DESCRIPTION OF TRANSACTION,

PUBLIC INTEREST SHOWING

AND RELATED DEMONSTRATIONS

EXECUTIVE SUMMARY

AT&T's acquisition of the retail operations and associated assets of Allied Wireless Communications Corporation will yield numerous public interest and consumer benefits – particularly in rural areas – without any harm to competition.

These public interest benefits are clear and demonstrable. As a result of this transaction, Allied's customers will have access to 4G and other services, equipment and features, including AT&T's nationwide 4G network. In addition, Allied customers will enjoy a wider variety of rate plans, advanced broadband services, wireline/wireless bundle discounts in AT&T's wireline service area, free Wi-Fi hotspots, an increased ability to roam internationally, free mobile-to-mobile calling over a substantially expanded customer base, and rollover minutes. On its own, Allied could not build a 4G network that rivals its competitors' in speed and capacity, or deliver these products and services nearly as robustly or as quickly. The transaction also will allow AT&T to extend its network coverage in areas where it is weak, to the advantage of its customers as well. The transaction will result in cost savings and synergies too, such as the reduction of general and administrative costs, internalization of roaming, more efficient billing functions, and lower network operating expenses.

These public interest benefits can be achieved without any harm to competition. Allied is a small, mostly rural carrier, with less than 0.2 percent of U.S. wireless subscribers, spread across disconnected portions of six states ranging from North Carolina to Idaho. Allied is not a meaningful competitive influence on AT&T today and is unlikely to become one in the future. Allied has lost nearly 30 percent of its retail customers over the last two years and faces substantial challenges going forward. When Allied agreed to acquire the Alltel wireless divestiture assets from Verizon Wireless in 2009, Alltel's wireless business was predominantly comprised of voice services. Like some others, Allied did not anticipate the level and rapid increase in demand for data services, and it has been left behind in the race to 4G. Moreover, Allied did not anticipate the extent of the customer experience and economic challenges it would face in serving the scattered geography where it operates. Allied's unusual footprint leads to higher-than-normal roaming usage, which, together with the surge in data traffic, has left Allied with uncompetitive per-subscriber data roaming costs. Further, the CMAs in which Allied operates are and will remain competitive following the transaction. A number of other competitors are present in each of Allied's markets. AT&T, for the most part, has a modest presence and limited coverage in many areas served by Allied, and its spectrum holdings will remain below the Commission's spectrum screen in all but one county.

In short, customers of both companies will benefit, and competition will continue to be strong. The Commission should consent to this transaction swiftly and unconditionally.

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I. INTRODUCTION

AT&T, Atlantic Tele-Network, Inc. ("ATN"), and ATN's subsidiary Allied Wireless Communications Corporation ("AWCC") have agreed to transfer control of AWCC's retail operations and associated assets to a wholly owned, indirect subsidiary of AT&T Inc. (collectively with its subsidiaries and affiliates, "AT&T"). These assets ("Allied Assets") include cellular, PCS, 700 MHz and microwave licenses, an international Section 214 authorization, and 700 MHz and cellular leases held by AWCC and certain of its affiliates[1] (collectively with AWCC, "Allied"), which are located in rural parts of six states – Georgia, Idaho, Illinois, North Carolina, Ohio, and South Carolina. AT&T and Allied are filing various Applications for Commission approval of the assignment or transfer of control of these authorizations. For the reasons set forth below, the Commission should find that the proposed transaction serves the public interest and grant these Applications swiftly and unconditionally.

The proposed transaction will benefit consumers, most of whom live in rural communities, in many ways. First, Allied customers, who currently receive 3G EV-DO services, will gain access to a range of products and services available on AT&T's 4G national network. On its own, Allied could not deliver these products and services nearly as robustly or as quickly. Second, the transaction will enhance and supplement AT&T's network – which, for the most part, is limited in Allied's service area along highways and other major roads and in small population centers – by providing broader and deeper coverage. Third, customers will benefit from substantial synergies produced by the transaction.

[1] AWCC's licensee affiliates are Georgia RSA #8 Partnership, Ohio RSA #3 Limited Partnership, Ohio RSA 2 Limited Partnership, Ohio RSA 5 Limited Partnership, and Ohio RSA 6 Limited Partnership. AT&T is acquiring the AWCC entities that hold interests in these partnerships, which will continue to hold their licenses and leases.

These benefits will be achieved without any harm to competition in any market. AT&T's spectrum holdings will remain below the Commission's spectrum screen virtually everywhere. Allied does not have a meaningful impact on AT&T's decision-making and, with Allied being particularly handicapped by its dispersed service areas and facing material barriers in its ability to deploy a competitively robust 4G offering, it is unlikely to do so in the future. Further, AT&T generally has a modest presence in Allied's markets, while a number of other competitors are present in each.

In short, customers of both companies will benefit, and competition will continue to be strong. The Commission therefore should consent to these Applications expeditiously and unconditionally.

II. DESCRIPTION OF THE APPLICANTS AND THEIR EXISTING BUSINESSES

AT&T is a leading provider in the United States of wireless, Wi-Fi, high-speed Internet, local and long distance voice, mobile broadband, and advanced TV services, as well as worldwide wireless coverage and IP-based business communications services.[2]

ATN provides telecommunications services to rural, niche and other underserved markets and geographies in the United States, Bermuda, and the Caribbean. Through its operating subsidiaries, ATN provides both wireless and wireline connectivity to residential and business customers, including a range of mobile wireless solutions, local exchange services, fiber-based services, and broadband Internet services.[3]

In the United States, ATN provides retail wireless voice and data services via Allied under the "Alltel" name in primarily rural areas of six widely scattered states to approximately

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[2] *See* AT&T Inc., Annual Report (Form 10-K), at 1-2 (Feb. 24, 2012).

[3] ATN is headquartered in Beverly, Massachusetts.

620,000 customers, with a network footprint of approximately 4.6 million people.[4] ATN's other domestic operating companies, which are not involved in this transaction, provide wholesale wireless voice and data roaming services in rural markets to national, regional, local and selected international wireless carriers, as well as retail wireless, fiber, and local exchange services.[5]

The Commission has concluded repeatedly that AT&T has the qualifications required by the Communications Act to control Commission authorizations,[6] and nothing has changed to disturb this conclusion. Nor can there be any question about Allied's character or qualifications to hold Commission authorizations.[7]

III. DESCRIPTION OF THE TRANSACTION

Allied is selling to AT&T the assets used in the operation of its retail wireless telecommunications businesses in 26 CMAs located in Georgia, Idaho, Illinois, North Carolina, Ohio, and South Carolina. These assets, which Allied operates under the "Alltel" brand, include

[4] The customer count includes 585,000 customers of AWCC plus 35,000 subscribers from an unconsolidated partnership, with a total network footprint of approximately 4.6 million people. Decl. of William F. Kreisher, Senior Vice President, Corporate Development, Atlantic Tele-Network, Inc. ¶ 4 (Feb. 5, 2013) ("Kreisher Decl."); *see also AT&T to Acquire Wireless Spectrum and Assets from Atlantic Tele-Network, Inc., Enhance Wireless Coverage in Rural Areas*, Press Release (Jan. 22, 2013), *available at* http://www.att.com/gen/press-room?pid=23674&cdvn=news&newsarticleid=35955&mapcode=corporate|financial.

[5] *See* Atlantic Tele-Network, Inc., Annual Report (Form 10-K), at 2-4 (Mar. 15, 2012).

[6] *See, e.g.*, *Application of AT&T Inc. and Qualcomm Inc. for Consent to Assign Licenses and Authorizations*, Order, 26 FCC Rcd. 17,589, 17,601 ¶ 28 (2011) ("*AT&T/Qualcomm Order*"); *Applications of AT&T Inc. and Cellco P'ship d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, Memorandum Opinion and Order, 25 FCC Rcd. 8,704, 8,720 ¶ 29 (2010) ("*AT&T/Verizon Order*"); *Applications of AT&T Inc. and Centennial Commc'ns Corp. for Consent to Transfer Control of Licenses, Authorizations and Spectrum Leasing Arrangements*, Memorandum Opinion and Order, 24 FCC Rcd. 13,915, 13,931 ¶ 33 (2009) ("*AT&T/Centennial Order*"); *Application of Aloha Spectrum Holdings Co. LLC and AT&T Mobility II LLC*, Memorandum Opinion and Order, 23 FCC Rcd. 2,234, 2,236 ¶ 8 (2008) ("*AT&T/Aloha Order*").

[7] *See, e.g.*, *Applications of Atlantic Tele-Network, Inc. and Cellco P'ship d/b/a Verizon Wireless*, Memorandum Opinion and Order, 25 FCC Rcd. 3,763, 3,777 ¶ 27 (2010).

certain 700 MHz licenses and a 700 MHz lease, cellular licenses and leases,[8] PCS licenses, ancillary microwave licenses, an international Section 214 authorization, network assets, retail stores, and approximately 620,000 subscribers. Allied also is selling to AT&T two 700 MHz licenses it holds that are not in the 26 Alltel CMAs.[9] Allied has not yet put these two licenses into service and has no related network assets.

In the transaction, AWCC will contribute those licenses, leases and authorizations (and related assets, including networks, subscribers, entities holding the partnership interests, and other assets) to a wholly owned subsidiary of AWCC called AWCC Acquisition Company, LLC ("Newco"). Then, in exchange for $780 million in cash, AWCC will transfer its 100 percent interest in Newco to a wholly owned, indirect subsidiary of AT&T.

IV. THE STANDARD OF REVIEW

In deciding whether to grant these Applications under Section 310(d) of the Communications Act of 1934, as amended,[10] the Commission first must assess whether the proposed transaction complies with the specific provisions of the Communications Act, other applicable statutes, the Commission's rules, and federal communications policy. The Commission then weighs any potential public interest harms of the proposed transaction against the potential public interest benefits. The Applicants bear the burden of proving, by a

[8] Each of the following Allied affiliates leases cellular spectrum to AWCC: Ohio RSA #3 Limited Partnership, Ohio RSA 2 Limited Partnership, Ohio RSA 5 Limited Partnership, and Ohio RSA 6 Limited Partnership. ULS does not provide for the assignment of a lease. As a result, to effectuate the assignment of the lease agreements involved in this transaction, the Applicants are filing new applications for approval of leases from these licensees to Newco. *See* ULS File Nos. 0005632716; 0005632713; 0005632710; 0005632708. In addition, the Applicants seek consent for the transfer of control of a lease by Georgia RSA #8 Partnership of 700 MHz spectrum licensed to PBP Bidco LLC. *See* ULS File No. 0005631586.

[9] The Lower B Block licenses for CMA153 (Columbus, GA-AL) and CMA588 (Ohio RSA 4 - Mercer).

[10] 47 U.S.C. § 310(d).

preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.[11] The Commission "may not consider whether the public interest, convenience, and necessity might be served by" a transaction involving an entity "other than the proposed transferee."[12] Moreover, the Commission repeatedly has found that an assignment or transfer proceeding is not the proper forum for addressing general industry issues that are not specific to the transaction.[13]

These Applications demonstrate on their face that the transaction will not result in harms to competition and will not violate any law or rule, require a waiver of a rule, or result in any unjust enrichment concerns. Nor will the transaction otherwise frustrate or undermine Commission policies and enforcement of the Act. In similar cases, the Commission has determined that such applications do not require extensive review or as certain or substantial a showing of potential benefits.[14] As this transaction will result in public interest benefits without harming competition, the Commission should approve it expeditiously and without conditions.

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[11] *See AT&T/Verizon Order*, 25 FCC Rcd. at 8,716 ¶ 22; *AT&T/Centennial Order*, 24 FCC Rcd. at 13,927 ¶ 27.

[12] 47 U.S.C. § 310(d).

[13] *E.g.*, *AT&T/Qualcomm Order*, 26 FCC Rcd. at 17,622 ¶ 79; *AT&T/Centennial Order*, 24 FCC Rcd. at 13,972 ¶ 141; *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,527-28 ¶ 185; *AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd. 5,662, 5,692 ¶ 56 n.154 (2007).

[14] *See Applications of Tele-Commc'ns, Inc. and AT&T Corp.*, Memorandum Opinion and Order, 14 FCC Rcd. 3,160, 3,170 ¶ 16 (1999); *Applications of Ameritech Corp. and SBC Commc'ns Inc.*, Memorandum Opinion and Order, 14 FCC Rcd. 14,712, 14,740-41 ¶ 54 (1999). Put another way, where a transaction will not reduce competition and the acquiring party possesses the requisite qualifications to control the licenses at issue, and "where, as here, potential harms are unlikely, Applicants' demonstration of potential benefits need not be as certain." *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from S. New Eng. TeleComms. Corp. to SBC Commc'ns Inc.*, Memorandum Opinion and Order, 13 FCC Rcd. 21,292, 21,315 ¶ 45 (1998) (quoting *Application of WorldCom, Inc. and MCI Commc'ns Corp. for Transfer of Control of MCI Commc'ns Corp. to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd. 18,025, 18,138 ¶ 197 (1998)); *see also*

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V. THE TRANSACTION WILL SERVE THE PUBLIC INTEREST

AT&T's acquisition of the Allied Assets will benefit both companies' customers. The transaction will enable AT&T to offer Allied customers access to more services and features, including access to AT&T's nationwide 4G network; extend AT&T's network coverage in primarily rural areas; improve customers' wireless calling experience; and create substantial economies of scale and scope that will benefit subscribers. AT&T also expects to overlay the Allied network with 4G technology, providing Allied customers with upgraded service compared to the 3G service they currently receive. The Commission repeatedly has credited near-term, verifiable, transaction-specific public interest benefits like these in prior transaction analyses and should do so here.[15]

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Applications of Pac. Telesis Group and SBC Commc'ns Inc., Memorandum Opinion and Order, 12 FCC Rcd. 2,624, 2,626-27 ¶ 2 (1997); *Applications of Comcast Cellular Holdings, Co. and SBC Commc'ns Inc. for Consent to Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order, 14 FCC Rcd. 10,604, 10,608-09 ¶ 10 (1999).

[15] In the *Verizon/ALLTEL Order*, the Commission concluded that that transaction was likely to result in transaction-specific public interest benefits very similar to those that will result here, including increased network coverage, expanded and improved services and features, roll-out of next generation services, improvements in service quality, and efficiencies and economies of scale and scope. *See Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,495, 17,515 ¶¶ 114-15, 156; *see also AT&T/Verizon Order*, 25 FCC Rcd. at 8,736, 8,741 ¶¶ 73, 86; *AT&T/Centennial Order*, 24 FCC Rcd. at 13,953, 13,960 ¶¶ 87-88, 108; *Applications of Cellco P'ship d/b/a Verizon Wireless and Rural Cellular Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases and Petitions for Declaratory Ruling That the Transaction Is Consistent with Section 310(b)(4) of the Commc'ns Act*, 23 FCC Rcd. 12,463, 12,504, 12,512 ¶¶ 91-92, 109 (2008) ("*Verizon/RCC Order*"); *Applications of AT&T Inc. and Dobson Commc'ns Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd. 20,295, 20,330, 20,335 ¶¶ 73-74, 84 (2007) ("*AT&T/Dobson Order*"); *Midwest Wireless Holdings, L.L.C. and ALLTEL Commc'ns, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 21 FCC Rcd. 11,526, 11,564, 11,568 ¶¶ 105-106, 118 (2006) ("*Midwest Wireless Order*"); *Applications of Nextel Commc'ns, Inc. and Sprint Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd. 13,967, 14,013-15 ¶¶ 129-131 (2005) ("*Sprint/Nextel Order*"); *Applications of W. Wireless Corp. and ALLTEL Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd. 13,053, 13,100-01, 13,108 ¶¶ 132-134, 150 (2005) ("*Western Wireless Order*"); *Applications of AT&T Wireless Servs., Inc. and Cingular Wireless Corp. for Consent to Transfer*
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A. The Transaction Will Enable a Broader and Faster Deployment of 4G Services to Rural Customers

The proposed transaction will bring advanced broadband services to more customers than Allied could cover economically on its own and at a much faster pace. When Allied agreed to acquire the Alltel wireless divestiture assets from Verizon Wireless in 2009, Alltel's retail wireless business was built around providing voice service.[16] Since that time, the demand for mobile broadband services has exploded, and Allied has struggled to adjust.[17] Allied currently offers only 3G EV-DO service and does not have sufficient spectrum to build a 4G network comparable to its competitors' in speed and capacity.[18]

By contrast, AT&T expects that it will transition Allied's customers from the current 3G EV-DO network to a 4G network, and as a result, Allied customers will enjoy an enhanced mobile Internet experience. AT&T's experience, infrastructure, and supplier contracts will permit it to deliver these benefits swiftly. And this network upgrade will ensure that Allied's

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Control of Licenses and Authorizations, Memorandum Opinion and Order, 19 FCC Rcd. 21,522, 21,599, 21,611 ¶¶ 201-03, 236 (2004) ("*Cingular/AT&T Wireless Order*").

[16] Kreisher Decl. ¶ 5.

[17] *Id.* ¶ 6.

[18] *Id.* ¶ 13. Allied won $47 million in subsidy funds in November 2012 in the Commission's Mobility Fund Phase I auction to provide mobile broadband services in unserved areas in its licensed territory. *Mobility Fund Phase I Auction Closes; Winning Bidders Announced for Auction 901, Attachment A: Bidder Summary*, Public Notice, 27 FCC Rcd. 12,031, 12,045 Attachment A (2012). Allied has filed long-form applications to claim its subsidies, which currently are pending at the FCC. Kreisher Decl. ¶ 15. Allied plans to use the support to deploy LTE only in Idaho, and the tracts receiving Mobility Fund support in Idaho represent only 0.11 percent of Allied's total covered POPs. *Id.* In unserved areas of its other five states, Allied proposes to deploy EV-DO with the Mobility Fund subsidies. *Id.*

spectrum is put to a significantly more valuable and efficient use than Allied has been, or would be, able to achieve on its own given the obstacles it faces.[19]

B. The Transaction Offers Many Other Benefits to Customers in Rural Areas

Both Allied's and AT&T's customers will benefit from this transaction. The Commission consistently has recognized that increasing the diversity and range of features and services available to customers, as well as the geographic reach of a carrier's network, is in the public interest.[20] This transaction will deliver these benefits as well as reducing costs.

1. Allied Customers Will Enjoy Greater Variety of Features and Services

AT&T's nationwide and global network provides AT&T's wireless customers a level and variety of services that Allied cannot offer.[21] Following the transaction, Allied customers, most of whom live in rural areas, will gain access to the range of services available on AT&T's nationwide 4G network. Through AT&T's international roaming partners, Allied's subscribers will be able to make and receive calls in more than 225 countries and access data services in more than 200 countries, as well as use nearly 190,000 Wi-Fi hotspots globally through roaming agreements.[22]

[19] *Cf. AT&T/Centennial Order*, 24 FCC Rcd. at 13,955-56 ¶¶ 96-98, 108 (describing accelerating deployment of next-generation service in the public interest analysis); *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,506-07, 17,515 ¶¶ 135-36, 156 (same).

[20] *See, e.g.*, *AT&T/Verizon Order*, 25 FCC Rcd. at 8,738-41 ¶¶ 79-86; *AT&T/Dobson Order*, 22 FCC Rcd. at 20,333 ¶ 79-82; *Midwest Wireless Order*, 21 FCC Rcd. at 11,564-67 ¶¶ 105-09, 111-12; *Western Wireless Order*, 20 FCC Rcd. at 13,101-04 ¶¶ 135-36, 138-40; *Sprint/Nextel Order*, 20 FCC Rcd. at 14,013-14 ¶¶ 129-130; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21,604-05 ¶¶ 216-20.

[21] *See, e.g.*, *AT&T/Dobson Order*, 22 FCC Rcd. at 20,333-34 ¶¶ 79-81 (recognizing the public interest benefits that accrue to customers of a regional wireless carrier from increasing the diversity and range of features and services available to them); *see also AT&T/Verizon Order*, 25 FCC Rcd. at 8,739 ¶ 80; *AT&T/Centennial Order*, 24 FCC Rcd. at 13,956-57 ¶ 99.

[22] *See, e.g.*, *AT&T Enhances Mobile Broadband Coverage in Time for the Big Game and Carnival Season*, Press Release (Jan. 16, 2013), *available at* http://www.att.com/gen/press-

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Among other things, Allied customers also will enjoy:

- wider variety of rate plans;
- more robust set of data services;
- free mobile-to-mobile calling to a substantially expanded customer base;
- rollover of unused minutes to the next month;
- wireline/wireless bundle discounts in AT&T's wireline service area;
- free access to 31,000 Wi-Fi hotspots for eligible subscribers;[23] and
- access to AT&T's nationwide footprint when traveling.

Because AT&T expects to integrate the Allied customers into its network rapidly and seamlessly, Allied customers will experience these numerous benefits relatively quickly. AT&T has experience in transitioning customers to its network following previous transactions, a number of which have been far larger than this one. In other transactions, the Commission has recognized the importance of such experience in ensuring the promised benefits will be realized and should do so here.[24]

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room?pid=23694&cdvn=news&newsarticleid=35971&mapcode=mk-att-wireless-networks|wireless.

[23] *See, e.g., AT&T 4G LTE Available in Macon*, Press Release (Jan. 31, 2013), *available at* http://www.att.com/gen/press-room?pid=23695&cdvn=news&newsarticleid =35972&mapcode=broadband|mk-att-wireless-networks. Free access to Wi-Fi hotspots is currently available to AT&T customers with certain devices and data plans. *See* AT&T website, AT&T Wi-Fi, *available at* http://www.att.com/gen/general?pid=5949 (last visited Feb. 5, 2013).

[24] *See Verizon/RCC Order*, 23 FCC Rcd. at 12,519 ¶ 132 (declining to require Verizon Wireless to provide greater detail regarding its plans for converting RCC customers from the existing GSM network to CDMA than that already provided by Verizon Wireless based, in part, on the Commission's recognition "that Verizon Wireless, in light of its many acquisitions, has had significant experience in transitioning customers from one system to another, some involving the replacement of one technology with another.").

2. The Transaction Will Expand Network Coverage in Rural Areas

The Commission has long acknowledged the public interest benefits of expanding the geographic reach of a wireless carrier's network.[25] The proposed transaction will allow AT&T to extend its network coverage in many predominantly rural areas and to serve customers better. AT&T's coverage has a limited reach in many of the areas served by Allied. The integration of the two networks, which AT&T expects to proceed quickly, will broaden and deepen the coverage enjoyed by each company's customers, especially in rural areas. In addition, where the networks overlap – generally near population centers, highways, and other major roads – AT&T will integrate Allied cell sites that complement AT&T's network, creating a denser network and increased capacity.

Following the network integration, Allied customers will be able to enjoy the benefits of AT&T's nationwide 4G network; AT&T's customers will benefit from the expanded geographic network; and customers of other GSM-based carriers will gain another GSM-based roaming option in Allied's footprint. AT&T's expanded 4G network coverage also will improve service for AT&T's existing customers and roamers who travel to these areas. The integration of the networks and improvements and upgrades to Allied's network will lead to more seamless service and a better customer experience, including fewer coverage gaps, fewer dropped calls, improved data speeds, better signal penetration of homes and other buildings, and enhanced feature performance.[26]

[25] *See*, *e.g.*, *AT&T/Centennial Order*, 24 FCC Rcd. at 13,955 ¶ 95; *Midwest Wireless Order*, 21 FCC Rcd. at 11,566-67 ¶¶ 111-12; *Western Wireless Order*, 20 FCC Rcd. at 13,102-04 ¶¶ 138-40; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21,604-05 ¶¶ 216-20.

[26] *See AT&T/Centennial Order*, 24 FCC Rcd. at 13,958 ¶ 103 (describing integration of networks resulting in better reception and signal quality in the public interest analysis); *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,507-08, 17,515 ¶ 137 (same).

C. The Transaction Yields Significant Cost Savings

In addition to the compelling direct benefits to consumers described above, the proposed transaction also will result in substantial cost savings. The cost savings will result from, among other things, reduced per-subscriber costs of acquiring customers, the reduction of general and administrative costs, the consolidation of cell sites, the reduction of network operating expenses, and the consolidation of customer billing functions.

The transaction will eliminate redundant administrative costs and reduce other corporate expenses.[27] Because Allied has a much smaller customer base than AT&T, its general and administrative costs account for a larger portion of its annual expense per customer than AT&T's expense per customer. For example, AT&T enjoys economies of scale that will permit it to absorb Allied's billing functions at a lower cost per subscriber than Allied can achieve.

AT&T also projects that the transaction will result in substantial savings in network operating expenses.[28] AT&T expects to be able to take advantage of many of Allied's towers while saving costs through decommissioning redundant sites. In addition, roaming costs will decline sharply with the resultant elimination of double marginalization.[29] Because 78 percent of

[27] The Commission has found that reducing the overall expenses for accounting, finance and legal services, as well as for advertising, sales, and billing, serve the public interest. *See*, *e.g.*, *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,514-15 ¶¶ 152-54; *see also AT&T/Centennial Order*, 24 FCC Rcd. at 13,959 ¶ 106; *AT&T/Dobson Order*, 22 FCC Rcd. at 20,334-35 ¶ 83.

[28] The Commission has found that integration results in cost savings from the elimination of redundant cell sites and transport facilities, as well as redeployment of assets for build-out in other areas. *See*, *e.g.*, *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,513 ¶ 149; *see also AT&T/Dobson Order*, 22 FCC Rcd. at 20,335 ¶ 84.

[29] As the Commission has recognized repeatedly, the internalization of roaming costs, as well as the elimination of the transaction costs of administering roaming, serve the public interest because they lower the marginal cost of providing service and are therefore "likely to benefit consumers through lower price and/or increased service." *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21,605 ¶ 219; *accord Western Wireless Order*, 20 FCC Rcd. at 13,108 ¶ 151 ("ALLTEL's merger with WWC would reduce its roaming costs in geographic markets where

Footnote continued on next page

Allied's subscribers reside in a county on the edge of Allied's licensed area,[30] they roam more than other carriers' customers.[31] Allied's roaming costs are therefore relatively high on a per-subscriber basis.[32] This transaction will reduce these costs. The Commission has credited similar synergies in past transactions and should do so here.[33]

VI. THE TRANSACTION WILL NOT HARM COMPETITION IN THE MARKET FOR MOBILE WIRELESS SERVICES

The transaction will not harm competition in any relevant market. As an initial matter, the transaction raises no spectrum aggregation concerns: the screen is reached in only one of the 162 counties involved in this transaction and is exceeded there by only 4 MHz. There also currently is no substantial competition between AT&T and Allied in the market for mobile wireless services. The markets in which Allied operates are and will remain competitive after the transaction. AT&T generally has a modest presence in these areas today, and competition from all the other national carriers in nearly all of the affected areas will remain.[34] Further,

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ALLTEL and WWC's service areas do not overlap, and the elimination of roaming agreements in these markets would directly benefit . . . its customers . . . .").

[30] Kreisher Decl. ¶ 12. *See* pages 21-22 below for a fuller description of this challenge.

[31] Kreisher Decl. ¶ 12.

[32] *Id.*

[33] *See*, *e.g.*, *AT&T/Centennial Order*, 24 FCC Rcd. at 13,959 ¶ 106; *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,512-15 ¶¶ 147-56; *AT&T/Dobson Order*, 22 FCC Rcd. at 20,334-35 ¶ 83 (crediting cost synergies in roaming, network, advertising, and overhead costs).

[34] The Commission and the Department of Justice have stated that the important competitive decisions by AT&T and other national wireless carriers are made at the national level, largely in response to competitive pressure from other national carriers, not local carriers such as Allied. *See Applications of Cellco P'ship d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses*, Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd. 10,698, 10,718-19 ¶ 59 (2012) ("*Verizon/SpectrumCo Order*"); *AT&T/Qualcomm Order*, 23 FCC Rcd. at 17,604-05 ¶ 35; *United States and Plaintiff States v. AT&T Inc. et al.*, Civil Action No. 11-01560 (ESH), Second Amended Compl. ¶ 19 (D.D.C. Sept. 30, 2011) ("*Am. Compl.*").

Allied's subscriber porting ratios show that the vast majority of Allied customers who port their service to another carrier do so not to AT&T, but to another national carrier instead.[35] Moreover, largely due to the challenges created by its unusual noncontiguous footprint, combined with the increasing importance of data services, Allied is not an effective competitive constraint on AT&T at either the local or national level. Allied has lost nearly 30 percent of its customer base since it acquired the former Alltel businesses in April 2010, and as discussed above, Allied faces serious challenges going forward in providing the data services customers increasingly demand.

A. The Transaction Raises No Spectrum Aggregation Concerns

The Commission's spectrum screen identifies local markets where an entity would acquire more than approximately one third of the total spectrum suitable and available for the provision of mobile telephony/broadband services.[36] The Commission's current screen is triggered where applicants would have "102 megahertz or more of cellular, PCS, SMR, 700 MHz, and WCS spectrum, where neither BRS nor AWS-1 spectrum is available; 121 megahertz or more of spectrum, where BRS spectrum is available, but AWS-1 spectrum is not available; 132 megahertz or more of spectrum, where AWS-1 spectrum is available, but BRS spectrum is not available; or 151 megahertz or more of spectrum where both AWS-1 and BRS spectrum are available."[37] An aggregation that exceeds the applicable screen merely indicates the need for a more detailed analysis of spectrum availability and competition in the pertinent area – it does not

[35] Kreisher Decl. ¶ 18.

[36] *Verizon/SpectrumCo Order*, 23 FCC Rcd. at 10,719 ¶ 59; *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,473 ¶¶ 53-54.

[37] *Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corp., Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas and Elec. Co. for Consent to Assign and Transfer Licenses*, WT Dkt No. 12-240, Memorandum Opinion and Order, FCC 12-156, at ¶ 33 n.94 (rel. Dec. 18, 2012).

alone lead to a finding of anticompetitive effects.[38]

As Appendix A demonstrates, this transaction presents no spectrum aggregation concerns. The screen is triggered in only one county, and there by only 4 MHz.[39] All the national carriers have deep spectrum positions in that county: after the consummation of pending transactions, Verizon will hold 109 MHz, Sprint 90 MHz, and T-Mobile 60 MHz. And other providers hold spectrum in that county as well – for example, DISH holds 700 MHz spectrum,[40] and Aloha holds AWS spectrum.

In every CMA involved in this transaction, all four national carriers have ample spectrum to serve existing customers and expand, and there are other spectrum holders that can deploy their spectrum or make it available for use by other carriers. Therefore, the modest increase in AT&T's spectrum holdings through this transaction, which will remain below the Commission's screens, raises no competitive concerns.[41]

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[38] *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,481-82 ¶ 75.

[39] In Ashtabula County, Ohio, the screen is 151 MHz, and after consummation of this transaction, AT&T will hold 155 MHz there.

[40] DISH also holds 40 MHz of nationwide AWS-4 spectrum (2000-2020 MHz and 2180-2200 MHz), which the Commission recently made available for mobile broadband. *See Serv. Rules for Advanced Wireless Servs. in the 2000-2020 MHz and 2180-2200 MHz Bands*, WT Dkt No. 12-70, Report and Order and Order of Proposed Modification, FCC 12-151, at ¶¶ 1, 7, 49 (rel. Dec. 17, 2012); *DBSD N. Am., Inc., Debtor-in-Possession, New DBSD Satellite Servs. G.P., Debtor-in-Possession, Pendrell Corp., and TerreStar License Inc., Debtor-in-Possession, and DISH Network Corp. and Gamma Acquisition L.L.C., Applications for Consent to Assign/Transfer Control of Licenses and Authorizations of New DBSD Satellite Servs. G.P., Debtor-in-Possession and TerreStar License Inc., Debtor-in-Possession,* Order, 27 FCC Rcd. 2250, 2250 ¶ 1 (IB 2012).

[41] *See, e.g., Sprint Nextel Corp. and Clearwire Corp., Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, Memorandum Opinion and Order, 23 FCC Rcd. 17,570, 17,601 ¶ 76 (2008) ("The purpose of this initial screen is to eliminate from further review those markets in which there is clearly no competitive harm relative to today's generally competitive marketplace."); *AT&T/Dobson Order*, 22 FCC Rcd. at 20,317 ¶ 39; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21,568-69 ¶¶ 106-109.

B. Market Definition

1. Relevant Product Market

The Commission defines relevant product markets by including all services that are reasonable substitutes for each other in the eyes of consumers.[42] The Commission has made clear that the relevant product market in transactions like this one is the combined "mobile telephony/broadband services" product market "that is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services)."[43]

2. Relevant Geographic Market

The Commission and the Department of Justice historically have analyzed the potential competitive effects of wireless transactions such as this one at the level of local geographic markets approximated by individual CMAs.[44] In doing so, the Commission determined that the appropriate geographic market was "the area within which a consumer is most likely to shop for mobile telephony/broadband services."[45] At the same time, however, the Commission has made

[42] *See Western Wireless Order*, 20 FCC Rcd. at 13,067 ¶ 25 ("When one product is considered by consumers to be a reasonable substitute for another product, it is included in the relevant market."); *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21,557 ¶ 71 (same).

[43] *Verizon/SpectrumCo Order*, 27 FCC Rcd. at 10,717 ¶ 53. *See also, e.g.*, *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,469-70 ¶ 45. This market includes the less advanced, earlier generation services, such as 2G and 2.5G wireless networks; a wide array of mobile data services, such as mobile Internet access services for laptop users; and mobile voice and data services provided over advanced wireless broadband, such as 3G and 4G, networks. *Id.* at 17,470 ¶¶ 46-47.

[44] *See*, *e.g.*, *Verizon/ALLTEL Order*, 23 FCC Rcd. at 14,741 ¶ 49; *Verizon/RCC Order*, 23 FCC Rcd. at 12,485 ¶ 41; *AT&T/Dobson Order*, 22 FCC Rcd. at 20,310-11 ¶ 25.

[45] *AT&T/Centennial Order*, 24 FCC Rcd. at 13,934 ¶ 41; *see also Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,472 ¶ 52; *AT&T/Dobson Order*, 22 FCC Rcd. at 20,310-11 ¶ 25. The Commission reasoned that consumers would be unlikely to switch to an alternative provider that was outside of where they lived, worked, or traveled in response to a small price increase. *See, e.g.*, *AT&T/Centennial Order*, 24 FCC Rcd. at 13,934 ¶ 41; *Verizon/ALLTEL Order*, 23 FCC Rcd. at 17,472 ¶ 52.

clear that small, local carriers such as Allied have no impact on the most important competitive decisions of national carriers – those regarding prices and service plans, as well as the development and deployment of mobile broadband equipment and devices – which are made at the national level.[46]

C. The Transaction Will Not Harm Competition Given Current Competition Between Allied and AT&T Is Minimal

Whether the relevant market is viewed as local or national, this transaction will not harm competition. Allied and AT&T are not close competitors. Verizon is the market leader in the local areas in which Allied operates, and Verizon's market position has been improving as Allied's has been waning.[47] Allied focuses on Verizon as the primary rival driving its competitive decisions.[48] AT&T, in contrast, is seen as lacking the coverage needed to compete effectively in these geographic areas.[49] Allied's subscriber porting ratios demonstrate that porting of subscribers to and from AT&T is very limited, with fewer than one in ten Allied customers who port their service to another carrier going to AT&T.[50] Allied's ports out to Verizon are well over 80 percent of the total, ten times the volume of ports to AT&T.[51] Additionally, unlike AT&T, Allied is not well-positioned to compete for enterprise customers of

[46] *AT&T/Qualcomm Order*, 23 FCC Rcd. at 17,605 ¶ 35 ("Because of the important national characteristics, competition that occurs at a local level is unlikely to affect, for example, the pricing and plans that the nationwide providers offer unless there is enough competition in enough local markets to make a nationwide pricing or plan change economically rational."); *see also Verizon/SpectrumCo Order*, 27 FCC Rcd. at 10,718-19 ¶ 57. The Department has reached a similar conclusion. *See Am. Compl.* ¶ 19 ("Because competitive decisions affecting technology, plans, prices, and device offerings are typically made at a national, rather than a local, level, the rivals that affect those decisions generally are those with sufficient national scale and scope.").

[47] Kreisher Decl. ¶ 19.

[48] *Id.*

[49] *Id.*

[50] *Id.* ¶ 18.

[51] *Id.*

any appreciable size because such businesses typically have operations outside of Allied's footprint.[52] Moreover, enterprise customers often want additional products and services that Allied does not offer.[53]

Viewed with regard to the dimensions of competition that the Commission and the Department of Justice have found to be driven primarily by national carriers, this transaction will have no effect. The transaction does not reduce the number, or in any way impair the competitiveness, of the national carriers in the local areas served by Allied. Moreover, Allied is a carrier serving a small number of noncontiguous, widely scattered rural areas that do not encompass any significant metropolitan areas and in which AT&T has a limited presence; thus, it is not a regional carrier that would influence the competitive decision-making of national carriers on national dimensions of competition.[54] Accordingly, this transaction will not negatively alter the competitive incentives and constraints faced by AT&T.

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[52] *Id*. ¶ 11.

[53] *Id*.

[54] In its analysis of the AT&T/T-Mobile transaction, Commission staff categorized Allied as among a group of smaller "market participants" that "hold spectrum licenses only in certain regions or sections of the country [and] provide facilities-based wireless services on a multi-regional or multi-metropolitan area basis." *Applications of AT&T Inc. and Deutsche Telekom AG, for Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Dkt No. 11-65, Staff Analysis and Findings, at ¶ 38 (rel. Nov. 29, 2011) ("*FCC Staff Report*"). To be able to compete effectively with nationwide providers, "a regional provider would most importantly need to obtain a nationwide spectrum footprint and the resources to build it out." *Id.* ¶ 64. Staff concluded that no local or regional competitor, including Allied, was likely to be an effective competitive constraint on national competition. *Id.* ¶¶ 62-70.

In its Complaint regarding the same transaction, the Department explained its conclusion that smaller, regional providers like Allied do not affect the significant competitive decisions of AT&T and other national carriers. The Department asserted that "customers in local markets across the country often face similar choices from AT&T, T-Mobile, Verizon, and Sprint, regardless of whether local or regional carriers also compete in any particular CMA. *Am. Compl.* ¶ 20. The Department stated that local or regional wireless providers "face significant competitive limitations" and "are therefore limited in their ability to constrain the . . . national carriers." *Id.* ¶ 35. The Department further asserted that, because AT&T and other national

Footnote continued on next page

In sum, at the local level, competition between AT&T and Allied is minimal, and AT&T is not a significant factor in Allied's competitive decisions and plans. With respect to national dimensions of competition, such as pricing and service plans, due in part to Allied's small and unusual footprint and diminishing presence, it is not a carrier that could exert an influence on the competitive decision-making of a national carrier like AT&T.

D. The Local Areas Where Allied Operates Are and Will Remain Competitive

In each local area involved, this transaction raises no competitive concerns. All four of the national competitors offer service in virtually all of the affected CMAs, and there are local or regional service providers in a number of these CMAs as well. Moreover, as discussed above, competition between Allied and AT&T is minimal. And, as described more fully below, Allied's competitive presence in these areas generally is modest and has been diminishing. AT&T, likewise, has a modest presence in the large majority of Allied's local operating areas. For all these reasons, competition in the areas where Allied operates will be undiminished by the transaction.

All four national carriers are present in all but two of the CMAs served by Allied, demonstrating that ample competitive options will remain for consumers in these areas after the transaction. Nor will the transaction reduce competition in the two exceptions: CMA390 (Idaho RSA 3-Lemhi) and CMA402 (Illinois RSA 9-Clay). In each of those CMAs, AT&T has few subscribers and limited coverage.

Footnote continued from previous page
carriers "typically offer[] prices, plans, and devices on a national basis, the regional and local providers . . . exert little influence on these aspects of competition." *Id.*

E. Allied's Limited Competitive Significance Is Diminishing

Allied's performance has declined significantly due to the scattered, rural nature of its footprint, high roaming costs caused by exploding data consumption, and the lack of a competitive 4G option. These factors pose significant obstacles to Allied's ability to serve customers going forward.

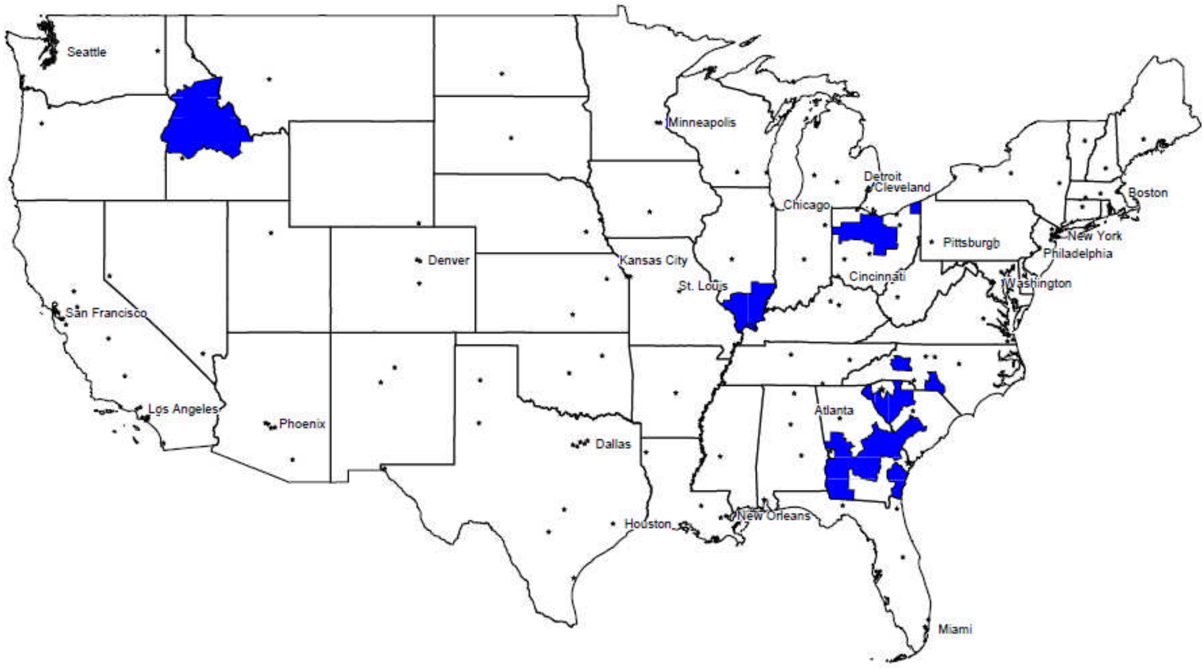
1. Allied's Declining Performance

Allied's subscriber base has declined significantly since it acquired the divested Alltel assets. Allied has lost nearly 30 percent of its subscribers since mid-2010.[55] Furthermore, Allied has lost subscribers in every CMA in which it has a meaningful market presence.[56] Allied's financial performance has suffered as a result.[57]

2. The Unusual Footprint of Allied's Service Areas Degrades Customer Experiences and Creates Inefficiencies for Allied's Operations

Allied offers service in just 26 CMAs dispersed amongst six states – Georgia, Idaho, Illinois, North Carolina, Ohio, and South Carolina – which are geographically spread across the country.[58] In essence, Allied operates 10 noncontiguous "island properties," a footprint unlike – and more challenging than – that of other regional carriers.[59]

[55] Kreisher Decl. ¶ 17.
[56] *Id.*
[57] *Id.*
[58] *Id.* ¶ 7.
[59] *Id.*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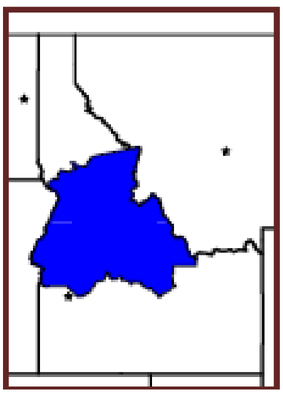

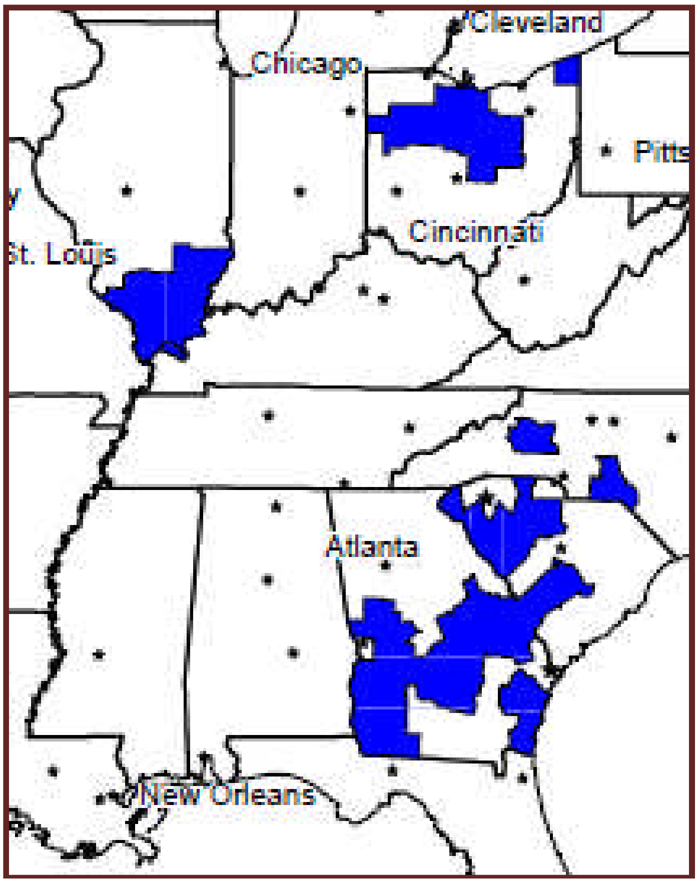
Cleveland
Chicago
Pitts
Cincinnati
St. Louis
Atlanta
New Orleans

As a result of this unusual footprint, 78 percent of Allied's subscribers reside in a county that is on the border of Allied's licensed areas.[60] Because Allied's footprint does not encompass the major metropolitan communities near its service areas, these customers frequently leave and enter Allied's network during the course of their daily routines.[61] This movement on and off Allied's network has resulted in degraded customer experiences at the edges of Allied's service areas due to dropped calls, signal loss, etc., and these problems have led to significant churn.[62] While quality issues at a network's edge are not entirely uncommon for wireless providers due to myriad technical constraints between carriers, the extent to which Allied's customers are subjected to these issues is uncommon.

Additionally, Allied suffers inefficiencies created due to the distances between its various noncontiguous operating areas and their atypical borders. For example, switching and interconnection infrastructure are inefficient and have unusually high associated expenses.[63] Further, because Allied cannot leverage capabilities effectively across the dispersed geographies in which it operates, the company has redundant field network and sales expenses.[64] Allied's footprint also means that advertising cannot be effectively targeted toward potential customers.[65] For instance, the POPs in Allied markets represent just one in eight of the POPs in the DMAs that cover the footprint.[66] As a result, mass media (television and radio) costs are prohibitively

[60] *Id*. ¶ 12. Another six percent of subscribers live outside of Allied's licensed coverage area. *Id*.
[61] *Id*.
[62] *Id.* ¶ 8.
[63] *Id*.
[64] *Id*.
[65] *Id.* ¶ 9.
[66] *Id.* Allied fully covers only one DMA (Lima, OH) and covers the majority of only one additional DMA (Albany, GA). *Id*.

expensive due to spillage, and Allied's options for promoting its brand are limited by the inefficiency of potential purchases.[67] Additionally, because it lacks presence in major market areas, Allied is at a significant competitive disadvantage in securing distribution through major retail chains as compared to other carriers.[68]

3. Allied Is Competitively Disadvantaged by High and Increasing Roaming Costs

Allied's scattered and limited footprint also means that its subscribers roam more frequently than they would if Allied's operating areas were contiguous. Approximately 15 percent of calls placed by Allied's customers are made off network.[69] This rate is much higher than the approximately one to three percent rate for out-of-network calls made by customers of carriers with more contiguous footprints.[70] As mobile broadband usage continues to explode – predicted to increase 18-fold between 2011 and 2016[71] – the relatively higher use of data roaming by Allied's customers will exacerbate the volume of roaming traffic, and thus further increase Allied's roaming costs relative to its competitors.[72] Such rapidly increasing spending on roaming reduces the amount of capital that Allied has available to invest in its network.[73]

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[67] *Id.* ¶ 9.

[68] *Id.* ¶ 10.

[69] *Id.* ¶ 12.

[70] *Id.*

[71] *See* http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.html ("Global mobile data traffic will increase 18-fold between 2011 and 2016.").

[72] Kreisher Decl. ¶ 12.

[73] *Id.*

4. Allied's Lack of a 4G Option Hamstrings Its Ability to Compete

Allied currently does not offer 4G technologies, as explained above, and its 3G EV-DO services lag far behind 4G. Allied has insufficient spectrum to launch an LTE network that is comparable in speed and throughput to the national carriers'.[74] Allied has sought to acquire additional spectrum but has had minimal success in doing so.[75] Even a limited bandwidth launch of LTE by Allied would exhaust all or most of its usable spectrum in most markets, which is likely to result in deteriorated 2G and 3G experience for Allied's customers during the transition period without allowing Allied to deliver a 4G experience comparable to the national carriers' offerings.[76] Allied's current inability to offer LTE has had a material impact on Allied's ability to source handsets and data devices because most device manufacturers have transitioned their roadmaps to 4G devices.[77]

5. Allied's Current, Limited Market Position Overstates Its Future Competitive Significance

It is well-settled that if a firm's current market position overstates its future competitive significance, analysis of a transaction should be based on the firm's future ability to compete.[78]

[74] *Id.* ¶ 13.

[75] *Id.* ¶ 14.

[76] *Id.* ¶ 13.

[77] *Id.* ¶ 16.

[78] *See*, *e.g.*, U.S. Dep't of Justice and Fed. Trade Comm'n, Horizontal Merger Guidelines § 5.2 (2010) ("*Horizontal Merger Guidelines*") ("Market concentration and market share data are normally based on historical evidence. However, recent or ongoing changes in market conditions may indicate that the current market share of a particular firm either understates or overstates the firm's future competitive significance. . . . The Agencies measure market shares based on the best available indicator of firms' future competitive significance in the relevant market."); *United States v. Gen. Dynamics Corp.*, 415 U.S. 486, 503-04 (1974) (finding that the District Court properly assessed coal producer's "weakness as a competitor" when it analyzed its "probable future ability to compete" rather than its past production, and concluded that the firm was a "far less significant factor in the coal market than . . . the production statistics seemed to indicate.").

Particularly, "where a firm's market share has been steadily declining, it may be appropriate to take a lower projected share as a measure rather than the last actual share."[79] Allied's current market position is modest in many of the areas in which it operates. Nevertheless, it still overstates Allied's future competitive significance given the steady subscriber decline Allied has experienced in virtually all of its operating areas and the many challenges described above. Where there are "recent or ongoing changes in market conditions," such as "if a new technology that is important to long-term competitive viability is available to other firms in the market, but is not available to a particular firm," the "reasonably predictable effects" should be considered in interpreting market share data.[80] Here, Allied's current lack of 4G services and a challenging route to a competitive 4G offering will result in further diminishing Allied's competitive presence in the future absent the transaction.

VII. MISCELLANEOUS REGULATORY ISSUES

A. After-Acquired Authorizations

The Applicants request that any Commission approval of these Applications include authority for AT&T to be transferred or assigned any applications regarding the Allied Assets that are pending at the time of consummation. Such action would be consistent with prior

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[79] 4A Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law* § 960 (3d ed. 2009); *see also id.* § 962 ("A firm's current market share may exaggerate its future market potential because the firm either lacks sufficient inputs to maintain sales at the existing level or would incur significantly higher costs in doing so. . . . In such a case, to look at today's sales certainly exaggerates the competitive significance of the firm.").

[80] *Horizontal Merger Guidelines* § 5.2; *see also Application of Gen. Elec. Co., GE Subsidiary, Inc. 21, and MCI Commc'ns Corp. for Authority to Transfer Control of RCA Global Commc'ns, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd. 2,803, 2,808 ¶ 37 (1988) ("Even in a highly concentrated market, a horizontal acquisition may not necessarily lessen competition where the merged companies lack market power to control prices or exclude competition because of other pertinent factors such as . . . changing market conditions.") (citing *United States v. Gen. Dynamics Corp.*, 415 U.S. at 497-98).

decisions of the Commission. Accordingly, the Applicants also request that Commission approval include any of Allied's licenses that may have been inadvertently omitted from the application forms the Applicants are filing.

B. Blanket Exemption to Cut-Off Rules

The public notice announcing this transaction will provide adequate notice to the public with respect to the licenses involved, including any for which license modifications are now pending. Therefore, no waiver needs to be sought from Sections 1.927(h), 1.929(a)(2) and 1.933(b) of the Commission's rules[81] to provide a blanket exemption from any applicable cut-off rules in cases where the Applicants file amendments to pending license applications to reflect the consummation of the proposed transfers of control or assignments.

C. Unjust Enrichment

One of the 700 MHz licenses (WQIZ559) that is the subject of these Applications was obtained pursuant to bidding credits for designated entities within the last five years. Pursuant to the Commission's unjust enrichment rules,[82] the unjust enrichment payment in connection with Allied's acquisition of this license from Gold Radio Group, LLC has been paid.

D. Consideration

One of the 700 MHz licenses (WQOL880) that is the subject of these Applications was acquired through competitive bidding procedures within the last three years and was granted on November 10, 2011. Pursuant to Section 1.2111(a) of the Commission's rules,[83] the Applicants

[81] 47 C.F.R. §§ 1.927(h), 1.929(a)(2), 1.933(b).
[82] *Id.* § 1.2111(b)-(d).
[83] *Id.* § 1.2111(a).

are filing with the Commission the contract governing this transaction in the form in which it was filed with the Securities and Exchange Commission.[84]

E. Environmental Impact

As required by Section 1.923(e) of the Commission's rules,[85] the Applicants state that the assignment or transfer of control of licenses and leases involved in this transaction will not have a significant environmental effect, as defined by Section 1.1307 of the Commission's rules.[86] An assignment or transfer of control of licenses and leases does not involve any engineering changes and, therefore, cannot have a significant environmental impact.

VIII. CONCLUSION

For the foregoing reasons, the Commission should conclude that the proposed transaction serves the public interest, convenience and necessity and should expeditiously, and unconditionally, grant these Applications.

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[84] Purchase Agreement By and Among AT&T Mobility LLC, Atlantic Tele-Network, Inc., and Allied Wireless Communications Corp. (dated Jan. 21, 2013).

[85] 47 C.F.R. § 1.923(e).

[86] *Id.* § 1.1307.