

carriers that roam with both AT&T and Centennial the option to select either agreement to govern post-merger;<sup>403</sup> expanding AT&T and Centennial's roaming agreements to other services not covered by those agreements;<sup>404</sup> and requiring AT&T to provide automatic data roaming.<sup>405</sup> Cincinnati Bell also argues that the Commission should impose a condition on AT&T to honor Centennial's existing roaming agreements for at least seven years following the consummation of the merger.<sup>406</sup> Cincinnati Bell cites Verizon Wireless's voluntary commitment in the Verizon/ALLTEL transaction to retain ALLTEL's agreements for four years, but argues that AT&T's post-merger stranglehold on the market warrants a longer period.<sup>407</sup> According to Cincinnati Bell, the only prospect to loosen AT&T's grip is the full deployment of LTE by multiple carriers, which would eliminate the technology limitations in the roaming marketplace.<sup>408</sup> RCA argues that, at a minimum, AT&T's roaming obligations should be clear that they apply to the entirety of the roaming agreement as well as to future services and spectrum bands of each carrier.<sup>409</sup>

124. The Applicants initially respond that the proposed transaction, with any required divestitures, will not disturb the competitive retail market, and thus Commission-imposed roaming conditions are inappropriate.<sup>410</sup> The Applicants further assert that the circumstances in the Verizon-ALLTEL transaction, which was conditioned upon roaming commitments by Verizon Wireless, could not be more different than the circumstances in the proposed transaction.<sup>411</sup> For example, the Applicants state that Centennial's licensed service area covers only about 1/25<sup>th</sup> the area that ALLTEL covered, is much more densely populated, and is almost ubiquitously served by national carriers, which are Centennial's principal competitors and provide alternative roaming partners.<sup>412</sup> In addition, the Applicants contend that in contrast to the Verizon-ALLTEL transaction, where many regional, small, and rural carriers were heavily dependent upon ALLTEL for roaming services, many of the regional, small and rural carriers that operate in Centennial's service area do not use the same technology as Centennial and thus do not roam with Centennial.<sup>413</sup> According to the Applicants, whereas ALLTEL and its predecessors had made

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<sup>403</sup> RCA Comments at 7; Cincinnati Bell Petition at 14-15; Letter from Todd B. Lantor, Counsel to Rural Cellular Association, to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 27, 2009), at 2 ("RCA Oct. 27 *Ex Parte* Letter").

<sup>404</sup> RCA Comments at 7; Cincinnati Bell Petition at ii, 17-19.

<sup>405</sup> Cincinnati Bell Petition at 16-19; Cellular South Petition at 2, 8-10.

<sup>406</sup> Cincinnati Bell Petition at 13.

<sup>407</sup> Cincinnati Bell Petition at 13-14.

<sup>408</sup> Cincinnati Bell Petition at 14.

<sup>409</sup> RCA Oct. 27 *Ex Parte* Letter at 2.

<sup>410</sup> Information Request II Response at 8-9.

<sup>411</sup> Information Request II Response at 9-12.

<sup>412</sup> Information Request II Response at 11.

<sup>413</sup> Information Request II Response at 11-12. The Applicants state that Centennial sells more than [REDACTED] percent of its roaming services in the mainland U.S. to [REDACTED] and [REDACTED]. Centennial sells more than [REDACTED] percent of its roaming services in Puerto Rico and the U.S. Virgin Islands to Sprint Nextel. Centennial's largest roaming partner that is a regional, small, or rural carrier, [REDACTED], purchased about [REDACTED] of roaming services from Centennial in the most recent fiscal year. Information Request II Response at 11-12.

roaming a major focus of their business, the provision of roaming is a small part of Centennial's business and accounts for less than seven percent of its revenues.<sup>414</sup>

125. The Applicants also contend that Cincinnati Bell and RCA are attempting to achieve a sizable and unwarranted windfall in the extension of roaming privileges they now enjoy over Centennial's limited footprint throughout the entire post-merger AT&T territory.<sup>415</sup> The Applicants assert that Cincinnati Bell and RCA are seeking Commission-imposed terms that they would not be able to obtain in a normal business negotiation with AT&T.<sup>416</sup> The Applicants further assert that there is no potential competitive harm from a reduction of roaming options as a result of the proposed transaction. According to the Applicants, AT&T predominantly relies on GSM and so there is no danger that AT&T will abandon Centennial's GSM network.<sup>417</sup>

126. In a letter filed in the docket for this proceeding, AT&T continues to argue that prompt approval of the transaction will unquestionably advance the public interest and agrees to voluntary roaming commitments in order to expedite approval of this transaction.<sup>418</sup> More specifically and as detailed below, AT&T states that it will honor Centennial's existing roaming agreements with other carriers.<sup>419</sup> AT&T also voluntarily commits that any carrier with fewer than 10 million subscribers that has a roaming agreement with Centennial will have the option to continue to obtain roaming services, in those areas where the carrier was obtaining roaming services, for a period of at least 48 months after closing.<sup>420</sup>

127. Cincinnati Bell further argues that AT&T acts in an anticompetitive manner in the roaming market, specifically, by imposing "primary carrier" requirements on its roaming partners that make it more difficult for Cincinnati Bell and similarly situated customers to roam on carriers other than AT&T in areas where AT&T provides service.<sup>421</sup> Accordingly, Cincinnati Bell requests that the Commission forbid AT&T to enforce any "primary carrier" requirement for carriers who elect to remain in their AT&T agreements, or to attempt to prevent such carriers from competing for nationwide

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<sup>414</sup> Information Request II Response at 12.

<sup>415</sup> Information Request II Response at 12 n.20.

<sup>416</sup> Information Request II Response at 12 n.20.

<sup>417</sup> Information Request II Response at 12. According to the Applicants, there is only one non-divestiture CMA in which a GSM-based regional, small, or rural carrier is a facilities-based competitor, Indiana RSA No. 6 – Randolph (CMA408), where Cincinnati Bell is one of six current facilities-based competitors. Information Request II Response at 12-13.

<sup>418</sup> AT&T Letter of Commitment at 2.

<sup>419</sup> AT&T Letter of Commitment at 3 (AT&T makes the following voluntary commitment: "AT&T will honor Centennial's existing agreements with other carriers to obtain roaming services on Centennial's network pursuant to the rates, terms and conditions contained in Centennial's roaming agreements on the date the AT&T-Centennial merger closes ("Merger Closing Date") for the full term of those agreements, notwithstanding any change of control or termination for convenience provisions in those agreements.").

<sup>420</sup> AT&T Letter of Commitment at 3 (AT&T makes the following voluntary commitment: "[A]ny carrier with fewer than 10 million subscribers that has an effective roaming agreement with Centennial on the Merger Closing Date will have the option to continue to obtain roaming services, pursuant to the rates, terms and conditions of that agreement, in those areas where the carrier was obtaining roaming services on the Centennial network on the Merger Closing Date, for the later of (i) a period of 48 months after the Merger Closing Date, or (ii) the full term of such carrier's agreement with Centennial.").

<sup>421</sup> Cincinnati Bell Petition at 7.

customers.<sup>422</sup> AT&T denies Cincinnati Bell's contention that AT&T requires that its roaming partners treat it as a "primary carrier" and argues that Cincinnati Bell attempted to use its roaming agreement with AT&T to resell AT&T's services to customers outside of Cincinnati Bell's service area.<sup>423</sup>

128. Some commenters also raise the issue of interoperability in conjunction with roaming.<sup>424</sup> Cellular South states that "[w]hen networks are interoperable, connectivity is not interrupted during inter-carrier handoffs and the customer who is roaming on another network does not lose functionality on his or her device."<sup>425</sup> RCA contends that large carriers, like AT&T, are known to create "moats" around their service areas, and without interoperability, calls near the edge of a license area are not sustained.<sup>426</sup> Both RCA and Cellular South argue that the Commission should require AT&T to negotiate in good faith for interoperability agreements for voice and data services with other carriers along with the automatic roaming agreements.<sup>427</sup> AT&T argues that the issues related to interoperability are unrelated to this merger and concern the wireless industry generally.<sup>428</sup> AT&T notes that the Commission has a longstanding policy of not considering arguments in merger proceedings that are better addressed in other Commission proceedings and not imposing conditions to remedy pre-existing harms or harms that are unrelated to the transaction.<sup>429</sup>

129. *Discussion.* We condition our approval of this transaction on AT&T's commitment to honor Centennial's existing agreements with other carriers to obtain roaming services on Centennial's network pursuant to the rates, terms and conditions contained in Centennial's roaming agreements on the date the AT&T-Centennial merger closes ("Merger Closing Date") for the full term of those agreements, notwithstanding any change of control or termination for convenience provisions in those agreements. We also condition our approval of this transaction on AT&T's commitment that any carrier with fewer than 10 million subscribers that has an effective roaming agreement with Centennial on the Merger Closing Date will have the option to continue to obtain roaming services, pursuant to the rates, terms and conditions of that agreement, in those areas where the carrier was obtaining roaming services on the Centennial network on the Merger Closing Date, for the later of (i) a period of 48 months after the Merger Closing Date, or (ii) the full term of such carrier's agreement with Centennial. This commitment does not apply to (a) any properties other than those AT&T is acquiring through the Centennial merger and (b) any properties that are to be divested. This commitment also does not limit AT&T's right in these areas to

<sup>422</sup> Cincinnati Bell Petition at ii, 3, 12-15, 24; Cincinnati Bell Reply at 3.

<sup>423</sup> Joint Opposition at 7 n.16.

<sup>424</sup> RCA Comments at iii, 8-9; Cellular South Petition at 9-10.

<sup>425</sup> Cellular South Petition at 9.

<sup>426</sup> RCA Comments at 8-9.

<sup>427</sup> RCA Comments at i, iii, 7-9; Cellular South Petition at 2, 9-10.

<sup>428</sup> Joint Opposition at i, 4-5.

<sup>429</sup> Joint Opposition at 4-5 (citing a number of Commission orders, including *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581-82 ¶ 22; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462-63 ¶ 29; AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74, *Memorandum Opinion and Order*, 22 FCC Rcd 5662, 5674-75 ¶ 22 (2007); SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control, WC Docket No. 05-65, *Memorandum Opinion and Order*, 20 FCC Rcd 18290, 18303 ¶ 19 (2005); *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545-46 ¶ 43; Applications of Craig O. McCaw and Am. Tel. & Tel. Co. for Consent to the Transfer of Control of McCaw Cellular Communications, Inc. and its Subsidiaries, *Memorandum Opinion and Order*, 9 FCC Rcd 5836, 5904 ¶ 123 (1994)).

reasonably manage its networks in an efficient manner to support the provision of 3G or 4G services to customers. In addition, this commitment shall not be interpreted to restrict AT&T's ability to modify, upgrade, or sunset Centennial's existing network, features or functionalities, in whole or in part, as AT&T implements its network technology of choice in these areas. Similarly, nothing in this commitment will be construed as limiting the rights of any carrier to pursue roaming arrangements pursuant to Commission rules and the remedies they afford.

130. We find that AT&T's roaming-related commitments, along with the package of divestitures on which we are conditioning our approval of this transaction, are sufficient to prevent competitive harm that this transaction would likely cause in certain geographic markets. We do not find that the specific facts of this situation warrant a condition that AT&T honor Centennial's existing roaming agreements, all or in part, for a period of seven years, as suggested in the record by some parties. Instead, we conclude that given the circumstances of this transaction, a period of four years ensures sufficient time, if necessary, for small carriers to resolve any roaming-related issues created specifically by the transaction. Additionally, we find that given the specific circumstances of this transaction, AT&T's four-year roaming commitment with respect to small carriers provides a sufficient safeguard on the ability of small carriers to continue roaming on Centennial's network that AT&T is acquiring. In particular, we note that many of the regional, small, and rural carriers that operate in Centennial's service area do not use the same network technology as Centennial and thus do not roam on Centennial's network. We also note that roaming is a small part of Centennial's business, and that the limited geographic size of Centennial's service area (only about two percent of the 48 contiguous states) similarly limits the impact of this transaction on the availability of roaming services. In addition, we note that the relatively high population density of Centennial's licensed service area (over 105 persons per square mile) makes it more likely that other carriers will build out networks in the areas that Centennial serves. Accordingly, we find that applying AT&T's four-year roaming commitment to those areas where carriers currently obtain roaming services from Centennial, along with the package of divestitures on which we are conditioning our approval of this transaction, would prevent significant competitive harm that this transaction would likely cause in Centennial's service areas as a result of the loss of Centennial as a roaming partner in those areas.

131. We also note that Centennial provides automatic roaming services on its GSM network, and there is no indication that AT&T will stop providing such services to any requesting carrier after the merger. Further, we remind carriers that roaming is a common carrier service subject to the protections afforded by Sections 201, 202, and 208 of the Communications Act.<sup>430</sup> When a CMRS carrier receives a reasonable request for roaming, pursuant to Sections 201 and 202, that carrier is required to provide roaming on reasonable and non-discriminatory terms and conditions.<sup>431</sup> If a requesting carrier believes that particular acts or practices relating to roaming are unjust and unreasonable,<sup>432</sup> it may file a complaint with the Commission pursuant to Section 208.<sup>433</sup>

132. With regard to any additional roaming-related concerns raised in the record, as discussed elsewhere in this Memorandum Opinion and Order, we find that the package of divestitures on which we are conditioning our approval of this transaction, along with the roaming conditions described above, sufficient to prevent any transaction-specific competitive harm that this transaction would likely cause in certain geographic markets. Based on this finding that the divestitures, as well as AT&T's roaming related commitments, will protect competition at the retail level in those geographic markets, we conclude

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<sup>430</sup> 47 U.S.C. §§ 201, 202, 208.

<sup>431</sup> See generally *Roaming Report and Order*, 22 FCC Rcd at 15818-19, 15824, 15826-29 ¶¶ 1-2, 18, 23-29.

<sup>432</sup> See generally *id.* at 15830-31 ¶¶ 33-35 (discussing reasonableness).

<sup>433</sup> See generally *id.* at 15818, 15829-30 ¶¶ 1, 30-32.

that this transaction will not alter competitive market conditions to harm consumers of mobile telephony/broadband services. We note that our conclusion here is consistent with the Commission's prior findings that competition in the retail market is sufficient to protect consumers against potential harm arising from intercarrier roaming arrangements and practices.<sup>434</sup>

133. We note that the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes.<sup>435</sup> A number of parties raised more general concerns about roaming in the record of this transaction, including issues related to automatic voice and data roaming, interoperability, and primary carrier requirements. We conclude that these concerns would be more appropriately addressed in other proceedings.<sup>436</sup> For instance, we are considering, in the context of the *Roaming Further Notice*, whether to extend the automatic roaming obligation to non-interconnected services or features, including services that have been classified as information services.<sup>437</sup> Any decisions reached or rules adopted in other proceedings related to roaming will apply with equal force to AT&T.

134. *Puerto Rico and the U.S. Virgin Islands.* In Puerto Rico, Centennial currently operates a 3G CDMA network on which Sprint Nextel roams. Two other providers also operate 3G CDMA networks in Puerto Rico: OpenMobile and Claro (a subsidiary of América Móvil).<sup>438</sup> T-Mobile and AT&T operate GSM networks in Puerto Rico. In the U.S. Virgin Islands, Centennial and Sprint Nextel operate the CDMA networks, while AT&T and Innovative Wireless operate GSM networks in the territory. Centennial's largest roaming partner in Puerto Rico and the U.S. Virgin Islands is [REDACTED], which purchases more than [REDACTED] percent of Centennial's roaming services in those areas.<sup>439</sup> As discussed below, AT&T commits to operate and maintain a CDMA network for the provision of roaming services in Puerto Rico and the U.S. Virgin Islands for 18 months after the transaction closing date.<sup>440</sup>

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<sup>434</sup> See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17525 ¶ 179; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12503 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21591 ¶ 180; *Roaming Report and Order*, 22 FCC Rcd at 15822 ¶ 13.

<sup>435</sup> See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12480-81 ¶ 30; *AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 14; *Sprint Nextel Order*, 20 FCC Rcd at 13979 ¶ 23.

<sup>436</sup> See generally *Roaming Further Notice*.

<sup>437</sup> *Id.*

<sup>438</sup> América Móvil is currently completing a GSM overlay for its existing CDMA network, and will also maintain its 3G CDMA network. See América Móvil Annual Progress Report for the Deployment of the Infrastructure Used to Provide Basic Telephone and Broadband Services in Puerto Rico, WT Docket No. 06-113, filed July 8, 2009, at 3.

<sup>439</sup> Information Request II Response at 11-12. In Information Request II, the Commission asked whether the roaming conditions in the *Verizon Wireless-ALLTEL Order* are or are not appropriate for the AT&T-Centennial transaction with respect to the continental U.S., Puerto Rico, and the U.S. Virgin Islands. The Commission also inquired as to the nature of the services (*i.e.*, voice, data, etc.) for which Centennial provides automatic roaming in the continental U.S., Puerto Rico, and the U.S. Virgin Islands. In addition, the Commission asked which carriers roam on Centennial's 3G CDMA network in Puerto Rico and the U.S. Virgin Islands, and the respective percent of Centennial's roaming traffic, in terms of both minutes and revenues, for which each roaming partner's use accounts.

<sup>440</sup> AT&T Letter of Commitment at 3 (AT&T makes the following voluntary commitment: "Notwithstanding any obligation in this commitment, AT&T will operate and maintain a CDMA network in Puerto Rico and the U.S. Virgin Islands for 18 months after the Merger Closing Date. After that time, AT&T will have no obligation to operate or maintain a CDMA network in Puerto Rico or the U.S. Virgin Islands.").

135. Sprint Nextel requests roaming conditions similar to those imposed in the *Verizon Wireless-ALLTEL Order*, stating they may be necessary “to protect the interests of Centennial’s current 430,000 CDMA customers and the hundreds of thousands of additional Americans who rely upon CDMA roaming with Centennial to complete calls in Puerto Rico”<sup>441</sup> and also asks that AT&T explain how long it intends to maintain Centennial’s CDMA network and whether it intends to honor Centennial’s current roaming agreements.<sup>442</sup> In response to Sprint Nextel’s concerns about the potential loss of a CDMA roaming partner in Puerto Rico, AT&T argues that, unlike in the Verizon Wireless-ALLTEL transaction that resulted in certain areas having no GSM provider,<sup>443</sup> other CDMA carriers will continue to operate as potential roaming partners in Puerto Rico and the U.S. Virgin Islands after this transaction.<sup>444</sup> Further, AT&T notes that Sprint Nextel possesses spectrum licenses in Puerto Rico and the U.S. Virgin Islands, which it could use to expand its CDMA networks in those areas, making it inappropriate for the Commission to prevent AT&T from making technology changes only to allow Sprint Nextel and other carriers to avoid having to improve their networks.<sup>445</sup>

136. [REDACTED].<sup>446</sup> [REDACTED].<sup>447</sup> According to the Applicants, CDMA roaming opportunities will continue to exist in Puerto Rico after the merger because in addition to Centennial, three other carriers – Sprint Nextel, Open Mobile, and Claro – employ CDMA technology in their networks. The Applicants state that “all three of these carriers currently provide facilities-based service in each CMA in Puerto Rico, with the single exception of CMA 725 – Ciales, where Sprint Nextel does not currently provide service.”<sup>448</sup> In the U.S. Virgin Islands, the Applicants state Sprint Nextel has a CDMA network in both CMAs.<sup>449</sup> The Applicants state that after closing, AT&T “will continue to provide CDMA roaming on just and reasonable terms until the network transition to GSM is completed.”<sup>450</sup>

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<sup>441</sup> Sprint Nextel Comments at 8-9.

<sup>442</sup> Sprint Nextel Comments at 7-9; Sprint Nextel Reply Comments at 2.

<sup>443</sup> See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17518, 17523 ¶¶ 161, 176.

<sup>444</sup> Joint Opposition at 11 n.32.

<sup>445</sup> Joint Opposition at 11 n.32. In reply, Sprint Nextel states that shutting down Centennial’s CDMA network could force CDMA customers who rely on Centennial’s network to purchase new handsets, especially because other CDMA networks in Puerto Rico do not offer 3G services. Sprint Nextel Reply at 2-3, 4. Sprint Nextel further notes, in the Verizon Wireless-RCC transaction, Verizon Wireless committed to maintain RCC’s GSM network for at least 18 months, to honor RCC’s GSM roaming agreements, and to provide to RCC’s GSM customers a free comparable handset or a discounted higher-end CDMA handset. Sprint Nextel Reply at 3-4. While Sprint Nextel acknowledges that it could build its own CDMA network in Puerto Rico, it asserts that because the build out would take at least 18 months, AT&T should explain its plan for its CDMA network during that time. Sprint Nextel Reply at 4.

<sup>446</sup> Information Request I Response at 30. In Information Request I, the Commission asked whether AT&T plans to shut down Centennial’s CDMA network or operate it and, if AT&T plans to operate it, for what period of time. The Commission also asked the Applicants whether there are other networks that operate CDMA 3G technology in Puerto Rico and the U.S. Virgin Islands and that provide comparable alternatives to Centennial’s CDMA network. In addition, the Commission asked whether AT&T plans to renew or extend Centennial’s CDMA roaming contracts when their terms expire and whether AT&T plans to enter into new CDMA roaming contracts.

<sup>447</sup> Information Request I Response at 30-31.

<sup>448</sup> Information Request I Response at 32 (footnote omitted). The Applicants note that Claro is in the process of overlaying a GSM/UMTS network but has stated that it has no plans to turn off the existing CDMA/EVDO network it purchased from Verizon. *Id.*

<sup>449</sup> Information Request I Response at 33.

<sup>450</sup> Information Request I Response at 34.

137. In a subsequent *ex parte* filing, Sprint Nextel clarified it is not asking the Commission to prevent or delay AT&T's conversion of Centennial's CDMA network to GSM technology.<sup>451</sup> Sprint Nextel stated that, while it has been actively assessing other CDMA roaming options in Puerto Rico, it will need a post-merger transition period in order to implement any alternative roaming arrangements that may be necessary.<sup>452</sup> Accordingly, Sprint Nextel respectfully requested that the Commission require AT&T to support CDMA roaming in Puerto Rico pursuant to the same rates, terms, and conditions as Centennial's existing CDMA roaming agreements for a period of at least 18 months from the date the transaction closes.<sup>453</sup> In response, AT&T voluntarily commits to operate and maintain a CDMA network for the provision of roaming services in Puerto Rico and the U.S. Virgin Islands for 18 months after the transaction closing date.<sup>454</sup>

138. *Discussion.* We condition our approval of this transaction on AT&T's commitment to operate and maintain a CDMA network in Puerto Rico and the U.S. Virgin Islands for 18 months after the Merger Closing Date. After that time, AT&T will have no obligation to operate or maintain a CDMA network in Puerto Rico or the U.S. Virgin Islands. We find that a period of eighteen months will allow carriers using Centennial's CDMA network sufficient time to implement alternatives. We also find this approach appropriate for both Puerto Rico and the U.S. Virgin Islands, where [REDACTED].

#### **B. Handset Availability and Exclusive Handset Agreements**

139. Several commenters contend that the Commission should prevent AT&T from engaging in exclusive handset arrangements as a condition of approval of this transaction<sup>455</sup> or defer action on the transaction until it resolves the separate handset exclusivity proceeding.<sup>456</sup> RCA argues that exclusive handset arrangements give carriers monopolistic control over desired handsets, enabling them to exact from consumers higher prices for services and accessories, undesirable terms of service, and premium prices for the handsets.<sup>457</sup> While Cincinnati Bell acknowledges that some of the handset exclusivity issues raised in this proceeding may overlap with issues in the pending handset exclusivity proceeding, it asserts that the Commission must nonetheless address the transaction-specific issues within the context of this proceeding, particularly because the handset exclusivity proceeding may not be completed for many months.<sup>458</sup>

140. Cincinnati Bell also contends that adopting a handset condition in this merger similar to the "Verizon Handset Commitment" will at least serve to mitigate the competitive harm resulting from AT&T's acquisition of Centennial.<sup>459</sup> In July of this year, Verizon Wireless committed to eliminate any

<sup>451</sup> Letter from Charles W. McKee, Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 9, 2009), at 2 ("Sprint Nextel Oct. 9 *Ex Parte* Letter").

<sup>452</sup> Sprint Nextel Oct. 9 *Ex Parte* Letter at 1-2.

<sup>453</sup> Sprint Nextel Oct. 9 *Ex Parte* Letter at 1.

<sup>454</sup> See AT&T Letter of Commitment at 3 (AT&T makes a voluntary commitment to operate and maintain a CDMA network in Puerto Rico and the U.S. Virgin Islands for 18 months after the Merger Closing Date and stating that, after that time, it will have no obligation to operate or maintain a CDMA network in Puerto Rico or the U.S. Virgin Islands).

<sup>455</sup> RCA Comments at 9-12; Cincinnati Bell Petition at ii, 3, 24.

<sup>456</sup> Cellular South Petition at 2, 7-8.

<sup>457</sup> RCA Comments at 10.

<sup>458</sup> Cincinnati Bell Reply at 8-10.

<sup>459</sup> Letter from Jean L. Kiddo, counsel for Cincinnati Bell Wireless LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 19, 2009), at 2-3 ("Cincinnati Bell Oct. 19 *Ex Parte* Letter").

new long-term handset exclusivity arrangements regarding small wireless carriers and to permit full access by such carriers to any manufacturer's portfolio of prototypes and products in development.<sup>460</sup> Without a condition similar to Verizon Wireless's commitment, Cincinnati Bell states that the merger will exacerbate the inequality in bargaining positions and make it easier for AT&T to impose exclusivity requirements on handset manufacturers.<sup>461</sup> Similarly, RCA argues that the merger should be conditioned upon AT&T's commitment to limit its exclusive handset arrangement to a maximum of six months at which point all of its handsets would immediately be made available to regional and rural carriers, consistent with the commitment made by Verizon Wireless.<sup>462</sup> In response, the Applicants contend handset exclusivity issues involve the wireless industry generally, and the concerns raised are not transaction-specific and are not appropriate for Commission consideration here.<sup>463</sup> AT&T further states that it will be responding to claims regarding exclusive handset arrangements in the industry-wide proceeding.<sup>464</sup> Finally, the Applicants argue that imposing proposed regulatory changes on AT&T alone would harm the public interest by constraining AT&T's ability to compete and discouraging it from investing.<sup>465</sup>

141. *Discussion.* We find that the proposed conditions prohibiting exclusive handset arrangements are not narrowly tailored to prevent a transaction-specific harm, but apply broadly across the industry and are more appropriate for a Commission proceeding where all interested industry parties have an opportunity to file comments.<sup>466</sup> RCA filed a petition asking the Commission to review exclusive handset agreements on an industry-wide basis,<sup>467</sup> and the Commission will be able to develop a comprehensive approach on handset exclusivity based on a full record in that proceeding.<sup>468</sup>

### C. Customer Transition Matters

142. Consolidation of the Centennial and AT&T networks will require two primary categories of transition for Centennial's customers. First, Centennial's customers in the mainland U.S. will be transitioned from Centennial's current GSM operations to the GSM capabilities provided by AT&T. Second, Centennial's customers in Puerto Rico and the U.S. Virgin Islands will be transitioned from its

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<sup>460</sup> Letter from John T. Scott, III, Vice President & Deputy General Counsel, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, RM-11497, WT Docket No. 09-66 (July 17, 2009), attachments. Verizon Wireless defined "small" as carriers with 500,000 customers or less (and subsequently expanded that definition to extend to a carrier with approximately 800,000 customers.) *Id.* See also Cincinnati Bell Oct. 19 *Ex Parte* Letter at 1, attachment.

<sup>461</sup> Cincinnati Bell Petition at 20. See also Cincinnati Bell Oct. 19 *Ex Parte* Letter at 2.

<sup>462</sup> RCA Oct. 27 *Ex Parte* Letter at 2-3.

<sup>463</sup> Joint Opposition at i, 1-2, 4-7. AT&T also "incorporates by reference" its comments filed in the pending proceeding addressing handset exclusivity. *Id.* at 7 n.15.

<sup>464</sup> *Id.* at 6.

<sup>465</sup> *Id.*

<sup>466</sup> See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468 ¶ 185.

<sup>467</sup> See Rural Cellular Association Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, filed May 20, 2008; Wireless Telecommunications Bureau Seeks Comment On Petition For Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers And Handset Manufacturers, *Public Notice*, DA 08-2278 (Oct. 10, 2008). See also RCA Oct. 27 *Ex Parte* Letter at 1-3.

<sup>468</sup> See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21592 ¶ 183.

current CDMA network to AT&T's GSM operations. We seek to ensure that these transitions are as successful as possible with minimal disruption to customers.

143. *Integration of GSM Networks.* Subject to revisions and budgetary considerations, the Applicants expect "the bulk of the integration of Centennial's GSM/EDGE network in the mainland United States to be completed within [REDACTED] after the closing of the [ ] transaction."<sup>469</sup> They plan swaps, dual banding, sectorization, and other Radio Access Network site modification, as well as E911 integration tasks, to begin in [REDACTED].<sup>470</sup> Core network integration, mobile switching center expansion, and base station controller expansion is expected to begin in [REDACTED].<sup>471</sup> Transport readiness work is expected to begin in [REDACTED].<sup>472</sup> Signaling work is planned to begin and be completed in the [REDACTED].<sup>473</sup> Lastly, the Mobility Network Reliability Center and National Dispatch Center integration are expected to begin and be completed in the [REDACTED].<sup>474</sup>

144. *Centennial's CDMA Network.* At the end of April 2009, Centennial had approximately 425,000 subscribers in Puerto Rico and the U.S. Virgin Islands, where it currently uses CDMA technology.<sup>475</sup> [REDACTED].<sup>476</sup> [REDACTED].<sup>477</sup> [REDACTED].<sup>478</sup> [REDACTED].<sup>479</sup> [REDACTED].<sup>480</sup> [REDACTED].<sup>481</sup> [REDACTED].<sup>482</sup>

145. AT&T represents that it will take steps to ensure that (1) AT&T's 3G coverage areas are backward-compatible with the 2G phones used by some Centennial's customers, and, (2) in overlap areas with both 850 MHz and 1900 MHz coverage, subscribers' handsets use the 850 MHz spectrum.<sup>483</sup>

146. Based on the record before us, we anticipate a smooth transition in both Centennial's mainland U.S. service areas and in Puerto Rico and the U.S. Virgin Islands. AT&T has experience in transitioning customers on both GSM and CDMA networks,<sup>484</sup> and we believe they have the experience

<sup>469</sup> Information Request I Response at 28. As discussed above, AT&T has committed to maintain the CDMA network in Puerto Rico and the U.S. Virgin Islands for a period of 18 months after the closing of the merger. See AT&T Commitment Letter at 3.

<sup>470</sup> Information Request I Response at 28.

<sup>471</sup> Information Request I Response at 28.

<sup>472</sup> Information Request I Response at 28-29.

<sup>473</sup> Information Request I Response at 29.

<sup>474</sup> Information Request I Response at 29.

<sup>475</sup> Information Request I Response at 31.

<sup>476</sup> Information Request I Response at 13.

<sup>477</sup> Information Request I Response at 30-31.

<sup>478</sup> Information Request I Response at 31.

<sup>479</sup> Information Request I Response at 13.

<sup>480</sup> Information Request I Response at 31.

<sup>481</sup> Information Request I Response at 31.

<sup>482</sup> Information Request I Response at 30.

<sup>483</sup> Information Request I Response at 37.

<sup>484</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20332-35 ¶¶ 73-84; Wireless Telecommunications Bureau Grants Consent for the Assignment of Licenses to AT&T Wireless Services Inc. and United States Cellular Corporation, *Public Notice*, 18 FCC Rcd 11971 (2005).

and resources to ensure a smooth transition. At the same time, we will monitor the situation in the Centennial service areas to ensure that the transition is smooth and is in the public interest.

#### D. NEATT Objections

147. By way of background, NEATT acquired certain divestiture assets from AT&T in northeastern Arkansas in March 2005 pursuant to a Commission-required divestiture.<sup>485</sup> In its petition to deny the subject transaction, NEATT asserts that AT&T has failed to demonstrate that the public interest will be served by allowing AT&T to increase its wireless spectrum holdings through the acquisition of the Centennial properties, which will allow greater concentration in markets that NEATT asserts are generally rural.<sup>486</sup> NEATT alleges that AT&T used its economic and financial power to suppress competition by preventing NEATT from being an effective competitor in northeastern Arkansas.<sup>487</sup> NEATT claims that these actions have resulted in inferior service and higher prices to the consumer, and allowed AT&T to become a monopolist provider of GSM service.<sup>488</sup> NEATT challenges the actions of AT&T in divesting the northeastern Arkansas facilities to NEATT, including the term of the transition services agreement, allegations of improper customer recruitment by AT&T, the transfer of long-term tower leases to NEATT, the transfer of outdated equipment making it difficult for NEATT to be competitive, and the withholding of payments by AT&T.<sup>489</sup>

148. NEATT requests that the Commission not approve this transaction until its formal complaint against AT&T pending at the DOJ is resolved.<sup>490</sup> If the Commission grants the applications prior to the resolution of its complaint, NEATT requests that the transaction be conditioned on the final resolution of the complaint.<sup>491</sup> NEATT further requests that the Commission condition the transaction on: (1) requiring AT&T to reach a settlement with NEATT within 30 days after approval of the transaction and to submit the settlement to the Commission's General Counsel for approval; (2) requiring AT&T to assist minority and women-owned businesses in acquiring divestiture markets from this transaction and to submit quarterly reports to the Commission on such efforts; and (3) making all future Commission divestiture requirements subject to a similar agreement with the DOJ.<sup>492</sup>

149. The Applicants claim that the issues raised by NEATT concern a private contractual dispute,<sup>493</sup> are already pending before the Commission and the DOJ, and are best addressed in those proceedings.<sup>494</sup>

150. We find that the issues raised by NEATT should be resolved in the ongoing proceedings before this Commission and the DOJ and not in the context of the subject transaction. NEATT has failed to show how its allegations regarding AT&T's actions in connection with the previous divestiture in

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<sup>485</sup> Application to Transfer Control of Dempster Newco LLC from Cingular Wireless LLC to Northeastern Arkansas Telephone and Transport, L.L.C., FCC File No. 50002CWTC05 (filed Mar. 16, 2005).

<sup>486</sup> NEATT Petition at 2.

<sup>487</sup> NEATT Petition at 2, 4.

<sup>488</sup> NEATT Petition at 4.

<sup>489</sup> NEATT Petition at 3.

<sup>490</sup> NEATT Petition at 4.

<sup>491</sup> NEATT Petition at 4.

<sup>492</sup> NEATT Petition at 2.

<sup>493</sup> Joint Opposition at 7 & n.16.

<sup>494</sup> Joint Opposition at 8 n.19.

northeastern Arkansas are related to the proposed transaction before us. As observed above, the Commission generally will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction at issue.<sup>495</sup>

#### E. Cellular South Objection Regarding Mississippi 8

151. Cellular South objects to AT&T's acquisition of a controlling interest in Centennial's authorization for Mississippi 8 (CMA500) on the grounds that it violates a Commission-approved "full-market" settlement agreement ("Agreement") that BellSouth Mobility, Inc.<sup>496</sup> ("BellSouth") and Cellular Holding, Inc.<sup>497</sup> ("Cellular Holding") (collectively, the "Parties") entered into in 1989.<sup>498</sup> According to the Agreement, the Parties agreed that Cellular Holding would be the surviving applicant for the Block B (wireline) cellular license for Mississippi 8.<sup>499</sup> BellSouth retained an option to obtain the Block B authorization for the Claiborne County portion of the Mississippi 8 market, which it later exercised.<sup>500</sup> The Parties also agreed that neither would hold "any interest in a second and competing cellular service or any applicant proposing to provide such service"<sup>501</sup> in Mississippi 8, as long as they hold any interest in Block B license for that market.<sup>502</sup> Cellular South argues that if AT&T acquires a controlling interest in Centennial's Block A cellular license in the Mississippi 8 market, AT&T would hold an interest in a "second and competing cellular service," in violation of the Agreement.<sup>503</sup> The Applicants reject this argument, claiming that the Agreement represents a private contractual matter, which is beyond the scope of Commission review in this proceeding.<sup>504</sup> Cellular South responds that the Agreement is not a "run-of-the-mill business or commercial contract," but rather a full-market settlement whose terms and conditions were approved by the Commission when it granted Cellular Holding's surviving application.<sup>505</sup>

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<sup>495</sup> See *supra* para. 30, citing *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17463 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

<sup>496</sup> BellSouth Mobility was succeeded by New Cingular Wireless PCS, LLC ("Cingular Wireless"), which is controlled by AT&T. Cellular South Petition at 6.

<sup>497</sup> Cellular Holding, Inc. is a previously used corporate name for Cellular South. Cellular South Petition at 6.

<sup>498</sup> See Cellular South Petition at 5-7, Exhibit 1. Cellular South also objects to AT&T gaining control over all 50 MHz of cellular spectrum in parts of the following CMAs: Lake Charles, Louisiana (CMA197); Louisiana 2 – Morehouse (CMA455); Louisiana 3 – De Soto (CMA456); Louisiana 5 – Beauregard (CMA458); Louisiana 6 – Iberville (CMA459); Louisiana 7 – West Feliciana (CMA460); and Mississippi 9 (CMA501). *Id.* at 5. The Commission has thoroughly evaluated the risks of competitive harm in these and other markets as a part of its competitive analysis, and it will condition grant of the proposed transaction on the divestiture of Centennial's business units CMA 456, CMA458, CMA459, and CMA460. See *supra* para 111. Moreover, the DOJ, based on the findings of its competitive analysis, will allow the merger to proceed subject to the divestiture of Centennial's business units in, among others, the markets of concern to Cellular South, except CMA455 and possibly CMA197. See DOJ Proposed Final Judgment at 3, 7.

<sup>499</sup> Cellular South Petition, Exhibit 1 at 1, 7.

<sup>500</sup> Cellular South Petition at 6, Exhibit 1 at 7.

<sup>501</sup> Cellular South Petition, Exhibit 1 at 5 ¶ G.

<sup>502</sup> Cellular South Petition, Exhibit 1 at 5 ¶ G.

<sup>503</sup> Cellular South Petition at 6.

<sup>504</sup> Joint Opposition at 8.

<sup>505</sup> Cellular South Reply to Joint Opposition to Petition at 2-3.

Therefore, the Applicant argue, a possible violation of such agreement is subject to the Commission's jurisdiction.<sup>506</sup>

152. We consider these arguments moot. Centennial's cellular operations in CMA500 will be divested as per the Commission's requirements<sup>507</sup> and the requirements of the Department of Justice.<sup>508</sup> In addition, the market is included in the application of Celco Partnership d/b/a Verizon Wireless and certain of its subsidiaries ("Verizon Wireless") and AT&T seeking Commission approval of the assignment or transfer of control of certain wireless licenses and related authorizations in Louisiana and Mississippi to Verizon Wireless.<sup>509</sup> Therefore, we conclude that this transaction will not result in AT&T holding an interest in both Blocks A and B cellular licenses in the Mississippi 8 market. In any event, we agree with the Applicants that the Agreement constitutes a private contractual matter between New Cingular Wireless and Cellular South that is beyond the Commission's jurisdiction. The Commission has a long-standing policy to defer to state and local courts on private contractual disputes,<sup>510</sup> and has traditionally declined to enforce private settlement agreements, "even when the agreements have been filed with the Commission."<sup>511</sup>

#### F. *Ex-Parte* Status of Proceeding

153. In the public notice seeking comment on the proposed transaction, the Wireless Telecommunications Bureau ("Bureau"), pursuant to its authority under section 1.1200(a) of the Commission's Rules,<sup>512</sup> announced that this proceeding would be governed by permit-but-disclose *ex parte* procedures that are applicable to proceedings under section 1.1206 of the Commission's Rules.<sup>513</sup> On January 15, 2009, Cellular South filed a petition for reconsideration objecting to the *ex parte* status of the proceeding, asserting that the Bureau's decision was a violation of section 1.1208 of the Commission's Rules and Section 309(d) of the Communications Act, as well as procedural and due process rights.<sup>514</sup>

154. We disagree. In what otherwise would be a restricted proceeding under section 1.1208, the Commission and its staff have the discretion to apply permit-but-disclose *ex parte* procedures under section 1.1206 if the agency or its staff determine that the proceeding "involves primarily issues of broadly applicable policy."<sup>515</sup> Cellular South argues that the Commission did not present the required public policy determination.<sup>516</sup> Although the Comment Public Notice did not fully articulate the reasons for reclassifying the proceeding as permit-but-disclose, we find that Bureau nonetheless appropriately

<sup>506</sup> Cellular South Reply to Joint Opposition to Petition at 6.

<sup>507</sup> See *supra* para. 111.

<sup>508</sup> See DOJ AT&T-Centennial Proposed Final Judgment at 3, 7.

<sup>509</sup> See Celco Partnership d/b/a Verizon Wireless and AT&T Inc. Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations and Request Declaratory Ruling on Foreign Ownership, WT Docket No. 09-121, *Public Notice*, DA 09-1978 (rel. Aug. 31, 2009). See also FCC File No. 0003888722.

<sup>510</sup> See *Listeners Guild v. Federal Communications Commission*, 813 F.2d 465 (D.C. Cir. 1987).

<sup>511</sup> *MCA, Inc. v. Garden State Broadcasting Ltd. Partnership*, 1988 WL 100993 (D.N.J. Sep 29, 1988) (NO. CIV. A. 88-2508), p. 5.

<sup>512</sup> 47 C.F.R. § 1.1200(a).

<sup>513</sup> *Id.* § 1.1206. See also Comment Public Notice, 23 FCC Rcd at 17966.

<sup>514</sup> See generally Cellular South Petition for Reconsideration.

<sup>515</sup> 47 C.F.R. § 1.1208 n.2.

<sup>516</sup> Cellular South Petition for Reconsideration at 5.

exercised its discretion. The Commission has previously determined that transactions like the proposed merger between AT&T and Centennial “involve[] broad public policy issues and we reaffirm that judgment here.”<sup>517</sup> For example, our major transaction proceedings generally include consideration of wireless competition issues and the possible effects on actual and potential customers. We note that permit-but-disclose *ex parte* procedures have been applied in the majority of recent merger cases.<sup>518</sup> The public policy determination underlying the decision to use permit-but-disclose *ex parte* procedures for significant transactions is thus reflected in a well-established administrative practice. It does not imply, as Centennial contends, that the *ex parte* rules have been ignored.

155. We further find that the use of permit-but-disclose procedures in this proceeding does not violate the requirement of Section 309(d) of the Communications Acts that allegations of fact in petitions to deny be supported by an affidavit. The affidavit requirement set forth in the section requires an affidavit only for petitions to deny and the applicant’s reply to such petitions. The affidavit requirement does not apply to other filings and does not preclude the Commission from considering other filings. Moreover, the purpose in seeking public comment is to invite information from a variety of perspectives regarding broad public policy concerns, as well as to adduce potential benefits and harms the transaction may cause. We do not believe that Section 309(d) precludes us from doing this. The requirement for a supporting affidavit relates to “specific allegations of fact sufficient to show that . . . grant of the application would be prima facie inconsistent with [the requirements of the Communications Act].” It does not apply to “matters which [the Commission] may officially notice.”<sup>519</sup> We believe that we may take official notice of the kind of policy-related concerns raised by the *ex parte* filings.<sup>520</sup>

156. Finally, we find that the use of permit-but-disclose procedures does not conflict with other procedural rules applicable to this proceeding or considerations of due process. Cellular South contends that by filing a petition to deny, the company acquired procedural rights that “involve being served with copies of papers that Centennial and AT&T may file with the Commission.”<sup>521</sup> Cellular South asserts that this right extends to Centennial’s and AT&T’s filings in response to Cellular South’s petitions.<sup>522</sup> While the rules cited by Centennial provide for the service of some pleadings, they do not bar the Commission or its staff from soliciting additional types of pleadings to which the service requirements do not apply.<sup>523</sup> In this regard, the use of permit-but-disclose *ex parte* procedures in lieu of

<sup>517</sup> See, e.g., “Permit But Disclose” Ex Parte Status Accorded to Proceeding Involving Applications Filed by Voicestream Wireless Corporation, Omnipoint Corporation, Cook Inlet/VS GSM II PCS, LLC and Cook Inlet/VS GSM III PCS, LLC for Consent to Transfer of Control and Assignment of Licenses and Authorizations, *Public Notice*, 15 FCC Rcd 6939 (1999).

<sup>518</sup> See, e.g., Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer Licenses, Spectrum Manager and *De Facto* Transfer Leasing Arrangements, and Authorizations, and Request a Declaratory Ruling on Foreign Ownership, WT Docket No. 08-95, *Public Notice*, 23 FCC Rcd 10004 (2008); Sprint Nextel Corporation and Clearwire Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 08-94, *Public Notice*, 23 FCC Rcd 9988 (2008); Verizon Wireless and Rural Cellular Corporation Seek FCC Consent to Transfer Control of Licenses, Spectrum Manager Leases, and Authorization, WT Docket No. 07-208, *Public Notice*, 22 FCC Rcd 18356 (2007).

<sup>519</sup> 47 U.S.C. §310(d)(2).

<sup>520</sup> See *City of Erie v. Pap’s A.M.*, 529 U.S. 277, 298 (2000) (administrative agency may take official notice of “legislative facts” within its special knowledge), citing *FCC v. National Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978) (Commission’s expertise in predicting the anticompetitive impact of broadcasting co-ownership).

<sup>521</sup> Cellular South Petition for Reconsideration at 10.

<sup>522</sup> *Id.* at 10.

<sup>523</sup> In particular, we do not construe the service requirement of 47 C.F.R. § 1.927(i) to extend beyond the context of the applicant’s duty to serve amendments to its application and related pleadings on the petitioner to deny.

service does not in itself deprive parties of basic due process. The use of permit-but-disclose procedures serves to give the parties adequate notice of allegations concerning them and a fair opportunity to respond.<sup>524</sup> While *ex parte* presentations need not be served on Cellular South, they are readily available on the Commission's web site on the ECFS system and can be accessed, reviewed, and responded to in a timely manner by Cellular South. Due process does not require more.<sup>525</sup>

157. Cellular South asserts that the Commission has in the past accepted *ex parte* presentations without enough time for interested parties to respond before the Commission took action.<sup>526</sup> We do not reach complaints about procedures in prior proceedings. Cellular South has pointed to no actions in this proceeding that deprived it or other parties of basic fairness. Nonetheless, we agree that a comprehensive reexamination of our *ex parte* practices is warranted and expect to include such reexamination as part of our FCC reform efforts.<sup>527</sup>

## IX. CONDITIONS IN ADDITION TO MARKET DIVESTITURES

158. As noted previously, AT&T filed a Letter of Commitment with the Commission on October 22, 2009, and that letter is attached as Appendix C. The letter contains eight sets of commitments by AT&T. The first commitment involves the continued provision of roaming services in Centennial's service areas subsequent to the consummation of the proposed transaction.<sup>528</sup> The roaming-related commitments for the mainland United States, and the conditions based on them, are discussed above in paragraph 129. In addition, this first commitment includes AT&T's commitment that it will operate and maintain its CDMA network in Puerto Rico and the U.S. Virgin Islands for 18 months after the closing of the proposed transaction.<sup>529</sup> Continued operation and maintenance of the Puerto Rico/U.S. Virgin Islands CDMA network as a condition of our action in this Memorandum Opinion and Order is discussed above in paragraph 138.

159. The second through fourth commitments relate to AT&T's provision of services under the Management Services Agreement and its seconding of employees to América Móvil.<sup>530</sup> These limitations, along with others discussed below, are essential to ameliorate our concerns about the potential likelihood of successful coordinated interaction by the merged entity in Puerto Rico. We accordingly condition our grant of consent to the proposed transaction on AT&T not providing consulting or other services, directly or indirectly, pursuant to the MSA or otherwise to América Móvil businesses and/or operations within the United States (including Puerto Rico and the U.S. Virgin Islands), unless the provision of such services is for the benefit of América Móvil and its subsidiaries as a whole and thus only incidentally benefits América Móvil's businesses and/or operations in the United States (including

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<sup>524</sup> See *Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings*, 10 FCC Rcd 3240 ¶¶ 20-22 (1995).

<sup>525</sup> See *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985) ("The essential requirements of due process . . . are notice and an opportunity to respond").

<sup>526</sup> Cellular South Petition for Reconsideration at 14.

<sup>527</sup> We note that as a first step in these efforts, on October 28, 2009, the Office of the General Counsel held a public forum on possible modifications to our *ex parte* rules. See October 28 Workshop Focuses on Improving Disclosure of Ex Parte Contacts, *News Release* (Oct. 22, 2009).

<sup>528</sup> AT&T Letter of Commitment at 3.

<sup>529</sup> AT&T Letter of Commitment at 3.

<sup>530</sup> AT&T Letter of Commitment at 3-4.

Puerto Rico and the U.S. Virgin Islands). This condition will not bar AT&T from entering into arm's-length commercial arrangements with América Móvil, such as reseller and roaming agreements.<sup>531</sup>

160. We also condition our action with respect to the pending transfer of control applications on AT&T not seconding employees to: (1) América Móvil to provide services for the benefit of América Móvil's businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands) unless the provision of such services is for the benefit of América Móvil and its subsidiaries as a whole and thus only incidentally benefits América Móvil's businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands); or (2) América Móvil's subsidiaries operating its wireless or wireline businesses in Puerto Rico or its wireless prepaid business in the United States.<sup>532</sup> For any employee currently seconded to América Móvil or who has been seconded to América Móvil since April 1, 2007, and who during such secondment provided services for the benefit of América Móvil businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands) unless the provision of such services is for the benefit of América Móvil and its subsidiaries as a whole and thus only incidentally benefits América Móvil's businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands), we require that AT&T not assign that person to any position within AT&T's Puerto Rico or U.S. prepaid wireless businesses for a period of 24 months post-secondment.<sup>533</sup>

161. AT&T's fifth commitment involves AT&T extending the information flow safeguards it previously put in place for Puerto Rico wireless services to cover the wireline business and/or operation and the U.S. prepaid wireless business and/or operation as well.<sup>534</sup> We consider these provisions to be critical requirements necessary to prevent the flow of non-public competitively sensitive information. We therefore condition our grant of approval in this Memorandum Opinion and Order on AT&T completely implementing the restrictions listed as item 5.A.1-5.1.6 of the AT&T Letter of Commitment, and we will make those commitments conditions of this order.<sup>535</sup> In addition, we condition this order on AT&T implementing all necessary procedures, including screening and redacting board packages, to ensure that no non-public, competitively sensitive information directly pertaining to or derived from América Móvil's businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands) is provided to any AT&T representative on the América Móvil Board of Directors.<sup>536</sup> This requirement provides an additional step to help ensure that AT&T's Board representatives do not inadvertently receive non-public competitively sensitive information from or about América Móvil's businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands).

162. AT&T's sixth and seventh commitments concern a separate committee of the América Móvil Board of Directors established to handle matters related to América Móvil's businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands).<sup>537</sup> Specifically, [REDACTED].<sup>538</sup> [REDACTED].<sup>539</sup> [REDACTED].<sup>540</sup> It is a condition of this order that once the

<sup>531</sup> See AT&T Letter of Commitment at 3.

<sup>532</sup> See AT&T Letter of Commitment at 3-4.

<sup>533</sup> See AT&T Letter of Commitment at 4.

<sup>534</sup> AT&T Letter of Commitment at 4-5.

<sup>535</sup> See AT&T Letter of Commitment at 4-5.

<sup>536</sup> See AT&T Letter of Commitment at 5.

<sup>537</sup> AT&T Letter of Commitment at 5-6.

<sup>538</sup> Information Request II Response at 3, Attachment II.1.1 at 8-9.

<sup>539</sup> Information Request II Response at 3, Attachment II.1.1 at 8.

AT&T/Centennial transaction is closed, this committee must be formed and in place prior to any AT&T representatives participating in any meeting of the América Móvil Board of Directors.<sup>541</sup>

163. To ensure that this new committee is maintained in place, we condition this order on the requirement that, if América Móvil alters this special board committee in a way that places any responsibility for América Móvil's Puerto Rico or U.S. businesses and/or operations with the full América Móvil Board of Directors on which AT&T representatives sit, AT&T will notify the Commission in writing within five business days so that the Commission may investigate whether any additional or alternative firewall or other remedies are required.<sup>542</sup> Moreover, notwithstanding the creation of this special board committee, we require that, to the extent that any issue relating specifically or primarily to those business and/or operations comes before the full América Móvil Board of Directors, either from the special committee or through any other channel, AT&T representatives on the América Móvil Board of Directors must recuse themselves and must not otherwise participate in any deliberations or decisions on those issues.<sup>543</sup>

164. We consider these conditions and requirements to be essential elements of our consideration to grant the pending applications. We accordingly accept AT&T's commitment to appoint a compliance officer to oversee AT&T's compliance with the commitments it has listed in items 2-7 of this Commitment Letter and hereby make such appointment and oversight a condition of this order.<sup>544</sup> The compliance officer is required to take the following actions: (1) communicate the nature and extent of the requirements set forth in items 2-7 of the AT&T Commitment Letter and as discussed herein to AT&T representatives on the América Móvil Board of Directors, AT&T employees seconded to América Móvil, AT&T Mexico employees, and AT&T employees with direct responsibility for marketing activities specific to AT&T's Puerto Rico operations and U.S. prepaid wireless business, along with the fact that AT&T would consider any violation to be a serious matter that could result in disciplinary action or dismissal; (2) act as a point of contact for such personnel who have information to report regarding a violation or possible violation of these requirements; and (3) investigate and act upon any known or reported violations of these requirements. The compliance officer shall be required to submit a compliance plan to the Commission within 45 days of the closing of the proposed transaction, and shall file a report with the Commission every six months that includes information for the reporting period on: (i) the compliance officer's monitoring activities; (ii) any violations of the requirements set forth above; and (iii) any and all steps taken to address and/or resolve any identified violations. The first report shall be filed 45 days after the six-month anniversary of the closing of the proposed transaction and shall include a certification by the compliance officer that he or she is familiar with the requirements of the Communications Act of 1934, as amended, as well as the rules and regulations implemented in connection therewith.

165. In the event that AT&T and América Móvil in the future are no longer competitors in the United States (including Puerto Rico) or in the event that AT&T ceases to have any representatives appointed to the América Móvil Board of Directors or AT&T ceases to hold an equity interest in América Móvil, AT&T must seek relief from any or all of these conditions, and these conditions will remain in

(Continued from previous page) \_\_\_\_\_

<sup>540</sup> Information Request II Response at 3, Attachment II.1.1 at 9.

<sup>541</sup> [REDACTED]. AT&T Oct. 29, 2009 Supplemental Response to Information Request II at 2.

<sup>542</sup> See AT&T Letter of Commitment at 5.

<sup>543</sup> See AT&T Letter of Commitment at 6.

<sup>544</sup> AT&T Letter of Commitment at 6.

effect until such time as the Commission or the Wireless Telecommunications Bureau modifies or lifts any of these conditions.<sup>545</sup>

#### X. CONCLUSION

166. We find that competitive harm is unlikely in most mobile telephony/broadband markets as a result of this transaction. As discussed above, however, with regard to seven local mobile telephony/broadband services markets, our market-by-market analysis shows that likely competitive harms exceed likely benefits of the transaction, and we therefore require remedies to ameliorate the expected harm. We also find that it is in the public interest to condition this transaction on AT&T's compliance with conditions discussed herein.

#### XI. ORDERING CLAUSES

167. Accordingly, having reviewed the applications, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to Sections 4(i) and (j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, and Section 2 of the Cable Landing License Act, 47 U.S.C. §§ 35, 154(i), (j), 214, 309, 310(d), the applications for the transfer of control of domestic and international Section 214 authorizations, cable landing license, and licenses and spectrum leasing arrangements from Centennial Communications Corp. and its subsidiaries to AT&T Inc. set forth in Appendix A are GRANTED, to the extent specified in this Memorandum Opinion and Order and subject to the conditions specified herein.

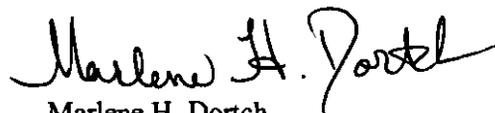
168. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petitions to Deny the transfer of control of licenses and spectrum leasing arrangements from Centennial Communications Corp. and its subsidiaries to AT&T Inc. are DENIED IN PART and GRANTED IN PART for the reasons stated herein.

169. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petition for Reconsideration filed by Cellular South, Inc. is DENIED for the reasons stated herein.

170. IT IS FURTHER ORDERED that the above grant shall include authority for AT&T Inc. to acquire control of: (a) any license or authorization issued to Centennial Communications Corp. and its subsidiaries during the Commission's consideration of the transfer of control applications or the period required for consummation of the transaction following approval; (b) construction permits held by such licensees that mature into licenses after closing; and (c) applications filed by such licensees and that are pending at the time of consummation of the proposed transfer of control.

171. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon adoption. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

<sup>545</sup> See AT&T Letter of Commitment at 6-7.

## APPENDIX A

## Applications Granted

## SECTION 310(d) APPLICATIONS

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0003652447	Bauce Communications of Beaumont, Inc.	KNKA454
0003652455	Centennial Michiana License Company LLC	KNKA428
0003652457	Centennial Puerto Rico License Corp.	KNLF250
0003652459	Centennial Southeast License Company LLC	KNKA748
0003652461	Elkhart Metronet, Inc.	KNKA741
0003652467	Lafayette Cellular Telephone Company	KNKA458

<u>File No.</u>	<u>Lessee</u>	<u>Lead Lease ID Number</u>
0003668912	Centennial Puerto Rico License Corp.	L000004145
0003674680	Centennial Puerto Rico License Corp.	L000004147

## SECTION 214 AUTHORIZATIONS

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20081121-00508	Centennial Communications Corp.	ITC-214-20000817-00545 ITC-214-19970923-00579
ITC-T/C-20081121-00509	Centennial Puerto Rico Operations Corp.	ITC-214-19980918-00669
ITC-T/C-20081121-00510	Centennial Puerto Rico License Corp.	ITC-214-19980430-00923

The Applicants have also filed an application to transfer control of the domestic Section 214 authority held by Centennial's subsidiary, Centennial Puerto Rico Operations Corp. ("CPROC") to AT&T in connection with the transaction described above.

## CABLE LANDING LICENSE APPLICATION

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
SCL-T/C-20081121-00018	Centennial Puerto Rico License Corp.	SCL-LIC-19980101-00036

**APPENDIX B**

**Petitioners and Commenters**

**Petitions:**

Cellular South, Inc. (2)  
Cincinnati Bell Wireless LLC  
NEATT Wireless LLC

**Comments:**

Rural Cellular Association  
Sprint Nextel Corporation

**Opposition:**

AT&T Inc. and Centennial Communications Corp.

**Replies:**

Cellular South, Inc. (2)  
Cincinnati Bell Wireless LLC  
Sprint Nextel Corporation

## APPENDIX C

## AT&amp;T Letter of Commitment



Joan Marsh  
Vice President –  
Federal Regulatory

AT&T Services, Inc.  
1120 20<sup>th</sup> Street, N.W.  
Suite 1000  
Washington, D.C. 20036

202.457.3120 Phone  
832.213.0172 Fax  
[joanmarsh@att.com](mailto:joanmarsh@att.com)

October 22, 2009

## VIA ECFS

Ruth Milkman  
Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: AT&T Inc. and Centennial Communications Corp. Applications for  
Consent to Transfer Control of Commission Licenses, Authorizations, and  
Spectrum Leasing Arrangements, WT Docket No. 08-246

Dear Ms. Milkman:

AT&T and Centennial have demonstrated that their merger will generate numerous significant public interest benefits without any harm to competition. Centennial's wireless customers will enjoy the full range of capabilities available on AT&T's network, including a greater variety of rate plans, an expanded selection of handsets with advanced service capabilities, enhanced international roaming opportunities, and improved reception and signal quality. The transaction will foster the Administration's objective of promoting broadband deployment in the United States. The merger will enable AT&T to provide Centennial's customers 3G services that Centennial has no plan currently to provide on its own. Moreover, the merger will enable AT&T to provide 4G services in areas where neither carrier may have provided services absent the merger. Substantial operational cost savings will flow from the merger, and Centennial's customers will benefit from AT&T's unique disaster recovery capabilities.

The transaction also has significant benefits for wireline customers in Puerto Rico. Centennial's broadband network in Puerto Rico will be combined with AT&T's global network and advanced service offerings to allow for end-to-end service over a single network. Upgrading the communications infrastructure in this way will enhance Puerto Rico's competitiveness and make Puerto Rico a more attractive location for multinational businesses.

These public interest benefits will be achieved without any harm to competition, particularly in light of the divestitures that will occur.

In view of the absence of any competitive harm and the abundant public interest benefits that will flow from the transaction, prompt approval will unquestionably advance the public interest. Nevertheless, in order to expedite approval of this transaction, AT&T makes the commitments set forth in Attachment A hereto.

In accordance with the Commission's rules, this letter is being filed electronically with the Secretary for inclusion in the public record.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joan Marsh', is written over a horizontal line.

Joan Marsh

cc: James D. Schlichting  
Paul E. Murray  
Katherine M. Harris

**Attachment A**

1. AT&T will honor Centennial's existing agreements with other carriers to obtain roaming services on Centennial's network pursuant to the rates, terms and conditions contained in Centennial's roaming agreements on the date the AT&T-Centennial merger closes ("Merger Closing Date") for the full term of those agreements, notwithstanding any change of control or termination for convenience provisions in those agreements. In addition, any carrier with fewer than 10 million subscribers that has an effective roaming agreement with Centennial on the Merger Closing Date will have the option to continue to obtain roaming services, pursuant to the rates, terms and conditions of that agreement, in those areas where the carrier was obtaining roaming services on the Centennial network on the Merger Closing Date, for the later of (i) a period of 48 months after the Merger Closing Date, or (ii) the full term of such carrier's agreement with Centennial.

This commitment does not apply to (a) any properties other than those AT&T is acquiring through the Centennial merger and (b) any properties that are to be divested.

This commitment does not limit AT&T's right in these areas to reasonably manage its networks in an efficient manner to support the provision of 3G or 4G services to customers. Indeed, one of the primary public interest benefits of this transaction is that it will enable AT&T to provide 3G and, ultimately, 4G services to more of Centennial's customers than Centennial could have done on its own. Therefore, this commitment shall not be interpreted to restrict AT&T's ability to modify, upgrade, or sunset Centennial's existing network, features or functionalities, in whole or in part, as AT&T implements its network technology of choice in these areas.

Notwithstanding any obligation in this commitment, AT&T will operate and maintain a CDMA network in Puerto Rico and the U.S. Virgin Islands for 18 months after the Merger Closing Date. After that time, AT&T will have no obligation to operate or maintain a CDMA network in Puerto Rico or the U.S. Virgin Islands.

2. AT&T shall not provide consulting or other services, directly or indirectly, pursuant to the MSA or otherwise to América Móvil S.A.B. de C.V. ("AMX") businesses and/or operations within the United States (including Puerto Rico and the U.S. Virgin Islands), unless the provision of such services is for the benefit of AMX and its subsidiaries as a whole and thus only incidentally benefits AMX's businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands). In addition, AT&T may enter into arm's-length commercial arrangements with AMX, such as reseller and roaming agreements. AT&T will clarify with AMX that it will provide only such services under the MSA.

3. AT&T shall not second employees to: (i) AMX to provide services for the benefit of AMX businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands) unless the provision of such services is for the benefit of

AMX and its subsidiaries as a whole and thus only incidentally benefits AMX's businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands); or (ii) AMX's subsidiaries operating its wireless or wireline businesses in Puerto Rico, or its wireless prepaid business in the U.S.

4. AT&T shall not assign any employee who (a) currently is seconded to AMX or has been seconded to AMX since April 1, 2007 and (b) during such secondment provided services for the benefit of AMX businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands) unless the provision of such services is for the benefit of AMX and its subsidiaries as a whole and thus only incidentally benefits AMX's businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands) to any position within AT&T's Puerto Rico or U.S. pre-paid wireless businesses for a period of 24 months post-secondment.

5. AT&T shall extend the information flow safeguards that it has currently in place for Puerto Rico wireless services<sup>1</sup> to cover the Puerto Rico wireline business and/or operation and the U.S. prepaid wireless business and/or operation as well. Specifically, AT&T will implement the following protections:

- A. Extend the existing firewall to include wireline, as well as wireless, services in Puerto Rico and AMX's U.S. prepaid wireless business and/or operation ("TracFone"). Accordingly,
  1. No AT&T employee, officer or director responsible for the management of the AT&T wireless or wireline business and/or operations in Puerto Rico, or AT&T U.S. prepaid wireless business and/or operations (with the exception of AT&T corporate officers who are not responsible for the day-to-day management of AT&T's business and/or operations in Puerto Rico and the US Virgin Islands or its U.S. prepaid wireless business), shall serve as an officer or director of AMX or member of any committee of AMX's Board of Directors.
  2. No AT&T employee, officer or director shall provide non-public, competitively sensitive information directly pertaining to or derived from the AT&T wireless or wireline business and/or operations in Puerto Rico to:
    - (i) AMX employees, officers or directors; or (ii) any AT&T employee, officer or director who serves on the AMX Board of Directors or any committee thereof.
  3. No AT&T employee, officer or director shall provide non-public, competitively sensitive information directly

<sup>1</sup> Letter from Wayne Wans, Senior Vice President and Associate General Counsel, AT&T Inc., to Michael J. Haral, Telecommunications & Media Section of the United States Department of Justice's Antitrust Division (May 30, 2006).

pertaining to or derived from the AT&T U.S. prepaid wireless business or operations to: (i) AMX employees, officers or directors, or (ii) any AT&T employee, officer or director who serves on the AMX Board of Directors or any committee thereof.

4. No AT&T employee, officer or director shall provide non-public, competitively sensitive information directly pertaining to or derived from AMX's business and/or operations in Puerto Rico received from AMX to AT&T employees, officers or directors responsible for the management of the AT&T wireless or wireline businesses and/or operations in Puerto Rico (with the exception of AT&T corporate officers who are not responsible for the day-to-day management of AT&T's business and/or operations in Puerto Rico and the U.S. Virgin Islands or its U.S. prepaid wireless business).
5. No AT&T employee, officer or director shall provide non-public, competitively sensitive information received from AMX directly pertaining to or derived from AMX's TracFone business to AT&T employees, officers or directors responsible for the management of AT&T's U.S. prepaid wireless business and/or operations (with the exception of AT&T corporate officers who are not responsible for the day-to-day management of AT&T's business and/or operations in Puerto Rico and the U.S. Virgin Islands or its U.S. prepaid wireless business).
6. AT&T will not use contractors or agents to perform any task that an AT&T employee, officer or director could not perform pursuant to 1-5 above.

- B. AT&T will implement procedures, including screening and redacting board packages, to ensure that no non-public, competitively-sensitive information directly pertaining to or derived from AMX's businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands) is provided to any AT&T representative on the AMX Board of Directors.

6. If AMX alters the special board committee that was created on September 10, 2009 in a way that places any responsibility for AMX's Puerto Rico or U.S. businesses and/or operations with the full AMX Board of Directors on which AT&T representatives sit, AT&T will notify the FCC in writing within 5 business days so the Commission can investigate whether any additional firewall remedies are required.

7. Notwithstanding the AMX board resolution creating a special committee with full responsibility for AMX's Puerto Rico and U.S. business and/or operations, to the extent any issue relating specifically or primarily to those business and/or operations comes before the full AMX Board of Directors, either from the special committee or through any other channel, AT&T representatives on the AMX Board of Directors will not be present for nor otherwise participate in any deliberations or decisions on those issues.

8. AT&T will appoint a compliance officer (the "Compliance Officer") to oversee AT&T's compliance with Commitments 2-7. The Compliance Officer will (i) communicate the nature and extent of Commitments 2-7 to AT&T representatives on the AMX Board of Directors, AT&T employees seconded to AMX, AT&T Mexico employees, and AT&T employees with direct responsibility for marketing activities specific to AT&T's Puerto Rico operations and U.S. prepaid wireless business, along with the fact that AT&T would consider any violation to be a serious matter that could result in disciplinary action or dismissal; (ii) act as a point of contact for such personnel who have information to report regarding a violation or possible violation of Commitments 2-7; and (iii) investigate and set upon any known or reported violations of the Commitments 2-7.

To effectuate this commitment, the Compliance Officer shall submit a compliance plan to the FCC within 45 days from the Merger Closing Date and shall provide the FCC with a report every 6 months that shall provide information on (i) the monitoring activities undertaken during the report period, (ii) any violations of Commitments 2-7 that were identified during the report period, (iii) and any and all steps taken to address and/or resolve identified violations. The first such report shall be filed 45 days following the 6-month anniversary of the Merger Closing Date and that report shall include a one-time certification by the Compliance Officer that he/she is familiar with the requirements of the Telecomm Act and the rules and regulations implemented in connection therewith related to FCC auction proceedings.

\* \* \*

Notwithstanding anything to the contrary in Commitments 2-8, AT&T, to the extent permitted by law, will be free to continue the customary and reasonable exchange of non-public information with AMX in furtherance of any bona fide (1) merger, acquisition, joint venture or similar transactions involving AT&T or its subsidiaries and AMX or its subsidiaries, or (2) turn-of-length commercial arrangements, such as reseller and roaming agreements.

If circumstances change such that AT&T and AMX are no longer competitors in the United States (including Puerto Rico) or in the event that AT&T ceases to have any representatives appointed to the AMX Board of Directors or AT&T ceases to hold an equity interest in AMX, AT&T will provide notice of such change of circumstances to the Wireless Telecommunications Bureau of the Commission, and will determine in cooperation with the Wireless Telecommunications Bureau whether changes in these policies are appropriate. Unless and until the Wireless Telecommunications Bureau

agrees that any or all of the policies are no longer necessary, such policies shall remain in full force and effect.

The commitments described herein will be null and void if the transaction is not consummated.

**CONCURRING STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*Re: Applications of AT&T, Inc. and Centennial Communications Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements, WT Docket No. 08-246.*

This transaction does not appear to be the vehicle for major changes in the Commission's approach to mergers in the wireless sector. For many years now I have expressed concern over the rising tide of economic concentration in our telecommunications and media industries. But the tide continued to run through those years. Consumers have paid a heavy cost, in terms of dollars, confusion and constricted services, because the FCC permitted—even encouraged—this concentration to happen. In both theory and practice, too much power in too few hands is not a good prescription for America's communications future.

Regarding the instant transaction—which is clearly on a fast track for approval—I believe the ameliorative requirements imposed by the Department of Justice for divestiture in eight markets significantly improve the original terms of this merger. Additionally, AT&T says it is committed to moving Centennial customers to newer generation wireless technologies currently unavailable to most of them. While the company's assertion that it will do this lacks solid commitment, there do appear to be market incentives at work to encourage the redemption of some of these promises. I will be closely monitoring the implementation of this transaction with an eye to ensuring that Centennial subscribers do in fact experience the tangible benefits they are entitled to expect—next generation wireless services, accelerated provision of broadband, and other up-to-date customer services. That being said, I continue to be skeptical of commercial marriages based on pledges that big companies “go rural” for better or for worse. Too many rural areas have been abandoned when the marriage didn't produce the big company profits sought by the market.

The competitive analysis employed in this merger review is certainly an improvement over the often-careless methodology applied in other recent wireless transactions. For instance, the ever-shifting and somewhat out-of-control spectrum screen employed by the last Commission is not generally invoked here. Nonetheless that process still stands, and I reiterate my concern with the screen as it exists. I applaud the Chairman for addressing this matter in the recently-issued Wireless Competition NOI which will hopefully result in changes in the way this Commission analyzes the competitive effects of proposed transactions—changes that I have been encouraging since almost the inception of the screen. I hope the NOI will lead to *expeditious change* because more mergers mean less competition.

For the reasons described above, I limit my vote on this item to a concurrence.