

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

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In the Matter of
Applications of AT&T Inc. and Cellco Partnership
d/b/a Verizon Wireless
For Consent To Assign or Transfer Control of
Licenses and Authorizations and Modify a
Spectrum Leasing Arrangement

WT Docket No. 09-104

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MEMORANDUM OPINION AND ORDER

Adopted: June 22, 2010

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By the Commission: Commissioner Copps issuing a statement.

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I. INTRODUCTION

1. In approving Verizon Wireless’s acquisition of ALLTEL Corporation (“ALLTEL”), the Commission required that Verizon Wireless divest licenses and associated business units in 105 of the affected markets in order to preserve and promote mobile competition in these markets.¹ Today, we approve the transfer to AT&T Inc. (“AT&T”) of licenses and business units in 79 of these markets.² In the great majority of these markets, which cover predominantly rural portions of the United States,³ AT&T currently provides either no mobile service or only very limited service, and our action will help ensure the availability of 3G Universal Mobile Telecommunications System (“UMTS”) offerings to consumers in rural areas. We closely scrutinized the individual markets that potentially raised competitive concerns, as well as considered other potential harms including the effect on roaming agreements and specific issues relating to service on the Pine Ridge Indian Reservation. In order to ensure that approval of this transaction serves the public interest, we adopt several conditions, including conditions relating to roaming, preservation of service on the Pine Ridge Indian Reservation, and a commitment by AT&T to divest 15 megahertz of spectrum in one Michigan market. We expect that this

¹ Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444 (2008) (“*Verizon Wireless-ALLTEL Order*”).

² The Commission has already acted to approve the transfer of licenses and business units associated with the other 26 markets pursuant to an order issued by the Wireless Telecommunications and International Bureaus earlier this year. See Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless For Consent To Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 09-119, *Memorandum Opinion and Order*, DA 10-661 (WTB/IB rel. Apr. 16, 2010) (“*ATN-Verizon Wireless Order*”).

³ Most of these markets cover portions of the western United States – including all of North Dakota and South Dakota, almost all of Montana and Wyoming, and portions of California, Arizona, Nevada, Utah, Colorado, New Mexico, Kansas, Iowa, Nebraska, and Minnesota. They also cover portions of Michigan, Tennessee, Alabama, and Virginia. See Map of Markets, Appendix A.

transaction will benefit consumers, particularly throughout much of rural America, by giving them access to an array of additional service offerings.

2. Specifically, we grant the applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless and certain of its subsidiaries (“Verizon Wireless,” and together with AT&T, the “Applicants”) to assign or transfer control of certain wireless licenses and related authorizations held by Verizon Wireless to AT&T,⁴ subject to the conditions set forth below. Our consent is given pursuant to sections 214 and 310(d) of the Communications Act, as amended,⁵ under which we must determine whether approval of the proposed transaction would serve the public interest, convenience, and necessity. As discussed more fully below, we conclude that approving the proposed transaction, with the specified conditions, will serve the public interest.

II. BACKGROUND

A. Description of Applicants

1. AT&T Inc.

3. AT&T, incorporated in Delaware and headquartered in Dallas, Texas, is a communications holding company.⁶ With its subsidiaries, affiliates, and operating companies, AT&T states that it ranks among the leading providers of telecommunications services in the United States and around the world.⁷ AT&T asserts that, as of December 31, 2009, it was a leading provider of wireless data in the U.S. wireless industry based on subscribers⁸ and the largest communications company in the world by revenue.⁹ The company reported more than \$123 billion in revenues in 2009.¹⁰

4. AT&T has four main operating segments: wireless, wireline, advertising solutions, and other.¹¹ The wireless segment consists of AT&T’s subsidiary, AT&T Mobility, which provides wireless services to both business and consumer customers.¹² This segment represents approximately 43 percent of 2009 total segment operating revenues.¹³ AT&T has more than 85.1 million wireless subscribers.¹⁴ Its

⁴ File No. 0003840313 has been designated the lead application (“Application”) for the wireless radio services. The other applications contain an exhibit referring to the exhibits attached to File No. 0003840313. Thus, for convenience, when referring to these applications, we only cite to the lead Application.

⁵ 47 U.S.C. §§ 214, 310(d).

⁶ AT&T Inc., SEC Form 10-K, at 1 (filed Feb. 25, 2010) (“AT&T 10-K”), available at <http://www.sec.gov/Archives/edgar/data/732717/000073271710000013/0000732717-10-000013-index.htm>.

⁷ *Id.* at 1.

⁸ *Id.* at 3.

⁹ AT&T, About Us, Corporate Profile, Key Facts About AT&T (“AT&T Corporate Profile Key Facts”), available at <http://www.att.com/gen/investor-relations?pid=5711> (last visited June 21, 2010).

¹⁰ AT&T Inc., AT&T Inc. 2009 Annual Report, Ex. 13 (filed Feb. 25, 2010), available at <http://www.sec.gov/Archives/edgar/data/732717/000073271710000013/0000732717-10-000013-index.htm>.

¹¹ AT&T 10-K at 3.

¹² *Id.*

¹³ *Id.*

¹⁴ AT&T Corporate Profile Key Facts.

3G network uses High Speed Downlink Packet Access/Universal Mobile Telecommunications System (“HSDPA/UMTS”) technology.¹⁵

5. AT&T’s wireline subsidiaries provide both retail and wholesale communications services (both voice and data) domestically and internationally.¹⁶ This segment represents approximately 52 percent of 2009 segment operating revenues.¹⁷ AT&T’s U.S. wired network includes 48 million access lines and more than 17.5 million high speed Internet subscribers.¹⁸

6. The advertising solutions segment includes AT&T’s directory operations, which publish Yellow and White Pages directories and sell directory advertising and Internet-based advertising and search.¹⁹ This segment represents approximately four percent of 2009 segment operating revenues.²⁰

7. The “other” segment includes operations from Sterling Commerce, AT&T’s business integration software and services subsidiary, operator services, corporate, and other operations.²¹ It represents approximately one percent of 2009 segment operating revenues.²²

2. Cellco Partnership d/b/a Verizon Wireless

8. Verizon Wireless is a joint venture between Verizon Communications Inc. (“Verizon”) and Vodafone Group Plc. (“Vodafone”).²³ Verizon owns a controlling 55 percent ownership interest in the joint venture, and thus has control of Verizon Wireless and its subsidiaries.²⁴ Verizon Wireless is a joint venture of Verizon Communications and Vodafone, headquartered in Basking Ridge, New Jersey.²⁵

¹⁵ AT&T, Wireless, Our Technology at 1 (“AT&T Wireless Technology”), available at <http://www.wireless.att.com/about/our-technology.jsp> (last visited June 21, 2010). AT&T also offers a High Speed Uplink Packet Access (“HSUPA”)–enabled network to wireless laptop users. AT&T, About Us, Corporate Profile, Networks (“AT&T Corporate Profile Networks”), available at <http://www.att.com/gen/investor-relations?pid=5711> (last visited June 21, 2010). AT&T offers customers Wi-Fi access at more than 125,000 hot spots around the world. *Id.*

¹⁶ AT&T 10-K at 4.

¹⁷ *Id.*

¹⁸ AT&T Corporate Profile Networks.

¹⁹ AT&T 10-K at 5.

²⁰ *Id.*

²¹ *Id.* AT&T has entered into an agreement to sell its Sterling Commerce subsidiary to IBM, a transaction AT&T expects will close in the second half of 2010. See AT&T Inc., SEC Form 8-K (dated May 23, 2010), available at http://www.sec.gov/Archives/edgar/data/732717/000073271710000039/sterling_8k.htm.

²² AT&T 10-K at 5.

²³ See Verizon Communications Inc., SEC Form 10-K, at 3 (for the fiscal year ended Dec. 31, 2009) (“Verizon 10-K”), available at <http://www.sec.gov/Archives/edgar/data/732712/000119312510041685/d10k.htm>; Verizon Communications, 2009 Annual Report, at 21 (“Verizon Annual Report”), available at http://investor.verizon.com/financial/quarterly/pdf/09_annual_report.pdf. While Verizon Wireless is not a reporting company under the Securities Exchange Act of 1934 and does not make Securities Exchange Commission (“SEC”) filings, information about Verizon Wireless is included in earnings announcements and SEC filings by Verizon Communications, Inc. See Verizon Wireless, Investors, available at <http://news.vzw.com/investor/index.html> (last visited June 21, 2010).

²⁴ See Verizon 10-K at 3; Verizon Annual Report at 21.

²⁵ Verizon Wireless, About Us, Facts-at-a-Glance, available at <http://aboutus.vzw.com/ataglance.html> (“Verizon Wireless Facts”) (last visited June 21, 2010); Application, Public Interest Statement at 2.

It is the industry-leading wireless company in the United States based on operating income,²⁶ and the largest wireless service provider in the U.S. based on the number of retail customers and revenues.²⁷ Verizon Wireless provides wireless voice and data products and other value-added services and equipment sales across the United States.²⁸ The company utilizes Code-Division Multiple Access (“CDMA”) technology.²⁹ Verizon states that its wireless network covers a population of approximately 290 million and provides service to nearly 91.2 million customers, as of December 31, 2009.³⁰ For 2009, Verizon states that its domestic wireless revenues were \$62 billion.³¹

9. Verizon is incorporated in Delaware and headquartered in New York.³² It provides wireline, wireless, and broadband services to mass market, business, government, and wholesale customers.³³ Verizon operates two reportable business segments – Domestic Wireless and Wireline.³⁴ For 2009, Verizon states that its wireline revenues were \$46 billion,³⁵ and Verizon, which is traded on the New York Stock Exchange,³⁶ generated consolidated revenues of approximately \$107.8 billion.³⁷

²⁶ See Verizon 10-K at 4.

²⁷ See *id.*; Verizon Wireless, About Us Overview, available at <http://aboutus.vzw.com/aboutusoverview.html> (last visited June 21, 2010).

²⁸ See Verizon Wireless, Investor Relations, Business Units, Domestic Wireless, available at <http://investor.verizon.com/business/wireless.aspx> (last visited June 21, 2010); Application, Public Interest Statement at 2.

²⁹ Verizon 10-K at 5. Verizon Wireless states that it has deployed CDMA-1xRTT technology in virtually all of its cell sites nationwide and that it had deployed Evolution-Data Optimized (“EV-DO”) technology in approximately 94 percent of its cell sites in its CDMA network as of December 31, 2009, with additional deployment ongoing. *Id.* As a result of Verizon Wireless’s acquisition of ALLTEL and Rural Cellular Corporation, Verizon Wireless also provides GSM service and fulfills GSM roaming obligations in certain markets. *Id.*

³⁰ *Id.* This figure includes the 105 markets that were required by the Commission to be divested in the *Verizon Wireless-ALLTEL Order*.

³¹ *Id.* at 3.

³² *Id.*; Verizon, Investor Relations, Company Profile, Corporate History, Current Statistics, available at <http://investor.verizon.com/profile/history/index.aspx?tabId=1> (“Verizon Current Statistics”) (last visited June 21, 2010); Verizon, Investor Relations, Company Profile, Corporate History, The History of Verizon Communications, available at <http://investor.verizon.com/profile/history/index.aspx> (“Verizon Corporate History”) (last visited June 21, 2010).

³³ Verizon, Investor Relations, Company Profile, Overview, available at <http://investor.verizon.com/profile/overview.aspx> (last visited June 21, 2010).

³⁴ See Verizon Annual Report at 21; Verizon, Investor Relations, Business Units, available at <http://investor.verizon.com/business/index.aspx> (last visited June 21, 2010).

³⁵ Verizon 10-K at 10.

³⁶ Verizon Corporate History.

³⁷ Verizon Annual Report at 17; Verizon, Investor Relations, Company Profile, Corporate History, Verizon Recent History, available at <http://investor.verizon.com/profile/history/index.aspx?tabId=1> (last visited June 21, 2010).

10. Vodafone, a public limited company incorporated in England with a registered office in Newbury, England,³⁸ holds a non-controlling 45 percent interest in Verizon Wireless.³⁹ Vodafone provides mobile voice and data, paging, and internet services in over 30 countries in Europe, Africa, Asia, the Middle East, and the United States through subsidiaries, joint ventures, and other investments.⁴⁰ Its ordinary shares are listed on the London Stock Exchange and its American Depositary Shares are listed on the NASDAQ Stock Market.⁴¹ Its revenue for the year ending March 31, 2009 was over £41 billion.⁴²

B. Description of Transaction

11. The Applicants state that this transaction implements most of the divestitures required under the Commission's order approving Verizon Wireless's acquisition of ALLTEL.⁴³ Specifically, the *Verizon Wireless-ALLTEL Order* required that Verizon Wireless divest business units and associated licenses and authorizations in 105 markets (collectively, the "Divestiture Markets").⁴⁴ The assignment and transfer of control applications involve licenses for the Part 22 Cellular Radiotelephone Service, the Part 24 Personal Communications Service, the Part 27 Advanced Wireless Service, and the Part 101 Common Carrier Fixed Point-to-Point Microwave Service,⁴⁵ as well as international Section 214 authorizations.⁴⁶

12. In these applications, the Applicants seek Commission approval of the assignment or transfer of control of certain wireless licenses and related authorizations located in 79 markets in 18

³⁸ Vodafone, About Vodafone, available at http://www.vodafone.com/start/investor_relations/vodafone_at_a_glance0.html ("About Vodafone") (last visited June 21, 2010).

³⁹ Verizon 10-K at 3.

⁴⁰ See About Vodafone; Vodafone, Fact Sheet, available at http://www.vodafone.com/start/investor_relations/vodafone_at_a_glance0/fact_sheet.html (last visited June 21, 2010); About Vodafone.

⁴¹ See About Vodafone.

⁴² Vodafone Group Plc, Annual Report For the year ended March 31, 2009, Performance, Operating Results, available at http://www.vodafone.com/static/annual_report09/performance/operating_results/2009_comp_2008/index.html (last visited June 21, 2010).

⁴³ Application, Public Interest Statement at i, 4, 6; see *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17515-16 ¶¶ 157, 159.

⁴⁴ See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17515-16 ¶¶ 157, 159.

⁴⁵ A complete list of applications involved in this transaction is attached as Appendix A hereto. See also AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless Seek FCC Consent To Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104, *Public Notice*, 24 FCC Rcd 8171 (2009) ("*Comment Public Notice*"). New Cingular Wireless PCS, LLC, a wholly-owned subsidiary of AT&T, and ALLTEL Communications, LLC, a wholly-owned subsidiary of Verizon Wireless, had filed an application for a new long-term *de facto* transfer spectrum leasing arrangement in order to obtain Commission approval of a replacement leasing arrangement involving a portion of an existing leasing arrangement of Part 24 spectrum between the two applicants. That application was withdrawn on June 20, 2010, and accordingly we take no action on it.

⁴⁶ See File Nos. ITC-ASG-20090522-00241, ITC-ASG-20090522-00242, ITC-ASG-20090522-00243, and. ITC-ASG-20090522-00244.

states⁴⁷ held by Verizon Wireless and its subsidiaries from Verizon Wireless to AT&T (the “AT&T Divestiture Markets”). To accomplish this transaction, Verizon Wireless and its subsidiaries that hold the licenses and authorizations that are the subject of these Applications will contribute those licenses and authorizations (and related assets⁴⁸) to a wholly-owned, indirect subsidiary of Verizon Wireless called Abraham Divestiture Company LLC (“ADC”). Verizon Wireless also will cause its indirect subsidiaries that collectively hold an approximate 94.9 percent interest in Las Cruces Cellular Telephone Company to contribute that interest to ADC.⁴⁹

13. The indirect Verizon Wireless subsidiary that is the parent of ADC will then transfer its interest in ADC to Garden Acquisitions Inc. (“GAI”), which will function as an exchange accommodation titleholder for AT&T.⁵⁰ A significant number of the licenses, including the ownership interest in Las Cruces Cellular Telephone Company, will immediately thereafter be transferred to an indirect subsidiary of AT&T.⁵¹ ADC, as *de jure* owned by GAI, will hold the remaining authorizations for a maximum of 180 days.⁵² For these authorizations, AT&T will manage the assets pursuant to a spectrum lease and operating agreement.⁵³ AT&T states that all the benefits and burdens associated with the assets held by GAI will flow to AT&T, and GAI will not have any discretion regarding the operation of the assets or receive any revenue or losses from them.⁵⁴ Accordingly, GAI will exercise *de jure* control over the assets, and AT&T will exercise *de facto* control.⁵⁵ Upon the completion of the like-kind exchange, or after 180 days, whichever occurs first, GAI will transfer its interest in ADC to a wholly-owned indirect subsidiary of AT&T.⁵⁶

⁴⁷ Application, Public Interest Statement at 4, 6.

⁴⁸ *Id.* at 6. These related network and operational assets include, among other things, certain employees, retail sites, and customers. *See* Application, Public Interest Statement at 6.

⁴⁹ *Id.*

⁵⁰ Letter from Maureen R. Jeffreys, Arnold & Porter LLP, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 31 (Dec. 3, 2009) (“AT&T First Partial Response”). AT&T will lend GAI the funds necessary to acquire the assets. *Id.* The use of an exchange accommodation titleholder is being pursued for tax purposes. *Id.* The Applicants disclosed the possible use of an exchange accommodation titleholder in the application. *See* Application, Public Interest Statement at 8 n.6.

⁵¹ AT&T First Partial Response at 29-30, 31 n.29. AT&T states that it will file the necessary notifications in connection with these *pro forma* assignments or transfers of control in accordance with the Commission’s rules. *Id.* at 30. The Commission has previously held that the transfer of *de jure* control of assets between the *de facto* controlling party (in this case, AT&T) and the exchange accommodation titleholder (in this case, GAI) is a *pro forma* transaction. *See* Media General Communications, Inc. (Assignor) and MG Broadcasting, LLC, as E.A.T. (Assignee) For *Pro Forma* Assignment of Licenses, *Memorandum Opinion and Order*, 21 FCC Rcd 7669, 7670 ¶ 5 (2006) (“*Media General EAT Order*”).

⁵² AT&T First Partial Response at 31. ADC will hold authorizations associated with the following CMAs: CMA181 Muskegon, MI; CMA246 Dothan, AL; CMA313 Alabama 7 - Butler; CMA322 Arizona 5 - Gila; CMA341 California 6 - Mono; CMA544 Nevada 2 - Lander; CMA547 Nevada 5 - White Pine; CMA553 New Mexico 1 - San Juan; CMA557 New Mexico 5 - Grant; CMA558 New Mexico 6 - Lincoln.

⁵³ *Id.* at 32. GAI and AT&T Mobility II LLC have filed a short-term *de facto* transfer lease application, File No. 7003ALNL10, seeking the necessary authority to permit AT&T to operate facilities on the licensed spectrum.

⁵⁴ *Id.* GAI will be paid a flat fee by AT&T. *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* AT&T will file the necessary *pro forma* notifications in connection with that transfer of interests. *Id.*

C. Transaction Review Process

1. Commission Review

14. Between May 21, 2009 and June 5, 2009, the Applicants filed a series of applications seeking Commission approval of the proposed assignment and transfer of control of certain licenses and related authorizations held by Verizon Wireless and its subsidiaries from Verizon Wireless to AT&T. The Applicants also filed applications, pursuant to section 214 of the Communications Act,⁵⁷ seeking consent to the partial assignment of four international section 214 authorizations to AT&T.⁵⁸ On June 19, 2009, the Commission released a public notice seeking comment on the proposed transaction.⁵⁹ The *Comment Public Notice* established a pleading cycle for the applications, with petitions to deny due July 20, 2009, oppositions due July 30, 2009, and replies due August 6, 2009.⁶⁰

15. In response to the *Comment Public Notice*, the Commission received five petitions to deny, filed by Cellular South, Inc. (“Cellular South”), Chatham Avalon Park Community Council (“CAPCC”), the National Association of Black Owned Broadcasters, Inc. (“NABOB”), NTELOS, Inc. (“NTELOS”), and Rural Telecommunications Group, Inc. (“RTG”),⁶¹ and comments filed by Sprint Nextel Corporation (“Sprint Nextel”).⁶² Cellular South also filed a petition for expedited reconsideration requesting that the Commission reconsider its decision, in the *Comment Public Notice*, to use permit-but-disclose *ex parte* procedures for the proceeding.⁶³ The Applicants filed a Joint Opposition on July 30, 2009.⁶⁴ The Commission received replies to the Joint Opposition from CAPCC, Cellular South, Cox

⁵⁷ 47 U.S.C. § 214.

⁵⁸ File Nos. ITC-ASG-20090522-00241 (partial assignment from Western Wireless, LLC to Abraham Divestiture Company LLC), ITC-ASG-20090522-00242 (partial assignment from Rural Cellular Corporation to Abraham Divestiture Company LLC), ITC-ASG-20090522-00243 (partial assignment from Celco Partnership to Abraham Divestiture Company LLC), and ITC-ASG-20080522-00244 (partial assignment from ALLTEL Communications, LLC to Abraham Divestiture Company LLC). ADC will provide international service pursuant to international section 214 authorization File No. ITC-214-20090522-00562. ALLTEL Communications, LLC will continue to provide international service to its remaining customers pursuant to its existing international section 214 authorization, ITC-214-19960404-00138. Celco Partnership will continue to provide international service to its remaining customers pursuant to its existing international section 214 authorization, ITC-214-20010504-00279. Rural Cellular Corporation will continue to provide international service to its remaining customers pursuant to its existing international section 214 authorizations, ITC-214-19940224-00114 and ITC-214-19980401-00220. Western Wireless LLC will continue to provide international service to its remaining customers pursuant to its existing international section 214 authorization, ITC-214-20010427-00254.

⁵⁹ *Comment Public Notice*, 24 FCC Rcd at 8175. The *Comment Public Notice* explicitly described the potential use of the reverse like-kind exchange involving an exchange accommodation titleholder. *Id.* at 8172 n.4.

⁶⁰ *See id.*

⁶¹ Petition to Deny of Cellular South, Inc., filed July 20, 2009 (“Cellular South Petition”); Petition to Deny of Chatham Avalon Park Community Council, filed July 20, 2009 (“CAPCC Petition”); Petition to Deny of the National Association of Black Owned Broadcasters, Inc., filed July 20, 2009 (“NABOB Petition”); Petition of NTELOS Inc. to Condition Consent or Deny Application, filed July 20, 2009 (“NTELOS Petition”); Petition to Deny of Rural Telecommunications Group, Inc., filed July 20, 2009 (“RTG Petition”).

⁶² Comments of Sprint Nextel Corporation, filed July 20, 2009 (“Sprint Nextel Comments”).

⁶³ Petition for Expedited Reconsideration of Cellular South, Inc., filed July 20, 2009 (“Cellular South Petition for Reconsideration”).

⁶⁴ Joint Opposition of AT&T Inc. and Verizon Wireless to Petitions to Deny or to Condition Consent and Reply to Comments, filed July 30, 2009 (“Joint Opposition”).

Communications (“Cox”), NABOB, Public Service Communications, Inc. (“PSC”), RTG, South Dakota Public Utilities Commission (“SDPUC”), and Sprint Nextel,⁶⁵ and a written *ex parte* letter from the National Telecommunications Cooperative Association (“NTCA”).⁶⁶ In addition to these pleadings, the Congressional Black Caucus (“CBC”) submitted a letter regarding Verizon Wireless’s divestiture plans.⁶⁷ Finally, Telephone USA Investments, Inc. (“Telephone USA”)⁶⁸ and the Oglala Sioux Tribe (the “Tribe” or “OST”)⁶⁹ have made a number of written *ex parte* filings.

16. *Confidential Materials.* On November 19, 2009, the Wireless Telecommunications Bureau (“Bureau”) issued a protective order to ensure that any confidential or proprietary documents submitted to the Commission would be adequately protected from public disclosure and announcing the process by which interested parties could gain access to confidential information filed in the record.⁷⁰ On December 16, 2009, the Bureau released a second protective order, requested by the Applicants,⁷¹ to provide additional protection to those documents and that information contained in AT&T’s and Verizon Wireless’s responses to the Bureau’s information request considered to be highly sensitive and

⁶⁵ Reply of Cellular South, Inc. to Joint Opposition to Petitions to Deny or to Condition Consent, filed Aug. 11, 2009 (“Cellular South Reply”); Reply to Opposition to Petition to Deny of Chatham Avalon Park Community Council, filed Aug. 11, 2009 (“CAPCC Reply”); Reply Comments of Cox Communications, filed Aug. 6, 2009 (“Cox Reply”); Reply of the National Association of Black Owned Broadcasters, Inc., filed Aug. 11, 2009 (“NABOB Reply”); Reply Comments of Public Service Communications, Inc., filed Aug. 6, 2009 (“PSC Reply”); Reply to Joint Opposition to Petitions to Deny of the Rural Telecommunications Group, Inc., filed Aug. 11, 2009 (“RTG Reply”); Reply Comments of the South Dakota Public Utilities Commission, filed Aug. 6, 2009 (“SDPUC Reply”); Reply Comments of Sprint Nextel Corporation, filed Aug. 6, 2009 (“Sprint Nextel Reply”). RTG also requested that its August 7, 2009 letter to the Honorable Jay Rockefeller and the Honorable Kay Bailey Hutchison be included in the record. Letter from Caressa D. Bennet, Counsel to RTG, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 11, 2009).

⁶⁶ *Ex Parte* Letter from Daniel Mitchell, Vice President, Legal and Industry, and Jill Canfield, Senior Regulatory Counsel, Legal and Industry, National Telecommunications Cooperative Association, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 7, 2009) (“NTCA Aug. 7, 2009 *Ex Parte*”).

⁶⁷ Letter from Members of the Congressional Black Caucus to The Honorable Michael Copps, Acting Chairman, Federal Communications Commission (May 20, 2009) (“CBC Letter”).

⁶⁸ See, e.g., *Ex Parte* Letter from John R. Feore, Jr., Dow Lohnes PLLC, counsel to Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2-4 (Jan. 25, 2010) (“Telephone USA Jan. 25, 2010 *Ex Parte*”).

⁶⁹ See *Ex Parte* Letter from Jonathan E. Canis, Arent Fox LLP, Counsel for Oglala Sioux Tribe, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 10, 2010) (“OST Mar. 10, 2010 *Ex Parte*”); *Ex Parte* Letter from Jonathan E. Canis, Arent Fox LLP, Counsel for Oglala Sioux Tribe, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 24, 2010) (“OST May 24, 2010 *Ex Parte*”).

⁷⁰ Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless For Consent To Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104, *Protective Order*, 24 FCC Rcd 13852 (WTB 2009) (“*Protective Order*”).

⁷¹ Letter from Maureen R. Jeffreys, Arnold & Porter LLP, Counsel for AT&T, and Nancy C. Victory, Wiley Rein LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 25, 2009).

confidential.⁷² The Bureau received acknowledgements pursuant to the *Protective Order* and *Second Protective Order* from fourteen individuals.⁷³

17. On January 5, 2010, the Bureau released a public notice announcing that Numbering Resource Utilization and Forecast (“NRUF”) reports and local number portability (“LNP”) data would be placed into the record and adopted a protective order pursuant to which the Applicants and third parties would be allowed to review the specific NRUF reports and LNP data placed into the record.⁷⁴ The Bureau received acknowledgements pursuant to the *NRUF Protective Order* from three individuals seeking to review the NRUF and LNP data that is in the record.⁷⁵

18. *Bureau Requests for Documents and Information.* On November 19, 2009, pursuant to section 308(b) of the Communications Act,⁷⁶ the Bureau requested a number of documents and additional

⁷² Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless For Consent To Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104, *Second Protective Order*, 24 FCC Rcd 14569 (WTB 2009) (“*Second Protective Order*”).

⁷³ Letter from John R. Feore, Jr., Dow Lohnes PLLC, Counsel for Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 4, 2009) (acknowledgements of confidentiality for John R. Feore, Jr., J.G. Harrington, John S. Logan, Joshua N. Pila, and Vicki Lynne Lyttle); Letter from John R. Feore, Jr., Dow Lohnes PLLC, Counsel for Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 18, 2009) (acknowledgements of confidentiality for John R. Feore, Jr., J.G. Harrington, John S. Logan, Joshua N. Pila, and Vicki Lynne Lyttle); Letter from Caressa D. Bennet, Bennet & Bennet, PLLC, counsel for RTG., to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 24, 2009) (acknowledgements of confidentiality for Caressa D. Bennet, Michael R. Bennet, Gregory W. Whitaker, Daryl A. Zakov, and Robert A. Silverman); Letter from John R. Feore, Jr., Dow Lohnes PLLC, Counsel for Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 29, 2009) (acknowledgements of confidentiality for Verdette Coltrane); Letter from Michael H. Pryor, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Counsel for Cox, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 7, 2010) (acknowledgements of confidentiality for Howard H. Symons and Michael H. Pryor); Letter from James L. Winston, Rubin, Winston, Diercks, Harris & Cooke, LLP, Counsel for NABOB, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 25, 2010) (acknowledgement of confidentiality for James L. Winston); Letter from James L. Winston, Rubin, Winston, Diercks, Harris & Cooke, LLP, Counsel for NABOB, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 28, 2010) (acknowledgement of confidentiality for James L. Winston); Letter from Michael H. Pryor, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Counsel for Cox, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 28, 2010) (acknowledgements of confidentiality for Stefanie Z. Desai); Letter from James L. Winston, Rubin, Winston, Diercks, Harris & Cooke, LLP, Counsel for NABOB, to Marlene H. Dortch, Secretary, Federal Communications Commission (Feb. 2, 2010) (revised acknowledgement of confidentiality for James L. Winston). We note that, consistent with Commission policy, only counsel for parties that had filed petitions to deny were provided the opportunity to review the confidential materials submitted by the Applicants.

⁷⁴ Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless For Consent To Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement – Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports Placed Into the Record, Subject to Protective Order, WT Docket No. 09-104, CC Docket No. 99-200, *Public Notice*, 25 FCC Rcd 47 (WTB 2010); Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless For Consent To Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104, CC Docket No. 99-200, *Protective Order*, 25 FCC Rcd 41 (WTB 2010) (“*NRUF Protective Order*”).

⁷⁵ Letter from Catherine M. Hilke, Wiley Rein LLP, counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 6, 2010) (acknowledgements of confidentiality for Nancy J. Victory, Catherine M. Hilke, and M. Ethan Lucarelli).

⁷⁶ 47 U.S.C. § 308(b).

information from the Applicants by December 3, 2009.⁷⁷ Among other things, the Bureau asked the Applicants to provide further information regarding the public interest benefits of the transaction, including network integration and the transition of customers, roaming opportunities, improved disaster preparedness, service, rate plans and handsets, and the possible reverse like-kind exchange.⁷⁸ It also asked Verizon Wireless and Morgan Stanley & Co. Incorporated (“Morgan Stanley”) to provide additional information regarding the bidding process for the Divestiture Markets.⁷⁹ The Applicants provided responsive documents and information on December 3, 17, and 18, 2009, January 20, March 3, 11, and 24, April 2, 12, and 16, May 5 and 17, and June 2, 2010,⁸⁰ some of which were provided subject to the provisions of the *Protective Order* and the *Second Protective Order*.

19. *AT&T and Verizon Wireless Commitment Letters.* On May 20, 2010, AT&T filed a letter making commitments in three areas – roaming in the AT&T Divestiture Markets, divestiture of 15 megahertz of spectrum in CMA476 Michigan 5 - Manistee, and the continued provision of wireless services on the Pine Ridge Indian Reservation.⁸¹ On May 27, 2010, Verizon Wireless filed a letter making a commitment regarding its provision of CDMA roaming services in the AT&T Divestiture

⁷⁷ Letter from Ruth Milkman, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Michael P. Goggin, AT&T Mobility Inc., and Michael Samsok, Verizon Wireless (Nov. 19, 2009) (“Information Request”).

⁷⁸ *See id.* at Attachment.

⁷⁹ *See id.*

⁸⁰ AT&T First Partial Response; Letter from Maureen R. Jeffreys, Arnold & Porter LLP, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 17, 2009) (“AT&T Second Partial Response of Dec. 17, 2009”); Letter from Nancy J. Victory, Wiley Rein LLP, counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 18, 2009) (“Verizon Wireless Information Request Response”); Letter from Maureen R. Jeffreys, Arnold & Porter LLP, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 20, 2010) (“AT&T Supplemental Response of Jan. 20, 2010”); Letter from Nancy J. Victory, Wiley Rein LLP, counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 3, 2010) (“Verizon Wireless Supplemental Response of Mar. 3, 2010”); Letter from Nancy J. Victory, Wiley Rein LLP, counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 11, 2010) (“Verizon Wireless Further Supplemental Response of Mar. 11, 2010”); Letter from Maureen R. Jeffreys, Arnold & Porter LLP, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 24, 2010) (“AT&T Supplemental Response of Mar. 24, 2010”); Letter from Nancy J. Victory, Wiley Rein LLP, counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Apr. 2, 2010) (“Verizon Wireless Second Further Supplemental Response of Apr. 2, 2010”); Letter from Maureen R. Jeffreys, Arnold & Porter LLP, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (Apr. 12, 2010) (“AT&T Supplemental Response of Apr. 12, 2010”); Letter from Maureen R. Jeffreys, Arnold & Porter LLP, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (Apr. 16, 2010) (“AT&T Supplemental Response of Apr. 16, 2010”); Letter from Maureen R. Jeffreys, Arnold & Porter LLP, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 5, 2010) (“AT&T Supplemental Response of May 5, 2010”); Letter from Maureen R. Jeffreys, Arnold & Porter LLP, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 17, 2010) (“AT&T Supplemental Response of May 17, 2010”); Letter from Scott Feira, Arnold & Porter LLP, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (June 2, 2010) (“AT&T Supplemental Response of June 2, 2010”).

⁸¹ Letter from Joan Marsh, Vice President – Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 20, 2010) (“AT&T Commitment Letter”). A copy of this letter is attached as Appendix D.

Markets during the one-year term of the Transition Services Agreement between it and AT&T.⁸² The commitments contained in these letters are discussed in more detail below.

2. Department of Justice Review

20. On October 30, 2008, the Antitrust Division of the United States Department of Justice (“DOJ”) filed a series of documents, including complaints and preservation of assets stipulations and orders, with the United States District Court for the District of Columbia (“D.C. District Court”) and United States District Court for the District of Minnesota (“Minnesota District Court,” and together with the D.C. District Court, the “District Courts”) reflecting the settlement between the DOJ and Verizon Wireless and ALLTEL designed to eliminate the anticompetitive affects of the Verizon Wireless-ALLTEL merger in certain markets,⁸³ and the parties jointly filed proposed Final Judgments with the District Courts.⁸⁴ The Applicants state that this transaction will aid Verizon Wireless in fulfilling its divestiture obligations under the settlement agreement.⁸⁵

21. Under the Final Judgment issued by the D.C. District Court,⁸⁶ the DOJ must be satisfied that the divestiture of assets will be accomplished such that “these assets can and will be used by the Acquirer(s) as part of a viable, ongoing business engaged in the provision of mobile wireless telecommunications services.”⁸⁷ In addition, the divestiture of assets “shall be made to an Acquirer or Acquirers that, in plaintiff United States’s sole judgment, upon consultation with the relevant plaintiff State, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of mobile wireless telecommunications services.”⁸⁸ The Final Judgment directed that the majority of the markets be divested in clusters, each

⁸² Letter from Nancy J. Victory, Wiley Rein LLP, Counsel to Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 27, 2010) (“Verizon Wireless Commitment Letter”). A copy of this letter is attached as Appendix E.

⁸³ See generally Complaint, Proposed Final Judgment, Competitive Impact Statement, Plaintiff United States’s Explanation of Consent Decree Procedures, Statement of Plaintiff United States in Support of the Appointment of W. Stephen Cannon as Management Trustee, Preservation of Assets Stipulation and Order, United States of America et al. v. Verizon Communications Inc., and ALLTEL Corporation, No. 1:08-cv-01878 (D.D.C. Oct. 30, 2008) (“DOJ Verizon Wireless-ALLTEL Stipulation and Order”); Joint Motion to Modify Final Judgment, United States of America v. Bell Atlantic Corporation, GTE Corporation, and Vodafone AirTouch PLC, No. 1:99-cv-01119 (D.D.C. Oct. 30, 2008) (“DOJ Bell Atlantic-GTE Modified Stipulation and Order”); Modified Preservation of Assets Stipulation, Certificate of Service of Motion Documents, Proposed Order Granting Motion To Modify Final Judgment, Proposed Modified Final Judgment, and Proposed Modified Preservation of Assets Order, United States of America and State of Minnesota v. ALLTEL Corporation and Midwest Wireless Holdings L.L.C., No. 06-3631 (D.Minn. Oct. 30, 2008) (“DOJ ALLTEL-Midwest Stipulation and DOJ ALLTEL-Midwest Order”).

⁸⁴ See Proposed Final Judgment, United States of America et al. v. Verizon Communications Inc., and ALLTEL Corporation, No. 1:08-cv-01878 (D.D.C. Oct. 30, 2008) (“DOJ Verizon Wireless-ALLTEL Proposed Final Judgment”); Proposed Modified Final Judgment, United States of America v. Bell Atlantic Corporation, GTE Corporation, and Vodafone AirTouch PLC, No. 1:99-cv-01119 (D.D.C. Oct. 30, 2008) (“DOJ Bell Atlantic-GTE Proposed Modified Final Judgment”); Proposed Modified Final Judgment, United States of America and State of Minnesota v. ALLTEL Corporation and Midwest Wireless Holdings L.L.C., No. 06-3631 (D.Minn. Oct. 30, 2008) (“DOJ ALLTEL-Midwest Proposed Modified Final Judgment”).

⁸⁵ Application, Public Interest Statement at 1.

⁸⁶ *United States of America v. Verizon Communications, Inc., and ALLTEL Corp.*, 607 F.Supp.2d 1 (D.D.C. 2009).

⁸⁷ *Id.* at 6-7.

⁸⁸ *Id.* at 7.

cluster to be sold to a single purchaser unless DOJ approval was obtained to break up a cluster to multiple acquirers.⁸⁹ Also, the Final Judgment provided for the provision of transition services to any acquirer of divestiture assets by Verizon Wireless for a period of up to one year.⁹⁰ The DOJ conducted its review of the proposed transaction in light of these requirements and its governing statutory authority, and in April 2010, the DOJ approved AT&T's acquisition of the wireless properties, including licenses and network assets, associated with the 79 markets.⁹¹

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

22. Pursuant to sections 214(a) and 310(d) of the Communications Act, we must determine whether the Applicants have demonstrated that the proposed assignment and transfer of control of licenses and authorizations will serve the public interest, convenience, and necessity.⁹² In making this assessment, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act,⁹³ other applicable statutes, and the Commission's rules.⁹⁴ If the transaction does not violate a statute or rule, we next consider whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.⁹⁵ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.⁹⁶ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.⁹⁷

⁸⁹ *Id.* at 7-9.

⁹⁰ *Id.* at 9.

⁹¹ AT&T Inc., SEC Form 10-Q, at 21 (for the period ending Mar. 31, 2010), available at <http://www.sec.gov/Archives/edgar/data/732717/000073271710000033/att1q10.htm>.

⁹² 47 U.S.C. §§ 214(a), 310(d).

⁹³ Section 310(d), 47 U.S.C. § 310(d), requires that we consider the applications as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. See, e.g., Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements, WT Docket No. 08-246, *Memorandum Opinion and Order*, 24 FCC Rcd 13915, 13927 ¶ 27 (2009) ("*AT&T-Centennial Order*"); Verizon Wireless-ALLTEL Order, 23 FCC Rcd at 17460 ¶ 26; Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, WT Docket No. 08-94, *Memorandum Opinion and Order*, 23 FCC Rcd 17570, 17578 ¶ 19 (2008) ("*Sprint Nextel-Clearwire Order*"); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21542 ¶ 40 (2004) ("*Cingular-AT&T Wireless Order*").

⁹⁴ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13927 ¶ 27; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17460 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17578-79 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21542-43 ¶ 40.

⁹⁵ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13927 ¶ 27; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17460 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17578-79 ¶ 19.

⁹⁶ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13927 ¶ 27; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17460 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17579 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

⁹⁷ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13927 ¶ 27; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17579 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

23. Our public interest evaluation also necessarily encompasses the “broad aims of the Communications Act,” which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest.⁹⁸ Our public interest analysis may also entail assessing whether the proposed transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.⁹⁹ In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.¹⁰⁰

24. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.¹⁰¹ The DOJ reviews communications mergers pursuant to section 7 of the Clayton Act, and if it wishes to block a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.¹⁰² Under the Commission’s review, applicants must show that the transaction will serve the public interest; otherwise the application is set for hearing. The DOJ’s review is limited solely to an examination of the competitive effects of the acquisition, without reference to various public interest considerations.¹⁰³ The Commission also considers the competitive effects of a transaction but our analysis under the public interest standard is somewhat broader; for example, it considers whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and the impact on the relevant market.¹⁰⁴

25. Our analysis recognizes that a proposed transaction may lead to both beneficial and harmful consequences.¹⁰⁵ Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to rely on our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits. Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not

⁹⁸ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 28; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

⁹⁹ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 28; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

¹⁰⁰ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 28; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

¹⁰¹ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 29; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 28; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42.

¹⁰² 15 U.S.C. § 18.

¹⁰³ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 29; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 28; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 21.

¹⁰⁴ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 29; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 28; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

¹⁰⁵ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 30; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

inconsistent with law that may be necessary to carry out the provisions of the Communications Act.¹⁰⁶ Similarly, section 214(c) of the Communications Act authorizes the Commission to impose “such terms and conditions as in its judgment the public convenience and necessity may require.”¹⁰⁷ In using this broad authority, the Commission has generally imposed conditions to remedy specific harms likely to arise from the transaction or to help ensure the realization of potential benefits promised for the transaction.¹⁰⁸

IV. QUALIFICATIONS OF APPLICANTS

26. As noted previously, when evaluating applications for consent to assign or transfer control of licenses and authorizations, sections 214(a) and 310(d) of the Communications Act require the Commission to determine whether the proposed transaction will serve “the public interest, convenience and necessity.”¹⁰⁹ Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite “citizenship, character, financial, technical, and other qualifications.”¹¹⁰ Therefore, as a threshold matter, the Commission must determine whether the applicants to the proposed transaction meet the requisite qualifications requirements to hold and transfer licenses under sections 214(a) and 310(d) of the Communications Act and the Commission’s rules.¹¹¹

27. In determining whether applicants have the requisite character to be Commission licensees, we look to the Commission’s character policy initially developed in the broadcast area as guidance in resolving similar questions in common carrier license transfer proceedings.¹¹² Under this

¹⁰⁶ 47 U.S.C. § 303(r); see also, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13939 ¶ 30; *Verizon Wireless/Alltel Order*, 23 FCC Rcd at 17463 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

¹⁰⁷ 47 U.S.C. § 214(c); see also, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13939 ¶ 30; *Verizon Wireless/Alltel Order*, 23 FCC Rcd at 17463 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

¹⁰⁸ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 30; *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. We consider only those harms and benefits that are related to the Commission’s responsibilities under the Communications Act and related statutes.

¹⁰⁹ 47 U.S.C. §§ 214(a), 310(d).

¹¹⁰ *Id.* §§ 308, 310(d). See also, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13930 ¶ 31; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 31; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

¹¹¹ See 47 U.S.C. §§ 214(a), 310(d); 47 C.F.R. § 1.948; see also, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13930 ¶ 31; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 31; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

¹¹² See, e.g., *WorldCom, Inc. and Its Subsidiaries (Debtors-in-Possession), Transferor, and MCI, Inc., Transferee*, WC Docket No. 02-215, *Memorandum Opinion and Order*, 18 FCC Rcd 26484, 26493 ¶ 13 (2003). See also *Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, Report, Order and Policy Statement*, 102 F.C.C.2d 1179, 1210-11 ¶¶ 60-61 (1986) (“1986 Character Policy Statement”); *Memorandum Opinion and Order*, 1 FCC Rcd 421 (1986); *Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications, Policy Statement and Order*, 5 FCC Rcd 3252 (1990) (“1990 Character Policy Statement”), *Memorandum Opinion and Order*, 6 FCC Rcd 3448 (1991), *Memorandum Opinion and Order*, 7 FCC Rcd 6564 (1992). The Commission applies its broadcast character standards to applicants and licensees in the other radio (continued....)

policy, the Commission previously has stated that it will review allegations of misconduct directly before it,¹¹³ as well as conduct that takes place outside of the Commission.¹¹⁴ With respect to Commission-related conduct, the Commission has stated that all violations of provisions of the Act, or of the Commission's rules or policies, are predictive of an applicant's future truthfulness and reliability, and thus have a bearing on an applicant's character qualifications.¹¹⁵ The Commission previously has determined that in its review of character issues, it will consider forms of adjudicated, non-Commission related misconduct that include: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition.¹¹⁶

28. When evaluating transfers of control or assignments under section 310(d), the Commission does not, as a general rule, re-evaluate the qualifications of the transferor, unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.¹¹⁷ There has been no designation for hearing of Verizon Wireless's basic qualifications nor have any issues been raised here that warrant such a hearing designation. CAPCC asserts that "neither the Commission nor Verizon Wireless has provided any reasonable basis to conclude that Verizon Wireless has complied with the foreign ownership requirements of section 310(b) of the Communications Act," and therefore "a significant question concerning the basic qualifications of Verizon Wireless to hold radio licenses remains unresolved" and "the Commission cannot grant the applications."¹¹⁸ The Commission, however, has previously considered and rejected CAPCC's arguments with respect to foreign ownership of Verizon Wireless in the *Verizon Wireless-ALLTEL Order*.¹¹⁹ Based on information Verizon Wireless submitted for the record

(Continued from previous page)

services. *See, e.g., 1990 Character Policy Statement*, 5 FCC Rcd at 3253 ¶ 10 (adopting 47 C.F.R. § 1.17 to apply prohibition against misrepresentations and material omissions to applicants, licensees, and permittees in all radio services).

¹¹³ *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13930 ¶ 32; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 32; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582-83 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

¹¹⁴ *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13930 ¶ 32; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 32; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

¹¹⁵ *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13930 ¶ 32; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 32; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47; *1986 Character Policy Statement*, 102 F.C.C.2d at 1209-10 ¶ 57.

¹¹⁶ *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13930 ¶ 32; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464-65 ¶ 32; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

¹¹⁷ *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13931 ¶ 33; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17466 ¶ 33; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44. *See also* Stephen F. Sewell, *Assignment and Transfers of Control of FCC Authorizations under Section 310(d) of the Communications Act of 1934*, 43 FED. COMM. L.J. 277, 339-40 (1991). The policy of not approving assignments or transfers when issues regarding the licensee's basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. *See id.* The hearing designation is required under section 309(e) of the Communications Act, 47 U.S.C. § 309(e), only if the record presents a "substantial and material question of fact" whether grant of the application would serve the public interest, convenience, and necessity.

¹¹⁸ CAPCC Petition at ii. *See also id.* at 12, 13.

¹¹⁹ *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17543-45 ¶¶ 227-29. *See also* Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent to Transfer Control of Licenses, (continued....)

in that proceeding, the Commission concluded specifically that there was “no substantial or material question of fact as to whether Verizon Wireless’s foreign ownership complies with the limitations of the *Vodafone-Bell Atlantic Order*.”¹²⁰ There is no new information in the current record, and we therefore see no reason to re-evaluate Verizon Wireless’s qualifications in considering the transaction before us.

29. Conversely, section 310(d) obligates the Commission to consider whether the proposed transferee is qualified to hold Commission licenses.¹²¹ No issues have been raised with respect to the basic qualifications of the proposed transferee, AT&T, which has previously and repeatedly been found qualified, through its subsidiaries, to hold Commission licenses. We therefore find that there is no reason to re-evaluate the basic qualifications of AT&T.

V. COMPETITIVE ANALYSIS

30. Our competitive analysis of the proposed transaction considers the potential competitive effects that might result from the proposed transaction.¹²² We begin our competitive analysis by determining the appropriate market definitions for this transaction,¹²³ including a determination of the product market, geographic markets, market participants, and the input market for spectrum available for the provision of mobile telephony/broadband services.

31. We next determine whether there is a significant increase in horizontal market concentration as a result of the proposed transaction. Horizontal transactions raise competitive concerns when they reduce the availability of choices to the point that the resulting firm has the incentive and the ability, either by itself or in coordination with other firms, to raise prices. The ability to raise prices above competitive levels is generally referred to as “market power.” Market power may also enable sellers to reduce competition on dimensions other than price, including innovation and service quality. Absent significant offsetting efficiencies or other public interest benefits, a transaction that creates or enhances market power or facilitates its use is unlikely to serve the public interest.¹²⁴ Transactions that do not significantly increase concentration or do not result in a concentrated market ordinarily require no further analysis of their horizontal impact.

32. In analyzing concentration levels, we apply a two-part initial “screen” to identify those local markets in which no competitive harm clearly arises from the transaction. The first part of the

(Continued from previous page)

Authorizations, and Spectrum Manager Leases, WT Docket No. 07-208, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 12463, 12524-26 ¶¶ 147-49 (2008), recon. pending.

¹²⁰ *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17545 ¶ 229 (footnote omitted); see also Applications of Vodafone AirTouch, Plc and Bell Atlantic Corporation for Consent to Transfer of Control or Assignment of Licenses and Authorizations, *Memorandum Opinion and Order*, 15 FCC Rcd 16507 (WTB/IB 2000) (“*Vodafone-Bell Atlantic Order*”).

¹²¹ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13931 ¶ 33; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17466 ¶ 33; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

¹²² See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13931 ¶ 34; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468 ¶ 40; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68; Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, at § 0.1, n.6. (Apr. 2, 1992, revised Apr. 8, 1997) (“*DOJ/FTC Merger Guidelines*”).

¹²³ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 36; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17469 ¶ 42; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583 ¶ 25; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 70.

¹²⁴ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13931-13932 ¶ 34 n.147; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468 ¶ 40; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556-57 ¶ 68-69; *DOJ/FTC Merger Guidelines* § 0.1, n.6.

screen considers changes in market concentration in the provision of “mobile telephony/broadband services” as a result of the proposed transaction, and is based on the size of the post-transaction Herfindahl-Hirschman Index (“HHI”) of market concentration and the change in the HHI.¹²⁵ The HHI thresholds used in the screen are conservative in order for us to be confident that we give further review to any market in which the merger may cause significant change in the competitive landscape. This initial screen is intended to eliminate from further review those markets in which there is clearly no competitive harm rather than to identify conclusively markets in which there *is* competitive harm. The second part of the screen examines the input market for spectrum available on a market-by-market basis for the provision of “mobile telephony/broadband services.”¹²⁶

33. For those markets not eliminated by the initial screen, we conduct, on a market-by-market basis, an analysis of any potential competitive harms associated with horizontal concentration, including the potential for both unilateral and coordinated effects. We also examine other market factors that pertain to competitive effects, including the incentive and ability of other existing firms to react and of new firms to enter the market in response to attempted exercises of market power by the merged entity as a result of the transaction.

A. Market Definitions

34. We establish at the outset the appropriate market definitions for our evaluation of the proposed transaction. This includes establishing the product and geographic market definitions that we will apply. We also discuss the input market for spectrum and identify market participants that would compete with the proposed merged entity in the provision of mobile telephony/broadband services.

1. Product Market

35. We evaluate this proposed transaction using a combined “mobile telephony/broadband services” product market, which is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).¹²⁷ Mobile telephony/broadband services is the relevant product market because it includes not only the traditional wireless services identified in older transactions but also encompasses the recent significant advances in mobile broadband services technology that is rapidly evolving for next-generation services. The market for mobile telephony/broadband services includes mobile voice and data services provided over wireless broadband networks, as well as mobile voice and data services provided over less advanced, earlier generation (e.g., 2G, 2.5G) legacy wireless networks. In addition, the market includes a wide array of mobile data services, ranging from handset-based mobile data services marketed primarily as an add-on to mobile voice services to standalone mobile Internet access services for laptop users. We find that both Verizon Wireless and AT&T provide services in the product market for mobile telephony/broadband services. No party in the proceeding challenged the mobile telephony/broadband definition, and we will apply this definition in our analysis of this transaction. Accordingly, our analysis herein focuses only on the potential competitive effects that relate to the mobile telephony/broadband services market.

¹²⁵ The HHI would be greater than 2800 and the change in HHI will be 100 or greater, or the change in HHI would be 250 or greater, regardless of the level of the HHI.

¹²⁶ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13935 ¶ 43; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468-69 ¶ 41 n.193; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583-17584 ¶ 26; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21552 ¶ 58.

¹²⁷ See *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 37; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17469-70 ¶ 45; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583-84 ¶ 26.

2. Geographic Market

36. In its wireless transaction orders, the Commission has consistently applied the “hypothetical monopolist test” and found that the relevant geographic markets are local, larger than counties, may encompass multiple counties, and, depending on the consumer’s location, may even include parts of more than one state.¹²⁸ The Commission in these orders identified two sets of geographic areas that effectively may be used to define local markets – Component Economic Areas (“CEAs”) and Cellular Market Areas (“CMAs”).¹²⁹ We have chosen CEAs and CMAs for our data analysis because, although CEAs and CMAs are of different sizes, each is consistent in order of magnitude with the local market definition we have adopted and because each brings a different consideration to the analysis. Because these two sets of geographic areas come from different sides of the equation – demand in one case, supply in the other – the Commission found them to be useful cross-checks on each other and, together, they help ensure that the Commission’s analysis does not overlook local areas that require more detailed analysis.¹³⁰ Consistent with other transactions, we conclude that the most appropriate geographic level for market analysis is comprised of CMAs and CEAs.

37. The Applicants argue that the market for mobile telephony/broadband services is national in scope and that analyzing the transaction in areas as small as CMAs and CEAs would not reflect the competitive forces that could constrain anticompetitive behavior by AT&T post-transaction.¹³¹ While the Applicants acknowledge that the Commission has rejected a national geographic scope in prior proceedings,¹³² they argue that national and regional wireless providers offer nationwide rate plans and set prices on a national basis.¹³³

38. We reject the Applicants’ argument that the relevant geographic market is national. We instead determine, as we have repeatedly done in numerous past decisions concerning wireless transactions, that the geographic market is the area within which a consumer is most likely to shop for

¹²⁸ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17470-71 ¶ 49; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562-63 ¶¶ 89-90.

¹²⁹ CEAs are designed to represent consumers’ patterns of normal travel for personal and employment reasons and may therefore capture areas within which groups of consumers would be expected to shop for wireless service. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURVEY OF CURRENT BUSINESS, February 1995, at 75. In addition, CEAs should be areas within which any service providers present would have an incentive to market—and actually provide—service relatively ubiquitously. Conversely, CMAs are the areas in which the Commission initially granted licenses for cellular service. Although partitioning has altered this structure in many license areas, CMAs represent the fact that the Commission’s licensing programs have to a certain degree shaped this market by defining the initial areas in which wireless providers had spectrum on which to base service offerings, and they may therefore serve as a reasonable proxy for where consumers face the same competitors. See *AT&T-Centennial Order*, 24 FCC Rcd at 13933 ¶ 38 n.151; *Verizon-Wireless ALLTEL Order*, 23 FCC Rcd at 17470-71 ¶ 49; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 51; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105.

¹³⁰ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13933 ¶ 38 n.151; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17470-71 ¶ 49; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 51; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105.

¹³¹ Application, Public Interest Statement at 22-23 n.58; Joint Opposition at 4-5.

¹³² Application, Public Interest Statement at 22.

¹³³ *Id.* at 22-23.

mobile telephony/broadband services.¹³⁴ For most individuals, this market will be a local area, as opposed to a larger regional or nationwide area.¹³⁵ This is because “in response to a small but not insignificant price increase by providers” that offer service where consumers live, work or travel, most consumers are unlikely to switch to alternative wireless providers that operate only outside of such a locality.¹³⁶ We conclude, as we have done before in wireless transaction orders, that the most appropriate geographic level for market analysis is comprised of CMAs and CEAs. The Applicants’ assertions that prices are set on a national level and that consumers shop for national plans and national rates¹³⁷ do not undercut the finding of a local geographic market.¹³⁸ We similarly conclude that their claims regarding the behavior of nationwide service providers and consumers do not establish the existence of a national market.¹³⁹ We find that the scope of a service plan is a feature of the product being offered, not an indication of where users may travel to purchase the service. Further, the Applicants have provided no evidence that many users of wireless services will travel outside their local area to purchase their wireless service. Finally, we believe that most users still prefer a telephone number for their wireless service that will result in a local call, not a toll or long-distance call, for the people who call them the most (*e.g.*, friends, family, and co-workers).

3. Input Market for Spectrum

39. In evaluating this transaction, we consider the aggregation of spectrum by AT&T. We analyze spectrum in particular bands that we determine to be “suitable” for the provision of mobile telephony/broadband services.¹⁴⁰ Consistent with our determination of a product market for mobile telephony/broadband services, we include all spectrum suitable for mobile voice and data services as well as spectrum suitable for the provision of wireless broadband over broadband networks. As previously explained by the Commission, suitability is determined by whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum

¹³⁴ See, *e.g.*, *AT&T-Centennial Order*, 24 FCC Rcd at 13934 ¶ 41; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17472 ¶ 52; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 52. See also *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 89.

¹³⁵ See, *e.g.*, *AT&T-Centennial Order*, 24 FCC Rcd at 13934 ¶ 41; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17472 ¶ 52; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 52; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 89. See also Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, WT Docket No. 08-27, *Thirteenth Report*, 24 FCC Rcd 6185, 6285 ¶ 212 (WTB 2009) (indicating that the average person shops for mobile communications services in markets that include place of work, place of residence, and surrounding areas that are economically related; such areas generally are larger than counties).

¹³⁶ *DOJ/FTC Merger Guidelines* §§ 1.11, 1.12.

¹³⁷ Application, Public Interest Statement at 22-23.

¹³⁸ See, *e.g.*, *AT&T-Centennial Order*, 24 FCC Rcd at 13934 ¶ 41; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17472 ¶ 52; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 52; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562 ¶ 88.

¹³⁹ See, *e.g.*, *AT&T-Centennial Order*, 24 FCC Rcd at 13934 ¶ 41; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17472 ¶ 52; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 52; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562 ¶ 88.

¹⁴⁰ See, *e.g.*, *AT&T-Centennial Order*, 24 FCC Rcd at 13935 ¶ 43; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17473 ¶ 53; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591-92 ¶ 53; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21560-61 ¶ 81.

is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its uses for mobile telephony/broadband service.¹⁴¹

40. No party has argued here for a change in our spectrum aggregation screen. Thus, for purposes of evaluating spectrum aggregation issues associated with this transaction, we include in both our market-specific spectrum screen as well as our market-by-market analysis those spectrum bands designated for cellular, broadband personal communications service (“PCS”), Specialized Mobile Radio (“SMR”), and 700 MHz services, as well as AWS-1 and Broadband Radio Service (“BRS”) spectrum¹⁴² where available.¹⁴³

4. Market Participants

41. In analyzing this transaction, we find, as we have before in numerous other wireless transaction orders, that mobile telephony/broadband services offered by facilities-based providers using cellular, broadband PCS, and SMR spectrum and employing various technologies offer similar voice and data functionalities and are indistinguishable to the consumer.¹⁴⁴ Similarly, to the extent that entities provide facilities-based mobile telephony/broadband services using 700 MHz, AWS-1, and BRS spectrum, the Commission also considers them to be market participants.¹⁴⁵ The Applicants claim additional sources of competition continue to emerge, including mobile virtual network operators (“MVNOs”) and licensees in the AWS-1 and 700 MHz bands.¹⁴⁶ As in previous decisions, we exclude MVNOs and resellers from consideration when computing initial concentration measures, although we acknowledge that non-facilities-based service options have an impact in the marketplace and in some instances may provide additional constraints against anticompetitive behavior.¹⁴⁷ Accordingly, we will consider facilities-based entities providing mobile telephony/broadband services using cellular, broadband PCS, SMR, 700 MHz, AWS-1, and BRS spectrum to be market participants.

B. Initial Screen

42. *Background.* In evaluating the competitive effects of this transaction, our initial screen is intended to exclude from further review those markets in which there is clearly no competitive harm

¹⁴¹ See *AT&T-Centennial Order*, 24 FCC Rcd at 13935 ¶ 43; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17473 ¶ 53; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591-92 ¶ 53.

¹⁴² The BRS spectrum reflects 55.5 megahertz of contiguous BRS spectrum (excluding BRS spectrum associated with the Middle Band Segment (MBS) channels, BRS Channel 1, and the J and K guard bands).

¹⁴³ AWS-1 spectrum is considered available based on whether there is required relocation of government transmitters or receivers in a CMA. See National Telecommunications and Information Administration, 1710-1755 MHz Introduction, <http://www.ntia.doc.gov/osmhome/reports/spec relo/index.htm> (last visited June 21, 2010) (provides information on AWS relocation, including a relocation schedule and cost summary for AWS-1 relocation). BRS spectrum is considered available if the transition is complete. See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17478 ¶ 65; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17597 ¶ 66.

¹⁴⁴ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13936 ¶ 45; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17480-81 ¶ 71; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17600 ¶ 75; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 91.

¹⁴⁵ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13936 ¶ 45; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17480-81 ¶ 71; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17600-01 ¶ 75.

¹⁴⁶ Application, Public Interest Statement at 26-28.

¹⁴⁷ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13936 ¶ 45; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17481 ¶ 74; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92.

relative to today's generally competitive marketplace.¹⁴⁸ Our initial screen criteria identifies, for further case-by-case market analysis, those markets in which, post-transaction: (1) the HHI would be greater than 2800 and the change in HHI will be 100 or greater, or the change in HHI would be 250 or greater, regardless of the level of the HHI, and (2) the Applicants would have, on a market-by-market basis, a 10 percent or greater interest in: 95 megahertz or more of PCS, SMR, and 700 MHz spectrum, where neither BRS nor AWS-1 spectrum is available; 115 megahertz or more of spectrum, where BRS spectrum is available, but AWS-1 spectrum is not available; 125 megahertz or more of spectrum, where AWS-1 spectrum is available, but BRS spectrum is not available; or 145 megahertz or more of spectrum where both AWS-1 and BRS spectrum are available.¹⁴⁹ A subsequent section examines on a case-by-case analysis those markets identified by the screen, where potential harm is possible, to determine whether harm is likely and a remedy needed.

43. NTELOS asserts that smaller, mid-tier regional, and rural carriers must overcome differences in both the quantity and quality of spectrum to which they have access in order to be effective competitors.¹⁵⁰ NTELOS states that AT&T and Verizon Wireless have the lion's share of optimum spectrum ranges (cellular and 700 MHz) for delivering mobile wireless services.¹⁵¹ NTELOS claims that it faces greater challenges deploying its PCS and AWS band spectrum due to the technical characteristics of that spectrum.¹⁵² NTELOS argues that if the Commission approves the acquisition of these 79 markets by AT&T, the gulf between the spectrum holdings of small carriers and the nationwide providers will increase.¹⁵³

44. The Applicants argue that smaller carriers are not excluded from lower spectrum bands, and point to the presence of numerous other licensees in the three CMAs¹⁵⁴ where NTELOS holds spectrum and that are also involved in the proposed transaction.¹⁵⁵ The Applicants also claim that, on average, small, rural, and regional providers hold an average of approximately 126 megahertz in the three CMAs.¹⁵⁶

45. *Discussion.* In evaluating this transaction, we decline to analyze whether, generally, the Applicants have an unfair advantage in terms of the quantity and quality of spectrum that they hold. Instead, we apply our initial screen to identify markets where spectrum aggregation by AT&T may result in competitive harms. We thus examine markets identified by the initial spectrum screen, based on the

¹⁴⁸ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13936 ¶ 45; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17481 ¶ 75; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17601 ¶ 76; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 108.

¹⁴⁹ See discussion *supra* paras. 39-40.

¹⁵⁰ NTELOS Petition at 4.

¹⁵¹ *Id.* at 4-5.

¹⁵² *Id.*

¹⁵³ *Id.* at 5.

¹⁵⁴ The CMAs are CMA262 Danville, VA; CMA681 Virginia 1 - Lee; and CMA688 Virginia 8 - Amelia.

¹⁵⁵ See Joint Opposition at 9-10. In these three CMAs, the Applicants state that licensees of 700 MHz spectrum include US Cellular, Appalachian Wireless, Buggs Island Telephone Cooperative, Continuum 700, and Cavalier, among others. See *id.* at 10. The Applicants argue that NTELOS cannot complain about lack of access to spectrum when it did not participate in Auction 73. See *id.* The Applicants also assert that NTELOS is an example of the diversity of spectrum holding in the three referenced CMAs. See *id.* at 9.

¹⁵⁶ See *id.* at 9.

specific characteristics of those markets, to determine any potential harms and whether there is a need for any remedies.¹⁵⁷

46. The Applicants attach to their amended Application a market-by-market analysis of the 79 markets involved in this transaction and state that the combined attributable spectrum held by post-transaction AT&T would meet or exceed the spectrum aggregation screen in only one market.¹⁵⁸ Within this market, the Applicants analyzed the amount of spectrum attributable to AT&T following the transaction on a county-by-county basis.¹⁵⁹ The Applicants conclude that given the existing spectrum available to current and potential competitors, there is no concern that AT&T's post-transaction spectrum aggregation would result in less than an effective competitive market for next-generation services.¹⁶⁰

47. For purposes of determining HHIs in this transaction, we use our June 2009 NRUF database, which tracks phone number usage by all telecommunications service providers, including wireless service providers, to estimate mobile communication subscribership levels, market shares, and concentration for various geographic markets.¹⁶¹ Consistent with our discussion of the geographic market definition above, in calculating market shares and market concentration, we analyze wireless provider data using two sets of geographic areas, CMAs and CEAs.¹⁶² We also apply our spectrum screen on a county-by-county basis to determine if any markets require further competitive analysis.

48. Our initial HHI screen identifies a total of 11 CMAs¹⁶³ and 12 CEAs¹⁶⁴ that require further competitive review. The initial spectrum screen identifies one CMA and one CEA that require

¹⁵⁷ See *infra* Section V.C, Market-by-Market Analysis.

¹⁵⁸ This market is CMA476 Michigan 5 - Manistee. The Applicants state that the applicable spectrum screen will be exceeded by 5 MHz in six counties of CMA476 and reached in two others in the CMA. See Application, Public Interest Statement at 21 n.52. The Applicants initially identified two markets in which they determined that the combined attributable spectrum held by post-transaction AT&T would meet or exceed the spectrum aggregation screen. Due to the fact that BRS spectrum was cleared in an additional market, thus changing the spectrum aggregation screen applicable to that market, this market no longer triggered the spectrum screen.

¹⁵⁹ See Application, Public Interest Statement, Appendix A, Amended Spectrum Aggregation Chart.

¹⁶⁰ See *id.*, Public Interest Statement at 21-22.

¹⁶¹ These data indicate the number of assigned phone numbers that a wireless carrier has in a particular wireline rate center. Rate centers are geographic areas used by local exchange carriers for a variety of reasons, including the determination of toll rates. See HARRY NEWTON, *NEWTON'S TELECOM DICTIONARY: 19TH EXPANDED & UPDATED EDITION* 660 (July 2003). All mobile wireless providers must report to the FCC the quantity of their phone numbers that have been assigned to end users, thereby permitting the Commission to calculate the total number of mobile subscribers. For purposes of geographical analysis, the rate center data can be associated with a geographic point, and all of those points that fall within a county boundary can be aggregated together and associated with much larger geographic areas based on counties.

¹⁶² See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13937 ¶ 47; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17482-83 ¶ 78; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 51; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 104. See discussion justifying the use of CMAs and CEAs *supra* note 129.

¹⁶³ The CMAs identified by the initial HHI screen are: CMA181 Muskegon, MI; CMA246 Dothan, AL; CMA262 Danville, VA; CMA313 Alabama 7 - Butler; CMA322 Arizona 5 - Gila; CMA341 California 6 - Mono; CMA476 Michigan 5 - Manistee; CMA478 Michigan 7 - Newaygo; CMA483 Minnesota 2 - Lake of the Woods; CMA650 Tennessee 8 - Johnson; and CMA676 Utah 4 - Beaver.

¹⁶⁴ The CEAs identified by the initial HHI screen are: CEA1950 Danville, VA; CEA2180 Dothan, AL-FL-GA; CEA2520 Fargo-Moorhead, ND-MN; CEA3000 Grand Rapids-Muskegon-Holland, MI; CEA4280 Lexington, KY-TN-VA-WV; CEA5240 Montgomery, AL; CEA6560 Pueblo, CO-NM; CEA6720 Reno, NV-CA; CEA6960 (continued....)

further competitive review.¹⁶⁵ Thus, our initial screen indicated a total of 11 CMAs and 12 CEAs that require a case-by-case competitive review.

1. Horizontal Issues

49. This section examines how the transaction could affect competitive behavior in the 11 CMAs and 12 CEAs identified by the initial screen as requiring additional analysis to determine whether the proposed transaction would result in competitive harm. As discussed in a number of the Commission's wireless transaction orders, competition may be harmed either through unilateral actions¹⁶⁶ or through coordinated interaction¹⁶⁷ among firms competing in the relevant market. We note that certain aspects of our previous analyses in wireless transaction orders are not challenged on the record.¹⁶⁸ We therefore discuss unilateral effects and coordinated interaction to the extent issues are raised by the parties to this proceeding as well as within the markets identified by our initial screen.¹⁶⁹

2. Unilateral Effects

50. *Background.* Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by "elevating price and suppressing output."¹⁷⁰ In the case of mobile telephony/broadband services, this might take the form of delaying improvements in service quality or adversely adjusting plan features without changing the plan price.¹⁷¹ Incentives for such unilateral

(Continued from previous page) _____

Saginaw-Bay City-Midland, MI; CEA7720 Sioux City, IA-NE-SD; CEA9519 Traverse City, MI; CEA9538 Hobbs, NM-TX.

¹⁶⁵ The CMA identified by the initial spectrum screen is CMA476 Michigan 5 - Manistee. The CEA identified by the initial spectrum screen is CEA9519 Traverse City, MI. CMA476 and CEA9519 were also identified by the initial HHI screen.

¹⁶⁶ Unilateral effects are those that result when a merged firm finds it profitable to alter its behavior by increasing prices or reducing output. *DOJ/FTC Horizontal Merger Guidelines* § 2.2. See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13939-41 ¶ 54-58; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17484 ¶ 82; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115 n.341.

¹⁶⁷ Coordinated interaction consists of actions by a group of firms that are profitable for each of the firms involved only because the other firms react by accommodating these actions rather than attempting to undercut them. See *DOJ/FTC Horizontal Merger Guidelines* § 2.1; *AT&T-Centennial Order*, 24 FCC Rcd at 13939 ¶ 52 n.201; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17484 ¶ 82; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151.

¹⁶⁸ For unilateral effects, the unchallenged aspects include: (1) product differentiation and substitutability; (2) network effects; (3) marginal cost reductions; (4) spectrum and advanced wireless services; and (5) penetration. See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13939 ¶ 53 n.203; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17484-85 ¶ 83. For coordinated interaction, the unchallenged aspects include: (1) firm and product homogeneity; (2) existing cooperative ventures; (3) number of firms; (4) technology development; (5) response of rivals; (6) transparency of information; and (7) presence of mavericks. See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13939 ¶ 53 n.203; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17484-85 ¶ 83; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21581-85 ¶¶ 154-163.

¹⁶⁹ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13939 ¶ 53; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17484-85 ¶ 83.

¹⁷⁰ See *AT&T-Centennial Order*, 24 FCC Rcd at 13939-40 ¶ 54; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 84; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115; see also *DOJ/FTC Merger Guidelines* § 2.2.

¹⁷¹ The term "unilateral" refers to the method used by firms to determine strategy, not to the fact that the merged entity would be the only firm to change its strategy. The term unilateral is used to indicate that strategies are determined unilaterally by each of the firms in the market and not by explicit or tacit collusion. Other firms in the (continued....)

competitive actions vary with the nature of competition in the relevant markets. Thus, we will examine whether AT&T's acquisition of the AT&T Divestiture Markets could lead to changes in the structure of the markets in the 11 CMAs and 12 CEAs identified by our initial screen as needing further analysis.¹⁷² With regard to each of these markets, we examine in more detail the possibility that the proposed transaction may lead to competitive harm through unilateral actions by AT&T following the acquisition of these markets.¹⁷³

51. As we explain below, the market for mobile telephony/broadband service in the United States appears to be differentiated.¹⁷⁴ Wireless service providers do not offer a completely homogeneous service. Rather, the service providers compete vigorously on the basis not only of price but also of other plan features, call quality, geographic coverage, and customer service. While service providers can change some of these attributes relatively quickly, others – particularly non-price attributes such as quality and coverage – require investments in spectrum or infrastructure and are not easily modified.

52. Some petitioners raise concern over concentration in the wireless industry and the ability of AT&T to unilaterally raise prices and exercise market power as a result of this transaction.¹⁷⁵ Further, petitioners argue that the wireless industry is moving to a duopoly.¹⁷⁶ NABOB asserts that this transaction would create an oligarchy in the wireless industry,¹⁷⁷ and that the large wireless carriers should not be allowed to continue to grow and assume even larger shares of local and national markets.¹⁷⁸ Sprint Nextel argues that AT&T will be able to raise its subscribers' prices without restraint if AT&T is allowed to shut down the CDMA network because the existence of the CDMA network exerts downward

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market may find it profitable to alter their behavior as a result of the merger-induced change in market structure by, for example, repositioning their products, changing capacity, or changing their own prices. These reactions can alter the total effect on the market and must be taken into account when evaluating potential unilateral effects. *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13939-40 ¶ 54 n.209; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 n.306; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 n.341.

¹⁷² *See supra* para. 48.

¹⁷³ *See infra* Section V.C.2, Results of Market-Specific Analysis. *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13948 ¶ 75; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 84; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115; *see also DOJ/FTC Merger Guidelines* § 2.

¹⁷⁴ *See Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 85.

¹⁷⁵ NABOB Petition at 8; NTELOS Petition at 4; RTG Petition at i; PSC Reply at 3-4; RTG Reply at 3.

¹⁷⁶ CAPCC Petition at 4; NABOB Petition at 10; RTG Petition at i, 5; NABOB Reply at 1-2; PSC Reply at 3; RTG Reply at 3, 5; NTCA Aug. 7, 2009 *Ex Parte* at 2. RTG argues that rural customers are most negatively impacted when smaller, rural commercial mobile radio service ("CMRS") operators are unable to compete in a market with two overwhelming competitors. RTG Reply at 3.

¹⁷⁷ NABOB claims that the wireless industry consists of an oligarchy of four national competitors and 145 significantly smaller companies. NABOB Petition at 8-10 (arguing that diversity of ownership must be reconciled with competitive analysis to avoid the creation of an oligarchy or a duopoly between AT&T and Verizon Wireless).

¹⁷⁸ *Id.* at 8-9 (arguing that too little emphasis is placed on creating opportunities for new entrants in the wireless industry).

pressure on prices for GSM services.¹⁷⁹ NTELOS claims that the transaction does not prevent the increase of market concentration.¹⁸⁰

53. RTG argues that there is a lack of effective competition in many of the states involved in this transaction.¹⁸¹ Specifically, RTG asserts that there is a lack of competition among wireless providers in Montana, North Dakota, South Dakota, and Wyoming, and that its members will be left to face AT&T and Verizon Wireless alone in many of the 79 AT&T Divestiture Markets because Sprint Nextel and T-Mobile focus on urban, rather than rural, markets in many of these areas.¹⁸²

54. The Applicants argue that unilateral effects are unlikely in any of the markets subject to this transaction because: there are numerous competitors in each CMA; AT&T's offerings are not close substitutes for ALLTEL's offerings; and competitors can take customers away from AT&T if it attempts to act unilaterally.¹⁸³ Also, AT&T claims that there is sufficient spectrum for other providers to compete effectively and to expand their services in the event of a unilateral price increase.¹⁸⁴ Further, the Applicants contend that the wireless industry is highly competitive and that the response of rival service providers will be sufficient to constrain any potential unilateral action by AT&T in all of the AT&T Divestiture Markets.¹⁸⁵ Specifically, the Applicants point to newly emerging competition from WiMax and cable television operators such as Cox Communications as constraints against unilateral conduct in the Divestiture markets.¹⁸⁶ In addition, the Applicants argue that there is significant churn in the wireless market and customers will leave for another wireless provider if competitive pricing, services, and features are missing,¹⁸⁷ and this motivates wireless providers to compete vigorously.¹⁸⁸ The Applicants state that this transaction involves a small number of subscribers and it will not have an impact on market structure or on competition at the national level.¹⁸⁹

¹⁷⁹ Sprint Nextel Comments at 11, 18 (arguing that the elimination of a CDMA network will decrease competition and harm customers).

¹⁸⁰ NTELOS Petition at 4 (stating that market concentration increases and customers are harmed when the larger players merely exchange spectrum and properties).

¹⁸¹ RTG Petition at i, 5. See NTCA August 7, 2009 *Ex Parte* at 2-3 (arguing that the transaction represents one more "nail in the coffin of non-nationwide wireless providers."). See also RTG Reply at 5 (stating that ALLTEL was a niche player in the market that kept AT&T and Verizon Wireless from assuming insurmountable market position).

¹⁸² RTG Petition at 7-8; RTG Reply at 4 (stating that Sprint Nextel and T-Mobile are noticeably absent in many of these 79 CMAs because, while they hold spectrum, they have little to no facilities-based networks and are dependent on roaming). NTCA asserts that AT&T is not a close substitute for ALLTEL in size, scope, or corporate philosophy. See NTCA Aug. 7, 2009 *Ex Parte* at 2, 4. PSC argues that the transaction reduces consumer choice and prevents small, rural operators from competing. PCS Reply at 2.

¹⁸³ Application, Public Interest Statement at 29-30.

¹⁸⁴ *Id.* at 30-33.

¹⁸⁵ *Id.* at 23-29.

¹⁸⁶ *Id.* at 23 (noting that Cox Communications has announced plans to build out a 3G network to compete directly against AT&T and Verizon Wireless).

¹⁸⁷ *Id.* at 32.

¹⁸⁸ *Id.* at 23.

¹⁸⁹ *Id.*