Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Applications of AT&T INC. and CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS For Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement	)))))))))))))	WT Docket No. 09-104

COMMENTS
OF SPRINT NEXTEL CORPORATION

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Sprint Nextel Corporation ("Sprint"), pursuant to the Federal Communications Commission's ("Commission" or "FCC") June 19, 2009 Public Notice,[1] submits these comments in response to the above-referenced applications of AT&T, Inc. ("AT&T") and Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") (together "Applicants") ("AT&T Application"). If approved, the proposed transaction will implement most of the market divestitures required as a condition of the Verizon Wireless/ALLTEL merger approval.[2]

Before the Commission may consider approving the transaction, AT&T must provide more detailed information about its plans for the CDMA network, which currently supports

[1] AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104, *Public Notice*, DA 09-1350 (rel. June 19, 2009).

[2] *See Application 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 and Declaratory Ruling, 23 FCC Rcd 17444 at ¶ 159 (*Verizon Wireless/ALLTEL Merger Order*).

numerous CDMA wireless customers in the divested markets. If AT&T confirms that it intends to shut down the CDMA network, then the Commission must extend the Verizon Wireless/ALLTEL roaming merger conditions to the proposed transaction. Specifically, the Commission must require AT&T to operate and maintain the CDMA network and honor the ALLTEL roaming agreements[3] covering those areas until the Verizon Wireless/ALLTEL roaming merger conditions expire or for a period of at least three years from the date the proposed AT&T transaction closes, which ever occurs later.

I. INTRODUCTION AND SUMMARY

AT&T seeks to purchase assets in 79 of the 105 Cellular Market Areas ("CMAs") that the Commission required Verizon Wireless to divest as a condition of the Verizon Wireless/ALLTEL merger approval. The Commission imposed this condition, among others, to eliminate potential competitive harm that could undermine the public interest. While the proposed transaction would help satisfy the Verizon Wireless/ALLTEL divestiture condition, the Commission still must conduct a separate analysis to determine whether the Applicants have adequately demonstrated that this transaction, on its own merit, would serve the public interest, convenience, and necessity pursuant to Sections 214(a) and 310(d) of the Communications Act, as amended. As part of that analysis, the Commission must assess whether the proposed transaction would reduce the availability of roaming services or increase roaming rates, and thus harm consumers.

Unfortunately, the AT&T Application fails to provide sufficient information about the fate of the CDMA network for the Commission to conduct a thorough public interest investigation. Therefore, the Commission should require AT&T to disclose more detailed

[3] "ALLTEL roaming agreements" or "ALLTEL CDMA roaming agreements" means the rates, terms, and conditions of the respective existing pre-divestiture roaming agreements between roaming partners and the Verizon Wireless-ALLTEL subsidiary party to such roaming agreements.

information about its plans. If AT&T confirms that it does intend to shut down the CDMA network, then the Commission must scrutinize the proposed transaction closely for any adverse effects it may have on the automatic roaming marketplace and condition its approval of the transaction accordingly. Indeed, closing the divested CDMA network will: (1) eradicate all CDMA coverage in approximately 32 percent of the total square mileage that ALLTEL originally covered within the 79 CMAs; and (2) eliminate CDMA wholesale roaming competition in 59 percent of that area. Sprint and other carriers cannot rely on rural build-out as a substitute for roaming throughout this vast territory, given the economic challenges of low population densities and recent Commission decisions that restrict subsidies of the magnitude ALLTEL had received for its rural build-out. Certainly any attempted build-out would take multiple years. The lack of competition in these CMAs will significantly curtail, or even eliminate altogether, the availability of CDMA roaming services and/or raise roaming rates for consumers. Accordingly, this transaction will erode competition, not preserve and enhance it as the public interest standard mandates.

Given that the proposed transaction may generate substantial transaction-specific competitive harm, Sprint respectfully requests that the Commission extend the Verizon Wireless/ALLTEL roaming merger conditions to AT&T as follows if AT&T intends to shut down the CDMA network:

> Until the Verizon Wireless/ALLTEL roaming merger conditions expire or for a period of at least three years from the date AT&T's proposed transaction closes, which ever occurs later, the Commission:
>
> 1. Requires AT&T to honor ALLTEL roaming partners' ALLTEL CDMA roaming agreements in their entirety (all rates, terms and conditions) covering the divested CDMA network in the 79 CMAs.[4] This condition should apply regardless of whether

[4] Currently, there is debate as to whether the Verizon Wireless/ALLTEL roaming merger conditions apply to all of the terms and conditions of the ALLTEL roaming agreements or only to the rates in those agreements. In the case of AT&T's proposed transaction, Sprint requests that the Commission apply the

the ALLTEL CDMA roaming partner holds spectrum usage rights that would otherwise bar it from obtaining automatic roaming under the in-market exception. It should also apply regardless of whether the roaming partner is a small, rural, regional, or national wireless carrier.

2. Requires AT&T to give ALLTEL roaming partners the option to keep the rates set forth in the roaming agreement referenced above in force for the full term of the agreement, notwithstanding any change of control or termination for convenience provisions that would give AT&T the right to accelerate termination of such agreement or force re-negotiation.

3. Requires AT&T not to adjust upward the rates set forth in ALLTEL's agreements with ALLTEL roaming partners.

4. Requires AT&T to continue to operate and maintain the divested CDMA network in the 79 CMAs. AT&T must maintain the CDMA network at a level comparable to the level it provides its GSM customers to preclude it from permitting the CDMA network's capabilities to degrade over time to the detriment of CDMA customers.

II. STANDARD OF REVIEW

The Commission may not approve a proposed transaction, unless it determines that the transaction will serve the public interest, convenience, and necessity pursuant to sections 214(a) and 310(d) of the Communications Act.[5] The Applicants bear the heavy burden of proving to the Commission, by a preponderance of the evidence, that the proposed transaction serves the public interest.[6] In determining whether the Applicants have satisfied the public interest test, the Commission examines whether the proposed transaction complies with the specific provisions of the Communications Act, other applicable statutes, the Commission's rules, and federal

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Verizon Wireless/ALLTEL roaming merger conditions to the ALLTEL roaming agreements in their entirety.

[5] 47 U.S.C. §§ 214(a), 310(d).

[6] *See e.g., Verizon Wireless/ALLTEL Merger Order* at ¶ 26; *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases*, WT Docket No. 07-208, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 12463 at ¶ 26 (2008) (*Verizon Wireless/RCC Merger Order*).

communications policy.[7] In making its assessment, the Commission holds, "a deeply rooted preference for preserving and enhancing competition."[8] If the Commission finds that the proposed transaction will generate transaction-specific harm, it will impose conditions to remedy such harm pursuant to its responsibilities under the Communications Act and related statutes.[9]

In transactions involving wireless service, the Commission's public interest analysis evaluates whether the transaction will have an adverse impact on the roaming market.[10] The Commission has found that a proposed transaction may inflict serious competitive harm on the roaming market where the transaction will either: (1) adversely affect the availability of roaming services; or (2) raise roaming rates passed through to consumers.[11] A transaction may adversely affect roaming service availability, for example, if it reduces the number of technologically compatible roaming partners operating in a given area.[12] Likewise, a transaction may increase

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[7] *See e.g., Verizon Wireless/ALLTEL Merger Order* at ¶ 26; *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket No. 04-70, Memorandum Opinion and Order, 19 FCC Rcd 21522 at ¶ 40 (2004) (*Cingular/AT&T Merger Order*).

[8] *See e.g., Verizon Wireless/ALLTEL Merger Order* at ¶ 27.

[9] *See e.g., id.* at ¶ 29*; Verizon Wireless/RCC Merger Order* at ¶ 30.

[10] *See e.g., Cingular/AT&T Merger Order* at ¶ 172.

[11] *See e.g., id.* at ¶¶ 172-3. The Commission has determined that consumers would be harmed if, as a result of the merger, the roaming partners' customers are no longer able to obtain roaming services in certain markets and they cannot replace that loss with equivalent or superior alternatives. *Id.* at ¶ 172.

[12] *See e.g., id.* at ¶173 (concluding "that the continued presence of two nationwide and numerous regional carriers using GSM technology after the merger should be sufficient to ensure the continued availability of roaming services at competitive rates to Cingular's potential roaming partners."); *Applications of Nextel Communications, Inc. and Sprint Corporation*, WT Docket No. 05-63, Memorandum Opinion and Order, 20 FCC Rcd 13967 at ¶ 126 (*Sprint/Nextel Merger Order*) (determining that "[a]lthough this merger would reduce the number of nationwide carriers, it is not likely to result in anticompetitive effects regarding roaming services because it will not reduce the number of iDEN or CDMA nationwide roaming partners for smaller, rural and/or regional providers."); *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 at ¶ 66 (2007) (*AT&T/Dobson Merger Order)* (finding "that the alleged absence of a reliable CDMA roaming partner in CMA450 is not a consequence of this transaction, and that the transaction is not likely to have any negative impact on the

roaming rates if it weakens the bargaining position of potential roaming partners negotiating roaming agreements with the surviving entity.[13] In this case, the proposed transaction will reduce the availability of roaming services in large areas and raise roaming rates for consumers in the remaining divested CMAs. Consequently, before the Commission may approve the transaction, it must impose conditions to help remedy the transaction-specific harm it will generate, as discussed in greater detail below.

III. THE PROPOSED TRANSACTION WILL NOT SERVE THE PUBLIC INTEREST IF AT&T INTENDS TO ELIMINATE THE CDMA NETWORK

A. The Commission Required Divestiture in the Verizon Wireless/ALLTEL Proceeding to Preclude Significant Competitive Harm

The Commission approved Verizon Wireless's acquisition of ALLTEL subject to several conditions it found necessary to eliminate potential competitive harm that could undermine the public interest.[14] In particular, the Commission conditioned its approval on Verizon Wireless's divestiture of the entire operating unit of either Verizon Wireless or ALLTEL in a total of 105 CMAs ("Divestiture Assets") to prevent "consolidation in individual markets from advancing to the point at which it would threaten competition and potentially harm consumers."[15] The

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number of actual or potential CDMA roaming partners in this or any other geographic market."); *Verizon Wireless/ALLTEL Merger Order* at ¶ 159 (requiring divestiture where "there would not be an adequate number of competing service providers remaining after the transaction with sufficient network and spectrum assets to deter anticompetitive behavior by the merged entity.").

[13] *See Applications of ALLTEL Corporation, Transferor, and Atlantis Holdings LLC, Transferee, For Consent to Transfer Control of Licenses, Leases and Authorizations,* WT Docket No. 07-128, *Memorandum Opinion and Order*, 22 FCC Rcd 19517 at ¶ 6 (2007) (*ALLTEL/Atlantis Merger Order)*; *Sprint/Nextel Merger Order* at ¶ 126.

[14] *See Verizon Wireless/ALLTEL Merger Order* at ¶¶ 3-4.

[15] *Id.* at ¶ 4. For each market, Verizon Wireless and ALLTEL were required to divest all licenses, authorizations and related operational and network assets (including certain employees, retail sites and subscribers) (*i.e.*, the entire business operating unit of either Verizon Wireless or ALLTEL) used in the operation of service by either Verizon Wireless or ALLTEL. *Id.* at ¶¶ 24, 159. The 105 markets divested comprise the entire states of North Dakota and South Dakota, as well as overlapping properties

Commission determined that without divestiture, "competing service providers would not be sufficiently numerous to deter anticompetitive behavior by the merged entity."[16]

In addition, the Commission adopted four roaming conditions to its approval of Verizon Wireless's acquisition of ALLTEL:

(1) Verizon Wireless will "honor ALLTEL's existing agreements with other carriers to provide roaming on ALLTEL's CDMA and GSM network;"

(2) Verizon Wireless will keep "the rates set forth in that roaming agreement in force for the full term of the agreement, notwithstanding any change of control or termination for convenience provisions that would give Verizon Wireless the right to accelerate the termination of such agreement;"

(3) A carrier with an agreement with both ALLTEL and Verizon Wireless will have "the option to select either agreement to govern all roaming traffic between it and post-merger Verizon Wireless;" and

(4) Verizon Wireless will "not adjust upward the rates set forth in ALLTEL's existing agreements . . . for the full term of the agreement or for four years from the closing date, which ever occurs later."[17]

The Commission declined to impose any additional roaming requirements, such as a requirement to maintain ALLTEL's GSM network for a specified period of time, but noted that Verizon Wireless planned to continue operating ALLTEL's GSM network indefinitely and provide roaming services to the customers of other wireless service providers under ALLTEL's existing

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comprising partial areas within the following additional states: Alabama, Arizona, California, Colorado, Georgia, Idaho, Illinois, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Carolina, Ohio, South Carolina, Utah, Virginia and Wyoming. *Id.* at ¶ 15.

[16] *Id.* at ¶ 100. While the Commission required divestiture, it declined to condition the sale of the Divestiture Assets "based on (1) the size, ownership structure, or business plan of the acquirer, or (2) the size of the geographic areas that the Divestiture Areas can be sold to an acquirer." *Id.* at ¶ 162. Nevertheless, the Commission voiced its strong preference for a buyer other than AT&T when it expressly "encourage[d] Verizon Wireless to consider and implement mechanisms to assist regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups in acquiring the Divestiture Assets and/or accessing spectrum, to the extent possible." *Id.* at ¶ 162.

[17] *Id.* at ¶ 178.

agreements with those providers.[18] Ultimately, the Commission concluded that the package of divestitures together with the above four roaming conditions "will protect competition at the retail level in those geographic markets" and thus "will not alter competitive market conditions to harm consumers . . . ."[19]

The Commission's determination that the divestiture condition was necessary to find the Verizon Wireless/ALLTEL merger in the public interest does not automatically deem any transaction designed to satisfy the divestiture condition in the public interest as well. As the Commission recognized, it must conduct a *separate* public interest analysis of any Divestiture Asset sale.[20] The public interest analysis for the AT&T's proposed transaction, however, reveals that it may actually cause the very competitive harm that the Verizon Wireless/ALLTEL divestiture condition sought to eliminate.

B. AT&T's Application Fails to Provide Sufficient Information for the Commission to Conduct an Informed Public Interest Analysis

AT&T seeks to purchase assets in 79 of the 105 CMAs that the Commission required Verizon Wireless to divest under the *Verizon Wireless/ALLTEL Merger Order*.[21] While AT&T claims that the proposed transaction "will result in a number of public interest benefits and increase competition,"[22] it fails to articulate clearly its plans for the CDMA network it would inherit, and thus does not provide the Commission sufficient information to conduct a

[18] *Id.* at ¶¶ 126, 175-6, 179.

[19] *Id.* at ¶ 179.

[20] *Id.* at ¶ 162.

[21] AT&T Application at 6. Of the wireless systems in the 79 CMAs, 65 are former ALLTEL systems, 11 are former Rural Cellular Corporation ("RCC") systems, and three are Verizon Wireless systems. *Id.* According to AT&T, these networks serve mostly rural areas. *Id.*

[22] *Id.* at 10.

meaningful public interest analysis of the proposed transaction. On the one hand, AT&T states that it, "will overbuild the divested CDMA networks to GSM to enable a smooth migration of those customers to GSM," which leaves open the possibility that AT&T may operate and maintain the CDMA network to provide wholesale CDMA roaming services, similar to what Verizon Wireless did with ALLTEL's GSM network.[23] On the other hand, AT&T states that it intends to "convert" the divested CDMA network to GSM, which suggests that AT&T plans to shut down the CDMA network entirely and replace it with its GSM network.[24]

The Commission needs to know *exactly* what AT&T plans to do with the CDMA network before it can determine whether this transaction would serve the public interest. If AT&T intends to terminate the CDMA network and discontinue CDMA service within the 79 CMAs, then Sprint believes that the Commission should ask AT&T at least the following questions:

- How long can Verizon Wireless/ALLTEL's CDMA customers expect to continue to use their current CDMA phones on the CDMA wireless network?
- What is AT&T's specific process and timetable for migrating Verizon Wireless/ALLTEL CDMA customers to AT&T's GSM network?
- Will AT&T force Verizon Wireless/ALLTEL's CDMA customers to buy new GSM phones?
- Will AT&T provide new GSM handsets to Verizon Wireless/ALLTEL's customers free of charge or on a subsidized basis?
- What assurances will Verizon Wireless/ALLTEL CDMA customers have that AT&T will continue to maintain Verizon Wireless/ALLTEL's network facilities at the same or better level than Verizon Wireless/ALLTEL has?
- Will Verizon Wireless/ALLTEL's CDMA customers have the same degree of access to wireless broadband data after the acquisition as they do today?
- Given Verizon Wireless/ALLTEL's extensive CDMA EV-DO wireless broadband coverage, will these customers lose wireless broadband access where they have it today

[23] *Id.* at 13; News Release, AT&T Inc., *AT&T to Acquire Divestiture Properties from Verizon Wireless, Enhance Network Coverage and Customer Service* (May 8, 2009) (*AT&T News Release*).

[24] AT&T Application at 16; *See also AT&T News Release* ("Network conversion from Verizon's CDMA network to GSM technology and transition of the operations of AT&T is expected to take no more than 12 months from the date the transaction closes . . . .").

because AT&T offers more limited, or simply different, wireless broadband data coverage on its network?

- Does AT&T intend provide CDMA wholesale roaming? If so, for how long and pursuant to what terms and conditions?[25]

Once AT&T answers these key questions, the Commission must carefully consider the impact of AT&T's responses before it renders a decision on AT&T's Application.

C. AT&T's Proposed Acquisition Will Result in Significant Competitive Harm if AT&T Shuts Down the CDMA Network

If AT&T does indeed intend to shut down the CDMA network, it must not only disclose the details as discussed above, but also demonstrate that such closure will not inflict significant competitive harm on the roaming market by reducing the availability of roaming services and raising roaming rates, to the detriment of the public interest. Eliminating the divested CDMA network will: (1) eradicate all CDMA coverage in approximately 32 percent of ALLTEL's original footprint within the 79 CMAs; and (2) eliminate competition in the CDMA wholesale roaming market in approximately 59 percent of that same area, as described in greater detail below.

1. AT&T Would Eliminate CDMA Coverage in 32 Percent of the Relevant Divested Territory

If AT&T dismantles the CDMA network, it will extinguish the presence of its CDMA rivals and eliminate *all* CDMA coverage in a whopping 32 percent of the total square mileage that ALLTEL originally covered within the 79 CMAs.[26] Exhibit A depicts the estimated affected

[25] The Commission's Information Request to AT&T posed similar questions about AT&T's proposed purchase of Centennial's CDMA network assets in Puerto Rico and the U.S. Virgin Islands. Letter from James D. Schlichting, Acting Chief, Wireless Telecommunications Bureau, Federal Communications Commission to William R. Drexel, AT&T, Inc. and Jonathan V. Cohen, Wilkenson Barker Knuaer, LLP (April 20, 2009) (*AT&T/Centennial Information Request*).

[26] Sprint understands that the divested ALLTEL network had covered approximately 409,000 square miles within the CMAs at issue. Sprint estimates that over 131,000 of those total square miles (32 percent) will lose all CDMA coverage if AT&T terminates the CDMA network. This no-CDMA-

area in which over 480,000 people live.[27] Without CDMA network coverage from any carrier, CDMA customers that live or roam in these areas will lose all access to service, and thus will see the words "No Service" on their handsets when seeking help with car trouble or trying to contact their family in the event of an emergency. Such significant service disruption cannot possibly serve the public interest. For most, AT&T will be their only option.

Even if CDMA customers in the affected areas switch to AT&T's GSM service, they will not be immune from harm. The availability of service from multiple CDMA-based carriers would help constrain AT&T's potential anticompetitive behavior and keep prices low.[28] If AT&T takes its CDMA rivals out of the equation by shutting down the divested CDMA network, however, AT&T's GSM customers would no longer have the option to switch to a CDMA-based carrier for service in these areas. There would certainly not be "numerous competitors . . . remain[ing] to serve wireless customers,"[29] let alone "head-to-head competition between the two largest National carriers" (*i.e.,* AT&T and Verizon Wireless) as AT&T's Application claims.[30] Without CDMA carriers to exert downward pressure on prices for GSM or other services in that area, AT&T would be at liberty to raise prices for its captive GSM subscribers without restraint.

2. AT&T Would Eliminate CDMA Wholesale Roaming Competition in 59 Percent of the Relevant Divested Territory

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coverage zone is well over three times larger than the Commonwealth of Virginia (39,598 square miles). Taking into account the total square mileage of all 79 CMAs (684,051 square miles), Sprint estimates that approximately 19 percent of this territory will lose all CDMA coverage if AT&T terminates the CDMA network.

[27] This figure is derived from U.S. Census Data.

[28] *Cingular/AT&T Merger Order* at ¶ 180.

[29] AT&T Application at 24.

[30] *Id.* at 11.

If AT&T shuts down the divested CDMA network, it will eliminate competition in the CDMA roaming market throughout approximately 59 percent of the total square mileage that ALLTEL originally covered within the 79 CMAs,[31] which will adversely impact roaming availability and rates for consumers.

In terms of roaming availability, AT&T will be able to reduce the number of technologically compatible carriers providing CDMA roaming service in this expansive swath of territory down to one (Verizon Wireless). Prior to the Verizon Wireless/ALLTEL merger, Verizon Wireless and ALLTEL separately operated the two CDMA networks within these CMAs. If AT&T maintained the divested CDMA network to provide wholesale CDMA roaming service, then CDMA providers would continue to have at least two options for wholesale roaming service and thus the same level of competition would be maintained.[32] Instead, they will be left with only one option or even none in some cases. Indeed, under the current "in-market" or "home-market" exception to the Commission's automatic roaming rule, Verizon Wireless is not required to offer automatic roaming services to any carrier holding licenses covering these areas.[33] Moreover, without competition to discipline CDMA roaming rates, they

[31] Sprint understands that the divested ALLTEL network had covered approximately 409,000 square miles within the CMAs at issue. If AT&T terminates the CDMA network, Sprint estimates only one CDMA network will serve approximately 239,400 of those total square miles (59 percent). This area is six times larger than the Commonwealth of Virginia (39,598 square miles). Taking into account the total square mileage of all 79 CMAs (684,051 square miles), Sprint estimates that only one CDMA network will serve approximately 35 percent of this territory, if AT&T terminates the CDMA network.

[32] As the Commission has recognized, "TDMA/GSM carriers do not have the ability to roam with CDMA carriers, and vice versa." *Cingular/AT&T Merger Order* at ¶ 175. Since CDMA carriers cannot roam on AT&T's technologically incompatible GSM network, AT&T is not a potential roaming partner for CDMA carriers in this area.

[33] 47 C.F.R. § 20.12(d). *See also Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 at ¶ 48 (2007) (*Automatic Roaming Order*). Sprint has filed a petition for reconsideration of the *Automatic Roaming Order*, which is still pending. Sprint Nextel Corporation, Petition for Reconsideration, WT Docket No. 05-265 (filed Oct. 1, 2007).

are sure to rise well above competitive levels. Higher CDMA roaming rates will ultimately translate into higher rates for CDMA consumers.

In sum, shutting down the divested CDMA network will significantly curtail, or even eliminate altogether, the availability of CDMA roaming services and raise roaming rates, which will inflict serious competitive harm on the roaming marketplace.

D. It Is Not Economically Feasible or Efficient for Sprint or Any New Entrant to Duplicate the Divested CDMA Rural Facilities

Unfortunately, there is little chance that either Sprint or another carrier would be able to replicate the entire footprint of the divested CDMA network in the foreseeable future, thus making this CDMA network an "essential facility" for any CDMA carrier seeking to provide its customers coverage in this region. As set forth below, the economics of a rural build-out in the former ALLTEL territories for companies seeking to extend their network today are very different than they were for ALLTEL over the past decade, given the unique challenges of overcoming low population densities coupled with recent changes in the Universal Service high cost support system.

First, low population densities make the economics of a rural build-out especially challenging. The average population density in the 79 CMAs is only about 27 persons per square mile.[34] Because there are few potential customers in rural areas, the costs of facilities must be spread over fewer subscribers than in urban areas. As the U.S. General Accounting Office's ("GAO") report on telecommunications explained, carriers like ALLTEL necessarily relied heavily on the Universal Service high cost program to build

> . . . in rural areas where they would otherwise be unable to economically justify the investment. For example, one carrier told us that it can cost from $350,000 to $500,000 to install a cell tower in rugged or

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[34] This figure is derived from U.S. Census data.

> mountainous terrain, in addition to other installation expenses such as land rent and maintenance costs, but that in most cases, low population density in the area would not yield enough customers to recover the investment.[35]

The *GAO Report* concluded that "wireless carriers often lack the economic incentive to install cell phone towers in rural areas where they are unlikely to recover the installation and maintenance costs, but the high-cost program support allows them to make these investments."[36]

Sprint's own experience confirms the findings of the *GAO Report*. Financial factors are a prime consideration in evaluating whether build-out to a particular area is rational and feasible, especially in the midst of an economic recession that has raised the cost of capital and tightened credit markets. In deciding whether to invest scarce capital resources in a particular site, Sprint considers whether the site is likely to generate sufficient new revenues (by adding new customers, by reducing churn among existing customers, and from customers passing through the area) to offset, on a net present value basis, the capital and operating costs associated with building and maintaining a new site. Rural sites are problematic because of the low population densities; it takes a longer period of time to break even if there are few potential customers and thus only a modest potential revenue stream. Moreover, certain costs of deploying facilities in rural areas can be higher than in more urban areas. For example, additional resources may be needed to accommodate difficult terrain, and higher special access costs are incurred to connect a rural cell site to a distant LEC serving wire center.

Second, the Universal Service high cost support system, established to help overcome these obstacles, has undergone changes in recent years that limit the amount of support competitive carriers may receive. In constructing its rural network, ALLTEL relied on massive

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[35] U.S. General Accounting Office, Telecommunications, *FCC Needs to Improve Performance Management and Strengthen Oversight of the High-Cost Program* at 24-25 (June 2008) (*GAO Report*).

[36] *Id.* at 25.

subsidies in the form of Universal Service high cost support. ALLTEL and the other rural Commercial Mobile Radio Service ("CMRS") providers that it acquired – Western Wireless and Midwest Cellular – were among the highest recipients of high cost support. Indeed, the total amount of support ALLTEL and its predecessors received since the inception of the high cost support program was over $1.4 billion through the end of 2008.[37] Simply put, ALLTEL was able to build the nation's largest rural network – including, again, nearly 503,000 square miles where it operates the only CDMA facilities in existence – because it received massive public aid that was ultimately paid for by end-user customers not only of ALLTEL's own services, but of all carriers that have been required to contribute to the federal USF.

Going forward, this level of support will not be available, whether to Sprint or any other new entrant into ALLTEL divested territory. Indeed, the Commission's universal service policies appear to be headed away from supporting multiple wireless networks – even of different air interfaces – in a given high cost area. The Commission's April 2008 adoption of an "emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers ("CETCs") may receive" was based on concern over the viability of the USF.[38] In addition, under the new USF cap regime that took effect August 1, 2008, the amount of universal service support for all CETCs in each state is capped at March 31, 2008 levels. Thus, as the number of CETC lines in each state increases, the amount of CETC support per line served falls. Consequently, a new wireless carrier building out its network can never hope to receive the magnitude of support ALLTEL and other CETCs received in the past, as all

[37] These sums were derived from the High Cost Appendices (HC01) publicly available on the USAC website at http://usac.org/about/goverance/fcc-filings.

[38] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 at ¶ 1 (2008) (*Interim Cap Order*).

CETCs will continue to split a fixed amount of support capped at 2008 levels. Support to competitive carriers may be further curtailed if the Commission abolishes the "equal support" rule (47 C.F.R. § 54.307(a)) and instead requires CETCs to file cost studies.[39] Furthermore, for Sprint in particular, the Commission conditioned its approval of the Sprint/Clearwire transaction on Sprint's commitment to phase out its requests for federal high-cost universal service support over a five-year transition period, thus severely restricting the level of support available to Sprint to build-out in the divested areas.[40]

Recent rural broadband initiatives designed to spur rural broadband deployment are a testament to the continuing challenges of communications network deployment in rural areas. Acting Chairman Copps' recent *Report on Rural Broadband Strategy,* citing significant financial obstacles to rural network deployment as a "formidable barrier," made a series of recommendations for government action, implying that current market forces alone are not enough.[41] In addition, under the American Recovery and Reinvestment Act of 2009,[42] Congress felt it was necessary to appropriate $2.5 billion to the USDA's Rural Utilities Service ("RUS")

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[39] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008). The Commission has tentatively concluded that it should eliminate the equal support rule and replace it with a cost analysis that would, among other things, forbid carriers from assigning a market value or opportunity cost to their wireless spectrum. *Id.* at ¶¶ 1, 17. The Commission has also asked whether CETC cost submissions should mirror the Part 32 rules that apply to incumbent LECs. *Id.* at ¶ 15.

[40] *Sprint Nextel Corp. and Clearwire Corp., Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, WT Docket No. 08-94, Memorandum Opinion and Order, 23 FCC Rcd 17570 (2008) at ¶ 108 (*Sprint Nextel/Clearwire Order*).

[41] *Bringing Broadband to Rural America, Report on a Rural Broadband Strategy*, rel. May 22, 2009 by Acting Chairman Michael Copps at 48.

[42] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (*Recovery Act*).

for the express purpose of extending loans and grants to facilitate broadband deployment in rural projects.[43]

In sum, it is not economically feasible for Sprint or any other carrier alone to duplicate existing CDMA networks in rural and high-cost areas and certainly not in the near future. Consequently, if AT&T decides to shut down the CDMA network it is acquiring from Verizon Wireless, it is highly unlikely that another CDMA network would be deployed across all 79 CMAs to provide a competitive alternative in the near term.

IV. THE COMMISSION MUST EXTEND THE VERIZON WIRELESS/ALLTEL MERGER ROAMING CONDITIONS TO AT&T'S PROPOSED TRANSACTION TO PRECLUDE COMPETITIVE HARM

AT&T has failed to satisfy its burden of demonstrating that the proposed transaction is in the public interest. Without more information about AT&T's plans for the CDMA network, the Commission cannot properly assess the potential impact of the transaction and whether it will have an adverse affect on competition and consumers. If AT&T does indeed intend to shut down the divested CDMA network, then CDMA coverage will be lost entirely or provided by only one carrier in a significant portion of the divested territory, thus significantly reducing roaming competition for the foreseeable future.

Less competition in the roaming market is precisely the same transaction-specific harm that the Commission aimed to remedy when it imposed the Verizon Wireless/ALLTEL roaming merger conditions. The Verizon Wireless/ALLTEL transaction merged two CDMA networks into one, and thus reduced competition. To ameliorate this competitive harm, the Commission imposed roaming conditions that in effect preserved the roaming rates, terms and conditions that roaming partners received under more competitive market conditions where at least two CDMA networks existed, rather than one.

[43] *Recovery Act*, Division A, Title I, Rural Utilities Service (RUS Appropriations).

The network at issue in the Verizon Wireless/ALLTEL proceeding is the same network AT&T proposes to inherit, so the same conditions should attach. Moreover, if AT&T purchases and then eliminates one of the CDMA networks in this territory by shutting it down, the net effect is the same or worse – there will be one CDMA network remaining or even none in many areas. Consequently, the level of competition will decrease and harm consumers, as discussed above. Accordingly, it is imperative that the Commission extend the Verizon Wireless/ALLTEL roaming conditions to AT&T's proposed transaction to preserve the same roaming rates, terms and conditions that ALLTEL's roaming partners received under a more competitive market environment.

Furthermore, to ensure that AT&T satisfies the Verizon Wireless/ALLTEL merger conditions, the Commission also must require AT&T to maintain the CDMA network for the same time frame that the conditions will apply. This condition was not necessary in the Verizon Wireless/ALLTEL merger proceeding because Verizon Wireless expressly stipulated that it would continue to operate ALLTEL's GSM network indefinitely and maintain it to at least its current level of quality.[44] Since AT&T has not yet made the same commitment with respect to the CDMA network it proposes to acquire, an express condition to that effect is necessary and appropriate.

Therefore, Sprint respectfully requests that the Commission extend the Verizon Wireless/ALLTEL merger conditions to AT&T's proposed transaction as follows:

> Until the Verizon Wireless/ALLTEL roaming merger conditions expire or for a period of at least three years from the date AT&T's proposed transaction closes, which ever occurs later, the Commission:
>
> 1. Requires AT&T to honor ALLTEL roaming partners' ALLTEL CDMA roaming agreements in their entirety (all rates, terms and conditions) covering the divested

[44] *Verizon Wireless/ALLTEL Merger Order* at ¶ 126.

CDMA network in the 79 CMAs.[45] This condition should apply regardless of whether the ALLTEL CDMA roaming partner holds spectrum usage rights that would otherwise bar it from obtaining automatic roaming under the in-market exception. It should also apply regardless of whether the roaming partner is a small, rural, regional, or national wireless carrier.

2. Requires AT&T to give ALLTEL roaming partners the option to keep the rates set forth in the roaming agreement referenced above in force for the full term of the agreement, notwithstanding any change of control or termination for convenience provisions that would give AT&T the right to accelerate termination of such agreement or force re-negotiation.

3. Require AT&T not to adjust upward the rates set forth in ALLTEL's agreements with ALLTEL roaming partners.

4. Require AT&T to continue to operate and maintain the divested CDMA network in the 79 CMAs. AT&T must maintain the CDMA network at a level comparable to the level it provides its GSM customers to preclude it from permitting the CDMA network's capabilities to degrade over time to the detriment of CDMA customers.

Sprint respects and supports the Commission's general policy against mandating the particular technology a carrier chooses and is not asking the Commission to deviate from that policy. In this case, Sprint is merely asking the Commission to take steps to mitigate the damage that will likely result from a technology change by maintaining the status quo for a period of at least three years to allow CDMA carriers to make alternative arrangements for the benefit of consumers.

V. CONCLUSION

The Commission should not automatically rubberstamp its approval of AT&T's proposed transaction as mere administrative clean-up to the Verizon Wireless/ALLTEL merger proceeding. If approved, this transaction could drastically alter the competitive landscape of the roaming market in rural areas. If AT&T chooses to terminate the divested CDMA network, it

[45] Currently, there is debate as to whether the Verizon Wireless/ALLTEL roaming merger conditions apply to the relevant roaming agreements in their entirety versus only to rates. Sprint submits that the Verizon Wireless/ALLTEL roaming merger conditions extended to AT&T's proposed transaction should apply to the relevant roaming agreements in their entirety.

will unilaterally eliminate CDMA roaming coverage and CDMA competition in significant portions of the divested territories. As a result, roaming availability will decrease while roaming rates will increase to the detriment of consumers. Accordingly, the Commission must invoke its authority to obtain additional information about the fate of the divested CDMA network. If it becomes clear that AT&T intends to shut down the CDMA network altogether, then the Commission must impose the conditions outlined above to maintain the status quo for at least three years while CDMA providers seek alternative arrangements for the benefit of CDMA consumers and ultimately the public interest.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

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<u>EXHIBIT A</u>

Map Depicting CDMA Coverage Impact
if AT&T Terminates the CDMA Network in the 79 CMAs

Exhibit A

CDMA Coverage Impact if AT&T Terminates the CDMA Network in the 79 CMAs