

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

In the Matter of
Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc.
For Consent to Transfer Control of Licenses and Authorizations
File Nos. 0002391997, et al.
and
Application of Great Western Cellular Partners, L.L.C. and ALLTEL Communications, Inc.
For Consent to Transfer Control of License
WT Docket No. 05-339
File No. 0002532959

MEMORANDUM OPINION AND ORDER

Adopted: October 2, 2006

Released: October 2, 2006

By the Commission: Commissioner Copps issuing a statement.

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I. INTRODUCTION

1. In this Order, we consider applications filed by Midwest Wireless Holdings, L.L.C. (“Midwest Wireless”) and ALLTEL Communications, Inc. (“ACI”), a wholly-owned subsidiary of ALLTEL Corporation (“ALLTEL”) (collectively, the “Applicants”), for consent to transfer control of all licenses and authorizations held by subsidiaries of Midwest Wireless to ALLTEL.¹ The Applicants generally seek Commission approval of the transfer of control to ALLTEL of the Midwest Subsidiaries, which hold licenses for Part 22 Cellular Radiotelephone Service (“cellular”), Part 24 Personal Communications Service (“PCS”), Part 101 Common Carrier Fixed Point-to-Point Microwave Service, Part 101 39 GHz Service, and Part 101 Local Multipoint Distribution Service. Additionally, the Applicants seek consent to the transfer of control of three international section 214 authorizations from subsidiaries of Midwest Wireless to ALLTEL. In a related matter, we consider an application for consent to transfer control of Great Western Cellular Holdings, L.L.C. (“GWC Holdings”) and the one cellular

¹ Application to Transfer Control of Licenses Held by Midwest Wireless Communications L.L.C. to ALLTEL Communications, Inc., File No. 0002391997 (filed Dec. 2, 2005); Application to Transfer Control of Licenses Held by Midwest Wireless Iowa L.L.C. to ALLTEL Communications, Inc., File No. 0002395311 (filed Dec. 2, 2005); Application to Transfer Control of Licenses Held by Midwest Wireless Wisconsin L.L.C. to ALLTEL Communications, Inc., File No. 0002395362 (filed Dec. 2, 2005); Application to Transfer Control of Licenses Held by Switch 2000 L.L.C. to ALLTEL Communications, Inc., File No. 0002395398 (filed Dec. 2, 2005). File No. 0002391997 has been designated the lead Application. The other applications each contain an exhibit referring to the exhibits attached to file no. 0002391997. Thus, for convenience, when referring to these applications, we only cite to the lead Application. Midwest Wireless Communications L.L.C., Midwest Wireless Iowa L.L.C., Midwest Wireless Wisconsin L.L.C., and Switch 2000 L.L.C. are subsidiaries of Midwest Wireless and are collectively referred to as the “Midwest Subsidiaries.”

license it holds from its controlling entity, Great Western Cellular Partners, L.L.C. (“Great Western”), to WWC Holding Co., Inc. (“WWC”), a wholly-owned subsidiary of ALLTEL.²

2. Pursuant to sections 214(a) and 310(d) of the Communications Act of 1934, as amended (“Communications Act”),³ we must determine whether the Applicants have demonstrated that the proposed acquisition of Midwest Wireless would serve the public interest, convenience, and necessity. Based on the record before us, we find that the Applicants have generally met that burden. Competitive harm is unlikely in most mobile telephony markets involved in the proposed transaction, primarily because of the complementary footprints of ALLTEL and Midwest Wireless. In five markets, however, the proposed transaction would result in the combination of overlapping mobile telephony coverage and services. Thus, the proposal required us to conduct a market-by-market competitive analysis examining the potential consequences of increasing both ALLTEL’s spectrum holdings and its market share in those markets. We determine that in four of those five markets likely competitive harms exceed the likely benefits of the transaction. In these areas, we impose narrowly tailored conditions that will effectively remedy the potential for these particular harms.

3. Similarly, pursuant to section 310(d) of the Communications Act, we must determine whether the proposed acquisition of GWC Holdings by WWC, a wholly-owned subsidiary of ALLTEL, would serve the public interest, convenience and necessity. Based on the record before us, we find that Great Western, GWC Holdings, and ALLTEL have generally met that burden. Although this proposed transfer of control does not independently raise any competitive issues, it must be considered in conjunction with the ALLTEL-Midwest Wireless transaction, since both transactions would result in ALLTEL’s acquisition of overlapping spectrum and market share in the Minnesota 11 – Goodhue Rural Service Area (“Minnesota 11 RSA”). We determine that the cumulative effective of both transactions would not result in competitive harms and we therefore impose no conditions with regard to the Minnesota 11 RSA in approving either of the two transactions.

II. BACKGROUND

A. Description of Applicants

1. ALLTEL Corporation

4. ALLTEL is a publicly-traded Delaware corporation, headquartered in Little Rock, Arkansas.⁴ It provides wireless telecommunications services through its licensee subsidiaries, including ACI and WWC.⁵ ALLTEL provides wireless communications services to approximately 11 million wireless

² Application to Transfer Control of License Held by Great Western Cellular Holdings, L.L.C. to WWC Holding Co., Inc., File No. 0002532959 (filed Mar. 21, 2006) (“Great Western Application”).

³ 47 U.S.C. §§ 214(a), 310(d).

⁴ Application, Exhibit 1, at 1; Great Western Application, Exhibit 1, at 1; ALLTEL Corporation, Form 10-K, at 1 (Mar. 10, 2006) (“ALLTEL Form 10-K”) (reporting on the year ending December 31, 2005).

⁵ Application, Exhibit 1, at 1; Great Western Application, Exhibit 1, at 1. ALLTEL acquired WWC on August 1, 2005. See Applications of Western Wireless Corporation and ALLTEL Corporation, WT Docket No. 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13053 (2005) (“*ALLTEL-Western Wireless Order*”); Notification of Consummation, File No. 0002273314, filed Aug. 11, 2005 (notifying the Commission that the ALLTEL-Western Wireless transaction closed on August 1, 2005); ALLTEL Corporation, Annual Review 2005, at 2 (Jan. 31, 2006) (“ALLTEL Annual Report”), available at http://library.corporate-ir.net/media_files/irol/74/74159/05atar/index.pdf (last visited Sept. 27, 2006).

customers in 35 states.⁶ ALLTEL owns a majority interest in wireless operations in 116 Metropolitan Statistical Areas (“MSAs”), covering a total aggregate population (“POPs”) of approximately 47.4 million, and a majority interest in 233 Rural Service Areas (“RSAs”), representing approximately 28.5 million POPs.⁷ As of December 31, 2005, ALLTEL had an overall penetration rate of 14 percent in those markets where it is providing service.⁸ Further, ALLTEL owns minority interests in 23 other wireless markets, including the Chicago, Illinois and Houston, Texas MSAs.⁹ ALLTEL has entered into roaming agreements with other wireless carriers that allow ALLTEL to provide its customers a wireless services footprint that covers approximately 95 percent of the United States population.¹⁰

5. ALLTEL sells messaging packages that allow customers to send and receive any combination of text, picture, or video messages for a flat-rate monthly price.¹¹ ALLTEL uses Code Division Multiple Access (“CDMA”) technology, including 1XRTT and EV-DO, to serve its customers.¹² As of December 30, 2005, over 90 percent of ALLTEL’s service area was equipped with 1XRTT technology, allowing customers to use Blackberry® products and a wide range of messaging and data services.¹³ Also as of that date, ALLTEL had rolled out EV-DO technology in 12 markets (covering 20 percent of ALLTEL’s POPs), enabling customers to download music, pictures, games, and other applications to smart phones and other data-enabled devices.¹⁴ ALLTEL expects to have EV-DO in 60 percent of its markets by the end of 2006.¹⁵ ALLTEL has also launched MobiTV®, allowing customers to watch live television on CDMA EV-DO handsets.¹⁶

2. Midwest Wireless

6. Midwest Wireless, a Delaware limited liability company headquartered in Mankato, Minnesota, is a regional wireless service provider.¹⁷ It is privately owned by a group of independent

⁶ See, e.g., United States and State of Minnesota v. ALLTEL Corporation and Midwest Wireless Holdings LLC, Competitive Impact Statement, Case No. 06-cv-03631-RHK-AJB, at 3 (filed Sept. 7, 2006) (“DOJ Competitive Impact Statement”). ALLTEL also provides paging services to approximately 17,000 customers on a resale basis in select markets. ALLTEL Form 10-K at 5.

⁷ ALLTEL Form 10-K at 5; DOJ Competitive Impact Statement at 3. ALLTEL holds 141 PCS licenses covering 32 million POPs. ALLTEL Form 10-K at 5.

⁸ ALLTEL Form 10-K at 5.

⁹ *Id.*

¹⁰ ALLTEL Form 10-K at 5-6; see also ALLTEL signs 10-year nationwide roaming agreement with Sprint, News Release (May 9, 2006), available at <http://www.alltel.com/corporate/media/news/06/may/n411may0906a.html> (last visited Sept. 27, 2006).

¹¹ ALLTEL Annual Report at 5.

¹² ALLTEL Form 10-K at 5.

¹³ ALLTEL Annual Report at 5; ALLTEL Form 10-K at 5, 9.

¹⁴ ALLTEL Annual Report at 5; ALLTEL Form 10-K at 5, 9.

¹⁵ ALLTEL Annual Report at 5; ALLTEL Form 10-K at 5, 9.

¹⁶ ALLTEL Annual Report at 5.

¹⁷ Application, Exhibit 1, at 2; Midwest Wireless, About US > Company Facts at 1, available at <http://www.midwestwireless.com/Home/AboutUs/CompanyFacts.htm> (“Midwest Wireless Company Facts”) (last visited Sept. 27, 2006); Midwest Wireless, About US > History at 1, available at <http://www.midwestwireless.com/Home/AboutUs/History.htm> (last visited Sept. 27, 2006).

telephone companies.¹⁸ Midwest Wireless employs CDMA to offer wireless voice and data services, including mobile Internet access on phones and wireless devices over a network that covers a population of approximately 2 million people.¹⁹ It has more than 400,000 customers in southern Minnesota, northern and eastern Iowa, and western Wisconsin.²⁰ In select areas, Midwest Wireless also offers wireless broadband Internet services for homes and businesses.²¹ In addition, Midwest Wireless offers customers the ability to combine their wireless and traditional phone services.²²

3. Great Western and GWC Holdings

7. Great Western is a privately-held limited liability company headquartered in Chesterfield, Montana.²³ Great Western holds the cellular A-Block license in the Minnesota 11 RSA through a licensee subsidiary, GWC Holdings.²⁴ On May 25, 2005, Great Western and WWC entered into an “Agreement for Purchase of Interests” (“Purchase Agreement”) whereby WWC acquired a 49.9 percent limited liability company membership interest in GWC Holdings. Great Western and WWC simultaneously entered into a Short-Term Spectrum Manager Lease Agreement to allow WWC to manage and utilize GWC Holdings’ spectrum usage rights.²⁵ Consequently, Great Western does not provide its own facilities-based service. Prior to this leasing arrangement, Great Western offered limited facilities-based roaming services to Time Division Multiple Access (“TDMA”) and Global System for Mobile Communications (“GSM”) customers within its licensed area.²⁶

B. Description of Transactions

1. ALLTEL-Midwest Wireless

8. ALLTEL and Midwest Wireless executed a “Transaction Agreement” dated November 17, 2005 (“Agreement”).²⁷ Under the terms of the Agreement, ALLTEL would acquire control of the Midwest Subsidiaries, including their customers, network assets, and FCC licenses, for \$1.075 billion in cash.²⁸ The Agreement would be effectuated by transferring all membership interests in each of the

¹⁸ Midwest Wireless Company Facts at 1.

¹⁹ ALLTEL Corporation, Form 8-K, at 2 (Nov. 18, 2005) (“ALLTEL Form 8-K”); ALLTEL Form 10-K at 2.

²⁰ Application, Exhibit 1, at 2; Midwest Wireless Company Facts at 1; About US > Counties Served at 1, *available at* <http://www.midwestwireless.com/Home/AboutUs/CountiesServed.htm> (last visited Sept. 27, 2006); ALLTEL Form 8-K at 2; ALLTEL Form 10-K at 2; ALLTEL Form 8-K, Exhibit 99(a) at 1.

²¹ Application, Exhibit 1, at 2; ALLTEL Form 8-K, Exhibit 99(a) at 1.

²² ALLTEL Form 8-K, Exhibit 99(a) at 1.

²³ *See* Great Western Cellular Holdings LLC, Form 602, File No. 0002077107 (Aug. 19, 2002); *see also* Great Western Cellular Partners, Form 602, File No. 0002080616.

²⁴ Great Western Application, Exhibit 1, at 1.

²⁵ That spectrum manager lease arrangement has been extended until May 25, 2007.

²⁶ Great Western Application, Exhibit 1, at 3.

²⁷ Application, Exhibit 1, at 2.

²⁸ *Id.*; ALLTEL Form 8-K at 2; ALLTEL Form 10-K at 2. To the extent that any of the licenses involved in this transaction are C or F Block PCS licenses, or former “designated entity” licenses, no restrictions prevent the transfer of control of those licenses to ALLTEL, because they were initially granted more than five years ago and/or the five-year construction benchmark for any such licenses has been met. Furthermore, there is no outstanding debt owed to the Commission for any of the licenses or any unjust enrichment payment required under the proposed transaction. Application, Exhibit 1, at 2.

Midwest Subsidiaries to ACI (or other designated ALLTEL subsidiary).²⁹ In the alternative, the parties may choose to merge Midwest Wireless with a newly formed ALLTEL subsidiary. Under either scenario, the Midwest Subsidiaries would become wholly-owned indirect subsidiaries of ACI and thus ALLTEL.³⁰

9. Under the terms of the Agreement, ALLTEL would acquire cellular and PCS spectrum covering approximately 2 million potential customers and would expand into Minnesota, Iowa and Wisconsin.³¹ As proposed, the merged company would have a total wireless customer base of approximately 11.5 million customers in 35 states.³²

2. ALLTEL-Great Western

10. Pursuant to the terms of the Purchase Agreement, Great Western was granted a put right to require WWC to purchase the remaining 50.1 percent interest in GWC Holdings.³³ Great Western has chosen to exercise its put right and now seeks Commission consent for the transfer of control of GWC Holdings to WWC.³⁴ Upon consummation, GWC Holdings will be a wholly-owned direct subsidiary of WWC and a wholly-owned indirect subsidiary of ALLTEL.³⁵

C. Application Review Process

1. Commission Review Process

11. *ALLTEL-Midwest Wireless.* On December 2, 2005, pursuant to section 310(d) of the Communications Act,³⁶ ALLTEL and Midwest Wireless filed four applications seeking consent to the proposed transfer of control of licenses held by the Midwest Subsidiaries to ACI.³⁷ Pursuant to section 214 of the Communications Act,³⁸ ALLTEL and Midwest Wireless also filed three international section 214 applications seeking Commission approval of the transfer of control of international section 214 authorizations from subsidiaries of Midwest Wireless to ACI.³⁹ On December 30, 2005, the Commission

²⁹ Application, Exhibit 1, at 2.

³⁰ *Id.*

³¹ ALLTEL Form 10-K at 2; ALLTEL Corporation, Form 10-Q, at 21 (May 9, 2006) (quarterly report for period ending March 31, 2006).

³² DOJ Competitive Impact Statement at 3-4.

³³ Great Western Application, Exhibit 1, at 1. In addition, ALLTEL had a right to acquire the remaining 51 percent ownership interest in Great Western Holdings. Application, Exhibit 1, at 12.

³⁴ Great Western Application, Exhibit 1, at 1.

³⁵ *Id.*

³⁶ 47 U.S.C. § 310(d).

³⁷ *See supra* note 1.

³⁸ 47 U.S.C. § 214.

³⁹ Application to Transfer Control of International Section 214 Authorization Held by Midwest Wireless Communications L.L.C. to ALLTEL Communications, Inc., File No. ITC-214-19990224-00111, at 1 (filed Dec. 2, 2005); Application to Transfer Control of International Section 214 Authorization Held by Midwest Wireless Wisconsin L.L.C. to ALLTEL Communications, Inc., File No. ITC-214-20050819-00333, at 1 (filed Dec. 2, 2005); Application to Transfer Control of International Section 214 Authorization Held by Midwest Wireless Iowa L.L.C. to ALLTEL Communications, Inc., File No. ITC-214-20050819-00334, at 1 (filed Dec. 2, 2005) (collectively, (continued....))

released a Public Notice seeking public comment on the proposed transaction.⁴⁰ In response to the Comment Public Notice, the Commission received one petition to deny the applications and one comment recommending that the applications not be approved without certain divestitures.⁴¹

12. The Wireless Telecommunications Bureau (“Bureau”) adopted a protective order, dated February 6, 2006, pursuant to which the Applicants and third parties would be allowed to review confidential or proprietary documents submitted in the proceeding.⁴² The Bureau also released a public notice announcing the Commission’s intent to provide the United States Department of Justice (“DOJ”) access to information contained in the Numbering Resource Utilization and Forecast (“NRUF”) reports filed by wireless telecommunications carriers as well as disaggregated, carrier-specific local number portability (“LNP”) data related to wireless telecommunications carriers.⁴³ The Bureau also announced by public notice that the NRUF and LNP reports would be placed into the record,⁴⁴ subject to a separate protective order (“NRUF Protective Order”).⁴⁵ On May 9, 2006, ALLTEL requested access to the NRUF reports and LNP data for the purpose of granting its outside counsel access to the data.⁴⁶ The

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“International 214 Applications”). The Applicants are both authorized to provide global resold telecommunications services. International 214 Applications, Attachment 1, at 1; Application, Exhibit 1, at 16.

⁴⁰ Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc. Seek FCC Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-339, *Public Notice*, 20 FCC Rcd 19834 (2005) (“Comment Public Notice”). The Comment Public Notice set due dates of January 30, 2006 for Petitions to Deny, February 9, 2006 for Oppositions, and February 16, 2005 for Replies. *See id.* at 19834.

⁴¹ Comment of Dan Welter, filed Jan. 6, 2006; Petition to Deny of United States Cellular Corporation, filed Jan. 30, 2006 (“U.S. Cellular Petition to Deny”); Letter from Peter M. Connelly, Holland and Knight, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 30, 2006) (“U.S. Cellular Confidential Letter”). During the pleading cycle, ALLTEL and Midwest Wireless requested an extension of the February 9, 2006 Opposition deadline. Midwest Wireless Holding, L.L.C. and ALLTEL Communications, Inc., Consent Motion for Extension of Time, filed Feb. 8, 2006. The Opposition was filed on February 16, 2006 and amended on February 17, 2006. ALLTEL Communications, Inc. and Midwest Wireless Holding, L.L.C., Joint Opposition, filed February 16, 2006; ALLTEL Communications, Inc. and Midwest Wireless Holding, L.L.C., Amended Joint Opposition, filed February 17, 2006 (“Joint Opposition”). Subsequently, United States Cellular Corporation requested an extension of the February 16, 2006 Reply deadline. United States Cellular Corporation, Motion for Extension of Time, filed Feb. 22, 2006. The Reply was filed on March 1, 2006. United States Cellular Corporation, Reply to Joint Opposition, filed Mar. 1, 2006 (“Reply”). Due to technical reasons, the Applicants resubmitted the February 17, 2006 Joint Opposition via the Commission’s Electronic Comment Filing System (“ECFS”) website on April 24, 2006. ALLTEL Communications, Inc. and Midwest Wireless Holding, L.L.C., Joint Opposition, filed April 24, 2006. All pleadings and comments are available on ECFS at www.fcc.gov/cgb/ecfs/.

⁴² Applications of Midwest Wireless Holdings, LLC and ALLTEL Communications, Inc. For Consent to Transfer Control of Licenses and Authorizations, Order Adopting Protective Order, WT Docket No. 05-339, *Order*, 21 FCC Rcd 1240 (2006).

⁴³ Notice of Request for Access to Carrier Data Filed in the Numbering Resource Utilization and Forecast Reports (NRUF), CC Docket Nos. 99-200, 95-116, *Public Notice*, 21 FCC Rcd 3972 (2006).

⁴⁴ ALLTEL Communications, Inc. and Midwest Wireless Holdings, LLC Applications for Transfer of Control of Licenses and Authorizations; Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports Placed into the Record, Subject to Protective Order, WT Docket No. 05-339, CC Docket Nos. 99-200, 95-116, *Public Notice*, 21 FCC Rcd 4345 (2006).

⁴⁵ Applications for the Transfer of Control of Licenses and Authorizations of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc., Protective Order, WT Docket No. 05-339, *Protective Order*, DA 06-929 (rel. Apr. 27, 2006).

⁴⁶ *See* Letter from Frank W. Krogh, Morrison & Foerster LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 9, 2006).

Commission placed the NRUF and LNP reports into the record, pursuant to the NRUF Protective Order. The NRUF report was provided to ALLTEL's counsel on September 6, 2006.⁴⁷

13. *ALLTEL-Great Western*. On March 21, 2006, pursuant to section 310(d) of the Communications Act,⁴⁸ ALLTEL and Great Western filed an application seeking consent to the proposed transfer of control of one cellular license held by Great Western's subsidiary, GWC Holdings, to WWC.⁴⁹ This application was placed on Public Notice on March 22, 2006 with a fourteen-day comment period.⁵⁰ In response to the Public Notice, the Commission received one petition to deny this application.⁵¹

2. Department of Justice Review Process

14. The Antitrust Division of the Department of Justice reviews telecommunications mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that are likely to substantially lessen competition.⁵² The Antitrust Division's review is limited solely to an examination of the competitive effects of the acquisition, without reference to national security, law enforcement, or other public interest considerations. The Antitrust Division reviewed the proposed merger between ALLTEL and Midwest

⁴⁷ On June 13, 2006, ALLTEL and Cingular Wireless LLC ("Cingular") filed applications to assign and transfer control of certain licenses involved in the ALLTEL-Midwest and ALLTEL-Great Western transactions from ALLTEL to Cingular. See ALLTEL Communications, Inc. and Cingular Wireless LLC Seek FCC Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 06-131, *Public Notice*, DA 06-1422 (rel. July 10, 2006); Application to *Pro Forma* Assign Licenses from WWC Holding Co., Inc. to ALLTEL Corporation, File No. 0002649372 (filed June 13, 2006); Application to *Pro Forma* Assign Licenses from Great Western Cellular Holdings LLC to ALLTEL Corporation, File No. 0002660860 (filed June 13, 2006); Application for the Transfer of Control of Licenses from Southern Minnesota to ALLTEL, File No. 50006CLTC06 (filed June 22, 2006) ("ALLTEL-Cingular Transfer of Control Applications"). These applications were withdrawn on August 7, 2006 and August 8, 2006. See Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, *De Facto* Transfer Lease Applications, Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports Action, *Public Notice*, Report No. 2609, at 21, 45, 48 (rel. Aug. 9, 2006).

⁴⁸ 47 U.S.C. § 310(d).

⁴⁹ See *supra* note 2.

⁵⁰ See Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and *De Facto* Transfer Lease Applications Accepted for Filing, *Public Notice*, Report No. 2443, at 5 (rel. Mar. 22, 2006); see also 47 C.F.R. § 1.948(j)(1)(iii).

⁵¹ Petition to Deny or Consolidate Proceedings of United States Cellular Corporation, filed Apr. 11, 2006. ALLTEL and Great Western filed separate oppositions on April 19, 2006. WWC Holding Co., Inc. Opposition to Petition to Deny or Consolidate Proceedings, filed Apr. 19, 2006 ("WWC Opposition"); Opposition of Great Western Cellular Partners, L.L.C., filed Apr. 19, 2006 ("Great Western Opposition"). U.S. Cellular filed a reply on April 28, 2006. Reply of United States Cellular Corporation, filed Apr. 28, 2006 ("Reply"). Great Western and U.S. Cellular filed additional letters dated May 8, 2006 and May 11, 2006, respectively. Letter from Lawrence J. Movshin, Counsel for Great Western Cellular Holdings, L.L.C., to Erin McGrath, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, May 8, 2006; Letter from Peter M. Connolly, Counsel to United States Cellular Corporation, to Erin McGrath, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, May 11, 2006. All pleadings and comments are available on ULS at wireless.fcc.gov/uls/.

⁵² 15 U.S.C. § 18. In addition, DOJ does not review mergers below certain statutorily mandated dollar thresholds, which are currently between \$50 and \$200 million. 15 U.S.C. § 18(a).

Wireless.⁵³ As a result of its analysis, DOJ concluded that the proposed merger was likely to result in competitive harm in certain markets,⁵⁴ and entered into a settlement with the Applicants designed to address its competitive concerns.⁵⁵ Thus, DOJ, along with the State of Minnesota, filed on September 7, 2006, a Preservation of Assets Stipulation and a Preservation of Assets Order with the United States District Court for the District of Minnesota (“District Court”),⁵⁶ and the parties jointly filed a proposed Final Judgment with the District Court.⁵⁷ DOJ will allow the merger to proceed subject to the Applicants’ divestiture of business units in four markets.⁵⁸

15. Under the terms of the settlement between the Applicants and DOJ, ALLTEL has agreed to transfer control of certain cellular licenses and related operational and network assets (including certain employees, retail sites, and subscribers) in four southern Minnesota markets where the Applicants have overlapping service areas.⁵⁹ The four markets in which the Applicants will divest the existing ALLTEL cellular systems are: Minnesota 7-Chippewa (CMA488) (“Minnesota 7 RSA”), Minnesota 8-Lac qui Parle (CMA489) (“Minnesota 8 RSA”), Minnesota 9-Pipestone (CMA490) (“Minnesota 9 RSA”), and Minnesota 10-Le Sueur (CMA491) (“Minnesota 10 RSA”).⁶⁰ These assets will be transferred to the court-appointed management trustee (“Management Trustee”), who will manage them while ALLTEL seeks a third-party buyer.⁶¹ ALLTEL has a period of 120 days from consummation of the transaction (which can be extended for up to 60 days) to sell the assets to a third-party buyer or divest the assets to a divestiture trustee (“Divestiture Trustee”), who will both manage and market the assets for sale to a third party.⁶² Under the settlement agreement, DOJ, the State of Minnesota, and the Management Trustee also will permit ALLTEL (which will remain the *de jure* holder of the spectrum) the right for a period of up to 30 days to use 2.5 MHz of the divested cellular spectrum in each of the four RSAs to permit ALLTEL to transition its GSM operations to spectrum that will not be divested.⁶³

⁵³ DOJ did not undertake a separate review and analysis of the transfer of control of Great Western Holdings to ALLTEL.

⁵⁴ See generally DOJ Competitive Impact Statement. All DOJ filings regarding this matter are available at <http://www.usdoj.gov/atr/cases/alltel2.htm>.

⁵⁵ See United States and State of Minnesota v. ALLTEL Corporation and Midwest Wireless Holdings LLC, Complaint, Case No. 06-cv-03631-RHK-AJB (filed Sept. 7, 2006).

⁵⁶ United States v. ALLTEL Corporation and Midwest Wireless Holdings LLC, Preservation of Assets Stipulation and Order, Case No. 06-cv-03631-RHK-AJB (entered Sept. 8, 2006) (“DOJ Stipulation”); United States v. ALLTEL Corporation and Midwest Wireless Holdings LLC, Preservation of Assets Order, Case No. 06-cv-03631-RHK-AJB (entered Sept. 8, 2006) (“DOJ Preservation Order”).

⁵⁷ United States v. ALLTEL Corporation and Midwest Wireless Holdings LLC, Proposed Final Judgment, Case No. 06-cv-03631-RHK-AJB (filed Sept. 7, 2006) (“DOJ Proposed Final Judgment”).

⁵⁸ See *id.* at 3-6; see also DOJ Competitive Impact Statement at 13-19.

⁵⁹ See DOJ Proposed Final Judgment at 3-5.

⁶⁰ See *id.* at 3. The cellular call signs associated with the divestiture are KNKQ432 (Minnesota 7 RSA), KNKN450 (Minnesota 8 RSA), KNKN282 (Minnesota 9 RSA), and KNKN572 (Minnesota 10 RSA).

⁶¹ See Letter from Cheryl A. Tritt, Counsel to ALLTEL Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2 (Sept. 14, 2006) (“ALLTEL September 14 Amendment”), available at Application, Amendment (filed Sept. 14, 2006); see also DOJ Stipulation at 8-15; DOJ Preservation Order at 9-16.

⁶² See DOJ Proposed Final Judgment at 12-13.

⁶³ ALLTEL September 14 Amendment at 2; DOJ Proposed Final Judgment at 23-24.

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

16. Pursuant to sections 214(a) and 310(d) of the Communications Act, the Commission must determine whether the applicants involved with each proposed transaction have demonstrated that the respective proposed transfers of control of licenses and authorizations would serve the public interest, convenience, and necessity.⁶⁴ In applying our public interest test, we must assess whether the proposed transactions comply with the specific provisions of the Communications Act,⁶⁵ the Commission's rules, and federal communications policy.⁶⁶ If a proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.⁶⁷ The Commission then employs a balancing test weighing any potential public interest harms of a proposed transaction against any potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest.⁶⁸ The applicants involved with each transaction bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.⁶⁹ If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, section 309(e) of the Act requires that we designate the application for hearing.⁷⁰

⁶⁴ 47 U.S.C. §§ 214(a), 310(d).

⁶⁵ 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.*, Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees, *Memorandum Opinion and Order*, 21 FCC Rcd 7358, 7360 ¶ 7 (2006) (“*Sprint Nextel-Nextel Partners Order*”); SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control, WC Docket No. 05-65, *Memorandum Opinion and Order*, 20 FCC Rcd 18290, 18300 ¶ 16 (2005) (“*SBC-AT&T Order*”); Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control, WC Docket No. 05-75, *Memorandum Opinion and Order*, 20 FCC Rcd 18433, 18442 ¶ 16 (2005) (“*Verizon-MCI Order*”); Applications of Nextel Communications, Inc. and Sprint Corporation, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 13976 ¶ 20 (2005) (“*Sprint-Nextel Order*”); *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062 ¶ 17 (2005); 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*”).

⁶⁶ *See, e.g.*, *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7360 ¶ 7; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18442-43 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21542-43 ¶ 40.

⁶⁷ *See, e.g.*, *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18442-43 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20.

⁶⁸ *See, e.g.*, *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7360 ¶ 7; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062-63 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

⁶⁹ *See, e.g.*, *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7360 ¶ 7; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976-77 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

⁷⁰ 47 U.S.C. § 309(e). *See also* *SBC-AT&T Order*, 20 FCC Rcd at 18300-01 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543-44 ¶ 40. Section 309(e)'s requirement applies (continued...)

17. 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.”⁷¹ Therefore, as a threshold matter, the Commission must determine whether the applicants to each proposed transfer of control before us meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission’s rules.⁷² In making this determination, the Commission does not, as a general rule, re-evaluate the qualifications of transferors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant designation for hearing.⁷³ Conversely, section 310(d) obligates the Commission to consider whether the proposed transferee is qualified to hold Commission licenses.⁷⁴ When evaluating the qualifications of a potential licensee, the Commission previously has stated that it will review allegations of misconduct directly before it,⁷⁵ as well as conduct that takes place outside of the Commission.⁷⁶ In this proceeding, no issues have been raised with respect to the basic

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only to those applications to which Title III of the Act applies, *i.e.*, radio station licenses. We are not required to designate for hearing applications for the transfer or assignment of Title II authorizations when we are unable to find that the public interest would be served by granting the applications, *see* ITT World Communications, Inc. v. FCC, 595 F.2d 897, 901 (2d Cir. 1979), but of course may do so if we find that a hearing would be in the public interest.

⁷¹ See 47 U.S.C. §§ 308, 310(d); *see also* *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18525-26 ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd 21546 ¶ 44.

⁷² See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; *see also* *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd 21546 ¶ 44.

⁷³ See, *e.g.*, *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362 ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063-64 ¶ 18; *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.*

⁷⁴ See, *e.g.*, *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362 ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

⁷⁵ See, *e.g.*, *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47. The Commission will consider any violation of any provision of the Act, or of the Commission’s rules or policies, as predictive of an applicant’s future truthfulness and reliability and, thus, as having a bearing on an applicant’s character qualifications. *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 172; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 184; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 n.85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47; 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, Gen. Docket No. 81-500, *Report and Order and Policy Statement*, 100 F.C.C. 2d 1179, 1209-10 ¶ 57 (1986), *modified*, 5 FCC Rcd 3252 (1990), *recon. granted in part*, 6 FCC Rcd 3448 (1991), *modified in part*, 7 FCC Rcd 6564 (1992).

⁷⁶ See, *e.g.*, *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47. 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. See, *e.g.*, *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 172; *Verizon-MCI Order*, 20 FCC Rcd at 18526 (continued...)

qualifications of ALLTEL, Midwest Wireless, or Great Western (and their respective affiliates involved in each of the proposed transactions), all of whom previously have been found qualified to hold FCC licenses. Thus, we find that, at this time, there is no reason to reevaluate the qualifications of ALLTEL, Midwest Wireless, and Great Western.

18. Our public interest evaluation necessarily encompasses the “broad aims of the Communications Act,”⁷⁷ which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing the spectrum in the public interest.⁷⁸ 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.⁷⁹ In conducting this analysis, the Commission may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.⁸⁰

19. In determining the competitive effects of the proposed merger, our analysis is informed by, but not limited to, traditional antitrust principles.⁸¹ The Commission and DOJ each have independent authority to examine telecommunications mergers, but the standards governing the Commission’s review differ from those of DOJ.⁸² DOJ reviews mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that are likely to lessen competition substantially in any line of commerce.⁸³ The Commission, on the other hand, is charged with determining whether the transfer of licenses serves the

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¶ 184; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 n.86; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

⁷⁷ See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18301 ¶ 17; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

⁷⁸ See *SBC-AT&T Order*, 20 FCC Rcd at 18301 ¶ 17; *Verizon-MCI Order*, 20 FCC Rcd at 18443-44 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

⁷⁹ See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18301 ¶ 17; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064-65 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

⁸⁰ See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18301-02 ¶ 17; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

⁸¹ See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13977-78 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42. See also *Satellite Business Systems, Memorandum, Opinion, Order, Authorization and Certification*, 62 F.C.C.2d 997, 1088 (1977), *aff’d sub nom* United States v. FCC, 652 F.2d 72 (DC Cir. 1980) (*en banc*); *Northern Utilities Service Co. v. FERC*, 993 F.2d 937, 947-48 (1st Cir. 1993) (stating that public interest standard does not require agencies “to analyze proposed mergers under the same standards that the Department of Justice . . . must apply”).

⁸² See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42.

⁸³ 15 U.S.C. § 18.

broader public interest.⁸⁴ In the communications industry, competition is shaped not only by antitrust rules, but also by the regulatory policies that govern the interactions of industry players.⁸⁵ In addition to considering whether the merger will reduce existing competition, therefore, we also must focus on whether the merger will accelerate the decline of market power by dominant firms in the relevant communications markets and the merger's effect on future competition.⁸⁶ We also recognize that the same consequences of a proposed merger that are beneficial in one sense may be harmful in another.⁸⁷ For instance, combining assets may allow the merged entity to reduce transaction costs and offer new products, but it may also create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.⁸⁸

20. Our public interest authority also enables us to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.⁸⁹ Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.⁹⁰ Similarly, section 214(c) of the Act authorizes the Commission to attach to the certificate "such terms and conditions as in

⁸⁴ See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

⁸⁵ See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

⁸⁶ See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

⁸⁷ See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

⁸⁸ See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

⁸⁹ See, e.g., *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43 (conditioning approval on the divestiture of operating units in select markets). See also *WorldCom-MCI Order*, 13 FCC Rcd at 18032 ¶ 10 (conditioning approval on the divestiture of MCI's Internet assets); *Deutsche Telekom-VoiceStream Wireless Order*, 16 FCC Rcd 9779 (2001) (conditioning approval on compliance with agreements with Department of Justice and Federal Bureau of Investigation addressing national security, law enforcement, and public safety concerns).

⁹⁰ 47 U.S.C. § 303(r). See also *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18302-03 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978-79 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43; *FCC v. Nat'l Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978) (upholding broadcast-newspaper cross-ownership rules adopted pursuant to section 303(r)); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (section 303(r) powers permit Commission to order cable company not to carry broadcast signal beyond station's primary market); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989) (syndicated exclusivity rules adopted pursuant to section 303(r) authority).

its judgment the public convenience and necessity may require.”⁹¹ Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to impose and enforce conditions to ensure that the transaction will, overall, serve the public interest.⁹² Despite broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms)⁹³ and that are related to the Commission’s responsibilities under the Communications Act and related statutes.⁹⁴ Thus, we will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.⁹⁵

IV. COMPETITIVE ANALYSIS

21. Initially, we note that the proposed transfer of control of GWC Holdings to ALLTEL proposes the acquisition of spectrum and services in the Minnesota 11 RSA that overlap with the proposed transfer of control of the Midwest Subsidiaries to ALLTEL in the same market. We therefore consider this application in the context of our analysis of the competitive effects of the ALLTEL-Midwest transaction.⁹⁶

22. In our analysis of the proposed ALLTEL-Midwest Wireless horizontal merger, we consider effects related to increased concentration within the mobile telephony market. Horizontal mergers lead to a loss of a competitor, and such loss can lead to reduced competition. Mergers raise competitive concerns when they reduce the availability of choices to the point that the merged firm has the incentive and the ability, either by itself or in coordination with other firms, to raise prices.⁹⁷ The ability to raise prices

⁹¹ 47 U.S.C. § 214(c). *See also SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

⁹² *See, e.g., SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43. *See also* Schurz Communications, Inc. v. FCC, 982 F.2d 1043, 1049 (7th Cir. 1992) (discussing Commission’s authority to trade off reduction in competition for increase in diversity in enforcing public interest standard).

⁹³ *See, e.g., Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545-46 ¶ 43.

⁹⁴ *See, e.g., Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

⁹⁵ *See, e.g., Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

⁹⁶ *See infra* ¶¶ 88-91 (analyzing the competitive effects of these transactions in the Minnesota 11 RSA). Since ALLTEL already indirectly holds 49.9 percent of GWC Holdings, GWC Holdings’ spectrum would be attributed to ALLTEL even in the absence of the proposal to transfer control of GWC Holdings to ALLTEL. Therefore, an analysis of the ALLTEL-Midwest Wireless transaction in isolation from the ALLTEL-Great Western transaction would not result in any change in attributable spectrum aggregation or subscriber-based concentration measures.

⁹⁷ *See, e.g., Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 30; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *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 (Apr. 2, 1992, revised Apr. 8, 1997) (“DOJ/FTC Merger Guidelines”).

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.⁹⁸ A fundamental tenet of the Commission’s public interest review is that, absent significant offsetting efficiencies or other public interest benefits, a transaction that creates or enhances significant market power or facilitates its use is unlikely to serve the public interest.⁹⁹

23. A horizontal merger is unlikely to create or enhance market power or facilitate its exercise unless the transaction significantly increases concentration and results in a concentrated market, properly defined and measured.¹⁰⁰ Transactions that do not significantly increase concentration or do not result in a concentrated market ordinarily require no further competitive analysis.¹⁰¹ Market concentration is generally measured by the Herfindahl-Hirschman Index (“HHI”), and changes in concentration are measured by the change in the HHI.¹⁰² However, HHI data provide only the beginning of the analysis.¹⁰³ The Commission then examines other market factors that pertain to competitive effects, including the incentive and ability of other firms to react and of new firms to enter the market.¹⁰⁴ Ultimately, the Commission must assess whether it is likely that the merged firm could exercise market power in any particular market.¹⁰⁵

24. Mergers can diminish competition and firms can exercise market power in a number of ways.¹⁰⁶ A merger may create market power in a single firm and allow that firm to act on its own in raising prices, lowering quality, reducing innovation, or restricting deployment of new technologies or services.¹⁰⁷ A merger may also diminish competition if it makes the firms selling in the market more likely to engage in a coordinated manner that harms consumers, such as tacit or express collusion.¹⁰⁸ The effects of such coordinated behavior may include increased prices, reduced number of minutes in a given

⁹⁸ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 30; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68; *DOJ/FTC Merger Guidelines* at § 0.1, n.6.

⁹⁹ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 30; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68.

¹⁰⁰ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 31; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 69; *DOJ/FTC Merger Guidelines* at § 1.0.

¹⁰¹ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 31; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 69.

¹⁰² See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 31; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 69.

¹⁰³ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 31; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 69.

¹⁰⁴ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 31; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 69.

¹⁰⁵ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 31; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 69.

¹⁰⁶ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 32; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 70.

¹⁰⁷ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 32; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 70.

¹⁰⁸ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13982 ¶ 32; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 70.

price plan, degraded output quality, or some combination of these effects.¹⁰⁹ It may also include adverse effects such as reduced innovation and restricted deployment of new technologies and services.¹¹⁰

25. We begin by determining the appropriate market definitions to employ for the analysis, as well as identifying relevant market participants.¹¹¹ We then measure the degree of market concentration.¹¹² Next, we consider the possible competitive harms that could occur due to a significant increase in market concentration or market power.¹¹³

A. Market Definition

1. Product Market Definition

26. We adopt the same product market definition as applied by the Commission in its recent wireless merger orders, the *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order*. In these orders, the Commission found that there are separate relevant product markets for interconnected mobile voice services and mobile data services, and also for residential services and enterprise services.¹¹⁴ Nevertheless, it analyzed all of these product markets under the combined market for mobile telephony service.¹¹⁵ Based on consideration of various factors, including the nature of these services and their relationship with each other, the Commission found that this approach provided a reasonable assessment of any potential competitive harm resulting from the transactions under review.¹¹⁶ In their Application, ALLTEL and Midwest Wireless endorse this approach in the context of their proposed transaction.¹¹⁷ Neither the petitioner nor the sole commenter challenged this product market definition in their submissions. Accordingly, we will use the same product market definition in this analysis.

27. For purposes of the ALLTEL-Midwest Wireless transaction, we do not define separate product markets for nationwide and local/regional carrier calling plans. As discussed in the *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order*, we take into account that local/regional plans are differentiated from nationwide plans, and thus firms that can provide only

¹⁰⁹ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13982 ¶ 32; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 70.

¹¹⁰ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13982 ¶ 32; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 70.

¹¹¹ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 32; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 70.

¹¹² See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 32; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 70.

¹¹³ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 32; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 70.

¹¹⁴ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 28; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558 ¶ 74.

¹¹⁵ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 29; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 74.

¹¹⁶ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068-69 ¶¶ 29-30; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21559-60 ¶¶ 77, 79.

¹¹⁷ See Application, Exhibit 1, at 7.

local/regional plans may not have the same competitive role as firms offering nationwide service plans.¹¹⁸ Also, we will not treat retail and wholesale as separate markets for purposes of analyzing this transaction.¹¹⁹

2. Geographic Market Definition

28. We find that the relevant geographic market for analyzing the competitive effect of the ALLTEL-Midwest Wireless transaction on mobile telephony is local. As discussed below, this finding is based on the observation that consumers obtain their wireless service in a local area, not on a national basis.

29. In the *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order* and *Cingular-AT&T Wireless Order*, the Commission used the “hypothetical monopolist test” and found that the relevant geographic markets are local, are larger than counties, may encompass multiple counties and, depending on the consumer’s location, may even include parts of more than one state.¹²⁰ The Commission in these orders identified two sets of geographic areas that may be used to define local markets—Component Economic Areas (“CEAs”) and Cellular Market Areas (“CMAs”).¹²¹ In their Application, ALLTEL and Midwest Wireless support the use of these two types of local markets.¹²² U.S. Cellular acknowledges that the Commission used data for CEAs and CMAs to review the competitive effects in the *ALLTEL-Western Wireless Order*, but also claims that “it is clear that in its substantive analysis the Commission considered smaller, more localized markets where appropriate.”¹²³ U.S. Cellular further asserts that “[a]s it did in its investigation of the ALLTEL-Western Wireless merger, the Commission should consider whether smaller geographic markets exist and whether the proposed transaction is anticompetitive in any such market.”¹²⁴

30. For the proposed transactions at issue here, we determine that the geographic market is the area within which a consumer is most likely to shop for mobile telephony service. For most individuals, this will be a local area, as opposed to a larger regional or nationwide area. As discussed in the *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order*, we find that the areas within which consumers regularly shop for wireless services generally are larger than counties.¹²⁵

¹¹⁸ See *Sprint-Nextel Order*, 20 FCC Rcd at 13987 ¶ 44; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13069 ¶ 31; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21560 ¶ 80.

¹¹⁹ See *Sprint-Nextel Order*, 20 FCC Rcd at 13987 ¶ 45.

¹²⁰ See *id.* at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562-63 ¶¶ 89-90.

¹²¹ See *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 57; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072-73 ¶¶ 44-45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶¶ 104-105.

¹²² See Application, Exhibit 1, at 7.

¹²³ U.S. Cellular Petition to Deny at 10-11. See also *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 45.

¹²⁴ See U.S. Cellular Petition to Deny at 11.

¹²⁵ See *Sprint-Nextel Order*, 20 FCC Rcd at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 90. See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Tenth Report*, 20 FCC Rcd 15908, 15971-72 ¶ 174 (2006) (“*Tenth Competition Report*”) (indicating that the average person shops for mobile telephony services in markets that include place of work, place of residence, and surrounding areas that are economically related; such areas generally are larger than counties); discussion *infra* ¶ 35 (discussing size of economically-related areas in which consumers (continued....))

Therefore, contrary to U.S. Cellular's assertion, we do not find that the relevant geographic market is typically as small as a county or a subset of CEA or CMA counties. If a hypothetical monopolist were to impose a small, non-transitory price increase for mobile telephony services (including promotions and handset prices) within a single county, we find that it would likely be unprofitable because significant numbers of consumers would be able to circumvent the higher price by obtaining a reasonably comparable service at a lower price in a nearby county.¹²⁶ In performing an analysis of any wireless transaction, however, we may examine geographic areas smaller than a CEA or CMA in order to understand any competitive problems fully and to design targeted remedies if necessary.¹²⁷

3. Input Market for Spectrum

31. In the *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order*, the Commission evaluated whether spectrum is within the input market for mobile telephony service by examining its suitability for mobile voice service, its physical properties, 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.¹²⁸ We find that the input market currently includes cellular, PCS, and Specialized Mobile Radio ("SMR") spectrum¹²⁹ and currently totals approximately 200 MHz of spectrum.¹³⁰

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would be expected to shop for wireless services, *citing* Kenneth P. Johnson & John R. Kort, *2004 Redefinition of the BEA Economic Areas*, SURV. OF CURRENT BUS., Nov. 2004, at 68-71).

¹²⁶ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13990-91 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 36; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 90. We assume that, although the hypothetical monopolist is the only seller of service in the county, customers can still receive service in the county if they purchase their service elsewhere, because there are other carriers who serve the county but do not have stores there, or because other carriers have roaming agreements with the hypothetical monopolist at prices that are not passed on to the customer, or because the customer can purchase service from the hypothetical monopolist itself in a different county at a lower price. As to the last point, we note that wireless carriers do not charge their customers different prices for service on different portions of their own network. See *Sprint-Nextel Order*, 20 FCC Rcd at 13991 n.146; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 n.121; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 n.298.

¹²⁷ See, e.g., *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568 ¶ 105.

¹²⁸ *Sprint-Nextel Order*, 20 FCC Rcd at 13992 ¶ 61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 41; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21560-61 ¶ 81.

¹²⁹ We find, consistent with previous Commission determinations, that Broadband Radio Service/Educational Broadband Service ("BRS/EBS") 2.5 GHz spectrum is not currently part of the input market for mobile telephony service. Currently, this spectrum is committed to uses other than mobile telephony. See *Sprint-Nextel Order*, 20 FCC Rcd at 13992-93 ¶ 61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 10371 n.127; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21561 n.283. We note that this spectrum is currently subject to rebanding requirements, which will alter the bandwidth held by Sprint Nextel and which will be made available to the market.

This will result in less available total bandwidth, but will provide more contiguous spectrum suitable for the provision of advanced mobile services, which may include mobile telephony services. Subsequent to the adoption of the *Cingular-AT&T Wireless Order*, Congress adopted the Commercial Spectrum Enhancement Act, Public Law No. 108-494 (2004), enabling the Commission to announce its intent to auction Advanced Wireless Services ("AWS") licenses as early as June 2006. See FCC to Commence Spectrum Auction that Will Provide American Consumers New Wireless Broadband Services, *News Release* (rel. Dec. 29, 2004). This auction, Auction No. 66, closed on September 18, 2006. See FCC's Advanced Wireless Services (AWS) Spectrum Auction Concludes, *News Release* (rel. Sept. 18, 2006). In the auction, a total of 104 bidders won 1,087 licenses. *Id.*; Auction of Advanced Wireless Services Licenses Closes; Winning Bidders Announced for Auction No. 66, *Public Notice*, Report No. (continued...)

4. Market Participants

32. We find that mobile telephony offered by cellular, PCS, and SMR licensees employing various technologies provide the same basic voice and data functionality and are indistinguishable to the consumer. The Applicants argue that they compete not only with facilities-based cellular, PCS, and SMR providers but with other market participants as well. These other market participants include resellers, satellite providers of interconnected mobile voice services, mobile virtual network operators (“MVNOs”), and wireless Voice over Internet Protocol (“VoIP”) providers.¹³¹

33. Generally, consistent with the *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order*, we limit our analysis to cellular, PCS, and SMR facilities-based carriers, and exclude satellite carriers, wireless VoIP providers, MVNOs, and resellers from consideration when computing initial measures of market concentration.¹³² Although satellite providers offer facilities-based mobile voice and data services, the price of these services is currently significantly higher than for services offered by cellular, PCS, or SMR carriers.¹³³ Therefore, most consumers would not view satellite phones as substitutes for mobile telephony. We also do not consider wireless VoIP carriers as providing the same functionality as mobile telephony providers because the service they provide now is nomadic rather than mobile.¹³⁴

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AUC-06-66-F (Auction No. 66), DA 06-1882 (rel. Sept. 20, 2006). It is clear that some portion of the AWS spectrum will be licensed in the near-term future. Nevertheless, given the time required to relocate existing government users of this spectrum, to issue new licenses, and for licensees to build systems that operate in this spectrum, we conclude that it is still premature to classify the AWS spectrum as suitable for the provision of mobile telephony services for purposes of our analysis here. We anticipate that in the future, as more spectrum becomes available, technological developments lead to performance advances, and allocations are revised, the Commission may from time-to-time need to re-evaluate whether additional spectrum should be viewed as suitable for the provision of mobile telephony services.

¹³⁰ The approximately 200 MHz of spectrum includes 50 MHz for cellular services, 120 MHz for Broadband PCS, and additional spectrum for SMR. See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, WT Docket No. 06-17, *Eleventh Report*, FCC 06-142, at ¶¶ 62-64 (rel. Sept. 29, 2006) (“*Eleventh Competition Report*”). See also *Sprint-Nextel Order*, 20 FCC Rcd at 13992 n.155; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 41; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21561 ¶ 81.

¹³¹ See Application, Exhibit 1, at 14.

¹³² See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶¶ 38-39; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92. Today, resellers are often referred to as MVNOs. MVNOs are distinguished from “traditional” resellers by a variety of factors, including brand appeal, distribution channels, bundling wireless and non-wireless products, and value-added services. See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Ninth Report*, 19 FCC Rcd 20597, 20614 n.71 (2005).

¹³³ See Global Com, Iridium Satellite Phone Service Plans, at http://www.globalcomsatphone.com/satellite/services/iridium_service_plans.html (last visited Sept. 29, 2006); GlobalStar, Airtime Pricing, Voice Pricing, at <http://www.globalcomsatphone.com/satellite/services/globalstar.html/> (last visited Sept. 29, 2006). See also *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38.

¹³⁴ See *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38. Wireless VoIP services are nomadic in the sense that one can use them from a number of different locations (for example, by using a laptop at different internet cafes all over a town). *Sprint-Nextel Order*, 20 FCC Rcd at 13991 n.151. VoIP using mobile phones is not anticipated to be available until sometime in 2007. See, e.g., John (continued...)

B. Initial Screen

34. Using the same criteria the Commission has used in prior wireless industry merger orders to identify markets likely to be adversely affected,¹³⁵ we identified the following five markets for in-depth analysis of the competitive effects of the proposed transactions: Minnesota 7 RSA, Minnesota 8 RSA, Minnesota 9 RSA, Minnesota 10 RSA, and Minnesota 11 RSA.

35. We used our NRUF database, which tracks phone number usage by all telecommunications carriers, including wireless carriers, to estimate market concentration using mobile telephone subscribership levels, market shares, and penetration rates for various geographic markets.¹³⁶ In calculating market shares and market concentration, we analyzed carrier data using two sets of geographic areas, CEAs¹³⁷ and CMAs.¹³⁸ As discussed in the *ALLTEL-Western Wireless Order* and *Cingular-AT&T Wireless Order*, both geographic areas are consistent with the local market definition the Commission has applied in these recent orders and each brings a different perspective to the analysis.¹³⁹ CEAs were

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Blau, *Mobile VoIP not here until 2007*, TECHWORLD, March 13, 2006, available at <http://www.techworld.com/mobility/news/index.cfm?NewsID=5553> (last visited Sept. 27, 2006).

¹³⁵ *Sprint-Nextel Order*, 20 FCC Rcd at 13993-94 ¶ 63-65; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071-74 ¶ 40-49; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69 ¶¶ 106-109.

¹³⁶ 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: 19TH EXPANDED & UPDATED EDITION* 660 (July 2003). All mobile wireless carriers 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. In the *Cingular-AT&T Wireless* and *Sprint-Nextel* transactions, the Commission also used billing data submitted by the nationwide carriers. See *Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 63; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 103. Although we may decide to collect such billing data as part of our review of future transactions, we found that the competitive situation associated with this proposed transaction was such that collection of third-party billing data was unnecessary.

¹³⁷ CEAs are defined by the Bureau of Economic Analysis ("BEA"), and are composed of a single economic node and surrounding counties that are economically related to the node. There are 348 CEAs in the 50 states and the District of Columbia. Of the 3,141 U.S. counties, 2,267 are non-nodal counties that are assigned to a CEA based first on county-to-county commuting flows from the 1990 Census and second on locations of the most widely read regional newspapers. Three quarters of non-nodal counties were assigned based on commuting patterns. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURV. OF CURRENT BUS., Feb. 1995, at 75-81. In November 2004, the Bureau of Economic Analysis updated definitions for CEAs. The total number of CEAs decreased from 348 to 344. Non-nodal county assignment continued to be based on county-to-county commuting flows and locations of the most widely read regional newspapers. See Johnson & Kort, *supra* note 125, at 68-71. For purposes of this transaction, we did not adopt the new CEA definitions.

¹³⁸ See *Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 63; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072 ¶ 44; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 104. CMAs are the regions originally used by the Commission for issuing cellular licenses. There are 734 CMAs, made up of 305 MSAs, 428 RSAs, and a market for the Gulf of Mexico. See *Tenth Competition Report*, 20 FCC Rcd at 15934-35 ¶ 70. RSAs are regions defined by the Commission for the purpose of issuing spectrum licenses. See *Tenth Competition Report*, 20 FCC Rcd at 20632 ¶ 70 n.145.

¹³⁹ *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072 ¶ 45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 105.

designed to represent consumers' patterns of normal travel for personal and employment reasons¹⁴⁰ and should replicate areas within which groups of consumers would be expected to shop for wireless service.¹⁴¹ In addition, CEAs generally constitute areas within which any service providers present would have an incentive to provide relatively ubiquitous service.¹⁴² CMAs, in turn, are the areas in which the Commission initially granted licenses for cellular service.¹⁴³ Although license partitioning has altered this initial licensing structure in many areas, CMAs continue to serve as reasonable areas for determining the number of competitors from which consumers may choose, because the Commission's licensing programs, to a large extent, have shaped the mobile telephony services market by defining the initial areas where carriers were able to provide facilities-based service.¹⁴⁴ As CEAs are derived from factors related to consumer demand for mobile telephony services and CMAs reflect to some extent the initial supply of mobile telephony services, we have found that they are useful cross-checks on each other and together help ensure that our analysis identifies all local areas that require more detailed analysis.¹⁴⁵

36. As noted previously, the HHI is used as a measure of market concentration.¹⁴⁶ In order to identify those areas that require further examination, we calculated the HHI and the change in HHI that would result from the ALLTEL-Midwest Wireless transaction for all CEAs and CMAs, consistent with the Commission's practice in its recent orders.¹⁴⁷ As explained below, we examined a market further if the post-transaction HHI would be greater than 2800 and the change in HHI would be 100 or greater; or if the change in HHI would be 250 or greater regardless of the level of the HHI; or if, post-transaction, the Applicants would hold 70 MHz or more of spectrum.¹⁴⁸

37. This analysis follows the general structure of the *DOJ/FTC Merger Guidelines* that the Commission applied in prior mobile telephony merger orders,¹⁴⁹ but we chose the HHI concentration

¹⁴⁰ See Johnson, *supra* note 137, at 75 ("The main factor used in determining the economic relationships among counties is commuting patterns, so each economic area includes, as far as possible, the place of work and the place of residence of its labor force.").

¹⁴¹ See *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072 ¶ 45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 105. See also Johnson, *supra* note 137, at 75 ("Economic nodes are metropolitan areas or similar areas that serve as centers of economic activity").

¹⁴² See *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072 ¶ 45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105.

¹⁴³ See 47 C.F.R. § 22.909.

¹⁴⁴ See *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568 ¶ 105.

¹⁴⁵ See *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568 ¶ 105.

¹⁴⁶ See *supra* ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 46; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21564 ¶ 96 n.306.

¹⁴⁷ See *Sprint-Nextel Order*, 20 FCC Rcd at 13993-94 ¶ 63; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 46; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568 ¶ 106.

¹⁴⁸ See *Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 63; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 46; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568 ¶ 106.

¹⁴⁹ See *Sprint-Nextel Order*, 20 FCC Rcd at 13993-94 ¶ 62-64; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 47; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568 ¶ 106; see generally *DOJ/FTC Merger Guidelines*.

thresholds based on our observation and evaluation of the current mobile telephony market.¹⁵⁰ We chose initial thresholds of 2800 for the HHI and 100 for the change in HHI because a mobile telephony market that does not exhibit at least this combined post-merger level of concentration will be no more concentrated than at the time of the Commission's last congressionally mandated review, which concluded the market was effectively competitive.¹⁵¹ In addition, we judged that a market in which the merger causes a change of less than 100 in the HHI need not be examined further because, even if the post-transaction HHI for such a market would be greater than 2800, the loss of a competitor with such a small market share is not likely to cause significant, merger-related anticompetitive effects.

38. Application of the initial HHI threshold described above to data aggregated by CEA identified four CEAs in southern Minnesota for further, in-depth analysis.¹⁵² In addition, application of the same HHI threshold to data aggregated by CMA identified four CMAs for closer analysis.¹⁵³ These CMAs cover essentially the same area of southern Minnesota identified by the four CEAs.

39. We also examined the impact of the proposed ALLTEL-Midwest Wireless transaction on the concentration of spectrum holdings in each market. Based on our analysis in previous transactions, we give further review to CMAs where, post-transaction, the merged entity would have a 10 percent or greater interest in 70 MHz or more of cellular and PCS spectrum.¹⁵⁴ In this case, there are five CMAs identified by our spectrum screen and by the Applicants where ALLTEL, post-transaction, would have a 10 percent or greater interest in 70 MHz or more of spectrum in at least one county in the CMA.¹⁵⁵ These five CMAs include the four CMAs identified by our HHI screens, as well as the Minnesota 11 RSA.¹⁵⁶ The Applicants do not provide any subscriber-based concentration or market share data for any of the Five Overlap Markets.¹⁵⁷

¹⁵⁰ See generally *Eleventh Competition Report*, FCC 06-142; *Tenth Competition Report*, 20 FCC Rcd at 15908.

¹⁵¹ See *Eleventh Competition Report*, FCC 06-142, at ¶ 2; *Tenth Competition Report*, 20 FCC Rcd at 15911 ¶ 2. Our analysis indicates that the current average HHI in markets across the country has increased to slightly over 4100 as a result of the Sprint-Nextel, ALLTEL-Western Wireless, and Cingular-AT&T Wireless mergers. Nevertheless, we have maintained an HHI score of 2800 as the trigger for the initial screen. A slightly more rigorous review is consistent with the analytical purpose of the initial screen – to eliminate from review markets where there is no competitive harm rather than identifying markets where competitive harm may exist.

¹⁵² These CEAs are: CEA7720 Sioux City, Iowa; CEA7760 Sioux Falls, South Dakota; CEA9522 Mankato, Minnesota; and CEA9523 Worthington, Minnesota.

¹⁵³ These CMAs are: Minnesota 7 RSA; Minnesota 8 RSA; Minnesota 9 RSA; and Minnesota 10 RSA.

¹⁵⁴ See *Sprint-Nextel Order*, 20 FCC Rcd at 13993-94 ¶¶ 63, 65; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13074 ¶ 49; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69 ¶¶ 106, 109.

¹⁵⁵ Application, Exhibit 1, Schedule B. Four of the CMAs are Minnesota 7 RSA, Minnesota 8 RSA, Minnesota 9 RSA, and Minnesota 10 RSA. See Application, Exhibit 1, at 11-12. In addition, the Applicants identify Minnesota 11 RSA as a market in which ALLTEL's post-transaction spectrum aggregation would be as high as 75 megahertz in some counties if the Great Western cellular license in which ALLTEL holds a 49.9 percent non-controlling interest is attributed to ALLTEL. See Application, Exhibit 1, Schedule B. Great Western and ALLTEL subsequently filed the application proposing to transfer the remaining 50.1 percent of GWC Holdings to ALLTEL, so that ALLTEL will have a 100 percent interest in the cellular license now held by GWC Holdings. Thus, as a result of both proposed transactions, ALLTEL would hold in the Minnesota 11 RSA the spectrum interests now controlled by both GWC Holdings and Midwest Wireless.

¹⁵⁶ We refer to the five RSAs collectively as the "Five Overlap RSAs."

¹⁵⁷ See Application, Exhibit 1, at 10.

40. U.S. Cellular argues that, since the Applicants only applied the spectrum aggregation screen, the Commission should apply the HHI and the change in the HHI screens in order to determine whether other markets may warrant additional review.¹⁵⁸ U.S. Cellular provides HHIs, changes in HHIs, and market share data for the Five Overlap RSAs.¹⁵⁹ For the Five Overlap RSAs, the U.S. Cellular average post-transaction HHI is 6,930, ranging from a minimum value of 5,378 to a maximum value of 8,517.¹⁶⁰ Further, the average increase in the HHI provided by U.S. Cellular is 1,809, ranging from a minimum value of 20 to a maximum of 3,536.¹⁶¹ U.S. Cellular argues that these concentration measures exceed the thresholds previously used by the Commission (a post-merger HHI of 2800 with a change in the HHI of 100) and, except for Minnesota 11 RSA, are four to five times as high as the Commission's threshold of a change in the HHI of 250 or more regardless of the post-transaction HHI level.¹⁶²

41. The U.S. Cellular market share and HHI data for Minnesota 11 RSA show an HHI of 6,487 with a change in the HHI of only 20.¹⁶³ U.S. Cellular argues that the Commission should disregard this data, however, and assume that the change in the HHI in this RSA is much larger given ALLTEL's ownership interest in Great Western.¹⁶⁴ U.S. Cellular contends that the Commission should assume that ALLTEL is operating a substantial retail business in Minnesota 11 RSA, and therefore the transaction would combine two substantial retail businesses.¹⁶⁵

42. The Applicants argue that market share and concentration levels are not dispositive in the circumstances of this transaction, and that the Commission has pointed out that there may be cases where there is high combined market share and increased concentration, but with little likelihood of harm.¹⁶⁶ According to the Applicants, the Commission has identified a number of factors that, taken together, can override customer share as indicia of competitive conditions in a market, such as the number of competitors, availability of investment capital, competitors' sunk advertising costs, low penetration rates, and access to additional spectrum.¹⁶⁷

43. Our calculation and analysis of the HHI and change in HHI data is reasonably consistent with the HHI and change in HHI data provided by U.S. Cellular. For this reason, we examine in detail CMAs

¹⁵⁸ U.S. Cellular Petition to Deny at 11.

¹⁵⁹ In its Petition to Deny, U.S. Cellular argues that the Commission should treat ALLTEL as having control of Great Western's cellular license in Minnesota 11 RSA and as operating a substantial retail wireless business in that RSA. U.S. Cellular Petition to Deny at 11-12. As previously indicated, *see supra* note 96, we attributed Great Western's Minnesota 11 RSA cellular license to ALLTEL for purposes of performing our initial screen. Because we have already attributed the Great Western spectrum and operations to ALLTEL, the proposal to transfer control of GWC Holdings from Great Western to ALLTEL already is accounted for in this competitive analysis. *See supra* ¶ 89 and *infra* note 223 (discussing the attribution of Great Western's cellular license in CMA492 to ALLTEL).

¹⁶⁰ *See* U.S. Cellular Petition to Deny at 14.

¹⁶¹ *See id.*

¹⁶² *Id.* at 15.

¹⁶³ *Id.* at 14.

¹⁶⁴ *Id.* at 14 n.46.

¹⁶⁵ *Id.* at 14 n.46.

¹⁶⁶ Joint Opposition at 11 (citing *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21579).

¹⁶⁷ *Id.* *See ALLTEL-Western Wireless Order*, 20 FCC Rcd 13080, 13081-82, 13083, 13095-96 ¶¶ 68, 73, 78, 116, 118; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21594-95 ¶ 189.

488, 489, 490, and 491.¹⁶⁸ Also, since ALLTEL's existing ownership interest in Great Western or the pendency of the Great Western-ALLTEL transfer of control application cause us to fully attribute Great Western's Minnesota 11 RSA A-Block cellular spectrum to ALLTEL, CMA492 also is subject to a more detailed examination of possible spectrum concentration concerns.

C. Horizontal Issues

44. As noted above, application of our initial screen identified five CMAs in southern Minnesota that required additional analysis in order to determine whether the proposed transaction would result in competitive harm. As further described below, ALLTEL's plan to divest cellular operations in four CMAs, along with 10 MHz of PCS spectrum in Lac qui Parle County,¹⁶⁹ will remedy the competitive harms we determine are associated with the subject transactions.

45. This section examines in more detail how the transaction, absent the planned divestitures, could affect competitive behavior in the five CMAs we have identified. As discussed in the *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order*, competition may be harmed either through unilateral actions¹⁷⁰ by the merged entity or through coordinated interaction¹⁷¹ among firms competing in the relevant market.

46. In this order, we find that extended qualitative discussions of unilateral effects and coordinated interaction are unnecessary.¹⁷² First, many aspects of our previous analyses in the *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order* are unchallenged

¹⁶⁸ These CMAs equate to the Minnesota 7 RSA, Minnesota 8 RSA, Minnesota 9 RSA, and Minnesota 10 RSA.

¹⁶⁹ See ALLTEL September 14 Amendment at 2, 3.

¹⁷⁰ 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 *Sprint-Nextel Order*, 20 FCC Rcd at 14001 n.199; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13076 n.155; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 n.341.

¹⁷¹ 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. *DOJ/FTC Horizontal Merger Guidelines* § 2.1. See *Sprint-Nextel Order*, 20 FCC Rcd at 13995 n.167; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 n.211; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151.

¹⁷² In the Commission's recent major CMRS merger orders, the initial screen typically identified large numbers of local areas as requiring in-depth analysis. For example, in the Cingular-AT&T Wireless merger, 270 CMAs were caught by the screen; when the screen was applied to CEAs, 180 such regions were caught. See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21569 ¶ 110. The Sprint-Nextel screen caught 190 CMAs and 124 CEAs. See *Sprint-Nextel Order*, 20 FCC Rcd at 13994 ¶ 63. Finally, the ALLTEL-Western Wireless screen caught 19 CMAs and 11 CEAs. See *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13074 ¶ 50. These large numbers meant that it was impractical to set out in an order a discussion of each local market; however, such an extended exposition was also unnecessary. The Commission proceeded by examining under what circumstances competitive harm—in the form of either coordinated interaction or unilateral effects—would be likely in local mobile telephony markets. This in-depth, qualitative analysis yielded criteria for determining whether harm is likely that were applicable to all the markets caught by the screen, which were then applied to individual markets. See *Sprint Nextel Order*, 20 FCC Rcd at 13995-14009 ¶¶ 68-116; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075-87 ¶¶ 54-93; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570-86 ¶¶ 115-164. Market-specific discussion was primarily confined to those markets for which the Commission concluded that harm was likely, and was contained in confidential appendices.

here.¹⁷³ Second, because only five local areas require in-depth analysis, it is feasible to turn directly to a market-by-market discussion of each CMA and discuss unilateral effects and coordinated interaction at a general level only to the extent issues are raised by the parties to this proceeding.

1. Unilateral Effects

47. ALLTEL's acquisition of Midwest Wireless would lead to significant changes in the structure of the local wireless markets identified above for further analysis, and thus it is necessary to examine in detail the possibility that the merger may lead to competitive harm through unilateral actions by the merged entity.¹⁷⁴ Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by "elevating price and suppressing output."¹⁷⁵ As discussed in the *ALLTEL-Western Wireless Order* and *Cingular-AT&T Wireless Order*, in the case of mobile telephony, this might take the form of delaying improvements in service quality or adversely adjusting plan features without changing the plan price.¹⁷⁶ Incentives for such unilateral competitive actions vary with the nature of competition in the relevant markets.

48. The Applicants claim that unilateral effects are unlikely as a result of this transaction. They argue that actual competitors would be able to attract and absorb new customers if, post-transaction,

¹⁷³ For unilateral effects, the unchallenged aspects include: (1) product differentiation and substitutability (*see Sprint-Nextel Order*, 20 FCC Rcd at 14002-07 ¶¶ 94-107; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13077-79 ¶¶ 59-64; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21571-75 ¶¶ 119-133); (2) network effects (*see ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13082-83 ¶¶ 75-77; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21578 ¶¶ 142-145); and (3) marginal cost reductions (*see Sprint-Nextel Order*, 20 FCC Rcd at 14009 ¶ 115). For coordinated interaction, the unchallenged aspects include: (1) firm and product homogeneity (*see Sprint-Nextel Order*, 20 FCC Rcd at 13997 ¶¶ 75-78; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13087 ¶ 90; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21582-84 ¶¶ 156-159); (2) existing cooperative ventures (*see Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21585 ¶ 163); (3) number of firms (*see Sprint-Nextel Order*, 20 FCC Rcd at 13996 ¶¶ 71-72); (4) technology development (*see Sprint-Nextel Order*, 20 FCC Rcd at 13998-99 ¶¶ 81-83); (5) response of rivals (*see Sprint-Nextel Order*, 20 FCC Rcd at 13999-14000 ¶¶ 84-88); (6) transparency of information (*see Sprint-Nextel Order*, 20 FCC Rcd at 13996 ¶¶ 73-74; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13086 ¶ 89; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21581-82 ¶¶ 154-155); and (7) presence of mavericks (*see Sprint-Nextel Order*, 20 FCC Rcd at 13997-98 ¶¶ 79-80; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13087 ¶¶ 91-92; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21584-85 ¶¶ 160-162).

¹⁷⁴ *See ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075 ¶ 54; *Cingular-AT&T Wireless*, 19 FCC Rcd at 21570 ¶ 115; Application of EchoStar Communications Corporation (A Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (A Delaware Corporation) (Transferee), CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559, 20620 ¶ 153 (2002) ("*EchoStar-DirecTV HDO*"); *see also DOJ/FTC Merger Guidelines* § 2.

¹⁷⁵ *See Sprint-Nextel Order*, 20 FCC Rcd at 14001 ¶ 91; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075 ¶ 54; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115; *DOJ/FTC Merger Guidelines* § 2.2; *see also supra* note 172.

¹⁷⁶ 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 Sprint-Nextel Order*, 20 FCC Rcd at 14001 n.199; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13076 n.155; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 n.341.

ALLTEL were to raise prices.¹⁷⁷ Further, they argue that there is a high degree of substitutability between mobile telephony providers, and that any attempt by ALLTEL to raise prices or suppress output would result in customers switching to a new provider.¹⁷⁸ Therefore, even if such price increase occurred, it would be transitory.¹⁷⁹ Finally, the Applicants argue that the Commission is planning to auction more than 100 MHz of spectrum in 2006, and that this additional spectrum will strengthen existing competitors and provide access to spectrum for new entry.¹⁸⁰

49. U.S. Cellular claims that the acquisition of Midwest Wireless by ALLTEL may result in higher mobile telephony prices.¹⁸¹ Specifically, U.S. Cellular requests that the Commission analyze the Five Overlap RSAs carefully for unilateral effects.¹⁸² U.S. Cellular states that it is unlikely that other mobile telephony carriers would be able to expand their networks sufficiently and enter these markets if ALLTEL raises prices post-transaction.¹⁸³

50. *Competitive responses by rivals.* Consistent with our analysis in the *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order*, in evaluating this transaction, we examine whether competitive responses by rivals to the merged entity – such as through repositioning by existing licensees or entry by a new licensee – would sufficiently counter the merged entity’s exercise of market power.¹⁸⁴ Should a merged entity attempt to raise prices or engage in other exercise of market power, other firms may have the incentive or ability to reposition their offerings. In particular, where a firm is already present in a market, has comparable service coverage, and has excess capacity relative to its current subscriber base, it should be able to relatively quickly adjust such factors as rates, plan features, handsets, and advertising. These firms, however, may not be able to add quickly to their operating footprints, purchase additional spectrum, secure tower siting permits, add cell sites, improve overall quality, or deploy a new technology.

51. The Applicants argue that advertising sunk costs from advertising spillovers from the Minneapolis and Rochester, Minnesota markets as well as the national carriers’ access to adequate capital tend to reduce barriers to expansion in the Five Overlap RSAs by these carriers.¹⁸⁵ U.S. Cellular argues that this transaction is analogous to the ALLTEL-Western Wireless merger, where DOJ found that higher buildout costs combined with relatively low population density makes new entry untimely, unlikely, and insufficient to prevent competitive harms from the transaction.¹⁸⁶ Therefore, U.S. Cellular argues that the Commission should analyze the current transaction in light of precedent set in the *ALLTEL-Western Wireless Order*.¹⁸⁷

¹⁷⁷ Application, Exhibit 1, at 13.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 14.

¹⁸¹ U.S. Cellular Petition to Deny at 4.

¹⁸² *Id.* at 16.

¹⁸³ *Id.*; U.S. Cellular Reply at 8-9.

¹⁸⁴ See *Sprint-Nextel Order*, 20 FCC Rcd at 14007-09 ¶¶ 108-114; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13079-81 ¶¶ 65-72; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21575-76 ¶¶ 134-137.

¹⁸⁵ Joint Opposition at 13.

¹⁸⁶ U.S. Cellular Petition to Deny at 8-9, 16; U.S. Cellular Reply at 8.

¹⁸⁷ U.S. Cellular Petition to Deny at 9-10, 13.

52. We find that, in four of the five markets we identified for in-depth analysis,¹⁸⁸ there are few carriers that are likely to be viewed as adequate substitutes to the merging parties in the short run. Although there are rival carriers that have at least some coverage in a market, the population and land area that their networks cover are significantly less than either ALLTEL's or Midwest Wireless's networks. A carrier with only partial service coverage in a geographic market may not be perceived as a close substitute for a carrier with ubiquitous local coverage. For the reasons outlined above, it is not clear how quickly carriers can expand geographic coverage in a given market. Therefore, we find it unlikely that rival carriers in those markets would be able to reposition themselves quickly enough to be a disciplining force if the merged entity attempts to exercise market power. Finally, we do not consider entry via roaming agreements to mitigate anticompetitive effects as a result of this transaction. There is insufficient evidence in the record to determine that non-facilities-based service enabled through roaming agreements would be cost effective.

53. *Spectrum and advanced wireless services.* As a result of these transactions, the current spectrum holdings of ALLTEL and Midwest Wireless would be combined, resulting in one entity controlling as much as 110 MHz of applicable spectrum in certain local markets.¹⁸⁹ Although we no longer have a *per se* limit on the amount of spectrum suitable for mobile telephony that an entity may hold in any one market, we are mindful of the unique role of spectrum as a critical input in the market for wireless services and have carefully analyzed the potential impact of this merger on that input.

54. Applicants argue that other carriers hold underutilized spectrum in the Five Overlap RSAs that can be used to expand coverage and serve new subscribers.¹⁹⁰ The Applicants claim that, given the low population densities in these markets, wireless two-way voice service providers have sufficient spectrum to serve the entire population in those markets.¹⁹¹ Further, the Applicants argue that the Commission should consider the AWS spectrum that will be licensed in 2006 in evaluating this transaction because including this spectrum will increase total available spectrum to almost 300 MHz in the five overlap Minnesota markets.¹⁹² Finally, the Applicants state that their proposed divestiture of cellular systems in four Minnesota RSAs "will cause no change in the number of independent competitors, market structure or concentration in these markets" and will reduce the combined entity's spectrum holdings to no more than 80 MHz in any market.¹⁹³

55. *Market share.* As discussed in the *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order*, the presence of few competitors or potential entrants that consumers consider to be good substitutes for the merged firm, combined with a large market share by the merged entity, may increase the likelihood of unilateral effects.¹⁹⁴ U.S. Cellular argues that the ALLTEL-Midwest Wireless transaction will substantially increase ALLTEL's market share in the Five Overlap RSAs and may result in competitive harms in these markets.¹⁹⁵ U.S. Cellular submitted market share data

¹⁸⁸ These four markets are Minnesota 7 RSA, Minnesota 8 RSA, Minnesota 9 RSA, Minnesota 10 RSA.

¹⁸⁹ Post-transaction, ALLTEL would hold 110 MHz of spectrum in Lac qui Parle County in the Minnesota 8 RSA. See Application, Exhibit 1, Schedule B at 2.

¹⁹⁰ Joint Opposition at 14-15.

¹⁹¹ *Id.* at 15 n.32.

¹⁹² *Id.* at 15-16; ALLTEL September 14 Amendment at 7-8.

¹⁹³ ALLTEL September 14 Amendment at 4.

¹⁹⁴ *Sprint-Nextel Order*, 20 FCC Rcd at 14001 ¶ 92; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13076-77 ¶ 58; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570-71 ¶¶ 117-118; *DOJ/FTC Merger Guidelines* § 2.211.

¹⁹⁵ U.S. Cellular Reply at 8.

collected by [REDACTED] for the facilities-based mobile telephony service providers in the Five Overlap RSAs.¹⁹⁶ These data show that, post-transaction, ALLTEL's market share will [REDACTED].¹⁹⁷ While U.S. Cellular argues that these market shares exceed the levels in the ALLTEL-Western Wireless divestiture markets,¹⁹⁸ it also acknowledges that market share data is not dispositive.¹⁹⁹

56. The Applicants argue that market share data is not dispositive and that other factors, including the number of competitors, the availability of investment capital and competitors' sunk advertising costs, low penetration rates, and access by other service providers to additional spectrum, may mitigate competitive concerns raised by high market shares.²⁰⁰ Further, the Applicants argue that U.S. Cellular's market share data for ALLTEL and Midwest Wireless in Minnesota 7 RSA and Minnesota 9 RSA are [REDACTED] and that subscriber information provided by the Applicants in these markets is more reliable.²⁰¹ The Applicants, however, do not provide any market share data, other than their own subscriber data, to support their assertion.

57. We calculated market shares using NRUF data for the Five Overlap RSAs. The combined market share of the merged entity in these markets ranges from [REDACTED] percent. We also calculated a hybrid market share for the combined entity for each of the Five Overlap RSAs by using the subscriber data provided by the Applicants for ALLTEL and Midwest Wireless, and NRUF data for the remaining carriers in the markets. The market shares using this hybrid approach range from [REDACTED] percent in the Five Overlap RSAs. We find that these high combined market shares raise concerns that this transaction may result in unilateral effects in four of the five markets of concern.

58. *Penetration.* As discussed in the *ALLTEL-Western Wireless Order* and *Cingular-AT&T Wireless Order*, another factor we consider in determining the consequences of a unilateral attempt to exercise market power is penetration rate, both the current rate in a local market as well as the potential for growth in market penetration.²⁰² The Applicants argue that the penetration rates for the Five Overlap RSAs are [REDACTED] the national average therefore minimizing any potential competitive harms resulting from this transaction.²⁰³ The Applicants calculate penetration rates of [REDACTED] percent for the Five Overlap RSAs, which is [REDACTED] the national average of 62 percent in 2004.²⁰⁴ Therefore, the Applicants claim that other carriers have the opportunity to attract a significant share of available

¹⁹⁶ U.S. Cellular Confidential Letter at 1-2.

¹⁹⁷ *See id.* at Attachment.

¹⁹⁸ U.S. Cellular Petition to Deny at 15-16; U.S. Cellular Reply at 9 n.20.

¹⁹⁹ U.S. Cellular Reply at 8.

²⁰⁰ Joint Opposition at 11.

²⁰¹ *Id.* at 14 n.30, Attachment 6. For Minnesota 7 RSA, the Applicants report [REDACTED] ALLTEL subscribers and [REDACTED] Midwest Wireless subscribers while U.S. Cellular reports [REDACTED] ALLTEL subscribers and [REDACTED] Midwest Wireless subscribers. For Minnesota 9 RSA, the Applicants report [REDACTED] ALLTEL subscribers and [REDACTED] Midwest Wireless subscribers while U.S. Cellular reports [REDACTED] ALLTEL subscribers and [REDACTED] Midwest Wireless subscribers. *See id.* at Attachment 6; U.S. Cellular Confidential Letter at Attachment.

²⁰² *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13083-85 ¶¶ 78-83; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21578-80 ¶¶ 146-149.

²⁰³ Joint Opposition at 14.

²⁰⁴ These penetration rates [REDACTED]. Joint Opposition at 14 n.30, Attachment 6. *See also Tenth Competition Report*, 20 FCC Rcd at 15912 ¶ 5 (discussing the national penetration rate).

customers, and national carriers in particular can take customers and build share quickly.²⁰⁵ U.S. Cellular argues, however, that the Applicants have not demonstrated that penetration rates are different in these markets from the Nebraska and Kansas markets divested as a condition for approval of the ALLTEL-Western Wireless merger.²⁰⁶

59. Using June 2005 NRUF data, the average penetration rate for the Five Overlap RSAs is [REDACTED] percent.²⁰⁷ Although this is [REDACTED] the national average, we do not find persuasive the Applicants' argument that a [REDACTED] average penetration rate is sufficient to mitigate potential competitive harms in these markets. Further, there is insufficient evidence in the record to determine that there is a strong potential for growth in the penetration rate in these markets in the near term. Therefore, we do not find that the market penetration rate is dispositive in analyzing this transaction for potential unilateral effects.

2. Coordinated Interaction

60. As discussed in the *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order*, 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.²⁰⁸ Accordingly, one way in which a merger 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.²⁰⁹ Successful coordination depends on two key factors.²¹⁰ 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.

61. The Applicants claim that the ALLTEL-Midwest transaction would not increase the likelihood of coordinated interaction in the mobile telephony market. They argue that the transaction would not change the relevant markets enough to make coordination more likely because: (1) the mobile telephony market is intensely competitive; (2) there are a significant number of facilities-based competitors in each of the CMAs with significant overlaps; (3) the market is characterized by heterogeneity in costs, elements of service, and product offerings; (4) carriers compete on multiple factors including handsets, plan features, service quality, and customer service; (5) carriers regularly monitor their rivals' service offerings, market strategies and other aspects of their rivals' operations, and use this information to attract and retain customers; and (6) the uncertainty of future demand for voice, data, and advanced services makes coordinated interaction difficult.²¹¹ U.S. Cellular urges the Commission to

²⁰⁵ Joint Opposition at 14.

²⁰⁶ U.S. Cellular Reply at 9 n.20. Using NRUF data for June 2005, the penetration rate for the ALLTEL-Western Wireless Nebraska and Kansas divestiture markets is [REDACTED] percent.

²⁰⁷ NRUF-based penetration rates for the Five Overlap RSAs are: Minnesota 7 RSA—[REDACTED] percent; Minnesota 8 RSA—[REDACTED] percent; Minnesota 9 RSA—[REDACTED] percent; Minnesota 10 RSA—[REDACTED] percent; and Minnesota 11 RSA—[REDACTED] percent.

²⁰⁸ See *Sprint-Nextel Order*, 20 FCC Rcd at 13995 ¶ 69; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶¶ 150; *DOJ/FTC Merger Guidelines* § 0.1.

²⁰⁹ See *Sprint-Nextel Order*, 20 FCC Rcd at 13995 ¶ 69; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150; see also *supra* note 173.

²¹⁰ See *Sprint-Nextel Order*, 20 FCC Rcd at 13995 ¶ 69; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151; *DOJ/FTC Merger Guidelines* § 2.11.

²¹¹ Application, Exhibit 1 at 14-15.

scrutinize competitive conditions in southern Minnesota markets carefully under the theory of potential coordinated interaction, and take appropriate action to protect consumers and competition.²¹²

62. Neither the comments of the Applicants or of U.S. Cellular on coordinated interaction cause us to alter our general views on this topic, as set out in the previous merger orders.²¹³ Thus, those views underpin the market-by-market analysis to which we now turn.

D. Market-by-Market Evaluation

1. Analytical Standard

63. In this section, we undertake a granular analysis of local markets using the approach the Commission adopted in the *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order*.²¹⁴ In undertaking this market-by-market analysis, we consider variables that the general analyses in the *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order* have shown are important for predicting the incentive and ability of carriers 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.²¹⁵ These include: the total number of rival carriers; 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 merger; the amount of spectrum suitable for the provision of mobile telephony services controlled by the combined entity; and the spectrum holdings of each of the rival carriers. In reaching determinations, we balance these factors on a market-specific basis, and consider the totality of the circumstances in each market.

64. Thus, for example, if our count of the number of rival carriers and our scrutiny of their spectrum holdings and network coverage indicates that the response of rival carriers will likely be sufficient to limit the ability and incentive of the combined entity to raise price unilaterally, we would find that the transaction is not harmful to competition in a specific market even in the presence of a relatively high post-transaction market share of the combined entity.²¹⁶ We also scrutinize, and base our determinations on, the uniformity of competitive conditions in local markets. Thus, in some instances, we may find that the transaction is not harmful to competition in a particular market if the potential harm from the transaction is confined to a small enclave within the market, and this harm is likely to be ameliorated by the more favorable competitive conditions in most of the market.²¹⁷

²¹² U.S. Cellular Petition to Deny at 16.

²¹³ See *Sprint-Nextel Order*, 20 FCC Rcd at 13995-01 ¶¶ 69-89; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085-87 ¶¶ 85-93; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580-86 ¶¶ 150-164.

²¹⁴ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 14046-14053 App. C; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13120-36 App. C, App. D; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21649 App. D.

²¹⁵ *Sprint-Nextel Order*, 20 FCC Rcd at 13995-14009 ¶¶ 68-116; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075-87 ¶¶ 54-93; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570-86 ¶¶ 115-164.

²¹⁶ *Sprint-Nextel Order*, 20 FCC Rcd at 14010 ¶ 118; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13096 ¶ 118; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 190.

²¹⁷ *Sprint-Nextel Order*, 20 FCC Rcd at 14010 ¶ 118; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13095-96 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 190.

2. Results of Analysis

65. Our market-by-market analysis finds that there is a significant likelihood of harm from either unilateral effects or coordinated interaction as a result of this transaction in four of the five markets identified by the initial screen. As the Commission found in the *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order*, this multi-factor, market-specific analysis employs a combination of data sources, and it provides a reliable basis for making our determinations herein.²¹⁸

66. A detailed examination of each of the CMA markets in which we determined that a closer examination was warranted is set forth below. The market share and HHI information are derived from our analysis of two sets of data: (1) data submitted by U.S. Cellular,²¹⁹ and (2) data compiled in our NRUF database, which tracks phone number usage by all telecommunications carriers, including wireless carriers. Using both sets of data to cross-check each other, we find they essentially corroborate each other. Although the figures derived from these two sources give different results in some cases (expressed below as a range), our analysis does not rely solely on market shares to determine which markets are likely to experience competitive harm as a result of this transaction. In combination with the other factors in our multi-factor, market-specific analysis, which draws competitive conclusions based on the totality of the circumstances present in a given market, we are confident that these ranges are a reliable basis for our determinations.

67. In addition, we examine data from our LNP database through June 30, 2005. This information includes each instance of a customer porting a phone number from one mobile carrier to another, and indicates both the origin and destination carrier.²²⁰ We also analyze carrier launch and coverage information available from a variety of public sources, as well as information regarding spectrum holdings,²²¹ which we obtained from our licensing databases and from the Applications.

68. **Minnesota 7 RSA.** In the Minnesota 7 RSA (which has a population of about 174,000 and a population density of about 37 POPs/sq. mile²²²), ALLTEL has [REDACTED] percent of the wireless subscribers, while Midwest Wireless has [REDACTED] percent. Combined, these two entities would have a post-merger share of [REDACTED] percent. The other carriers with market share in this RSA are: Sprint Nextel, with [REDACTED] percent; Cingular, with [REDACTED] percent; T-Mobile, with [REDACTED] percent; and Verizon Wireless, with [REDACTED] percent. The post-merger HHI in the Minnesota 7 RSA would be [REDACTED], with a change from the current figure of [REDACTED].

69. ALLTEL and Midwest Wireless hold the two cellular licenses in the RSA. Throughout the RSA, ALLTEL holds between 35 and 45 MHz of spectrum and Midwest Wireless holds between 25 and 55 MHz of spectrum. The merged entity would hold between 60 and 100 MHz of spectrum throughout the RSA. ALLTEL and Midwest Wireless have launched service in each county and provide network coverage throughout the RSA. In addition, ALLTEL had [REDACTED] mobile-to-mobile ports out through June 2005, and [REDACTED] ports were to Midwest Wireless ([REDACTED] percent of

²¹⁸ *Sprint-Nextel Order*, 20 FCC Rcd at 14010 ¶ 118; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13095-96 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 190.

²¹⁹ The HHI and market share data submitted by U.S. Cellular was prepared by [REDACTED] on a confidential basis. [REDACTED].

²²⁰ This data was provided to the Commission by NeuStar.

²²¹ Sprint Nextel's SMR spectrum holdings are not included in its spectrum aggregation totals.

²²² Population and population density figures are based on 2000 Census data.

ALLTEL's ports). Midwest Wireless had [REDACTED] mobile-to-mobile ports out through June 2005, and [REDACTED] ports were to ALLTEL ([REDACTED] percent of Midwest Wireless's ports).

70. Sprint Nextel and T-Mobile are the only other carriers to hold spectrum throughout the RSA. Sprint Nextel holds 30 MHz of PCS spectrum throughout the RSA, and T-Mobile holds between 20 and 30 MHz of spectrum. Cingular, Redwood Wireless, U.S. Cellular, and Verizon Wireless hold spectrum in portions of the RSA.

71. Sprint Nextel has launched service in each of the counties in the RSA and its network covers approximately 84 percent of the population of the CMA. Cingular and T-Mobile have also launched service in portions of the RSA. Cingular's and T-Mobile's networks cover approximately 31 percent and 73 percent of the population, respectively.

72. We are concerned about the competitive impact of the merger on this RSA because of the relatively small number of carriers that currently serve the entire RSA or may be able to serve it relatively quickly in response to possible actions by the Applicants. The merger would also result in large changes in the HHI, which is also cause for concern.

73. **Minnesota 8 RSA.** In the Minnesota 8 RSA (which has a population of about 68,000 and a population density of about 18 POPs/sq. mile), ALLTEL has [REDACTED] percent of the wireless subscribers, while Midwest Wireless has [REDACTED] percent. Combined, these two entities would have a post-merger share of [REDACTED] percent. The other carriers with market share in this RSA are: Sprint Nextel, with [REDACTED] percent; Rural Cellular, with [REDACTED] percent; and T-Mobile, with [REDACTED] percent. The post-merger HHI in the Minnesota RSA would be [REDACTED], with a change from the current figure of [REDACTED].

74. ALLTEL and Midwest Wireless hold the two cellular licenses in the RSA. Throughout the RSA, ALLTEL holds between 45 and 55 MHz of spectrum and Midwest Wireless holds between 35 and 55 MHz of spectrum. The merged entity would hold between 80 and 110 MHz of spectrum throughout the RSA. ALLTEL and Midwest Wireless have launched service in each county and provide network coverage throughout the RSA. In addition, ALLTEL had [REDACTED] mobile-to-mobile ports out through June 2005, and [REDACTED] ports were to Midwest Wireless ([REDACTED] percent of ALLTEL's ports). Midwest Wireless had [REDACTED] mobile-to-mobile ports out through June 2005, and [REDACTED] ports were to ALLTEL ([REDACTED] percent of Midwest Wireless's ports).

75. Sprint Nextel and T-Mobile are the only other carriers to hold spectrum throughout the RSA. Sprint Nextel holds/controls 30 MHz of PCS spectrum, and T-Mobile holds 20 MHz of spectrum throughout the RSA. Cingular, Redwood Wireless, and Verizon Wireless hold spectrum in some portions of the RSA.

76. Sprint Nextel is the only carrier other than ALLTEL and Midwest Wireless that has launched service in this RSA and whose network covers more than 10 percent of the population. Sprint Nextel's network covers approximately 43 percent of the population of the RSA.

77. We are concerned about the competitive impact of the merger on this CMA because of the relatively small number of carriers that currently serve the entire CMA or may be able to serve it relatively quickly in response to possible actions by the Applicants. The merger would also result in large changes in the HHI, which is also cause for concern.

78. **Minnesota 9 RSA.** In the Minnesota 9 RSA (which has a population of about 134,000 and a population density of about 24 POPs/sq. mile), ALLTEL has [REDACTED] percent of the wireless subscribers, while Midwest Wireless has [REDACTED] percent. Combined, these two entities would

have a post-merger share of [REDACTED] percent. The other carriers with market share in this RSA are: Sprint Nextel, with [REDACTED] percent; and T-Mobile, with [REDACTED] percent. The post-merger HHI in the Minnesota 9 RSA would be [REDACTED], with a change from the current figure of [REDACTED].

79. ALLTEL and Midwest Wireless hold the two cellular licenses in the RSA. Throughout the RSA, ALLTEL holds between 35 and 55 MHz of spectrum and Midwest Wireless holds between 35 and 50 MHz of spectrum. The merged entity would hold between 70 and 105 MHz of spectrum throughout the RSA. ALLTEL and Midwest Wireless have launched service in each county and provide network coverage throughout the RSA. In addition, ALLTEL had [REDACTED] mobile-to-mobile ports out through June 2005, and [REDACTED] ports were to Midwest Wireless ([REDACTED] percent of ALLTEL's ports). Midwest Wireless had [REDACTED] mobile-to-mobile ports out through June 2005, and [REDACTED] ports were to ALLTEL ([REDACTED] percent of Midwest Wireless's ports).

80. Sprint Nextel, T-Mobile, and Redwood Wireless hold spectrum throughout the entire RSA. Sprint Nextel holds 30 MHz of PCS spectrum throughout the RSA, T-Mobile holds between 20 and 30 MHz of spectrum, and Redwood Wireless holds between 15 and 30 MHz of spectrum. Also, Cingular and Long Lines hold 10 MHz of spectrum in portions of the CMA.

81. Sprint Nextel and T-Mobile have launched service in the majority of the counties in the RSA. Sprint Nextel's network covers approximately 73 percent of the population, while T-Mobile's network covers approximately 63 percent of the population of the RSA.

82. We are concerned about the competitive impact of the merger on this CMA because of the relatively small number of carriers that currently serve the entire CMA or may be able to serve it relatively quickly in response to possible actions by the Applicants. The merger would also result in large changes in the HHI, which is also cause for concern.

83. **Minnesota 10 RSA.** In the Minnesota 10 RSA (which has a population of about 240,000 and a population density of about 59 POPs/sq. mile), ALLTEL has [REDACTED] percent of the wireless subscribers, while Midwest Wireless has [REDACTED] percent. Combined, these two entities would have a post-merger share of [REDACTED] percent. The other carriers with market share in this CMA are: Sprint Nextel, with [REDACTED] percent; T-Mobile, with [REDACTED] percent; and Cingular, with [REDACTED] percent. Post-transaction, the merged entity would have a market share [REDACTED]. The post-merger HHI in the Minnesota 10 RSA would be [REDACTED], with a change from the current figure of [REDACTED].

84. ALLTEL and Midwest Wireless hold the two cellular licenses in the RSA. Throughout the RSA, ALLTEL holds between 25 and 35 MHz of spectrum and Midwest Wireless holds between 25 and 40 MHz of spectrum. The merged entity would hold between 50 and 75 MHz of spectrum throughout the RSA. ALLTEL and Midwest Wireless have launched service in each county and provide network coverage throughout the RSA. In addition, ALLTEL had a [REDACTED] mobile-to-mobile ports through June 2005, and [REDACTED] ports were to Midwest Wireless ([REDACTED] percent of ALLTEL's ports). Midwest Wireless had [REDACTED] mobile-to-mobile ports out through June 2005, and [REDACTED] ports were to ALLTEL ([REDACTED] percent of Midwest Wireless's ports).

85. Sprint Nextel, T-Mobile, and Cingular hold spectrum throughout the entire RSA. Sprint Nextel holds 30 MHz of PCS spectrum throughout the RSA, T-Mobile holds between 30 and 40 MHz of spectrum, and Cingular holds between 10 and 20 MHz of spectrum. In addition, Cellcom, Redwood Wireless, U.S. Cellular, and Verizon Wireless hold spectrum in portions of the RSA.

86. Sprint Nextel and T-Mobile have launched service in each county and their networks cover over 90 percent of the population and 70 percent of the land area of the RSA. Cingular's network covers approximately 78 percent of the population and 63 percent of the land area. Cingular does not have network coverage in two (Fairbault and Freeborn) out of the seven counties comprising the RSA.

87. We are concerned about the competitive impact of the merger on this CMA because of the relatively small number of carriers that currently serve the entire CMA or may be able to serve it relatively quickly in response to possible actions by the Applicants. The merger would also result in large changes in the HHI, which is also cause for concern.

88. **Minnesota 11 RSA.** In the Minnesota 11 RSA (which has a population of about 213,000 and a population density of about 18 POPs/sq. mile), ALLTEL has [REDACTED] percent of the wireless subscribers,²²³ while Midwest Wireless has [REDACTED] percent. Combined, these two entities would have a post-merger share of [REDACTED] percent. The other carriers with market share in this RSA are: Sprint Nextel, with [REDACTED] percent; Cingular, with [REDACTED] percent; and T-Mobile and Verizon Wireless, each with [REDACTED] percent. The post-merger HHI in the Minnesota 11 RSA would be [REDACTED], with a change from the current figure of [REDACTED].

89. By attributing the GWC Holdings A-Block cellular license to ALLTEL, ALLTEL holds between 25 and 35 MHz of spectrum throughout the RSA. Midwest Wireless, the B-Block Minnesota 11 RSA cellular licensee, holds between 25 and 40 MHz of spectrum throughout the RSA. The merged entity would hold between 50 and 75 MHz of spectrum throughout the RSA. ALLTEL, pursuant to its spectrum leasing arrangement with GWC Holdings, has launched service in three out of seven counties and Midwest Wireless has launched service in each county. ALLTEL provides network coverage in parts of the RSA and Midwest provides network coverage to most of the RSA. ALLTEL had [REDACTED] mobile-to-mobile ports through June 2005, and [REDACTED] ports were to Midwest Wireless. Midwest Wireless had [REDACTED] mobile-to-mobile ports through June 2005; [REDACTED] ports were to ALLTEL.

90. Sprint Nextel and Cingular hold spectrum throughout the entire RSA. Sprint Nextel holds 30 MHz of PCS spectrum throughout the RSA, and Cingular holds between 10 and 20 MHz of spectrum. In addition, Airadigm, Cellcom, Leap, Skagit, T-Mobile, U.S. Cellular, and Verizon Wireless hold spectrum in portions of the CMA. Sprint Nextel, T-Mobile, Cingular, U.S. Cellular, and Verizon Wireless have launched service in parts of this RSA. Sprint Nextel's network covers approximately 70 percent of the population of the RSA. T-Mobile's network covers 45 percent of the population of the RSA. Cingular's network covers approximately 75 percent of the population of the RSA. U.S. Cellular covers approximately 17 percent of the population of the RSA.

91. Given the large number of carriers providing service in all or portions of this RSA, plus the fact that the ALLTEL-Midwest Wireless merger will result in only a small increase in concentration, it is unlikely that there would be a major change in the character of competition in this RSA after the merger. This conclusion continues to be true if we grant the application of ALLTEL and Great Western to transfer control of GWC Holdings to ALLTEL, since the GWC Holdings A-Block spectrum in Minnesota 11 would be attributed to ALLTEL regardless of the pendency of the ALLTEL-Great Western application.

²²³ As noted previously, *see supra* note 96, we attribute the GWC Holdings cellular spectrum to ALLTEL whether viewed from the perspective of ALLTEL's 49.9 percent ownership interest in GWC Holdings, ALLTEL's spectrum leasing arrangement with GWC Holdings, or the application to transfer the remaining 50.1 percent interest in GWC Holdings to ALLTEL so that the latter will fully control the license and associated spectrum and operations. The determination that ALLTEL has less than one percent of the wireless subscribers in this market reflects this attribution.

92. *Specific Markets in Which Competitive Harm Is Likely.* In sum, the four markets in which our market-by-market analysis indicated that competitive harm is likely to result from the ALLTEL-Midwest transaction are:

CMA	Name
CMA488	Minnesota 7-Chippewa
CMA489	Minnesota 8-Lac qui Parle
CMA490	Minnesota 9-Pipestone
CMA491	Minnesota 10-Le Sueur

93. In these four markets the merged entity will have high market shares and face few competing carriers. In these markets, we are concerned that, post-merger, there would be too few competing carriers to deter anticompetitive behavior by the merged entity.²²⁴

94. *Rochester, Minnesota (CMA288).* In addition to the markets of concern listed above, U.S. Cellular raises concerns about the relationship between the Rochester CMA and the Minnesota 11 RSA. For the reasons below, we do not include the Rochester CMA in our list of markets of concern.

95. U.S. Cellular argues that the Commission should require divestiture not only of the Minnesota 11 RSA but also the Rochester CMA.²²⁵ U.S. Cellular claims that when it provided mobile telephone service in the Rochester CMA, it found that the Rochester CMA could not be operated profitably as an “island” separate from the Minnesota 11 RSA.²²⁶ U.S. Cellular therefore sold its Rochester CMA cellular business to Midwest Wireless.²²⁷

96. U.S. Cellular points out that the Rochester CMA is comprised of a single county – Olmsted County – that is completely surrounded by the counties that make up the Minnesota 11 RSA.²²⁸ U.S. Cellular claims that there is a strong community of interest between the Rochester CMA and the Minnesota 11 RSA, and offers the following rationales in support of this conclusion.²²⁹ First, U.S. Cellular states that the Census Bureau’s definition of the MSA that includes Rochester has changed since cellular spectrum was licensed.²³⁰ The MSA for Rochester, as currently defined by the Census Bureau, now includes Olmsted County as well as two of the seven counties (Dodge and Wabasha counties) included in the Minnesota 11 RSA. U.S. Cellular alleges that this development shows a clear economic

²²⁴ 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 divestiture area to eliminate concerns of competitive harm would be CMAs.

²²⁵ See U.S. Cellular Reply at 19-25. Indeed, U.S. Cellular argues in support of a divestiture of the Midwest Wireless operating unit providing service to Minnesota 7 RSA, Minnesota 8 RSA, Minnesota 9 RSA, Minnesota 10 RSA, Minnesota 11 RSA, and the Rochester CMA. *Id.*

²²⁶ *Id.* at 20, 25.

²²⁷ *Id.* at 20.

²²⁸ *Id.* at 23.

²²⁹ *Id.* at 23.

²³⁰ *Id.* at 23.

connection between the Rochester CMA and Minnesota 11 RSA.²³¹ Second, U.S. Cellular points to data showing that there is significant vehicular traffic between Rochester, Minnesota and six of the seven Minnesota 11 RSA counties to support a finding of a community of interest.²³² According to U.S. Cellular, approximately 47 percent and 32 percent of the residents of Dodge and Wabasha counties, respectively, work in Rochester, Minnesota.²³³ Further, according to U.S. Cellular, the Rochester, Minnesota phone book includes residents of Rochester as well as residents in three of the Minnesota 11 RSA counties.²³⁴ Finally, U.S. Cellular points out that various “Rochester Area” designations include parts of the Minnesota 11 RSA.²³⁵ To illustrate this claim, U.S. Cellular observes that the Rochester-Austin-Albert Lea Minnesota BTA includes the Rochester CMA as well as five of the Minnesota 11 RSA counties, and the Rochester Designated Market Area, which is the primary viewing area for broadcast television stations, includes four of the Minnesota 11 RSA counties.²³⁶

97. Although U.S. Cellular provides evidence that the Rochester CMA and the Minnesota 11 RSA may be interrelated, we do not find that there is a likelihood of competitive harms in the Rochester CMA that would result from this transaction. The Rochester CMA was not caught by our initial screen, indicating that we can be confident without the necessity of in-depth analysis that the transaction will not result in harm in this CMA. Nonetheless, we note that the Applicants’ post-transaction spectrum aggregation would be 50 MHz of spectrum in the Rochester CMA,²³⁷ and there is no overlap in the provision of facilities-based mobile telephony services by these carriers. This transaction accordingly will not result in the loss of an actual competitor in the Rochester CMA. Second, there are three other carriers providing facilities-based service in the Rochester CMA that have at least a two percent market share and significant coverage of both population and land area. Therefore, we find that this transaction is unlikely to result in competitive harm in the Rochester CMA.²³⁸

E. Roaming

1. Background

98. Roaming occurs when the subscriber of one CMRS provider travels beyond the service area of that provider and utilizes the facilities of another CMRS provider to place an outgoing call, to receive an incoming call, or to continue an in-progress call.²³⁹ A subscriber may establish a roaming arrangement

²³¹ *Id.* at 23.

²³² *Id.* at 23-24, Exhibit.

²³³ *Id.* at 24.

²³⁴ *Id.* at 24.

²³⁵ *Id.* at 24.

²³⁶ *Id.* at 24. Designated Market Areas are used by Nielsen Media Research to identify TV stations whose broadcast signals reach a specific area and attract the most viewers. See http://www.nielsenmedia.com/FAQ/dma_satellite%20service.htm (last visited Sept. 27, 2006).

²³⁷ ALLTEL holds 10 MHz of spectrum in the Rochester CMA and Midwest Wireless holds 40 MHz. See Application, Exhibit 1, Schedule B, at 1.

²³⁸ See Appendix for a more detailed analysis supporting our conclusion that the proposed transaction would not result in competitive harm in a combined Rochester CMA and Minnesota 11 RSA market.

²³⁹ See *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13090 ¶ 101; *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 Service, WT (continued....)

with a CMRS provider “manually” by personally entering into a contractual agreement with that provider for the right to roam on its network (e.g., giving the provider a credit card number to pay for roaming charges).²⁴⁰ In contrast, “automatic” roaming involves an agreement between two carriers and allows all of the subscribers of a carrier to make calls on the network of the other without taking any action beyond the making of the call.²⁴¹ Thus, automatic roaming is more convenient for a subscriber than manual roaming and, as a practice, has become increasingly widespread.²⁴²

99. Section 20.12 of the Commission’s rules imposes on CMRS providers the obligation to provide manual roaming arrangements to the subscriber of another provider on request.²⁴³ This rule does not impose any obligation to provide automatic roaming arrangements.²⁴⁴

100. U.S. Cellular argues that the Commission should investigate the effects of the proposed ALLTEL-Midwest Wireless transaction on roaming in southern Minnesota, and that it should impose conditions to mitigate any vertical harms.²⁴⁵ U.S. Cellular argues that this transaction would combine both cellular licenses in areas where there is limited PCS build-out, and therefore in these areas, the proposed transaction will reduce from two to one the number of available roaming partners.²⁴⁶ As a result of this reduction in roaming partners, U.S. Cellular alleges there is the potential for increased prices for roaming services and other anticompetitive effects.²⁴⁷ U.S. Cellular further argues that this problem is specific to the proposed ALLTEL-Midwest Wireless transaction and should be remedied in the context of the current proceeding and not left to the pending broader roaming rulemaking proceeding.²⁴⁸

101. In the Application, ALLTEL and Midwest Wireless address the impact of the merger on the availability of automatic roaming services. They assert that the transaction will eliminate roaming costs in areas where ALLTEL and Midwest Wireless have little network overlap.²⁴⁹ Further, the Applicants argue that by expanding its facilities-based footprint, ALLTEL will become a more attractive roaming partner to other mobile telephony carriers, and the revenue generated by providing roaming services will enable it to provide quality wireless services for its own subscribers, making ALLTEL a

(Continued from previous page) _____

Docket No. 05-265, 00-193, *Memorandum Opinion & Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 15047, 15048 ¶ 2 (2005) (“*Roaming Notice*”).

²⁴⁰ *Roaming Notice*, 20 FCC Rcd at 15049 ¶ 3.

²⁴¹ *Id.*

²⁴² *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21588-89 ¶ 174.

²⁴³ 47 C.F.R. § 20.12(c) provides:

Each carrier subject to this section must provide mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to this section, including roamers, while such subscribers are located within any portion of the licensee’s licensed service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee’s base stations.

²⁴⁴ *Id.*

²⁴⁵ U.S. Cellular Petition to Deny at 16-17.

²⁴⁶ *Id.* at 17.

²⁴⁷ *Id.*

²⁴⁸ *Id.*; see generally *Roaming Notice*, 20 FCC Rcd 15047.

²⁴⁹ See Application, Exhibit 1, at 5.

more effective competitor.²⁵⁰ Finally, ALLTEL claims that subscribers of other mobile telephony carriers will benefit from ALLTEL's expanded roaming options.²⁵¹

102. In response to U.S. Cellular's arguments that the proposed transaction would reduce the number of roaming partners in the southern Minnesota markets from two to one, the Applicants point out that this proposal is mooted by their plan to divest cellular business operations in four of the Minnesota RSAs where we have identified competitive concerns.²⁵² The Applicants also claim that carriers can file complaints under Section 208 of the Communications Act if they believe roaming rates are unreasonable or discriminatory.²⁵³ The Applicants then argue that the reasonableness of roaming rates is better addressed in the context of the roaming rulemaking.²⁵⁴ Further, the Applicants argue that U.S. Cellular [REDACTED].²⁵⁵ Finally, they argue that ALLTEL is and will remain a regional carrier, and since the merged entity would still need roaming service from other carriers in many areas, it would not have any incentive to impose unreasonably high or discriminatory rates for roaming in the overlap areas.²⁵⁶

2. Discussion

103. U.S. Cellular raises important concerns about the effect of the ALLTEL-Midwest Wireless transaction on the roaming market in southern Minnesota. The Commission in the *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order* found that the Commission's existing rules address many of these concerns. Our manual roaming rule requires other carriers to complete calls initiated by ALLTEL's customers where ALLTEL cannot because it has neither its own signal nor an automatic roaming agreement.²⁵⁷ In addition, we adopt as a condition to our grant in this Order a reciprocal duty, *i.e.*, that ALLTEL may not prevent its customers from reaching another carrier and completing their calls in these circumstances, unless specifically requested to do so by a subscriber.²⁵⁸ We also note that if a roaming partner believes that ALLTEL is charging unreasonable roaming rates, it can file a complaint with the Commission under section 208 of the Communications Act.²⁵⁹

104. Finally, the divestitures proposed by the Applicants²⁶⁰ to address horizontal competitive effects in four overlap RSAs will mitigate any potential harms in the provision of roaming services in

²⁵⁰ *See id.*

²⁵¹ *See id.*

²⁵² *See* Joint Opposition at 20-21 (referring to [REDACTED]); *see also* ALLTEL September 14 Amendment at 4.

²⁵³ Joint Opposition at 21 (citing *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13093 ¶ 108).

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.* at 21-22.

²⁵⁷ *See* 47 C.F.R. § 20.12; *see also* *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 127; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13093 ¶ 108; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21592 ¶ 182.

²⁵⁸ *See* *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 127; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13093 ¶ 108; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21592 ¶ 182.

²⁵⁹ 47 U.S.C. § 208. *See also* *Sprint-Nextel Order*, 20 FCC Rcd at 14012-13 ¶ 127; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13093 ¶ 108; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21592 ¶ 182.

²⁶⁰ *See generally* ALLTEL September 14 Amendment.

southern Minnesota.²⁶¹ The divestitures proposed by the Applicants may result in an additional facilities-based carrier in these four markets that would be a supplier of mobile telephony roaming services.

F. Public Interest Benefits

105. In addition to assessing the potential competitive harms of the proposed transactions, we also consider whether the respective combination of these companies' wireless operations is likely to generate verifiable, merger-specific public interest benefits.²⁶² In doing so, we ask whether the resulting combined entity would be able, and would be likely, to pursue business strategies resulting in demonstrable and verifiable benefits to consumers that could not be pursued but for the combination.²⁶³

106. As discussed below, we find that the proposed transactions are likely to result in some merger-specific public interest benefits. We reach this conclusion recognizing that many of these benefits may be challenging to achieve in the near future because of sizable technological and financial requirements. As a result, it is difficult for us to quantify very precisely either the magnitude of or the time period in which these benefits will be realized.

1. Analytical Framework

107. 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, enhanced service or new products.”²⁶⁴ Under Commission precedent, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transfer outweigh the potential public interest harms.²⁶⁵

108. There are several criteria the Commission applies in deciding whether a claimed benefit should be considered and weighed against potential harms. First, the claimed benefit must be transaction- or merger-specific. This means that the claimed benefit “must be likely to be accomplished as a result of the merger but unlikely to be realized by other means that entail fewer anticompetitive effects.”²⁶⁶

²⁶¹ See *supra* ¶ 100 (discussing allegations raised by U.S. Cellular regarding the anticompetitive effects of the proposed transaction on roaming in Southern Minnesota).

²⁶² See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 182; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 193; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13100 ¶ 132; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

²⁶³ See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 182; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 193; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13100 ¶ 132; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

²⁶⁴ See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 183; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 194; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101 ¶ 135; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204; see also *DOJ/FTC Merger Guidelines* § 4.

²⁶⁵ See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 183; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 194; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101 ¶ 135; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204.

²⁶⁶ *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599-600 ¶ 205; accord *EchoStar-DirectTV HDO*, 17 FCC Rcd at 20630 ¶ 189; Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, *Memorandum Opinion and Order*, 12 FCC Rcd 19985, 20063 ¶ (“Pro-competitive efficiencies include only those efficiencies that are merger-specific, *i.e.*, that would not be achievable but for the proposed merger. Efficiencies that can be (continued....)”).

Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a merger is in the sole possession of the applicants involved in such a transaction, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude.²⁶⁷ In addition, as the Commission has noted, “the magnitude of benefits must be calculated net of the cost of achieving them.”²⁶⁸ Furthermore, as the Commission explained in the *Cingular-AT&T Wireless Order*, “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.”²⁶⁹ Third, the Commission has stated that it “will more likely find marginal cost reductions to be cognizable than reductions in fixed cost.”²⁷⁰ 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.²⁷¹

109. Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims.²⁷² 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.”²⁷³ On the other hand, where potential harms appear less likely and less substantial, as in this case, we will accept a lesser showing to approve the merger.²⁷⁴

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achieved through means less harmful to competition than the proposed merger . . . cannot be considered to be true pro-competitive benefits of the merger.”); Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, CC Docket No. 98-141, *Memorandum Opinion and Order*, 14 FCC Rcd 14712, 14825 ¶ 255 (“Public interest benefits also include any cost saving efficiencies arising from the merger if such efficiencies are achievable only as a result of the merger. . . .”). Cf. *DOJ/FTC Merger Guidelines* § 4.

²⁶⁷ See *SBC-AT&T Order*, 20 FCC Rcd at 18384-85 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101-02 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

²⁶⁸ *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18530-31 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101-02 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

²⁶⁹ *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205 (citing *EchoStar-DirectTV HDO*, 17 FCC Rcd at 20630 ¶ 190).

²⁷⁰ *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205. See also *DOJ/FTC Merger Guidelines* § 4.

²⁷¹ See *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 137; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206; see also *DOJ/FTC Merger Guidelines* § 4.

²⁷² *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 185; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 196; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 137; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206.

²⁷³ *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 185; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 196; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 137; *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.”).

²⁷⁴ See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 185; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 195.

2. Discussion

110. The Applicants assert that a number of public interest benefits would result from the ALLTEL-Midwest Wireless transaction.²⁷⁵ They contend that the proposed transaction would strengthen ALLTEL as a competitor in the wireless telecommunications marketplace.²⁷⁶ First, the Applicants note that this transaction would expand ALLTEL's wireless footprint.²⁷⁷ Second, the Applicants maintain that the combined entity would achieve economies of scale and scope allowing ALLTEL to more effectively compete against the nationwide carriers.²⁷⁸ Third, the merger would allow the combined entity to provide higher quality service and make it a more attractive roaming partner.²⁷⁹ Fourth, the increased resources would enable ALLTEL to deploy advanced wireless services in rural areas more rapidly than either existing company currently has or could achieve on its own.²⁸⁰

111. *Increased Footprint.* The Applicants state that the proposed transaction would expand ALLTEL's wireless footprint into Iowa and Wisconsin and supplement ALLTEL's existing footprint in Minnesota and certain markets in Nebraska, South Dakota, and Illinois.²⁸¹ The Applicants also assert that, upon consummation of the proposed transaction, ALLTEL's wireless footprint will cover rural areas and mid-sized cities in 36 states.²⁸² Further, the Applicants state that the markets that ALLTEL is acquiring through the Midwest Subsidiaries are generally contiguous to ALLTEL's existing operations and cover a population of approximately 1.9 million.²⁸³ The Applicants also claim that this expansion will create a stronger regional wireless carrier that can better and more effectively compete against nationwide and other wireless carriers.²⁸⁴

112. The Applicants note that the Commission has previously found that consumer benefits flow from expanded footprints.²⁸⁵ The Applicants further assert that the Commission has found that carriers with a larger footprint can offer competitive service to more consumers across the country.²⁸⁶ In addition, the Applicants state that the Commission has found that a carrier's customers may enjoy enhanced service and/or lower prices because of factors such as the wider area in which the carrier's full

²⁷⁵ The applicants in the ALLTEL-Great Western transaction assert that the application demonstrates on its face that it will yield affirmative competitive public interest benefits. See Great Western Application, Exhibit 1, at 2, 3. As discussed above, our analysis of the ALLTEL-Great Western transaction is subsumed in the review of the ALLTEL-Great Western.

²⁷⁶ Application, Exhibit 1, at 3; Joint Opposition at 4.

²⁷⁷ Application, Exhibit 1, at 3.

²⁷⁸ *Id.* at 4.

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.* at 1, 4; Joint Opposition at 5.

²⁸² Application, Exhibit 1, at 4.

²⁸³ *Id.* at 1; Joint Opposition at 5.

²⁸⁴ Application, Exhibit 1, at 1, 4; Joint Opposition at 4-5.

²⁸⁵ Application, Exhibit 1, at 4. See, e.g., *ALLTEL- Western Wireless Order*, 20 FCC Rcd at 13103 ¶ 140; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21604 ¶ 217.

²⁸⁶ Application, Exhibit 1, at 4. See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21604 ¶ 217.

handset functionality is operative and the carrier's lessened reliance on roaming agreements to fill out its coverage.²⁸⁷

113. *Economies of Scale and Operating Synergies.* The Applicants state that the proposed transaction will create significant economies of scale and scope that will improve ALLTEL's ability to compete against nationwide and other wireless carriers.²⁸⁸ For example, the Applicants state that both ALLTEL and the Midwest Subsidiaries use CDMA network technology, and accordingly, ALLTEL will be able to integrate quickly its system and those of the Midwest Subsidiaries, with minimal disruption to customers.²⁸⁹ Further, the Applicants claim that, since its inception, ALLTEL successfully has expanded its service footprint and service offerings through multiple acquisitions.²⁹⁰ In each transaction, according to the Applicants, ALLTEL has met or exceeded its goals of achieving substantial synergies and economies of scale. ALLTEL states that it expects similar results in this transaction.²⁹¹

114. The Applicants argue that the reduction in costs associated with the purchase of network equipment is another example of a synergy produced by the proposed transaction.²⁹² According to the Applicants, equipment prices fluctuate based upon volume, and because ALLTEL will be able to purchase in larger quantities than either it or Midwest Wireless could individually, its costs associated with network equipment will be reduced.²⁹³ Finally, the Applicants claim that an increased volume of purchases also creates the related benefit of providing manufacturers with greater incentive to customize device interfaces to match a wireless carrier's service offerings, and thus, ALLTEL will be better positioned to request and deploy customized handsets.²⁹⁴

115. *Roaming.* The Applicants state that, by combining the companies' networks and other infrastructure, roaming costs to ALLTEL (and thus its existing and new subscribers) will be eliminated in areas in which ALLTEL and the Midwest Subsidiaries have little or no network overlap.²⁹⁵ The Applicants also allege that the merged entities' increased facilities-based footprint expands ALLTEL's roaming opportunities and makes it a more attractive roaming partner to other wireless carriers.²⁹⁶ In addition, the Applicants argue that subscribers of other wireless carriers benefit from expanded roaming options from ALLTEL.²⁹⁷ The Applicants further argue that the revenue ALLTEL collects from providing roaming services to other wireless carriers helps it provide quality wireless services to its own subscribers, making ALLTEL a more effective competitor in the wireless marketplace.²⁹⁸

²⁸⁷ *ALLTEL- Western Wireless Order*, 20 FCC Rcd at 13103-04 ¶ 140; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21604 ¶ 217.

²⁸⁸ Application, Exhibit 1, at 1, 4, 5.

²⁸⁹ *Id.* at 5.

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.*; Joint Opposition at 5.

²⁹³ Application, Exhibit 1, at 5.

²⁹⁴ *Id.*; Joint Opposition at 5.

²⁹⁵ Application, Exhibit 1, at 5; Joint Opposition at 5-6.

²⁹⁶ Application, Exhibit 1, at 5.

²⁹⁷ *Id.*

²⁹⁸ *Id.*

116. *Improvements in Service Quality.* The Applicants state that the merger will lead to improved service in a few aspects. First, the Applicants state that the merged entity will be able to provide more wireless services on a broader basis than each could deliver on a stand-alone basis.²⁹⁹ Additionally, the Applicants assert that improvements in ALLTEL's network post-merger will allow ALLTEL to offer consumers a better product in terms of fewer dropped calls and improved sound quality.³⁰⁰ The expanded ALLTEL network and subscriber base also will, according to the Applicants, increase the number of consumers that will be able to make free "in-network" calls on ALLTEL's network (*i.e.*, free calls between mobile phone customers of the same wireless provider).³⁰¹

117. *Promotion of Next Generation Services.* The Applicants claim that service quality will also be enhanced through the deployment of advanced services in rural areas, which generally lags behind urban areas.³⁰² The Applicants further argue that through the proposed transaction, ALLTEL, which serves more rural areas than any other wireless carrier, will expand its advanced wireless footprint to additional rural areas.³⁰³ ALLTEL notes that it has significant incentive to deploy such services so it may better compete with other wireless carriers. Further, the Applicants argue that ALLTEL will be able to deploy advanced wireless services in rural areas more quickly than it could pre-transaction.³⁰⁴ Specifically, the Applicants claim they expect that the increased purchasing power generated by this transaction should reduce the cost of acquiring the equipment to provide advanced services.³⁰⁵

3. Conclusion

118. We find that it is likely that the proposed transactions would result in many of the transaction-specific public interest benefits discussed above. Specifically, in those markets where there are no overlaps or where the overlaps are unlikely to cause competitive harm, we find that it is likely that the ALLTEL-Midwest Wireless transaction will result in many public interest benefits and would allow the combined entity to more effectively compete with the nationwide carriers. However, while we find that these transactions are likely to result in transaction-specific public interest benefits and result in the combined company being a more effective competitor, we are not able on the basis of this record, using the sliding scale approach described above, to conclude that they are sufficiently large or imminent to outweigh the potential harms we have identified in certain individual markets. In those markets, therefore, remedies are necessary to ameliorate likely competitive harms.

V. CONDITIONS/REMEDIES

119. Using the analytical standards outlined above, we find that the Applicants' proposed transaction would likely pose significant competitive harms in four local mobile telephony markets. We conclude that, in these markets, the potential harms would not be outweighed by the proposed transaction's alleged public interest benefits. Thus, if our analysis ended at this point, we would have to conclude that the Applicants have not demonstrated that the proposed transactions, on balance, would serve the public interest, convenience and necessity.

²⁹⁹ *Id.* at 1.

³⁰⁰ *Id.* at 5; Joint Opposition at 6.

³⁰¹ Application, Exhibit 1, at 5; Joint Opposition at 6.

³⁰² Application, Exhibit 1, at 6.

³⁰³ *Id.*

³⁰⁴ *Id.* at 1, 4, 6, 17; Joint Opposition at 5.

³⁰⁵ Application, Exhibit 1, at 6.

120. In its review of proposed transactions, the Commission is empowered to impose conditions on the transfer of control of Commission licenses to mitigate the harms the transaction would likely create. Such conditions are tailored to address the specific harms anticipated based on economic analysis, examination of documents submitted in response to our inquiry, and public comment contained in the record of this proceeding. We conclude that the conditions set forth below alter the public interest balance of the proposed transaction by mitigating the potential public interest harms. Accordingly, with the conditions that we adopt in this Order, and assuming the Applicants' compliance with these conditions, we find that the Applicants have demonstrated that the proposed transfer of licenses would serve the public interest, convenience, and necessity.

121. As we discuss more fully below, we decline to impose additional conditions proposed by U.S. Cellular and Mr. Welter that we find are not designed to remedy merger-specific harms.

A. Operating Unit Divestitures

122. We found above that the proposed transaction would be likely to cause significant competitive harm in four geographic markets. Specifically, our analysis indicated that, in those markets, there would not be an adequate number of competing carriers remaining after the merger with sufficient network and spectrum assets to deter anticompetitive behavior by the merged entity. Subsequent to the original filing of its applications, ALLTEL has proposed that the merged entity would divest certain cellular licenses and related operational and network assets, including certain employees, retail sites, and subscribers ("Cellular Operating Units").³⁰⁶ In addition, ALLTEL has proposed to divest 10 MHz of PCS spectrum in Lac qui Parle County ("10 MHz PCS Divestiture").³⁰⁷ We have reviewed this proposal and find that this package of proposed divestitures is sufficient to address the concerns identified in our competitive analysis.³⁰⁸ Thus, we condition this grant of authority to transfer control of licenses from Midwest Wireless to ALLTEL on the divestiture of the Cellular Operating Units (including all fixed assets, customers, goodwill and spectrum associated therewith) and on ALLTEL effectuating the 10 MHz PCS Divestiture as prescribed in the following paragraphs.³⁰⁹

³⁰⁶ See ALLTEL September 14 Amendment at 1-4; see also DOJ Proposed Final Judgment at 3-6 (requiring same operating unit divestitures).

³⁰⁷ See ALLTEL September 14 Amendment at 3; Letter from Cheryl A. Tritt, Counsel to ALLTEL Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2 (Sept. 28, 2006) ("ALLTEL September 28 Amendment"), available at Application, Amendment (filed Sept. 28, 2006).

³⁰⁸ As discussed above, U.S. Cellular filed a petition to deny the transaction or to require certain divestitures, and a subsequent filing seeking divestiture of operating units in five Minnesota markets. See U.S. Cellular Petition to Deny at 18-20; U.S. Cellular Reply at 19-26. However, U.S. Cellular made these filings prior to ALLTEL's proposal to divest operating units in four markets – including cellular licenses and related operational and network assets such as subscribers – as a part of the overall transaction. As discussed above, the Commission and DOJ found potential competitive harms were likely in only four markets, all of which are addressed by the divestiture remedy set forth in this Order. Thus, to the extent they have merit, the arguments raised by U.S. Cellular have been addressed.

³⁰⁹ As discussed above, ALLTEL has committed to sell 10 MHz of PCS spectrum in Lac qui Parle County, in CMA489, where ALLTEL would have held 85 MHz of CMRS spectrum following the transaction. See ALLTEL September 28 Amendment at 2; ALLTEL September 14 Amendment at 3. We accept ALLTEL's proposal, and require that this 10 MHz of PCS spectrum in Lac qui Parle County (call sign WQFA857) be transferred to the management trustee pursuant to a *de facto* transfer spectrum leasing application upon the closing of the ALLTEL-Midwest Wireless transfer of control, and that this 10 MHz spectrum be divested in accordance with the provisions outlined below in the text. One commenter argued that the Commission should condition its approval of this transaction on the divestiture by ALLTEL of its interests in Cellular A licenses in Minnesota. Comment of Dan (continued...)

CMA	Name
CMA488	Minnesota 7 – Chippewa
CMA489	Minnesota 8 – Lac qui Parle
CMA490	Minnesota 9 – Pipestone
CMA491	Minnesota 10 – Le Sueur

B. Operation of Divestitures

123. Divestiture of the Cellular Operating Units and the 10 MHz PCS Divestiture, including the spectrum identified above (the “Divestiture Assets”), will be accomplished in the following way. A Management Trustee shall be appointed to serve as manager of the Divestiture Assets until such assets are sold to third party purchasers or transferred to a Divestiture Trustee (who may be the same person as the Management Trustee). During the period in which the Management Trustee is in day-to-day control of the Divestiture Assets, ALLTEL shall retain *de jure* control and shall have the sole power to market and dispose of the Divestiture Assets to third-party buyers, subject to the Commission’s regulatory powers and process with respect to license transfers and assignments and the terms of the agreements contained in the DOJ Stipulation, DOJ Preservation Order and DOJ Final Judgment.³¹⁰

124. ALLTEL filed on September 19, 2006, a short-term *de facto* transfer leasing application to transfer the Cellular Operating Units into the trust with the Management Trustee, and these applications include, as we required, a request to approve the identity of the Management Trustee and the terms of the trust agreement (“Management Trustee Agreement”).³¹¹ We require that all of the Divestiture Assets shall be transferred to the trust in accordance with the terms of this Order no later than upon consummation of this proposed transaction. The Management Trustee Agreement includes all reasonable and necessary rights, powers, and authorities to permit the Management Trustee to perform his duties of day-to-day management of the Divestiture Assets, in the ordinary course of business, in order to permit expeditious divestiture.³¹² The Management Trustee will serve at the cost and expense of the Applicants.³¹³

125. From the date of release of this Order, and until the divestitures ordered herein have been consummated, both the Applicants and the Management Trustee shall preserve, maintain, and continue to

(Continued from previous page) _____

Welter, filed Jan. 6, 2006. As noted, this Order addresses all of the competitive harm found to be likely as a result of the transaction, and no further remedies are necessary.

³¹⁰ DOJ Stipulation at 8-13, 16-17; DOJ Preservation Order at 9-13; DOJ Proposed Final Judgment at 1-2, 7-8.

³¹¹ Application for Short-Term *De Facto* Transfer Spectrum Leasing Arrangement Between WWC Holding Co., Inc. and David S. Turetsky, File No. 0002756216, at Exhibit 5 – Form of Management Trustee Agreement (filed Sept. 19, 2006). An amendment adding the 10 MHz of PCS spectrum in Lac qui Parle County (call sign WQFA857) to the subject short-term *de facto* transfer spectrum leasing application and including revised forms of the Lease Agreement and Management Trustee Agreement was filed on September 28, 2006. See ALLTEL September 28 Amendment at 2.

³¹² The duties and responsibilities of the Management Trustee and the terms relating to how the Divestiture Assets are to be preserved during the term of the trust are more fully set forth in the DOJ Stipulation and the DOJ Preservation Order filed in the District Court for the District of Minnesota on September 7, 2006. See *supra* ¶¶ 14-15. Except to the extent that any provisions herein conflict, we require that the Applicants and the Management Trustee fully comply with such provisions as if they were set forth herein *in extenso*.

³¹³ DOJ Stipulation at 9-10, 18, 21-23; see also DOJ Preservation Order at 9, 11, 18, 22; Management Trustee Agreement at Art. IV.1.

support the Divestiture Assets and shall take all steps to manage them in a way as to permit prompt divestiture. We require that the Applicants and the Management Trustee abide by the same provisions relating to the duties of the Management Trustee and the preservation of the Divestiture Assets as those contained in the DOJ Stipulation.³¹⁴ We also require that, to the extent the DOJ Stipulation or the Management Trustee Agreement requires the Applicants or the Management Trustee to provide DOJ and the State of Minnesota with any reports or requires that the Applicants seek any approvals from DOJ and the State of Minnesota, the Applicants will also provide such reports to, and seek such approvals from, the Commission.³¹⁵

126. The Applicants will be allowed 120 days from the closing of their transaction or five days after notice of entry of the Final Judgment, whichever is later (the “Management Period”), to divest the Divestiture Assets prior to the second stage of the divestiture procedures becoming operative.³¹⁶ Upon application by the Applicants to the Bureau, the Bureau may grant one or more extensions to the Management Period not to exceed 60 days in the aggregate to allow the Applicants further time to dispose of the Divestiture Assets.³¹⁷

127. Upon expiration of the Management Period, any Divestiture Assets that remain owned by the Applicants shall be irrevocably transferred to a Divestiture Trustee, who shall be solely responsible for accomplishing disposal of the Divestiture Assets. The Applicants will submit to the Bureau, for approval, both the name of the proposed Divestiture Trustee and a draft of the divestiture trust agreement³¹⁸ to be entered into with the Divestiture Trustee together with an appropriate application to effect such transfer no later than 30 days prior to the expiration of the Management Period.³¹⁹ The Divestiture Trustee will serve at the cost and expense of the Applicants and shall file monthly reports with the Bureau setting forth his efforts to divest the Divestiture Assets.

128. The Divestiture Trustee shall use its best efforts to sell the Divestiture Assets within six months of appointment, subject to the Commission’s regulatory powers and process with respect to license transfers and assignments. The expeditious disposal of the Divestiture Assets during this period is of greater importance than the price that might otherwise be obtained for such assets. If a sale of any of the Divestiture Assets that consist of operating units and associated spectrum has not been effectuated within such period, the Divestiture Trustee shall file a report with the Bureau explaining the Divestiture Trustee’s efforts to sell the Divestiture Assets, the reasons why the Divestiture Assets have not been sold, and the Divestiture Trustee’s recommendations. The Commission will consider such report and will issue such further orders as it considers appropriate.

³¹⁴ DOJ Stipulation at 9-23; *see also* DOJ Preservation Order at 10-23.

³¹⁵ DOJ Stipulation at 12-13; *see also* DOJ Preservation Order at 12-13; Management Trustee Agreement at Arts. II and III.

³¹⁶ DOJ Proposed Final Judgment at 7-8.

³¹⁷ If the Applicants have filed an application with the Commission seeking consent to the sale of any of the Divestiture Assets to a third party within the time periods set forth above but the Commission has not acted by the end of such period, such period will be automatically extended and shall expire five days after the Commission’s action with respect to such Divestiture Assets.

³¹⁸ The Bureau will consult with the Office of General Counsel on matters relating to the identity of the proposed divestiture trustee and the terms of the divestiture trust.

³¹⁹ Except to the extent that any provisions herein conflict, the duties and responsibilities of the Divestiture Trustee are more fully set forth in the DOJ Proposed Final Judgment and we require that the Applicants and the Divestiture Trustee fully comply with such provisions as if they were set forth herein *in extenso*.

129. To the extent that the Divestiture Assets are included within the DOJ Stipulation and the DOJ Proposed Final Judgment, we will allow the Applicants to proceed to divest such assets in accordance with the terms of the agreements that are contained in those documents. To the extent that this Order requires divestitures in any market that are more extensive than those required by DOJ, we require that the Applicants comply with this Order and completely dispose of the Divestiture Assets included in such markets. To the extent that we are requiring divestitures in additional markets than required by DOJ, we will require the Applicants, prior to closing their transaction, to provide the Commission with documentation substantially similar to that provided to DOJ with respect to the additional divestitures that we require herein.

VI. CONCLUSION

130. We find that competitive harm is unlikely in most mobile telephony markets as a result of this transaction. As discussed above, however, with regard to four local mobile telephony markets, our market-by-market analysis shows that likely competitive harms exceed likely benefits of the transaction, and we therefore require remedies to ameliorate the expected harm.

VII. ORDERING CLAUSES

131. Accordingly, having reviewed the applications, the petition and comment, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the applications for the transfer of control of licenses from Midwest Wireless to ALLTEL are GRANTED, to the extent specified in this Memorandum Opinion and Order and subject to the conditions specified below.

132. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the application for the transfer of control of a license from Great Western to ALLTEL is GRANTED.

133. IT IS FURTHER ORDERED that the above grant shall include authority for ALLTEL to acquire control of: (a) any license or authorization issued to Midwest Wireless and its subsidiaries during the Commission's consideration of the transfer of control applications or the period required for consummation of the transaction following approval; (b) construction permits held by such licensees that mature into licenses after closing; and (c) applications filed by such licensees and that are pending at the time of consummation of the proposed transfer of control.

134. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.24 of the Commission's rules, 47 C.F.R. § 63.24, the applications to transfer control of international section 214 authorizations from subsidiaries of Midwest Wireless to ALLTEL are GRANTED, subject to the conditions applicable to international section 214 authorizations.

135. IT IS FURTHER ORDERED that the Commission's grant of the transfer of control of licenses from Midwest Wireless to ALLTEL is conditioned upon the completion of the divestitures described in Part V of this Memorandum Opinion and Order.

136. IT IS FURTHER ORDERED that, with respect to roaming, ALLTEL may not prevent its customers from completing calls in the manner contemplated in 47 C.F.R. § 20.12(e), unless specifically requested to do so by a subscriber.

137. 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 to Deny

the transfer of control of licenses and authorizations from Midwest Wireless to ALLTEL filed by United States Cellular Corporation is DENIED for the reasons stated herein.

138. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release. 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 order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

ALLTEL – MIDWEST WIRELESS

Analysis of Combined Minnesota 11-Goodhue (CMA492) and Rochester, MN (CMA288)

Set forth below is a discussion of the combined Minnesota 11-Goodhue (CMA492) and Rochester, MN (CMA288) market in which we determined that the proposed transaction between ALLTEL and Midwest Wireless would raise no competitive harm issues. The market share and HHI information set forth below are derived from our analysis of data compiled in our Numbering Resource Utilization / Forecast (NRUF) database, which tracks phone number usage by all telecommunications carriers, including wireless carriers, in the United States. However, our analysis does not rely solely on market shares to determine which markets are likely to experience competitive harm as a result of this transaction. Instead, we analyze each market using a multi-factor, market-specific analysis, as described in the text of the order to which this appendix is attached, which draws competitive conclusions based on the totality of the circumstances present in a given market.

In addition, we examine data from our local number portability database through June 30, 2005. This information includes each instance of a customer porting a phone number from one mobile carrier to another, and indicates both the origin and destination carrier.³²⁰ We also analyze carrier launch and coverage information available from a variety of public sources as well as information regarding spectrum holdings,³²¹ which we obtained from our licensing databases and from the Applications. Our multi-factor, market-specific analysis employs a combination of the information derived from all of the data sources described above, and it provides a reliable basis for making our determinations herein.

In this case, we have combined CMA492 Minnesota 11-Goodhue and CMA288 Rochester, Minnesota into one market for the purposes of our geographic market definition, in light of the fact that U.S. Cellular has argued that the Rochester CMA cannot be viewed on a stand alone basis. CMA492 Minnesota 11-Goodhue surrounds CMA288 Rochester, Minnesota, which consists solely of Olmstead County, the boundaries of which are coterminous with the city of Rochester, Minnesota. In the following analysis, CMA492 Minnesota 11-Goodhue and CMA288 Rochester, Minnesota are combined and referred to as “The Market.”

In The Market (which has a population of about 337,000 and an average population density of about 65 POPs/sq. mile), ALLTEL has [REDACTED] percent of the wireless subscribers while Midwest Wireless has [REDACTED] percent; combined, these two entities would have a post-merger share of [REDACTED] percent. The other carriers with market share in The Market are: Sprint Nextel, with [REDACTED] percent of subscribers; Cingular, with [REDACTED] percent; T-Mobile, with [REDACTED] percent; and U.S. Cellular, with [REDACTED] percent.

The post-merger HHI in The Market would be [REDACTED], with a change from the current figure of [REDACTED].

ALLTEL holds between 25 and 35 MHz throughout The Market³²² and Midwest Wireless holds

³²⁰ This data was provided to the Commission by NeuStar.

³²¹ Sprint Nextel’s SMR spectrum holdings are not included in its spectrum aggregation totals.

³²² This amount includes the cellular spectrum licensed to Great Western Cellular Holdings, L.L.C. (“Great Western”) in the Minnesota 11 RSA, which is attributed to ALLTEL for the reasons stated in the text of the order to which this appendix is attached.

between 25 and 40 MHz of spectrum. The merged entity would hold between 50 and 75 MHz of spectrum throughout the Market. ALLTEL has launched service in three of the eight counties that make up The Market, while Midwest Wireless has launched service in all eight counties. ALLTEL's network covers approximately 25 percent of both the population and land area of The Market. Midwest Wireless's network covers approximately 92 percent of the population and 81 percent of the land area of The Market. ALLTEL had a total of [REDACTED] mobile-to-mobile ports out through June 2005 and [REDACTED] to Midwest Wireless. Midwest Wireless had a total of [REDACTED] mobile-to-mobile ports out through June 2005, and [REDACTED] ports were to ALLTEL.

Cingular and Sprint Nextel hold spectrum throughout The Market. Cingular holds between 10 and 40 MHz of spectrum throughout The Market, and Sprint Nextel holds 30 MHz of PCS spectrum throughout the market. Also, T-Mobile, U.S. Cellular, Verizon Wireless, Airadigm, Leap, Cellcom, and Skagit hold spectrum in portions of the market. Cingular has launched service in four of eight counties, and its network covers approximately 75 percent of the population and 62 percent of the land area. Sprint Nextel has launched service in five of eight counties, and its network covers approximately 81 percent of the population and 41 percent of the land area of The Market. T-Mobile has launched service in five of eight counties, and its network covers approximately 64 percent of the population and 35 percent of the land area. U.S. Cellular has launched service in two of eight counties, and its network covers approximately 46 percent of the population and 16 percent of the land area of The Market.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Applications of Midwest Wireless Holdings L.L.C. and ALLTEL Communications, Inc. For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-339.

I approve this merger for substantially the same reasons I gave in approving in the larger and analytically comparable merger between ALLTEL and Western Wireless last year. In light of the divestitures required by the Department of Justice, I am satisfied that this merger will not reduce competition below the level we have found acceptable in earlier mergers.

I am also troubled by ALLTEL's disappointing penetration rate of E911-enabled handsets. As I explained in our prior decision, our merger standards require us to look at "citizenship, character, financial, technical, and other qualifications" and I believe that a corporation's compliance with our public safety regulations fit squarely under this rubric.