

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

In the Matter of )
Applications of Cellco Partnership d/b/a Verizon ) WT Docket No. 09-121
Wireless and AT&T, Inc. )
For Consent To Assign or Transfer Control of ) File Nos. 0003888722, et al., ITC-ASG-
Licenses and Authorizations ) 20090630-00309
and )
Request for Declaratory Ruling on Foreign ) File No. ISP-PDR-20090630-00004
Ownership )

MEMORANDUM OPINION AND ORDER AND DECLARATORY RULING

Adopted: August 19, 2010

Released: August 20, 2010

By the Chief, Wireless Telecommunications Bureau and Chief, International Bureau:

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## I. INTRODUCTION

1. In approving AT&T’s acquisition of Centennial, the Commission required that AT&T divest licenses and associated business units in seven of the affected markets in order to preserve and promote mobile competition in these markets.<sup>1</sup> The United States Department of Justice required that AT&T divest licenses and associated business units in one additional market.<sup>2</sup> Today, we approve the transfer to Verizon Wireless of licenses and business units in six of these eight markets. In these six markets, Verizon Wireless currently does not provide service or provides service only to parts of the market. With approval of this transaction, Verizon Wireless will be upgrading the 2G services offered by the divested business units with 3G offerings for consumers throughout the divested areas. Following Commission precedent, we closely scrutinized the individual markets that potentially raised competitive concerns, and considered potential harms as well as potential public interest benefits.

2. Specifically, we grant the applications<sup>3</sup> of Celco Partnership d/b/a Verizon Wireless (“Verizon Wireless”), and AT&T Inc. (“AT&T”) (together with Verizon Wireless, the “Applicants”), and certain of its future subsidiaries, to assign or transfer control of certain wireless licenses and related

<sup>1</sup> Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements, WT Docket No. 08-246, *Memorandum Opinion and Order*, 24 FCC Rcd 13915 (2009) (“*AT&T-Centennial Order*”).

<sup>2</sup> United States of America and State of Louisiana v. AT&T, Inc. and Centennial Communications Corp., Competitive Impact Statement, Case No. 1:-9-cv-01932, at 10-13 (filed Oct. 13, 2009) (“DOJ AT&T Competitive Impact Statement”). The additional market in which the Antitrust Division of the United States Department of Justice (“DOJ”) required divestiture is CMA501 (Mississippi 9 – Copiah). *See id.*

<sup>3</sup> File No. 0003888722 has been designated the lead application (“Application”) for the wireless radio services. The other wireless application contains an exhibit referring to the exhibits attached to File No. 0003888722. Thus, for convenience, when referring to these applications, we only cite to the lead Application.

authorizations<sup>4</sup> held by AT&T and its subsidiaries to Verizon Wireless. Our consent is given pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (“Communications Act”),<sup>5</sup> under which we must determine whether approval of the Applicants’ proposed transaction would serve the public interest, convenience, and necessity. In addition, we grant the request for a declaratory ruling that it is in the public interest for Zodiac Newco, LLC (“Zodiac”) and Lafayette Cellular Telephone Company (“Lafayette”), proposed future direct and indirect subsidiaries of Verizon Wireless, to have indirect foreign ownership in excess of the 25 percent benchmark under section 310(b)(4) of the Communications Act.<sup>6</sup> Our action to grant the subject applications partially effectuates the requirement imposed by the Commission in the *AT&T-Centennial Order* that AT&T divest certain business units as a condition of Commission consent for it to acquire licenses and authorizations held by Centennial Communications Corp. (“Centennial”).<sup>7</sup>

## II. BACKGROUND

### A. Description of Applicants

#### 1. Cellco Partnership d/b/a Verizon Wireless

3. Verizon Wireless is a joint venture between Verizon Communications Inc. (“Verizon”) and Vodafone Group Plc. (“Vodafone”).<sup>8</sup> Verizon owns a controlling 55 percent ownership interest in the joint venture, and thus has control of Verizon Wireless and its subsidiaries.<sup>9</sup> Verizon Wireless is headquartered in Basking Ridge, New Jersey.<sup>10</sup> Verizon Wireless reports that it is the industry-leading wireless company in the United States based on operating income,<sup>11</sup> and the largest wireless service provider in the U.S. based on the number of retail customers.<sup>12</sup> Verizon Wireless provides wireless voice

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<sup>4</sup> The authorizations involve radio service licenses under Parts 22 and 101 of the Commission’s rules as well as international section 214 authorizations. *See infra* para. 9.

<sup>5</sup> 47 U.S.C. §§ 214, 310(d).

<sup>6</sup> 47 U.S.C. § 310(b)(4).

<sup>7</sup> Specifically, this proposed transaction would fulfill the required divestiture in five of the seven CMAs set forth in the *AT&T-Centennial Order*. The divestiture in CMA501 included in the pending applications was required by the DOJ. *See* DOJ AT&T Competitive Impact Statement at 10-13. Divestitures in the remaining two CMAs are the subject of separate applications involving an agreement between AT&T and Texas 10, LLC that we recently granted. *See* Wireless Telecommunications Bureau and International Bureau Grant Consent for the Transfer of Control and Assignment of Licenses and Authorizations from AT&T Inc. to Texas 10, LLC, WT Docket No. 10-78, *Public Notice*, DA 10-1552 (WTB/IB rel. Aug. 17, 2010). *See infra* para 12.

<sup>8</sup> *See* Verizon Communications Inc., SEC Form 10-K, at 3 (for the fiscal year ended Dec. 31, 2009) (“Verizon 10-K”), *available at* <http://www.sec.gov/Archives/edgar/data/732712/000119312510041685/d10k.htm>; Verizon Communications, 2009 Annual Report, at 21 (“Verizon Annual Report”), *available at* [http://investor.verizon.com/financial/quarterly/pdf/09\\_annual\\_report.pdf](http://investor.verizon.com/financial/quarterly/pdf/09_annual_report.pdf). While Verizon Wireless is not a reporting company under the Securities Exchange Act of 1934 and does not make Securities Exchange Commission (“SEC”) filings, information about Verizon Wireless is included in earnings announcements and SEC filings by Verizon Communication, Inc. *See* Verizon Wireless, Investors, *available at* <http://news.vzw.com/investor/index.html> (last visited Aug. 11, 2010).

<sup>9</sup> *See* Verizon 10-K at 3; Verizon Annual Report at 21.

<sup>10</sup> Verizon Wireless, About Us, Facts-at-a-Glance, *available at* <http://aboutus.vzw.com/atagance.html> (“Verizon Wireless Facts”) (last visited Aug. 11, 2010).

<sup>11</sup> *See* Verizon 10-K at 4.

<sup>12</sup> *See id.*

and data products and other value-added services and equipment sales across the United States.<sup>13</sup> The company utilizes Code-Division Multiple Access (“CDMA”) technology.<sup>14</sup> Verizon states that its wireless network covers a population of approximately 290 million and provides service to nearly 91.2 million customers, as of December 31, 2009.<sup>15</sup> For 2009, Verizon states that its domestic wireless revenues were \$62 billion.<sup>16</sup>

4. Verizon is incorporated in Delaware and headquartered in New York.<sup>17</sup> It provides wireline, wireless, and broadband services to mass market, business, government, and wholesale customers.<sup>18</sup> Verizon operates two reportable business segments – Domestic Wireless and Wireline.<sup>19</sup> For 2009, Verizon states that its wireline revenues were \$46 billion,<sup>20</sup> and Verizon, which is traded on the New York Stock Exchange,<sup>21</sup> generated consolidated revenues of approximately \$107.8 billion.<sup>22</sup>

5. Vodafone, a public limited company incorporated in England with a registered office in Newbury, England,<sup>23</sup> holds a non-controlling 45 percent interest in Verizon Wireless.<sup>24</sup> Vodafone provides mobile voice and data, paging, and internet services in 30 countries in Europe, Asia, the Middle

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<sup>13</sup> See Verizon Wireless, Investor Relations, Business Units, Domestic Wireless, *available at* <http://investor.verizon.com/business/wireless.aspx> (last visited Aug. 11, 2010).

<sup>14</sup> Verizon 10-K at 5. Verizon Wireless states that it has deployed CDMA-1xRTT technology in virtually all of its cell sites nationwide and that it had deployed Evolution-Data Optimized (“EV-DO”) technology in approximately 94 percent of its cell sites in its CDMA network as of December 31, 2009, with additional deployment ongoing. *Id.* As a result of Verizon Wireless’s acquisition of ALLTEL and Rural Cellular Corporation, Verizon Wireless also provides GSM service and fulfills GSM roaming obligations in certain markets. *Id.*

<sup>15</sup> Verizon 10-K at 5. This figure includes the 105 markets the Commission required to be divested in its order approving Verizon Wireless’s acquisition of ALLTEL Corporation (“ALLTEL”). See Applications of Celco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444, 17515-16 ¶¶ 157, 159 (2008) (“*Verizon Wireless-ALLTEL Order*”).

<sup>16</sup> Verizon 10-K at 3.

<sup>17</sup> *Id.*; Verizon, Investor Relations, Company Profile, Corporate History, *available at* <http://investor.verizon.com/profile/history/index.aspx> (last visited Aug. 11, 2010).

<sup>18</sup> Verizon, Investor Relations, Company Profile, Overview, *available at* <http://investor.verizon.com/profile/overview.aspx> (last visited Aug. 11, 2010).

<sup>19</sup> See Verizon Annual Report at 21; Verizon, Investor Relations, Business Units, *available at* <http://investor.verizon.com/business/index.aspx> (last visited Aug. 11, 2010).

<sup>20</sup> Verizon 10-K at 10.

<sup>21</sup> Verizon, Corporate History, History of Verizon Communications, *available at* <http://investor.verizon.com/profile/history/index.aspx> (last visited Aug. 11, 2010).

<sup>22</sup> Verizon Annual Report at 17; Verizon, Investor Relations, Company Profile, Corporate History, Recent Verizon History, *available at* <http://investor.verizon.com/profile/history/index.aspx> (last visited Aug. 11, 2010).

<sup>23</sup> Vodafone, About Vodafone, *available at* [http://www.vodafone.com/start/investor\\_relations/vodafone\\_at\\_a\\_glance0.html](http://www.vodafone.com/start/investor_relations/vodafone_at_a_glance0.html) (last visited Aug. 11, 2010) (“About Vodafone”).

<sup>24</sup> Verizon 10-K at 3.

East, and the United States through subsidiaries, joint ventures, and other investments.<sup>25</sup> Its ordinary shares are listed on the London Stock Exchange and its American Depositary Shares are listed on the NASDAQ Stock Market.<sup>26</sup> Its revenue for the year ending March 31, 2009 was £41 billion.<sup>27</sup>

## 2. AT&T

6. AT&T, incorporated in Delaware and headquartered in Dallas, Texas, is a communications holding company.<sup>28</sup> With its subsidiaries, affiliates, and operating companies, AT&T states that it ranks among the leading providers of telecommunications services in the United States and around the world.<sup>29</sup> AT&T asserts that, as of December 31, 2009, it was a leading provider of wireless data in the U.S. wireless industry based on subscribers<sup>30</sup> and the largest communications company in the world by revenue.<sup>31</sup> The company reported more than \$123 billion in revenues in 2009.<sup>32</sup>

7. AT&T has four main operating segments: wireless, wireline, advertising solutions, and other.<sup>33</sup> The wireless segment consists of AT&T's subsidiary, AT&T Mobility, which provides wireless services to both business and consumer customers.<sup>34</sup> This segment represents approximately 43 percent of 2009 total segment operating revenues.<sup>35</sup> AT&T has more than 85.1 million wireless subscribers.<sup>36</sup> Its 3G network uses High Speed Downlink Packet Access/Universal Mobile Telecommunications System ("HSDPA/UMTS") technology.<sup>37</sup>

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<sup>25</sup> See About Vodafone; Vodafone, Fact Sheet, *available at* [http://www.vodafone.com/start/investor\\_relations/vodafone\\_at\\_a\\_glance0/fact\\_sheet.html](http://www.vodafone.com/start/investor_relations/vodafone_at_a_glance0/fact_sheet.html) (last visited Aug. 11, 2010).

<sup>26</sup> See About Vodafone.

<sup>27</sup> Vodafone Group Plc, Annual Report For the year ended March 31, 2009, Performance, Operating Results, *available at* [http://www.vodafone.com/static/annual\\_report09/performance/operating\\_results/2009\\_comp\\_2008/index.html](http://www.vodafone.com/static/annual_report09/performance/operating_results/2009_comp_2008/index.html) (last visited Aug. 11, 2010).

<sup>28</sup> AT&T Inc., Form 10-K, at 1 (filed Feb. 25, 2010) ("AT&T 10-K") *available at* <http://www.sec.gov/Archives/edgar/data/732717/000073271710000013/0000732717-10-000013-index.htm>.

<sup>29</sup> AT&T 10-K at 1.

<sup>30</sup> AT&T 10-K at 3.

<sup>31</sup> AT&T, About Us, Corporate Profile, Key Facts About AT&T ("AT&T Corporate Profile Key Facts"), *available at* <http://www.att.com/gen/investor-relations?pid=5711> (last visited Aug. 11, 2010).

<sup>32</sup> AT&T Inc., AT&T Inc. 2009 Annual Report, Ex. 13 (filed Feb. 25, 2010), *available at* <http://www.sec.gov/Archives/edgar/data/732717/000073271710000013/0000732717-10-000013-index.htm>.

<sup>33</sup> AT&T 10-K at 3.

<sup>34</sup> AT&T 10-K at 3.

<sup>35</sup> AT&T 10-K at 3.

<sup>36</sup> AT&T Corporate Profile Key Facts.

<sup>37</sup> AT&T, Wireless, Our Technology at 1, *available at* <http://www.wireless.att.com/about/our-technology.jsp> (last visited Aug. 11, 2010). AT&T also offers a High Speed Uplink Packet Access ("HSUPA")-enabled network to wireless laptop users. AT&T, About Us, Corporate Profile, Networks, *available at* <http://www.att.com/gen/investor-relations?pid=5711> (last visited Aug. 11, 2010). AT&T offers customers Wi-Fi access at more than 125,000 hot spots around the world. *Id.*

8. AT&T's wireline subsidiaries provide both retail and wholesale communications services (both voice and data) domestically and internationally.<sup>38</sup> The advertising solutions segment includes AT&T's directory operations, which publish Yellow and White Pages directories and sell directory advertising and Internet-based advertising and search.<sup>39</sup> The "other" segment includes operations from Sterling Commerce, AT&T's business integration software and services subsidiary, operator services, corporate and other operations.<sup>40</sup>

### **B. Description of Transaction**

9. On June 30, 2009 and March 5, 2010, the Applicants filed a series of applications pursuant to sections 214 and 310(d) of the Communications Act,<sup>41</sup> and a request for a declaratory ruling that it is in the public interest for Zodiac and Lafayette to have indirect foreign ownership in excess of the 25 percent benchmark under section 310(b)(4) of the Communications Act.<sup>42</sup> In these applications, the Applicants seek Commission approval of the transfer of control from AT&T to Verizon Wireless of certain wireless licenses and related authorizations in Louisiana and Mississippi held by AT&T and its subsidiaries. These licenses and authorizations were part of the transaction by which AT&T acquired control of Centennial and its subsidiaries.<sup>43</sup> The instant assignment and transfer of control applications involve licenses for the Part 22 Cellular Radiotelephone Service and the Part 101 Common Carrier Fixed Point-to-Point Microwave Service,<sup>44</sup> as well as a partial assignment of an international Section 214 authorization.<sup>45</sup>

10. Pursuant to a purchase agreement the Applicants entered into on May 8, 2009, Centennial and Centennial Southeast License Company LLC, a 100 percent direct subsidiary of Centennial, will contribute licenses, authorizations, and related assets that are the subject of the pending applications, and Centennial will contribute its general partnership interest in Lafayette, a 95 percent direct subsidiary of

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<sup>38</sup> AT&T 10-K at 4. This segment represents approximately 52 percent of 2009 segment operating revenues. AT&T 10-K at 4.

<sup>39</sup> AT&T 10-K at 5. This segment represents approximately four percent of 2009 segment operating revenues. AT&T 10-K at 5.

<sup>40</sup> AT&T 10-K at 5. AT&T has entered into an agreement to sell its Sterling Commerce subsidiary to IBM, a transaction AT&T expects will close in the second half of 2010. See AT&T Inc., SEC Form 8-K (dated May 23, 2010), available at [http://www.sec.gov/Archives/edgar/data/732717/000073271710000039/sterling\\_8k.htm](http://www.sec.gov/Archives/edgar/data/732717/000073271710000039/sterling_8k.htm). This segment represents approximately one percent of 2009 segment operating revenues. AT&T 10-K at 5.

<sup>41</sup> 47 U.S.C. §§ 214, 310(d).

<sup>42</sup> 47 U.S.C. § 310(b)(4).

<sup>43</sup> See generally *AT&T-Centennial Order*.

<sup>44</sup> See File Nos. 0003888718, 0003888722 (amended Mar. 5 and July 30, 2010). See also Cellco Partnership d/b/a Verizon Wireless and AT&T Inc. Seek FCC Consent To Assign or Transfer Control of Licenses and Request for a Declaratory Ruling on Foreign Ownership, WT Docket No. 09-121, *Public Notice*, 24 FCC Rcd 11314 (2009) ("*Comment Public Notice*"); Cellco Partnership d/b/a Verizon Wireless and AT&T Inc. Seek FCC Consent To Assign or Transfer Control of Licenses and Request for a Declaratory Ruling on Foreign Ownership – Amended Application, WT Docket No. 09-121, *Public Notice*, 25 FCC Rcd 3031 (2010) ("*Second Comment Public Notice*").

<sup>45</sup> See File No. ITC-ASG-20090630-00309 (partial assignment from Centennial Communications Corp. to Zodiac Newco, LLC) ("*214 Application*"). Zodiac will provide international service pursuant to international section 214 authorization File No. ITC-214-20100621-00260. Centennial will continue to provide international service to its remaining customers pursuant to its existing international section 214 authorization, ITC-214-19970923-00579.

Centennial, to Zodiac, a newly-formed wholly-owned indirect subsidiary of AT&T.<sup>46</sup> Subsequently, the indirect AT&T subsidiary that is the parent of Zodiac will transfer its interest in Zodiac to Verizon Wireless, thereby causing Zodiac to become a wholly-owned subsidiary of Verizon Wireless.<sup>47</sup> After consummation of the proposed transaction, the licenses and authorizations that are the subject of the instant applications will be controlled by Verizon Wireless.<sup>48</sup>

11. As a result of the proposed transaction, Verizon Wireless will acquire from AT&T the assets of the Centennial wireless businesses in CMA174 (Lafayette, LA), CMA458 (Louisiana 5 – Beauregard), CMA459 (Louisiana 6 – Iberville), CMA460 (Louisiana 7 – West Feliciana), CMA500 (Mississippi 8 – Claiborne),<sup>49</sup> and CMA501 (Mississippi 9 – Copiah) (collectively, the “Divestiture Markets”).<sup>50</sup>

12. The remaining two markets in which the Commission required divestitures in the *AT&T-Centennial Order*<sup>51</sup> are the subject of separate transfer applications. Those applications propose transfer of those business units to Texas 10, LLC, which, directly or through affiliates, provides wireless services in rural areas in Montana, Wyoming, Texas, and Oklahoma, often under the name Cellular One.<sup>52</sup> We recently granted these two applications.<sup>53</sup>

### C. Transaction Review Process

#### 1. Commission Review

13. On June 30, 2009, the Applicants filed applications seeking Commission approval of the transfer of control from AT&T to Verizon Wireless of certain wireless licenses and related authorizations in Louisiana and Mississippi held by AT&T and its subsidiaries,<sup>54</sup> and a request for a declaratory ruling that it is in the public interest for Zodiac and Lafayette to have indirect foreign ownership in excess of the 25 percent benchmark under section 310(b)(4) of the Communications Act.<sup>55</sup> On August 31, 2009, the Commission released a public notice seeking comment on the proposed transaction.<sup>56</sup> The *Comment Public Notice* established a pleading cycle for the applications, with petitions to deny due September 30,

<sup>46</sup> Application, Public Interest Statement at 4.

<sup>47</sup> Application, Public Interest Statement at 4; Letter from Nancy J. Victory, Wiley Rein LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 6, 2010).

<sup>48</sup> Application, Public Interest Statement at 5.

<sup>49</sup> Application, Public Interest Statement at 3. These assets include the cellular A-band licenses for those CMAs, along with the customers and substantially all operational and related assets of the former Centennial wireless businesses in these areas. Application, Public Interest Statement at 3.

<sup>50</sup> Application, Amendment to Description of Transaction at 1.

<sup>51</sup> Those two markets are CMA205 (Alexandria, LA) and CMA456 (Louisiana 3 – De Soto).

<sup>52</sup> Texas 10, LLC and AT&T Inc. Seek FCC Consent To Assign Licenses and Authorizations, WT Docket No. 10-78, *Public Notice*, 24 FCC Rcd 3027 (2010). Some of these companies also operate under the name Chinook Wireless.

<sup>53</sup> See Wireless Telecommunications Bureau and International Bureau Grant Consent for the Transfer of Control and Assignment of Licenses and Authorizations from AT&T Inc. to Texas 10, LLC, WT Docket No. 10-78, *Public Notice*, DA 10-1552 (WTB/IB rel. Aug. 19, 2010).

<sup>54</sup> See *supra* notes 44, 45.

<sup>55</sup> 47 U.S.C. § 310(b)(4).

<sup>56</sup> *Comment Public Notice*, 24 FCC Rcd at 11316.

2009, oppositions due October 13, 2009, and replies due October 20, 2009.<sup>57</sup> On March 5, 2010, the Applicants amended the applications to seek authority to permit AT&T to transfer to Verizon Wireless several additional authorizations that previously were not included in the applications.<sup>58</sup> On March 26, 2010, the Commission released a second public notice seeking comment on the amended application.<sup>59</sup> The *Second Comment Public Notice* established a pleading cycle for the applications, with petitions to deny due April 26, 2010, oppositions due May 6, 2010, and replies due May 13, 2010.<sup>60</sup>

14. In response to the *Comment Public Notice*, the Commission received a petition to deny filed by Cellular South, Inc. (“Cellular South”).<sup>61</sup> Cellular South also filed a petition for expedited reconsideration requesting that the Commission reconsider its decision, in the *Comment Public Notice*, to use permit-but-disclose *ex parte* procedures for the proceeding.<sup>62</sup> The Applicants filed a Joint Opposition on October 13, 2009.<sup>63</sup> The Commission received a reply to the Joint Opposition from Cellular South.<sup>64</sup> In response to the *Second Comment Public Notice*, the Commission received a comment from WRJI 91.5 FM.<sup>65</sup>

15. *Confidential Materials.* On November 19, 2009, the Wireless Telecommunications Bureau (“Bureau”) issued a protective order to ensure that any confidential or proprietary documents submitted to the Commission would be adequately protected from public disclosure and announcing the process by which interested parties could gain access to confidential information filed in the record.<sup>66</sup> On May 19, 2010, the Bureau released a second protective order, requested by the Applicants,<sup>67</sup> to provide additional protection to those documents and that information contained in AT&T’s and Verizon Wireless’s responses to the Bureau’s information request considered to be highly sensitive and

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<sup>57</sup> See *id.* at 11314.

<sup>58</sup> See File No. 0003888722 (amended Mar. 5 and July 30, 2010).

<sup>59</sup> *Second Comment Public Notice*, 25 FCC Rcd at 3033.

<sup>60</sup> See *id.* at 3033.

<sup>61</sup> Petition to Deny of Cellular South, Inc., filed Sept. 30, 2009 (“Cellular South Petition”).

<sup>62</sup> Petition for Expedited Reconsideration of Cellular South, Inc., filed Sept. 29, 2009 (“Cellular South Petition for Reconsideration”).

<sup>63</sup> Joint Opposition of Verizon Wireless and AT&T Inc. to Petition to Deny, filed July 30, 2009 (“Joint Opposition”).

<sup>64</sup> Reply of Cellular South, Inc. to Joint Opposition of Verizon Wireless and AT&T Inc. to Petition to Deny, filed Oct. 20, 2009 (“Cellular South Reply”).

<sup>65</sup> Comment of WRJI 91.5 FM, filed April 19, 2010 (“WRJI 91.5 FM Comment”).

<sup>66</sup> Applications of Cellco Partnership d/b/a Verizon Wireless and AT&T Inc. For Consent To Assign or Transfer Control of Licenses and Authorizations and Request for Declaratory Ruling on Foreign Ownership, WT Docket No. 09-121, *Protective Order*, 24 FCC Rcd 13869 (WTB 2009) (“*Protective Order*”).

<sup>67</sup> Letter from Nancy C. Victory, Wiley Rein LLP, Counsel for Verizon Wireless, and Maureen R. Jeffreys, Arnold & Porter LLP, Counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 9, 2010).



confidential.<sup>68</sup> The Bureau received acknowledgements pursuant to the Protective Order from six individuals.<sup>69</sup>

16. On January 5, 2010, the Bureau released a public notice announcing that Numbering Resource Utilization and Forecast (“NRUF”) reports and local number portability (“LNP”) data would be placed into the record and adopted a protective order pursuant to which the Applicants and third parties would be allowed to review the specific NRUF reports and LNP data placed into the record.<sup>70</sup> The Bureau received acknowledgements pursuant to the *NRUF Protective Order* from three individuals seeking to review the NRUF and LNP data that is in the record.<sup>71</sup>

17. *Bureau Requests for Documents and Information.* On November 19, 2009, pursuant to section 308(b) of the Communications Act,<sup>72</sup> the Bureau requested a number of documents and additional information from the Applicants by December 3, 2009.<sup>73</sup> Among other things, the Bureau asked the Applicants to provide further information regarding the GSM network formerly owned by Centennial that Verizon Wireless will acquire, roaming opportunities, service, rate plans, and handsets.<sup>74</sup> On December 1, 2009, January 25, and April 2, 2010, Verizon Wireless requested extensions of time to provide its written responses to the information request of 60 days, an additional 60 days, and three business days following grant of the Applicants’ request for the *Second Protective Order*, respectively.<sup>75</sup> Following the Commission grant of the extension of time request and the issuance of the *Second Protective Order* on

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<sup>68</sup> Applications of Cellco Partnership d/b/a Verizon Wireless and AT&T Inc. For Consent To Assign or Transfer Control of Licenses and Authorizations and Request for Declaratory Ruling on Foreign Ownership, WT Docket No. 09-121, *Second Protective Order*, 25 FCC Rcd 5580 (WTB 2010) (“*Second Protective Order*”).

<sup>69</sup> Letter from John R. Feore, Jr., Dow Lohnes, PLLC, Counsel for Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 3, 2009) (acknowledgements of confidentiality for John R. Feore, Jr., J.G. Harrington, John S. Logan, Joshua N. Pila, and Vicki Lynne Lyttle); Letter from John R. Feore, Jr., Dow Lohnes, PLLC, Counsel for Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 29, 2009) (acknowledgement of confidentiality for Verdette Coltrane).

<sup>70</sup> Applications of Cellco Partnership d/b/a Verizon Wireless and AT&T Inc. For Consent To Assign or Transfer Control of Licenses and Authorizations and Request for Declaratory Ruling on Foreign Ownership – Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports Placed Into the Record, Subject to Protective Order, WT Docket No. 09-121, CC Docket No. 99-200, *Public Notice*, 25 FCC Rcd 592 (WTB 2010); Applications of Cellco Partnership d/b/a Verizon Wireless and AT&T Inc. For Consent To Assign or Transfer Control of Licenses and Authorizations and Request for Declaratory Ruling on Foreign Ownership, WT Docket No. 09-121, CC Docket No. 99-200, *Protective Order*, 25 FCC Rcd 59 (WTB 2010) (“*NRUF Protective Order*”).

<sup>71</sup> Letter from Catherine M. Hilke, Wiley Rein LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 6, 2010) (acknowledgements of confidentiality for Nancy J. Victory, Catherine M. Hilke, and M. Ethan Lucarelli).

<sup>72</sup> 47 U.S.C. § 308(b).

<sup>73</sup> Letter from Ruth Milkman, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Michael Samscock, Verizon Wireless, and William R. Drexel, AT&T (Nov. 19, 2009) (“*Information Request*”).

<sup>74</sup> *See id.* at Attachment.

<sup>75</sup> Letter from Nancy J. Victory, Wiley Rein LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 1, 2009); Letter from Nancy J. Victory, Wiley Rein LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 25, 2010); Letter from Nancy J. Victory, Wiley Rein LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Apr. 2, 2010).

May 19, 2010, the Applicants provided responsive documents and information on May 24 and 25, 2010,<sup>76</sup> some of which was provided subject to the provisions of the *Protective Order* and the *Second Protective Order*. On May 19, 2010, the Bureau advised the Applicants that it was stopping the informal 180-day review clock for this proceeding from the time the response to the Information Request was due on December 3, 2009, until the date the Applicants submitted their responses to the Information Request.<sup>77</sup>

## 2. Department of Justice Review

18. On October 13, 2009, the Antitrust Division of the United States Department of Justice (“DOJ”) filed a series of documents, including a complaint and preservation of assets stipulation and order, with the United States District Court for the District of Columbia (“D.C. District Court”) reflecting the settlement between the DOJ and AT&T and Centennial designed to eliminate the anticompetitive effects of the AT&T-Centennial transaction in certain markets,<sup>78</sup> and the parties jointly filed a Final Judgment with the D.C. District Court.<sup>79</sup> This transaction aids AT&T in fulfilling its divestiture obligations under the settlement agreement with the DOJ.

19. Under the Final Judgment issued by the D.C. District Court,<sup>80</sup> the DOJ must be satisfied that the divestiture of assets will be accomplished such that “these assets can and will be used by the Acquirer(s) as part of a viable, ongoing business engaged in the provision of mobile wireless telecommunications services.”<sup>81</sup> In addition, the divestiture of assets “shall be made to an Acquirer or Acquirers that, in plaintiff United States’s sole judgment, upon consultation with the relevant plaintiff State, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of mobile wireless telecommunications

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<sup>76</sup> Letter from Nancy J. Victory, Wiley Rein LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 25, 2010) (“Verizon Wireless Information Request Response”); Letter from William E. Cook, Jr., Arnold & Porter LLP, Counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 24, 2010) (“AT&T Information Request Response”).

On January 25, 2010, Telephone USA filed a written *ex parte* communication with the Commission responding to and commenting on the Verizon Wireless Information Request Response in WT Docket No. 09-104. Letter from John R. Feore, Jr., Dow Lohnes, PLLC, Counsel for Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 25, 2010). The arguments in this filing are primarily directed toward Verizon Wireless’s disposition of the ALLTEL divestiture assets, which is not an issue raised by the applications before us in this proceeding. We thus do not address these issues herein. Moreover, the raised issues are discussed in detail in Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless For Consent To Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104, *Memorandum Opinion and Order*, FCC 10-116, ¶¶ 116-133 (rel. June 22, 2010) (“*AT&T-Verizon Wireless Order*”).

<sup>77</sup> Letter from Ruth Milkman, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Michael Samscock, Verizon Wireless, and William R. Drexel, AT&T (May 19, 2010).

<sup>78</sup> See generally *United States of America and State of Louisiana v. AT&T, Inc. and Centennial Communications Corp.*, Complaint, Case No. 1:09-cv-01932, at 7-9 ¶¶ 17-19 (filed Oct. 13, 2009) (“DOJ AT&T-Centennial Complaint”); DOJ AT&T-Centennial Competitive Impact Statement at 7-10; *United States of America and State of Louisiana v. AT&T, Inc. and Centennial Communications Corp.*, Preservation of Assets Stipulation and Order, Case No. 1:09-cv-01932, at 6 (filed Oct. 13, 2009) (“DOJ AT&T-Centennial Stipulation and Order”). All DOJ filings regarding this matter are available at <http://www.usdoj.gov/atr/cases/attcentennial.htm>.

<sup>79</sup> See *United States of America and State of Louisiana v. AT&T, Inc. and Centennial Communications Corp.*, Final Judgment, Case No. 1:09-cv-01932 (filed Oct. 13, 2009) (“DOJ AT&T-Centennial Final Judgment”).

<sup>80</sup> *United States of America et al. v. AT&T, Inc., and Centennial Communications Corp.*, No. 1:09-cv-1932 (HHK), 2010 WL 1726890 (D.D.C. Feb. 20, 2010) (“*U.S. v. AT&T and Centennial*”).

<sup>81</sup> *Id.* at 5.

services.”<sup>82</sup> The Final Judgment divided the markets into three clusters and directed that each cluster be sold to a single purchaser unless DOJ approval was obtained to break up a cluster to multiple acquirers.<sup>83</sup> Also, the Final Judgment provided for the provision of transition services by AT&T for a period of up to one year.<sup>84</sup> The DOJ conducted its review of the proposed transaction in light of these requirements and its governing statutory authority, and the DOJ has approved the proposed divestiture of the business units associated with the six markets to Verizon Wireless.

### III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

20. Pursuant to sections 214(a) and 310(d) of the Communications Act, the Commission must determine whether the Applicants have demonstrated that the proposed assignment and transfer of control of licenses and authorizations will serve the public interest, convenience, and necessity.<sup>85</sup> In making this assessment, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act,<sup>86</sup> other applicable statutes, and the Commission’s rules.<sup>87</sup> If the transaction does not violate a statute or rule, we next consider whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.<sup>88</sup> We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.<sup>89</sup> The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.<sup>90</sup>

21. Our public interest evaluation also necessarily encompasses the “broad aims of the Communications Act,” which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services,

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 6.

<sup>84</sup> *Id.*

<sup>85</sup> 47 U.S.C. §§ 214(a), 310(d).

<sup>86</sup> Section 310(d), 47 U.S.C. § 310(d), requires that we consider the applications as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. *See, e.g., AT&T-Verizon Wireless Order* at ¶ 22 n.93; *AT&T-Centennial Order* at 13927 ¶ 27; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17460 ¶ 26; Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, WT Docket No. 08-94, *Memorandum Opinion and Order*, 23 FCC Rcd 17570, 17578 ¶ 19 (2008) (“*Sprint Nextel-Clearwire Order*”); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21542 ¶ 40 (2004) (“*Cingular-AT&T Wireless Order*”).

<sup>87</sup> *See, e.g., AT&T-Verizon Wireless Order* at ¶ 22; *AT&T-Centennial Order*, 24 FCC Rcd at 13927 ¶ 27; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17460 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17578-79 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21542-43 ¶ 40.

<sup>88</sup> *See, e.g., AT&T-Verizon Wireless Order* at ¶ 22; *AT&T-Centennial Order*, 24 FCC Rcd at 13927 ¶ 27; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17460 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17578-79 ¶ 19.

<sup>89</sup> *See, e.g., AT&T-Verizon Wireless Order* at ¶ 22; *AT&T-Centennial Order*, 24 FCC Rcd at 13927 ¶ 27; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17460 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17579 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

<sup>90</sup> *See, e.g., AT&T-Verizon Wireless Order* at ¶ 22; *AT&T-Centennial Order*, 24 FCC Rcd at 13927 ¶ 27; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17579 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

promoting a diversity of license holdings, and generally managing the spectrum in the public interest.<sup>91</sup> Our public interest analysis may also entail assessing whether the proposed transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.<sup>92</sup> In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.<sup>93</sup>

22. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.<sup>94</sup> The DOJ reviews communications mergers pursuant to section 7 of the Clayton Act, and if it wishes to block a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.<sup>95</sup> Under the Commission's review, applicants must show that the transaction will serve the public interest; otherwise, the application is set for hearing. The DOJ's review is limited solely to an examination of the competitive effects of the acquisition, without reference to various public interest considerations.<sup>96</sup> The Commission also considers the competitive effects of a transaction but our analysis under the public interest standard is somewhat broader; for example, it considers whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and the impact on the relevant market.<sup>97</sup>

23. Our analysis recognizes that a proposed transaction may lead to both beneficial and harmful consequences.<sup>98</sup> Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to rely on our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits. Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not

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<sup>91</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 23; *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 28; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

<sup>92</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 23; *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 28; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

<sup>93</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 23; *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 28; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

<sup>94</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 24; *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 29; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 28; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42.

<sup>95</sup> 15 U.S.C. § 18.

<sup>96</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 24; *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 29; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 28; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 21.

<sup>97</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 24; *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 29; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 28; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

<sup>98</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 25; *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 30; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

inconsistent with law that may be necessary to carry out the provisions of the Communications Act.<sup>99</sup> Similarly, section 214(c) of the Communications Act authorizes the Commission to impose “such terms and conditions as in its judgment the public convenience and necessity may require.”<sup>100</sup> In using this broad authority, the Commission has generally imposed conditions to remedy specific harms likely to arise from the transaction or to help ensure the realization of potential benefits promised for the transaction.<sup>101</sup>

#### IV. QUALIFICATIONS OF APPLICANTS

24. As noted previously, when evaluating applications for consent to assign or transfer control of licenses and authorizations, sections 214(a) and 310(d) of the Communications Act require the Commission to determine whether the proposed transaction will serve “the public interest, convenience and necessity.”<sup>102</sup> Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite “citizenship, character, financial, technical, and other qualifications.”<sup>103</sup> Therefore, as a threshold matter, the Commission must determine whether the applicants to the proposed transaction meet the requisite qualifications requirements to hold and transfer licenses under sections 214(a) and 310(d) of the Communications Act and the Commission’s rules.<sup>104</sup>

25. In determining whether applicants have the requisite character to be Commission licensees, we look to the Commission’s character policy initially developed in the broadcast area as guidance in resolving similar questions in common carrier license transfer proceedings.<sup>105</sup> Under this

<sup>99</sup> 47 U.S.C. § 303(r); *see also, e.g., AT&T-Verizon Wireless Order* at ¶ 25; *AT&T-Centennial Order*, 24 FCC Rcd at 13939 ¶ 30; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17463 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

<sup>100</sup> 47 U.S.C. § 214(c); *see also, e.g., AT&T-Verizon Wireless Order* at ¶ 25; *AT&T-Centennial Order*, 24 FCC Rcd at 13939 ¶ 30; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17463 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

<sup>101</sup> *See, e.g., AT&T-Verizon Wireless Order* at ¶ 25; *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 30; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17463 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43. We consider only those harms and benefits that are related to the Commission’s responsibilities under the Communications Act and related statutes.

<sup>102</sup> 47 U.S.C. §§ 214(a), 310(d).

<sup>103</sup> *Id.* §§ 308, 310(d). *See also, e.g., AT&T-Verizon Wireless Order* at ¶ 26; *AT&T-Centennial Order*, 24 FCC Rcd at 13930 ¶ 31; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 31; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

<sup>104</sup> *See* 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; *see also, e.g., AT&T-Verizon Wireless Order* at ¶ 26; *AT&T-Centennial Order*, 24 FCC Rcd at 13930 ¶ 31; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 31; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

<sup>105</sup> *See, e.g., WorldCom, Inc. and Its Subsidiaries (Debtors-in-Possession), Transferor, and MCI, Inc., Transferee*, WC Docket No. 02-215, *Memorandum Opinion and Order*, 18 FCC Rcd 26484, 26493 ¶ 13 (2003). *See also* Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, *Report, Order and Policy Statement*, 102 F.C.C.2d 1179, 1210-11 ¶¶ 60-61 (1986) (“1986 Character Policy Statement”); *Memorandum Opinion and Order*, 1 FCC Rcd 421 (1986); Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications, *Policy Statement and Order*, 5 FCC Rcd 3252 (1990) (“1990 Character Policy Statement”), *Memorandum Opinion and Order*, 6 FCC Rcd 3448 (1991), *Memorandum Opinion and Order*, 7 FCC Rcd 6564 (continued....)

policy, the Commission previously has stated that it will review allegations of misconduct directly before it,<sup>106</sup> as well as conduct that takes place outside of the Commission.<sup>107</sup> With respect to Commission-related conduct, the Commission has stated that all violations of provisions of the Communications Act, or of the Commission's rules or policies, are predictive of an applicant's future truthfulness and reliability, and thus have a bearing on an applicant's character qualifications.<sup>108</sup> The Commission previously has determined that in its review of character issues, it will consider forms of adjudicated, non-Commission related misconduct that include: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition.<sup>109</sup>

26. When evaluating transfers of control or assignments under section 310(d), the Commission does not, as a general rule, re-evaluate the qualifications of the transferor, unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.<sup>110</sup> There has been no designation for hearing of AT&T's basic qualifications nor have any issues been raised here that warrant such a hearing designation. Conversely, section 310(d) obligates the Commission to consider whether the proposed transferee is qualified to hold Commission licenses.<sup>111</sup> No issues have been raised with respect to the basic qualifications of the transferee, Verizon Wireless, which has previously been found qualified to hold Commission licenses. We therefore find that there is no reason to re-evaluate the basic qualifications of Verizon Wireless.

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(1992). The Commission applies its broadcast character standards to applicants and licensees in the other radio services. *See, e.g., 1990 Character Policy Statement*, 5 FCC Rcd at 3253 ¶ 10 (adopting 47 C.F.R. § 1.17 to apply prohibition against misrepresentations and material omissions to applicants, licensees, and permittees in all radio services).

<sup>106</sup> *See, e.g., AT&T-Verizon Wireless Order* at ¶ 27; *AT&T-Centennial Order*, 24 FCC Rcd at 13930 ¶ 32; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 32; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582-83 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

<sup>107</sup> *See, e.g., AT&T-Verizon Wireless Order* at ¶ 27; *AT&T-Centennial Order*, 24 FCC Rcd at 13930 ¶ 32; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 32; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

<sup>108</sup> *See, e.g., AT&T-Verizon Wireless Order* at ¶ 27; *AT&T-Centennial Order*, 24 FCC Rcd at 13930 ¶ 32; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 32; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47; *1986 Character Policy Statement*, 102 F.C.C.2d at 1209-10 ¶ 57.

<sup>109</sup> *See, e.g., AT&T-Verizon Wireless Order* at ¶ 27; *AT&T-Centennial Order*, 24 FCC Rcd at 13930 ¶ 32; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464-65 ¶ 32; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

<sup>110</sup> *See, e.g., AT&T-Verizon Wireless Order* at ¶ 28; *AT&T-Centennial Order*, 24 FCC Rcd at 13931 ¶ 33; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17466 ¶ 33; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44. *See also* Stephen F. Sewell, *Assignment and Transfers of Control of FCC Authorizations under Section 310(d) of the Communications Act of 1934*, 43 FED. COMM. L.J. 277, 339-40 (1991). The policy of not approving assignments or transfers when issues regarding the licensee's basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. *See id.* The hearing designation is required under section 309(e) of the Communications Act, 47 U.S.C. § 309(e), only if the record presents a "substantial and material question of fact" whether grant of the application would serve the public interest, convenience, and necessity.

<sup>111</sup> *See, e.g., AT&T-Verizon Wireless Order* at ¶ 29; *AT&T-Centennial Order*, 24 FCC Rcd at 13931 ¶ 33; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17466 ¶ 33; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

## V. COMPETITIVE ANALYSIS

27. Our competitive analysis of the proposed transaction considers the potential competitive effects that might result from the proposed transaction.<sup>112</sup> As set out in prior Commission decisions, we begin our competitive analysis by determining the appropriate market definitions for this transaction,<sup>113</sup> including a determination of the product market, geographic markets, market participants, and the input market for spectrum available for the provision of mobile telephony/broadband services.

28. Under the Commission's framework for analysis, we next determine whether there is a significant increase in horizontal market concentration as a result of the proposed transaction. Horizontal transactions raise competitive concerns when they reduce the availability of choices to the point that the resulting firm has the incentive and the ability, either by itself or in coordination with other firms, to raise prices. The ability to raise prices above competitive levels is generally referred to as "market power." Market power may also enable sellers to reduce competition on dimensions other than price, including innovation and service quality. Absent significant offsetting efficiencies or other public interest benefits, a transaction that creates or enhances market power or facilitates its use is unlikely to serve the public interest.<sup>114</sup> Transactions that do not significantly increase concentration or do not result in a concentrated market ordinarily require no further analysis of their horizontal impact.

29. In analyzing concentration levels, the Commission has applied a two-part initial "screen" to identify those local markets in which no competitive harm clearly arises from the transaction. The first part of the screen considers changes in market concentration in the provision of "mobile telephony/broadband services" as a result of the proposed transaction, and is based on the size of the post-transaction Herfindahl-Hirschman Index ("HHI") of market concentration and the change in the HHI.<sup>115</sup> The HHI thresholds used in the screen are conservative in order for us to be confident that we give further review to any market in which the transaction may cause significant change in the competitive landscape. This initial screen is intended to eliminate from further review those markets in which there is clearly no competitive harm rather than to identify conclusively markets in which there *is* competitive harm. The second part of the screen examines the input market for spectrum available on a market-by-market basis for the provision of "mobile telephony/broadband services."<sup>116</sup>

30. For those markets not eliminated by the initial screen, we conduct, on a market-by-market basis, an analysis of any potential competitive harms associated with horizontal concentration,

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<sup>112</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 30; *AT&T-Centennial Order*, 24 FCC Rcd at 13931 ¶ 34; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468 ¶ 40; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68; Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, at § 0.1, n.6. (Apr. 2, 1992, revised Apr. 8, 1997) ("*DOJ/FTC Merger Guidelines*").

<sup>113</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 30; *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 36; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17469 ¶ 42; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583 ¶ 25; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 70.

<sup>114</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 31; *AT&T-Centennial Order*, 24 FCC Rcd at 13931-32 ¶ 34 n.147; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468 ¶ 40; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556-57 ¶ 68-69; *DOJ/FTC Merger Guidelines* § 0.1, n.6.

<sup>115</sup> The HHI would be greater than 2800 and the change in HHI will be 100 or greater, or the change in HHI would be 250 or greater, regardless of the level of the HHI.

<sup>116</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 32; *AT&T-Centennial Order*, 24 FCC Rcd at 13935 ¶ 43; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468-69 ¶ 41 n.193; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583-17584 ¶ 26; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21552 ¶ 58.

including the potential for both unilateral and coordinated effects. We also examine other market factors that pertain to competitive effects, including the incentive and ability of other existing firms to react and of new firms to enter the market in response to attempted exercises of market power by the merged entity as a result of the transaction.

## A. Market Definitions

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

### 1. Product Market

32. We evaluate this proposed transaction using the product market most recently used by the Commission – a combined “mobile telephony/broadband services” product market, which is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).<sup>117</sup> Mobile telephony/broadband services is the relevant product market because it includes not only the traditional wireless services identified in older transactions but also encompasses the recent significant advances in mobile broadband services technology that is rapidly evolving for next-generation services. The market for mobile telephony/broadband services includes mobile voice and data services provided over wireless broadband networks, as well as mobile voice and data services provided over less advanced, earlier generation (*e.g.*, 2G, 2.5G) legacy wireless networks. In addition, the market includes a wide array of mobile data services, ranging from handset-based mobile data services marketed primarily as an add-on to mobile voice services to standalone mobile Internet access services for laptop users. We find that both Verizon Wireless and AT&T provide services in the product market for mobile telephony/broadband services. No party in the proceeding challenged the mobile telephony/broadband definition, and we will apply this definition in our analysis of this transaction. Accordingly, our analysis herein focuses only on the potential competitive effects that relate to the mobile telephony/broadband services market.

### 2. Geographic Market

33. In its wireless transaction orders, the Commission has consistently applied the “hypothetical monopolist test” and found that the relevant geographic markets are local, larger than counties, may encompass multiple counties, and, depending on the consumer’s location, may even include parts of more than one state.<sup>118</sup> The Commission in these orders identified two sets of geographic areas that effectively may be used to define local markets – CEAs and CMAs.<sup>119</sup> We have chosen CEAs

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<sup>117</sup> See *AT&T-Verizon Wireless Order* at ¶ 35; *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 37; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17469-70 ¶ 45; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583-84 ¶ 26.

<sup>118</sup> See *AT&T-Verizon Wireless Order* at ¶ 36; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17470-71 ¶ 49; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562-63 ¶¶ 89-90.

<sup>119</sup> CEAs are designed to represent consumers’ patterns of normal travel for personal and employment reasons and may therefore capture areas within which groups of consumers would be expected to shop for wireless service. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURVEY OF CURRENT BUSINESS, February 1995, at 75. In addition, CEAs should be areas within which any service providers present would have an incentive to market—and actually provide—service relatively ubiquitously. Conversely, CMAs are the areas in which the Commission initially granted licenses for cellular service. Although partitioning has altered this structure in many license areas, CMAs represent the fact that the Commission’s licensing programs have to a certain degree shaped this market by defining the initial areas in which wireless providers had spectrum on which to base service offerings, (continued....)



and CMAs for our data analysis because both are consistent in order of magnitude with the local market definition we have adopted and because each brings a different consideration to the analysis. Because these two sets of geographic areas come from different sides of the equation – demand in one case, supply in the other – the Commission found them to be useful cross-checks on each other and, together, they help ensure that the Commission’s analysis does not overlook local areas that require more detailed analysis.<sup>120</sup> No party in the proceeding challenged the CMA/CEA geographic market definition, and we will apply this definition in our analysis of this transaction. Consistent with other transactions, we conclude that the most appropriate geographic level for market analysis is comprised of CMAs and CEAs.

### 3. Input Market for Spectrum

34. In evaluating this transaction, we consider the aggregation of spectrum by Verizon Wireless following Commission precedent. We analyze spectrum in particular bands that we determine to be “suitable” for the provision of mobile telephony/broadband services.<sup>121</sup> Consistent with our determination of a product market for mobile telephony/broadband services, we include all spectrum suitable for mobile voice and data services as well as spectrum suitable for the provision of wireless broadband over broadband networks. As previously explained by the Commission, suitability is determined by whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its uses for mobile telephony/broadband service.<sup>122</sup>

35. No party has argued here for a change in the spectrum to be included in the spectrum screen. Thus, for purposes of evaluating spectrum aggregation issues associated with this transaction, we include in both our market-specific spectrum screen as well as our market-by-market analysis those spectrum bands designated for cellular, broadband PCS, Specialized Mobile Radio (“SMR”), and 700 MHz services, as well as AWS-1 and Broadband Radio Service (“BRS”) spectrum<sup>123</sup> where available.<sup>124</sup>

(Continued from previous page) \_\_\_\_\_

and they may therefore serve as a reasonable proxy for where consumers face the same competitors. See *AT&T-Verizon Wireless Order* at ¶ 36 n.129; *AT&T-Centennial Order*, 24 FCC Rcd at 13933 ¶ 38 n.151; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17470-71 ¶ 49; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 51; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105.

<sup>120</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 36; *AT&T-Centennial Order*, 24 FCC Rcd at 13933 ¶ 38 n.151; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17470-71 ¶ 49; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 51; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105.

<sup>121</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 39; *AT&T-Centennial Order*, 24 FCC Rcd at 13935 ¶ 43; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17473 ¶ 53; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591-92 ¶ 53; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21560-61 ¶ 81.

<sup>122</sup> See *AT&T-Verizon Wireless Order* at ¶ 39; *AT&T-Centennial Order*, 24 FCC Rcd at 13935 ¶ 43; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17473 ¶ 53; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591-92 ¶ 53.

<sup>123</sup> The BRS spectrum reflects 55.5 megahertz of contiguous BRS spectrum (excluding BRS spectrum associated with the Middle Band Segment (MBS) channels, BRS Channel 1, and the J and K guard bands).

<sup>124</sup> AWS-1 spectrum is considered available based on whether there is required relocation of government transmitters or receivers in a CMA. See National Telecommunications and Information Administration, 1710-1755 MHz Introduction, <http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm> (last visited Aug. 11, 2010) (provides information on AWS relocation, including a relocation schedule and cost summary for AWS-1 relocation). BRS spectrum is considered available if the transition is complete. See *AT&T-Verizon Wireless Order* at ¶ 40 n.143; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17478 ¶ 65; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17597 ¶ 66.

#### 4. Market Participants

36. In analyzing this transaction, we find, as we have before in numerous other wireless transaction orders, that mobile telephony/broadband services offered by facilities-based providers using cellular, broadband PCS, and SMR spectrum and employing various technologies offer similar voice and data functionalities and are indistinguishable to the consumer.<sup>125</sup> Similarly, to the extent that entities provide facilities-based mobile telephony/broadband services using 700 MHz, AWS-1, and BRS spectrum, the Commission also considers them to be market participants.<sup>126</sup> As in previous decisions, we exclude MVNOs and resellers from consideration when computing initial concentration measures, although we acknowledge that non-facilities-based service options have an impact in the marketplace and in some instances may provide additional constraints against anticompetitive behavior.<sup>127</sup> Accordingly, we will consider facilities-based entities providing mobile telephony/broadband services using cellular, broadband PCS, SMR, 700 MHz, AWS-1, and BRS spectrum to be market participants.

##### B. Initial Screen

37. *Background.* In evaluating the competitive effects of this transaction, the Commission's initial screen is intended to exclude from further review those markets in which there is clearly no competitive harm relative to today's generally competitive marketplace.<sup>128</sup> The initial screen criteria identify, for further case-by-case market analysis, those markets in which, post-transaction: (1) the HHI would be greater than 2800 and the change in HHI will be 100 or greater, or the change in HHI would be 250 or greater, regardless of the level of the HHI, and (2) the Applicants would have, on a market-by-market basis, a 10 percent or greater interest in: 95 megahertz or more of PCS, SMR, and 700 MHz spectrum, where neither BRS nor AWS-1 spectrum is available; 115 megahertz or more of spectrum, where BRS spectrum is available, but AWS-1 spectrum is not available; 125 megahertz or more of spectrum, where AWS-1 spectrum is available, but BRS spectrum is not available; or 145 megahertz or more of spectrum where both AWS-1 and BRS spectrum are available.<sup>129</sup> A subsequent section examines on a case-by-case analysis those markets identified by the screen, where potential harm is possible, to determine whether harm is likely and a remedy needed.

38. *Discussion.* We apply the initial screen to identify markets where spectrum aggregation by Verizon Wireless may result in competitive harms. We thus examine markets identified by the initial spectrum screen, based on the specific characteristics of those markets, to determine any potential harms and whether there is a need for any remedies.<sup>130</sup>

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<sup>125</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 41; *AT&T-Centennial Order*, 24 FCC Rcd at 13936 ¶ 45; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17480-81 ¶ 71; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17600 ¶ 75; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 91.

<sup>126</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 41; *AT&T-Centennial Order*, 24 FCC Rcd at 13936 ¶ 45; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17480-81 ¶ 71; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17600-01 ¶ 75.

<sup>127</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 41; *AT&T-Centennial Order*, 24 FCC Rcd at 13936 ¶ 45; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17481 ¶ 74; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92.

<sup>128</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 42; *AT&T-Centennial Order*, 24 FCC Rcd at 13936 ¶ 45; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17481 ¶ 75; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17601 ¶ 76; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 108.

<sup>129</sup> See discussion *supra* note 124.

<sup>130</sup> See *infra* Section V.C, Market-by-Market Analysis.

39. The Applicants claim that Verizon Wireless's acquisition of the Centennial licenses and businesses do not raise competitive concerns because Verizon Wireless has limited operations and spectrum holdings in the geographic areas at issue in the proposed transaction.<sup>131</sup> The Applicants attach to their amended Application a market-by-market analysis of post-transaction spectrum aggregation by Verizon Wireless, and state that the combined attributable spectrum would not meet or exceed the screen in any county.<sup>132</sup> The Applicants further state that there is no competitive harm because Verizon Wireless's market presence in the affected areas is currently very limited and each of the divestiture markets have a number of licensed competitors.<sup>133</sup>

40. For purposes of determining HHIs in this transaction, we use our June 2009 NRUF database, which tracks phone number usage by all telecommunications service providers, including wireless service providers, to estimate mobile communication subscribership levels, market shares, and concentration for various geographic markets.<sup>134</sup> Consistent with our discussion of the geographic market definition above, in calculating market shares and market concentration, we analyze wireless provider data using two sets of geographic areas, CMAs and CEAs.<sup>135</sup> We also apply the spectrum screen on a county-by-county basis to determine if any markets require further competitive analysis.

41. The initial HHI screen identifies two CMAs<sup>136</sup> and two CEAs<sup>137</sup> that require further competitive review. The initial spectrum screen did not identify any CMAs or CEAs that require further competitive review. Thus, the initial screen indicated a total of two CMAs and two CEAs that require a case-by-case competitive review.<sup>138</sup>

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<sup>131</sup> Application, Public Interest Statement at 9.

<sup>132</sup> See Application, Public Interest Statement at 9, Ex. 3, Amended Spectrum Aggregation Chart.

<sup>133</sup> See Application, Public Interest Statement at 9.

<sup>134</sup> These data indicate the number of assigned phone numbers that a wireless carrier has in a particular wireline rate center. Rate centers are geographic areas used by local exchange carriers for a variety of reasons, including the determination of toll rates. See HARRY NEWTON, *NEWTON'S TELECOM DICTIONARY: 19<sup>TH</sup> EXPANDED & UPDATED EDITION* 660 (July 2003). All mobile wireless providers must report to the FCC the quantity of their phone numbers that have been assigned to end users, thereby permitting the Commission to calculate the total number of mobile subscribers. For purposes of geographical analysis, the rate center data can be associated with a geographic point, and all of those points that fall within a county boundary can be aggregated together and associated with much larger geographic areas based on counties.

<sup>135</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 47; *AT&T-Centennial Order*, 24 FCC Rcd at 13937 ¶ 47; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17482-83 ¶ 78; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 51; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 104. See discussion justifying the use of CMAs and CEAs *supra* note 120.

<sup>136</sup> The CMAs identified by the initial HHI screen are: CMA174 Lafayette, LA and CMA459 Louisiana 6 – Iberville.

<sup>137</sup> The CEAs identified by the initial HHI screen are: CEA3880 Lafayette, LA and CEA3960 Lake Charles, LA.

<sup>138</sup> Application of the initial screen on a CEA basis does not identify any potential markets of concern that are not also identified by CMA-based application of the screen. For convenience, we limit our discussion of the markets of concern to CMAs because, upon completing our competitive analysis, we find that the most exact area to eliminate concerns of competitive harm would be CMAs. Therefore, we undertake our in-depth analysis on the basis of CMAs.

## 1. Horizontal Issues

42. This section examines how the transaction could affect competitive behavior in the two markets identified by the initial screen as requiring additional analysis to determine whether the proposed transaction would result in competitive harm. As discussed in a number of the Commission's wireless transaction orders, competition may be harmed either through unilateral actions<sup>139</sup> or through coordinated interaction<sup>140</sup> among firms competing in the relevant market. We note that certain aspects of our previous analyses in wireless transaction orders are not challenged on the record.<sup>141</sup>

## 2. Unilateral Effects

43. *Background.* Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by “elevating price and suppressing output.”<sup>142</sup> In the case of mobile telephony/broadband services, this might take the form of delaying improvements in service quality or adversely adjusting plan features without changing the plan price.<sup>143</sup> Incentives for such unilateral competitive actions vary with the nature of competition in the relevant markets. Thus, we will examine whether Verizon Wireless's acquisition of the Divestiture Markets could lead to changes in the structure of the markets in the two markets identified by our initial screen as needing further analysis.<sup>144</sup> With

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<sup>139</sup> Unilateral effects are those that result when a merged firm finds it profitable to alter its behavior by increasing prices or reducing output. *DOJ/FTC Horizontal Merger Guidelines* § 2.2. See, e.g., *AT&T-Verizon Wireless Order* at ¶ 49 n.166; *AT&T-Centennial Order*, 24 FCC Rcd at 13939 ¶ 52 n.200; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17484 ¶ 82; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115 n.341.

<sup>140</sup> Coordinated interaction consists of actions by a group of firms that are profitable for each of the firms involved only because the other firms react by accommodating these actions rather than attempting to undercut them. See *DOJ/FTC Horizontal Merger Guidelines* § 2.1; *AT&T-Verizon Wireless Order* at ¶ 49 n.167; *AT&T-Centennial Order*, 24 FCC Rcd at 13939 ¶ 52 n.201; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17484 ¶ 82; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151.

<sup>141</sup> For unilateral effects, the unchallenged aspects include: (1) product differentiation and substitutability; (2) network effects; (3) marginal cost reductions; (4) spectrum and advanced wireless services; and (5) penetration. See, e.g., *AT&T-Verizon Wireless Order* at ¶ 49 n.168; *AT&T-Centennial Order*, 24 FCC Rcd at 13939 ¶ 53 n.203; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17484-85 ¶ 83. For coordinated interaction, the unchallenged aspects include: (1) firm and product homogeneity; (2) existing cooperative ventures; (3) number of firms; (4) technology development; (5) response of rivals; (6) transparency of information; and (7) presence of mavericks. See, e.g., *AT&T-Verizon Wireless Order* at ¶ 49 n.168; *AT&T-Centennial Order*, 24 FCC Rcd at 13939 ¶ 53 n.203; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17484-85 ¶ 83; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21581-85 ¶¶ 154-163.

<sup>142</sup> See *AT&T-Verizon Wireless Order* at ¶ 50; *AT&T-Centennial Order*, 24 FCC Rcd at 13939-40 ¶ 54; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 84; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115; see also *DOJ/FTC Merger Guidelines* § 2.2.

<sup>143</sup> The term “unilateral” refers to the method used by firms to determine strategy, not to the fact that the merged entity would be the only firm to change its strategy. The term unilateral is used to indicate that strategies are determined unilaterally by each of the firms in the market and not by explicit or tacit collusion. Other firms in the market may find it profitable to alter their behavior as a result of the merger-induced change in market structure by, for example, repositioning their products, changing capacity, or changing their own prices. These reactions can alter the total effect on the market and must be taken into account when evaluating potential unilateral effects. See, e.g., *AT&T-Verizon Wireless Order* at ¶ 50 n.171; *AT&T-Centennial Order*, 24 FCC Rcd at 13939-13940 ¶ 54 n.209; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 n.306; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 n.341.

<sup>144</sup> See *supra* para. 41.

regard to each of these markets, we examine in more detail the possibility that the proposed transaction may lead to competitive harm through unilateral actions by Verizon Wireless following the acquisition of these markets.<sup>145</sup> Concerns regarding unilateral effects as a result of the proposed transaction were not raised by parties or the Applicants, as we explain below.

44. *Discussion.* The market for mobile telephony/broadband service in the United States appears to be differentiated, and service providers compete vigorously on the basis not only of price but also of other plan features, call quality, geographic coverage, and customer service.<sup>146</sup> While service providers can change some of these attributes relatively quickly, others – particularly non-price attributes such as quality and coverage – require investments in spectrum or infrastructure and are not easily modified. Based on our review of the markets, we generally do not find it likely that Verizon Wireless would be able to raise prices unilaterally or otherwise behave anticompetitively as a result of this transaction. We find that a number of market conditions may affect whether Verizon Wireless may be more able to unilaterally raise prices or decrease service as a result of the transaction, including product differentiation and substitutability and the presence and capacity of rival providers in the market.<sup>147</sup> Therefore, we take the possibility of unilateral effects into account in our analysis of specific markets by carefully scrutinizing, among other variables, the presence and capacity of rival carriers. Our analysis is discussed below in Section V.C.2.

### 3. Coordinated Effects

45. *Background.* In markets where only a few firms account for most of the sales of a product, those firms may be able to exercise market power by either explicitly or tacitly coordinating their actions.<sup>148</sup> Accordingly, one way in which a transaction may create or enhance market power or facilitate its exercise is by making such coordinated interaction among firms more likely, more successful, or more complete.<sup>149</sup> Successful coordination depends on two key factors. The first is the ability to reach terms that are profitable for each of the firms involved, and the second is the ability to detect and punish deviations that would undermine the coordinated interaction.<sup>150</sup> Concerns regarding coordinated effects as a result of the proposed transaction were not raised by parties or the Applicants.

46. *Discussion.* We find that a number of market conditions may affect whether coordinated interaction is more likely as a result of the transaction, including the availability of information about market conditions, the extent of firm and product homogeneity, and the presence of maverick providers in

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<sup>145</sup> See *infra* Section V.C.2, Results of Market-Specific Analysis. See, e.g., *AT&T-Verizon Wireless Order* at ¶ 50; *AT&T-Centennial Order*, 24 FCC Rcd at 13948 ¶ 75; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 84; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115; see also *DOJ/FTC Merger Guidelines* § 2.

<sup>146</sup> See *AT&T-Verizon Wireless Order* at ¶ 51; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 85.

<sup>147</sup> See *AT&T-Verizon Wireless Order* at ¶ 58; *AT&T-Centennial Order*, 24 FCC Rcd at 13941 ¶ 58; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 84-85.

<sup>148</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 59; *AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 59; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17486 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150; *DOJ/FTC Merger Guidelines* § 0.1.

<sup>149</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 59; *AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 59; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17486 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150.

<sup>150</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 59; *AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 59; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17486 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151; *DOJ/FTC Merger Guidelines* § 2.11.

the market.<sup>151</sup> We take the possibility of coordinated interaction into account in our analysis of markets identified by our initial screens by carefully scrutinizing, among other variables, the presence and capacity of rival carriers. As discussed in orders concerning previous transactions, these general findings underpin the market-by-market analysis discussed below.<sup>152</sup>

### C. Market-by-Market Analysis

#### 1. Analytical Standard

47. In this section, we examine the effects of the transaction on the two local markets identified by the initial screen.<sup>153</sup> In undertaking this market-by-market analysis, we consider variables that are important for predicting the incentive and ability of service providers to successfully restrict competition on price or non-price terms through coordinated interaction, and the incentive and ability of the merged entity unilaterally to elevate prices or suppress output.<sup>154</sup> These include: the total number of rival service providers; the number of rival firms that can offer competitive nationwide service plans; the coverage of the firms' respective networks; the rival firms' market shares; the merged entity's post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum holdings of each of the rival service providers.<sup>155</sup> In reaching determinations, we balance these factors on a market-specific basis, and consider the totality of the circumstances in each market.<sup>156</sup> We derive market shares and HHIs from our analysis of data compiled in our NRUF database. We derive network coverage from American Roamer and U.S. Census data, and we obtain spectrum holdings from our licensing databases and the Application. In addition, we examine data from our LNP database<sup>157</sup> through December 30, 2008.<sup>158</sup> We also consider the uniformity of competitive conditions in each market. Thus, in some instances, we may find that the transaction is not harmful to competition in a market if the potential harm is confined to a small enclave in the market, and this harm is likely to be ameliorated by the more favorable competitive conditions in most of the market.<sup>159</sup>

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<sup>151</sup> See *AT&T-Verizon Wireless Order* at ¶ 62; *AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 61; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487 ¶ 90; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580-86 ¶¶ 150-164.

<sup>152</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 62; *AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 61; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487 ¶ 90; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21649 App. D.

<sup>153</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 63; *AT&T-Centennial Order*, 24 FCC Rcd at 13948 ¶ 75; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487-88 ¶ 91; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17602 ¶ 79; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21649 App. D.

<sup>154</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 63; *AT&T-Centennial Order*, 24 FCC Rcd at 13948 ¶ 75; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487-88 ¶ 91; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17602 ¶ 79; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21593-99 ¶¶ 184-200.

<sup>155</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 63; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487 ¶ 91.

<sup>156</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 63; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487 ¶ 91.

<sup>157</sup> This information is provided to the Commission by NeuStar.

<sup>158</sup> This information includes each instance of a customer porting a phone number from one mobile provider to another, and indicates both the origin and destination provider.

<sup>159</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 63; *AT&T-Centennial Order*, 24 FCC Rcd at 13948 ¶ 75 n.288; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17488 ¶ 92; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 175602-3 ¶ 80; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 190.

## 2. Results of Market-Specific Analysis

48. After performing a market-by-market analysis, we find that, in the two markets identified by the initial screen, competitive harms are unlikely. Post-transaction in each of these two markets, there are a sufficient number of competitors present with thoroughly built-out networks and the ability to offer competitive service. We conclude, based on the various particular facts in each of these two markets, that the proposed transaction would be unlikely to make it profitable for Verizon Wireless to raise prices and restrict output or to engage in coordinated actions with another provider. The presence and capacity of rival service providers are such in these markets that the response of these providers would likely be sufficient to deter any unilateral actions by Verizon Wireless.<sup>160</sup> Below is a more detailed analysis of the two markets identified by the initial screen.

49. *CMA174*. The Lafayette, Louisiana CMA was flagged only by the HHI screen. This CMA is non-rural<sup>161</sup> and is comprised of two parishes. In terms of market share and population covered, the number of competitors would be reduced from five to four,<sup>162</sup> and there would be no change in the number of competitors covering at least 50 percent of the land area.<sup>163</sup> In this CMA, AT&T is by far the largest provider, with more than [REDACTED] percent market share. The transaction would combine Verizon Wireless, the [REDACTED] largest provider in terms of market share (with [REDACTED] percent market share), and Centennial Cellular, the [REDACTED] largest provider (with [REDACTED] percent market share). The combined entity would have a market share of approximately [REDACTED]. The other two competitors in the market, Sprint Nextel and T-Mobile, hold an approximate [REDACTED] and [REDACTED] percent share, respectively. Verizon Wireless's acquisition of the divestiture assets in this CMA would make it a stronger competitor against AT&T in this market. In particular, Verizon Wireless's coverage in this CMA would increase, especially in the St. Martin Parish, which would provide it with a stronger presence in the CMA. Further, there are two providers other than AT&T – *i.e.*, Sprint Nextel and T-Mobile – with sufficient presence and capacity to discipline the market if Verizon Wireless behaves in an anticompetitive manner.

50. *CMA459*. The Louisiana 6 – Iberville CMA was also identified only by the HHI screen. This CMA is rural<sup>164</sup> and is comprised of four parishes. In terms of market share, the number of competitors would be reduced from four to three.<sup>165</sup> With respect to population covered, this transaction would result in the number of competitors being reduced from five to four, and there would be no change in the number of competitors covering at least 50 percent of the land area. As in *CMA174 Lafayette, Louisiana*, AT&T is by far the largest provider in this CMA, with more than a [REDACTED] percent market share, while the remaining five providers' market shares fall [REDACTED] and [REDACTED] percent. Further, in this market, AT&T is the only provider that covers more than 50 percent of the land area. This transaction would combine Verizon Wireless, the [REDACTED] largest provider in terms of market share (with [REDACTED] percent market share), and Centennial Cellular, the [REDACTED] largest provider (with [REDACTED] percent market share). The combined entity would have a combined market share of approximately [REDACTED] percent, which is still significantly less than

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<sup>160</sup> See *AT&T-Verizon Wireless Order* at ¶ 64; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17490-91 ¶ 98; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17603 ¶ 82.

<sup>161</sup> This CMA has a population of approximately 239,000 and a population density of 220 POPs per square mile.

<sup>162</sup> This reflects service providers with market shares of [REDACTED] percent or greater.

<sup>163</sup> Verizon Wireless's network covers less than 50 percent of the land area.

<sup>164</sup> This CMA has a population of approximately 183,000 and a population density of 78 POPs per square mile.

<sup>165</sup> This reflects service providers with market shares of [REDACTED] percent or greater.

AT&T's market share. Sprint Nextel, the only other competitor with more than a [REDACTED] percent share, would hold an approximate [REDACTED] percent market share. Verizon Wireless's acquisition of the divestiture assets in this CMA would improve Verizon Wireless's position in the market and allow it to compete more effectively with AT&T. Although T-Mobile has a market share of less than [REDACTED] percent, its network covers approximately 81 percent of the population, and its land area coverage is comparable to the other providers in the market (other than AT&T's land area coverage). T-Mobile therefore would be in a position to discipline the market if Verizon Wireless behaves in an anticompetitive manner.

## VI. POTENTIAL PUBLIC INTEREST BENEFITS

51. In addition to assessing the potential competitive harms of the proposed Verizon Wireless-AT&T transaction, the Commission has also considered whether the proposed assignment and transfer of control of the subject wireless licenses and related authorizations held by AT&T are likely to generate verifiable, transaction-specific public interest benefits.<sup>166</sup> In doing so, the Commission has asked whether Verizon Wireless would be able, and would be likely, to pursue business strategies resulting in demonstrable and verifiable benefits to consumers that would not be pursued but for the transaction.<sup>167</sup> As discussed below, we find that the proposed transaction is likely to result in certain transaction-specific public interest benefits. We reach this conclusion, however, recognizing that it is difficult for us to precisely quantify either the magnitude of or the time period in which these benefits will be realized.<sup>168</sup>

### A. Analytical Framework

52. The Commission has recognized that “[e]fficiencies generated through a merger can mitigate competitive harms if such efficiencies enhance the merged firm’s ability and incentive to compete and therefore result in lower prices, improved quality of service, enhanced service or new products.”<sup>169</sup> This same analysis applies to an acquisition of assets like that contemplated by the proposed transaction before us. Under Commission precedent, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms.<sup>170</sup>

53. The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms. First, the claimed benefit must be transaction-specific. Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a transaction is in the sole possession of the applicants, they are required to provide sufficient

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<sup>166</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 73; *AT&T-Centennial Order*, 24 FCC Rcd at 13953 ¶ 87; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 114; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17614 ¶ 113; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

<sup>167</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 73; *AT&T-Centennial Order*, 24 FCC Rcd at 13953 ¶ 87; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 114; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17614 ¶ 113; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

<sup>168</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 73; *AT&T-Centennial Order*, 24 FCC Rcd at 13953 ¶ 88; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 115.

<sup>169</sup> E.g., *AT&T-Verizon Wireless Order* at ¶ 74; *AT&T-Centennial Order*, 24 FCC Rcd at 13953 ¶ 89; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 116; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17614 ¶ 115; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204; see also *DOJ/FTC Merger Guidelines* § 4.

<sup>170</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 74; *AT&T-Centennial Order*, 24 FCC Rcd at 13953 ¶ 89; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 116; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 115; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204.



evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude.<sup>171</sup> In addition, “the magnitude of benefits must be calculated net of the cost of achieving them.”<sup>172</sup> Furthermore, as the Commission has explained, “benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present.”<sup>173</sup> Third, the Commission has stated that it “will more likely find marginal cost reductions to be cognizable than reductions in fixed cost.”<sup>174</sup> The Commission has justified this criterion on the ground that, in general, reductions in marginal cost are more likely to result in lower prices for consumers.<sup>175</sup>

54. Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims.<sup>176</sup> Under this sliding scale approach, where potential harms appear “both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”<sup>177</sup> Conversely, where potential harms appear less likely and less substantial, as is the case here, we will accept a lesser showing to approve the transaction.<sup>178</sup>

## B. Discussion

55. The Applicants assert that the proposed transaction will serve the public interest as subscribers in the acquired CMAs will receive a greater variety of service offerings and more extensive coverage than what is currently available to them.<sup>179</sup> Specifically, Verizon Wireless will offer these

<sup>171</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 75; *AT&T-Centennial Order*, 24 FCC Rcd at 13953 ¶ 90; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

<sup>172</sup> E.g., *AT&T-Verizon Wireless Order* at ¶ 75; *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 90; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

<sup>173</sup> E.g., *AT&T-Verizon Wireless Order* at ¶ 75; *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 90; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

<sup>174</sup> E.g., *AT&T-Verizon Wireless Order* at ¶ 75; *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 90; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615-16 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205. See also *DOJ/FTC Merger Guidelines* § 4.

<sup>175</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 75; *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 91; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206; see also *DOJ/FTC Merger Guidelines* § 4.

<sup>176</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 76; *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 91; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 118; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206.

<sup>177</sup> E.g., *AT&T-Verizon Wireless Order* at ¶ 76; *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 91; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 118; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206. Cf. *DOJ/FTC Merger Guidelines* § 4 (“The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.”).

<sup>178</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 76; *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 91; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17497 ¶ 118; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 117.

<sup>179</sup> Application, Public Interest Statement at 6.

customers a variety of service plans with data bundles and package offerings that include unlimited nights and weekends and unlimited mobile-to-mobile minutes with a customer base of over 91 million subscribers.<sup>180</sup> Verizon Wireless's rate plans include calling features such as Caller ID, voicemail, call forwarding, call waiting, and 3-way calling, which currently are not available free of charge for Centennial subscribers.<sup>181</sup> Some Verizon Wireless plans include five or ten Friends & Family numbers at no additional charge.<sup>182</sup>

56. The network in the Centennial divestiture markets uses Global System for Mobile Communications ("GSM") technology with Enhanced Data Rates for GSM Evolution ("EDGE") data capability.<sup>183</sup> The Applicants assert that when the acquired CMAs are integrated into Verizon Wireless's CDMA network with Evolution-Data Optimized ("EV-DO") data capability, the quality of service will improve dramatically, as the affected customers will be able to access Broadband Access™ on their laptops, email, or PDAs, and Verizon Wireless's VCast™ Video and Music services on their wireless phones.<sup>184</sup> [REDACTED]<sup>185</sup> [REDACTED]<sup>186</sup> In general, as a result of the integration, the proposed transaction will enlarge the affected subscribers' in-network calling community to approximately 289 million.<sup>187</sup> The Applicants claim that the subscribers will be able to take advantage of international roaming agreements in over 40 destinations, and wireless service will be available to them in 220 destinations as part of Verizon Wireless's Global Phone Service offering.<sup>188</sup>

57. The Applicants state that the divestiture customers with Verizon Wireless 3G-capable handsets in those areas where EV-DO has been deployed will gain access to a broader range of high-speed services and applications, such as Mobile Broadband at 3G speed and VCast™ (including VCast™ Music and VCast™ Video), which offer content from some of the country's most popular entertainment and information sources.<sup>189</sup> The customers with Verizon Wireless data-capable handsets in all markets will have access to location-based services such as VZ Navigator and Family Locator, Mobile Web, Push to Talk, Text/Picture/Video Messaging and Get it Now Media Center, which provides a variety of games, ringtones, ringback tones, and applications.<sup>190</sup> Verizon Wireless will also offer to divestiture subscribers a variety of Blackberry and Smartphone solutions, including service plans for their laptops.<sup>191</sup>

58. The Applicants claim that the divestiture subscribers will be able to choose from a greater

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<sup>180</sup> Application, Public Interest Statement at 6. *See also* Verizon Wireless Information Request Response at 13.

<sup>181</sup> Verizon Wireless Information Request Response at 12.

<sup>182</sup> Verizon Wireless Information Request Response at 13.

<sup>183</sup> AT&T Information Request Response at 4. The total number of postpaid and prepaid subscribers in these CMAs was [REDACTED] as of the date of the consummation of the AT&T-Centennial merger. *Id.*

<sup>184</sup> Application, Public Interest Statement at 6-7.

<sup>185</sup> Verizon Wireless Information Request Response at 7. Verizon Wireless will [REDACTED]. *Id.* at 8.

<sup>186</sup> Verizon Wireless Information Request Response at 7. Verizon Wireless states that [REDACTED]. *Id.*

<sup>187</sup> Application, Public Interest Statement at 7.

<sup>188</sup> Application, Public Interest Statement at 7.

<sup>189</sup> Verizon Wireless Information Request Response at 14.

<sup>190</sup> Verizon Wireless Information Request Response at 14. Centennial currently does not offer Mobile Broadband, Push to Talk, Location Based Services, or the number of games, ringtones, ringback tones, and other applications available from Verizon Wireless. *Id.* at 15.

<sup>191</sup> Verizon Wireless Information Request Response at 14.

variety of wireless devices.<sup>192</sup> Moreover, under the Verizon Wireless Open Development Initiative, the divestiture customers will be able to use any device that meets the company's published technical standards.<sup>193</sup>

59. The Applicants assert that existing Verizon Wireless customers will be able to benefit from expanded coverage in the acquired geographic areas, as almost half of the 1.2 million POPs covered by the systems being acquired are in areas not covered by Verizon Wireless's existing PCS systems in these CMAs.<sup>194</sup> The transaction will also enable Verizon Wireless to obtain seamless A-band cellular coverage throughout these CMAs, complementing Verizon Wireless's existing A-band cellular coverage in two counties in CMA459 Louisiana 6 – Iberville.<sup>195</sup> Lastly, the Applicants state that the proposed transaction will enable Verizon Wireless to enter the market in the affected license areas as a stronger and more effective competitor.<sup>196</sup>

### C. Conclusion

60. As noted above, we concluded that competitive harms are unlikely as a result of the proposed transaction. As a result, we require a lesser showing of public interest benefits by the Applicants. In the end, we conclude, based on the record before us and as discussed above, that this transaction is likely to result in meaningful transaction-specific public interest benefits that support grant of the Commission's approval to the proposed transaction.

## VII. OTHER ISSUES

### A. Roaming

61. *Background.* Roaming occurs when the subscriber of one CMRS provider travels beyond the service area of that provider and uses the facilities of another CMRS provider to place an outgoing call, to receive an incoming call, or to continue an in-progress call.<sup>197</sup> Under the Commission's automatic roaming rules, upon a reasonable request, CMRS carriers are obligated to provide automatic roaming to any technologically compatible, facilities-based CMRS carrier on reasonable and not unreasonably discriminatory terms and conditions, pursuant to sections 201 and 202 of the Communications Act.<sup>198</sup> The automatic roaming obligations extend to real time, two-way switched voice and data service that is

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<sup>192</sup> Application, Public Interest Statement at 7.

<sup>193</sup> Application, Public Interest Statement at 7.

<sup>194</sup> Application, Public Interest Statement at 8.

<sup>195</sup> Application, Public Interest Statement at 8.

<sup>196</sup> Application, Public Interest Statement at 9.

<sup>197</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 87; *AT&T-Centennial Order*, 24 FCC Rcd at 13963 ¶ 120; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21586 ¶ 166; see also Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, WT Docket Nos. 05-265, 00-193, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 15047, 15048 ¶ 2 (2005).

<sup>198</sup> 47 C.F.R. § 20.12(d). See also *AT&T-Verizon Wireless Order* at ¶ 88; Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 25 FCC Rcd 4181, 4190 ¶ 18 (2010) (“*Roaming Order on Reconsideration*” and “*Data Roaming Second Further Notice*,” respectively); Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817, 15826 ¶ 23 (2007) (“*Roaming Report and Order*” and “*Data Roaming Further Notice*,” respectively).

interconnected with the public switched network.<sup>199</sup> It also applies to push-to-talk and text messaging services offered by CMRS carriers.<sup>200</sup> There currently is no rule imposing an automatic roaming obligation with respect to data service provided without interconnection to the public switched network.<sup>201</sup>

62. In its Petition to Deny, Cellular South contends that Verizon Wireless has not timely complied with a roaming condition in the *Verizon Wireless-ALLTEL Order*.<sup>202</sup> Cellular South argues that, following consummation of the Verizon-ALLTEL transaction in January 2009, Cellular South has repeatedly requested that Verizon Wireless implement data roaming with Cellular South in the former ALLTEL markets based on the conditions in the *Verizon Wireless-ALLTEL Order*.<sup>203</sup> Cellular South contends that, despite its numerous requests, its requests were met with repeated delays.<sup>204</sup> In a more recent update filing in the record, on the implementation of data roaming in the former ALLTEL properties,<sup>205</sup> Cellular South states that, as of February 2010, its customers have been able to have CDMA 1X data roaming in the former ALLTEL markets Verizon Wireless acquired.<sup>206</sup> With respect to higher speed EV-DO data roaming, it states that it is currently in a testing stage in the same markets, and that, if the testing is successful, EV-DO data roaming could be available to customers by August 2010.<sup>207</sup> In its Reply and the most recent supplemental filing, Cellular South requests that the Commission postpone action on these applications until Verizon Wireless has taken all steps necessary to enable data roaming with Cellular South in the former ALLTEL markets, or, at a minimum, condition any consent on requiring Verizon Wireless to certify completion of all actions necessary on its part to facilitate data roaming with Cellular South in the former ALLTEL markets.<sup>208</sup>

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<sup>199</sup> 47 C.F.R. § 20.12(a)(2). *See also* *Roaming Order on Reconsideration*.

<sup>200</sup> 47 C.F.R. § 20.12(a)(2).

<sup>201</sup> In the 2007 *Data Roaming Further Notice*, the Commission sought comment on whether it should extend the automatic roaming obligation to non-interconnected services or features, including services that have been classified as information services offered by CMRS carriers. *Data Roaming Further Notice*, 22 FCC Rcd at 15845-47 ¶¶ 77-81. In the 2010 *Data Roaming Second Further Notice*, the Commission sought comment on broadening the scope of the proceeding to non-CMRS providers and whether to extend roaming obligations to data services that are provided without interconnection to the public switched network – including mobile broadband services. *Data Roaming Second Further Notice*, 25 FCC Rcd at 4212 ¶ 62. The data roaming proceeding is pending.

<sup>202</sup> Cellular South Petition to Deny at 4-5.

<sup>203</sup> Cellular South Petition to Deny at 5. Specifically, Cellular South cites the condition that Verizon Wireless give each “regional, small and/or rural carrier that currently has roaming agreements with both ALLTEL and Verizon Wireless . . . the option to select either agreement to govern all roaming traffic between it and post-merger Verizon Wireless” and states that Cellular South elected to apply its roaming agreement with Verizon Wireless, which includes among other things data roaming, to all its roaming traffic. Cellular South Petition to Deny at 4-5; *see also* Cellular South Reply at 2.

<sup>204</sup> Cellular South Petition to Deny at 5. Prior to Cellular South filing its reply comments, Cellular South received a signed document from Verizon Wireless to extend the current automatic roaming agreement between Verizon Wireless and Cellular South for voice and data services. Cellular South Reply at 3 n.5.

<sup>205</sup> Cellular South Supplement to Reply at 2.

<sup>206</sup> Cellular South Supplement to Reply at 2.

<sup>207</sup> Cellular South Supplement to Reply at 2.

<sup>208</sup> Cellular South Reply at 3; *see also* Cellular South Supplement to Reply at 2.

63. In response, the Applicants assert that Cellular South's claims relate to a prior transaction and different markets, and are therefore unrelated to the proposed transaction.<sup>209</sup> The Applicants also contend that they have been working with Cellular South to implement data roaming in the former ALLTEL territory, but state that implementing data roaming is a complex task that involves significant time and resources to integrate and upgrade both the Cellular South and the former ALLTEL networks to support data roaming.<sup>210</sup>

64. *Discussion.* While Cellular South raises an important issue, we find that this roaming issue is not related to any specific harm arising out of this transaction.<sup>211</sup> The Commission has held that it will impose conditions only to remedy harms that arise from a transaction (*i.e.*, transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes.<sup>212</sup> Furthermore, Cellular South's most recent supplemental filing indicates progress has been made to implement data roaming in the former ALLTEL markets that Verizon Wireless acquired. Specifically, CDMA 1X data roaming is now available to Cellular South's subscribers in those markets, and ongoing testing is proceeding with respect to the higher speed EV-DO data roaming in the same markets with the expectation that that service will be available to subscribers by August 2010. Thus, it appears that these issues have been, or are very close to being, resolved. We find no reason to further delay approval of this transaction.

#### **B. Handset Availability and Exclusive Handset Agreements**

65. Cellular South states that the Commission should prohibit exclusive handset agreements between wireless carriers and handset manufacturers that have a substantial adverse effect on the provision of wireless telecommunications service or result in an impairment of CMRS competition.<sup>213</sup> Specifically, Cellular South raises the concern that if small or regional carriers, such as itself, are prevented from offering the most desirable handsets, they will not remain competitive with carriers such as AT&T and Verizon Wireless.<sup>214</sup> In response to the Commission's finding in previous merger orders that such conditions are not narrowly tailored to prevent a transaction-specific harm, Cellular South asserts that the Commission previously has engaged in similar *de facto* rulemaking or regulation by condition.<sup>215</sup> Cellular South urges the Commission to defer action on the proposed transaction until the issues regarding exclusive handset agreements are resolved, or impose a condition to prohibit AT&T and Verizon Wireless from entering into any new exclusive handset agreements until the resolution of the separate exclusive handset proceeding.<sup>216</sup>

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<sup>209</sup> Joint Opposition at 4.

<sup>210</sup> Joint Opposition at 5-6.

<sup>211</sup> See *AT&T-Verizon Wireless Order* at ¶ 101; *AT&T-Centennial Order*, 25 FCC Rcd at 1309 ¶ 132; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17525 ¶ 179; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21591 ¶ 180; *Roaming Report and Order*, 22 FCC Rcd at 15822 ¶ 13.

<sup>212</sup> See, e.g., *AT&T-Verizon Wireless Order* at ¶ 101; *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 30; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17463 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

<sup>213</sup> Cellular South Petition to Deny at 7.

<sup>214</sup> Cellular South Petition to Deny at 7; see also Cellular South Reply at 3.

<sup>215</sup> Cellular South Petition to Deny at 8. Cellular South contends that the Commission previously engaged in *de facto* rulemaking or regulation by condition in the *Verizon Wireless-ALLTEL Order*. Cellular South Petition to Deny at 8.

<sup>216</sup> Cellular South Reply at 4.

66. In response, the Applicants state that Cellular South's proposed prohibition on exclusive handset arrangements regarding only the Applicants would harm the public interest.<sup>217</sup> Specifically, the Applicants contend that such a condition would constrain the Applicants' ability to compete with other licensees as well as discourage the Applicants from investing in the development of new and innovative devices, thus harming consumers.<sup>218</sup> The Applicants urge the Commission to dismiss Cellular South's request for relief because it is unrelated to the proposed transaction and, instead, consider the exclusive handset issues in an industry-wide proceeding.<sup>219</sup>

67. The Commission was presented with similar concerns and requests for relief during its consideration of the AT&T and Centennial merger<sup>220</sup> and the recent transaction involving the transfer of 79 markets from Verizon Wireless to AT&T.<sup>221</sup> As we did in those proceedings, we find here that the proposed conditions regarding exclusive handset agreements are not narrowly tailored to prevent a transaction-specific harm.<sup>222</sup> We find instead that the proposed conditions would apply broadly across the industry and are therefore more appropriate for a Commission proceeding where all interested industry parties have an opportunity to file comments.<sup>223</sup> RCA has filed a petition asking the Commission to review exclusive handset agreements on an industry-wide basis;<sup>224</sup> based on a full record in that proceeding, the Commission will be able to determine whether any action is needed in this area, and if so, to develop a comprehensive approach that addresses exclusive handset agreements.<sup>225</sup> We therefore decline to grant Cellular South's request to defer action on the pending transaction until the exclusive handset arrangement issues are resolved, or to impose conditions on AT&T and Verizon Wireless to limit their ability to enter into exclusive handset arrangements until the industry-wide proceeding is concluded.

### C. Customer Transition Matters

68. In evaluating this transaction, we seek to ensure that Verizon Wireless's transition of customers from a GSM network to a CDMA network is as successful as possible with minimal disruption to customers. To ensure a smooth transition for these classes of customers, we generally expect applicants' transition plans to provide for certain reasonable accommodations to subscribers of divested business units, such as maintaining networks and quality of service, and providing comparable replacement handsets and rate plans. Verizon Wireless states that it has extensive experience in smoothly transitioning customers it acquires in transactions.<sup>226</sup> Verizon Wireless further states that reasonable efforts will be made to give divestiture GSM network subscribers an equivalent or better rate plan.<sup>227</sup>

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<sup>217</sup> Joint Opposition at 7.

<sup>218</sup> Joint Opposition at 7.

<sup>219</sup> Joint Opposition at 7.

<sup>220</sup> See *AT&T-Centennial Order*, 24 FCC Rcd at 13971-72 ¶¶ 139-141.

<sup>221</sup> See *AT&T-Verizon Wireless Order* at ¶¶ 102-104.

<sup>222</sup> See *AT&T-Verizon Wireless Order* at ¶ 104; *AT&T-Centennial Order*, 24 FCC Rcd at 13972 ¶ 141.

<sup>223</sup> See *AT&T-Verizon Wireless Order* at ¶ 104; *AT&T-Centennial Order*, 24 FCC Rcd at 13972 ¶ 141.

<sup>224</sup> See Rural Cellular Association Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, RM-11497 (filed May 20, 2008); Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, *Public Notice*, 23 FCC Rcd 14873 (2008).

<sup>225</sup> See *AT&T-Verizon Wireless Order* at ¶ 104; *AT&T-Centennial Order*, 24 FCC Rcd at 13972 ¶ 141.

<sup>226</sup> Application, Public Interest Statement at 8.

<sup>227</sup> Verizon Wireless Information Request Response at 12.

Divestiture GSM network subscribers will also be provided with a selection of comparable replacement handsets [REDACTED].<sup>228</sup> Verizon Wireless asserts that the service offerings will remain the same before the transition, and after the transition, divestiture GSM network subscribers will experience the expanded service offerings<sup>229</sup> offered by Verizon Wireless.<sup>230</sup>

69. *Transition Framework.* Verizon Wireless provided a copy of its Transition Services Agreement (“TSA”) with AT&T and its transition plans pursuant to the Information Request.<sup>231</sup> The TSA addresses a wide range of functions, such as customer care, network services, collections, retail stores, sales reporting, and supply chain management.<sup>232</sup> The TSA specifies that AT&T will provide transition services for a period of 12 months, effective from the date of the TSA.<sup>233</sup>

70. *Length of Transition.* With respect to the length of the transition, Verizon Wireless states that it plans to complete its CDMA network in the Divestiture Markets at the latest [REDACTED] following the closing of the proposed transaction.<sup>234</sup> Verizon Wireless further explains that it would then transition the divestiture GSM network subscribers to the new CDMA network the following month, and they will be converted to Verizon Wireless [REDACTED].<sup>235</sup> After a customer is converted, Verizon Wireless states that the divestiture subscribers will be able to use their CDMA handsets that next morning.<sup>236</sup> [REDACTED]<sup>237</sup>

71. *Service.* Verizon Wireless states that the GSM network will be maintained at the same level as it will exist at the closing of the proposed transaction until the divestiture GSM network subscribers are transitioned to the Verizon Wireless CDMA network pursuant to the terms of the TSA.<sup>238</sup> Following transition to the CDMA network, Verizon Wireless maintains that the divestiture GSM network subscribers will enjoy comparable or upgraded service.<sup>239</sup>

72. *Handsets.* Verizon Wireless states that the divestiture GSM network subscribers will be offered a selection of comparable handsets [REDACTED].<sup>240</sup> [REDACTED]<sup>241</sup> Verizon Wireless states

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<sup>228</sup> Verizon Wireless Information Request Response at 6-7.

<sup>229</sup> [REDACTED] Verizon Wireless Information Request Response at 5.

<sup>230</sup> Verizon Wireless Information Request Response at 5. [REDACTED] Verizon Wireless Information Request Response at 5.

<sup>231</sup> Letter from Nancy J. Victory, Wiley Rein LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 21, 2010) (“Verizon Wireless Supplement to Information Request Response”).

<sup>232</sup> See generally Verizon Wireless Supplement to Information Request Response.

<sup>233</sup> Verizon Wireless Supplement to Information Request Response, II.5 §§ 1.2, 3.1.

<sup>234</sup> Verizon Wireless Information Request Response at 4.

<sup>235</sup> Verizon Wireless Information Request Response at 4, 11.

<sup>236</sup> Verizon Wireless Information Request Response at 4-5.

<sup>237</sup> Verizon Wireless Information Request Response at 4.

<sup>238</sup> Verizon Wireless Information Request Response at 5.

<sup>239</sup> Verizon Wireless Information Request Response at 7-8. See *supra* Section VI, Potential Public Interest Benefits.

<sup>240</sup> Verizon Wireless Information Request Response at 6. Verizon Wireless states that divestiture customers [REDACTED]. Verizon Wireless Information Request Response at 7.

<sup>241</sup> Verizon Wireless states that [REDACTED]. Verizon Wireless Information Request Response at 6.

that it will begin the ordering process for divestiture GSM network subscribers to select their CDMA handsets approximately [REDACTED].<sup>242</sup>

73. *Pricing.* Verizon Wireless states that reasonable efforts will be made to give divestiture GSM network subscribers an equivalent or better rate plan.<sup>243</sup> Divestiture subscribers may elect to upgrade their service plan either prior to or after the conversion, although Verizon Wireless states that this could result in a price increase.<sup>244</sup> Otherwise, divestiture subscribers, Verizon Wireless states, [REDACTED].<sup>245</sup>

74. *Early Termination Fees.* Verizon Wireless states that divestiture GSM network subscribers for whom Verizon Wireless is unable to provide an equivalent or better rate plan will be permitted to terminate their existing service contract without paying an early termination fee (ETF) because these customers will have experienced a material change to their service.<sup>246</sup>

75. *Prepaid Customers.* Verizon Wireless states that prepaid customers will be [REDACTED]. Prepaid customers, Verizon Wireless explains, will be offered a replacement handset [REDACTED].<sup>247</sup>

76. *GSM Network.* Following consummation of the proposed transaction, Verizon Wireless states that it will integrate the acquired GSM network into its pre-existing CDMA PCS network.<sup>248</sup> During the integration, Verizon Wireless asserts that it will collocate CDMA equipment (“GSM/CDMA overlay”) on many of the existing towers, while continuing to operate the GSM network for a period of time to permit a smooth customer migration to the CDMA network.<sup>249</sup> Until the divestiture subscribers are transitioned to the CDMA network, Verizon Wireless states that the GSM network will be maintained at the same level as it will exist at the closing of the proposed transaction.<sup>250</sup>

77. *Discussion.* Based upon the record before us, we anticipate a smooth transition of the divestiture properties. Verizon Wireless has experience in transitioning customers it acquires in transactions, and we believe they have the experience and resources to ensure a smooth transition. At the same time, we will monitor the situation in the service areas to ensure that the transition is smooth and is in the public interest

#### **D. Trafficking**

78. *Background.* Section 1.948(i) of the Commission’s Rules states that “[a]pplications for approval of assignment or transfer may be reviewed by the Commission to determine if the transaction is for purposes of trafficking in service authorizations.”<sup>251</sup> The rule defines trafficking as “obtaining or

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<sup>242</sup> Verizon Wireless Information Request Response at 16. Verizon Wireless states that handset offerings [REDACTED]. Verizon Wireless Information Request Response at 16.

<sup>243</sup> Verizon Wireless Information Request Response at 12.

<sup>244</sup> Verizon Wireless Information Request Response at 12.

<sup>245</sup> Verizon Wireless Information Request Response at 17.

<sup>246</sup> Verizon Wireless Information Request Response at 12. [REDACTED] Verizon Wireless Information Request Response at 12.

<sup>247</sup> Verizon Wireless Information Request Response at 11.

<sup>248</sup> Application, Public Interest Statement at 8.

<sup>249</sup> Application, Public Interest Statement at 8.

<sup>250</sup> Verizon Wireless Information Request Response at 5.

<sup>251</sup> 47 C.F.R. § 1.948(i).



attempting to obtain an authorization for the principal purpose of speculation or profitable resale of the authorization rather than for the provision of telecommunication services to the public or for the licensee's own private use."<sup>252</sup> The anti-trafficking rules provide that Commission review for the purposes of determining whether trafficking has occurred is discretionary.<sup>253</sup>

79. Cellular South asserts, similarly to the claims it made with respect to the recent AT&T-Verizon Wireless transaction, that the Commission should investigate whether AT&T engaged in trafficking with respect to the licenses that are included in the instant transaction.<sup>254</sup> Because in these six markets AT&T seeks to divest business units and related authorizations it had acquired in its merger with Centennial, Cellular South argues that the Commission should inquire into whether AT&T acquired Centennial's licenses for the principal purpose of immediately reselling them for a profit.<sup>255</sup> Cellular South also requests that the applications be designated for a hearing.<sup>256</sup>

80. The Applicants assert that AT&T had no choice but to acquire the subject licenses in the process of acquiring Centennial, and its decision to sell the licenses "was prompted by issues raised in the antitrust review of the transaction and was an effort to expedite regulatory review."<sup>257</sup> In addition, they argue that the anti-trafficking rule is not aimed at "subsequent sale of *constructed facilities acquired at a market price*."<sup>258</sup> Cellular South responds that the language of section 1.948(i) broadly applies to any grant or request for a grant of radio authorizations.<sup>259</sup> It also claims that the Commission's decisions cited by the Applicants do not limit the application of the anti-trafficking rule.<sup>260</sup> Cellular South reiterates its claim that a hearing is required to determine whether AT&T sought to obtain the subject licensees with

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<sup>252</sup> 47 C.F.R. § 1.948(i)(1). The Commission may require applicants to submit an affirmative showing demonstrating that the assignor or transferor did not acquire the authorization for the principal purpose of speculation or profitable resale of the authorization. 47 C.F.R. § 1.948(i)(2).

<sup>253</sup> 47 C.F.R. § 1.948(i) (stating that "[a]pplications for approval of assignment or transfer *may* be reviewed by the Commission to determine if the transaction is for purposes of trafficking in service authorizations" (emphasis added)).

<sup>254</sup> Cellular South Petition at 8-10. As noted above, the Commission required AT&T to divest business units in seven markets in connection with its acquisition of Centennial. *AT&T-Centennial Order*, 24 FCC Rcd at 13961 ¶ 111. The instant applications include five of those markets. The divestiture of the business unit in CMA501 was required by the DOJ. *See U.S. v. AT&T and Centennial* at 2; DOJ AT&T-Centennial Competitive Impact Statement at 10-13.

<sup>255</sup> Cellular South Petition at 9-10.

<sup>256</sup> Cellular South Petition at 10.

<sup>257</sup> Joint Opposition at 8.

<sup>258</sup> Joint Opposition at 8. (emphasis in original) (citing Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services, WT Docket No. 01-108, *Report and Order*, 17 FCC Rcd 18401, 18437 ¶ 72 (2002) ("*2000 Biennial Regulatory Review*"), and Forbearance From Applying Provisions of the Communications Act to Wireless Telecommunications Carriers, WT Docket No. 98-100, *First Report and Order*, 15 FCC Rcd 17414, 17429 ¶ 33 (2000) ("*Forbearance Order*")).

<sup>259</sup> *See* Cellular South Reply at 5.

<sup>260</sup> *See* Cellular South Reply at 6 n.10 (stating that while the *Forbearance Order* noted that the Commission would rarely review authorizations obtained in an auction because the initial licenses are required to pay market price for licenses acquired in auction, the Applicants are not the initial licensees, nor did they acquire the subject licenses in auction).

the intent to resell them at a profit.<sup>261</sup>

81. The subject applications contain only cellular and point-to-point microwave licenses. All of the cellular licenses included in the instant transaction were awarded pursuant to random selection (or lotteries).

82. *Discussion.* We find, as did the Commission in the *AT&T-Verizon Wireless Order*, that Cellular South's claims regarding violation of our anti-trafficking policies are based on an apparent misunderstanding of the applicable rules and policies.<sup>262</sup> Former section 22.943 of the Commission's Rules addressed limitations on assignments and transfers of cellular authorizations.<sup>263</sup> This section provided that "[a]pplications for consent to transfer of control or assignment of authorization in the Cellular Radiotelephone Service are subject to the provisions of Sec. 22.139 [the then applicable rule regarding trafficking]."<sup>264</sup> This section, however, also exempted "[a]pplications for consent to transfer of control or assignment of a cellular authorization obtained by random selection, after commencement of service," among others, from the application of the then anti-trafficking rule.<sup>265</sup> Thus, former section 22.943 by its terms excluded from the definition of impermissible trafficking the transfer of cellular licenses awarded pursuant to random selection and where service had commenced. The Commission explained that it adopted the rule in order "to balance the public interest in liberal transferability of licenses with a means to deter insincere applicants from speculation on unbuilt facilities."<sup>266</sup> Since all of the cellular licenses in the instant applications were awarded by random selection and the necessary construction obligations were satisfied for these licenses well before they were acquired by AT&T, there can be no trafficking concern regarding these licenses.

83. The subject applications also include point-to-point microwave licenses under Part 101 of our rules. The Applicants state that all of the authorizations included in the subject applications involve constructed facilities.<sup>267</sup> However, even if any of the point-to-point microwave facilities are not constructed, sections 101.55(a) and (d) of our rules make clear that unconstructed point-to-point microwave facilities may be transferred where the transfer is incidental to a sale of other facilities or merger of interests.<sup>268</sup> The transfer of any unconstructed point-to-point microwave facilities as part of

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<sup>261</sup> See Cellular South Reply at 6-8.

<sup>262</sup> See *AT&T-Verizon Wireless Order* at ¶ 151.

<sup>263</sup> 47 C.F.R. § 22.943 (1997).

<sup>264</sup> 47 C.F.R. § 22.943(a) (1997).

<sup>265</sup> 47 C.F.R. § 22.943(a)(2) (1997).

<sup>266</sup> *2000 Biennial Regulatory Review*, 17 FCC Rcd at 18436 ¶ 72. See also Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission's Rules To Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services, WT Docket No. 01-108, *Notice of Proposed Rulemaking*, 16 FCC Rcd 11169, 11195 ¶ 64 (2001) ("The cellular anti-trafficking rules specifically permit the transfer of cellular licenses awarded by lottery after construction. This policy was intended to balance the public interest in efficient use of the spectrum through free transferability of licenses with a deterrent for insincere applicants to speculate in unbuilt facilities."); Amendment of the Commission's Rules To Allow the Selection from Among Mutually Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings, CC Docket No. 83-1096, *Report and Order*, 98 F.C.C. 2d 175, 217 ¶ 77 (1984) ("cellular licenses awarded by lottery will be transferable after construction without regard to a minimum license holding period").

<sup>267</sup> Application, Public Interest Statement at 15.

<sup>268</sup> 47 C.F.R. § 101.55(d).

this transaction clearly would be incidental to the sale of other licenses and associated business units, and thus would fall under the trafficking exemption provided in section 101.55(d).

84. The Commission has made clear that the transfer of cellular licenses awarded pursuant to random selection and that have been constructed, and the transfer of point-to-point licenses incidental to a sale of other facilities, do not fall within proscribed trafficking in Commission licenses. We thus find that the transfer of the subject cellular and point-to-point microwave licenses from AT&T to Verizon Wireless does not raise any trafficking concerns.

#### **E. *Ex Parte* Status of the Proceeding**

85. *Background.* In the public notice seeking comment on the proposed transaction, the Wireless Telecommunications Bureau (“Bureau”), pursuant to its authority under section 1.1200(a) of the Commission’s Rules,<sup>269</sup> announced that this proceeding would be governed by permit-but-disclose *ex parte* procedures that are applicable to proceedings under section 1.1206 of the Commission’s Rules.<sup>270</sup> In its Petition for Reconsideration, Cellular South objects to the *ex parte* status of the proceeding, asserting that the Bureau’s decision was a violation of section 1.1208 of the Commission’s Rules and section 309(d) of the Communications Act, as well as procedural and due process rights.<sup>271</sup>

86. *Discussion.* This is the third time Cellular South has raised these arguments before the Commission. The Commission has recently addressed them in the *AT&T-Verizon Wireless Order* and *AT&T-Centennial Order*.<sup>272</sup> The Commission concluded in both orders that, in what otherwise would be a restricted proceeding under section 1.1208, the Commission and its staff have the discretion to apply permit-but-disclose *ex parte* procedures under section 1.1206 if the agency or its staff determine that the proceeding “involves primarily issues of broadly applicable policy.”<sup>273</sup> Those orders stated that the Commission has previously determined that similar transactions involving large providers of telecommunications services “involve[] broad public policy issues and we reaffirm that judgment here.”<sup>274</sup> The Commission also noted that permit-but-disclose *ex parte* procedures have been applied in the majority of recent merger cases,<sup>275</sup> and the public policy determination underlying the decision to use

<sup>269</sup> 47 C.F.R. § 1.1200(a).

<sup>270</sup> 47 C.F.R. § 1.1206. *See also Comment Public Notice*, 24 FCC Rcd at 11316.

<sup>271</sup> *See generally* Cellular South Petition for Reconsideration.

<sup>272</sup> *See AT&T-Verizon Wireless Order* at ¶¶ 154-160; *AT&T-Centennial Order*, 24 FCC Rcd at 13976-78 ¶¶ 153-157.

<sup>273</sup> *See AT&T-Verizon Wireless Order* at ¶ 155, citing 47 C.F.R. § 1.1208 n.2; *AT&T-Centennial Order*, 24 FCC Rcd at 13976-77 ¶ 154.

<sup>274</sup> *See, e.g.*, “Permit But Disclose” Ex Parte Status Accorded to Proceeding Involving Applications Filed by Voicestream Wireless Corporation, Omnipoint Corporation, Cook Inlet/VS GSM II PCS, LLC and Cook Inlet/VS GSM III PCS, LLC for Consent to Transfer of Control and Assignment of Licenses and Authorizations, *Public Notice*, 15 FCC Rcd 6939 (1999).

<sup>275</sup> *See, e.g.*, AT&T Inc. and Centennial Communications Corp. Seek FCC Consent to Transfer Control of Licenses, Leasing Arrangements, and Authorizations, WT Docket No. 08-246, *Public Notice*, 23 FCC Rcd 17966 (2008); Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer Licenses, Spectrum Manager and *De Facto* Transfer Leasing Arrangements, and Authorizations, and Request a Declaratory Ruling on Foreign Ownership, WT Docket No. 08-95, *Public Notice*, 23 FCC Rcd 10004 (2008); Sprint Nextel Corporation and Clearwire Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 08-94, *Public Notice*, 23 FCC Rcd 9988 (2008).

permit-but-disclose *ex parte* procedures for significant transactions is reflected in a well-established administrative practice.<sup>276</sup>

87. In addition, we find, as the Commission did in the *AT&T-Verizon Wireless Order* and *AT&T-Centennial Order*, that the use of permit-but-disclose procedures in this proceeding does not violate the requirement of section 309(d) of the Communications Act that allegations of fact in petitions to deny be supported by an affidavit.<sup>277</sup> The affidavit requirement set forth in the section requires an affidavit only for petitions to deny and the applicant's reply to such petitions, and does not apply to "matters which [the Commission] may officially notice,"<sup>278</sup> as is the case here. We believe that we may take official notice of the kind of policy-related concerns raised by the *ex parte* filings.<sup>279</sup> The purpose in seeking public comment is to invite information from a variety of perspectives regarding broad public policy concerns, as well as to adduce potential benefits and harms the transaction may cause.

88. As the Commission found in the *AT&T-Verizon Wireless-ALLTEL Order* and *AT&T-Centennial Order*, we find here, that the use of permit-but-disclose procedures does not conflict with other procedural rules applicable to this proceeding or considerations of due process.<sup>280</sup> As was concluded in the two orders, the use of permit-but-disclose procedures serves to give the parties adequate notice of allegations concerning them and a fair opportunity to respond.<sup>281</sup> *Ex parte* presentations are readily available on the Commission's web site on the Electronic Comment Filing System ("ECFS") and the Office of General Counsel Transaction Team web page, and can be accessed, reviewed, and responded to in a timely manner by Cellular South. Due process does not require more.<sup>282</sup>

89. Cellular South argues again that the harm caused by the *ex parte* status of this proceeding will be exacerbated by the issuance of a "wholly-unlawful protective order."<sup>283</sup> The Commission rejected the same argument in the *AT&T-Verizon Wireless Order*, explaining that protective orders are used to ensure the protection of competitively sensitive information while still permitting limited disclosure for a specific public purpose,<sup>284</sup> and that they have been employed in a number of major transactions, wireless and otherwise.

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<sup>276</sup> See *AT&T-Verizon Wireless Order* at ¶ 155; *AT&T-Centennial Order*, 24 FCC Rcd at 13976-77 ¶ 154.

<sup>277</sup> See *AT&T-Verizon Wireless Order* at ¶ 156; *AT&T-Centennial Order*, 24 FCC Rcd at 13977 ¶ 155.

<sup>278</sup> 47 U.S.C. § 309(d)(2).

<sup>279</sup> See *City of Erie v. Pap's A.M.*, 529 U.S. 277, 298 (2000) (administrative agency may take official notice of "legislative facts" within its special knowledge), citing *FCC v. National Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978) (Commission's expertise in predicting the anticompetitive impact of broadcasting co-ownership).

<sup>280</sup> See *AT&T-Verizon Wireless Order* at ¶ 157; *AT&T-Centennial Order*, 24 FCC Rcd at 13977-78 ¶ 156.

<sup>281</sup> See *AT&T-Verizon Wireless Order* at ¶ 157; *AT&T-Centennial Order*, 24 FCC Rcd at 13977-78 ¶ 156, citing Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings, GC Docket No. 95-21, *Notice of Proposed Rulemaking*, 10 FCC Rcd 3240, 3243 ¶¶ 20-22 (1995).

<sup>282</sup> See *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985) ("The essential requirements of due process . . . are notice and an opportunity to respond").

<sup>283</sup> Cellular South Petition for Reconsideration at 15.

<sup>284</sup> Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, GC Docket No. 96-55, *Report and Order*, 13 FCC Rcd 24816, 24823-24, 24831-32 ¶¶ 9, 21 (1998).

90. Lastly, Cellular South asserts again that the Commission has in the past accepted *ex parte* presentations without enough time for interested parties to respond before the Commission took action.<sup>285</sup> Consistent with the Commission's decisions in the *AT&T-Verizon Order* and *AT&T-Centennial Order*, we decline to address complaints about procedures in prior proceedings,<sup>286</sup> and note that a comprehensive reexamination of our *ex parte* practices is underway.<sup>287</sup>

#### **F. Comment of WRJI 91.5 FM**

91. WRJI 91.5 FM objects to the Commission's grant of the proposed transaction, stating that the Verizon Wireless failed to "provide us with the service intended for our company, and this impeded our ability to broadcast on-air."<sup>288</sup> We note, however, that WRJI 91.5 FM's complaint constitutes a private contractual matter between WRJI 91.5 FM and Verizon Wireless that is beyond the Commission's jurisdiction. The Commission has a long-standing policy to defer to state and local courts on private contractual disputes.<sup>289</sup> We thus decline to intervene in or decide the dispute between WRJI 91.5 FM and Verizon Wireless.

#### **G. Verizon Wireless Foreign Ownership**

92. Verizon Wireless requests a declaratory ruling, pursuant to section 310(b)(4) of the Communications Act, that the public interest would be served by extending its current foreign ownership ruling to encompass Zodiac, Lafayette, and the common carrier radio licenses they will hold following their transfer of control to Verizon Wireless as a result of the proposed transaction.<sup>290</sup> We find, subject to the conditions specified herein, that the public interest would be served by extending the current foreign ownership ruling under section 310(b)(4), which the Commission issued to Verizon Wireless in the *Vodafone-Bell Atlantic Order*,<sup>291</sup> to Zodiac and Lafayette and to their wireless licenses. We conclude, based on ownership information Verizon Wireless has submitted to the Commission, that its current foreign ownership complies with that section 310(b)(4) ruling.

##### **1. Review of Foreign Ownership Issues**

93. We review under section 310(b)(4) of the Communications Act and Commission rules and policies established in the Foreign Participation Order<sup>292</sup> the post-transaction foreign ownership of Zodiac and Lafayette. As part of our foreign ownership analysis under section 310(b)(4), we consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the proposed

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<sup>285</sup> Cellular South Petition for Reconsideration at 22-24. Cellular South specifically cites events related to the Verizon Wireless-ALLTEL transaction.

<sup>286</sup> *AT&T-Verizon Wireless Order* at ¶ 158; *AT&T-Centennial Order*, 24 FCC Rcd at 13978 ¶ 157.

<sup>287</sup> Amendment of the Commission's *Ex Parte* Rules and Other Procedural Rules, GC Docket No. 10-43, *Notice of Proposed Rulemaking*, 25 FCC Rcd 2403 (2010).

<sup>288</sup> WRJI 91.5 FM Comment at 1.

<sup>289</sup> See, e.g., *Listeners Guild v. Federal Communications Commission*, 813 F.2d 465 (D.C. Cir. 1987).

<sup>290</sup> 47 U.S.C. § 310(b)(4). The petition for declaratory ruling is included in the narrative portion of the transfer of control applications and has been assigned File No. ISP-PDR-20090630-00004.

<sup>291</sup> Applications of Vodafone AirTouch, Plc and Bell Atlantic Corporation for Consent to Transfer of Control or Assignment of Licenses and Authorizations, *Memorandum Opinion and Order*, 15 FCC Rcd 16507, 16514 ¶ 19 (WTB/IB 2000) ("*Vodafone-Bell Atlantic Order*").

<sup>292</sup> See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order and Order on Reconsideration*, IB Docket Nos. 97-142 and 95-22, 12 FCC Rcd 23891 (1997) ("*Foreign Participation Order*"), *Order on Reconsideration*, 15 FCC Rcd 18158 (2000).

transfer of control.<sup>293</sup> Section 310(b)(4) of the Communications Act establishes a 25 percent benchmark for investment by foreign individuals, corporations, and governments in U.S.-organized entities that control U.S. common carrier radio licensees.<sup>294</sup> This section of the Communications Act also grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.<sup>295</sup> The presence of aggregated alien equity or voting interests in a common carrier licensee's parent in excess of 25 percent triggers the applicability of section 310(b)(4)'s statutory benchmark.<sup>296</sup> Once the benchmark is triggered, section 310(b)(4) directs the Commission to determine whether the "public interest will be served by the refusal or revocation of such license."<sup>297</sup>

94. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by individuals or entities from World Trade Organization ("WTO") Member countries in U.S. common carrier and aeronautical fixed and aeronautical en route radio licensees.<sup>298</sup> Therefore, with respect to indirect foreign investment from WTO Members, the Commission adopted a rebuttable presumption that such investment generally raises no competitive concerns.<sup>299</sup> Because the Commission has previously issued a foreign ownership ruling to Verizon Wireless under section 310(b)(4), we consider in this proceeding whether Verizon Wireless remains in compliance with that ruling and, if so, whether it is appropriate to extend Verizon Wireless's current ruling to encompass Zodiac and Lafayette and the common carrier radio licenses they will hold following the proposed transaction.

95. As discussed above, Verizon Wireless is a general partnership of which 55 percent is indirectly owned by Verizon and the remaining 45 percent is indirectly owned by Vodafone. Verizon and Vodafone hold their partnership interests in Verizon Wireless through numerous intermediate subsidiaries organized under the laws of Luxembourg, the Netherlands, and the United Kingdom, all of which are WTO Member countries, and the United States.<sup>300</sup> Verizon is a widely-held, publicly-traded company organized in the United States. Vodafone is a widely-held, publicly-traded company organized in the United Kingdom.<sup>301</sup>

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<sup>293</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23918-21 ¶¶ 59-66. In assessing the public interest, we consider the record and accord the appropriate level of deference to Executive Branch expertise on these issues. *See id.*

<sup>294</sup> 47 U.S.C. § 310(b)(4).

<sup>295</sup> *Id.*

<sup>296</sup> See Applications of BBC License Subsidiary L.P. (Assignor) and SF Honolulu Subsidiary, Inc. (Assignee), *et al.*, *Memorandum Opinion and Order*, 10 FCC Rcd 10968, 10973-74 ¶ 25 (1995).

<sup>297</sup> 47 U.S.C. § 310(b)(4).

<sup>298</sup> *Foreign Participation Order*, 12 FCC Rcd at 23896, 23913, 23940 ¶¶ 9, 50, 111-112.

<sup>299</sup> *Id.* at 23913, 23940 ¶¶ 50, 111-112. The Commission stated, in the *Foreign Participation Order*, that it will deny an application if it finds that more than 25 percent of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding. *See id.* at 23946 ¶ 131.

<sup>300</sup> See Cellco Partnership, Form 602, File No. 0003031455 (Aug. 12, 2009) (providing the current ownership structure).

<sup>301</sup> See Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation, WT Docket No. 07-208, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 12463, 12523 ¶ 145 (2008) ("*Verizon Wireless-RCC Order*"). To support its requested ruling, Verizon Wireless relies on ownership (continued....)

96. In the *Vodafone-Bell Atlantic Order* issued in 2000, the Commission authorized Verizon Wireless “to be indirectly owned by Vodafone in an amount up to 65.1 percent.”<sup>302</sup> The Commission stated that Verizon Wireless “would need additional Commission authority under section 310(b)(4) before Vodafone could increase its investment above authorized levels”<sup>303</sup> and that “[a]dditional authority also would be required before any other foreign entity or entities acquire, in the aggregate, a greater-than-25 percent indirect interest” in Verizon Wireless.<sup>304</sup> For purposes of calculating the additional, aggregate 25 percent amount, Verizon Wireless is required to include foreign ownership of Verizon and foreign ownership of Vodafone, other than ownership of Vodafone from the United States and the United Kingdom.<sup>305</sup>

97. We conclude on this record that current foreign ownership of Verizon Wireless is not inconsistent with the foreign ownership ruling issued in the *Vodafone-Bell Atlantic Order*. The instant Petition relies on the April 8, 2008 detailed showing made by Verizon Wireless to the Commission in the Verizon Wireless-RCC proceeding to demonstrate that its foreign ownership remained within the parameters of its foreign ownership ruling.<sup>306</sup> The beneficial ownership information that Vodafone and Verizon gathered for that proceeding indicates that non-U.S., non-U.K. ownership of Vodafone (14.55 percent), together with non-U.S. ownership of Verizon (8.65 percent), is below the 25 percent aggregate allowance specified in the Verizon Wireless ruling for such ownership and, thus, complies with that ruling.<sup>307</sup> We find the beneficial ownership information that Verizon Wireless has submitted for Vodafone and Verizon sufficient to demonstrate compliance with its section 310(b)(4) ruling for the same reasons discussed in the *Verizon Wireless-RCC Order*.<sup>308</sup>

98. We therefore find that Verizon Wireless is entitled to a rebuttable presumption that, following consummation of the proposed transaction, the indirect foreign ownership in Zodiac and Lafayette would not pose a risk to competition in the U.S. market. We find no evidence in the record that rebuts this presumption and, as we explained above, we find no basis to conclude that the proposed transaction is likely to harm competition.<sup>309</sup> In addition, we have received no opposition to or comment

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information it submitted to the Commission in the *Verizon Wireless-RCC* proceeding. See Application, Public Interest Statement at 11 n.19 (citing Letter from Nancy J. Victory, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 07-208, DA 07-4192 (Apr. 8, 2008) (“April 8, 2008 Letter”).

<sup>302</sup> *Vodafone-Bell Atlantic Order*, 15 FCC Rcd at 16514 ¶ 19. The Commission has extended this ruling to cover the AWS services, see International Authorizations Granted, File No. ISP-PDR-20060619-00015, *Public Notice*, 21 FCC Rcd 13575 (IB 2006), and permitted Verizon Wireless to acquire ownership interests in other common carriers, see, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd 17444; *Verizon Wireless-RCC Order*, 23 FCC Rcd 12463; Applications of Northcoast Communications, LLC and Celco Partnership d/b/a Verizon Wireless, WT Docket No. 03-19, *Memorandum Opinion and Order*, 18 FCC Rcd 6490, 6492 ¶ 6 & n.15 (CWD/WTB 2003).

<sup>303</sup> *Vodafone-Bell Atlantic Order*, 15 FCC Rcd at 16514 ¶ 19.

<sup>304</sup> *Id.*

<sup>305</sup> See *id.* at 16514 ¶ 19 n.34.

<sup>306</sup> See April 8, 2008 Letter at 2-3. The beneficial ownership information for Vodafone is current as of February 29, 2008, and the beneficial ownership information for Verizon is current as of March 3, 2008. See *id.*

<sup>307</sup> See *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12525 ¶ 148 n.473.

<sup>308</sup> See *id.* at 23 FCC Rcd at 12525 ¶¶ 147-148. See also *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 18445 ¶ 226.

<sup>309</sup> See *supra* paras. 48-50; see also *Foreign Participation Order*, 12 FCC Rcd at 23905-09 ¶¶ 33-41.

on the applications from the Executive Branch.<sup>310</sup> Accordingly, pursuant to section 310(b)(4) of the Communications Act and the rules and policies established in the *Foreign Participation Order*, we find that it is in the public interest to extend Verizon Wireless's section 310(b)(4) foreign ownership ruling to cover Zodiac and Lafayette and their wireless licenses.

## 2. Declaratory Ruling

99. Accordingly, this declaratory ruling permits Verizon Wireless to acquire up to and including 100 percent of the equity and voting interests in Zodiac and Lafayette subject to the terms and conditions of the ruling issued in the *Vodafone-Bell Atlantic Order*.<sup>311</sup> We reiterate, as stated in our previous rulings, that Verizon Wireless has an affirmative duty to monitor its foreign equity and voting interests, calculate these interests consistent with the attribution principles enunciated by the Commission, and otherwise ensure continuing compliance with the provisions of section 310(b)(4) of the Communications Act.<sup>312</sup>

### H. International Dominant Carrier Safeguards

100. The Applicants seek consent to the partial assignment of international section 214 authority held by Centennial to Zodiac.<sup>313</sup> As part of our public interest analysis under section 214(a) of the Communications Act, we consider whether, upon consummation of the proposed transaction, Zodiac will become affiliated with a foreign carrier that has market power on the foreign end of a U.S. international route that it will have authority to serve pursuant to the international section 214 authority that will be assigned.<sup>314</sup> Under rules adopted in the *Foreign Participation Order*, the Commission classifies a U.S. carrier as "dominant" on a particular route if it is, or is affiliated with, a foreign carrier that has market power on the foreign end of that route.<sup>315</sup>

101. Following consummation of the proposed transaction, Zodiac will become affiliated,

<sup>310</sup> We note that Verizon Wireless is a party to an Agreement dated December 14, 1999, as amended March 27, 2008, between Verizon (formerly, Bell Atlantic Corporation), Vodafone, and Verizon Wireless, on the one hand, and the U.S. Department of Defense, the U.S. Department of Justice, the Federal Bureau of Investigation, and the U.S. Department of Homeland Security, on the other. See *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12526-28 ¶¶ 152-154. Verizon Wireless acknowledges that the licenses that will be held by Zodiac and Lafayette will be subject to that agreement. Application, Public Interest Statement at 15-16.

<sup>311</sup> *Vodafone-Bell Atlantic Order*, 15 FCC Rcd at 16514 ¶ 19.

<sup>312</sup> Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc., Petition for Declaratory Ruling Under Section 310(b) of the Communications Act of 1934, as Amended, File No. ISP-PDR-20070314-00004, *Declaratory Ruling*, 23 FCC Rcd 4436, 4443 ¶ 16 (2008); Verizon Communications, Inc., Transferor, and América Móvil, S.A. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI), WT Docket No. 06-113, *Memorandum Opinion and Order and Declaratory Ruling*, 22 FCC Rcd 6195, 6225 ¶ 68 (2007).

<sup>313</sup> See File No. ITC-ASG-20090630-00309 (partial assignment from Centennial Communications Corp. to Zodiac Newco, LLC). Zodiac will provide international service pursuant to international Section 214 authorization File No. ITC-214-20100621-00260. Centennial will continue to provide international service to its remaining customers pursuant to its existing international Section 214 authorization, ITC-214-19970923-00579. 60404-00138.

<sup>314</sup> 47 U.S.C. § 214(a).

<sup>315</sup> *Foreign Participation Order*, 12 FCC Rcd at 23991-99 ¶¶ 215, 221-39. A carrier classified as dominant on a particular U.S. international route due to an affiliation with a foreign carrier that has market power on the foreign end of the route is subject to specific international dominant carrier safeguards set forth in section 63.10 of the rules. 47 C.F.R. § 63.10(c), (e).



within the meaning of section 63.09 of the Commission's rules,<sup>316</sup> with Verizon Wireless and Vodafone and the foreign carriers with which Verizon Wireless and Vodafone are affiliated.<sup>317</sup> Pursuant to section 63.10 of the Commission's rules, Zodiac requests "non-dominant" status upon consummation of the transaction for all of the routes except the U.S.-Ghana route.<sup>318</sup> We find that Zodiac has demonstrated that foreign carriers affiliated with Verizon Wireless and Vodafone do not have market power on the foreign end of the various routes, with the exception of the U.S.-Ghana route. We therefore will classify Zodiac as non-dominant on those routes.

102. With respect to the U.S.-Ghana route, Zodiac agrees to be classified as dominant and comply with the dominant carrier safeguards set forth in section 63.10 of the Commission's rules.<sup>319</sup> Accordingly, pursuant to section 214(a) of the Communications Act and section 63.10 of the Commission's rules, we condition our grant of the international section 214 assignment applications on the classification of Zodiac as a dominant carrier on the U.S.-Ghana route.

### VIII. CONCLUSION

103. We find that competitive harms are unlikely as a result of the proposed transaction and that the proposed transaction is likely to result in transaction-specific public interest benefits. Moreover, we conclude that, consistent with the Commission's intent in the *AT&T-Centennial Order*, the proposed transfer of the licenses and business units associated with six markets from AT&T to Verizon Wireless will promote competition and provide consumers with additional wireless services in a number of markets around the country. Accordingly, we conclude that the grant of the subject assignment and transfer of control applications will serve the public interest.

### IX. ORDERING CLAUSES

104. Accordingly, having reviewed the applications, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 214, 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(b), 310(d), the applications for the assignment or transfer of control of licenses and partial assignment of international section 214 authorizations from AT&T Inc. and certain of its subsidiaries to Zodiac Newco, LLC, as owned and controlled by Cellco Partnership d/b/a Verizon Wireless, are GRANTED, to the extent specified in this Memorandum Opinion and Order and Declaratory Ruling.

105. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.18 of the Commission's rules, 47 C.F.R. § 63.18, Zodiac Newco, LLC is authorized to provide facilities-based international service in accordance with section 63.18(e)(1) of the Commission's rules and resale international service in accordance with section 63.18(e)(2) of the Commission's rules, 47 C.F.R. § 63.18(e)(1), (2), pursuant to international Section 214 authorization File No. ITC-214-20100621-00260.

106. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.10 of the Commission's rules, 47 C.F.R. § 63.10, Zodiac Newco, LLC SHALL BE CLASSIFIED as a dominant international carrier in its provision of

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<sup>316</sup> 47 C.F.R. § 63.09.

<sup>317</sup> See 214 Application, Att. 1 at 4-6 (list of all the foreign carriers with which Verizon Wireless and Vodafone are affiliated).

<sup>318</sup> See 214 Application, Att. 1 at 7, citing 47 C.F.R. § 63.10.

<sup>319</sup> See 214 Application, Att. 1 at 7.

service on the U.S.-Ghana route effective upon consummation of the partial assignment of international section 214 authority specified in this Memorandum Opinion and Order and Declaratory Ruling.

107. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), and 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 310(b)(4), and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, the petition for declaratory ruling filed by Cellco Partnership d/b/a Verizon Wireless is GRANTED to the extent specified in this Memorandum Opinion and Order and Declaratory Ruling.

108. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), the Petition to Deny the assignment and transfer of control of licenses from AT&T Inc. to Cellco Partnership d/b/a Verizon Wireless filed by Cellular South, Inc is DENIED for the reasons stated herein.

109. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petition for Expedited Reconsideration filed by Cellular South, Inc. is DENIED for the reasons stated herein.

110. IT IS FURTHER ORDERED that the above grant shall include authority for Cellco Partnership d/b/a Verizon Wireless to acquire control of: (a) any license or authorization issued to AT&T, Inc. and its subsidiaries that is related to the properties to be acquired by Cellco Partnership d/b/a Verizon Wireless during the Commission's consideration of the transfer of control applications or the period required for consummation of the transaction following approval; (b) any construction permits that are related to the properties to be acquired by Cellco Partnership d/b/a Verizon Wireless that mature into licenses after closing; and (c) applications that are related to the properties to be acquired by Cellco Partnership d/b/a Verizon Wireless that are pending at the time of consummation of the proposed transfer of control.

111. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon adoption. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this Memorandum Opinion and Order.

112. This action is taken under delegated authority pursuant to sections 0.131, 0.261, and 0.331 of the Commissions rules, 47 C.F.R. §§ 0.131, 0.261, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Ruth Milkman  
Chief, Wireless Telecommunications Bureau

Mindel De La Torre  
Chief, International Bureau

APPENDIX A  
Map of Markets

## APPENDIX B

## Applications Granted

*Section 310(d) Applications*

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0003888718	Lafayette Cellular Telephone Company	KNKA458
0003888722	Centennial Southeast License Company LLC	KNKN636

*Section 214 Authorizations*

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-ASG-20090630-00309	Centennial Communications Corp.	ITC-214-19970923-00579 ITC-214-20000817-00545

**APPENDIX C**

**Petitioners and Commenters**

**Petitions:**

Cellular South, Inc.

**Opposition:**

Verizon Wireless and AT&T Inc.

**Reply:**

Cellular South, Inc.

**Comments and *Ex Parte* Filings**

Telephone USA Investments, Inc.  
WRJI 91.5 FM