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on the combined AT&T/T-Mobile for *all* of the services which will be or could be offered by the combined AT&T/T-Mobile;

- Roaming obligations which require AT&T to publicly disclose its agreements and allow carriers which do not have the benefit of national spectrum the right to roam on the combined AT&T/T-Mobile network at prices which allow such carriers to effectively compete with the combined AT&T/T-Mobile; and
- Obligations on the combined AT&T/T-Mobile not to purchase wireless devices exclusively.

A. The Commission must require significant spectrum divestures to existing carriers

The Commission must require significant pre-merger spectrum divestures to one or more of the remaining non-national carriers that AT&T has identified as viable competitors. The amount of spectrum which must be divested should be enough to allow the acquiror(s) to be able to effectively compete against the combined AT&T/T-Mobile for data services.¹³⁰ AT&T and others have acknowledged that to be an effective mobile broadband competitor for all broadband services, it is necessary to have at least 20 MHz of clean spectrum in the near term. The Commission should study the public statements of AT&T and Verizon on the subject, and should also invite specific comment on how much spectrum is necessary to offer robust mobile broadband services. The Petitioners believe that the appropriate amount is larger than 20 MHz, since it is not clear how long the 20 MHz will have to last before additional spectrum is made available by the Commission. Further, this spectrum must be divested on a “fix it first” basis to a proven competitor – not a new entrant.

¹³⁰ Sprint currently holds or has access to significant spectrum. Sprint currently holds between 40-60 MHz of paired spectrum in all of MetroPCS’ major metropolitan areas, which includes the 10MHz of clean paired spectrum in the PCS G Block. Further, Sprint holds a greater than 50% interest in Clearwire which holds in excess of 120 MHz in many major metropolitan areas. Since the other competitor in each market holds or has access to considerably less spectrum than Sprint or the combined AT&T/T-Mobile, it is appropriate that any divestiture go to such non-national carrier.

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Required divestitures should be of bare spectrum and, at a minimum, should not include the infrastructure that T-Mobile or AT&T deployed on the spectrum or other impediments which would allow AT&T to impose its inefficiencies on the purchasing carrier. The reason for this is several-fold. First, requiring a purchaser to also purchase infrastructure will drive up the purchase price and foreclose mid-tier carriers from buying it. The price of spectrum and infrastructure together is likely to be much higher than merely the sale of spectrum. The spectrum needs to go to the remaining non-national carriers, and they have considerably less financial resources to fund an acquisition than do the large national carriers. If the Commission wants to ensure that the fourth carrier in each market is able to effectively compete with the merged AT&T/T-Mobile, it should not require such carriers to purchase infrastructure that the carrier does not need. Of course, if the remaining non-national carrier wants the infrastructure, AT&T should be obligated to sell it – but it should be at the election of the buyer, not AT&T.

Second, since in most areas the other carriers are CDMA-based, GSM infrastructure is considerably less attractive to, and potentially unusable by, these carriers. Since the remaining carriers do not utilize GSM, they would have to retrain their technicians to understand and work on such equipment and they would have to manage a new-to-them GSM handset inventory. The better approach is not to require the purchaser to undertake these costs, since such a requirement would limit the purchaser's ability to be an effective competitor in the short run.

Third, any infrastructure that is purchased will undoubtedly need to be replaced quickly, which will result in the purchaser potentially having a significant write-off. This may limit the ability of the purchaser to finance the acquisition of the infrastructure since the assets being purchased will be of little value in several years.

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Fourth, divesting clean spectrum will allow the purchaser to immediately begin to deploy 4G services without having to refarm its existing spectrum. Since broadband is the service that the Commission should be most worried about in this merger, divesting clean spectrum to allow the remaining competitors to immediately deploy 4G should be a priority.

Fifth, divestiture of the infrastructure is not required even if the Commission decides that customers also need to be divested – AT&T can be required to enter into a long term resale agreement at rates that allow the buyer to enjoy a margin on the customers. This would give the purchaser the time to convert the customers over to its own system without having to incur upfront non-recoverable costs for the infrastructure.

The Commission also should restrict any divestitures to the remaining non-national competitor(s) in an area. Given the high concentration levels for the industry, divesting the spectrum to one of the other carriers who also have significant market share nationwide will not materially reduce the concentration in the market. Both of the other nationwide carriers have said either that they have adequate spectrum for the near term to compete with the merged AT&T/T-Mobile (Verizon) or have access to spectrum (or resale deals) that they can or have already deployed 4G (Sprint). Further, neither of these carriers is a “maverick” and thus they will not be able to effectively discipline the merged AT&T/T-Mobile. It is Petitioners and others like them that AT&T has characterized as “mavericks.” Accordingly, any divestitures should be directed to the non-nationwide carriers who are mavericks and who will remain in the market.

While in the past the Commission has not imposed conditions that mandated sales to a particular carrier or type of carrier, given the already robust spectrum holdings of the other national carriers, the public interest would be best served if the spectrum is divested to those mid-tier, rural and regional carriers already in the market. Divestiture to such established carriers

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would allow competition to begin much sooner with the combined AT&T/T-Mobile than if the spectrum is sold to a new entrant, and the costs to provide mobile broadband service by the existing carrier would be substantially less than those which would be required for a new entrant.

Requiring spectrum divestiture would allow the remaining carriers to act as a competitive check on the combined AT&T/T-Mobile and consumers would benefit. Consumers would benefit because the cost efficiencies that AT&T believes will result from its merger would be passed along to its customers and innovation would continue. Without significant spectrum divestiture there is serious question whether the existing carriers could effectively check the behavior of the combined AT&T/T-Mobile.

B. The Commission must impose meaningful roaming obligations

As discussed at length above, the ability to offer nationwide service is the only way carriers will be able to effectively compete with the Big 2. However, given that carriers other than the Big-4 generally do not have spectrum in every metropolitan area across the United States, they must rely on roaming from the Big-4 carriers (Big 3 after the merger). The existing roaming rules, however, are untested and do not have many of the safeguards which would be appropriate when the provider has dominant market power – such as restraints on the price that the duopolist can charge for roaming.

Further, conditions like those imposed in the previous mergers would be far from sufficient to safeguard the roaming market after this merger. If conditions were imposed with time limits similar to those previously adopted, they would expire far too early (the Verizon/Alltel condition is already soon to expire) to accomplish anything except briefly postponing the damage to the competitors' roaming arrangements that would otherwise be caused by the merger. More to the point, mere extensions of T-Mobile roaming arrangements,

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which would be the remedy that would parallel the AT&T-Centennial and Verizon-Alltel conditions, would fail to place meaningful data roaming constraints on the Big 2 going forward and would not address the need for 4G LTE roaming at all. Finally, the recently adopted data roaming rules are already under appellate attack by the other member of the Big 2, and the Commission can be assured based on past performance that AT&T will use every loophole or ambiguity it can find to avoid providing meaningful data roaming to its competitors.¹³¹

As a result, the Commission must require the combined AT&T/T-Mobile to offer roaming services on terms and conditions, including rates, that would allow the remaining carriers to effectively compete with the combined AT&T/T-Mobile. The Commission should require AT&T and T-Mobile to turn over to the Commission their existing roaming and wholesale agreements for the Commission to examine how the existing rules have driven prices. The Commission then would be in a position to be able to determine what rates would be appropriate under the circumstances. The Commission should also require AT&T to publish all of its roaming agreements, just as the ILECs are obligated to post interconnection agreements, so that requesting carriers have the market information they need to know whether they are being treated fairly.

One way to establish the cost of roaming may be to require AT&T to offer roaming on terms no less favorable than AT&T offers for wholesale services (or, if lower, AT&T's retail rates). Since wholesale services include more costs than roaming and should include a reasonable profit, such a rate may be appropriate under the circumstances. This mechanism may work for existing 2G and 3G services but will probably not work for 4G services since AT&T is

¹³¹ A cynic (or realist) might conclude that it was only AT&T's judgment that such a step would be impolitic right now that stayed its hand in filing its own appeal of the data roaming rules. See discussion *supra* at V.H.

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not currently offering those services on a retail or wholesale basis. An appropriate way to set prices for 4G may be to set the price at AT&T's forward looking price to provide such service with a reasonable profit. While the Commission has been reluctant in the past to step in and set rates, the transformational nature of this transaction dictates that the Commission do so. Otherwise, the existing competitive equilibrium which has allowed prices to fall and innovation to flourish may not exist.

C. The Commission must disallow exclusive handset arrangements

AT&T has proven to be a significant beneficiary of exclusive handset arrangements and the Commission should expect that absent a condition addressing this issue AT&T will continue to enter into exclusive handset arrangements. Such arrangements, however, can stifle competition and deter innovation if the remaining carriers are not given access to the same handsets. The best way to address such a condition would be to prohibit AT&T from purchasing any handsets which are not made available to other carriers using the same air interface. This would not impose any obligation on the equipment manufacturers and would in fact promote more openness on handsets.

D. AT&T Should be Required to Meet the Conditions as a Requirement of Closing

The Commission also should require AT&T to "fix it first" or, in other words, be required to divest the spectrum and undertake the other conditions so that any closing on the divestiture would occur contemporaneous with the consummation of the merger with T-Mobile. If the Commission requires AT&T to meet the conditions only after the consummation of the merger, the conditions might not be met until months after the consummation of the merger

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giving AT&T/T-Mobile a substantial head start against its competition.¹³² While DOJ and the Commission will undoubtedly approve any divestiture of spectrum as soon as possible, AT&T will nonetheless be required to negotiate agreements with the acquiring carrier and file any necessary applications with the DOJ and the Commission. Such a process alone can take several months. In addition, AT&T may not be incented to meet the conditions as soon as possible because doing so would empower competition to AT&T/T-Mobile. A “fix it first” approach will assure that a viable competitor has been able to reach an agreement at an acceptable price that will enable it to bring needed competition to the marketplace. Otherwise, the purpose of the conditions will have failed.

Moreover, if a failure to divest in a timely manner only results in AT&T having to place the necessary assets in trust, AT&T/T-Mobile, not consumers, will benefit since competitors will not have access to the spectrum to compete with AT&T/T-Mobile. Trust arrangements always raise complicated issues regarding the nature and extent of the communications that will be allowed between the trustee and the merger parties, and require continuing oversight and regulatory intervention. A “fix it first” approach avoids these complications. Any head start is further exacerbated by the time that it will take for the acquiring carrier to deploy the spectrum in its network. While divesting spectrum to an existing carrier will reduce the time required to deploy the spectrum, nonetheless it will take some time to deploy the spectrum and during this period consumers will suffer because the competitive alternative from the acquiring carrier will not exist. In addition, requiring AT&T to fix it first would ensure that AT&T will have met its conditions at least initially. There is always a risk in requiring post closing conditions that the

¹³² This is especially true for the divestiture of spectrum which will require DOJ and Commission approval.

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party delays meeting those conditions or the conditions are not fully met.¹³³ Either way, requiring the conditions be met at closing will ensure that a framework exists for future compliance and the Commission can be assured that any headstart that AT&T may enjoy would be minimized.

Requiring AT&T to fix it first will not impose an undue burden on AT&T. AT&T already has indicated that it expects that the Commission and DOJ may require divestitures so AT&T should already be undertaking the process of identifying potential purchasers and starting negotiations with them.¹³⁴ AT&T clearly has the resources and the ability to begin the process of meeting the conditions prior to the approval of the Commission. Since the review of the transaction is expected to last a number of months, if AT&T starts the process of negotiating the divestitures now, any delay in the consummation of its merger with T-Mobile should be minimal, if any. And, since the preferred buyer will be an experienced carrier whose licensee qualifications already have been established, and whose spectrum holdings in the market will not raise concentration or other competitive issues, the divestiture should be capable of being processed by the Commission on an expedited basis. Accordingly, the Commission should require AT&T to meet the proposed conditions *prior* to the consummation of the AT&T/T-Mobile merger.

X. CONCLUSION

AT&T's acquisition of T-Mobile, if allowed to proceed without stringent, meaningful conditions, would be devastating for consumers. It would complete the re-establishment of the wireless duopoly and allow AT&T, in concert with Verizon to choke off the remaining

¹³³ See discussion *infra* Section V.I.

¹³⁴ See *e.g.*, Roger Cheng, "AT&T CEO Expects Some Divestitures in T-Mobile Deal," Fox Business, March 30, 2011, <http://www.foxbusiness.com/industries/2011/03/30/att-ceo-expects-divestitures-t-mobile-deal/>.

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competition in this market. As a result, prices would rise to monopolistic levels, and innovative development of technology would be driven not by the marketplace but by the whims of the executives of two powerful companies. Such conditions will be difficult to craft, but if the Commission is unwilling or unable to impose such conditions, it must deny the applications.

Respectfully submitted,

/s/ Jean L. Kiddoo

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Counsel for MetroPCS Communications, Inc.
and NTELOS Inc.

Dated: May 31, 2011

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SERVICE LIST

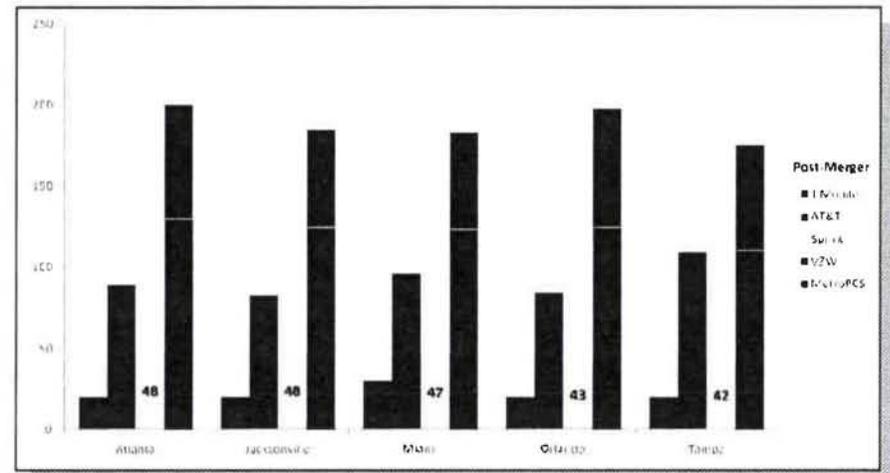
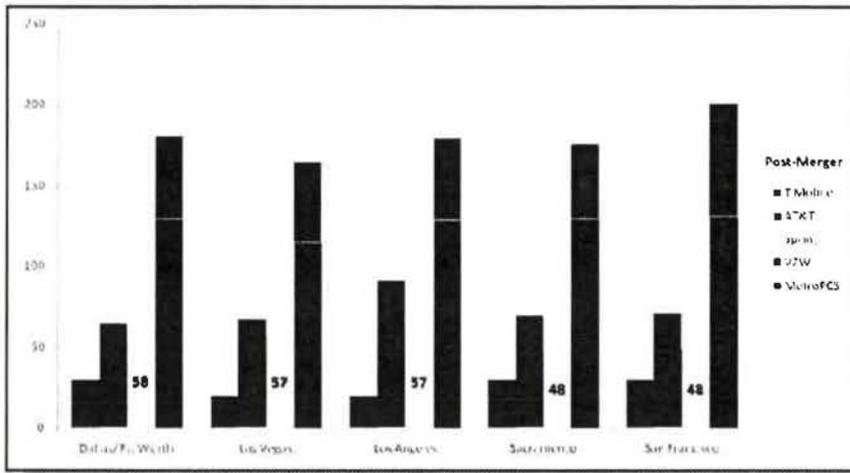
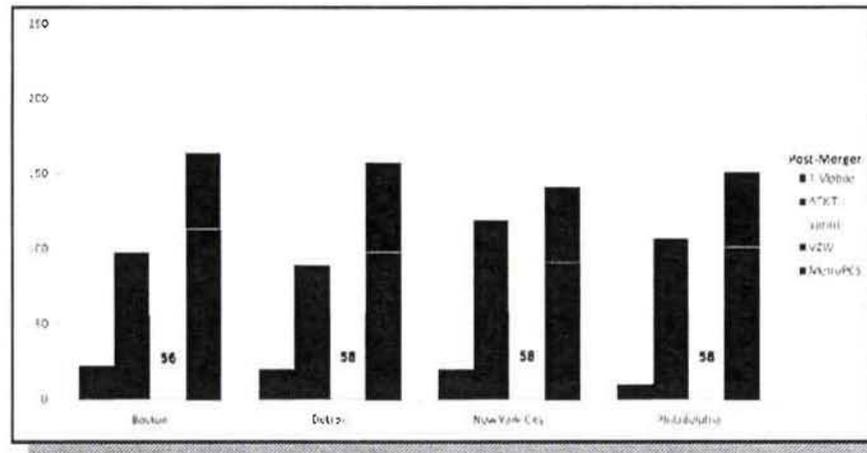
I, Kimberly A. Lacey, hereby certify that on this 31st day of May 2011, I have caused a copy of the foregoing **PETITION OF METROPCS COMMUNICATIONS, INC. AND NTELOS INC. TO CONDITION CONSENT, OR DENY APPLICATION** to be served, as specified, upon the parties listed below:

<p>Peter J. Schildkraut Scott Feira Arnold & Porter LLP 555 Twelfth Street NW Washington, DC 20004 peter_schildkraut@aporter.com scott_feira@aporter.com <i>Outside Counsel to AT&T Inc.</i> (Via Electronic Mail - REDACTED)</p>	<p>Nancy J. Victory Wiley Rein LLP 1776 K Street NW Washington, DC 20006 nvictory@wileyrein.com <i>Outside Counsel to Deutsche Telekom AG and T-Mobile USA, Inc.</i> (Via Electronic Mail - REDACTED)</p>
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/s/ Kimberly A. Lacey
Kimberly A. Lacey

EXHIBIT A

Spectrum Holdings In MetroPCS Major Metropolitan Areas below 2.5 GHz



AT&T Spectrum includes WCS and QCOM Spectrum and based on FCC records as of 3/31/11

EXHIBIT B

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Relative Efficiencies of Carriers in Major MetroPCS Metropolitan Areas

	MetroPCS (MHz)	MetroPCS Subs/MHz (000s)	VZW (MHz)	VWZ Subs/MHz (000s)	Sprint (MHz)	Sprint Subs/MHz (000s)	AT&T (MHz)	AT&T Subs/MHz (000s)	T Mobile (MHz)	T Mobile Subs/MHz (000s)	Combined T & T Mo (MHz)	AT&T & T Mo Combined Subs/MHz (000s)
Atlanta	20	[REDACTED]	89	[REDACTED]	48	[REDACTED]	136	[REDACTED]	70	[REDACTED]	206	[REDACTED]
Boston	22	[REDACTED]	97	[REDACTED]	56	[REDACTED]	126	[REDACTED]	50	[REDACTED]	176	[REDACTED]
Dallas/ Ft. Worth	30	[REDACTED]	64	[REDACTED]	58	[REDACTED]	136	[REDACTED]	50	[REDACTED]	186	[REDACTED]
Detroit	20	[REDACTED]	89	[REDACTED]	58	[REDACTED]	104	[REDACTED]	60	[REDACTED]	164	[REDACTED]
Jacksonville	20	[REDACTED]	82	[REDACTED]	48	[REDACTED]	131	[REDACTED]	60	[REDACTED]	191	[REDACTED]
Las Vegas	20	[REDACTED]	67	[REDACTED]	57	[REDACTED]	121	[REDACTED]	50	[REDACTED]	171	[REDACTED]
Los Angeles	20	[REDACTED]	91	[REDACTED]	57	[REDACTED]	141	[REDACTED]	50	[REDACTED]	191	[REDACTED]
Miami	30	[REDACTED]	96	[REDACTED]	47	[REDACTED]	129	[REDACTED]	60	[REDACTED]	189	[REDACTED]
New York City	20	[REDACTED]	119	[REDACTED]	58	[REDACTED]	103	[REDACTED]	50	[REDACTED]	153	[REDACTED]
Orlando	20	[REDACTED]	84	[REDACTED]	43	[REDACTED]	131	[REDACTED]	73	[REDACTED]	204	[REDACTED]
Philadelphia	10	[REDACTED]	107	[REDACTED]	58	[REDACTED]	113	[REDACTED]	50	[REDACTED]	163	[REDACTED]
Sacramento	30	[REDACTED]	69	[REDACTED]	48	[REDACTED]	136	[REDACTED]	45	[REDACTED]	181	[REDACTED]
San Francisco	30	[REDACTED]	71	[REDACTED]	48	[REDACTED]	141	[REDACTED]	70	[REDACTED]	211	[REDACTED]
Tampa	20	[REDACTED]	109	[REDACTED]	42	[REDACTED]	116	[REDACTED]	65	[REDACTED]	181	[REDACTED]

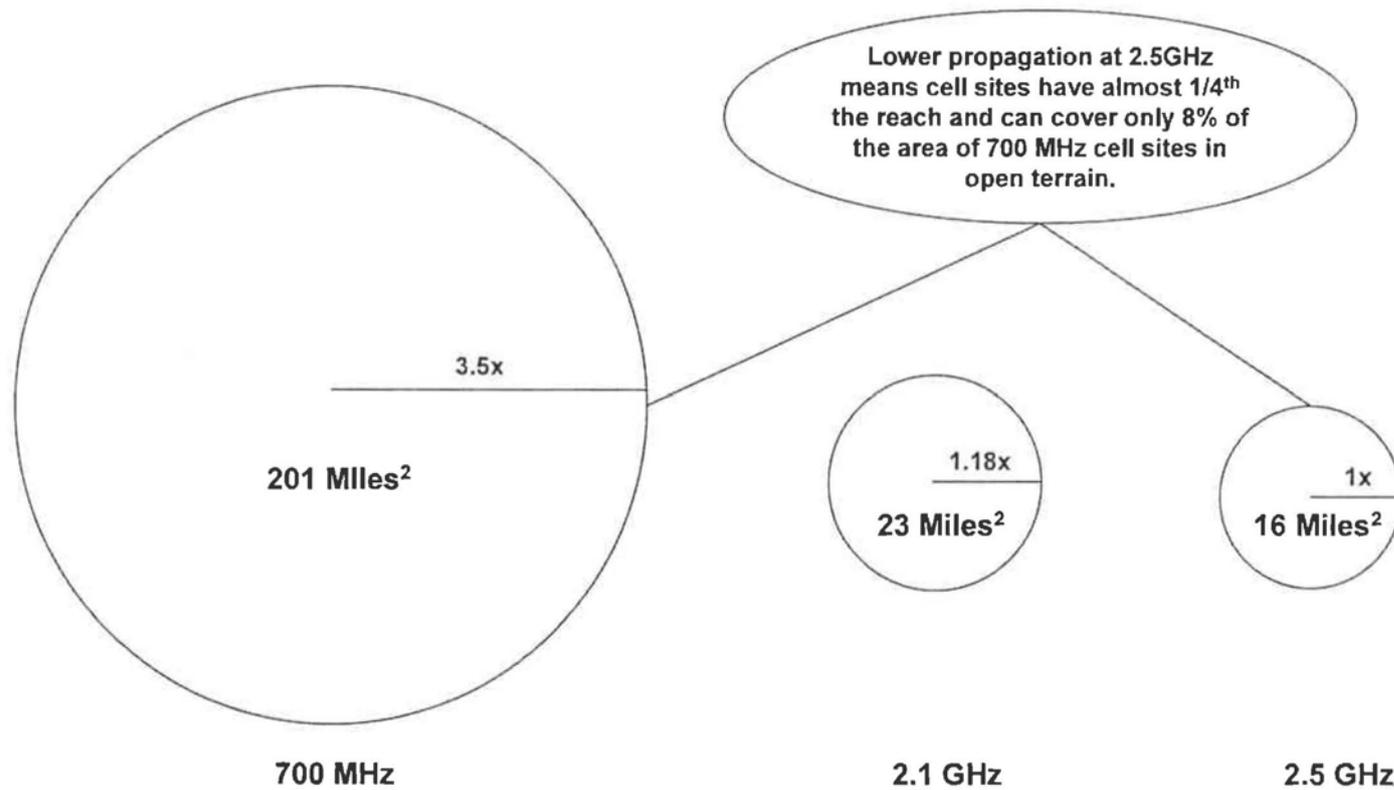
- Nielsen Data March 2011
- Spectrum count includes WCS and QCOM and from FCC records
- Sprint does not include Clearwire

EXHIBIT C

Higher Frequency Spectrum Has Less Reach

Telecom Services
Equity Research

Maximum Radius by Frequency



Source: VZ Presentation (11/10/2010); OBI Paper, "The Broadband Availability Gap"; Credit Suisse Estimates

VERIFICATION

I, James A. Hyde, declare that I am the Chief Executive Officer of NTELOS Inc. and that the facts set forth in the Petition of MetroPCS Communications, Inc. and NTELOS Inc. to Condition Consent, or Deny Application ("Petition"), except for statements uniquely pertaining to MetroPCS Communications, Inc., are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 31, 2011

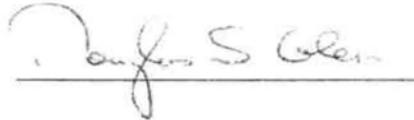
A handwritten signature in black ink is written over a horizontal line. The signature is stylized and appears to be 'J. A. Hyde'.

VERIFICATION

I, Doug Glen, declare that I am the Senior Vice President, Corporate Development for MetroPCS Communications, Inc. and that the facts set forth in the Petition of MetroPCS Communications, Inc. and NTELOS, Inc. to Condition Consent, or Deny Application ("Petition"), except for statements uniquely pertaining to NTELOS, Inc., are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 31, 2011



Doug S. Glen