

57. In evaluating the likelihood of harms from unilateral effects as a result of this transaction, we do not consider service via roaming agreements, advertising spillovers, or the inability by the merged entity to target price increases. The Applicants argue that consumers could acquire service from competitors in adjacent markets, even if these carriers do not have facilities-based service in the area that they live, and this service would be provided through roaming agreements.<sup>215</sup> We do not consider entry via roaming agreements to mitigate anticompetitive effects as a result of this transaction. There is no evidence in the record that indicates that non-facilities-based service enabled through roaming agreements is cost effective.<sup>216</sup> The Applicants claim that “spillovers” from advertising by carriers in adjacent areas would constrain the ability of the merged entity to raise prices or reduce service quality.<sup>217</sup> There is no evidence on the record that substantiates the Applicants’ claim that advertising spillovers would mitigate any potential competitive harm, and therefore we do not consider advertising spillovers in our analysis of unilateral effects of this transaction. The Applicants also argue that because of the characteristics of the wireless industry, it is unlikely post-transaction that the combined firm would be able to profitably differentiate pricing across markets.<sup>218</sup> We acknowledge that there is evidence that AT&T currently sets its price on a nationwide basis, and does not offer many localized promotions for either pricing plans or handsets. However, the Applicants do not quantify the cost savings or customer gains from using a nationwide versus a geographically differentiated strategy. Although a nationwide strategy may be cost effective at the present time, there is no evidence in the record that this situation would be unchanged post-transaction. We find it reasonable to assume that if geographically differentiated strategies became profitable in the future, AT&T would implement these strategies.<sup>219</sup>

58. In summary, while harm arising from unilateral effects is unlikely in most of the markets involved in this transaction, for the reasons discussed above we find that this transaction is likely to result in adverse unilateral effects in many of the limited number of markets identified by the initial screen.<sup>220</sup> In these markets, where AT&T and Centennial service areas currently overlap, it appears that AT&T and Centennial are relatively close substitutes for each other in the eyes of consumers. In many of these markets, other providers generally are unable to match the price/service options offered by the Applicants. In addition, other licensees in these markets have limited ability to reposition in response to any attempted exercise of market power by the merged firm. Further, entry by firms not currently providing service in these markets cannot be counted on to prevent possible exercise of market power. And, forces pushing firms away from setting differing prices across local markets cannot be counted on to prevent such differential pricing in the future. Therefore, as further described in the market-by-market analysis below, we find a number of markets in which other providers are not present or do not possess the capacity to prevent the exercise of unilateral market power.

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<sup>215</sup> Application, Public Interest Statement at 38-40 (citing Declaration of Willig, Orszag, and Poulsen at ¶¶ 43-45).

<sup>216</sup> Application of Western Wireless Corporation and ALLTEL Corporation, *Memorandum Opinion and Order*, 20 FCC Rcd 13053, 13081 ¶ 72 (2005) (“*ALLTEL-Western Wireless Order*”).

<sup>217</sup> Application, Public Interest Statement at 39. See also Application, Declaration of Willig, Orszag, and Poulsen at ¶ 46.

<sup>218</sup> Application, Declaration of Willig, Orszag, and Poulsen at ¶¶ 47-48.

<sup>219</sup> *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13084 ¶ 83.

<sup>220</sup> See *infra* Section V.D.2, Results of Market-Specific Analysis.

## 2. Coordinated Effects

59. In markets where only a few firms account for most of the sales of a product, those firms may be able to exercise market power by either explicitly or tacitly coordinating their actions.<sup>221</sup> Accordingly, one way in which a transaction may create or enhance market power or facilitate its exercise is by making such coordinated interaction among firms more likely, more successful, or more complete.<sup>222</sup> Successful coordination depends on two key factors. The first is the ability to reach terms that are profitable for each of the firms involved, and the second is the ability to detect and punish deviations that would undermine the coordinated interaction.<sup>223</sup>

60. The Applicants claim that the AT&T-Centennial transaction would not increase the likelihood of coordinated interaction in the mobile telephony/broadband services market.<sup>224</sup> They argue that there are several factors that would make coordination more difficult, including the following: product heterogeneity; excess capacity and ease of expansion; cheating would be easy to accomplish and difficult to detect; and the uncertainty of future demand.<sup>225</sup>

61. We find that a number of market conditions may affect whether coordinated interaction is more likely as a result of the transaction, including the availability of information about market conditions, the extent of firm and product homogeneity, and the presence of maverick providers in the market.<sup>226</sup> We acknowledge, however, that there is considerable variation across local geographic markets with regard to the number and identity of competing carriers, firm homogeneity, and the presence of network capacity. Because of this local variation, it is difficult to generalize about the impact of the transaction in facilitating coordinated interaction to restrict competition on price or non-price terms in specific markets. Therefore, we take the possibility of coordinated interaction into account in our analysis of specific markets by carefully scrutinizing, among other variables, the presence and capacity of rival carriers.

62. *Puerto Rico Market.* With respect to the Puerto Rico market, we find that there are additional significant competitive concerns relating to coordinated interaction of the merged entity and América Móvil.<sup>227</sup> The relationship between AT&T and América Móvil has increased over time and with this transaction may raise potential significant concerns that may increase the companies' economic incentives to coordinate their business dealings in Puerto Rico. Centennial, AT&T (through Cingular), and América Móvil currently compete in Puerto Rico for pre-paid and post-paid wireless services. América Móvil wholly owns Telecomunicaciones de Puerto Rico, Inc. ("TELPRP") and its wholly-owned subsidiary, Puerto Rico Telephone Company, Inc. ("PRTC"), the incumbent local exchange carrier

<sup>221</sup> See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17486 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150; *DOJ/FTC Merger Guidelines* § 0.1.

<sup>222</sup> See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17486 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150.

<sup>223</sup> See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17486 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151; *DOJ/FTC Merger Guidelines* § 2.11.

<sup>224</sup> Application, Public Interest Statement at 40-42.

<sup>225</sup> Application, Public Interest Statement at 40-42 (citing Declaration of Willig, Orszag, and Poulsen at ¶¶ 52-54).

<sup>226</sup> See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487 ¶ 90; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580-86 ¶¶ 150-164.

<sup>227</sup> América Móvil is the largest provider of wireless communications services in Latin America, based on subscribers. América Móvil, through its subsidiaries, has wireless operations in Mexico, Brazil, Argentina, Paraguay, Uruguay, Chile, Colombia, Peru, Ecuador, Guatemala, El Salvador, Honduras, Nicaragua, Panama, the Dominican Republic, and the United States. América Móvil 20-F at 17.

("LEC") in Puerto Rico that also offers mobile telephony/broadband services in Puerto Rico under the trade name Claro.<sup>228</sup> AT&T does not have wireline facilities in Puerto Rico and does not actively market to residential and small to medium-sized businesses, but does provide data and voice services to large, multinational customers through arrangements with local providers, including Centennial and TELPRI.<sup>229</sup> AT&T also does not actively market stand-alone long distance services in Puerto Rico. After the transaction, customers in Puerto Rico will continue to have numerous alternatives to AT&T for long distance, including Telefónica Larga Distancia de Puerto Rico (TLD), PRT-Larga Distancia, Sprint, Verizon, and cable VoIP providers.<sup>230</sup> América Móvil also holds a 98.2 percent equity interest in and controls TracFone, a prepaid wireless provider in the U.S.<sup>231</sup>

63. *AT&T's Relationship with Telmex and América Móvil.* In 1990, AT&T acquired a minority ownership in Telmex as a part of a consortium organized with the goal of privatizing and modernizing the Mexican telephone system.<sup>232</sup> Currently, AT&T holds approximately 1,799,500,000 Series AA shares in Telmex, representing approximately 9.75 percent of Telmex's total equity.<sup>233</sup> In September 2000, AT&T acquired a minority interest in América Móvil when América Móvil was spun-off from Telmex.<sup>234</sup> AT&T currently holds approximately 2,869,000,000 Series AA shares in América Móvil.<sup>235</sup> This represents approximately 8.82 percent of América Móvil's total equity.<sup>236</sup> Although Telmex spun off América Móvil, the two companies are commonly owned.<sup>237</sup> In March 2007, América

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<sup>228</sup> See Puerto Rico Telephone Company, Inc. FCC Form 602, File No. 0003573775 ("PRTC Form 602"), Attachment, América Móvil-TELPRI Organizational Structure (filed Sept. 9, 2008); Information Request I Response at 33; Verizon Communications, Inc., Transferor, and América Móvil, S.A.B. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI), *Memorandum Opinion and Order and Declaratory Ruling*, 22 FCC Rcd 6195, 6196 ¶ 2 (2007) ("*Verizon-América Móvil Order*").

<sup>229</sup> Application, Public Interest Statement at 42 (citing Declaration of Rick L. Moore at ¶¶ 34-35). Wireline service providers in Puerto Rico include Centennial, Perpa.net, WorldNet, and TELPRI/PRTC. See Application, Public Interest Statement at 43.

<sup>230</sup> Application, Public Interest Statement at 43 n.209 (citing Declaration of Moore at ¶ 39).

<sup>231</sup> América Móvil 20-F at 52; see also PRTC Form 602, Schedule A for América Móvil, S.A.B. de C.V.

<sup>232</sup> Information Request I Response at 60.

<sup>233</sup> Information Request II Response at 4. The Applicants further state that, in addition to the Series AA shares, Telmex has issued Series A and Series L shares. *Id.* at 4 n.2. The Series AA and A shares are "full voting shares," while the Series L shares are entitled to vote only on certain matters. *Id.* As of May 13, 2009, AT&T held Series AA shares that represented approximately 21.1 percent of the total combined Series AA and Series A shares. *Id.* As of May 28, 2009, AT&T held 1,799,453,534 Series AA shares in Telmex, equal to approximately 9.5 percent of Telmex's total voting securities. Information Request I Response at 60.

<sup>234</sup> Information Request I Response at 62; Information Request II Response at 4.

<sup>235</sup> Information Request II Response at 4. The Applicants also state that, similarly to Telmex, América Móvil has issued Series A and Series L shares in addition to the Series AA shares. *Id.* at 4 n.3. The Series AA and A shares are "full voting shares," while the Series L shares are entitled to vote only on certain matters. *Id.* As of April 30, 2009, AT&T held Series AA shares that represented approximately 23.4 percent of the total combined Series AA and Series A shares. *Id.* As of May 28, 2009, AT&T held 2,869,670,964 Series AA shares in América Móvil, equal to approximately 8.3 percent of América Móvil's total voting securities. Information Request I Response at 62.

<sup>236</sup> Information Request II Response at 4.

<sup>237</sup> See Information Request I Response at 60-64.

Móvil acquired TELPRI and PRTC.<sup>238</sup> As a result, América Móvil, through TELPRI/PRTC, has been competing directly with AT&T and Centennial for the provision of wireless services in Puerto Rico.<sup>239</sup>

64. Because both Telmex's and América Móvil's bylaws permit only Mexican individuals and certain other Mexican institutions to hold Series AA shares in the companies, AT&T placed its shares of Telmex and América Móvil in irrevocable trusts.<sup>240</sup> According to the Telmex Trust Agreement, the trustee is directed, on all matters except for the election of members of Telmex's Board of Directors and Executive Committee, to vote its shares in the same proportion as the shares of Carso Global Telecom, S.A. de C.V. ("Carso Global"), which is controlled by Carlos Slim Helú, are voted.<sup>241</sup> Similarly, according to the América Móvil Trust Agreement, the trustee is directed to vote its shares in the same proportion as the shares of Carso Global are voted on all matters, except for the election of members of América Móvil's Board of Directors and Executive Committee.<sup>242</sup>

65. Telmex is governed by a 14-member Board of Directors, three of which may be nominated by AT&T.<sup>243</sup> Carso Global currently has the right to nominate nine directors, and Class L shareholders have the right to nominate the remaining two directors.<sup>244</sup> At present, AT&T has granted Carso Global the right to nominate one of the three directors AT&T is entitled to nominate, so that Carso Global currently is nominating ten directors.<sup>245</sup> Pursuant to the terms of a joint venture agreement, AT&T and Carso Global have agreed to vote their Series AA shares in favor of the directors nominated by the other.<sup>246</sup> Telmex's Executive Committee has four members who are elected from among the directors by a majority vote of the Series AA and Series A shareholders.<sup>247</sup> Carso Global has the right to nominate three Executive Committee members, while AT&T has the right to nominate one member.<sup>248</sup>

66. América Móvil is governed by a 12-member Board of Directors, ten of which are elected by a majority of the Series AA and Series A shareholders.<sup>249</sup> The Slim family and the Control Trust (a Mexican trust that holds Series AA and Series L shares for which the Slim family are beneficiaries), through Carso Global, are entitled to appoint a majority of the Board members, as they together hold a majority of the Series AA shares.<sup>250</sup> Pursuant to a shareholders agreement between Carso Global and AT&T, Carso Global has the right to nominate seven directors and AT&T has the right to nominate two directors.<sup>251</sup> Each of the parties has agreed to vote its Series AA shares in favor of the other's

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<sup>238</sup> América Móvil 20-F at 17; *see generally Verizon-América Móvil Order*, 22 FCC Rcd 6195.

<sup>239</sup> América Móvil 20-F at 55.

<sup>240</sup> Information Request I Response at 61, 63; Information Request II Response at 4-5.

<sup>241</sup> Information Request I Response at 61; Information Request II Response at 4-5.

<sup>242</sup> Information Request I Response at 63.

<sup>243</sup> Information Request I Response at 61.

<sup>244</sup> Information Request I Response at 61.

<sup>245</sup> Information Request I Response at 61.

<sup>246</sup> Information Request I Response at 61.

<sup>247</sup> Information Request I Response at 62.

<sup>248</sup> Information Request I Response at 62.

<sup>249</sup> Information Request I Response at 63.

<sup>250</sup> Information Request I Response at 63.

<sup>251</sup> Information Request I Response at 63-64.

nominees.<sup>252</sup> Class L shareholders have the right to nominate two directors.<sup>253</sup> América Móvil's Executive Committee has up to four members, three of whom may be nominated by Carso Global, and one by AT&T.<sup>254</sup>

67. América Móvil and Telmex do not hold any voting or management rights in AT&T, and do not have any right to nominate any member of the AT&T Board of Directors.<sup>255</sup> However, Mr. Jaime Chico Pardo, chairman of Telmex and formerly a member of the América Móvil Board of Directors, was elected to the AT&T Board of Directors on September 26, 2008, to serve, the Applicants state, in his personal capacity and not as a representative of Telmex, América Móvil, or any other company.<sup>256</sup> He also serves on AT&T's Audit Committee and Corporate Development Committee.<sup>257</sup> América Móvil and Telmex each owns less than five percent of AT&T's common stock.<sup>258</sup>

68. In addition to AT&T's ownership interests in Telmex and América Móvil, and its rights to designate members of the Boards of Directors of both companies, AT&T and América Móvil have entered into an MSA<sup>259</sup> pursuant to which AT&T provides management, consulting, and technical services to América Móvil.<sup>260</sup> For example, AT&T may provide "evaluation and counseling concerning material management decisions;" "counseling relating to performance of material daily operations;" "counseling connected with technical, administrative and financial planning;" and "counseling pertaining to policies in the file of rates, business relations and regulatory efforts."<sup>261</sup> For the first five years of the agreement, América Móvil paid AT&T \$1 million per year for the services provided under the MSA, then increased that to \$7.5 million paid to AT&T for each of the last two years, and has paid \$5 million to AT&T for 2009 work through August 2009.<sup>262</sup>

69. The MSA defines eight specific categories of counseling and advisory services to be provided under the MSA.<sup>263</sup> AT&T has provided services under the MSA without reference to the categories of services listed in the MSA.<sup>264</sup> The MSA further specifies that the services are to be provided by AT&T Mexico, Inc. with its own resources located in Mexico City.<sup>265</sup> If additional resources are required, the MSA calls for additional contracts to be entered into for the provision thereof.<sup>266</sup> While the

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<sup>252</sup> Information Request I Response at 64.

<sup>253</sup> Information Request I Response at 63.

<sup>254</sup> Information Request I Response at 64.

<sup>255</sup> Information Request I Response at 64.

<sup>256</sup> Information Request I Response at 64-65.

<sup>257</sup> AT&T, Investor Relations, Board of Directors, *available at* <http://www.att.com/gen/investor-relations?pid=5631> (last visited Oct. 19, 2009).

<sup>258</sup> Information Request I Response at 65.

<sup>259</sup> *See supra* note 22.

<sup>260</sup> Information Request I Response at 69; *see also* América Móvil 20-F at 88.

<sup>261</sup> MSA at 3.

<sup>262</sup> Information Request II Response at 30.

<sup>263</sup> MSA at 3.

<sup>264</sup> Information Request II Response at 27.

<sup>265</sup> MSA at 7.

<sup>266</sup> MSA at 7.

majority of services provided to América Móvil and its subsidiaries has been provided by AT&T Mexico from resources in its Mexico City office, AT&T Mexico employees have drawn on resources outside of AT&T Mexico for assistance in providing services under the MSA to the extent necessary or appropriate.<sup>267</sup> AT&T has not entered into separate contracts, as required by the MSA, with respect to such additional resources.<sup>268</sup> Pursuant to the Second Amendment to MSA, the geographic scope of the MSA is defined to include the provision of services in Mexico, Guatemala, Nicaragua, El Salvador, Ecuador, Colombia, Brazil, and Argentina.<sup>269</sup> [REDACTED].<sup>270</sup> The Second Amendment to MSA also defined the scope of América Móvil companies to which service would be provided under the MSA as companies operating in the eight countries listed in the Second Amendment to MSA.<sup>271</sup> [REDACTED].<sup>272</sup>

70. AT&T has acknowledged that since América Móvil acquired TELPRI in March 2007, AT&T has in a few circumstances provided services under the MSA that relate to América Móvil's operations in Puerto Rico.<sup>273</sup> [REDACTED].<sup>274</sup> [REDACTED].<sup>275</sup> [REDACTED].<sup>276</sup>

71. *Discussion.* We disagree with the Applicants that the merger would not change the competitive dynamics of this market for mobile telephony/broadband services. In Puerto Rico, the instant transaction combines the number [REDACTED] and [REDACTED] providers in terms of market share. América Móvil represents the [REDACTED] provider in terms of market share. AT&T, América Móvil, and Centennial represent approximately [REDACTED] percent of the wireless market in Puerto Rico. There are three other competitors in the market with market shares ranging from [REDACTED] percent to [REDACTED] percent.<sup>277</sup> All of the providers in the market cover more than 70 percent of the population and more than 50 percent of the land area of Puerto Rico.<sup>278</sup> AT&T, América Móvil, and Centennial combined hold up to 132 megahertz – or 36 percent of the 370 megahertz available for mobile telephony/broadband services in Puerto Rico.<sup>279</sup> Given these market-specific facts, combined with the relationship between AT&T and América Móvil, including the equity interest, seats on the América

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<sup>267</sup> Information Request II Response at 32.

<sup>268</sup> Information Request II Response at 32.

<sup>269</sup> Second Amendment to MSA at 3.

<sup>270</sup> Information Request II Response at 26.

<sup>271</sup> Second Amendment to MSA at 3.

<sup>272</sup> Information Request II Response at 26.

<sup>273</sup> Information Request I Response at 70; Information Request II Response at 27-28.

<sup>274</sup> Information Request I Response at 70; Information Request II Response at 27-28.

<sup>275</sup> AT&T Oct. 19, 2009 Supplemental Response to Information Request II, at 2-5.

<sup>276</sup> Information Request I Response at 70. [REDACTED]. AT&T Oct. 29, 2009 Supplemental Response to Information Request II at 2. [REDACTED]. *Id.*

<sup>277</sup> Open Mobile has a [REDACTED] percent share, Sprint Nextel has a [REDACTED] percent share, and T-Mobile has a [REDACTED] percent market share.

<sup>278</sup> Sprint Nextel covers approximately 56 percent of the land area of Puerto Rico while the remaining providers cover at least 70 percent of the land area. American Roamer provides data on network deployment by service provider. Combining American Roamer data with Census Bureau data provides the percent of land area and population covered within a CMA.

<sup>279</sup> See *supra* Section V.B., discussing the spectrum aggregation screen.

Móvil Board of Directors, and the MSA, we find that the acquisition of Centennial by AT&T in Puerto Rico is likely to result in competitive harms.

72. We are concerned that the acquisition of Centennial by AT&T will increase the economic incentives by América Móvil and the post-merger AT&T to coordinate how they provide services in Puerto Rico, resulting in anticompetitive harms. These concerns are increased by the evidence in the record demonstrating increased opportunities for coordinated interaction and information sharing between AT&T and América Móvil since 2007, when the MSA began to extend to operations in Puerto Rico. Based on the record, we find that AT&T and América Móvil do not have an arms' length relationship under the MSA. Further, we find that the current Board structure does not adequately address the potential for sharing of competitively sensitive information. Given the proposed merger between AT&T and Centennial, it is important to ensure that the remaining mobile telephony/broadband competitors in Puerto Rico, including AT&T and América Móvil/PRTC have every incentive to compete vigorously and independently in the mobile telephony/broadband services market in Puerto Rico.

73. In addition to our concerns in the post-paid wireless market, our concern extends to whether the relationship between AT&T and América Móvil might influence behavior and provide opportunities for collusion and information exchanges with respect to their operations in the U.S. prepaid market, including in the Puerto Rico market, and to the provision of wireline services in Puerto Rico. In Puerto Rico, TELPRI/PRTC competes directly against Centennial, a competitive LEC, for wireline customers.<sup>280</sup> Centennial provides fiber broadband services (voice, data, and internet services) primarily to business and some residential customers in Puerto Rico.<sup>281</sup> In Puerto Rico, as we stated above, AT&T does not have wireline facilities and provides some services through arrangements with local providers.<sup>282</sup> Because the acquisition of Centennial by AT&T combined with AT&T's and América Móvil's relationship, however, may create additional opportunities for collusion and information exchanges with respect to prepaid services and wireline access, the safeguards addressed in the conditions/commitments below are intended to extend to each of these wireless, wireline, and prepaid services.

74. Based on these concerns about possible collusion and the exchange of competitively sensitive information as a result of the subject transaction, we find, at a minimum, that it is essential that we adopt conditions both prohibiting AT&T from providing any consulting services to América Móvil in the United States (including Puerto Rico and the U.S. Virgin Islands) pursuant to the MSA or otherwise, and controlling the flow of competitively sensitive information about América Móvil's U.S. operations to AT&T.<sup>283</sup> While we previously concluded that the relationship between AT&T and América Móvil did not raise competitive issues in the Puerto Rico mobile telephony market,<sup>284</sup> as explained above that relationship has evolved and expanded since that determination, raising significant concerns about its potential adverse effect on competition in Puerto Rico wireless and wireline services.<sup>285</sup> In addition, these

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<sup>280</sup> Application, Public Interest Statement at 43.

<sup>281</sup> Application, Public Interest Statement at 42.

<sup>282</sup> Currently, AT&T and other wireless carriers in Puerto Rico purchase wireline access from Centennial and PRTC. We note that no parties have raised concerns regarding whether the proposed acquisition of Centennial will affect wireline access for wireless providers in Puerto Rico and there is nothing in the record to suggest that there are not sufficient alternative sources for such access available in Puerto Rico that will continue to be available after this transaction.

<sup>283</sup> See *infra* paras. 159-163.

<sup>284</sup> *Verizon-América Móvil Order*, 22 FCC Rcd at 6210 ¶ 33.

<sup>285</sup> Section 8 of the Clayton Act, in pertinent part, addresses interlocking directorates of competitors. 15 U.S.C. §§ 19, 21. Consistent with past practice, we leave to other appropriate antitrust law enforcement agencies the questions whether and how Section 8 of the Clayton Act should be applied to assess AT&T's nomination of two (continued....)

concerns are heightened with AT&T's proposed acquisition of Centennial. The subject transaction results in the loss of a significant facilities-based mobile telephony/broadband competitor in Puerto Rico. By contrast, when América Móvil acquired TELPRI, the Commission declined to take any action based on AT&T's minority interest in América Móvil, concluding that the acquisition was "not likely to have an adverse effect on the number of facilities-based mobile telephone providers in Puerto Rico," and that the number of facilities-based carriers and resellers/MVNOs would be sufficient to protect against any anticompetitive strategies by the two companies.<sup>286</sup>

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

##### **1. Analytical Standard**

75. In this section, we examine the effects of the transaction on local markets identified by our initial screen.<sup>287</sup> This includes 25 CMAs, Puerto Rico, and the U.S. Virgin Islands. In our analysis we consider numerous variables that are important for predicting the incentive and ability of the merged entity to unilaterally elevate prices or suppress output and its ability to successfully restrict competition on price or non-price terms through coordinated interaction.<sup>288</sup>

##### **2. Results of Market-Specific Analysis**

76. After performing a market-by-market analysis, we find, in the great majority of the 27 markets identified by the initial screen, no competitive concerns requiring remedy. For instance, in most of these markets, there would be four or more competitors present post-transaction with thoroughly built-out networks and the ability to offer competitive services. In several other of these 27 markets, we conclude, based on the various particular facts in each of these markets, that the proposed transaction would be unlikely to make it profitable for the combined entity to raise price and restrict output or to engage in coordinated actions with another provider. The presence and capacity of rival service providers are such in these markets that the response of rival service providers would likely be sufficient to deter

(Continued from previous page)

employees to sit on the board of directors of América Móvil. See 15 U.S.C. §§ 19, 21; *cf.*, Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Company, 10 FCC Rcd 13368, 13373 n.19 (1995), *In re Sprint Corporation*, 11 FCC Rcd 1850, 1859 n.82 (1995).

<sup>286</sup> *Verizon-América Móvil Order*, 22 FCC Rcd at 6209, 6210 ¶¶ 30, 33.

<sup>287</sup> See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487-88 ¶ 91; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17602 ¶ 79; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21649 App. D.

<sup>288</sup> See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487-88 ¶ 91; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17602 ¶ 79; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 215793-99 ¶¶ 184-200. The factors we consider in each identified market include, for example, the total number of competitors in the market; their market shares, network coverage, and spectrum holdings, as compared to the merged entity's post-transaction market share, network coverage, and spectrum holdings. We derive market shares and HHIs from our analysis of data compiled in our NRUF database and data provided through our information requests. We derive network coverage from a variety of public sources and also through our information request, and we obtain spectrum holdings from our licensing databases and the Application. In addition, we examine data from our LNP database (provided to the Commission by NeuStar) through December 30, 2008. This information includes each instance of a customer porting a phone number from one mobile provider to another, and indicates both the origin and destination provider. We also consider the uniformity of competitive conditions in each market. Thus, in some instances, we may find that the transaction is not harmful to competition in a market if the potential harm is confined to a small enclave in the market, and this harm is likely to be ameliorated by the more favorable competitive conditions in most of the market. See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17488 ¶ 92; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 175602-3, ¶ 80; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 190.

any unilateral actions or anticompetitive behavior by the merged entity. For each of these markets, we determine that competitive harm is unlikely.<sup>289</sup>

77. In the seven markets listed below, our case-by-case analysis indicates that competitive harm is likely as a result of this transaction. In these markets, we are concerned that, post-transaction, competing service providers would not be sufficiently numerous to deter anticompetitive behavior by the merged entity.<sup>290</sup>

CMA	Name
CMA174	Lafayette, LA
CMA205	Alexandria, LA
CMA456	Louisiana 3 – De Soto
CMA458	Louisiana 5 – Beauregard
CMA459	Louisiana 6 – Iberville
CMA460	Louisiana 7 – West Feliciana
CMA500	Mississippi 8 – Claiborne

78. **Lafayette, LA (CMA174).** We find that in this market, there is a high likelihood of competitive harm due to the merged entity's high combined market share along with insufficient network coverage by other service providers in this market that would effectively counter any anticompetitive behavior by the merged entity. In this CMA, AT&T has a market share of [REDACTED] percent and Centennial has approximately [REDACTED] percent of the wireless subscribers. Thus, the merged entity would have a post-transaction market share of [REDACTED] percent. Other carriers with coverage in the CMA (see below) are: Sprint Nextel with [REDACTED] percent; T-Mobile with [REDACTED] percent; and Verizon Wireless with [REDACTED] percent. The post-merger HHI in the CMA would be [REDACTED], an increase of [REDACTED] from the current figure. The CMA has a population of about 239,086 and a population density of about 220 POPs/sq. mile. With respect to network coverage, besides the merged entity, Sprint Nextel is the only carrier with sufficient population and area coverage that could effectively discipline the market within the next two years.<sup>291</sup> AT&T covers 100 percent of the

<sup>289</sup> See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17490-91 ¶ 98; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17603 ¶ 82. Application of the initial screen on a CEA basis does not identify any potential markets of concern that are not also identified by CMA-based application of the screen. For convenience, we limit our discussion of the markets of concern to CMAs because, upon completing our competitive analysis, we find that the most exact divestiture area to eliminate concerns of competitive harm would be CMAs. Therefore, we undertake our in-depth analysis on the basis of CMAs within the continental United States.

<sup>290</sup> Application of the initial screen on a CEA basis shows that no potential markets of concern are identified that are not also identified by CMA-based application of the screen. For convenience, we limit our discussion of the markets of concern to CMAs because, upon completing our competitive analysis, we find that the most exact divestiture area to eliminate concerns of competitive harm would be CMAs. Therefore, we undertake our in-depth analysis on the basis of CMAs within the continental United States.

<sup>291</sup> American Roamer provides data on network deployment by service provider. Combining American Roamer data with Census Bureau data provides the percent of land area and population covered within a CMA. With respect to coverage, we have considered to be "sufficient" – coverage of 70 percent or greater of the population and 50 percent or more of the area. See *AT&T-Dobson Order*, 22 FCC Rcd at 20324 n.170.

population and 91.8 percent of the area within this CMA. Centennial covers 99.7 percent of the population and 73.8 percent of the area in this CMA. By comparison, the other providers with coverage are: Sprint Nextel with coverage of 99.9 percent of the population and 64.4 percent of the area; T-Mobile with coverage of 94.3 percent of the population and 43.8 percent of the area; and Verizon Wireless with coverage of 96.4 percent of the population and 46.4 percent of the area.

79. **Alexandria, LA (CMA205).** We find that in this market, there is a high likelihood of competitive harm due to the merged entity's high combined market share, and we find it is unlikely that the rivals with sufficient network capacity in this CMA could effectively and fully counter any anticompetitive actions by the merged entity. AT&T has a market share of [REDACTED] percent and Centennial has approximately [REDACTED] percent of the wireless subscribers. Thus, the merged entity would have a post-transaction market share of [REDACTED] percent. Other carriers with coverage in the CMA (see below) are: Sprint Nextel with [REDACTED] percent and Verizon Wireless with [REDACTED] percent. The post-merger HHI in this CMA would be [REDACTED], an increase of [REDACTED] from the current figure. The CMA has a population of about 145,035 and a population density of about 72 POPs/sq. mile. With respect to network coverage, AT&T covers 89.2 percent of the population and 65.8 percent of the area within this CMA. Centennial covers 99.9 percent of the population and 99.4 percent of the area in this CMA. By comparison, the other providers with coverage are: Sprint Nextel with coverage of 92.4 percent of the population and 76.6 percent of the area and Verizon Wireless with coverage of 93.8 percent of the population and 74.3 percent of the area.

80. **Louisiana 3 – De Soto (CMA456).** We find that in this market, there is a high likelihood of competitive harm due to the merged entity's high combined market share along with insufficient network coverage by other service providers in this market that would effectively counter any anticompetitive behavior by the merged entity. In this CMA, AT&T has a market share of [REDACTED] percent and Centennial has approximately [REDACTED] percent of the wireless subscribers. Thus, the merged entity would have a post-transaction market share of [REDACTED] percent. Other carriers with coverage in the CMA (see below) are: Sprint Nextel with [REDACTED] percent, T-Mobile with [REDACTED] percent, and Verizon Wireless with [REDACTED] percent. The post-merger HHI in the CMA would be [REDACTED], an increase of [REDACTED] from the current figure. The CMA has a population of about 150,186 and a population density of about 30 POPs/sq. mile. With respect to network coverage, there is no other carrier besides the merged entity with sufficient population and area coverage that could effectively discipline the market within the next two years.<sup>292</sup> AT&T covers 85.6 percent of the population and 61.4 percent of the area within this CMA. Centennial covers 74.8 percent of the population and 62.9 percent of the area in this CMA. By comparison, the other providers with coverage are: Sprint Nextel with coverage of 73.5 percent of the population and 48.1 percent of the area; T-Mobile with coverage of 35.8 percent of the population and 25.7 percent of the area; and Verizon Wireless with coverage of 60.4 percent of the population and 57.4 percent of the area.

81. **Louisiana 5 – Beauregard (CMA458).** We find that in this market, there is a high likelihood of competitive harm due to the merged entity's high combined market share along with insufficient network coverage by other service providers in this market that would effectively counter any anticompetitive behavior by the merged entity. In this CMA, AT&T has a market share of [REDACTED] percent and Centennial has approximately [REDACTED] percent of the wireless subscribers. Thus, the merged entity would have a post-transaction market share of [REDACTED] percent. Other carriers with coverage in the CMA (see below) are: Sprint Nextel with [REDACTED] percent, T-Mobile with [REDACTED] percent, and Verizon Wireless with [REDACTED] percent. The post-merger HHI in this CMA would be [REDACTED], an increase of [REDACTED] from the current figure. The CMA has a population of about 399,898 and a population density of 43 POPs/sq. mile. With respect to network

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<sup>292</sup> *Id.*

coverage, besides the merged entity, Sprint Nextel is the only carrier with sufficient population and area coverage that could effectively discipline the market within the next two years.<sup>293</sup> AT&T covers 99.3 percent of the population and 88.9 percent of the area within this CMA. Centennial covers 99.4 percent of the population and 83.6 percent of the area in this CMA. By comparison, the other providers with coverage are: Sprint Nextel with coverage of 94.9 percent of the population and 78.3 percent of the area; T-Mobile with coverage of 37.5 percent of the population and 18.4 percent of the area; and Verizon Wireless with coverage of 52.1 percent of the population and 27.3 percent of the area.

82. **Louisiana 6 – Iberville (CMA459).** We find that in this market, there is a high likelihood of competitive harm due to the merged entity's high combined market share along with insufficient network coverage by other service providers in this market that would effectively counter any anticompetitive behavior by the merged entity. In this CMA, AT&T has a market share of [REDACTED] percent and Centennial has approximately [REDACTED] percent of the wireless subscribers. Thus, the merged entity would have a post-transaction market share of [REDACTED] percent. Other carriers with coverage in the CMA (see below) are: Sprint Nextel with [REDACTED] percent, T-Mobile with [REDACTED] percent, and Verizon Wireless with [REDACTED] percent. The post-merger HHI in the CMA would be [REDACTED], an increase of [REDACTED] from the current figure. The CMA has a population of about 183,474 and a population density of about 78 POPs/sq. mile. With respect to network coverage, there is no other carrier besides the merged entity with sufficient population and area coverage that could effectively discipline the market within the next two years.<sup>294</sup> AT&T covers 100 percent of the population and 78.1 percent of the area within this CMA. Centennial covers 71.6 percent of the population and 37 percent of the area in this CMA. By comparison, the other providers with coverage are: Sprint Nextel with coverage of 94 percent of the population and 37.9 percent of the area; T-Mobile with coverage of 64.3 percent of the population and 13.5 percent of the area; and Verizon Wireless with coverage of 97.1 percent of the population and 41.8 percent of the area.

83. **Louisiana 7 – West Feliciana (CMA460).** We find that in this market, there is a high likelihood of competitive harm due to the merged entity's high combined market share along with insufficient network coverage by other service providers in this market that would effectively counter any anticompetitive behavior by the merged entity. In this CMA, AT&T has a market share of [REDACTED] percent and Centennial has approximately [REDACTED] percent of the wireless subscribers. Thus, the merged entity would have a post-transaction market share of [REDACTED] percent. Other carriers with coverage in the CMA (see below) are: Sprint Nextel with [REDACTED] percent, T-Mobile with [REDACTED] percent, and Verizon Wireless with [REDACTED] percent. The post-merger HHI in the CMA would be [REDACTED], an increase of [REDACTED] from the current figure. The CMA has a population of about 191,510 and a population density of about 69 POPs/sq. mile. With respect to network coverage, there is no other carrier besides the merged entity with sufficient population and area coverage that could effectively discipline the market within the next two years.<sup>295</sup> AT&T covers 99.4 percent of the population and 97.3 percent of the area within this CMA. Centennial covers 94.1 percent of the population and 83.7 percent of the area in this CMA. By comparison, the other providers with coverage are: Sprint Nextel with coverage of 76.8 percent of the population and 46.4 percent of the area; T-Mobile with coverage of 29.5 percent of the population and 46.4 percent of the area; and Verizon Wireless with coverage of 54.9 percent of the population and 26.6 percent of the area.

84. **Mississippi 8 – Claiborne (CMA500).** We find that in this market, there is a high likelihood of competitive harm due to the merged entity's high combined market share along with insufficient network coverage by other service providers in this market that would effectively counter any

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<sup>293</sup> *Id.*

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

anticompetitive behavior by the merged entity. This CMA was also identified by our spectrum screen. Within this CMA, one county – Jefferson County, Mississippi – triggered the spectrum screen, and this county reflects only 6 percent of the CMA population. Thus, spectrum aggregation in this county was not a determining factor to require a business unit divestiture in this market. In this CMA, AT&T has a market share of [REDACTED] percent and Centennial has approximately [REDACTED] percent of the wireless subscribers. Thus, the merged entity would have a post-transaction market share of [REDACTED] percent. Other carriers with coverage in the CMA (see below) are: Cellular South with [REDACTED] percent, Sprint Nextel with [REDACTED] percent, and Verizon Wireless with [REDACTED] percent. The post-merger HHI in the CMA would be [REDACTED], an increase of [REDACTED] from the current figure. The CMA has a population of 160,376 and a population density of about 36 POPs/sq. mile. With respect to network coverage, besides the merged entity, Cellular South is the only carrier with sufficient population and area coverage that could effectively discipline the market within the next two years.<sup>296</sup> AT&T covers 85.3 percent of the population and 57.1 percent of the area within this CMA. Centennial covers 96 percent of the population and 88.6 percent of the area in this CMA. By comparison, the other providers with coverage are: Cellular South with 98.2 percent of the population and 90.3 percent of the area; Sprint Nextel with coverage of 69.5 percent of the population and 37.3 percent of the area; and Verizon Wireless with coverage of 27.2 percent of the population and 6.4 percent of the area.

85. *Puerto Rico Market.* As discussed above, we find that the record raises significant concerns about the potential for coordinated interaction between AT&T and América Móvil in Puerto Rico due to the extensive corporate interrelationship between the companies.<sup>297</sup> AT&T has made certain commitments with respect to América Móvil, including restrictions on AT&T's participation on América Móvil's Board of Directors, extension of the firewall between the two companies concerning information about business and/or operations in Puerto Rico, the implementation of certain procedures to screen and redact board packages of non-public information about businesses and/or operations in Puerto Rico, amending the MSA to exclude Puerto Rico-specific operations, and appointment of a compliance officer to oversee AT&T's compliance with its commitments.<sup>298</sup> We find that AT&T's commitments ameliorate our concerns about the potential for the likelihood of successful coordinated interaction by the merged entity in Puerto Rico.

86. *Conclusion.* In the above seven markets, the proposed transaction would reduce the number of competitors and result in a significant likelihood of anticompetitive behavior by the combined firm. We find that the totality of the circumstances in each of these markets would provide the incentive and ability for the combined entity to raise price and restrict output.<sup>299</sup> In all seven of these markets, the merged entity has a combined market share that is significantly higher than the market share of rival service providers. In these seven markets, the merged entity's market share ranges from [REDACTED] to [REDACTED] percent of the market. Thus, the combined entity's market share ranges from [REDACTED] to [REDACTED] times the market share of all competing service providers. Given the demographics of the area and the contiguous nature of these markets, divestiture is necessary to prevent the likelihood of anticompetitive behavior of the combined firm. We conclude that the presence and capacity of rival service providers is such that the response of these providers is likely to be insufficient to deter successful unilateral effects and/or coordinated interaction by the merged entity.

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<sup>296</sup> *Id.*

<sup>297</sup> See *supra* Section V.C.2, Coordinated Effects.

<sup>298</sup> See AT&T Letter of Commitment.

<sup>299</sup> These seven markets were identified by our HHI screen.

## VI. POTENTIAL PUBLIC INTEREST BENEFITS

87. In addition to assessing the potential competitive harms of the proposed AT&T-Centennial transaction, we also consider whether the respective combination of these companies' wireless operations is likely to generate verifiable, transaction-specific public interest benefits.<sup>300</sup> In doing so, we ask whether the resulting combined entity would be able, and would be likely, to pursue business strategies resulting in demonstrable and verifiable benefits to consumers that would not be pursued but for the combination.<sup>301</sup>

88. As discussed below, we find that the proposed transaction is likely to result in certain transaction-specific public interest benefits. We reach this conclusion, however, recognizing that many of these benefits may be challenging to achieve in the near future because of sizable technological and financial requirements. As a result, it is difficult for us to precisely quantify either the magnitude of or the time period in which these benefits will be realized.<sup>302</sup>

### A. Analytical Framework

89. The Commission has recognized that “[e]fficiencies generated through a merger can mitigate competitive harms if such efficiencies enhance the merged firm’s ability and incentive to compete and therefore result in lower prices, improved quality of service, enhanced service or new products.”<sup>303</sup> Under Commission precedent, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms.<sup>304</sup>

90. The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms. First, the claimed benefit must be transaction-specific. This means that the claimed benefit “must be likely to be accomplished as a result of the merger but unlikely to be realized by other means that entail fewer anticompetitive effects.”<sup>305</sup> Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a merger is in the sole possession of the applicants, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude.<sup>306</sup> In addition, “the magnitude of benefits must be calculated net of the cost of achieving them.”<sup>307</sup> Furthermore, as the

<sup>300</sup> See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 114; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17614 ¶ 113; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

<sup>301</sup> See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 114; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17614 ¶ 113; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

<sup>302</sup> See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 115; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12504 ¶ 92; *AT&T-Dobson Order*, 22 FCC Rcd at 20330 ¶ 74.

<sup>303</sup> E.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 116; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17614 ¶ 115; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204; see also *DOJ/FTC Merger Guidelines* § 4.

<sup>304</sup> See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 116; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 115; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204.

<sup>305</sup> E.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599-600 ¶ 205. Cf. *DOJ/FTC Merger Guidelines* § 4.

<sup>306</sup> See, e.g. *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

<sup>307</sup> E.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

Commission has explained, “benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present.”<sup>308</sup> Third, the Commission has stated that it “will more likely find marginal cost reductions to be cognizable than reductions in fixed cost.”<sup>309</sup> The Commission has justified this criterion on the ground that, in general, reductions in marginal cost are more likely to result in lower prices for consumers.<sup>310</sup>

91. Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims.<sup>311</sup> Under this sliding scale approach, where potential harms appear “both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”<sup>312</sup> On the other hand, where potential harms appear less likely and less substantial, as is the case here, we will accept a lesser showing to approve the transaction.<sup>313</sup>

## B. Discussion

92. The Applicants assert that the proposed transaction will result in a number of public interest and consumer benefits. The Applicants state that the merger “will enable the combined firm to offer Centennial’s customers, especially those in rural areas, advanced services that Centennial does not currently offer, accelerate the provision of broadband and other next-generation wireless services, expand each party’s network coverage, improve customers’ wireless calling experience and create substantial economies of scale and scope that will benefit subscribers.”<sup>314</sup> The Applicants contend that, overall, the proposed transaction would provide substantial benefits for existing Centennial customers as well as existing and future AT&T customers.<sup>315</sup>

### 1. Expanded and Improved Services and Features

93. The Applicants contend that the proposed transaction will particularly benefit Centennial’s subscribers, who will gain access to a broader range of services available on AT&T’s

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<sup>308</sup> E.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

<sup>309</sup> E.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615-16 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205. See also *DOJ/FTC Merger Guidelines* § 4.

<sup>310</sup> See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206; see also *DOJ/FTC Merger Guidelines* § 4.

<sup>311</sup> See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 118; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206.

<sup>312</sup> E.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 118; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206. Cf. *DOJ/FTC Merger Guidelines* § 4 (“The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.”).

<sup>313</sup> See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17497 ¶ 118; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 117; Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc., WT Docket No. 05-339, *Memorandum Opinion and Order*, 21 FCC Rcd 11526, 11566 ¶ 109 (2006) (“*ALLTEL-Midwest Wireless Order*”).

<sup>314</sup> Application, Public Interest Statement at 4 (citing Declaration of Willig, Orszag, and Poulsen at ¶¶ 12, 20-21).

<sup>315</sup> Application, Public Interest Statement at i-ii.

national network, which covers more than 290 million people in 13,000 communities in the United States.<sup>316</sup>

94. *Diverse Rate Plans.* The Applicants state that the post-merger company will be able to offer a wider variety of rate plans to Centennial's customers, including those in rural areas, than Centennial currently provides.<sup>317</sup> As a result of the merger, Centennial's customers will, according to the Applicants, have a much larger pool of wireless customers (approximately 75 million) with whom they can communicate without using their monthly minutes than is currently available to them (approximately 1 million).<sup>318</sup> Centennial's existing customers will, post-transaction, be able to roll over unused minutes to the next month, an option they do not currently have.<sup>319</sup>

95. *Expanded Network Coverage.* The Applicants contend that combining AT&T's and Centennial's networks will result in an increase of network coverage for Centennial's customers from 9 million POPs in the mainland U.S. and 4 million POPs in the Caribbean to over 290 million POPs.<sup>320</sup> The in-network coverage for Centennial's customers who currently have access to a GSM network deployed with GPRS/EDGE will increase by approximately [REDACTED] million POPs and [REDACTED] new MSAs and [REDACTED] new RSAs, covering almost [REDACTED] percent of the geographic area of the U.S.<sup>321</sup> AT&T's customers will also benefit from the combined network, which will increase the coverage of AT&T's GSM network deployed with GPRS/EDGE by more than [REDACTED] million POPs and the addition of [REDACTED] RSA.<sup>322</sup> The Applicants state that combining the coverage of the two networks will eliminate roaming between them and thus will benefit the customers of both companies when they travel outside their home areas "by enabling more consistent access to features, fewer dropped calls, and increased data speeds."<sup>323</sup>

96. *3G and 4G Deployment.* The Applicants explain that, currently, Centennial provides 3G wireless broadband services only to its customers in Puerto Rico and the U.S. Virgin Islands, using EVDO Rev. A technology.<sup>324</sup> Centennial states that [REDACTED], Centennial has not commercially deployed 3G technology in its mainland U.S. markets.<sup>325</sup> It also states that, [REDACTED], it does not

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<sup>316</sup> Application, Public Interest Statement at 5.

<sup>317</sup> Application, Public Interest Statement at 6 (citing Declaration of Hunt at ¶ 10).

<sup>318</sup> Application, Public Interest Statement at 6 (citing Declaration of Hunt at ¶¶ 4, 12).

<sup>319</sup> Application, Public Interest Statement at 6-7 (citing Declaration of Hunt at ¶ 12).

<sup>320</sup> Application, Public Interest Statement at 19 (citing Declaration of Hunt at ¶ 4; Declaration of Moore at ¶ 4); Centennial 10-K at 1.

<sup>321</sup> Information Request I Response at 8, 12 (calculating the difference between the combined entity's total GSM network coverage of [REDACTED] POPs in [REDACTED] MSAs, and [REDACTED] RSAs throughout [REDACTED]% of the U.S. geographic area, and Centennial's existing GSM coverage of [REDACTED] POPs in [REDACTED] MSAs and [REDACTED] RSAs throughout [REDACTED]% of the U.S. geographic area).

<sup>322</sup> Information Request I Response at 10, 12 (calculating the difference between the combined entity's total GSM network coverage of [REDACTED] POPs in [REDACTED] MSAs, and [REDACTED] RSAs throughout [REDACTED]% of the U.S. geographic area, and AT&T's existing GSM coverage of [REDACTED] POPs in [REDACTED] MSAs and [REDACTED] RSAs throughout [REDACTED]% of the U.S. geographic area).

<sup>323</sup> Application, Public Interest Statement at 19 (citing Declaration of Hunt at ¶ 8; Declaration of Moore at ¶ 12).

<sup>324</sup> Information Request I Response at 26; Centennial 10-K at 2.

<sup>325</sup> Application, Public Interest Statement at 7; Information Request I Response at 45.

have any plans to launch 4G services either in the mainland U.S. or Puerto Rico and the U.S. Virgin Islands.<sup>326</sup>

97. The Applicants assert that the proposed transaction will enable AT&T to provide 3G services to Centennial's customers throughout its footprint.<sup>327</sup> With the addition of Centennial's network infrastructure and its 850 MHz spectrum, AT&T will begin to expand its 3G network to numerous Centennial cell sites beginning in 2010,<sup>328</sup> and AT&T estimates that the transaction will accelerate the deployment of 3G services to Centennial territories by at least [REDACTED].<sup>329</sup> The Applicants claim that AT&T, which has deployed 3G services to 320 cities, has extensive experience, infrastructure, resources, and supplier contracts necessary for such deployment.<sup>330</sup> AT&T commits to provide the Commission with periodic updates every six months over the next three years on its progress towards deploying 3G services in the former Centennial areas.<sup>331</sup> We accordingly condition our grant of consent to the proposed transaction on AT&T's compliance with this commitment to file periodic updates.

98. While no plans or timelines have yet been established, the Applicants assert that, as a result of the merger, AT&T will be able to roll out 4G technology more quickly in Centennial service areas where AT&T holds AWS or 700 MHz spectrum, but lacks towers or necessary infrastructure to use this spectrum.<sup>332</sup> Moreover, addition of the Centennial spectrum will provide AT&T with sufficient spectrum that it otherwise would not have to enable it to roll out 4G services.<sup>333</sup> The post-merger company will be able to set aside a portion of its combined spectrum for LTE implementation without jeopardizing the quality of service to existing customers.<sup>334</sup>

99. *Handsets with Advanced Services Capabilities.* The Applicants assert that as a result of the proposed transaction, Centennial's customers will have access to all handset offerings and services available to new AT&T customers at that time.<sup>335</sup> As of May 2009, AT&T offered [REDACTED] handset models, [REDACTED] of which support UMTS technology for 3G services.<sup>336</sup> Centennial offered only [REDACTED] handset models for its customers in the mainland United States, only

<sup>326</sup> Application, Public Interest Statement at 16 (citing Declaration of Hunt at ¶ 14); Information Request I Response at 44.

<sup>327</sup> Application, Public Interest Statement at 16 (citing Declaration of Hunt at ¶ 14).

<sup>328</sup> See Letter from Joan Marsh, AT&T Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 5, 2009), at 1 ("AT&T Nov. 5 *Ex Parte* Letter"); see also Application, Public Interest Statement at 16-17 (citing Declaration of Moore at ¶ 23).

<sup>329</sup> Information Request I Response at 26.

<sup>330</sup> Application, Public Interest Statement at 17 (citing Declaration of Moore at ¶ 23). AT&T has experience with rapid deployment of 3G services. *Id.* After it acquired Dobson in 2007, it deployed 3G services in 2008 in portions of 29 CMAs that were part of Dobson's footprint. *Id.* It tentatively planned to deploy 3G technology in portions of 43 formerly-Dobson CMAs in 2009. *Id.*

<sup>331</sup> AT&T Nov. 5 *Ex Parte* Letter at 2.

<sup>332</sup> Application, Public Interest Statement at 17 (citing Declaration of Moore at ¶ 22); Information Request I Response at 27; AT&T Nov. 5 *Ex Parte* Letter at 1-2.

<sup>333</sup> Application, Public Interest Statement at 18 (citing Declaration of Moore at ¶ 21).

<sup>334</sup> Application, Public Interest Statement at 18 (citing Declaration of Moore at ¶ 20); Information Request I Response at 27.

<sup>335</sup> Information Request I Response at 24.

<sup>336</sup> Information Request I Response at 24.

[REDACTED] of which support UMTS technology, and [REDACTED] handset models for its customers in Puerto Rico and the U.S. Virgin Islands.<sup>337</sup> Because Centennial does not have 3G capability in its mainland U.S. service areas,<sup>338</sup> it cannot offer its subscribers mobile video and music subscription service, location-based services, and other advanced and multimedia features that are available to AT&T subscribers.<sup>339</sup> The Applicants maintain that, as a result of the merger and following AT&T's rollout of 3G services in Centennial's service areas, Centennial's customers will be able to use dual-mode phones with integrated Wi-Fi and GPS navigation and other innovative features such as free access at Wi-Fi hotspots at more than 17,000 locations.<sup>340</sup> Finally, the Applicants also assert that, as a result of the merger, Centennial customers will be able to purchase handsets at lower costs.<sup>341</sup>

100. *Improved International Roaming.* The Applicants assert that the proposed merger will result in an increased availability of international roaming at lower rates for Centennial's customers.<sup>342</sup> Currently, Centennial maintains roaming agreements that provide for direct interconnection with providers only in a small number of countries;<sup>343</sup> roaming in the remaining countries is provided through Centennial's participation in clearinghouse relationships at generally higher rates.<sup>344</sup> Moreover, Centennial's international roaming arrangements include data capabilities in only a minority of the countries.<sup>345</sup> In contrast, AT&T claims that it has the largest international roaming availability of any U.S. carrier, and its customers benefit from better rates and broader service options.<sup>346</sup> As a result of the proposed transaction, Centennial's subscribers will have access to more than 630 international roaming agreements, and will be able to use roaming voice services and roaming data services in 211 and 131 countries, respectively.<sup>347</sup>

101. *Open Applications Policy.* The Applicants contend that the merger will allow Centennial's customers to benefit from AT&T's Open Applications Policy.<sup>348</sup> This policy will afford Centennial's customers access to more application choices, more handset options, and a more robust network on which to experience downloaded applications.<sup>349</sup> AT&T offers its subscribers a broad variety of content and applications for their wireless phones.<sup>350</sup> AT&T also explains that its customers can

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<sup>337</sup> Information Request I Response at 24.

<sup>338</sup> Information Request I Response at 6, 25.

<sup>339</sup> Application, Public Interest Statement at 7 (citing Declaration of Hunt at ¶ 11).

<sup>340</sup> Application, Public Interest Statement at 8 (citing Declaration of Moore at ¶ 11).

<sup>341</sup> Application, Declaration of Willig, Orszag, and Poulsen at ¶¶ 15-16. *See also* Information Request I Response at 56-58.

<sup>342</sup> Application, Public Interest Statement at 9 (citing Declaration of Hunt at ¶ 9).

<sup>343</sup> Application, Public Interest Statement at 9-10 (citing Declaration of Moore at ¶ 9).

<sup>344</sup> Application, Public Interest Statements at 10 (citing Declaration of Hunt at ¶ 9). *See also* Information Request I Response at 35-36.

<sup>345</sup> Application, Public Interest Statement at 10 (citing Declaration of Hunt at ¶ 9).

<sup>346</sup> Information Request I Response at 36.

<sup>347</sup> Application, Public Interest Statement at 10 (citing Declaration of Moore at ¶ 16).

<sup>348</sup> Application, Public Interest Statement at 7 (citing Declaration of Hunt at ¶ 10; Declaration of Moore at ¶ 8); Information Request I Response at 20.

<sup>349</sup> Information Request I Response at 20.

<sup>350</sup> Information Request I Response at 14-15.

download any application that is compatible with their handsets.<sup>351</sup> In addition, AT&T states that its customers have access to a wide variety of handsets that can support various operating systems, features, applications, and functionalities.<sup>352</sup> Customers also are allowed to use their own GSM-compatible device on AT&T's GSM network.<sup>353</sup>

102. *Wireless/Wireline Integration.* The Applicants state that the proposed transaction will enable the combined entity to integrate Centennial's wireless network with AT&T's wireline network.<sup>354</sup> In the mainland U.S., AT&T has incumbent LEC operations in 30 of the 41 CMAs where Centennial currently provides wireless service.<sup>355</sup> Those of Centennial's customers residing in AT&T's wireline service areas will be able to take advantage of AT&T's Unity Plans, which allow free calling among AT&T's wireless and wireline residential and business phone numbers.<sup>356</sup> The Applicants contend that customers that have both wireless and wireline services will also be able to take advantage of discounts, special DSL pricing, and unified billing.<sup>357</sup>

103. *Improved Reception and Signal Quality.* The Applicants state that the integration of AT&T's and Centennial's networks, with the associated greater cell site density, will result in better reception and signal quality for both companies' customers.<sup>358</sup> The Applicants conclude that customers of the merged company will have a better customer calling experience, with more seamless service, fewer dropped calls, dead spots, and coverage gaps, and improved data speeds and feature performance.<sup>359</sup>

104. *Benefits for Business Customers.* The Applicants contend that the combined entity will be in a better position to provide wireless services to business customers.<sup>360</sup> Centennial currently offers its business customers the same wireless products and services that are offered to consumers.<sup>361</sup> In contrast, AT&T has several innovative wireless services it offers to its business customers.<sup>362</sup> Centennial's business customers would, post-merger, gain access to AT&T offerings such as Corporate Digital Advantage, which includes a broad array of features and functionalities tailored to the needs of businesses, Premier Enterprise Portal Wireless Management Center, Enterprise on Demand, and Business Pooled Nation voice plan, as well as increased access to WiFi service.<sup>363</sup>

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<sup>351</sup> Information Request I Response at 15.

<sup>352</sup> Information Request I Response at 15.

<sup>353</sup> Information Request I Response at 15.

<sup>354</sup> Application, Public Interest Statement at 8-9 (citing Declaration of Moore at ¶ 14; Declaration of Willig, Orszag, and Poulsen at ¶ 18).

<sup>355</sup> Information Request I Response at 34.

<sup>356</sup> Application, Public Interest Statement at 9 (citing Declaration of Moore at ¶ 9).

<sup>357</sup> Application, Public Interest Statement at 9 (citing Declaration of Moore at ¶ 14).

<sup>358</sup> Application, Public Interest Statement at 11.

<sup>359</sup> Application, Public Interest Statement at 11 (citing Declaration of Moore at ¶ 12; Declaration of Willig, Orszag, and Poulsen at ¶¶ 20-21).

<sup>360</sup> Application, Public Interest Statement at 12.

<sup>361</sup> Information Request I Response at 38.

<sup>362</sup> Application, Public Interest Statement at 12 (citing Declaration of Moore at ¶¶ 17-18); Information Request I Response at 38.

<sup>363</sup> Application, Public Interest Statement at 12 (citing Declaration of Hunt at ¶ 11; Declaration of Moore at ¶¶ 17-18); Information Request I Response at 38-39.

## 2. Improved Disaster Preparedness

105. The Applicants contend that the merger will improve the combined entity's ability to prepare for as well as respond to emergencies, such as natural disasters, acts of terrorism, and others.<sup>364</sup> They state that the combined entity will benefit from adding Centennial's experience in responding to hurricanes and other disasters with AT&T's own experience as well as its many emergency preparedness resources, such as two mobile command centers, mobile generators, and mobile cell sites that are connected via satellite or landline.<sup>365</sup> The use of AT&T's 3G network has also proven critical during emergencies.<sup>366</sup> The Applicants explain that because Centennial's network switches in Alexandria, Louisiana, are located outside of the typical hurricane centers closer to the Gulf Coast, they are less susceptible to power outages caused by hurricanes.<sup>367</sup> The Applicants maintain that the denser network of the combined entity will be more resilient to power outages than either network would be individually.<sup>368</sup> Overlap of the two networks, which operate in two separate bands (850 MHz and 1900 MHz), will ensure that emergency equipment that operates on either band can be deployed to restore service.<sup>369</sup> The Applicants assert that in Puerto Rico, the combined entity will benefit from Centennial's broader presence and more extensive emergency recovery capabilities.<sup>370</sup>

## 3. Substantial Additional Cost Synergies

106. The Applicants maintain that the proposed transaction will result in substantial additional savings in costs of operations, which in turn will increase the combined entity's competitiveness and the introduction of innovative features and services.<sup>371</sup> The Applicants state that cost savings will result from "reduced per-subscriber costs of acquiring customers; the reduction of general and administrative costs; the consolidation of cell sites; the reduction of network operating expenses; and the consolidation of customer billing functions."<sup>372</sup> Examples of such cost savings include: the elimination of redundant towers; shifting AT&T's current wireline traffic in Puerto Rico from PRTC to Centennial's wireline network; reduced roaming costs; and AT&T's lower cost per subscriber (due to its economies of scale) for general and administrative expenses, billing and customer care, and marketing and advertising, as well as elimination of duplicative activities in these categories of expense.<sup>373</sup> The Applicants maintain that some portion of the savings in advertising, billing, general and administrative, and network categories will be passed on to the subscribers, as they represent reductions in the variable costs of offering cellular service.<sup>374</sup> They expect cost synergies with a net present value of approximately [REDACTED].<sup>375</sup>

<sup>364</sup> Application, Public Interest Statement at 14 (citing Declaration of Hunt at ¶ 16; Declaration of Moore at ¶ 19).

<sup>365</sup> Application, Public Interest Statement at 14-15 (citing Declaration of Moore at ¶ 19; Declaration of Willig, Orszag, and Poulsen at ¶ 22).

<sup>366</sup> Application, Public Interest Statement at 15.

<sup>367</sup> Information Request I Response at 43. In fact, during recent hurricanes, Centennial was able to add hundreds of thousands of AT&T's Louisiana customers to its network. Information Request I Response at 43.

<sup>368</sup> Information Request I Response at 43.

<sup>369</sup> Information Request I Response at 43.

<sup>370</sup> Information Request I Response at 43.

<sup>371</sup> Application, Public Interest Statement at 20.

<sup>372</sup> Application, Public Interest Statement at 21 (citing Declaration of Moore at ¶¶ 24-33).

<sup>373</sup> Application, Public Interest Statement at 21-23 (citing Declaration of Moore at ¶¶ 26-32); Information Request I Response at 50-53.

<sup>374</sup> Information Request I Response at 52.

#### 4. Puerto Rico Wireline Service Benefits

107. In Puerto Rico, AT&T provides wireline services to a number of businesses, but because it does not own “last mile” facilities, it must rely on local services provided by third parties.<sup>376</sup> AT&T’s focus is on large national and multinational companies that also have telecommunications needs in Puerto Rico.<sup>377</sup> Centennial’s principal services consist of voice services (e.g., local and long distance telephony, ISDN-PRI/BRI, DS1, POTS, toll free services, and VoIP), dedicated services (e.g., private line, frame relay, ATM, and Ethernet), and Internet services (e.g., dedicated access and dial-up).<sup>378</sup> The Applicants assert that as a result of the proposed merger, AT&T will be able to provide its business customers in Puerto Rico a single point of contact for their telecommunication services instead of relying on local services provided by third parties.<sup>379</sup> The Applicants contend that Centennial’s business customers will also benefit by being able to travel on one network and gaining access to “AT&T’s global service offerings, including global Internet service, Enhanced VPN and other advanced managed services.”<sup>380</sup>

#### C. Conclusion

108. While we find that this transaction is likely to result in transaction-specific public interest benefits, we are not able on the basis of this record, using the sliding-scale approach described above, to conclude that they are sufficiently large or imminent to outweigh the potential harms we have identified in certain individual markets. In those markets, therefore, remedies are necessary to ameliorate likely competitive harms.

### VII. DIVESTITURE OF MARKETS

109. Using the analytical standards outlined above, we find that the Applicants’ proposed transaction would likely pose significant competitive harms in seven local mobile telephony/broadband services markets. We conclude that, in these markets, the potential harms would not be outweighed by the proposed transaction’s alleged public interest benefits. Thus, if our analysis ended at this point, we would have to conclude that the Applicants have not demonstrated that the proposed transaction, on balance, would serve the public interest, convenience, and necessity.

110. In its review of proposed transactions, the Commission is empowered to impose conditions on the transfer of control of Commission licenses to mitigate the harms the transaction would likely create. Such conditions are tailored to address the specific harms anticipated based on economic analysis, examination of documents submitted in response to our inquiry, and public comment contained in the record of this proceeding. We conclude that the conditions set forth below alter the public interest balance of the proposed transaction by mitigating the potential public interest harms. Accordingly, with the conditions that we adopt in this Memorandum Opinion and Order, and assuming the Applicants’ compliance with these conditions, we find that the Applicants have demonstrated that the proposed transfer of licenses would serve the public interest, convenience, and necessity. We find that the operating unit divestitures described herein resolve certain transaction-specific competitive harms disclosed by our competitive analysis above. As discussed below,<sup>381</sup> we accept certain commitments

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<sup>375</sup> Information Request I Response at 50. [REDACTED]. Information Request I Response at 50.

<sup>376</sup> Application, Public Interest Statement at 12-13 (citing Declaration of Moore at ¶ 36).

<sup>377</sup> Application, Public Interest Statement at 12; Information Request I Response at 40.

<sup>378</sup> Information Request I Response at 40.

<sup>379</sup> Application, Public Interest Statement at 12-13 (citing Declaration of Moore at ¶ 36).

<sup>380</sup> Application, Public Interest Statement at 13 (citing Declaration of Moore at ¶ 37).

<sup>381</sup> See discussion *infra* Part IX, Conditions in Addition to Market Divestitures.

made by AT&T and will impose these commitments as conditions designed to ensure that the proposed transaction is in the public interest by remedying additional harms which may occur as a result of the proposed transaction.

#### A. Operating Unit Divestitures

111. We found above that the proposed transaction would be likely to cause significant competitive harm in seven geographic markets. The Department of Justice also required divestiture of these markets. Specifically, our analysis indicated that, in those markets, 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. To address these concerns, we will require the Applicants to divest all licenses, spectrum leasing arrangements, and authorizations and related operational and network assets, which shall include certain employees, retail sites, subscribers, customers, all fixed assets, goodwill, and all spectrum associated therewith and any other assets, tangible or intangible, used in the operation of the mobile telephony/broadband services to be divested (together, the "Divestiture Assets"), of Centennial in certain markets. Specifically, we condition this grant of authority to transfer control of licenses, authorizations, and spectrum leasing arrangements held by Centennial and its subsidiaries to AT&T on the divestiture of the Divestiture Assets in the seven markets listed below:

CMA	Name
CMA174	Lafayette, LA
CMA205	Alexandria, LA
CMA456	Louisiana 3 – De Soto
CMA458	Louisiana 5 – Beauregard
CMA459	Louisiana 6 – Iberville
CMA460	Louisiana 7 – West Feliciana
CMA500	Mississippi 8 – Claiborne

#### B. Operation of Divestitures

112. Disposal of the Divestiture Assets in the seven geographic markets in which competitive harm is likely will be accomplished in the following way. A Management Trustee shall be appointed to serve as manager and operator of the Divestiture Assets until such assets are sold to third party purchasers or transferred to a Divestiture Trustee (who may be the same person as the Management Trustee). During the period in which the Management Trustee is in day-to-day control of the Divestiture Assets, AT&T shall retain *de jure* control and shall have the sole power to market and dispose of the Divestiture Assets to third-party buyers, subject to the Commission's regulatory powers and processes with respect to license transfers and assignments and the terms of the agreements to be contained in any preservation of assets stipulation, proposed final judgment, or other document or agreement that may be entered into between the Applicants and the DOJ.

113. To the extent the Applicants file applications to enter into short-term *de facto* transfer spectrum leases in order to transfer certain Divestiture Assets into the trust with the Management Trustee, these applications must include a request to approve the identity of the Management Trustee and the terms

of the trust agreement (“Management Trustee Agreement”).<sup>382</sup> We require that all of the Divestiture Assets shall be transferred to the trust in accordance with the terms of this Memorandum Opinion and Order no later than upon consummation of this proposed transaction. The Management Trustee Agreement must include all reasonable and necessary rights, powers, and authorities to permit the Management Trustee to perform his duties of day-to-day management of the Divestiture Assets, in the ordinary course of business, in order to run the businesses carried on in those CMAs and to permit expeditious divestiture.<sup>383</sup> The Management Trustee will serve at the cost and expense of the Applicants.<sup>384</sup>

114. From the date of release of this Memorandum Opinion and Order, and until the divestitures ordered herein have been consummated, both the Applicants and the Management Trustee shall preserve, maintain, and continue to support the Divestiture Assets and shall take all steps to manage them in a way as to permit prompt divestiture. We require that the Applicants and the Management Trustee abide by the same provisions relating to the duties of the Management Trustee and the preservation of the Divestiture Assets as those contained in any DOJ preservation of assets stipulation or any other document or agreement. We also require that, to the extent any DOJ preservation of assets stipulation or Management Trustee Agreement or other document or agreement requires the Applicants or the Management Trustee to provide DOJ with any reports, affidavits, notifications, or statements of compliance or requires that the Applicants seek any approvals from the DOJ, the Applicants will also provide such reports, affidavits, notifications, and statements to, and seek such approvals from, the Commission.

115. The Applicants will be allowed 120 days from the closing of their transaction or five days after notice of entry of any Final Judgment, whichever is later (the “Management Period”), to divest the Divestiture Assets prior to the second stage of the divestiture procedures becoming operative. Upon application by the Applicants to the Bureau, the Bureau may grant one or more extensions of the Management Period, not to exceed 60 days in the aggregate, to allow the Applicants further time to dispose of the Divestiture Assets.<sup>385</sup>

116. Upon expiration of the Management Period, any Divestiture Assets that remain owned by the Applicants shall be irrevocably transferred to a Divestiture Trustee, who shall be solely responsible for accomplishing disposal of the Divestiture Assets. The Applicants will submit to the Bureau, for approval, both the name of the proposed Divestiture Trustee and a draft of the divestiture trust agreement<sup>386</sup> to be entered into with the Divestiture Trustee together with an appropriate application to

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<sup>382</sup> See *supra* Part II.C.2, Department of Justice Review.

<sup>383</sup> The duties and responsibilities of the Management Trustee and the terms relating to how the Divestiture Assets are to be preserved during the term of the trust are more fully set forth in the preservation of assets stipulation DOJ filed in the D.C. District Court. See *supra* Part II.C.2, Department of Justice Review. Except to the extent that any provisions herein conflict, we require that the Applicants and the Management Trustee fully comply with such provisions as if they were set forth herein *in extenso*.

<sup>384</sup> See, e.g., DOJ AT&T-Centennial Stipulation and Order at 8.

<sup>385</sup> If the Applicants have filed an application with the Commission seeking consent to the sale of any of the Divestiture Assets to a third party within the time periods set forth above but the Commission has not acted by the end of such period, such period will be automatically extended and shall expire five days after the Commission’s action with respect to such Divestiture Assets.

<sup>386</sup> The Wireless Telecommunications Bureau will consult with the Office of General Counsel on matters relating to the identity of the proposed divestiture trustee and the terms of the divestiture trust.

effect such transfer no later than 30 days prior to the expiration of the Management Period.<sup>387</sup> The Divestiture Trustee will serve at the cost and expense of the Applicants and shall file monthly reports with the Bureau setting forth his efforts to divest the Divestiture Assets.

117. The Divestiture Trustee shall use its best efforts to sell the Divestiture Assets within six months of appointment, subject to the Commission's regulatory powers and process with respect to license transfers and assignments. The expeditious disposal of the Divestiture Assets during this period is of greater importance than the price that might otherwise be obtained for such assets. If a sale of any of the Divestiture Assets that consist of operating units and associated spectrum has not been effectuated within such period, the Divestiture Trustee shall file a report with the Bureau explaining the Divestiture Trustee's efforts to sell the Divestiture Assets, the reasons why the Divestiture Assets have not been sold, and the Divestiture Trustee's recommendations. The Commission will consider such report and will issue such further orders as it considers appropriate.

118. Subject to our regulatory powers and processes, to the extent that any of the Divestiture Assets are included within any DOJ preservation of assets stipulation, DOJ proposed final judgment or any other document or agreement, we will allow the Applicants to proceed to divest such assets in accordance with the terms of the provisions of those documents.

119. To the extent that this Memorandum Opinion and Order conflicts with any document or agreement among the DOJ, the Applicants, the Management Trustee, and the Divestiture Trustee, the Applicants must nonetheless comply with the terms of this Memorandum Opinion and Order.

## VIII. OTHER ISSUES

### A. Roaming

120. *Background.* Roaming occurs when the subscriber of one CMRS provider travels beyond the service area of that provider and uses the facilities of another CMRS provider to place an outgoing call, to receive an incoming call, or to continue an in-progress call.<sup>388</sup> Subscribers can roam manually by providing a credit card number to the host carrier, while automatic roaming allows mobile telephone subscribers to place calls while roaming as they do in their home coverage area, by simply entering a phone number and pressing "send."

121. In the *Roaming Report and Order*,<sup>389</sup> the Commission determined that the automatic roaming obligation applies to real-time, two-way switched voice or data services that are interconnected with the public switched network and utilize an in-network switching facility that enables providers to reuse frequencies and accomplish seamless hand-offs of subscriber calls.<sup>390</sup> The Commission determined that automatic roaming, as a common carrier obligation, does not extend to services that are classified as

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<sup>387</sup> Except to the extent that any provisions herein conflict, we require that the Applicants and the Divestiture Trustee fully comply with the provisions of any DOJ Proposed Final Judgment relating to the responsibilities of the Divestiture Trustee as if they were set forth herein *in extenso*.

<sup>388</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20324 ¶ 59; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11561-62 ¶ 98; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21586 ¶ 166; see also Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Service, WT Docket No. 05-265, 00-193, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 15047, 15048 ¶ 2 (2005).

<sup>389</sup> 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 (2007) ("*Roaming Report and Order*" and "*Roaming Further Notice*," respectively).

<sup>390</sup> See *Roaming Report and Order*, 22 FCC Rcd at 15817, 15839 ¶¶ 1, 60.

information services or to other wireless services that are not CMRS.<sup>391</sup> Additionally, the Commission determined that when “a reasonable request is made by a technologically compatible [CMRS] carrier, a host [CMRS] carrier must provide automatic roaming to the requesting carrier outside of the requesting carrier’s home market . . .”<sup>392</sup> on reasonable and non-discriminatory terms and conditions.<sup>393</sup> The Commission also stated that if a carrier makes a reasonable request for automatic roaming, “then the would-be host carrier cannot refuse to negotiate an automatic roaming agreement with the requesting carrier.”<sup>394</sup> The Commission also found that it would serve the public interest to extend automatic roaming obligations to push-to-talk and Short Message Services (SMS), but declined to adopt a rule extending the automatic roaming obligation beyond that to offerings such as non-interconnected services or features provided over enhanced digital networks, such as wireless broadband Internet access.<sup>395</sup> Nevertheless, in the *Roaming Further Notice*, the Commission sought comment on whether it should extend the automatic roaming obligation to non-interconnected services or features, including services that have been classified as information services, such as wireless broadband Internet access service, or other non-CMRS services offered by CMRS carriers.<sup>396</sup> The Commission also maintained its existing manual roaming requirement, which imposes on CMRS providers the obligation to permit customers of other service providers to roam manually on their networks.<sup>397</sup> The provision of automatic roaming services is subject to the requirements of Sections 201, 202, and 208 of the Communications Act.<sup>398</sup>

122. Several parties assert that competition in the marketplace for roaming services will be harmed as a result of the consolidation proposed in the transaction.<sup>399</sup> Cincinnati Bell contends that because Centennial is the last GSM carrier to have an appreciable facility footprint that AT&T does not cover, without conditions, AT&T will have power in the wholesale roaming market to dictate terms and prices to its remaining roaming partners.<sup>400</sup> Cincinnati Bell also asserts that the transaction would allow AT&T to extend its anticompetitive practices into Centennial’s territory and adopt new anticompetitive practices.<sup>401</sup>

123. Several parties also request that the Commission impose conditions on this transaction, such as holding or lowering the rates in AT&T and Centennial’s roaming agreements;<sup>402</sup> providing

<sup>391</sup> See *Roaming Report and Order*, 22 FCC Rcd at 15818-19, 15839 ¶¶ 2, 60.

<sup>392</sup> *Roaming Report and Order*, 22 FCC Rcd at 15818, 15831 ¶¶ 2, 33.

<sup>393</sup> *Id.* at 15826 ¶ 23.

<sup>394</sup> *Id.* at 15828 ¶ 28.

<sup>395</sup> See *id.* at 15839 ¶ 60.

<sup>396</sup> *Roaming Further Notice*, 22 FCC Rcd at 15845-46 ¶¶ 77-81.

<sup>397</sup> 47 C.F.R. § 20.12(c) provides:

Each carrier subject to this section must provide mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to this section, including roamers, while such subscribers are located within any portion of the licensee’s licensed service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee’s base stations.

<sup>398</sup> See generally *Roaming Report and Order*, 22 FCC Rcd at 15818, 15824 ¶¶ 1, 18.

<sup>399</sup> Cincinnati Bell Petition at 3; RCA Comments at 5; Cellular South Petition at 8-9.

<sup>400</sup> Cincinnati Bell Petition at 2-3, 6-7, 9-12; Cincinnati Bell Reply at 3.

<sup>401</sup> Cincinnati Bell Reply at 2-3.

<sup>402</sup> RCA Comments at 7.