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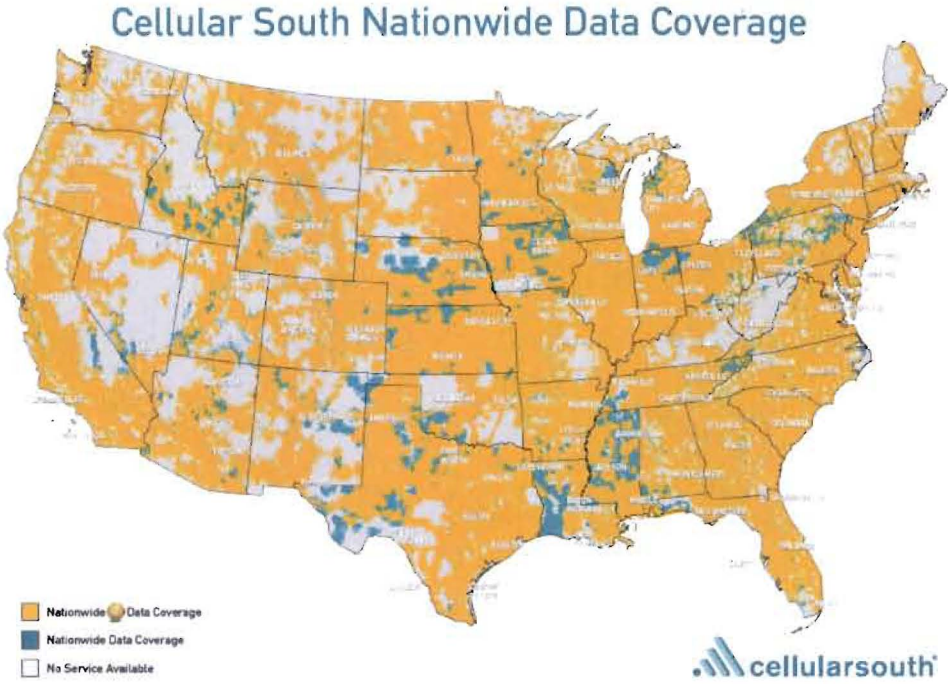
139 Mike Dano, *U.S. Cellular plans LTE test, vendor selection next year*, Fierce Wireless (Nov. 10, 2010), http://www.fiercewireless.com/story/us-cellular-plans-lte-test-vendor-selection-next-year/2010-11-10.

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

marketplace in the absence of the transactions.[158] Such concerns are most substantial when (1) the pre-merger companies are not capacity constrained and thus, in the absence of the merger, would find it profitable to add more customers at existing price levels, and (2) the merging brands are close substitutes and exert strong mutual competitive pressure. Carlton Decl. ¶¶ 137-140. Neither condition is present here, and typical "unilateral effects" concerns are thus inapplicable. *Id.*

First, the transaction will produce *greater* output and *lower* prices than would exist in the absence of the transaction precisely because it will enable these two companies to meet otherwise intractable capacity constraints. Carlton Decl. ¶ 133. Firms like AT&T that are operating at or near capacity have little or no incentive to cut prices in order to attract new subscribers. Instead, even in highly competitive markets, such firms have the incentive to ration available capacity through a variety of means, including the use of usage-sensitive pricing to discourage high customer demand for available capacity. *See* Christopher Decl. ¶ 4. For example, AT&T instituted tiered pricing for its smartphone services in 2010 to help promote that capacity-conserving objective. *Id.* Alternatively, a provider facing severe capacity constraints could throttle back on high usage or simply allow its network to become increasingly congested.[159] In practical effect, either outcome would raise the quality-adjusted price of service.

In these circumstances, the capacity increases created by this highly synergistic transaction can only benefit consumers. As Professor Carlton explains, those increases "will lower the cost of serving additional subscribers and thus create incentives to expand output and

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158 *Verizon/ALLTEL Order*, 23 FCC Rcd at 17484 ¶ 82 n.298.

159 *See generally* Brennon Slattery, *T-Mobile Unlimited Data Plan Includes Throttling*, PC World (Apr. 13, 2011), http://www.pcworld.com/article/225012/tmobile_unlimited_data_plan_includes_ throttling.html.

lower prices relative to the levels expected in the absence of the transaction." Carlton Decl. ¶ 134. This is "especially" true "in light of the large projected increases in demand for data services[.]" *Id.*[160] And the transaction will benefit consumers by creating incentives for greater innovation, greater output, and lower prices than would occur in the absence of this transaction. *See* Christopher Decl. ¶¶ 79-80; Carlton Decl. ¶ 134. In particular, it will "enable AT&T to bring to market a broader range of products and services in a more timely, efficient, and competitive manner," thereby "challeng[ing AT&T's] competitors to compete on the quality and pricing of their service offerings" as well. Christopher Decl. ¶ 80.

In any event, even apart from these considerations, the transaction presents few concerns about unilateral anticompetitive effects because, as discussed, T-Mobile USA does not exert strong competitive pressure on AT&T and the two brands serve substantially different groups of subscribers. Christopher Decl. ¶ 27; Carlton Decl. ¶ 149. Verizon is AT&T's "next closest" competitor, followed by Sprint, while MetroPCS, Leap, and other regional providers are increasing competitive threats. While AT&T tracks T-Mobile USA's activities (along with those of other providers), it does not view T-Mobile USA as a close competitor, let alone as a major competitive threat. Christopher Decl. ¶ 27. Indeed, **[Begin Confidential Information]**

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[160] As Professor Carlton further explains (Decl. at ¶¶ 141-143), the "upward pricing pressure" ("UPP") analysis reflected in the new DoJ/FTC Horizontal Merger Guidelines is designed for markets where firms do not confront long-term capacity constraints that deprive them of normal incentives to win more customers by lowering prices. That analysis is thus an inappropriate means of evaluating the proposed merger, given the severe capacity constraints facing AT&T and T-Mobile USA and the ability of the two companies to increase their capacity and output through merger synergies." *See also* Jonathan B. Baker, *Merger Simulation in an Administrative Context*, at 5 n.8 (Feb. 22, 2011) ("In practice, unilateral effects most commonly arise from mergers among firms that sell differentiated products without binding capacity constraints."), http://ssrn.com/abstract=1790943.

[End Confidential Information]. Christopher Decl. ¶ 23.

The two companies are positioned very differently in the marketplace. For example, T-Mobile USA focuses on a **[Begin Confidential Information]**

[End Confidential Information] than AT&T. Carlton Decl. ¶ 89 & Table 2, ¶ 125. In a recent survey, T-Mobile USA subscribers were substantially **[Begin Confidential Information]**

[End Confidential Information].[161] Data usage also accounts for a far lower percentage of T-Mobile USA's revenues than AT&T's, and T-Mobile USA has a far higher share of non-contract subscribers. *See* Carlton Decl. ¶ 89 & Table 2, ¶ 125.

MetroPCS, Leap, and other value providers increasingly target the same value-conscious consumers as T-Mobile USA. Christopher Decl. ¶ 46; Carlton Decl. ¶ 89 & Table 2. And they are doing so more successfully because they tend to offer lower prices than T-Mobile USA for value-oriented services. Christopher Decl. ¶ 46. For example, as MetroPCS told the Commission earlier this year, "MetroPCS' most expensive all-inclusive plan . . . is priced well below the unlimited voice and data offerings of all of MetroPCS' major competitors," and it cited T-Mobile USA's comparable plan in particular as one of the "substantially more expensive" alternatives.[162]

In short, MetroPCS, Leap, and others can fill any gap T-Mobile USA might leave in the competition for value-conscious consumers when the transaction is completed. Indeed, as

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161 *See* Nielsen, *Q4 2010 Q4 Mobile Insights: National Report*, at 68-69.

162 *MetroPCS Feb. 14, 2011 Letter* at 12 and n.42.

discussed above, MetroPCS and Leap have *already* overtaken T-Mobile USA in a growing number of markets. This trend is likely to continue. "[A] significant driver of . . . new customers [for MetroPCS] is an influx of former contract customers . . . . '[T]hese consumers, who are typically no longer on contract, are porting their numbers to [MetroPCS] once they recognize the value proposition offered by unlimited month-to-month usage and near-nationwide coverage for an all-in flat rate. . . . . [One-third] of its gross adds were former post paid subs, and . . . this share could increase as [MetroPCS] rolls out new attractive handsets.'"[163]

The threat of new entry further minimizes any concern about unilateral effects. For example, LightSquared's recent wholesale deal with Best Buy shows the potential for new retail competition, and LightSquared has sufficient spectrum to wholesale to additional providers such as Wal-Mart or Amazon.[164] Similarly, cable companies such as Cox and Time Warner Cable both have spectrum in their own right and have entered arrangements with wholesalers such as Clearwire.[165] The cable companies, which can easily exploit their longstanding access to millions of cable television subscribers, could also expand their offerings to respond to any opportunity in a market segment now served by T-Mobile USA. *See* Carlton Decl. ¶ 120.

More generally, this transaction will not eliminate a major competitive force from the marketplace. T-Mobile USA is now "struggling for relevance" in this increasingly competitive

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[163] Carlton Decl. ¶ 110 (quoting *Deutsche Bank Jan. 4, 2011 Analyst Report* at 4).

[164] *See* David Goldman, *LightSquared's big gamble: A brand-new wireless network*, CNNMoney.com (July 21, 2010), http://money.cnn.com/2010/07/21/technology/ LightSquared_wireless_network/ index.htm.

[165] SpectrumCo, a consortium of investors including Comcast and Time Warner Cable (but no longer Cox), holds AWS licenses for 20 MHz of spectrum covering over 80% of the continental U.S. and Hawaii. *See, e.g.,* Time Warner Cable, Inc., Annual Report (2010 10-K) at 15 (Feb. 18, 2011). That spectrum is also a key source of potential new wireless entry. *See* Carlton Decl. ¶ 120.

market.[166] In particular, its "pricing strategy is exposed at the low-end to challengers, such as Leap and Metro, while high ARPU [subscribers] are targeted by AT&T and Verizon's higher quality positioning."[167] While Sprint has turned itself around within the past two years, and while industry upstarts MetroPCS and Leap have grown with astonishing rapidity, T-Mobile USA's percentage of subscribers nationwide has declined since 2009:

[Begin Confidential Information]

[End Confidential Information]

Carlton Decl. ¶ 126. T-Mobile USA had its worst decline ever in the fourth quarter of 2010, when it suffered a net loss of 23,000 total customers and a net loss of 318,000 contract customers.[168] "T-Mobile USA's high total churn, 3.4% at the end of Q3 2010[,] is significantly

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166 Carlton Decl. ¶ 130 (quoting *J.P. Morgan Jan. 2011 Analysis*, at 18).

167 Carlton Decl. ¶ 130 (quoting Morgan Stanley, *Deutsche Telekom, US Options—No Easy Way Out*, at 3 (Jan. 10, 2011)).

168 Peter Pachal, *Why Is T-Mobile Losing Customers?*, PCMag.com (Feb 25, 2011), http://www.pcmag.com/article2/0,2817,2380949,00.asp.

higher when compared to national carriers such as Verizon Wireless and AT&T. This can be attributed to its customer base, which is more value oriented and now overwhelmingly skewed towards prepaid for net additions."[169] As DT's Thorsten Langheim notes, T-Mobile USA is "struggling to remain a strong competitor in the wireless marketplace." Langheim Decl. ¶ 11.

As an independent company, T-Mobile USA would also have decreasing significance in the higher end of the market because T-Mobile USA has no clear path to deploy LTE. *See* Section I.A, *supra.* And any potential LTE product T-Mobile USA could potentially deploy would be subject to substantial spectrum limitations and capital-financing challenges. *See id.* As discussed, DT has turned increasing attention to its European operations at the expense of its American subsidiary and, in January 2011, announced that T-Mobile USA can no longer rely on its parent for investment support and must instead "fund its future itself."[170]

This transaction also will not harm competition for business customers because AT&T and T-Mobile USA are not frequent or close competitors in that space. *See* Christopher Decl. ¶¶ 25-26. AT&T offers a sophisticated suite of wireless business applications and services, and it focuses on offering an integrated value proposition that includes wireline services like VPN as well as wireless. Verizon and Sprint are AT&T's primary competitors for those opportunities. In contrast, T-Mobile USA has a more limited offering, since it sells more basic wireless services and has no wireline operations. In short, T-Mobile USA is not a significant player in this customer segment, and where it does appear, there are other, stronger competitors involved as well.

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[169] Carlton Decl. ¶ 122 n.181 (quoting Current Analysis, *Company Assessment: T-Mobile USA*, at 5 (Jan. 18, 2011)).

[170] Jan. 20, 2011 DT Analyst Briefing (Deutsche Telekom CEO Rene Obermann).

For all of these reasons, while consumers will benefit tremendously from the integration of these two companies' networks, the elimination of T-Mobile USA as a standalone provider will not substantially reduce competition in any relevant market.

Finally, an international perspective is instructive. The U.S. marketplace is substantially less concentrated than its foreign counterparts, which themselves remain competitive, and it also differs from them in its "large number of regional and local mobile operators" offering nationwide service.[171] As the Commission has observed, "each market [in Western Europe and Japan] tends to be dominated by the top two competitors, which have a combined market share ranging from approximately 70-72 percent in Germany and Italy to approximately 77-78 percent in France, Finland, and Japan."[172] As foreign regulators have recognized, consumers benefit when providers have the scope and scale they need to provide high-quality, cutting-edge services despite escalating wireless broadband usage. This Commission should not hobble the U.S. broadband marketplace with artificial constraints on these operating efficiencies.

RELATED GOVERNMENTAL FILINGS

The Department of Justice will conduct its own review of the competitive aspects of this transaction pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976[173] and the rules promulgated thereunder. The Applicants have submitted a notification form and an associated documentary appendix to the Department and the Federal Trade Commission, and they fully expect that this review will confirm that the transaction does not raise any competitive issues.

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171 *Fourteenth Wireless Report*, 25 FCC Rcd at 11621 ¶ 365 n.981.

172 *Id.* at 11622 ¶ 367; *see id.* at 11621 ¶ 365.

173 15 U.S.C. § 18a.

MISCELLANEOUS REGULATORY ISSUES

In addition to seeking the Commission's approval of the assignments and transfer of control of the authorizations and spectrum leases covered in these applications, the applicants also request approval for the additional authorizations described below.

A. After-Acquired Authorizations

The list of call signs and file numbers included in each application is intended to include all of the licenses, authorizations, and spectrum leases held by the respective licensees or lessees that are subject to the transaction. However, T-Mobile USA licensees or lessees may now have on file, and may hereafter file, additional requests for authorizations for new or modified facilities that may be granted, or it may enter into new spectrum leases before the Commission takes action on these Applications. Accordingly, the applicants request that any Commission approval of the applications filed for this transaction include authority for AT&T to acquire control of: (1) any authorization issued to T-Mobile USA or its subsidiaries while this transaction is pending before the Commission and the period required for consummation of the transaction;[174] (2) any construction permits held by T-Mobile USA or its subsidiaries that mature into licenses after closing; (3) any applications or lease notifications that are pending at the time of consummation; and (4) any leases of spectrum into which T-Mobile USA or its subsidiaries enter as lessees while this transaction is pending before the Commission and the period required

[174] In particular, the applicants request that any Commission approval of the applications include authority for AT&T to acquire control of spectrum acquired by T-Mobile USA from Sprint in a recent transaction. The Commission consented to T-Mobile USA's acquisition of a partitioned/disaggregated portion of Sprint call sign KNLF215, and the parties consummated the transaction, but inadvertently failed to file a notice of consummation. The relevant application, ULS File No. 0004141100, is currently in a dismissal status, and T-Mobile USA and Sprint have pending before the Commission a petition for reinstatement of this and a related application assigning spectrum to Sprint.

for consummation of the transaction. Such action would be consistent with prior decisions of the Commission.[175] Moreover, because AT&T is acquiring T-Mobile USA and all of its FCC authorizations, AT&T requests that Commission approval include any authorizations that may have been inadvertently omitted.

B. Trafficking

To the extent any authorizations for unconstructed systems are covered by this transaction, these authorizations are merely incidental, with no separate payment being made for any individual authorization or facility. Accordingly, there is no reason to review the transaction from a trafficking perspective.[176]

C. Blanket Exemption to Cut-Off Rules

Pursuant to Sections 1.927(h), 1.929(a)(2), and 1.933(b) of the Commission's Rules,[177] to the extent necessary,[178] the applicants request a blanket exemption from any applicable cut-off

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175 *See, e.g.*, *AT&T/Verizon Order*, 25 FCC Rcd at 8773 ¶ 165; *AT&T/Centennial Order*, 24 FCC Rcd at 13981 ¶ 170; Memorandum Opinion and Order, *SBC Communic'ns Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18392 ¶ 212 (2005); *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21626 ¶ 275; Memorandum Opinion and Order, *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from S. New Eng. Telecoms. Corp. to SBC Commc'ns, Inc.*, 13 FCC Rcd 21292, 21317 ¶ 49 (1998); Memorandum Opinion and Order, *Applications of NYNEX Corp. and Bell Atl. Corp.*, 12 FCC Rcd 19985, 20097-98 ¶¶ 246-56 (1997) ("*NYNEX/Bell Atlantic Order*"); Memorandum Opinion and Order, *Applications of Pac. Telesis Group and SBC Commc'ns, Inc.*, 12 FCC Rcd 2624, 2665 ¶ 93 (1997); Memorandum Opinion and Order, *Applications of Craig O. McCaw and Am. Tel. & Tel. Co.*, 9 FCC Rcd 5836, 5909 ¶ 137 n.300 (1994) ("*McCaw/AT&T Order*"), *aff'd sub nom. SBC Commc'ns Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995), *recons. in part*, 10 FCC Rcd 11786 (1995).

176 *See* 47 C.F.R. § 1.948(i) (noting that the Commission *may* request additional information regarding trafficking if it appears that a transaction involves unconstructed authorizations that were obtained for the principal purpose of speculation); *id.* § 101.55(c)-(d) (permitting transfers of unconstructed microwave facilities that are "incidental to a sale of other facilities or merger of interests").

177 47 C.F.R. §§ 1.927(h), 1.929(a)(2), 1.933(b).

rules in cases where the licensees in this transaction file amendments to pending applications in order to reflect consummation of the proposed transaction. This exemption is requested to prevent amendments to pending applications that report the change in ultimate ownership of the licenses involved in these applications from being treated as major amendments. The nature of the proposed transaction demonstrates that the ownership changes would not be made for the acquisition of any particular pending application, but as part of a larger transaction undertaken for an independent and legitimate business purpose. Grant of this request would be consistent with prior Commission decisions that have routinely granted a blanket exemption in cases involving multiple-license transactions, such as this one.[179]

D. Unjust Enrichment

No unjust enrichment concerns are implicated by this transaction. Although the applicants are filing a Form 603 to transfer control of T-Mobile USA's interest in a designated entity, Cook Inlet/VS GSM VII PCS, LLC ("Cook Inlet VII"), that interest already is held by a

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[178] With respect to cut-off rules under Sections 1.927(h) and 1.929(a)(2), the Commission previously has found that the public notice announcing the transaction will provide adequate notice to the public with respect to the licenses involved, including for any license modifications pending. In such cases, it determined that a blanket exemption of the cut-off rules was unnecessary. *See* Memorandum Opinion and Order, *Applications of Ameritech Corp. and GTE Consumer Services Inc. for Consent to Transfer Control of Licenses and Authorizations*, 15 FCC Rcd 6667, 6668 ¶ 2 n.6 (1999); Memorandum Opinion and Order, *Applications of Comcast Cellular Holdings, Co. and SBC Communic'ns Inc.*, 14 FCC Rcd 10604, 10605, ¶ 2 n.3 (1999).

[179] *See, e.g.*, Memorandum Opinion and Order, *Applications of PacifiCorp Holdings, Inc., and Century Tel. Enters., Inc. for Consent to Transfer Control of Pac. Telecom, Inc., a Subsidiary of PacifiCorp Holdings, Inc.*, 13 FCC Rcd 8891, 8915-16, ¶ 47 (1997); *NYNEX/Bell Atlantic Order* , 12 FCC Rcd at 20091-92 ¶ 234; *McCaw/AT&T Order*, 9 FCC Rcd at ¶ 137 n.300.

non-designated entity—T-Mobile USA.[180] The applicants are filing the Stock Purchase Agreement and related materials.

Several of T-Mobile USA's authorizations originally were subject to the Commission's installment payment plan. For all of these authorizations, however, the installment payment obligations have been paid in full.[181]

E. Environmental Impact

As required by Section 1.923(e) of the Commission's rules,[182] the applicants state that the transfer of control of licenses and leases involved in this transaction will not have a significant environmental effect, as defined by Section 1.1307 of the Commission's rules.[183] A transfer of control of licenses and leases does not involve any engineering changes and, therefore, cannot have a significant environmental impact.

CONCLUSION

AT&T's acquisition of T-Mobile USA from DT will serve the public interest. The Commission should expeditiously grant the applications to transfer control of T-Mobile USA's FCC authorizations to AT&T.

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[180] T-Mobile USA's interest in Cook Inlet VII is non-controlling by definition. Otherwise, Cook Inlet VII would not have qualified to bid on and hold its licenses as a designated entity. *See* 47 C.F.R. § 1.2110; Fifth Report and Order, *Amendment of Part 1 of the Comm'n's Rules – Competitive Bidding Procedures*, 15 FCC Rcd 15293, 15323-28 ¶¶ 58-69 (2000) ("We will adopt as our general attribution rule a 'controlling interest' standard for determining which applicants qualify as small businesses.") (subsequent history omitted).

[181] *See* ULS File Nos. 0004669383, 0004673673, 0004673727, 0004673730, and 0004673732. The application to transfer control of licenses held by Iowa Wireless Services Holding Corporation also involves spectrum originally subject to the Commission's installment payment program. This application is being filed manually and as such a file number has not yet been assigned.

[182] 47 C.F.R. § 1.923(e).

[183] *Id.* § 1.1307.

REDACTED -- FOR PUBLIC INSPECTION

DECLARATION OF DAVID CHRISTOPHER

I, David A. Christopher, hereby declare the following:

I. Introduction

1. My name is David A. Christopher. I am the Chief Marketing Officer of AT&T's Mobility and Consumer Markets business for AT&T Mobility Services LLC. I am responsible for AT&T's national portfolio of consumer communications and entertainment products and services. In this capacity, I oversee overall wireless product planning, and marketing operations, including advertising, product and service offerings, pricing and rate plans, and promotions. I am familiar with our wireless competitors, our competitors' initiatives, and industry developments in the marketplace that are important to AT&T's advertising, product and service offerings, and pricing decisions and strategies.

2. The purpose of my declaration is three-fold. First, I will describe the fiercely competitive U.S. wireless marketplace today and the ways in which the U.S. wireless marketplace is evolving and will remain extremely competitive in the future. Second, I will describe from AT&T's perspective T-Mobile USA's role in the wireless marketplace today and in the future. Finally, I will describe how network capacity is critical to new products and services and how AT&T's acquisition of T-Mobile USA will foster innovation by providing AT&T with essential spectrum and thereby create a more competitive environment.

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II. Executive Summary

3. The wireless marketplace in the U.S. is highly competitive. As I will describe in detail below, it comprises (a) traditional providers like AT&T Mobility Services, LLC ("AT&T"), Cellco Partnership (Verizon Wireless) ("Verizon"), Sprint Nextel Corporation ("Sprint"), and T-Mobile USA, Inc. ("T-Mobile USA"); (b) rapidly growing, low-cost, no-contract "all-you-can-eat" ("AYCE") carriers like MetroPCS Communications Inc. ("MetroPCS") and Leap Wireless International, Inc. ("Leap"); (c) regional and local carriers like United States Cellular Corporation ("U.S. Cellular"), Cellular South, and Cincinnati Bell Wireless ("Cincinnati Bell"); (d) wholesale providers like Clearwire Corporation ("Clearwire") and LightSquared; and (e) new entrants with an embedded customer base like Cox Communications ("Cox"). All of these providers are competing for the wireless consumer's share of mind and wallet by trying to differentiate themselves primarily based on network evolution and performance, price, and availability of innovative products and services.

4. The explosive growth in wireless products and services, and wireless broadband in particular, is largely the result of innovation in the speed and capabilities of wireless networks. Wireless network evolution, in turn, supported the creation of new devices that are orders of magnitude more powerful than even five years ago along with robust new operating systems and applications to run on those devices.[1] However, as wireless consumers' insatiable demand for these devices, services, and applications has increased, the wireless industry (and AT&T in

[1] Smartphones can generate up to 24 times the traffic as a basic-feature phone. *See Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2010-2015*, at 7 (Feb. 1, 2011), http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ ns827/white_paper_c11-520862.pdf.

particular) is facing a shortage in spectrum necessary to address this explosive growth.[2] As I will discuss in more detail below, our forecasts of expected consumer demand and expected spectrum capacity constraints have affected our competitive decisions, including the plans we offer, the prices we charge, and the advanced features we make available on our devices. **[Begin Confidential Information]**

[End Confidential Information].[3] The proposed acquisition of T-Mobile USA will increase AT&T's ability to improve its network quality, to offer a broader range of innovative services and device features, and to aggressively compete with Verizon, Sprint, other carriers, and the highly disruptive "all you can eat" carriers and new entrants. The net result will be improved service quality, more innovation, and increased competition, all of which will benefit wireless consumers.

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[2] Remarks of FCC Chairman Julius Genachowski, The White House, at 2 (Apr. 6, 2011) ("Demand for spectrum is rapidly outstripping supply. . . . We need to tackle the looming spectrum crunch by dramatically increasing the new spectrum available for mobile broadband, and the efficiency of its use."), http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0406/DOC-305593A1.pdf.

[3] *See* Mike Dano, *New Sprint Ad Campaign Hinges on Unlimited Data*, FierceWireless (Apr. 11, 2011), http://www.fiercewireless.com/story/new-sprint-ad-campaign-hinges-unlimited-data/2011-04-11; David Goldman & Laurie Segall, *Verizon iPhone Draws Small Crowds*, CNNMoney.com (Feb. 10, 2011) ("But Verizon has a few competitive tricks up its sleeve. It's going after AT&T's customers by offering unlimited data plans for the iPhone for a limited time."), http://money.cnn.com/2011/02/10/technology/verizon_iphone; Roger Cheng, *Verizon iPhone: $30 Unlimited Data (for Now)*, WSJ Blog (Jan. 25, 2011) (regarding Verizon's $30 unlimited data plan for iPhone buyers, Verizon's COO Lowell McAdam, stated, "I'm not going to shoot myself in the foot," and that "not offering an unlimited plan would put up a barrier for customers who might otherwise switch from AT&T."), http://blogs.wsj.com/digits/2011/01/25/verizon-iphone-30-unlimited-data.

III. The U.S. Wireless Market Is Fiercely Competitive

5. The wireless marketplace today is one of the most intensely competitive of any industry in the U.S. In a wireless marketplace in which wireless subscription penetration surpassed ninety-five percent (95%) in 2010, there are a limited number of new subscribers.[4] As a result, wireless providers compete not only to retain their existing customer base, but also to attract new customers from each other—consumers we call "switchers." Wireless consumers do not hesitate to switch their service—in fact, approximately twenty-five percent (25%) of U.S. customers switch to different wireless service providers each year.[5] Indeed, it is estimated that, industry-wide, over ninety percent (90%) of new postpaid customers result from switching from one carrier to another.[6]

6. At the same time, the wireless marketplace is served by a wide variety of competitors, each of which is vying for a larger piece of the market by differentiating itself from its competitors by focusing to varying degrees on three key components—network quality, price, and new and innovative product and service offerings. The stakes are enormous for the decisions AT&T and its competitors make every day. Success depends on making the right choices in advertising and marketing strategy, product and service offerings, and pricing, in a marketplace that constantly evolves.

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[4] Strategy Analytics, *US Wireless Market Outlook (2010-2015)* (April 2011).

[5] *See* Fourteenth Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, 25 FCC Rcd 11407, 11411 ¶ 248 (2010) ("*Fourteenth Wireless Report*").

[6] Strategy Analytics, *US Wireless Market Outlook (2010-2015)* (April 2011).