Information]. *See* Christopher Decl. ¶ 61. These new mavericks not only appeal to the value-conscious consumers that have long constituted T-Mobile USA's base, but have aggressively rolled out new smartphone services. For example, the first LTE provider in the United States was not Verizon, but MetroPCS.

In contrast, T-Mobile USA is—in the words of DT Senior Vice President Thorsten Langheim—"struggling to remain a strong competitor in the wireless marketplace. Despite marketing efforts to improve its standing, T-Mobile USA has steadily lost market share . . . over the past two years." Langheim Decl. ¶ 11. T-Mobile USA has faltered because, among its other challenges, it occupies an uncomfortable position between higher-end providers and value competitors. Christopher Decl. ¶ 46. On the one hand, it has been undersold by MetroPCS, Leap, and others in the provision of budget-oriented services. *Id.* And on the other hand, it "lacks a clear path to deployment of LTE that is necessary for it to compete robustly in the U.S. longer term," particularly for high-end mobile broadband services. Langheim Decl. ¶ 11. In Professor Carlton's words, "T-Mobile's competitive position is probably best summarized in J.P. Morgan's recent comment that T-Mobile is 'struggling for relevance.'"[92] For all of these reasons, it is not a significant competitive constraint on AT&T. *See* Christopher Decl. ¶¶ 23-27.

Third, as Professor Carlton further explains in his attached declaration, an economically sensible way to promote greater output, higher quality, and lower prices in capacity-constrained industries such as this one is to permit an efficient capacity-enhancing combination. Carlton Decl. ¶ 158. Blocking such combinations would have the opposite effects: lower output, worse quality, and higher prices. As Chairman Genachowski recently observed, "[i]f we do nothing in

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[92] Carlton Decl. ¶ 130 (quoting J.P. Morgan, North America Equity Research, *U.S. Telecom Services & Towers*, at 18 (Jan. 13, 2011) ("*J.P. Morgan January 2011 Analysis*")).

the face of the looming spectrum crunch, many consumers will face higher prices—as the market is forced to respond to supply and demand[.]"[93] Although the Chairman was addressing the need to free up more spectrum through auctions in the long term, his reasoning applies equally to this transaction, which, as discussed, creates the functional equivalent of more spectrum.

1. The Commission Should Adhere to Its Current Market-Definition Conclusions, but the Existing Screens Should Be Modified to Reflect New Sources of Commercially Available Spectrum.

The Commission begins its competitive analysis of wireless transactions by defining the appropriate product market, geographic markets, and market participants. As to the first issue, the Commission "treat[s] the provision of mobile broadband services using more recent and advanced networks (*e.g.*, 3G, 4G) and the provision of mobile voice and data services over earlier generations of wireless networks as part of a combined mobile telephony/broadband services market, rather than separate markets," now that the industry is "transitioning from the provision of interconnected mobile voice and add-on mobile data services over legacy wireless networks to the provision of mobile voice and data services over wireless broadband networks."[94]

Second, the Commission has repeatedly concluded that the geographic market is local rather than national and consists of CMAs or, alternatively, "Component Economic Areas ("CEAs").[95] As the Commission has explained, "the geographic market is the area within which

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93 *Genachowski CTIA Remarks*, at 9.

94 *Verizon/ALLTEL Order*, 23 FCC Rcd at 17470 ¶ 47; *accord* Memorandum Opinion and Order, *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and* Authorizations, 19 FCC Rcd 21522, 21562-63 ¶ 89 (2004) ("*Cingular/AT&T Wireless Order*").

95 See *Verizon/ALLTEL Order*, 23 FCC Rcd at 17471 ¶ 49; Memorandum Opinion and Order and Declaratory Ruling, *Applications of Cellco Partnership D/B/A Verizon Wireless and*

a consumer is most likely to shop for mobile telephony/broadband services," and "[f]or most individuals, this market will be a local area, as opposed to a larger regional or nationwide area."[96] The Department of Justice has likewise concluded that mobile services are offered in "numerous *local* geographic markets," given that, among other considerations, customers generally choose among providers that market services "where they live, work, and travel on a regular basis" and "[t]he number and identity of . . . providers varies among geographic areas[.]"[97]

AT&T's own market research confirms these conclusions. The great majority of AT&T's new customers—some **[Begin Confidential Information]** **[End Confidential Information]** percent—purchased their wireless service locally, either through a company-owned store, local outlets of chain stores such as Radio Shack, Best Buy, Target, AT&T agent stores, or other local retail stores. *See* Christopher Decl. ¶ 12. Independent studies reach similar conclusions about the industry at large: local sales (at a store or kiosk) account for

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Rural Cellular Corporation for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases and Petitions for Declaratory Ruling, 23 FCC Rcd 12463, 12485 ¶ 41 (2008) ("*Verizon/RCC Order*"); Memorandum Opinion and Order, *Applications of AT&T Inc. and Dobson Communic'ns Corporation for Consent to Transfer Control of Licenses and Authorizations*, 22 FCC Rcd 20295, 20310 ¶ 25 (2007) ("*AT&T/Dobson Order*"); Memorandum Opinion and Order, *Application of Great Western Cellular Partners, LLC and Alltel Communic'ns, Inc. for Consent to transfer Control of License*, 21 FCC Rcd 11526, 11545-49 ¶¶ 35-43 (2006) ("*Midwest Wireless Order*"); Memorandum Opinion and Order, *Applications of Western Wireless Corporation and Alltel Corporation for Consent to Transfer Control of Licenses and Authorizations*, 20 FCC Rcd 13053, 13072-75 ¶¶ 44-51 ("*Western Wireless Order*"); Memorandum Opinion and Order, *Applications Nextel Communic'ns, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, 20 FCC Rcd 13991-95 ¶¶ 57, 63-67 (2005) ("*Sprint/Nextel Order*"); *Cingular/AT&T Wireless Order* at 21567-69 ¶¶ 104-112.

96 *Verizon/ALLTEL Order*, 23 FCC Rcd at 17472 ¶ 52.

97 Complaint, *United States v. AT&T Inc.*, Civ. No. 1:09-cv-01932-JDB, at ¶ 15 (D.D.C. filed Oct. 13, 2009) (emphasis added).

approximately **[Begin Confidential Information]** **[End Confidential Information]** percent of industry-wide total sales and, indeed, approximately **[Begin Confidential Information]** **[End Confidential Information]** percent of MetroPCS's sales. *Id.*.

Further underscoring the local nature of this marketplace, AT&T has tailored its sales operations to respond quickly and distinctively to local market conditions. AT&T Mobility's Chief Marketing Officer, David Christopher, explains:

> AT&T has divided the country into twenty-seven separate geographic regions, each led by a vice president/general manager ("VP/GM") who is responsible for operations of the [AT&T] stores, our relationships with AT&T's local dealer agents at the local level, and all other sales activities within their respective markets. In fact, the annual performance of these VP/GMs is evaluated, in part, by the profits and losses associated with all sales activity within their markets. They strive to meet unique local customer demand by working with our headquarters marketing team to run local advertising pointing out the advantages of AT&T service in a specific local area, by direct marketing campaigns, and by offering local promotions on handsets and peripheral devices. To further support this effort, our direct mail direct response . . . and online marketing and sales efforts are capable of making targeted offers to customers in specific local market areas.

Id. ¶ 13. Similarly, because T-Mobile USA's own experience confirms that customers prefer to make purchasing decisions locally, it recently reorganized its sales staff by local region to address local market conditions most effectively. In any event, as Professor Carlton concludes, this transaction will create such output-expanding, pro-consumer synergies that it would warrant approval even if competition were (improperly) analyzed at the national level. Carlton Decl. ¶¶ 8, 12.

Third, the Commission has concluded that the market participants for purposes of its competitive analysis include "facilities-based" entities providing mobile telephony/broadband

services.[98] Those participants include every provider that serves customers within a given geographic market, irrespective of how many other geographic markets that provider also serves. As discussed below, a number of major U.S. providers are called "regional" in the narrow sense that they have networks and recruit customers in only a subset of the nation's hundreds of geographic markets. Key providers in this category have nonetheless entered into wholesale roaming agreements throughout other markets in order to offer *nationwide* service plans: *i.e.*, seamless coverage in most or all population centers throughout the United States, generally without retail roaming fees. *See* Carlton Decl. ¶¶ 9, 102, 104, 113, 115; Christopher Decl. ¶¶ 8, 63. These providers compete in the same *product* market as carriers that market nationally, even though they compete in only some of the local *geographic* markets. *See* Carlton Decl. ¶¶ 112-115; Christopher Decl. ¶ 9.[99]

The Commission next applies a two-part initial "screen" to separate those local markets where, without further analysis, it is clear that the transaction would result in no potential competitive harm, from those local markets where further competitive analysis is required to determine whether the transaction would promote or harm consumer welfare.

HHI Screen. The first part of the 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. Under the analysis used in recent Commission orders,

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98 *See, e.g., Verizon /ALLTEL Order*, 23 FCC Rcd at 17480-81 ¶ 71.

99 *See also Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21564 ¶ 94 (including within relevant product market all firms "able to offer nationwide service," including "nationwide carriers" and "regional firms," but excluding providers "unable to offer national mobile telephony services").

a market is subject to further scrutiny if, based on the NRUF data, its post-transaction HHI (1) would be both greater than 2800 and increase by at least 100, or (2) would increase by at least 250.[100] As discussed in detail below, this merger, even in the markets flagged by the HHI screen, poses no substantial competitive concern because, in addition to the merger's output-enhancing effect, the combined company will face vigorous competition from diverse providers and, in any event, T-Mobile USA is not a particularly close competitor to AT&T.

Spectrum screen. The second part of the market-by-market screen examines the input market for spectrum available for the provision of mobile telephony/broadband services. In past transactions—which (as discussed below) predated the deployment of new spectrum for mobile broadband purposes—the Commission designed the spectrum screen to include spectrum bands designated for cellular, PCS, Specialized Mobile Radio ("SMR"), and 700 MHz services, as well as AWS-1 and 55.5 MHz of Broadband Radio Service ("BRS") spectrum where available. The screen ranges from 95 MHz to 145 MHz, depending on the availability of AWS-1 and BRS.[101] If the Commission used this approach here, despite its obsolescence, 202 CMAs would be flagged by the spectrum screen and subject to further analysis.[102] Spectrum aggregation data is provided in Appendix A. Again, this screen is only the starting point in the Commission's analysis, and the remainder of that analysis confirms that the overwhelming majority of the markets at issue will retain both several strong competitors—indeed, at least four in more than 80

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100 *See, e.g., Verizon /ALLTEL Order*, 23 FCC Rcd at 17483 ¶ 78.

101 *Id.*

102 The Commission has asked AT&T in pending spectrum-transfer proceedings to provide data concerning its holdings of the 25 MHz of WCS spectrum, which a recent Commission order intended to make usable for mobile broadband services. See Report and Order and Second Report and Order, *Amendment of Part 27 of the Comm'n's Rules To Govern the Operation of Wireless Commc'ns Servs. in the 2.3 GHz Band*, 25 FCC Rcd 11710 (2010) (recons. filed). Those data are included in Appendix A.

percent of these CMAs—and ample spectrum resources to support further growth. Appendices B and C provide further details on competitive conditions in these CMAs.

In any event, the current spectrum screen substantially overstates potential threats to competition because it excludes much of the spectrum currently available for mobile telephony and broadband services. The Commission should now update this analysis in two respects. First, it should include 90 MHz of MSS/ATC spectrum within the screen because, as the Commission itself found just this month, MSS/ATC providers will soon "provide mobile services similar to those provided by [other] mobile providers" and should thus be considered "in the context of our existing competitive analysis framework for mobile telephony/broadband services."[103] Indeed, LightSquared plans to begin the rollout of wholesale mobile broadband service using MSS/ATC spectrum in 2011, as soon as the Commission resolves GPS interference issues, and its network is expected to encompass 100 million Americans by year-end 2012, 145 million by year-end 2013, and 260 million by year-end 2015.[104] Second, the Commission should include *all* 194 MHz of BRS/EBS spectrum (not just the 55.5 MHz it has considered before) because the BRS/EBS transition is complete in most areas of the country, and because Clearwire and its partners (including Sprint and Time Warner Cable) are making widespread use of WiMAX service throughout the country, now passing more than 100 million people.

In short, these broader spectrum categories easily "meet the criteria for suitable spectrum within two years" and are thus appropriately considered "a relevant input" for purposes of the

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[103] Report and Order, *Fixed and Mobile Servs. in the Mobile Satellite Service Bands*, FCC No. 11-57, ET Docket No. 10-142, at ¶ 23 (Apr. 6, 2011).

[104] LightSquared, *Nationwide LTE Broadband Network*, http://www.lightsquared.com/what-we-do/network/.

Commission's spectrum screen.[105] AT&T has addressed these points in detail in its public interest statement in the AT&T-Qualcomm proceeding and incorporates that discussion by reference here.[106]

2. The Combined Company Will Face Strong Competition From Many Sources.

Whatever the results of the initial screens, the Commission's merger analysis ultimately asks whether a transaction will give rise to a substantial prospect of either anticompetitive coordination or anticompetitive unilateral effects. The nature and extent of competition in U.S. wireless markets foreclose either concern here, as discussed below. We begin by describing the strong competitors that the combined company will continue to face after this transaction is complete. These include not only providers that market service to customers living in most U.S. markets, but also "regional" providers that market only where they operate networks. Again, providers in *both* categories offer their customers *nationwide* service plans.

Verizon Wireless is the nation's largest wireless provider with a leading reputation for high-quality network performance, and it competes with AT&T in almost every local market. It has an exceedingly robust spectrum position. In addition to its other 700 MHz band holdings, Verizon Wireless has 22 MHz of upper 700 MHz band spectrum nationwide for its ongoing LTE deployment.

Verizon Wireless often targets AT&T in its commercials and asserts that Verizon's network is superior to AT&T's more congested counterpart. Christopher Decl. ¶ 28. Verizon is

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105 *Verizon/ALLTEL Order*, 23 FCC Rcd at 17477 ¶ 62.

106 Public Interest Statement, *Application of AT&T Mobility Spectrum LLC and Qualcomm Inc. for Consent to Assign Eleven Lower 700 MHz Band Licenses*, WT Docket No. 11-18, at 21-28 (Jan. 13, 2011).

using its nationwide 700 MHz footprint to aggressively deploy 4G LTE, which it says will cover two-thirds of Americans by mid-2012.[107] Verizon also states that it will offer a suite of 10 devices for its 4G LTE network that will be available by mid-2011.[108] Verizon claims to face no systemic constraints on its network capacity. Indeed, in the wake of this transaction's announcement, Verizon Wireless's CEO reaffirmed that his company is "extremely confident" it has the "spectrum position" it needs.[109]

Sprint has reversed recent trends and, in 2010, achieved successes that CEO Dan Hesse called "unprecedented in the history of the U.S. wireless industry."[110] Sprint added nearly 1.8 million net subscribers in 2010, including nearly 1.1 million during the fourth quarter of 2010 alone, for a total of approximately 50 million.[111] Along with Verizon Wireless and U.S. Cellular, Sprint fared well in Consumer Reports's recent survey of customer satisfaction, and it is now rapidly increasing market share with its 4G service. *See* Carlton Decl. ¶¶ 96-100; Christopher Decl. ¶ 30. Sprint's success contrasts sharply with T-Mobile USA's own recent performance:

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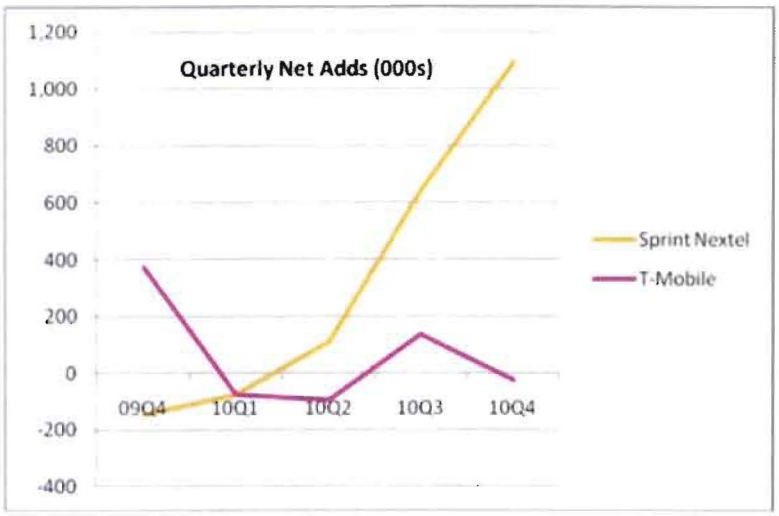
107 Press Release, Verizon Wireless, *Verizon Wireless Unveils Suite of 4G LTE Smartphones, Tablets, a Mi-Fi, Hotspot and Notebooks* (Jan. 6, 2011), http://news.vzw.com/news/2011/01/pr2011-01-06n.html.

108 *Id.*

109 *Verizon and Sprint react to US mega deal*, Mobile Business Briefing, Mar. 22, 2011 (quoting CEO Dan Mead), http://www.mobilebusinessbriefing.com/article/verizon-and-sprint-react-to-us-mega-deal. As Verizon Wireless's CTO added: "We added enormous capacity to the network in one fell swoop. It is there waiting for us to grow into it." *Report: Verizon to Offer Unlimited iPhone Plans*, DailyTech (Jan. 10, 2011) (quoting Anthony J. Melone), http://www.dailytech.com/Report+Verizon+to+Offer+Unlimited+iPhone+Plans/article20614.htm.

110 Press Release, *Sprint Nextel Reports Fourth Quarter and Full Year 2010 Results*, at 2 (Feb. 10, 2011), http://newsroom.sprint.com/article_display.cfm?article_id=1796.

111 *Id.* at 1, 11.



Sprint's resurgence is attributable to several factors. First, it was the first to market with a 4G product. In partnership with Clearwire (in which it has a majority ownership stake), Sprint is aggressively rolling out its 4G/WiMAX network, which now reaches well more than 100 million people.[112] Sprint touted these leading-edge network capabilities to consumers in aggressive marketing campaigns throughout 2010, vigorously promoting "the First 4G Phone."[113] And Sprint appears to have delivered on its network performance promises to customers, **[Begin Confidential Information]**

[End Confidential Information]. Christopher Decl. ¶ 30. Indeed, Sprint CEO Dan Hesse has taken aim at AT&T's HSPA+ products by touting Sprint's services as "4G, not faux G."[114]

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112 Sprint recently reached a new wholesale agreement with Clearwire for access to Clearwire's 4G network. *See* Roger Cheng, *Sprint to Pump $1 Billion Into Clearwire*, Wall St. J. (Apr. 19, 2011). According to Clearwire's interim Chief Executive, John Stanton, the agreement reaffirms the companies' relationship, as well as the strength of their combined spectrum position. *Id.*

113 *E.g.*, Sprint, *Sprint HTC EVO™ 4G*, http://now.sprint.com/firsts/evo4g/#/evo4g/.

114 Roger Cheng, *Sprint CEO Touts 4G Devices, "Not Faux G,"* WSJ Blog (Mar. 22, 2011), http://blogs.wsj.com/digits/2011/03/22/sprint-ceo-touts-4g-devices-not-faux-g/.

Second, Sprint has achieved this early 4G success in part because of its exceptional spectrum position, which is far stronger than AT&T's today. As Hesse explains, "[w]hen you combine Sprint's spectrum position with Clearwire's spectrum position it put[s] us in the strongest place for the future."[115] He added: "We have the spectrum resources where we could add LTE if we choose to do that, on top of the WiMAX network. The beauty of having a lot of spectrum is we have a lot of flexibility."[116] A senior Sprint executive recently announced that Sprint might well use that flexibility to "deploy LTE as part of its Network Vision network modernization project . . . , with nationwide LTE coverage by year-end 2013."[117]

Third, Sprint has accompanied this strong network performance with its highly popular suite of award-winning Android handsets, including the HTC EVO 4G, HTC EVO Shift 4G, and Samsung Epic 4G. Christopher Decl. ¶ 34. Sprint is also reportedly gearing up to include eighteen 4G-enabled devices within its portfolio by the end of this year. *Id.*

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115 *Hesse Keynote, supra.* Clearwire has an average spectrum position of approximately 140 MHz across its national spectrum footprint and of approximately 160 MHz across the 100 largest markets. Clearwire Corporation, Annual Report (2010 Form 10-K), at 3 (Feb. 22, 2011). Combined with its own spectrum, this gives Sprint access to an average of more than 190 MHz nationwide, *Fourteenth Wireless Report*, 25 FCC Rcd at 11569, Table 26 (showing Sprint with average holdings of 52.5 MHz) and more than 260 MHz in some markets. *See, e.g.*, Public Interest Statement, *Sprint Nextel Corporation and Clearwire Corporation*, WT Docket 08-94, Appx. D, at 48, 52 (June 1, 2008) (showing that, in Dallas County, Texas, Clearwire has 186 MHz of 2.5 GHz spectrum and Sprint has 77.75 MHz of non-2.5 GHz spectrum).

116 *Sprint's 4G Move, supra*; *see also* Marguerite Reardon, *CTIA Day 1: Where's T-Mobile; talk of spectrum crunch*, CNET News (Mar. 22, 2011), http://reviews.cnet.com/8301-12261_7-20046096-10356022.html#ixzz1IfWvLnt8 (quoting Sprint's Senior Vice President of Networks, Bob Azzi: "[w]e are well positioned with Clearwire in terms of spectrum[.]"); Scott Cendrowski, *Why Sprint stock can double*, CNNMoney.com (Mar. 25, 2011) (quoting Greenlight Capital's David Einhorn: because "Sprint has more than three times the spectrum for 4G than Verizon or AT&T," it could have "a huge advantage going forward"), http:// money.cnn.com/ 2011/03/24/pf/sprint_stock_comeback.fortune/?section=magazines_fortune.

117 Sue Marek, *Sprint could deploy LTE nationwide by year-end 2013*, FierceWireless (Mar. 2, 2011), http://www.fiercewireless.com/story/sprint-could-deploy-lte-nationwide-year-end-2013/2011-03-02.

Fourth, Sprint has lured subscribers away from its rivals not only with faster data speeds, but also with aggressively priced unlimited data plans. For example, Sprint targeted AT&T's iPhone users when highlighting a substantial price difference between AT&T's plans and Sprint's $69.99 *Everything* unlimited data plan. Christopher Decl. ¶¶ 41-42. Overall, Sprint's strategy appears to have succeeded. In every month since October 2010, **[Begin Confidential Information]**

[End Confidential Information]. *Id.* ¶ 43.

MetroPCS and ***Leap*** (discussed below) have now become the industry's leading "maverick[s]," a term that does not apply to providers that, like T-Mobile USA, are losing share. *See* Carlton Decl. ¶ 154. MetroPCS and Leap each offer unlimited ("all you can eat") voice and data plans to value-oriented customers at low rates and on a no-contract basis. They are taking an "increasing percentage" of subscribers from "the postpaid contract world,"[118] prompting other major providers, including AT&T, to make competitive responses. *See* Christopher Decl. ¶¶ 48-49, 59-62. Indeed, MetroPCS and Leap are now mentioned in the same breath with AT&T, Verizon Wireless, Sprint, and T-Mobile USA.[119] And in a growing number of markets, these providers—and MetroPCS in particular—are estimated to have surpassed T-Mobile USA in both

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[118] Final Transcript, *PCS—MetroPCS Communications, Inc. at Morgan Stanley Technology, Media & Telecom Conference*, at 8 (Mar. 3, 2011) ("*Metro PCS Morgan Stanley Conference Transcript*") (MetroPCS CFO Braxton Carter: "And we have seen [an] increasing percentage of our gross adds coming from the lower part of the postpaid contract world. I think, Tom on our year-end call mentioned roughly a third of our customers are coming from that. And I think it's a natural evolution."); *see also* Carlton Decl. ¶ 109.

[119] For example, Sprint CFO Bob Brust recently remarked: "Retail is a tough place. I mean, we have got a *lot of retail competition* out there, and for [Clearwire] to jump in to that may not be the easiest thing in the world. You've got *Verizon, and AT&T and us and T-Mobile, and Leap and Metro and this, that, and everything else*, so that's a long putt." Final Transcript, S—Sprint Nextel Corporation at Bank of America Merrill Lynch Media, Communications & Entertainment Conference, at 12 (Sept. 15, 2010) (emphasis added).

subscriber share and competitive significance. They can quickly fill any market gap T-Mobile USA leaves upon the completion of this transaction.

Since 2002, MetroPCS has grown from roughly 500,000 subscribers to approximately 8.1 million subscribers today—a sixteen-fold increase in nine years. *See* Christopher Decl. ¶ 60. In September 2008, MetroPCS signed a long-term mutual roaming agreement with Leap and now offers service for a flat monthly fee, without retail roaming charges, in areas covering approximately 90 percent of the U.S. population.[120] In the words of CFO Braxton Carter, MetroPCS has "a nationwide footprint . . . that really puts us on par from a footprint standpoint on a combined network that is *actually a tad bit larger than the Sprint network*":[121]

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[120] Carlton Decl. ¶ 104; Press Release, *Leap Wireless International, Inc. and MetroPCS Communications, Inc. Enter into National Roaming Agreement and Spectrum Exchange Agreement and Settle Litigation* (Sept. 29, 2008), http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle&ID=1203113&highlight=; *see* MetroPCS Coverage Map, http://www.metropcs.com/coverage; Metro USA FAQs, http://www.metropcs.com/plans/metrousa/faq.aspx; MetroPCS Rate Plans, http://www.metropcs.com/plans/default.aspx?tab=family.

[121] Final Transcript, *PCS—MetroPCS Communications, Inc. at Raymond James Institutional Investors Conference*, at 1 (Mar. 7, 2011) (emphasis added). MetroPCS's own facilities cover approximately 100 million people. *See Metro PCS-Transcript Morgan Stanley Conference* at 8.

MetroPCS's success is equally striking when one considers its share of subscribers in the particular local markets it has entered. According to AT&T's estimates, MetroPCS has won approximately a **[Begin Confidential Information]** **[End Confidential Information]** percent share of the Miami market and double-digit shares of such major markets as **[Begin Confidential Information]**

[End Confidential Information]. Christopher Decl. ¶ 61.[122] And it is rapidly expanding into new markets, including New York, Los Angeles, Boston, and Philadelphia. *Id.* ¶¶ 54, 61. AT&T's estimates further indicate that MetroPCS's share exceeds that of T-Mobile USA in many markets, including **[Begin Confidential Information]**

[End Confidential Information]. *Id.* ¶ 61.

[122] The market-share discussion in this section reflect a provider's share of subscribers within the relevant "designated market areas" ("DMAs").

MetroPCS has achieved this success because of, among other considerations, its low prices and formidable local distribution network. *See id.* ¶¶ 13, 61.

Although MetroPCS has traditionally focused on selling inexpensive voice plans to value-oriented customers, it has now aggressively entered the 4G race; indeed, it was the first provider to offer a commercial LTE service. It now offers LTE in at least the following markets: Atlanta, Jacksonville, Miami, Orlando, Boston, Dallas-Fort Worth, Detroit, Las Vegas, Los Angeles, New York City, Philadelphia, Sacramento, and San Francisco. Christopher Decl. ¶ 54. According to MetroPCS CEO Roger Linquist, the company "will finish 'phase one' of its LTE buildout by the first quarter of [2011], and will then cover most all of the carrier's customers with the 4G technology . . . . '[P]hase two' of MetroPCS' LTE buildout will be completed by the end of next year, and will involve putting LTE onto all of the carrier's 11,000 cell sites."[123]

MetroPCS recently rolled out new smartphone plans that provide access to its 4G network, which one analyst has called "the best value for data at the high-end."[124] In CFO Carter's words, "[t]here is a tsunami of Androids coming through[,]" driving Metro's "heavy users to . . . higher ARPU rate plans."[125] He added in early March 2011 that, even though "[t]he Androids have been out a little while longer than two months now, . . . a third of our sales [have been] the Androids handsets" so far this year.[126] CEO Linquist recently reaffirmed his

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123 Mike Dano, *MetroPCS details LTE buildout plans for 2011, open to LightSquared*, FierceWireless (Sept. 22, 2010), http://www.fiercewireless.com/story/metroPCS-details-lte-buildout-plans-2011-open-LightSquared/2010-09-22#ixzz1HungmW5B.

124 Carlton Decl. ¶ 107 (quoting Deutsche Bank Analyst Report, *MetroPCS Comm. Increasing 4Q10 Net Adds on Positive Channel Checks* (Jan. 4, 2011) ("*Deutsche Bank Jan. 4, 2011 Analyst Report*)).

125 *Metro PCS Morgan Stanley Conference Transcript*, at 2.

126 *Id.* at 3.

company's commitment to this smartphone segment, observing that the bar and clam phones are "going the way of the dinosaurs."[127] And because most of MetroPCS's smartphone customers will use spectrally efficient LTE services, the company has the spectrum resources it needs to provide high-quality service to its growing 4G customer base, as MetroPCS told the Commission earlier this year.[128]

Leap, which operates under the brand name "Cricket," markets all-you-can-eat plans to customers in 135 CMAs covering 102 million people, has spectrum in hundreds of additional CMAs, and has announced a variety of potential expansion plans. Carlton Decl. ¶ 108. Like MetroPCS, with which it has a comprehensive long-term roaming agreement, Leap offers nationwide service:

127 Final Transcript, *PCS – MetroPCS Communciations, Inc. at Credit Suisse Group Convergence Conference*, at 2 (Mar. 9, 2011).

128 *See* Letter from Carl Northrop, Counsel to MetroPCS, to Chairman Genachowski, GN Docket No. 09-191, at 6-7 (Feb. 14, 2011).

See Christopher Decl. ¶ 52. Leap has expanded its subscriber base from 1.47 million to 5.5 million in seven years. Christopher Decl. ¶ 62.[129] According to AT&T estimates, Leap has achieved a strong presence in such markets as **[Begin Confidential Information]**

[End Confidential Information]. Carlton Decl. ¶ 108. In **[Begin Confidential Information]**

[End Confidential Information], Leap's shares are estimated to exceed T-Mobile USA's. *See id.*

Leap has traditionally served value-oriented customers and continues targeting its advertising campaigns at consumers seeking lower-priced alternatives to AT&T and Verizon:

Like MetroPCS, Leap has also recently branched out into smartphone services. Leap offers 3G service in all of its markets to approximately 92 million covered POPs, and its MVNO arrangement with Sprint expands 3G coverage to over 280 million POPs.[130] Ten percent of Leap's customer base had already moved to smartphones by year-end 2010. Smartphones—including Android, Windows, and Blackberry devices—now account for 40% of Leap's new

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[129] *See* Leap Wireless International, Inc., Annual Report (2010 10-K), at 48 (Feb. 25, 2011) ("*Leap 2010 10-K*"); Leap Wireless International, Inc., Annual Report (2004 10-K) at 32 (May 16, 2005).

[130] *See* Press Release, *Cricket Announces Launch of Nationwide 3G Data Roaming* (Oct. 19, 2010), http://www.mycricket.com/press/press-release/Cricket-Announces-Launch-of-Nationwide-3G-Data-Roaming.

handset sales.[131] CEO Doug Hutcheson explains: "Our business progress demonstrates how data services are increasingly important to our customers, as evidenced by our customers' significant uptake of smartphones and data-focused, higher-ARPU service plans."[132] He adds: "We have now got the devices, the service plans, and the nationwide 3G coverage our customers want. . . . The result is a significant increase in customer lifetime value which validates that we're making the right investments in the right places."[133] As with its other services, Leap emphasizes value in promoting its products against their more expensive AT&T and Verizon counterparts—advertising, for example, "All the BlackBerry" at "Half the Cost of AT&T and Verizon" with "No Signed Contracts" and "No Fees."[134]

Finally, Leap has begun LTE testing and, in March 2011, accelerated its 4G deployment plans by reaching a major spectrum arrangement with LightSquared to "supplement the LTE coverage that Cricket plans to deploy."[135] Leap currently plans to launch a commercial 4G trial in late 2011.[136]

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131 Mike Dano, *Leap plans Wi-Fi-only ViewSonic Android tablet, more Android smartphones*, Fierce Wireless (Mar. 24, 2011), http://www.fiercewireless.com/ctialive/story/leap-plans-wi-fi-only-viewsonic-android-tablet-more-android-smartphones/2011-03-24.

132 Press Release, *Cricket Enters into 4G Roaming Agreement with LightSquared* (Mar. 22, 2011), http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle&ID=1541451&highlight= ("*Leap-LightSquared Press Release*").

133 LEAP – Q4 2010 Leap Wireless International Earnings Conference Call, at 2 (Feb. 22, 2011).

134 BlackBerry® Curve™ 8530 | Cricket Wireless, http://www.mycricket.com/bundles/curve?CMP=AFC-Google09.

135 *Leap-LightSquared Press Release.*

136 *Leap 2010 10-K*, at 3.

U.S. Cellular. This highly successful provider serves approximately 6.1 million customers in 26 U.S. states.[137] Like the other providers discussed above, it offers nationwide coverage:

According to AT&T's internal estimates, U.S. Cellular has double-digit and sometimes leading shares of many markets in which T-Mobile USA and AT&T also compete, including **[Begin Confidential Information]**

[End Confidential Information]. Christopher Decl. ¶ 65. U.S. Cellular provides a range of 2G and 3G services and offers its customers nationwide 3G data roaming. It also offers a range of state-of-the-art smartphones, including the BlackBerry Bold and a variety of Android phones.[138] In November 2010, U.S. Cellular announced that it

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137 United States Cellular Corporation, Annual Report (2010 10-K), at 1 (Feb. 25, 2011), http://phx.corporate-ir.net/phoenix.zhtml? c=106793&p=irol-sec.

138 U.S. Cellular, *Phones*, http://www.uscellular.com/uscellular/cell-phones/showPhones.jsp.

would launch an LTE test market in late 2011 and was planning for full-scale LTE deployment in 2012.[139]

Strong additional competition is also provided by more regional competitors offering nationwide service plans. These regional competitors include, among many others:

Cellular South serves approximately 880,000 subscribers in at least six states: Mississippi, Alabama, Tennessee, Florida, Louisiana, and Arkansas. Carlton Decl. ¶ 114. In February 2011, it launched a "nationwide talk unlimited plan" for $59.99. CellSouth's website has a page designed specifically to attract customers away from AT&T, advertising: "From coast to coast, we've handpicked the best networks to give you better coverage in far more places than AT&T," and "Our Smartphone Unlimited Plan is a first-of-its-kind value! Get unlimited talk, text, email, and web at a price that saves you over $40/month compared to AT&T or Verizon."[140] And its marketing materials further tout CellSouth's "[n]ationwide [d]ata [c]overage," most of it (the areas colored orange) in 3G:

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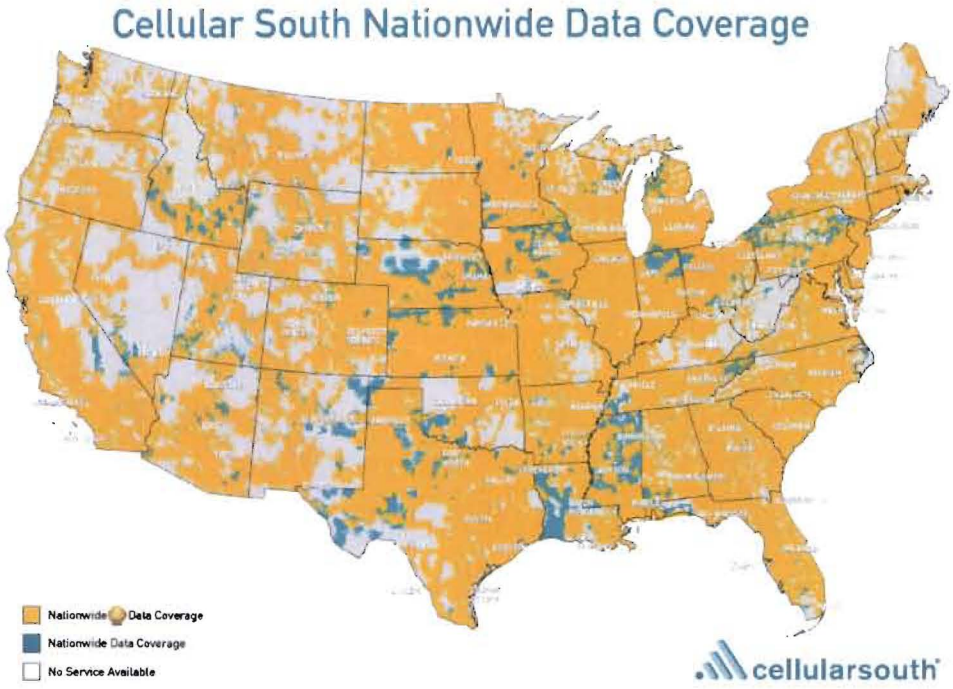
139 Mike Dano, *U.S. Cellular plans LTE test, vendor selection next year*, Fierce Wireless (Nov. 10, 2010), http://www.fiercewireless.com/story/us-cellular-plans-lte-test-vendor-selection-next-year/2010-11-10.

140 *Why Cellular South*, http://www.cellularsouth.com/DiscoverCenter/why-cs/att.jsp.



Similarly, ***Allied Wireless***—a successor to Alltel—serves more than 800,000 subscribers in Georgia, North Carolina, South Carolina, Illinois, Ohio, and Idaho.[141] ***Cincinnati Bell***, a significant competitor in southwestern Ohio, has an estimated market share **[Begin Confidential Information]** **[End Confidential Information]**. Christopher Decl. ¶ 67. ***Cox Communications*** is aggressively promoting its "Unbelievably Fair" (SM) wireless plans to its existing cable TV subscribers in a growing number of markets, including parts of California, Virginia, Oklahoma, and Nebraska. Cox will soon expand into Cleveland and parts of New England and "plans to launch wireless service across 50 percent of its cable footprint by year-end."[142] Although Cox launched in

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141 Allied Wireless Communications Corp., *About Us, Company Overview*, http://www.awcc.com/index.php?id=2.

142 Phil Goldstein, *Cox to expand wireless to 50% of footprint by year-end*, FierceWireless (Mar. 29, 2011), http://www.fiercewireless.com/story/cox-expand-wireless-50-footprint-year-end/2011-03-29.

existing markets through the use of Sprint's spectrum, it is also conducting trials of 4G LTE technology on its own AWS and 700 MHz spectrum, for which it spent more than half a billion dollars at auction.[143]

Finally, in addition to these retail competitors, additional providers are using strong spectrum positions to deploy 4G technology and offer nationwide wholesale capacity to existing competitors and new entrants. These include:

Clearwire, owned by a consortium of Sprint, Comcast, Time Warner Cable, Intel, Google, and Bright House Networks, is the nation's largest holder of spectrum. Using spectrum in the 2.5-2.6 GHz bands, Clearwire is both a retailer of 4G data services (under the "Clear" brand), with more than a million retail customers, and a supplier of wholesale inputs to 4G WiMAX retail providers such as Sprint, Time Warner Cable, and Comcast.[144] It also recently struck a wholesale wireless deal with Best Buy, under which the retailer will use Clearwire's spectrum to market 4G services ("Best Buy Connect") for $45 per month to customers at Best

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143 *See id.*; Press Release, *Cox Successfully Demonstrates the Delivery of Voice Calling, High Definition Video Via 4G Wireless Technology* (Jan. 25, 2010), http://cox.mediaroom.com/index.php?s=43&item=469.

144 For example, Time Warner resells Clearwire's 4G service in several markets, including New York City. Michelle Maisto, *Sprint, Clearwire, Time Warner to Bring WiMax 4G to NYC*, eWeek.com (Oct. 18, 2010), http://www.eweek.com/c/a/Mobile-and-Wireless/Sprint-Clearwire-Time-Warner-to-Bring-WiMax-4G-to-NYC-869670. Comcast resells Clearwire's 4G service in numerous cities. Press Release, *Comcast Begins National Rollout of High-Speed Wireless Data Service* (June 29, 2009) ("Comcast's 4G service will be provided via the Clearwire network, and its 3G service will be provided by Sprint's nationwide 3G network."), http://www.comcast.com/About/PressRelease/ PressReleaseDetail.ashx?PRID=887; Devin Coldewey, *Comcast to piggyback on Clearwire and Sprint networks and offer mobile broadband*, CrunchGear (June 29, 2009), http://www.crunchgear.com/2009/06/29/comcast-to-piggyback-on-clearwire-and-sprint-networks-and-offer-mobile-broadband.

Buy's retail outlets nationwide,[145] and a new wholesale agreement with Sprint that, according to Clearwire's CEO, "provides us with the capital to operate efficiently over the next couple of years" and "to plan for our expansion."[146] Clearwire is also conducting LTE trials, and CTO John Saw reports that those trials are producing "mind blowing" results, including "60-90 Mbps of user data rate while you're driving [at] fifty miles an hour."[147]

LightSquared—the successor to SkyTerra—will begin deploying a nationwide 4G LTE network in the second half of 2011 (upon resolution of GPS interference issues) and "could vigorously compete with AT&T and Verizon in the market for 4G LTE service."[148] It expects to reach 100 million people by year-end 2012, 145 million by year-end 2013, and 260 million by year-end 2015.[149] LightSquared has both strong financial backing from Harbinger Capital Partners and, in its words, "owns valuable high quality spectrum assets, including 59 MHz of nationwide ubiquitous spectrum in an advantageous frequency position."[150] As discussed, LightSquared has entered into a long-term 4G roaming agreement with Leap. It also recently announced an agreement to lease spectrum to Open Range, a wireless broadband provider in

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145 Phil Goldstein, *Best Buy kickstarts Clearwire MVNO service for $45 per month*, FierceWireless (Mar. 29, 2011), http://www.fiercewireless.com/story/best-buy-kickstarts-clearwire-mvno-service-45-month/2011-03-29.

146 *See* Roger Cheng, *Sprint to Pump $1 Billion Into Clearwire*, Wall St. J. (Apr. 19, 2011) (quoting interim CEO John Stanton).

147 Karl Bode, *Clearwire: LTE Trial Results "Mind Blowing,"* DSL Reports (Mar. 23, 2011), http://www.dslreports.com/shownews/Clearwire-LTE-Trial-Results-Mind-Blowing-113342.

148 Paul Kapustka, *LightSquared Poised to Build Nationwide 4G Network*, PCWorld (Apr. 14, 2011), http://www.pcworld.com/article/225282/lightsquared_poised_to_build_nationwide_4g_network.html.

149 LightSquared, *Nationwide LTE Broadband Network*, http://www.lightsquared.com/what-we-do/network/.

150 Our Investors – LightSquared, http://www.lightsquared.com/about-us/our-investor/.

rural communities.[151] And like Clearwire, it also has entered into a wholesale agreement with Best Buy. CEO Sanjiv Ahuja recently disclosed that the company is negotiating spectrum contracts with 15 additional companies.[152]

The arrangements that spectrum wholesalers (such as Clearwire and LightSquared) have struck with retailers (like Best Buy) and cable companies (like Comcast and Time Warner Cable) illustrate the growing competitive role of MVNOs in the mobile marketplace. *See generally* Carlton Decl. ¶¶ 117-119. In the U.S., an increasing number of non-facilities-based MVNOs offer service to tens of millions of subscribers.[153] While MVNOs generally compete directly with facilities-based providers on price and differentiate themselves through branding, recent market developments make them much more significant as competitive threats.[154] Globally, moreover, MVNOs are already recognized as competitors to facilities-based providers. For example, in its recent T-Mobile/Orange decision, the European Commission took MVNOs into account when analyzing the state of competition in the mobile communications market.[155] Under the circumstances, the FCC, too, should account for MVNOs within its competitive analysis.

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151 Press Release, *LightSquared and Open Range Partner to Expand Deployment of Nation's First 4G LTE Wireless Broadband and Satellite Network to Rural American Communities* (Mar. 11, 2011), http://www.lightsquared.com/press-room/press-releases/lightsquared-and-open-range-2/.

152 Phil Goldstein, *LightSquared CEO: We're in contract negotiations with 15 companies*, FierceWireless (Mar. 28, 2011), http://www.fiercewireless.com/story/lightsquared-ceo-were-contracts-talks-15-companies/2011-03-28.

153 Letter from Christopher Guttman-McCabe, Vice President of Regulatory Affairs, CTIA – The Wireless Association, to Marlene Dortch, Secretary, FCC, WT Docket No. 09-66, GN Docket No. 09-157, GN Docket No. 09-51, at 2 (April 29, 2010).

154 *See id.*

155 *Case No. COMP/M.5650 – T-Mobile/Orange*, EUR-Lex 32010M5650, at 9 (Mar. 1, 2010), http://ec.europa.eu/competition/mergers/cases/decisions/M5650_20100301_20212_247214_EN.pdf.

3. The Transaction Will Not Harm Competition.

The Commission analyzes horizontal mergers to determine whether they will create one of two types of anticompetitive harm—either "coordinated interaction" or "unilateral effects."[156] This transaction presents neither concern.

a) The transaction poses no prospect of anticompetitive coordination.

This merger presents no plausible basis for concern about anticompetitive coordination. Such concerns typically arise in markets with commodity products, limited (and highly transparent) dimensions of competition, limited growth, and few or no "disruptive" players. *See* Carlton Decl. ¶¶ 146-148.[157] As Professor Carlton discusses in his attached declaration, wireless markets have none of those features.

First, wireless markets are characterized by many heterogeneous firms with many different service plans and diverse market positions. These providers compete on multiple dimensions: not only on absolute price levels, but also on highly variable price structures (larger vs. smaller buckets, wireless-to-wireless minutes free, etc.), service quality (speed, reliability, network coverage, etc.), operating systems, and devices. *See* Carlton Decl. ¶¶ 149-152. Indeed, as the popularity of the iPhone and Android platforms reveals, wireless providers now compete on innovation as well. *See* Donovan Decl. ¶¶ 4, 14. By itself, the complexity and non-

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156 "Unilateral effects are those that result when a merged firm finds it profitable to alter its behavior by increasing prices or reducing output," whereas "[c]oordinated 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." *Verizon/ALLTEL Order*, 23 FCC Rcd at 17484 ¶ 82 nn.298, 299.

157 *See also Sprint/Nextel Order*, 20 FCC Rcd at 13995 ¶ 70 (factors include "the number of firms, transparency of information, firm and product homogeneity, and the presence of mavericks"); *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21580-86 ¶¶ 150-164.

transparency of this competitive landscape would present formidable obstacles to any effective coordination effort. *See* Carlton Decl. ¶¶ 149-152.

Second, wireless markets are characterized by both strong demand and rapid technological flux. Those conditions would make coordination among firms formidably difficult, given that every provider has strong individual incentives to be an early provider of new services and to serve rapidly growing demand. *See* Carlton Decl. ¶ 151.

Third, wireless markets are highly prone to disruption by mavericks. For example, upstarts such as MetroPCS and Leap have succeeded—as shown by their dramatic subscriber growth—because they have effectively distinguished themselves from Verizon, AT&T, and others on (for example) the basis of price. And Sprint can claim to have added nearly two million net subscribers in 2010 because it effectively marketed its value propositions plus its groundbreaking first-in-time 4G service and devices. Such widespread differentiation among providers and services would further impede any coordination effort. *See* Carlton Decl. ¶¶ 148-152.

Finally, even by itself, the geographically local nature of wireless markets would also preclude any coordination arrangement. Local markets vary tremendously in the number and identity of competitors, as discussed above. Major providers would find it difficult, if not impossible, to "coordinate" their competitive activities without triggering disruptive responses from various upstarts in local markets. *See* Carlton Decl. ¶ 152.

b) *The transaction poses no prospect of anticompetitive unilateral effects.*

There is also no basis for concern that the transaction will present unilateral anticompetitive effects—*i.e.*, "increas[ed] prices or reduc[ed] output" as compared to the