸ In addition, customers will have access to AT&T's Wi-Fi network which provides AT&T's wireless subscribers that select 3G LapTopConnect cards or qualified smartphone plans unlimited access at no additional charge at AT&T's nearly 20,000 hotspots in the United States.²⁹ AT&T also provides access to more than 80,000 global hotspots through its roaming agreements.³⁰

c. Reduced Roaming Costs

By expanding AT&T's geographic footprint, the transaction will result in more on-net usage by both the current customers of AT&T and customers in the areas being divested here, thereby reducing reliance on roaming. As the Commission has repeatedly recognized, the internalization of such roaming costs, as well as the elimination of the transaction costs of

²⁶ Alltel 2007 10-K at 7.

²⁷ AT&T 2008 Annual Report at 4; AT&T 10-K at 16.

²⁸ AT&T 2008 Annual Report at 8.

²⁹ News Release, AT&T to Acquire Divestiture Properties from Verizon Wireless, Enhance Network Coverage and Customer Service (May 8, 2009).

³⁰ News Release, AT&T Inc., AT&T Sees Surge in Wi-Fi Connections (Apr. 23, 2009).

administering roaming, serve the public interest because they lower the marginal cost of providing service and are therefore “likely to benefit consumers through lower price and/or increased service.”³¹

d. Increased International Roaming

The proposed transaction will permit ALLTEL’s customers in these areas to benefit from a substantial increase in the availability of international roaming at lower rates. For its CDMA subscribers, ALLTEL maintained roaming agreements that provided for interconnection with local providers in only Mexico, Canada, and parts of the Caribbean.³² While ALLTEL also allowed its customers to roam internationally in over 160 countries by entering into an agreement with a third-party provider,³³ this service required the additional purchase of a SIM card and the BlackBerry 8830 World Edition Smartphone, which could operate on GSM networks.³⁴ AT&T, on the other hand, has an extensive global footprint since its GSM/HSPA network is the worldwide standard for wireless.³⁵ Once the transaction is approved, ALLTEL customers will

³¹ *Cingular/AT&T Wireless Order* at 21,605, ¶ 219; *accord Western Wireless Order* at 13,108, ¶ 151 (“ALLTEL’s merger with WWC would reduce its roaming costs in geographic markets where ALLTEL and WWC’s service areas do not overlap, and the elimination of roaming agreements in these markets would directly benefit . . . its customers”).

³² Alltel Corp., International Services, http://www.alltel.com/wps/portal/AlltelPublic/Content?WCM_GLOBAL_CONTEXT=/wps/wcm/connect/DV1Personal/home/p/wirelessplans/add-ons/international/dinternationalservices/ (last visited Feb. 4, 2009). Specifically, ALLTEL offers international roaming for its CDMA customers in the Caribbean in Aruba, Barbados, Bermuda, British Virgin Islands, Cayman Islands (Grand Cayman Only), Curacao, Dominican Republic, Jamaica, Netherland Antilles, Puerto Rico, St. Maarten and U.S. Virgin Islands. *Id.*

³³ See Press Release, Alltel Corp., Alltel Introduces the Sleek New BlackBerry 8830 World Edition Smartphone (Aug. 30, 2007), *available at* <http://press.rim.com/release.jsp?id=1322>.

³⁴ Alltel Corp., International Roaming, http://www.alltelsolutions.com/solutions/international_roaming.html (last visited Apr. 23, 2009). Data services are also available through use of SIM card. See Alltel Corp., International Feature Roaming Activation, <https://www.alltelsimcard.com/> (last visited Feb. 4, 2009).

³⁵ See News Release, AT&T Inc., AT&T Named World's Best Wireless Service Provider for Second Consecutive Year by Business Traveler Magazine (Dec. 12, 2008), *available at* <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26394>.

benefit from AT&T's more than 630 international roaming agreements, which provide roaming for voice services in 215 countries and for data services in 170 countries.³⁶ AT&T also offers several devices that have automatic roaming capabilities around the globe, thereby allowing customers to travel around the world using their same wireless number.³⁷

4. The Transaction Will Improve Disaster Response Capabilities

Disaster preparedness has become a national imperative in recent years.³⁸ This transaction will advance the public interest by enhancing response capabilities to natural disasters, acts of terrorism and other emergencies. AT&T currently offers several services for emergency situations, including two mobile command centers, a fleet of mobile generators and mobile cell sites that are satellite or landline connected,³⁹ therefore allowing the company to provide unique disaster recovery capabilities. For example, when Hurricane Ike hit southeast Texas in the fall of 2008, not only did AT&T encourage its customers to contribute financially to the aid efforts, but also provided emergency communication services in an effort to help hurricane victims begin the recovery process.⁴⁰ AT&T provided evacuees with wired telephone lines with free local and long distance calling; AT&T High Speed Internet Service for accessing

³⁶ News Release, AT&T to Acquire Divestiture Properties from Verizon Wireless, Enhance Network Coverage and Customer Service (May 8, 2009); AT&T 2008 Annual Report at 7.

³⁷ See AT&T Inc., Fact Sheet: Staying in Touch Around the Globe, *available at* http://www.att.com/Common/merger/files/pdf/international_calling/inter-calling-fs.pdf; *see also* AT&T Inc., Travel Guide, <http://www.wireless.att.com/travelguide/coverage/roaming/step1.jsp> (last visited May 16, 2008).

³⁸ See Frances Fragos Townsend, White House, The Federal Response to Hurricane Katrina: Lessons Learned 3 (2006), *available at* <http://www.whitehouse.gov/reports/katrina-lessons-learned.pdf>.

³⁹ *AT&T/Centennial PIS* at 14.

⁴⁰ News Release, AT&T Inc., AT&T Ready to Respond to Hurricane Ike, Provide Assistance to Evacuees (Sept. 12, 2008) ("AT&T Hurricane Ike News Release"); *see also* AT&T Inc., Deployments: Hurricane Ike – Galveston Island, http://www.corp.att.com/ndr/deployment_2008_09_galveston.html (last visited May 20, 2009).

email; and charging stations for wireless phones.⁴¹ Further, AT&T undertook additional measures to protect its network from the high winds and flooding.⁴² Moreover, in Galveston Island, Texas, AT&T placed satellite cells on light trucks (“satellite COLTS”) at a local hospital so that it could provide the hospital with optimized coverage as well as deployed an additional satellite COLT to a local high school that had been designated as the Emergency Operations Center for the Island so that the unit would have voice and EDGE data coverage.⁴³ AT&T also established a command center and an Emergency Communications Vehicle at its local office in Galveston in order to restore service quickly.⁴⁴ With this transaction expanding AT&T’s presence in areas where it previously was not providing retail wireless service, AT&T will be in an even stronger position to respond quickly when emergencies occur in these areas.

VI. THE TRANSACTION WILL NOT HARM COMPETITION

As the Commission has consistently found, the market for wireless services is robustly competitive. This transaction will not change that. There is no relevant market where the proposed transaction will adversely affect competition in the provision of mobile telephony/broadband services. To the contrary, as demonstrated in Appendix C, the proposed transaction will make AT&T a new cellular competitor in 49 CMAs in Kansas, Montana, North Dakota, South Dakota and Wyoming, and will expand its limited presence in the remaining 30 CMAs, thus enhancing competition and improving the quality of service to consumers in these areas. The proposed transaction will foster increased competition due to the transaction-

⁴¹ AT&T Hurricane Ike News Release.

⁴² *Id.*

⁴³ AT&T Inc., Deployments: Hurricane Ike – Galveston Island, http://www.corp.att.com/ndr/deployment_2008_09_galveston.html (last visited May 20, 2009)

⁴⁴ *Id.*

specific efficiencies described above and by ensuring that there will be strong competition in all 79 affected CMAs.

A. Market Definition

1. Product Market

In the *Verizon/ALLTEL Order* and the *Sprint/Clearwire Order*, the Commission defined the relevant product market as the combined “mobile telephony/broadband services” product market, which is comprised of “mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).”⁴⁵ This updates the Commission’s traditional definition of a “mobile telephony services” market in light of the rapidly evolving market for mobile broadband data services.⁴⁶

2. Input Market for Spectrum

This transaction raises no conceivable spectrum aggregation concerns. In the *Verizon/ALLTEL Order* and the *Sprint/Clearwire Order*, consistent with its revised product market definition, the Commission defined an input market for the total spectrum that the Commission finds to be suitable for the provision of wireless broadband over broadband networks and for mobile voice and data services.⁴⁷ Based on this input market for spectrum, the Commission relies on an initial spectrum aggregation screen that is approximately one-third of

⁴⁵ *Verizon/ALLTEL Order* ¶ 78.

⁴⁶ *In re Applications of Cellco P’ship 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 Commc’ns Act*, WT Dkt No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-258, ¶¶ 45-48 (rel. Nov. 10, 2008) (“*Verizon/ALLTEL Order*”); *In re Sprint-Nextel Corp. and Clearwire Corp. Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, WT Dkt No. 08-94, Memorandum Opinion and Order, FCC 08-259, ¶¶ 38-45 (rel. Nov. 7, 2008) (“*Sprint/Clearwire Order*”).

⁴⁷ *Verizon/ALLTEL Order* ¶ 53; *Sprint/Clearwire Order* ¶ 53.

the suitable spectrum, which varies depending on whether BRS, AWS-1 or both are available in a particular market. If AWS-1 and BRS spectrum are available, the Commission applies a 145 MHz spectrum screen. If AWS-1 is available, but BRS is not available, the Commission applies a 125 MHz spectrum screen. If BRS is available, but AWS-1 is not available, the Commission applies a 115 MHz spectrum screen. Where neither BRS nor AWS-1 is available, the Commission applies a 95 MHz spectrum screen.⁴⁸ This initial screen is only the first step in the Commission's competitive analysis.⁴⁹ An aggregation that exceeds the applicable screen merely indicates the need for a more detailed analysis of spectrum availability and competition – it does not alone lead to a finding of anticompetitive effects.⁵⁰ Where the initial screen is exceeded, a further case-by-case review of the areas identified by the screen is conducted to determine whether the combination would be likely to cause anticompetitive effects.⁵¹

As Appendix A demonstrates, there is no conceivable spectrum aggregation concern in this transaction. In parts of only two of the 79 CMAs affected by this transaction will the spectrum screen be reached and even there just barely.⁵² As Appendix B demonstrates, in those CMAs, the other three national wireless carriers – Verizon, Sprint, and T-Mobile – hold spectrum, as does a designated entity that is majority owned by Leap – Denali Spectrum – and three affiliates of local exchange carriers – CenturyTel, Agri-Valley, and Nsightel. Given the

⁴⁸ *Verizon/ALLTEL Order* ¶ 64; *Sprint/Clearwire Order* ¶ 74.

⁴⁹ In addition to looking at the amount of spectrum an applicant would hold, the initial screen is also triggered by (1) CMAs or CEAs with a post-transaction Herfindahl-Hirschman Index (“HHI”) greater than 2800, with a change in HHI of 100 or more and (2) CMAs or CEAs where the change in HHI would be 250 or more, regardless of the level of HHI. *Verizon/ALLTEL Order* ¶ 45.

⁵⁰ *Verizon/ALLTEL Order* ¶ 75.

⁵¹ *Id.* ¶ 75.

⁵² In CMA476, the applicable spectrum screen will be exceeded by 5 MHz in six counties and reached in two others. In CMA478, the spectrum screen will be reached in two of five counties.

existing spectrum already available to current and potential competitors and the new spectrum the Commission has licensed and soon will license,⁵³ there is no basis for concern about spectrum aggregation.

3. Geographic Market

In past transactions involving wireless carriers, the Commission has defined the relevant market as being no smaller than CMAs or, alternatively, Component Economic Areas (“CEAs”).⁵⁴ As explained below, even when considered on that basis, the proposed transaction will not have an adverse effect on competition in any local area. Nonetheless, the evidence shows that the predominant forces driving competition among wireless carriers operate at the national level. Therefore, examining market structure in areas as small as CMAs or CEAs does not accurately account for the competitive forces that will constrain the behavior of AT&T post-transaction and assure continued intense competition in all the local areas affected by the transaction. As the Commission has recognized, rate plans of national scope, offering nationwide service at a single price without roaming charges, have become the standard in the

⁵³ See, e.g., *Thirteenth Annual CMRS Report* ¶ 68.

⁵⁴ See *Verizon/ALLTEL Order* ¶ 49; See also *In re Applications of Celco P’ship d/b/a Verizon Wireless and Rural Cellular Corp. 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 Commc’ns Act, Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd. 12,463, 12,485, ¶ 41 (2008) (“*Verizon/RCC Order*”); *In re Applications of AT&T Inc. and Dobson Commc’ns Corp. for Consent to Transfer Control of Licenses and Authorizations, Memorandum Opinion and Order*, 22 FCC Rcd. 20,295, 20,310, ¶ 25 (2007) (“*AT&T/Dobson Order*”); *In re Midwest Wireless Holdings, L.L.C. and ALLTEL Commc’ns, Inc. for Consent to Transfer Control of Licenses and Authorizations, Memorandum Opinion and Order*, 21 FCC Rcd. 11,526, 11,545-49, ¶¶ 35-43 (2006) (“*Midwest Wireless Order*”); *Western Wireless Order* at 13,072-75, ¶¶ 44-51; *Sprint Nextel Order* at 13,991-95, ¶¶ 57, 63-67; *Cingular/AT&T Wireless Order* at 21,567-69, ¶¶ 104-112.

wireless industry.⁵⁵ These plans are offered by the large national carriers as well as regional carriers, such as MetroPCS, Leap and U.S. Cellular.⁵⁶

B. Competitive Effects

The transaction will not have any adverse effect on competition at the national or local levels for a variety of reasons. First, this transaction involves a small number of subscribers and will not have any impact on market structure and competition. Second, customers can and do switch wireless carriers often, thus motivating wireless carriers to compete vigorously. Third, there are newly emerging sources of competition, such as WiMAX. Also, cable television operators have entered or are planning to enter into the wireless telephony/broadband business. For example, Cox Wireless plans to build out a 3G network that will compete directly with AT&T, Verizon Wireless, and other wireless providers.⁵⁷

1. National Competition Will Be Unaffected by the Transaction

At the national level, the transaction will have no impact on market structure and competition.⁵⁸ The transaction involves approximately 1.5 million subscribers, which accounts for less than one percent of the approximately 263 million wireless subscribers nationwide.⁵⁹

⁵⁵ *Thirteenth Annual CMRS Report* ¶ 111.

⁵⁶ *Id.*; see also MetroPCS website, Unlimited Cell Plans from MetroPCS, available at <http://www.metropcs.com/plans/> (last visited May 13, 2009); Cricket website, Plans, available at <http://www.mycricket.com/cricketplans/> (last visited May 13, 2009); U.S. Cellular Corp., Annual Report (Form 10-K), at 10 (Feb. 29, 2008).

⁵⁷ See *infra* Section VI.B.3.

⁵⁸ Where national competitive forces determine prices and the same products are offered nationwide at the same price, the relevant geographic market is national, rather than local. See, e.g., *United States v. Grinnell Corp.*, 384 U.S. 563, 575 (1966) (finding that relevant market for security services was nationwide where defendants had a “national schedule of prices, rates, and terms.”); see also *In re Bell Atl. Mobile Sys., Inc. and NYNEX Mobile Commc’ns Co. Application for Transfer of Control of Eighty-Two Cellular Radio Licenses to Cellco P’ship*, Order, 10 FCC Rcd. 13,368, 13,374-75, ¶ 20 n.28 (1995) (citing *Grinnell Corp.*, 384 U.S. at 575-76).

⁵⁹ *Thirteenth Annual CMRS Report* ¶ 2.

Numerous competitors, including the four largest national carriers, will remain to serve wireless customers.⁶⁰ Moreover, as discussed below, in each CMA that is the subject of this transaction, there will be sufficient facilities-based competition, as well as competition from non-facilities-based providers, to assure that there will be no harm to competition.

2. The Wireless Industry Is Highly Competitive

The Commission has consistently found that there is vigorous competition in the wireless industry, and that finding remains true as the industry has undergone dynamic change and expansion.⁶¹ The Commission's most recent report on CMRS competition reported that, as of December 2007, 95 percent of the population lived in census blocks served by three or more wireless operators, and 60 percent lived in census blocks served by at least five carriers.⁶² The size and extent of mobile networks also continues to grow. In June 2008, wireless carriers reported an addition of over 10,000 cell sites from the previous year, and the number of cell sites

⁶⁰ See *Thirteenth Annual CMRS Report* ¶ 14 (“As of year-end 2007, there were four mobile telephone operators in the United States that analysts typically describe as ‘nationwide’: AT&T Inc. (“AT&T”) (formerly known as Cingular Wireless), Sprint Nextel Corp. (“Sprint Nextel”), T-Mobile USA (“T-Mobile”), and Verizon Wireless, LLC (“Verizon Wireless”). In addition, a number of large regional carriers, such as Leap Wireless, US Cellular and Metro PCS, and smaller providers compete offering nationwide coverage through roaming agreements. *Id.*”).

⁶¹ See, e.g., *Thirteenth Annual CMRS Report* ¶ 1 (“U.S. consumers continue to reap significant benefits – including low prices, new technologies, improved service quality, and choice among providers – from competition in the CMRS marketplace . . . [t]here is effective competition in the CMRS market”); *id.* ¶¶ 51, 52 (“Consolidation in the mobile telecommunications market may enable providers to achieve economies of scale and increased efficiencies compared to smaller operators,” and “operators with larger footprints can achieve economies of scale and increased efficiencies compared to operators with smaller footprints.”).

⁶² See *Thirteenth Annual CMRS Report* ¶ 2; see also *id.* Table 1 (showing that 272,475,210 people or 95.5% of the U.S. population have three or more different operators offering mobile telephone service in the census blocks in which they live).

in service are up 4.8 percent year-over-year, with the total number of cell sites growing nearly 50 percent in the last five years.⁶³

Such competition and growth has led to greater subscriber choice and improved wireless service at lower prices across the United States. Most recently, the Commission pointed out in its *Thirteenth Annual CMRS Report* that “U.S. consumers continue to reap significant benefits – including low prices, new technologies, improved service quality, and choice among providers – from competition in the CMRS marketplace, both terrestrial and satellite CMRS.”⁶⁴

Significantly, these findings are not limited to urban areas. To the contrary, the Commission has examined rural areas, such as many involved in this transaction, and found that competition in those areas was no less vigorous than in more populous areas.⁶⁵ In this transaction, 74 of the 79 CMAs are rural, i.e., have a population density below 100 persons per square mile.

Acquisitions such as this one have enabled carriers to deliver improved services and equipment as well as provide greater choice to all consumers. As AT&T has previously noted, the economies of scale made possible by these combinations have directly benefited consumers

⁶³ See CTIA - The Wireless Ass'n, Annualized Wireless Industry Survey Results, June 1985 to June 2008, http://files.ctia.org/pdf/CTIA_Survey_Mid_Year_2008_Graphics.pdf; see also, e.g., News Release, Sprint Nextel Corp., Chicagoland Customers Can Do More With Wireless: Sprint Enhanced Wireless Coverage and Network Capacity (Feb. 19, 2008), available at http://newsreleases.sprint.com/phoenix.zhtml?c=127149&p=irol-newsArticle_newsroom&ID=1109603&highlight=.

⁶⁴ *Thirteenth Annual CMRS Report* ¶ 1.

⁶⁵ See *id.* ¶ 109 (“Based on our analysis, and the information provided in the record, we conclude that CMRS providers are competing effectively in rural areas.”).

through lower prices, increased output, and more rapid and widespread deployment of advanced services.⁶⁶ This transaction will be no different.

3. Additional Sources of Competition Continue To Emerge

In addition to the already vigorous competition, additional competition in the mobile telephony/broadband business is resulting from the growth of smaller providers, the rapid entry of new competitors, and the development of new technologies. For example, the expansion by a number of newer carriers (*e.g.*, Leap Wireless and MetroPCS) to more nationwide service offerings will provide subscribers with additional facilities-based competitive alternatives.⁶⁷ WiMAX also provides mobile users with additional options.⁶⁸ Most recently, the Commission approved the transfer of Sprint Nextel and Clearwire's 2.5 GHz Band spectrum to New Clearwire Corporation.⁶⁹ Comcast, Time Warner Cable and Bright House Networks plan to become MVNOs of the New Clearwire's WiMAX service in order to compete with other

⁶⁶ *In re Rural Telecomms. Group, Inc. Petition for Rulemaking to Impose a Spectrum Aggregation Limit on All Commercial Terrestrial Wireless Spectrum Below 2.3 GHz*, RM No. 11498, Comments of AT&T Inc. at 6 (filed Dec. 2, 2008) (“*AT&T Spectrum Cap Comments*”).

⁶⁷ See Press Release, Cricket Footprint Grows with Premium Extended Coverage, Forming Largest Roaming Coverage Area for a Low-Cost, Unlimited Carrier (Nov. 13, 2008), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=95536&p=irol-newsArticle&ID=1226045&highlight=>. MetroPCS first offered wireless telephone services in the Miami area in 2002, and now provides wireless service to approximately 5.4 million subscribers in several metropolitan areas, including Atlanta, Dallas, Detroit, Los Angeles, New York, San Francisco, and Philadelphia. Press Releases, MetroPCS Commc'ns Inc., MetroPCS Reports Fourth Quarter and Year End 2008 Results (Feb. 26, 2009), available at <http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-newsArticle&ID=1260271&highlight=>.

⁶⁸ New Clearwire has announced plans to deploy a nationwide WiMAX network. News Release, Sprint Nextel Corp., XOHM, Intel and WiMAX Partners Celebrate New 4G Broadband Era in Baltimore (Oct. 8, 2008); *Sprint/Clearwire Order* ¶¶ 3, 123-127 (approving the merger of Sprint and Clearwire's WiMAX businesses in order to facilitate the development of nationwide WiMAX network). The Commission specifically concluded that “the merger [could] speed the arrival of a wireless broadband pipe that [would] increase competition and consumer choice, make possible new services, and promote the availability of broadband for all Americans.” *Id.* ¶ 123.

⁶⁹ *Sprint/Clearwire Order* ¶ 1.

wireless providers and enhance their own service offerings.⁷⁰ Many mobile telephones are also Wi-Fi compatible.⁷¹

Cable television operators are also among the latest entrants in the mobile telephony/broadband business, leveraging their ability to bundle wireless service with their video, high-speed Internet and voice offerings.⁷² For example, Cox Communications is planning to compete directly with AT&T, Verizon Wireless and others by offering wireless services beginning in 2009.⁷³ Cox is an incumbent cable operator in multiple states where the 79 CMAs are located, such as Arizona, Kansas, Nebraska and Nevada. Cox holds 700 MHz spectrum in 14 of the 79 CMAs,⁷⁴ and has added AWS spectrum by acquiring AWS licenses from

⁷⁰ *Id.*

⁷¹ Press Release, Wi-Fi is now a must-have for mobile phones; User affinity to drive annual shipments to 300 million in 2011, Wi-Fi Alliance, (April 1, 2009), available at http://www.wi-fi.org/pressroom_overview.php?newsid=795.

⁷² See Marin Perez, *Customers Prefer Bundles from Telecoms*, Information Week, Oct. 1, 2008, available at <http://www.informationweek.com/news/telecom/business/showArticle.jhtml?articleID=210605175> (stating that cable companies without wireless services are not “future-proofing their bundles”); see also John Curran, *Sprint Nextel, Clearwire to Combine Wireless Broadband Operations*, Telecomm. Rep., May 15, 2008, available at 2008 WLNR 8633822 (quoting Comcast and Time Warner’s CEOs discussing their desire to introduce wireless mobility); see also Joseph Menn, *Sprint to Beef Up Wireless Venture*, L.A. Times, May 7, 2008, available at 2008 WLNR 8511864 (“quadruple play would help [cable companies] compete with phone companies that are also rolling out pay-TV service” and suggesting that cable companies may “push video content packages for souped-up phones or a new generation of devices that are somewhere between phones and laptops”); Todd Spangler, *Pivot Gets Tabled, Operators Plot Next Mobile Move*, Multichannel News, Apr. 28, 2008, available at 2008 WLNR 7856597 (stating that despite the failure of Pivot “individual operators are already scoping out the next phase of their wireless strategies”); see also *Backhaul: The Hidden Ground for Telcos & Cablecos*, The Online Reporter, Sept. 30, 2006, available at http://www.onlinereporter.com/article.php?article_id=7815 (stating that “cablecos intend to move into the mobile phone market [in 2006] in a major way.”); *AT&T Goes On Pricey Advertising Blitz*, The Online Reporter, Jan. 7, 2006, available at http://www.onlinereporter.com/article.php?article_id=5580 (noting that cable companies are much farther ahead in landline and wireless telephone offerings than telephone companies are in television offerings in the war over bundled services).

⁷³ Sinead Carew, *Cox to Offer Wireless in '09 Using Sprint Network*, Reuters, Oct. 27, 2008 (“Carew article”).

⁷⁴ Cox holds 700 MHz in the following CMAs: 322, 419, 428, 429, 433, 434, 438, 439, 330, 537, 547, 557, 676 and 678.

SpectrumCo.⁷⁵ Cox has acquired AWS licenses from SpectrumCo in CMAs 428, 429, 433, 434, 438, 439, and 440 in Kansas. Cox currently holds a total of 32 MHz of spectrum in those areas (12 MHz of 700 MHz spectrum and 20 MHz of AWS spectrum).⁷⁶

Finally, the recent spectrum auctions will give new entrants, rural carriers and non-nationwide incumbents opportunities for growth and expansion.⁷⁷ As the Commission has recognized, “the results of recent auctions indicate that the Commission’s spectrum allocation and assignment policies have helped minimize spectrum-related entry barriers.”⁷⁸

⁷⁵ Jim Barthold, *On the Hot Seat with Cox’s Stephen Bye*, FierceWireless (Dec. 15, 2008), available at <http://www.fiercewireless.com/story/hot-seat-coxs-stephen-bye/2008-12-15> (“Cox Communications Wireless Vice President Stephen Bye defended the cable operator’s decision to plow full steam ahead with its own mobile wireless play in 2009.”).

On November 14, 2008, Cox filed applications with the FCC to exchange its 10.9% interest in SpectrumCo for some of SpectrumCo’s AWS licenses. See Fed. Commc’n’s Comm’n, ULS Application: Cox TMI Wireless, LLC, <http://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=4672150> (last visited Mar. 18, 2009); Cox TMI Wireless, Description of the Transaction and Public Interest Statement (Nov. 12, 2008), available at <http://wireless2.fcc.gov/UlsApp/ApplicationSearch/applAdmin.jsp?applID=4672150#> (follow “Public Interest Statement” hyperlink). The FCC consented to the transaction on January 12, 2009 and it was consummated on February 3, 2009. See Fed. Commc’n’s Comm’n, Public Notice (Jan. 14, 2009), available at http://www.fcc.gov/Daily_Releases/Daily_Business/2009/db0114/DOC-287850A1.pdf (reporting the January 12 consent); Fed. Commc’n’s Comm’n, Public Notice (Feb. 11, 2009), available at http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-288373A1.pdf (reporting the February 3 consummation).

⁷⁶ See AT&T Inc. & Centennial Communications Corp., Description of Transaction, Public Interest Showing and Related Demonstrations, App. A (Nov. 21, 2008) [hereinafter AT&T-Centennial Public Interest Statement], available at <https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp;ATTACHMENTS=1N6VJL5K37mPzN1G7L2XKBP7mC5jC50m96ttqVIHZr3GL1cyJSgx!-659400886!-849295342?applType=search&fileKey=843683410&attachmentKey=18355849&attachmentInd=applAttach>.

⁷⁷ See *Thirteenth Annual CMRS Report* ¶¶ 65, 68. *In re Serv. Rules for Advanced Wireless Servs. in the 1.7 GHz & 2.1 GHz Bands*, Report and Order, 18 FCC Rcd. 25162, 25165 ¶ 5; 25167 ¶ 13 (2003) (AWS spectrum could be used to expand wireless voice and data services and licensees can use the spectrum for any fixed or mobile service.); Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (700MHz spectrum may be used for broad range of flexible uses, including mobile wireless commercial services.). See also Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73, *Public Notice*, Report No. AUC-08-73-I (Auction 73), DA 08-595 (rel. Mar. 20, 2008), *AT&T Spectrum Cap Comments* at 7.

⁷⁸ *Thirteenth Annual CMRS Report* ¶ 68. For example, the Commission “has progressively increased the amount of spectrum available for the provision of CMRS,” and has “implemented a

Footnote continued on next page

C. Competition Will Be Enhanced in Each CMA After This Transaction

Even if each CMA is assumed to be its own relevant geographic market, the proposed transaction will not harm competition. In the 49 CMAs where AT&T does not currently provide wireless service -- located in Kansas, Montana, North Dakota, South Dakota, Wyoming, and elsewhere -- the transaction will bring AT&T in as a new facilities-based cellular competitor.⁷⁹ In the remaining CMAs, this transaction will not result in the elimination of a major competitor or reduce the intensity of competition in these markets. As Appendix B indicates, after the transaction AT&T will face stiff competition from a number of competitors in each of the CMAs where it acquires spectrum pursuant to this transaction. Moreover there is sufficient spectrum available for new entrants. Taken together with the dynamic nature of competition in the wireless industry, these facts ensure that the transaction will not lead to either unilateral or coordinated anticompetitive effects in any market.

1. Unilateral Effects on Retail Mobile Telephony/Broadband Services Are Unlikely

The Commission has recognized that a combination of two wireless carriers can lead to the possibility of unilateral anticompetitive effects only under highly specific conditions. Those conditions almost certainly cannot be satisfied in this transaction, which is not a typical acquisition of a wireless carrier by another wireless carrier, but rather an acquisition of divestiture properties required to be sold by the Commission and the Antitrust Division of the Justice Department. As noted, in 49 of the CMAs, AT&T will be a new entrant, and in the others, AT&T has only a minor presence. Indeed, unilateral effects are unlikely in any of the

Footnote continued from previous page
more flexible, market-oriented model of spectrum allocation and assignment for spectrum used to provide" CMRS. *Id.* ¶ 66.

⁷⁹ See Appendix C.