

will go from supporting four different technologies to supporting GSM, HSPA+, and LTE—complementary technologies—which will reduce Newco’s network expenditures and greatly simplify the overall network architecture. MetroPCS’ transition to Newco’s network will also reduce MetroPCS’ roaming costs, for a projected run-rate savings of [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] per year.¹²⁹ The rapid transition to a single LTE network will result in projected savings of approximately \$5-6 billion NPV. In addition, both companies will save by eliminating future individual network builds.¹³⁰

The combination of the network assets of T-Mobile USA and MetroPCS is expected to result in additional cost savings that will free up resources for investment. One of the major network synergies involved in the proposed transaction is the decommissioning of overlapping cell sites and elimination of overlapping network functions. Newco’s target network will be anchored on T-Mobile USA’s cell site grid, supplemented with approximately [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] retained MetroPCS sites.¹³¹ All of MetroPCS’ DAS systems will be retained and upgraded to maintain coverage and capacity advantages, as discussed in detail above. Newco is expected to be able to eliminate approximately [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] redundant MetroPCS cell base station sites, generating substantial cost savings from the elimination of leases, backhaul, utilities, upgrades, maintenance and other recurring site-related expenses. The decommissioning of these cell sites will result in projected savings of [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] per year per site. Even when offset by the higher operating expenses

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ McDiarmid Decl. at Para. 16.

(“OPEX”) on retained and upgraded DAS and T-Mobile USA sites, this elimination will result in a projected annual run-rate synergy of between \$600-700 million by 2017.¹³² Decommissioning cell sites will enable Newco to serve an increased number of subscribers per site, meaning that the company will operate more efficiently while simultaneously providing more capacity and throughput to consumers.

Newco will also incur reduced tower lease expenses due to the decommissioning of these cell sites. Taken together, these synergies will create cash flow to reinvest in Newco. As a result, Newco will be advantageously positioned to serve all customers, compete across the full range of offerings more effectively against the other larger nationwide rivals, and deliver the most in-demand services to consumers.

By retaining and integrating MetroPCS assets (such as its DAS network) in urban areas, Newco additionally will be able to boost its spectrum capacity without engaging in a lengthy and costly build-out of additional facilities. Newco’s asset utilization is projected to improve by about 20-25 percent as measured by customers per cell site.¹³³

2. The Proposed Transaction Will Result in Substantial Non-Network Synergies

The proposed transaction will also generate significant non-network synergies, projected at approximately \$1 billion NPV.¹³⁴ Newco’s enhanced scale and its integrated administrative operations will allow it to realize cost efficiencies that T-Mobile USA and MetroPCS could not realize on their own. These efficiencies will free up financial resources that Newco can use to

¹³² Ewens Decl. at Para. 16.

¹³³ *Id.* at Para. 15.

¹³⁴ *Id.* at Para. 17.

invest back in its network and develop new initiatives, thereby strengthening the combined company as a fierce competitor in the wireless marketplace.

The migration of MetroPCS customers to a GSM-compatible network will also enable Newco to realize significant savings with respect to handsets. As a GSM carrier, Newco will not have to pay the royalty rates that MetroPCS currently pays on any 3G CDMA handsets that it sells.¹³⁵ Newco expects that its projected handset subsidies of MetroPCS will be reduced by **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** percent, for a projected annual run-rate savings of **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** by 2015.¹³⁶

Newco will realize additional savings by combining back-office operations, for a projected annual run-rate savings of **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** by 2015.¹³⁷ Similar efficiencies can be achieved in customer support, resulting in an estimated cost reduction of **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** percent of MetroPCS' customer support costs by 2015, for a projected annual run-rate savings of **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]**. Further, Newco anticipates being able to reduce its non-network capital expenditures by **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** percent, for a projected annual

¹³⁵ See MSN Money, "Qualcomm's Got the Mobile Device Market Nailed" (Jan. 23, 2012), available at <http://money.msn.com/investment-advice/article.aspx?post=843b89f6-5f1b-40c6-b93a-3921a6e4261f> (explaining the royalty rates carriers pay to Qualcomm when selling 3G CDMA devices that incorporate its patented technology).

¹³⁶ Ewens Decl. at Para. 19.

¹³⁷ *Id.* at Para. 18.

run-rate savings of \$10-50 million by 2015.¹³⁸ By eliminating administrative redundancy and scaling down non-network expenditures and fees, Newco will be more operationally efficient than T-Mobile USA and MetroPCS could be on their own.

Newco's proposed transaction-specific savings will free up significant financial resources that could be invested back in its network and operations. This will allow the company to grow, potentially increasing employment opportunities. These efficiencies will thus further bolster the long-term viability of both brands and strengthen them as competitors.

IV. THE PROPOSED TRANSACTION WILL STRENGTHEN—NOT HARM— COMPETITION IN THE MOBILE TELEPHONY/BROADBAND SERVICES MARKET

The proposed transaction offers a compelling opportunity for the Commission to strengthen national and local competition in the provision of mobile telephony/broadband services. As discussed below, under the analytical framework used by the FCC, which examines the wireless telephony/broadband market at both the national and local level, the proposed transaction is highly efficient, pro-competitive and results in no competitive harms. At the national level, the transaction fosters increased competition by strengthening the smallest nationwide provider, thereby enabling it to compete more aggressively across the country. (It also actually reduces market concentration levels among the "nationwide" carriers identified by the Commission as a result of increasing the relative share of the smallest such carrier, T-Mobile USA.) At the local level, the transaction does not result in any material degradation in the number of built-out competitors in any local area. Indeed, the proposed transaction does not even trigger the spectrum screen that the Commission uses to identify areas where additional competitive review is warranted.

¹³⁸

Id.

A. The Analytical Framework

As the Commission has previously explained, “[m]ergers raise competitive concerns when they reduce the availability of substitute choices (market concentration) to the point that the merged firm has a significant incentive and ability to engage in anticompetitive actions (such as raising prices or reducing output), either by itself, or in coordination with other firms.”¹³⁹ In other words, the Commission’s concerns are triggered by market power, and so the Commission begins its competitive analysis “by determining the appropriate [product and geographic] market definitions for [a] transaction.”¹⁴⁰ Consistent with prior transactions, the relevant product market for reviewing this proposed transaction should be the retail wireless telephony/broadband market. While traditionally the FCC has focused on local geographic markets—either Cellular Market Area (“CMA”) or Component Economic Area (“CEA”) review¹⁴¹—more recently the Commission has also begun to consider competitive effects at the national level.¹⁴² As discussed

¹³⁹ *Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation and EchoStar Communications Corporation*, Hearing Designation Order, 17 FCC Rcd 20559, 20603, Para. 97 (2002).

¹⁴⁰ *Verizon/ALLTEL Order* at Para. 42. The Commission recognizes that market definition “is not an end in itself but a tool to facilitate the analysis of competitive effects. If the competitive effects of a transaction can be understood without rigorously defining markets, it may be unnecessary to do so.” Staff Report at Para. 29 n.88; *see also DOJ/FTC Horizontal Merger Guidelines*, § 4 (Apr. 8, 1997) *available at* http://www.justice.gov/atr/public/guidelines/horiz_book/hmg1.html (*DOJ/FTC Horizontal Merger Guidelines*).

¹⁴¹ *See Verizon/ALLTEL Order* at Para. 49 (“The Commission in these orders identified two sets of geographic areas that effectively may be used to define local markets—CEAs and CMAs”); *AT&T/Centennial Order* at Para. 38 (“We conclude that for this transaction, the most appropriate geographic level for market analysis is comprised of Cellular Market Areas (“CMAs”) and Component Economic Areas (“CEAs”)”).

¹⁴² *See, e.g., Application of AT&T Inc. and Qualcomm Incorporated*, Order, 26 FCC Rcd 17589, 17605, at Para. 37 (2011) (“Accordingly, we find it is in the public interest not only to consider the local markets, but also to consider the effect of this transaction at the national level.”) (*AT&T/Qualcomm Order*).

below, this proposed transaction does not raise competitive issues in the wireless telephone/broadband services market at either the national or local level.

1. Consistent with Prior Practice, “All Wireless Services” Is the Appropriate Product Market for Reviewing the Proposed Transaction

At its core, market definition “focuses . . . on customers’ ability and willingness to substitute away from one product to another in response to a price increase or a corresponding non-price change such as a reduction in product quality or service.”¹⁴³ In recent wireless transactions, the Commission has consistently analyzed proposed transactions using a “combined ‘mobile telephony/broadband services’ product market, which is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband networks.”¹⁴⁴ 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.”¹⁴⁵

There is no basis for departing from the Commission’s well-established practices with respect to product market definition in reviewing this proposed transaction. Neither company

¹⁴³ *DOJ/FTC Horizontal Merger Guidelines* § 4.

¹⁴⁴ *AT&T/Centennial Order* at Para. 37; *Verizon/ALLTEL Order* at Paras. 45-46.

¹⁴⁵ *Verizon/ALLTEL Order* at Para. 47. The Commission also has declined to identify separate prepaid and postpaid markets, noting that policymakers should take care not to “defin[e] product markets too narrowly, since doing so may thwart . . . pro-competitive deals that take place in the context of rapidly evolving markets and services. Staff Report at n.97; *Verizon/ALLTEL Order* at Paras. 45-46.

offers products that other market participants do not offer or could not offer through alterations to their rate plans, and MetroPCS and T-Mobile USA customers can and do routinely switch to services provided by other market participants.¹⁴⁶ Moreover, while the Staff Report in the AT&T/T-Mobile USA transaction did identify a separate product market for enterprise and government sales (as opposed to retail wireless),¹⁴⁷ MetroPCS “does not serve (and has no current plans to serve) enterprise or government customers, or offer any other services on a contract basis.”¹⁴⁸ Accordingly, the Applicants submit that the appropriate product market definition for purposes of this proposed transaction, consistent with the Commission’s prior practices, is the retail market for mobile telephony/broadband services.

2. Under Recent Analyses, the Commission Has Defined the Relevant Market to Include National and Local Effects

In the past, the Commission considered the appropriate geographic market for review of mobile transactions to be local (*i.e.*, CMAs or, alternatively, CEAs).¹⁴⁹ Recently, however, the

¹⁴⁶ See Glen Decl. at Para. 15. AT&T, for example, recently introduced a new \$65 no-contract plan with unlimited voice, texting, and 1 GB of data, bringing its pricing even closer to traditional no-contract offerings available through MetroPCS or T-Mobile USA. See Phil Goldstein, *Fierce Wireless*, *supra* note 71. Facilities-based carriers such as AT&T and Verizon Wireless are recognizing that there are subprime customers that will still pay a premium for quality no-contract offerings, and are introducing new rate plans as a result. Verizon Wireless launched its own no-contract plan in April 2012 that offers 1 GB of data for \$45 a month. See Roger Yu, *USA Today*, “Competition for No-Contract Market Gains Steam” (Jun.8, 2012), available at <http://www.usatoday.com/tech/news/story/2012-06-06/prepaid-wireless-smartphones/55442768/1>.

¹⁴⁷ Staff Report at Para. 31.

¹⁴⁸ See Glen Decl. at Para. 5. The Commission has previously recognized that only the four nationwide providers of retail mobile wireless services (AT&T, T-Mobile, Verizon Wireless, and Sprint) have the “requisite nationwide infrastructure to economically provide the services that these customers demand.” Staff Report at Para. 88.

¹⁴⁹ See *Verizon/ALLTEL Order* at Para. 49 (“The Commission in these orders identified two sets of geographic areas that effectively may be used to define local markets—CEAs and CMAs”); *AT&T/Centennial Order* at Para. 38 (“We conclude that for this transaction, the most

Commission modified its review practices and has found it appropriate to analyze both the local and national effects of a wireless transaction.¹⁵⁰ As the Commission has explained, “the geographic market is the area within which a consumer is most likely to shop for mobile telephony/broadband services.”¹⁵¹ For most retail customers, this “will be a local area, as opposed to a larger regional or nationwide area,” because “in response to a small but not insignificant price increase by providers that offer service where consumers live, work, or travel, most consumers are unlikely to switch to alternative wireless providers that operate only outside of such a locality.”¹⁵² The Department of Justice (“DOJ”) similarly acknowledges that “[c]onsumers typically purchase wireless services from providers that offer and market services where they live, work, and travel on a regular basis; hence geographic markets are local.”¹⁵³

That said, both the Commission and the DOJ temper their statements by recognizing that key competitive variables are national in scope. The Commission, for the first time, noted in its Staff Report that “[d]efining local geographic markets for retail wireless services does not preclude us from recognizing that two key competitive variables—prices and service plan offerings—do not vary for most providers across most geographic markets where they sell services.”¹⁵⁴ The Commission has since considered the effect on the national market with

appropriate geographic level for market analysis is comprised of Cellular Market Areas (“CMAs”) and Component Economic Areas (“CEAs”).

¹⁵⁰ See, e.g., *AT&T/Qualcomm Order* at Para. 37 (“Accordingly, we find it is in the public interest not only to consider the local markets, but also to consider the effect of this transaction at the national level.”).

¹⁵¹ *AT&T/Centennial Order* at Para. 41; *Verizon Wireless/ALLTEL Order* at Para. 52.

¹⁵² *AT&T/Centennial Order* at 13934 Para. 41 (quoting *DOJ/FTC Merger Guidelines*, Paras. 1.11, 1.12).

¹⁵³ *United States v. Verizon Commc’ns Inc.*, No. 1:12-cv-01354, Competitive Impact Statement at 11 (D.C. Cir. 2012) (“DOJ Competitive Impact Statement”).

¹⁵⁴ Staff Report at Para. 34.

respect to other spectrum transactions.¹⁵⁵ The DOJ echoes the Commission’s findings, arguing that “the largest and most successful wireless providers have national footprints and offer pricing, plans, and devices that are available nationwide” and that “nationwide competition among wireless service providers affects competition across local markets.”¹⁵⁶

B. The Proposed Transaction Will Not Harm, but Rather Enhance, National Competition

At the national level, it is clear that the proposed transaction will not harm competition. Notably, the Commission describes only AT&T, Verizon Wireless, Sprint, and T-Mobile USA as “nationwide” providers of retail mobile wireless services.¹⁵⁷ According to the Commission, each of these carriers—and no other carrier—have the spectrum and infrastructure necessary to provide coverage for more than 90 percent of the U.S. population.¹⁵⁸ In contrast, the Commission characterizes MetroPCS as a “regional provider” and notes that such providers “do not compete on a nationwide basis because they generally do not market their brand or sell their services to customers outside the areas where they own facilities.”¹⁵⁹

As such, the Commission has concluded that MetroPCS is not a participant in the national wireless market. Since that conclusion less than one year ago, MetroPCS has not materially altered its operations or expanded in a manner that would warrant the Commission’s

¹⁵⁵ *AT&T/Qualcomm Order* at Para. 35 (“We find that it is appropriate also to analyze both the local markets in which consumers purchase mobile wireless services and the potential national competitive impacts of this transaction.”); *Verizon Wireless/SpectrumCo Order* at Para. 58 (“For purposes of evaluating the competitive effects of Verizon Wireless’ acquisition of spectrum from SpectrumCo, Cox, and Leap, as well as from T-Mobile, we use both local and national markets.”).

¹⁵⁶ DOJ, Competitive Impact Statement at 11.

¹⁵⁷ *Fifteenth Wireless Competition Report* at Para. 27.

¹⁵⁸ *See id.* at Para. 31 n.70, Table 4.

¹⁵⁹ Staff Report at Para. 38. *See also Fifteenth Wireless Competition Report* at Paras. 28, 196.

revisiting its conclusion that MetroPCS is not a nationwide carrier. Since 2009, MetroPCS has not expanded its network nor launched service into any additional major metropolitan areas.¹⁶⁰ MetroPCS currently markets its service to an area of approximately 100 million in population.¹⁶¹ While its 4G LTE network covers a population very close to that covered by its CDMA/EvDO networks, in many major metropolitan areas MetroPCS has been forced to deploy its LTE network over a mere 1.4 x 1.4 MHz or 3.0 x 3.0 MHz of spectrum, while, in several cases, concurrently refarming existing spectrum.¹⁶² Thus, as noted above, the speeds and capacity that MetroPCS is presently able to offer its data customers over its narrow LTE network are significantly lower than the offerings of its more spectrum-rich competitors.¹⁶³

MetroPCS is not currently, nor is it in a position to become, a nationwide carrier,¹⁶⁴ as the Commission uses that term, because it does not have access to nationwide spectrum. And while Section III.A.2. notes that MetroPCS has entered into roaming agreements to offer nationwide service to its customers, the Commission has previously found that roaming and resale agreements alone will not allow regional providers such as MetroPCS to replicate the

¹⁶⁰ See Glen Decl. at Para. 3. MetroPCS launched service in its current major metropolitan areas as follows: Miami, Atlanta, Sacramento, and San Francisco in 2002; Tampa/Sarasota in 2005; Dallas/Fort Worth, Detroit, Orlando and portions of northern Florida in 2006; Los Angeles in 2007; Las Vegas and Philadelphia in 2008; and New York and Boston in 2009.

¹⁶¹ Glen Decl. at Para. 3.

¹⁶² *Id.* at Para. 9.

¹⁶³ See also *id.* at Paras. 9, 11 (“Going forward, the gap between MetroPCS and its larger competitors is likely to increase further as they are able to use extensive, unused spectrum holdings to develop robust LTE offerings while MetroPCS remains capacity constrained. Absent access to additional spectrum for LTE deployment and expansion into additional major metropolitan areas, MetroPCS increasingly will be at a competitive disadvantage.”).

¹⁶⁴ Staff Report at Para. 38 (“None of these [regional] providers’ networks cover more than 34 percent of the U.S. population, and for most their more advanced broadband networks are smaller.”).

competitive position of a nationwide facilities-based provider.¹⁶⁵ As such, the proposed transaction plainly will have no effect on the number of participants in the national market and thus will not give rise to any competitive harms.

Indeed, the proposed transaction will actually increase competition in the national market—under the Commission’s definition. Under a national carrier Herfindahl–Hirschman Index (“HHI”) analysis, the proposed transaction actually *reduces*—rather than increases—market concentration. In fact, the change in HHI for the proposed transaction based on nationwide carrier market shares is -86, going from 2,863 to 2,777. This means that the national market will be less concentrated after the consummation of the proposed transaction.¹⁶⁶ This seemingly anomalous result is driven by the fact that MetroPCS’ customers are not currently considered (by the Commission) to be customers of a “nationwide” carrier, but after the merger, they will be customers of a nationwide Newco. This leads to an increase in T-Mobile USA’s share, and a relative reduction in the shares of AT&T, Verizon, and Sprint, the net effect of which is a reduction in national market concentration as measured by the HHI.

Last, but not least, the proposed transaction increases T-Mobile USA’s ability and incentive to be a disruptive force among the nationwide carriers. The Commission has previously found that T-Mobile USA has built its challenger strategy around aggressive pricing and technical innovation in the national wireless market.¹⁶⁷ As the Commission has recognized, T-Mobile USA has had an economic incentive to play this role due to its position as the smallest

¹⁶⁵ *Id.*

¹⁶⁶ HHI calculated based on AT&T, Verizon Wireless, Sprint and T-Mobile share of subscribers of nationwide carriers as of YE2010, *see Fifteenth Wireless Competition Report* at Para. 31, Table 3. For purposes of these calculations, Sprint’s market share has been aggregated with its affiliate Clear. Customers of non-nationwide carriers are not counted, except that MetroPCS’ pre-transaction subscribers are counted as Newco post-transaction subscribers.

¹⁶⁷ Staff Report at Paras. 22, 24.

of the nationwide wireless carriers.¹⁶⁸ The proposed transaction will in no way remove this incentive, but rather increase the combined company's ability and incentive to take market share from the larger rivals. Even after the proposed transaction Newco will remain the number four carrier, but will now be stronger and more effective as a disruptive force. Indeed, Newco intends to be the leading value carrier in the U.S., with a focus on offering a variety of appealing plans to compete aggressively for customers seeking affordability and certainty in the cost of their wireless plans.¹⁶⁹ As Newco attracts more customers through its innovative plans and more robust service offerings, the other nationwide carriers will respond. The proposed transaction will thus increase wireless competition, benefiting all wireless customers.

C. The Proposed Transaction Raises No Competitive Concerns at the Local Level

The combination of MetroPCS' and T-Mobile USA's spectrum assets also plainly will not harm competition in local areas. The Commission utilizes a two-part screen to identify what it views to be local markets where a proposed transaction has the potential to harm competition.¹⁷⁰ The first part of the screen considers changes in market concentration in the provision of mobile telephony/broadcast services as a result of a proposed transaction, and is based on the size of the post-transaction HHI of market concentration and the change in HHI. The second part of the screen examines the amount of spectrum that is suitable and available on a county-by-county basis for the provision of mobile telephony/broadband services. Post-

¹⁶⁸ *Id.* at Para. 78 (finding T-Mobile USA “would benefit less from coordinated pricing than . . . its significant rivals.”)

¹⁶⁹ Press Release, T-Mobile USA, *supra* note 62.

¹⁷⁰ The two-part initial screen is used to identify (1) those local markets where, without further analysis, it is clear that the transaction would result in no potential competitive harm, and (2) those local markets where further competitive analysis is required to determine whether the transaction has the potential to harm competition.

transaction, Newco will not trigger the spectrum screen in any area that the Commission views as a local market. As detailed below, the proposed transaction is consistent with both standards for assessing competitive effects.

1. The Proposed Transaction Is Consistent with the Spectrum Screen in All Local Geographies

It is notable that application of the Commission’s current spectrum aggregation screen demonstrates that combining the spectrum assets of MetroPCS and T-Mobile USA poses no risk of harm to competition in any locality.¹⁷¹ In fact, considering only those counties where T-Mobile USA and MetroPCS will contribute spectrum, Newco will hold an average of only 50 MHz from T-Mobile USA and 17 MHz from MetroPCS—far, far below the 145 MHz screen that applies in most counties of the United States.¹⁷² And, even in areas where Newco will aggregate the largest amounts of spectrum as a result of this transaction, other carriers in those areas will still hold more spectrum than Newco.¹⁷³

¹⁷¹ The Commission’s initial spectrum screen identifies, for further case-by-case market analysis, those markets in which, post transaction, the Applicants would have a 10 percent or greater interest in 95 MHz or more of PCS, SMR, and 700 MHz spectrum where neither BRS nor AWS-1 spectrum is available; 115 MHz or more of spectrum where BRS spectrum is available but AWS-1 spectrum is not available; 125 MHz or more of spectrum where AWS-1 spectrum is available but BRS spectrum is not available; or 145 MHz or more of spectrum where both AWS-1 and BRS spectrum are available.

¹⁷² See Spectrum Aggregation Chart, attached as Exhibit 3 to the lead wireless application, ULS File No. 0005446627.

¹⁷³ The most spectrum that Newco will hold post-transaction is 110 MHz, and that will occur only in seven counties: Banks, GA; Dawson, GA; Habersham, GA; Hall, GA; Lumpkin, GA; White, GA; and Whatcom, WA. See Spectrum Aggregation Chart. In Whatcom County, including its WCS spectrum and spectrum it will acquire in pending deals, AT&T will hold in excess of 120 MHz. In the Georgia counties, including BRS and ESMR spectrum but excluding its EBS leases, Sprint holds in excess of 110 MHz. And in the Georgia counties, both AT&T and Verizon hold in excess of 100 MHz. Thus, even in those counties where Newco holds the largest amount of spectrum, there exists a competitor with greater spectrum holdings. See Competitor Chart, attached at Exhibit 4 to the lead wireless application, ULS File No. 0005446627.

2. Market Concentration Is Not an Issue in The Proposed Transaction

Despite the fact that data to calculate the relevant HHIs on a CMA basis is not yet available, it is nonetheless clear that no competitive harms would result from the proposed transaction in any locality. The Commission has found no competitive problems where four built-out competitors, defined as those with “coverage of 70 percent or greater of the population and 50 percent or more of the area,”¹⁷⁴ will remain post-transaction. In such respects, T-Mobile USA and MetroPCS face aggressive competition from many sources, and Newco will continue to face the same competition post-transaction.¹⁷⁵ Indeed, with very limited exceptions, the Applicants calculate that at least four built-out competitors will remain in all local areas affected by the proposed transaction, or, alternatively, that the number will remain unchanged. Moreover, even in those few markets facing a nominal decrease to three post-transaction built-out competitors, the situation is such that additional competitors exist, but miss relevant thresholds by insignificant amounts.¹⁷⁶ Importantly, in every local market area involved in the proposed transaction, all four nationwide carriers operate facilities. Thus, post-consummation, the merged company will continue to be constrained by the full range of competitors and products available at the local level.

¹⁷⁴ *AT&T/Centennial Order* at Para. 76 and n.291. See also *Applications of AT&T Inc. and Dobson Communications Corporation*, Order, 22 FCC Rcd 20295, at n.170 (“*AT&T/Dobson Order*”) (“For purposes of this determination, we define fully built-out as having coverage of at least 70 percent of the population in the CMA.”).

¹⁷⁵ In the *Fifteenth Wireless Competition Report*, the Commission reports that consumers can choose from four or more providers for mobile wireless service in 71 percent of CMAs. *Fifteenth Wireless Competition Report* at Para. 47.

¹⁷⁶ According to T-Mobile USA’s data, for example, Sprint fails to qualify as a built-out competitor in the Miami, Florida CMA simply because its geographic coverage is only 49.9 percent, which misses the 50 percent criterion by a mere 0.1 percent. As this data is somewhat dated, Sprint may well have already crossed the 50 percent threshold.

Beyond that, the Commission's traditional analysis of local competition ignores the impact of resellers and MVNOs, despite the fact that they compete extensively for the same customer demographics as MetroPCS. Post-transaction, the merged company will continue to face stiff competition from the nationwide resellers/MVNOs that compete successfully on the strength of uniquely packaged voice and data services that are sold at relatively low prices under their own proprietary brand names. For example, América Móvil, a leading nationwide MNVO, offers competitive unlimited and by the minute no-contract plans through subsidiaries that include TracFone, NET10, Straight Talk, and, recently, Simple Mobile. TracFone alone serves over 21.3 million customers nationally through resale.¹⁷⁷ Additionally, because MVNOs are able to take advantage of the spectrum holdings of the four nationwide carriers, they do not face the same spectrum constraints that limit MetroPCS. In light of the transformative role that MVNOs play in local markets—especially for the demographics targeted by MetroPCS—the Commission should consider these providers to be participants in the relevant product market as well. Indeed, the Commission does take into account the role of such providers to the extent necessary in evaluation of likely competitive effects.¹⁷⁸ Nevertheless, even if the Commission again declines to consider MVNOs to be market participants, the facts make it abundantly clear that the proposed transaction will not reduce competition at the local level.

¹⁷⁷ Mike Dano, FierceWireless, "F.J. Pollack's TracFone: The Most Successful Wireless Provider You've Never Heard Of", (Oct. 4, 2012), *available at* <http://www.fiercewireless.com/story/fj-pollaks-tracfone-most-successful-wireless-provider-youve-never-heard/2012-10-03>.

¹⁷⁸ *See, e.g., AT&T/Centennial Order* at Para. 45; *AT&T/Dobson Order* at Para. 38.

V. PROCEDURAL CONSIDERATIONS

A. Section 310(b)(4) Declaratory Ruling Request

DT requests that the Commission grant it Section 310(b)(4) authority to hold indirect controlling interests in common carrier licenses and authorizations issued to MetroPCS and its subsidiaries post-transaction. The Commission has already approved DT's foreign ownership of T-Mobile USA and its licensee subsidiaries, and the public interest would be served by also granting Section 310(b)(4) authority with respect to MetroPCS' licenses.

In the *Foreign Participation Order*, the Commission concluded that allowing additional foreign investment in common carrier wireless licensees beyond the 25 percent benchmark of Section 310(b)(4) will promote competition in the U.S. market, thereby serving the public interest.¹⁷⁹ Accordingly, the Commission adopted a presumption in favor of allowing such investment if the investment is from entities organized under the laws of World Trade Organization ("WTO") Members.¹⁸⁰ DT is a publicly traded German company and Germany is a signatory to the WTO Basic Agreement on Telecommunications. As noted earlier in this filing, the Federal Republic of Germany holds approximately a direct 15% interest in DT. KfW, a development bank that is 80% owned by the Federal Republic of Germany and 20% owned by the German federal states, owns approximately a 17% interest in DT.

The Commission has already determined that the public interest would be served by allowing up to 100 percent indirect foreign investment in T-Mobile USA and its licensee subsidiaries by DT and its German shareholders, and by the German government through its

¹⁷⁹ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23940, Para. 111 (1997).

¹⁸⁰ See *id.* at Paras. 50, 111-12.

investment in DT.¹⁸¹ On April 27, 2001, the Commission issued an order granting the applications of T-Mobile USA (then named VoiceStream Wireless Corporation (“VoiceStream”)) for authority to transfer control of the licenses of its subsidiaries to a wholly owned U.S. subsidiary of DT in order to effect a merger between VoiceStream and DT.¹⁸² There, the Commission held that granting the applications would be consistent with the public interest as DT’s German government ownership did not confer any unique advantages that were likely to pose a risk to competition in the U.S. telecommunications market.¹⁸³ Since consummation of that transaction, there has been a decrease in the Federal Republic of Germany’s overall ownership interest in DT (directly in DT and through KfW) from approximately 46 percent to 32 percent.¹⁸⁴ Thus, the same public interest rationale that applied in that decision should also apply to MetroPCS and its licensee subsidiaries and the FCC licenses to be controlled by DT as a result of the proposed transaction. The Commission therefore can and should grant to DT Section 310(b)(4) authority to control the MetroPCS licenses and authorizations as well.¹⁸⁵

¹⁸¹ See *VoiceStream Wireless Corp., Powertel, Inc. and Deutsche Telekom AG*, Memorandum Opinion and Order, 16 FCC Rcd 9779 (2001) (“*VoiceStream/DT Order*”). The transfer of control of T-Mobile to DT was consummated on May 31, 2001.

¹⁸² See *VoiceStream/DT Order* at 9845-46 Paras. 127-28.

¹⁸³ See *id.* at Paras. 55, 125. DT is currently subject to a National Security Agreement entered into on January 12, 2001, as amended, with the Department of Justice, the Federal Bureau of Investigation, and the Department of Homeland Security. See *id.* at App. B., Agreement between DT, VoiceStream Wireless Corporation, VoiceStream Wireless Holding Corporation, the DOJ and the FBI (Jan. 12, 2001) (“DT National Security Agreement”). DT has no outstanding compliance issues under that agreement.

¹⁸⁴ The FCC most recently approved DT’s foreign investment in connection with the transfer of control of WALLC License, LLC from Verizon Wireless to T-Mobile USA. See Public Notice, International Authorizations Granted, ISP-PDR-20090826-00008, DA No. 09-2631 (Dec. 24, 2009).

¹⁸⁵ See *supra* note 183.

B. Additional Authorizations

The list of call signs and file numbers included in the Applications 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, MetroPCS licensees or lessees or 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 they 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 DT to acquire control of: (1) any authorization issued to MetroPCS or its subsidiaries or T-Mobile USA or its subsidiaries while this transaction is pending before the Commission and the period required for consummation of the transaction; (2) any construction permits held by MetroPCS or its subsidiaries or T-Mobile USA or its subsidiaries that mature into licenses after closing; (3) any applications or lease notifications filed by MetroPCS or its subsidiaries or T-Mobile USA or its subsidiaries that are pending at the time of consummation; and (4) any leases of spectrum into which MetroPCS or its subsidiaries or T-Mobile USA or its subsidiaries enter as lessees while this transaction is pending before the Commission and the period required for consummation of the transaction. Such action would be consistent with prior decisions of the Commission.¹⁸⁶ Moreover, because DT is acquiring control of MetroPCS and

¹⁸⁶ See, e.g., *AT&T/Verizon Order* at Para. 165; *AT&T/Centennial Order* at Para. 170; *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18392 Para. 212 (2005); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522 at 21626 Para. 275 (2004); *SNET/SBC Order* at Para. 49; *Applications of NYNEX Corp. and Bell Atlantic Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 19985, 20097-98, Paras. 246-56 (1997) (“*NYNEX/Bell Atlantic Order*”); *PacTel/SBC Order* at Para. 93; *Applications of Craig O. McCaw and Am. Tel. & Tel. Co.*, Memorandum Opinion and Order, 9 FCC Rcd 5836, 5909,

all of its FCC authorizations and there will be a *pro forma* transfer of T-Mobile USA and all its authorizations, DT requests that Commission approval include any authorizations that may have been inadvertently omitted.

C. Exemption from Cut-off Rules

Pursuant to Sections 1.927(h), 1.929(a)(2), and 1.933(b) of the Commission's Rules,¹⁸⁷ to the extent necessary,¹⁸⁸ the Applicants request a blanket exemption from any applicable cut-off 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.¹⁸⁹

Para. 137 n.300 (1994), *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) ("*McCaw/AT&T Order*").

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

¹⁸⁸ 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 *Applications of Ameritech Corp. and GTE Consumer Services Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 15 FCC Rcd 6667, 6668, Para. 2 n.6 (1999); *Comcast/SBC Order* at Para. 2 n.3.

¹⁸⁹ See, e.g., *Applications of PacifiCorp Holdings, Inc., and Century Telephone Enterprises, Inc. for Consent to Transfer Control of Pacific Telecom, Inc., a Subsidiary of PacifiCorp Holdings, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 8891, 8915-16, Para. 47 (1997);

D. Unconstructed Facilities

To the extent any authorizations for unconstructed systems are covered by this transaction, these authorizations are merely incidental to the larger transaction, 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.¹⁹⁰

E. Unjust Enrichment

No unjust enrichment concerns are implicated by this transaction. Although the Applicants are filing a Form 603 for the *pro forma* transfer control of T-Mobile USA’s interest in a designated entity, Cook Inlet/VIS GSM VII PCS, LLC (“Cook Inlet VII”), that interest already is held by a non-designated entity—T-Mobile USA.¹⁹¹ Nevertheless, as required by Section 1.2111(a) of the Commission’s rules,¹⁹² the Applicants are filing the Business Combination Agreement in the form in which it was filed with the Securities and Exchange Commission.¹⁹³

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

NYNEX/Bell Atlantic Order at Para. 234; *McCaw/AT&T Order*, on reconsideration, at Para. 137 n.300.

¹⁹⁰ 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”).

¹⁹¹ 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; *Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, Fifth Report and Order, 15 FCC Rcd 15293, 15323-28, Paras. 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).

¹⁹² 47 C.F.R. § 1.2111(a).

¹⁹³ See Exhibit 5 attached to the lead wireless application, ULS File No. 0005446627.

obligations have been paid in full.¹⁹⁴ All of MetroPCS' licenses are freely alienable without designated entity transfer restrictions or unjust enrichment payments.

F. Environmental Impact

As required by Section 1.923(e) of the Commission's rules,¹⁹⁵ 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.¹⁹⁶ A transfer of control of licenses and leases does not involve any engineering changes and, therefore, cannot have a significant environmental impact.

G. DOJ Agreement

DT requests that the Commission condition its grant of the transfer of control of the MetroPCS authorizations on compliance with the provisions of the National Security Agreement entered into on January 12, 2001, as amended, between DT and the Department of Justice, the Federal Bureau of Investigation, and the Department of Homeland Security.¹⁹⁷ Section 7.2 of the National Security Agreement provides:

DT agrees that in its applications or petitions to the FCC for licensing or other authority filed with the FCC after the Effective Date, except with respect to *pro forma* assignments or *pro forma* transfers of control, it shall request that the FCC condition the grant of such licensing or other authority on DT's compliance with the terms of this Agreement¹⁹⁸

¹⁹⁴ See, e.g., ULS File Nos. 0005443547; 0005444862; 0005444861; 0005444874; 0005444873.

¹⁹⁵ 47 C.F.R. § 1.923(e).

¹⁹⁶ *Id.* § 1.1307.

¹⁹⁷ See DT National Security Agreement, which was appended by the Commission to the *VoiceStream/DT Order*. The National Security Agreement was amended in 2008 to add DHS as a party. The requirements of the National Security Agreement are binding upon DT and DT's U.S. subsidiaries as defined in Section 1.21 of the DT National Security Agreement.

¹⁹⁸ DT National Security Agreement at § 7.2.

The National Security Agreement prescribed that the following specific language be included in the conditional grant of interests in FCC licenses in the specific context of the DT/VoiceStream merger:

It is further ordered, that authorizations and the licenses related thereto are subject to compliance with the provisions of the Agreement between Deutsche Telekom AG, VoiceStream Wireless Corporation, VoiceStream Wireless Holding Corporation on the one hand, and the Department of Justice (the "DOJ") and the Federal Bureau of Investigation (the "FBI") on the other, dated January 12, 2001, which Agreement is designed to address national security, law enforcement, and public safety issues of the FBI and the DOJ regarding the authority granted herein. Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to, 47 U.S.C. § 222(a) and (c)(1) and the FCC's implementing regulations.¹⁹⁹

DT hereby requests that the Commission impose a similar condition on the grant of the instant transfer applications.

H. 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 1976²⁰⁰ and the rules promulgated thereunder. The Applicants will be submitting shortly 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.

VI. CONCLUSION

In view of the foregoing, the facts confirm that the proposed transaction promotes competition and will result in significant public interest benefits for the Applicants' customers

¹⁹⁹ *Id.* at Exhibit A.

²⁰⁰ 15 U.S.C. § 18a.

and wireless consumers generally. Moreover, there are no resulting national or local competitive harms. Accordingly, the Commission should rapidly review and approve this merger.

Attachment 1

Declaration of Peter Ewens

**DECLARATION OF PETER EWENS
Chief Strategy Officer, T-Mobile USA, Inc.**

I. INTRODUCTION

1. My name is Peter Ewens and I currently serve as the Chief Strategy Officer for T-Mobile USA, Inc. (“T-Mobile USA”). I have been at T-Mobile USA since 2008. I hold undergraduate and graduate degrees in engineering from the University of Toronto, and I earned a master’s of science in business administration from MIT’s Sloan School of Management.

2. In this declaration, I discuss some of the competitive issues driving the proposed transaction between Deutsche Telekom AG (“DT”), T-Mobile USA, Inc. (“T-Mobile USA”) and MetroPCS Communications, Inc. (“MetroPCS”). In Section II, the declaration discusses T-Mobile USA’s current competitive position in the mobile market, and specifically areas where T-Mobile USA is operating at a competitive disadvantage relative to other providers. In Section III, the declaration analyzes how the proposed transaction with MetroPCS will enable Newco to address those disadvantages and allow the company to emerge as a strengthened competitor. In Section IV, the declaration addresses how the proposed transaction will result in tangible network and non-network synergies. Finally, in Section V, the declaration discusses the benefits of the proposed transaction to existing T-Mobile USA and MetroPCS customers, as well as to current and future subscribers of other carriers.

II. T-MOBILE USA’S COMPETITIVE POSITION

3. T-Mobile USA is competing against significantly larger “nationwide” carriers with superior spectrum holdings in the wireless market. As a result, T-Mobile USA faces spectrum and scale challenges. In this declaration, I review the scale challenges facing T-Mobile USA due to its smaller size, subscriber share and resources and how the proposed transaction with MetroPCS helps address those issues, allowing Newco to be a more effective competitor.