

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

In the Matter of)	
)	
Applications of AT&T Inc. and Dobson)	
Communications Corporation)	
)	WT Docket No. 07-153
For Consent to Transfer Control of Licenses and)	
Authorizations)	
)	
File Nos. 0003092368 <i>et al.</i>)	

MEMORANDUM OPINION AND ORDER

Adopted: November 15, 2007

Released: November 19, 2007

By the Commission: Commissioner Copps concurring in part, dissenting in part and issuing a statement; Commissioner Adelstein approving in part, dissenting in part and issuing a statement; Commissioner McDowell issuing a statement.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	3
A. Description of Applicants	3
1. AT&T Inc.	3
2. Dobson Cellular Corporation	5
B. Description of Transaction.....	6
C. Application Review Process	7
1. Commission Review.....	7
2. Department of Justice Review	8
III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK	10
IV. COMPETITIVE ANALYSIS	15
A. Market Definitions	20
B. Initial Screen	39
C. Horizontal Issues.....	42
D. Market-by-Market Analysis.....	51
1. Analytical Standard	51
2. Results of Analysis	53
E. Other Issues.....	58
1. Roaming	58
2. Eligible Telecommunications Carrier Status	68
F. Public Interest Benefits	73
1. Analytical Framework	75
2. Discussion.....	78
3. Conclusion.....	84
V. CONDITIONS/REMEDIES.....	85
A. Operating Unit Divestitures	88

B. Spectrum	90
C. Operation of Divestitures	95
VI. CONCLUSION	103
VII. ORDERING CLAUSES.....	104
APPENDIX A – Market-Specific Analysis of Markets Involving Divestiture	
APPENDIX B – Market Specific Analysis of Texas-9 Runnels (CMA660)	

I. INTRODUCTION

1. In this order, we consider applications filed by AT&T Inc. (“AT&T”) and Dobson Communications Corporation (“Dobson”). In these applications, AT&T and Dobson (together “the Applicants”) seek Commission approval of the transfer of control of licenses, authorizations and *de facto* transfer spectrum leases held by Dobson and its subsidiaries from Dobson CC Limited Partnership, the controlling interest holder in Dobson,¹ to AT&T.² At closing, Dobson will continue as a wholly-owned subsidiary of AT&T.³ These transfer of control applications pertain to licenses for the Part 22 Cellular Radiotelephone Service, the Part 24 Personal Communications Service, the Part 27 Advanced Wireless Service, and the Part 101 Common Carrier Fixed Point-to-Point Microwave Service, as well as international section 214 authorizations.

2. Pursuant to sections 214(a) and 310(d) of the Communications Act of 1934, as amended (“Communications Act”),⁴ we must determine whether the Applicants have demonstrated that the proposed acquisition of Dobson would serve the public interest, convenience, and necessity. Based on the record before us, we find that the Applicants have generally met that burden. In 38 markets, the proposed transaction would result in the combination of overlapping mobile telephony coverage and services. After applying an initial screen to identify those markets in which there clearly is no competitive harm, we conduct a market-by-market competitive analysis examining the potential consequences of increasing AT&T’s market share and spectrum holdings in those markets. We find that competitive harm is unlikely in most of these markets, primarily because multiple other service providers in these markets would be an effective competitive constraint on the behavior of the merged entity. With regard to four local areas, however, our case-by-case analysis indicates that likely competitive harms will result. In these areas, we impose narrowly tailored conditions that will effectively remedy the potential for these particular harms. We also condition the proposed transaction on AT&T’s voluntary commitment to an interim cap on high-cost, competitive Eligible Telecommunications Carrier (“ETC”) support provided to AT&T and Dobson.

¹ See Dobson Communications Corporation, FCC Form 602, File No. 0002781671 (filed Oct. 11, 2006).

² For a complete list of applications involved in this transaction, see AT&T Inc. and Dobson Communications Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations and Request a Declaratory Ruling on Foreign Ownership, WT Docket No. 07-153, *Public Notice*, DA 07-3404 (rel. July 26, 2007) (“Comment Public Notice”). File No. 0003092368 has been designated the lead application (“Application”). The other applications contain an exhibit referring to the exhibits attached to file no. 0003092368. Thus, for convenience, when referring to these applications, we only cite to the lead Application.

³ Dobson will continue to own the stock of its subsidiaries, and Dobson and its subsidiaries will continue to hold all of the FCC authorizations and spectrum leases that they held prior to the merger.

⁴ 47 U.S.C. §§ 214(a), 310(d).

II. BACKGROUND

A. Description of Applicants

1. AT&T Inc.

3. AT&T is a communications holding company incorporated in the State of Delaware and has its principal offices in San Antonio Texas.⁵ Through its subsidiaries and affiliates, AT&T is a provider of communications services, including local exchange and long-distance voice services, wireless services, data/broadband services and high-speed Internet access, Wi-Fi, and IP-based communications services to businesses.⁶ Specifically, AT&T provides broadband, long distance, and local voice service over 64.1 million access lines to customers and has 13.3 million High-Speed Internet subscribers, with a concentration in twenty-two states.⁷ AT&T also provides satellite television service through strategic alliances and provides bundled offerings, such as AT&T HomezoneSM, which combines AT&T|DISH Network with AT&T Yahoo!® High Speed Internet, and AT&T U-verseSM services, including AT&T U-verse TV, AT&T Yahoo!® High Speed Internet, and Voice over Internet Protocol (“VoIP”) services.⁸ Further, AT&T provides domestic and directory publishing and advertising services.⁹

4. AT&T provides wireless service to 63.7 million customers and has more subscribers than any other wireless provider in the United States.¹⁰ It holds spectrum licenses in all fifty states, the District of Columbia, Puerto Rico, and the United States Virgin Islands,¹¹ and has a network footprint that covers over 284 million people.¹² AT&T provides digital service on its network using primarily Global System for Mobile Communications (“GSM”) and General Packet Radio Service (“GPRS”) technology and offers Enhanced Data rates for GSM Evolution (“EDGE”) for wireless broadband.¹³ AT&T is also in the process of deploying Universal Mobile Telecommunications System/High Speed Downlink Packet Access (“UMTS/HSDPA”) broadband to deliver high-speed, wireless broadband services.¹⁴ AT&T

⁵ Application, Exhibit 1 at 1; AT&T Inc., Form 10-K, at 1 (Feb. 26, 2007) (“AT&T Form 10-K”), available at <http://www.att.com/gen/investor-relations?pid=5691>; AT&T, Corporate Profile, <http://www.att.com/gen/investor-relations?pid=5711>, at 1 (last visited Oct. 16, 2007) (“AT&T Corporate Profile”) (displaying “all segments of the Company Overview”).

⁶ Application, Exhibit 1 at 1; AT&T Form 10-K at 1, 4; AT&T to Acquire Dobson Communications, Expand Wireless Coverage, http://www.dobson.net/ir_press_releases.html, at 1 (last visited Oct. 1, 2007) (“Press Release”); AT&T Corporate Profile at 1, 3.

⁷ AT&T Corporate Profile at 2, 5. The twenty-two states are Alabama, Arkansas, California, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas and Wisconsin. *See id.*; *see also* AT&T Form 10-K at 1.

⁸ AT&T Form 10-K at 2 (stating that AT&T is providing AT&T U-verseSM service in limited parts of 11 markets as of December 2006); AT&T Corporate Profile at 3.

⁹ AT&T Form 10-K at 1; Application, Exhibit 1 at 1; Press Release at 1; AT&T Corporate Profile at 2.

¹⁰ AT&T Corporate Profile at 2.

¹¹ *Id.*

¹² *See* Press Release at 4; AT&T, 2006 Online Annual Report, Wireless, http://www.att.com/Investor/ATT_Annual/wireless/index.html (last visited Oct. 19, 2007).

¹³ AT&T Form 10-K at 3; AT&T Corporate Profile at 5. AT&T also provides service using Time Division Multiple Access (“TDMA”) technology. *See* AT&T Form 10-K at 3. AT&T states that it has moved most of its wireless traffic over to its GSM network. *See* AT&T, 2006 Online Annual Report, Chairman’s Letter, http://www.att.com/Investor/ATT_Annual/letter/02.html (last visited Oct. 19, 2007).

¹⁴ AT&T Form 10-K at 3; AT&T Corporate Profile at 5.

provides its customers the ability to make calls in 190 countries using internationally enabled phones, with wireless data roaming in 130 countries for laptops, hand-held devices and other data services.¹⁵

2. Dobson Cellular Corporation

5. Dobson, which incorporated in Oklahoma in 1997,¹⁶ provides wireless services over a GSM/GPRS/EDGE network¹⁷ to 1.7 million subscribers in rural and suburban communities in 17 states.¹⁸ Dobson's network covers a population of approximately 12.7 million people primarily in rural and suburban areas.¹⁹ Dobson offers digital voice and data services, including messaging and high-speed data functions, such as wireless e-mail and Internet access.²⁰ Dobson offers service on 850 MHz Cellular and 1900 MHz Personal Communications Services ("PCS") licenses that Dobson either owns or has access to through spectrum leasing arrangements.²¹ Dobson also owns 85 Advanced Wireless Services ("AWS") licenses, which are not currently integrated into Dobson's network.²² Dobson's operations are encompassed in its two wholly-owned subsidiaries, Dobson Cellular Systems, Inc. and American Cellular Corporation.²³ Dobson also has roaming arrangements with AT&T and T-Mobile. The roaming agreements with AT&T designate Dobson as the preferred provider, and in some cases exclusive partner, of roaming services in substantially all of Dobson's markets where AT&T and its affiliates do not have a network.²⁴ Dobson provides services under the CELLULARONE® brand name.²⁵

B. Description of Transaction

6. On June 29, 2007, Dobson, AT&T, and Alpine Merger Sub, Inc. ("Alpine Merger Sub") entered into an Agreement and Plan of Merger ("Merger Agreement").²⁶ Pursuant to the Merger

¹⁵ AT&T Corporate Profile at 2; *See* AT&T, 2006 Online Annual Report, Wireless, http://www.att.com/Investor/ATT_Annual/wireless/02.html (last visited Oct. 19, 2007).

¹⁶ Dobson Communications Corporation, Form 10-K, at 3 (Feb. 28, 2007) ("Dobson Form 10-K"), *available at* http://www.dobson.net/ir_sec_filings.html (last visited Oct. 15, 2007).

¹⁷ Application, Exhibit 1 at 1; Dobson Form 10-K at 3, 4; Dobson Communications Corporation, Profile, http://www.dobson.net/dp_profile.html (last visited Oct. 1, 2007) ("Dobson Profile"). Dobson also provides service on a TDMA network. *See* Dobson Form 10-K at 4; Dobson Profile at 1.

¹⁸ Application, Exhibit 1 at 1; Dobson Communications Corporation, Service Area, http://www.dobson.net/dp_service_area.html (last visited Oct. 1, 2007) ("Dobson Service Area"); Dobson Profile at 1; Press Release at 1. Dobson is providing service in portions of Alaska, Arizona, Illinois, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, West Virginia, and Wisconsin. Dobson Form 10-K at 5; Dobson Service Area at 1; Press Release at 2.

¹⁹ Dobson Communications Corporation, <http://www.dobson.net> (last visited Oct. 1, 2007); Dobson Profile at 1; Dobson Form 10-K at 3, 4; Press Release at 1.

²⁰ Dobson Form 10-K at 3, 5; Dobson Profile at 1.

²¹ Dobson Form 10-K at 5. Dobson's network utilizes 850 MHz spectrum in 13 MSAs, which covers a total population of 2.7 million, and 59 RSAs, which cover a total population of 9 million. The network utilizes 1900 MHz spectrum in an area that covers a total population of 1.0 million. *Id.*

²² *Id.* at 4.

²³ *Id.* at 3.

²⁴ *Id.* at 4-5.

²⁵ Application, Exhibit 1 at 1; Dobson Form 10-K at 6 (stating that, until March 2007, Dobson also marketed under the brand name of DOBSON CELLULAR SYSTEMS® in western Oklahoma and the Texas Panhandle).

²⁶ Application, Exhibit 1 at 2; Dobson Communications Corporation, Form 8-K, at 2 (June 29, 2007; filed July 2, 2007) ("Dobson Form 8-K"), *available at* http://www.dobson.net/ir_sec_filings.html.

Agreement, Alpine Merger Sub will be merged with and into Dobson, with Dobson being the surviving entity.²⁷ Each share of Dobson common stock will be canceled and converted into the right to receive \$13.00 per share.²⁸ The total value of the deal is approximately \$2.8 billion in cash.²⁹ At closing, the separate corporate existence of Alpine Merger Sub will cease, and Dobson will continue as the surviving corporation and a wholly-owned subsidiary of AT&T.³⁰ Dobson will continue to own the stock of its subsidiaries, and Dobson and its subsidiaries will continue to hold all of the FCC authorizations and spectrum leasing arrangements that they held prior to the merger.³¹

C. Application Review Process

1. Commission Review

7. On July 13, 2007, pursuant to section 310(d) of the Communications Act,³² the Applicants filed applications seeking consent to the proposed transfer of control of licenses held by subsidiaries of Dobson to AT&T.³³ Pursuant to section 214 of the Communications Act,³⁴ the Applicants also filed applications seeking Commission approval of the transfer of control of three international section 214 authorizations to from Dobson to AT&T.³⁵ On July 26, 2007, the Commission released a Public Notice seeking public comment on the proposed transaction.³⁶ In response to the Comment Public Notice, the Commission received two petitions to deny the applications, filed by East Kentucky Network, LLC (“East Kentucky Network”) and Mid-Tex Cellular LTD. (“Mid-Tex Cellular”),³⁷ and two comments filed by T-Mobile USA, Inc. (“T-Mobile”) and Governor Jennifer M. Granholm of the state of Michigan.³⁸ The

²⁷ Application, Exhibit 1 at 2; Dobson Form 8-K at 2.

²⁸ Application, Exhibit 1 at 2; Dobson Form 8-K at 2; Press Release at 2.

²⁹ Press Release at 1, 2.

³⁰ Application, Exhibit 1 at 2; Dobson Form 8-K at 2.

³¹ Application, Exhibit 1 at 2-3.

³² 47 U.S.C. § 310(d).

³³ *See supra* note 2 and accompanying text.

³⁴ 47 U.S.C. § 214.

³⁵ *See supra* note 2 and accompanying text.

³⁶ Comment Public Notice, DA 07-3404, at 1. The Comment Public Notice set due dates of August 27, 2007 for Petitions to Deny, September 6, 2007 for Oppositions, and September 13, 2007 for Replies. *See id.*

³⁷ East Kentucky Network, LLC, Petition to Condition Approval or to Deny, filed Aug. 27, 2007 (“East Kentucky Network Petition to Deny”); Mid-Tex Cellular LTD., Petition to Deny, filed Aug. 27, 2007 (“Mid-Tex Cellular Petition to Deny”). East Kentucky filed an errata to its Petition to Deny on September 10, 2007. East Kentucky Network, LLC, Errata to Petition to Condition Approval or to Deny, filed Sept. 10, 2007 (“East Kentucky Network Errata”). Mid-Tex Cellular filed a supplement to its petition to deny on October 26, 2007. Mid-Tex Cellular LTD., Motion for Leave to Supplement Petition to Deny, filed Oct. 26, 2007 (“Mid-Tex Cellular Supplement”). All pleadings and comments are available on the Commission’s Electronic Comment Filing System (“ECFS”) at www.fcc.gov/cgb/ecfs/.

³⁸ T-Mobile USA, Inc., Comments of T-Mobile USA, Inc., filed Aug. 27, 2007 (“T-Mobile Comments”); Letter from Jennifer M. Granholm, Governor, State of Michigan, to Kevin Martin, Chairman, Michael Copps, Commissioner, Jonathan Adelstein, Commissioner, Deborah Taylor Tate, Commissioner, and Robert McDowell, Commissioner, Federal Communications Commission (filed Nov. 2, 2007) (“Governor Granholm Comments”) (discussing the public interest benefits of the proposed transaction).

Applicants filed a Joint Opposition on September 6, 2007,³⁹ to which East Kentucky Network, Mid-Tex Cellular, and T-Mobile each filed a reply on September 13, 2007.⁴⁰

2. Department of Justice Review

8. The Antitrust Division of the Department of Justice (“DOJ”) reviews telecommunications mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that are likely to substantially lessen competition.⁴¹ 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 AT&T and Dobson. As a result of its analysis, DOJ concluded that the proposed merger was likely to result in competitive harm in certain markets,⁴² and entered into a settlement with the Applicants designed to address its competitive concerns. Thus, on October 30, 2007, DOJ filed a Complaint and Preservation of Assets Stipulation and Order with the United States District Court for the District of Columbia (“District Court”),⁴³ and the parties jointly filed a proposed Final Judgment with the District Court.⁴⁴ DOJ will allow the merger to proceed subject to the Applicants’ divestiture of business units in three markets, the divestiture or withdrawal of AT&T’s minority interests in partnerships providing wireless service in two markets, and the divestiture of Dobson’s Cellular One interests in two markets.⁴⁵

9. Specifically, under the terms of the settlement between the Applicants and DOJ, AT&T and Dobson have agreed to transfer control of certain cellular licenses and related operational and network assets (including certain employees, retail sites, and subscribers) in Kentucky RSA-6 (CMA448), Kentucky RSA-8 (CMA450), and Oklahoma RSA-5 (CMA600). AT&T has agreed to divest its minority interests in Mid-Tex Cellular, Ltd. covering Texas RSA-9 (CMA660), and in Northwest Missouri Cellular Limited partnership, covering Missouri RSA-1 (CMA504). Finally, AT&T and Dobson have agreed to divest Dobson’s interests in Cellular One in Pennsylvania RSA-5 (CMA616) and Texas RSA-11 (CMA662).⁴⁶ These assets will be transferred to the court-appointed management trustee

³⁹ AT&T, Inc. and Dobson Communications Corporation, Joint Opposition of AT&T Inc. and Dobson Communications Corporation to Petitions to Deny and Reply to Comments, filed Sept. 6, 2007 (“Joint Opposition”).

⁴⁰ East Kentucky Network, LLC, Reply to Joint Opposition of AT&T Inc. and Dobson Communications Corporation, filed Sept. 13, 2007 (“East Kentucky Network Reply”); Mid-Tex Cellular LTD., Reply to Joint Opposition of AT&T Inc. and Dobson Communications Corporation to Petition to Deny, filed Sept. 13, 2007 (“Mid-Tex Cellular Reply”); T-Mobile USA, Inc., Reply Comments of T-Mobile USA, Inc., filed Sept. 13, 2007 (“T-Mobile Reply”).

⁴¹ 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).

⁴² See generally *United States of America v. AT&T Inc. and Dobson Communications Corporation*, Competitive Impact Statement, Case No. 1:07-cv-01952 (filed October 30, 2007) (“DOJ Competitive Impact Statement”). All DOJ filings regarding this matter are available at <http://www.usdoj.gov/atr/cases/dobson.htm>.

⁴³ See *United States of America v. AT&T Inc. and Dobson Communications Corporation*, Complaint, Case No. 1:07-cv-01952-RMC (filed October 30, 2007) (“DOJ Complaint”); *United States of America v. AT&T Inc. and Dobson Communications Corporation*, Preservation of Assets Stipulation and Order, Case No.1:07-cv-01952-RMC (entered October 30, 2007) (“DOJ Stipulation”).

⁴⁴ *United States of America v. AT&T Inc. and Dobson Communications Corporation*, Proposed Final Judgment, Case No.1:07-cv-01952-RMC (entered October 30, 2007) (“DOJ Proposed Final Judgment”).

⁴⁵ See DOJ Proposed Final Judgment at 8-12; DOJ Complaint at 8-9.

⁴⁶ See DOJ Proposed Final Judgment at 2-8; DOJ Complaint at 8-9; DOJ Competitive Impact Statement at 8-9.

(“Management Trustee”), who will manage them while AT&T seeks a third-party buyer.⁴⁷ AT&T 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.⁴⁸

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

10. 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 assignments and/or transfers of control of licenses and authorizations would serve the public interest, convenience, and necessity.⁴⁹ In applying our public interest test, we must assess whether the proposed transaction complies with the specific provisions of the Communications Act,⁵⁰ the Commission’s rules, and federal communications policy.⁵¹ 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.⁵²

⁴⁷ See DOJ Stipulation at 8-20.

⁴⁸ See DOJ Proposed Final Judgment at 8-23.

⁴⁹ 47 U.S.C. §§ 214(a), 310(d).

⁵⁰ Section 310(d), 47 U.S.C. § 310(d), requires that we consider the applications as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. See, e.g., AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74, *Memorandum Opinion and Order*, 22 FCC Rcd 5662, 5672 ¶ 17 (“AT&T-BellSouth Order”); Applications for the Assignment of License from Denali PCS, L.L.C to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C to General Communications, Inc., WT Docket No. 05-114, *Memorandum Opinion and Order*, 21 FCC Rcd 14863, 14871 ¶ 15 (2006) (“GCI-Alaska DigiTel Order”); Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc., WT Docket No. 06-76, *Memorandum Opinion and Order*, 21 FCC Rcd 13580, 13588 ¶ 13 (2006) (“DoCoMo-Guam Order”); Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc., WT Docket No. 05-339, *Memorandum Opinion and Order*, 21 FCC Rcd 11526, 11535 ¶ 16 (2006) (“ALLTEL-Midwest Wireless Order”); 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”); Applications of Western Wireless Corporation and ALLTEL Corporation, WT Docket No. 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13053, 13062 ¶ 17 (2005) (“ALLTEL-Western Wireless Order”); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21542 ¶ 40 (2004) (“Cingular-AT&T Wireless Order”).

⁵¹ See, e.g., AT&T-BellSouth Order, 22 FCC Rcd at 5672 ¶ 19; GCI-Alaska DigiTel Order, 21 FCC Rcd at 14871 ¶ 15; DoCoMo-Guam Order, 21 FCC Rcd 13588-89 ¶ 13; ALLTEL-Midwest Wireless Order, 21 FCC Rcd 11535 ¶ 16; 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.

⁵² See, e.g., AT&T-BellSouth Order, 22 FCC Rcd at 5672 ¶ 19; GCI-Alaska DigiTel Order, 21 FCC Rcd at 14871 ¶ 15; DoCoMo-Guam Order, 21 FCC Rcd at 13589 ¶ 13; ALLTEL-Midwest Wireless Order, 21 FCC Rcd 11535 ¶ 16; 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.

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.⁵³ 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.⁵⁴ 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.⁵⁵

11. 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.”⁵⁶ Therefore, as a threshold matter, the Commission must determine whether the applicants to the proposed transaction meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission’s rules.⁵⁷ 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.⁵⁸ Conversely, section 310(d) obligates the Commission to

⁵³ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14871 ¶ 15; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589 ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11535 ¶ 16; *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.

⁵⁴ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14871-72 ¶ 15; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589 ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11535 ¶ 16; *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.

⁵⁵ 47 U.S.C. § 309(e). See also *AT&T-BellSouth Order*, 22 FCC Rcd at 5672-73 ¶ 19; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 15; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589 ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *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 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.

⁵⁶ 47 U.S.C. §§ 308, 310(d). See also *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11536 ¶ 17; *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.

⁵⁷ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see also *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589-90 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *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.

⁵⁸ See, e.g., *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13590 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *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* (continued....)

consider whether the proposed transferee is qualified to hold Commission licenses.⁵⁹ When evaluating the qualifications of a potential licensee, the Commission previously has stated that it will review allegations of misconduct directly before it,⁶⁰ as well as conduct that takes place outside of the Commission.⁶¹ In this proceeding, no issues have been raised with respect to the basic qualifications of AT&T or Dobson, both of which previously have been found qualified to hold FCC licenses.⁶² Thus, we find that, at this time, there is no reason to re-evaluate the qualifications of these entities.

12. Our public interest evaluation necessarily encompasses the “broad aims of the Communications Act,”⁶³ which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest.⁶⁴ Our public interest analysis may also entail assessing whether the proposed transaction will

(Continued from previous page)

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.*

⁵⁹ *See, e.g., GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd 13590 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *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.

⁶⁰ *See, e.g., GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13590 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *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).

⁶¹ *See, e.g., GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872-73 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13590 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *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 ¶ 184; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 n.86; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

⁶² *See AT&T-BellSouth Order*, 22 FCC Rcd at 5758 ¶ 194 (evaluating AT&T’s qualifications to be a Commission licensee).

⁶³ *E.g., AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 20; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 17; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11537 ¶ 18; *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.

⁶⁴ *See, e.g., AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 20; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 17; *DoCoMo-Guam Order*, 21 FCC Rcd 13591 ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11537 ¶ 18; (continued....)

affect the quality of communications services or will result in the provision of new or additional services to consumers.⁶⁵ 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.⁶⁶

13. In determining the competitive effects of the proposed transaction, our analysis is informed by, but not limited to, traditional antitrust principles.⁶⁷ Because the Commission is charged with determining whether the transfer and assignment of licenses serves the broader public interest,⁶⁸ we take into account factors beyond those considered under a traditional antitrust analysis. 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.⁶⁹ In addition to considering whether the merger will reduce existing

(Continued from previous page) _____
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.

⁶⁵ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 20; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 17; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 18; *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.

⁶⁶ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 20; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 17; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 18; *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.

⁶⁷ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 18; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 ¶ 16; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 19; *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”). 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. See, e.g., *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 n.75; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 n.77; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 19; *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. 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. 15 U.S.C. § 18.

⁶⁸ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 18; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 ¶ 16; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 19; *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.

⁶⁹ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 18; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591-92 ¶ 16; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537-38 ¶ 19; *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.

competition, we also must consider 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.⁷⁰ We also recognize that the same consequences of a proposed merger that are beneficial in one sense may be harmful in another.⁷¹ For instance, combining assets may allow a 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.⁷²

14. 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.⁷³ 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.⁷⁴ Similarly, section 214(c) of the Act authorizes the Commission to attach to the certificate “such terms and conditions as in

⁷⁰ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 18; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 16; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11538 ¶ 19; *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.

⁷¹ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 18; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 16; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 19; *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.

⁷² See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873-74 ¶ 18; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11538 ¶ 19; *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.

⁷³ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 22; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 20; *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); Applications of VoiceStream Wireless Corporation, PowerTel, Inc., Transferors, and Deutsche Telekom AG, Transferee, IB Docket No. 00-187, *Memorandum Opinion and Order*, 16 FCC Rcd. 9779 (2001) (“*Deutsche Telekom-VoiceStream Wireless Order*”) (conditioning approval on compliance with agreements with Department of Justice and Federal Bureau of Investigation addressing national security, law enforcement, and public safety concerns).

⁷⁴ 47 U.S.C. § 303(r). See also *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11538 ¶ 20; *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.”⁷⁵ 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.⁷⁶ 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) and that are related to the Commission’s responsibilities under the Communications Act and related statutes.⁷⁷ Thus, we generally will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.⁷⁸

IV. COMPETITIVE ANALYSIS

15. Consistent with our practice when reviewing proposed wireless transactions affecting the mobile telephony market, our analysis of the proposed AT&T-Dobson transaction considers the potential competitive effects that might result from increased concentration.⁷⁹ Horizontal transactions, including mergers, raise competitive concerns when they reduce the availability of choices to the point that the resulting firm has the incentive and the ability, either by itself or in coordination with other firms, to raise prices. 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.⁸⁰

⁷⁵ 47 U.S.C. § 214(c). See also *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 20; *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.

⁷⁶ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 22; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592-93 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538-39 ¶ 20; *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).

⁷⁷ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5674-75 ¶ 22; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13593 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11539 ¶ 20; *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.

⁷⁸ See, e.g., *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874-75 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13593 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11539 ¶ 20; *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.

⁷⁹ See, e.g., *CGI-Alaska DigiTel Order*, 21 FCC Rcd at 14875 ¶ 21; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11539 ¶ 22; *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, n.6. (Apr. 2, 1992, revised Apr. 8, 1997) (“*DOJ/FTC Merger Guidelines*”).

⁸⁰ See *GCI-Alaska-DigTtel Order*, 21 FCC Rcd at 14871 ¶ 15; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13589-90 ¶ 13; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11540 ¶ 22; *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; *DOJ/FTC Merger Guidelines* § 0.1, n.6. The ability to raise prices above competitive levels is (continued....)

16. As we have discussed in several recent wireless merger orders – including *GCI-Alaska DigiTel Order*, *ALLTEL-Midwest Wireless Order*, *Sprint-Nextel Order*, and *Cingular-AT&T Wireless Order* – transactions such as mergers can diminish competition and allow firms to exercise market power in a number of ways.⁸¹ However, a horizontal transaction or 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. Transactions that do not significantly increase concentration or do not result in a concentrated market ordinarily require no further competitive analysis. Thus, when examining the effect of proposed transactions, we have first applied a three-part initial “screen” that identifies those local markets in which there is clearly no competitive harm arising from the transaction. Two parts of the screen utilize changes in the measures of the Herfindahl-Hirschman Index (“HHI”) market concentration. The final part of this screen examines the input market for spectrum available on a nationwide basis for the provision of mobile telephony services.⁸² This screen provides only the beginning of the analysis for markets that are not eliminated by the screen. For those markets, we then conduct, on a market-by-market basis, an analysis of other market factors that pertain to competitive effects, including the incentive and ability of other existing firms to react and of new firms to enter the market, in response to attempted exercises of market power by the merged entity. Ultimately, we must assess whether it is likely that the combined firm could exercise market power in any particular market.⁸³

17. Our competitive analysis is set forth in six sections below. First, consistent with these recent wireless merger orders, we begin our competitive analysis by determining the appropriate market definitions for this transaction.⁸⁴ This includes determination of the product market and geographic market definitions that we apply to this transaction, as well as the identification of the market participants. It also considers the input market for spectrum available for the provision of mobile telephony services. As discussed more fully below, by applying the same analysis as in the recent merger orders, we find the product market to be the combined market for mobile telephony services, and the geographic market to be local markets.⁸⁵ With regard to spectrum, however, we no longer limit our examination to spectrum in the cellular, SMR, and broadband PCS bands. Instead, we update our analysis to include 700 MHz spectrum in the initial spectrum screen given its availability and suitability on a nationwide basis for the provision

(Continued from previous page) _____

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.

⁸¹ See, e.g., *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14875 ¶ 23; *ALLTEL-Midwest Order*, 21 FCC Rcd 11541 ¶ 24; *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.

⁸² See, e.g., *GCI-Alaska DigiTel Order* 21 FCC Rcd at 14875 ¶ 22; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13592 ¶ 17; *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.

⁸³ See, e.g., *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14875 ¶ 22; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11540 ¶ 23; *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* § 1.0.

⁸⁴ See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 24; *DoCoMo-Guam Order*, 21 FCC Rcd at 13593-94 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *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.

⁸⁵ See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876-77 ¶¶ 25-27; *DoCoMo-Guam Order*, 21 FCC Rcd at 13593 ¶ 18; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541-43 ¶¶ 26-31; *Sprint-Nextel Order*, 20 FCC Rcd at 13983-91 ¶¶ 37-57; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067-70 ¶¶ 25-36; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557-63 ¶¶ 71-91.

of mobile telephony services. As a result, our initial spectrum screen for the proposed transaction is 95 MHz, rather than 70 MHz that we previously have used. In addition, while we decide it is premature to include AWS-1 (1710-1755 MHz and 2110-2155 MHz) and Broadband Radio Service (“BRS”) spectrum in the initial screen, we will consider such spectrum in our case-by-case analyses to the extent such spectrum is available in any local market not eliminated by our screen. We then examine the market participants holding spectrum in these bands.

18. Second, we apply the Commission’s three-part initial screen to this transaction. As described above, through this process, we identify those markets that we subject to further case-by-case review while eliminating from further review those markets in which there clearly is no competitive harm. Third, the order examines the remaining markets with regard to specific issues related to potential competitive harms associated with horizontal concentration. It considers both the potential for unilateral anticompetitive impacts, and the potential for coordinated interaction when only a few firms participate in a market. Fourth, we undertake a granular, market-by-market analysis of the local markets identified by the initial screen. In this section, we identify four markets in which competitive harm is likely. Fifth, we address two other concerns raised by the petitioners in response to this transaction – the potential adverse impact of the transaction with regard to the provision of roaming services and whether AT&T can acquire Dobson’s ETC status in one market. Sixth, we examine the public interest benefits of the proposed transaction and conclude that the transaction, subject to the conditions we impose, is likely to result in transaction-specific public interest benefits.

19. Finally, consistent with our determination that the proposed AT&T-Dobson transaction would likely pose significant competitive harms in four local mobile telephony markets, we adopt various conditions and remedies to prevent these harms.

A. Market Definitions

20. Consistent with recent wireless merger orders, we establish at the outset the appropriate market definitions for our evaluation of the AT&T-Dobson transaction. This includes establishing the product and geographic market definitions that we will apply. We also discuss the input market for mobile telephony spectrum and identify market participants that would compete with the proposed merged entity in the provision of mobile telephony services.

21. *Product market.* As noted above, we adopt the same product market definition as applied by the Commission in recent transactions involving the mobile telephony market – *GCI-Alaska DigiTel Order*, *DoCoMo-Guam Order*, *ALLTEL-Midwest Wireless Order*, *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order*. In those 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.⁸⁶ Nevertheless, it analyzed all of these product markets under the combined market for mobile telephony service.⁸⁷ Based on consideration of various factors, including the nature of these services and their relationship with each other, the Commission

⁸⁶ See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 25; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *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.

⁸⁷ See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 25; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *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.

found that this approach provided a reasonable assessment of any potential competitive harm resulting from the transactions under review.⁸⁸

22. Neither the Applicants nor the Petitioners challenge this product market definition in their submissions. Specifically, the Applicants note that the Commission has analyzed past transactions using a combined market for mobile telephony services, including both voice and data, based on the Commission's findings that doing so would not overlook any potential for competitive harm in a separate mobile data market.⁸⁹ They also note that the proper level of analysis was the combined market for both business and residential services, noting that the more intense competition for business customers obviated the risk of understating any competitive harm to the business enterprise market.⁹⁰ The Applicants contend the same is true here, where service providers offering mobile voice services generally offer at least some data services, and Dobson derives only 7.5 percent of its revenue from business service, which account for only approximately 11 percent of Dobson's subscribers.⁹¹ East Kentucky Network agrees that the proper level of analysis is the combined voice and data services market for both business and residential customers of mobile telephony.⁹² Based on our precedent and the record in this proceeding, we will use the same product market definition in our analysis of the proposed transaction.

23. *Geographic Market.* In its recent wireless merger orders, the Commission applied the "hypothetical monopolist test" and found that the relevant geographic markets are local, larger than counties, may encompass multiple counties, and, depending on the consumer's location, may even include parts of more than one state.⁹³ The Commission in these orders identified two sets of geographic areas that effectively may be used to define local markets – Component Economic Areas ("CEAs") and Cellular Market Areas ("CMAs").⁹⁴ Because these two sets of geographic areas come from different

⁸⁸ See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 25; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *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.

⁸⁹ Application, Exhibit 1 at 16.

⁹⁰ *Id.* at 16-17.

⁹¹ Coates Declaration at ¶ 6.

⁹² East Kentucky Network Petition to Deny at 10.

⁹³ See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 27; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542-43 ¶¶ 29-30; *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 21562-63 ¶¶ 89-90.

⁹⁴ We have chosen CEAs and CMAs for our data analysis because both are consistent in order of magnitude with the local market definition we have adopted and because each brings a different consideration to the analysis. CEAs are designed to represent consumers' patterns of normal travel for personal and employment reasons and may therefore capture areas within which groups of consumers would be expected to shop for wireless service. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURVEY OF CURRENT BUSINESS, February 1995, at 75. In addition, CEAs should be areas within which any service providers present would have an incentive to market – and actually provide – service relatively ubiquitously. Conversely, CMAs are the areas in which the Commission initially granted licenses for the cellular service. Although partitioning has altered this structure in many license areas, CMAs represent the fact that the Commission's licensing programs have to a certain degree shaped this market by defining the initial areas in which wireless providers had spectrum on which to base service offerings, and they may therefore serve as a reasonable proxy for where consumers face the same competitors. See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105; see also *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876-77 ¶ 27; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at (continued....)

sides of the equation – demand in one case, supply in the other – the Commission found them to be useful cross-checks on each other and, together, they help ensure that the Commission’s analysis does not overlook local areas that require more detailed analysis.⁹⁵

24. The Applicants assert that a CMA-level analysis will show no adverse effects on competition from the merger.⁹⁶ Nonetheless, the Applicants argue for a national-level examination, asserting that national-level competition makes any local anticompetitive effect unlikely.⁹⁷ In particular, the Applicants argue that the forces driving competition among wireless service providers and their effects are felt at a national level and that examining market structure in areas as small as CMAs or CEAs does not accurately account for the way national-level market constraints will ensure effective competition in any local areas affected by the merger.⁹⁸ The Applicants assert that AT&T establishes its rate plans and pricing on a national basis, which means that the terms of such plans are set without reference to market structure at the CMA level.⁹⁹ Although AT&T admits that it, in fact, sometimes adjusts prices in local markets, it states that it does so only in response to the actions of the major national service providers and aggressive local competitors, and that Dobson is not such a competitor.¹⁰⁰ Moreover, such discounts are typically offered on a state or regional level, not within a specific CMA,¹⁰¹ and are relatively rare.¹⁰² East Kentucky Network argues that the primary competitive analysis should be at the CMA level,¹⁰³ but asserts that larger markets need to be examined to the extent that its petition is based on an examination of the interaction of several CMAs in the East Kentucky Region.

25. For this transaction, we continue to find that the most appropriate geographic level for market analysis is comprised of CMAs and CEAs. For the proposed transaction 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.¹⁰⁴ For most individuals, this will be a local area, as opposed to a larger regional or nationwide area.¹⁰⁵ Further, the Applicants’ pricing argument does not undercut the finding of a local geographic

(Continued from previous page)

11542 ¶ 29; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 57; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072-73 ¶¶ 44-45.

⁹⁵ See, e.g., *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11546 ¶ 35; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105

⁹⁶ Application, Exhibit 1 at 18.

⁹⁷ *Id.* See also Willig and Orszag Declaration at 12.

⁹⁸ Application, Exhibit 1 at 18.

⁹⁹ *Id.* at 19.

¹⁰⁰ Roth Declaration at 2.

¹⁰¹ Willig and Orszag Declaration at 13.

¹⁰² *Id.*; Roth Declaration at 3.

¹⁰³ East Kentucky Network Petition to Deny at 10.

¹⁰⁴ *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542 ¶ 30. See also *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 ¶ 89.

¹⁰⁵ *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542 ¶ 30; *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 ¶ 89. See also 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 (continued....))

market. While they argue that there may be substantial similarity in the prices of national rate plans amongst nationwide service providers, they admit to adjusting prices in local markets. We conclude that these assertions regarding the nationwide service providers do not establish the existence of a national market.¹⁰⁶ Accordingly, we will use the same geographic market definition in this analysis as the Commission has used in its recent wireless merger orders discussed above.

26. *Input market for spectrum.* Consistent with the Commission's recent wireless merger orders, we also examine this transaction in light of the input market for spectrum associated with the provision of mobile telephony services. In particular, the Commission determined to include, in its evaluation of potential competitive harm, spectrum in particular bands that is "suitable" for the provision of mobile telephony services. As first explained by the Commission in the 2004 *Cingular-AT&T Wireless Order*, suitability is determined by whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its uses for mobile telephony.¹⁰⁷

27. In previous wireless merger orders, the Commission has found that the input market includes only cellular, broadband PCS, and Specialized Mobile Radio ("SMR") spectrum, which totals approximately 200 MHz of spectrum.¹⁰⁸ In addition, the Commission has applied an initial spectrum aggregation screen to proposed transactions involving these services based on this amount of mobile telephony spectrum. This screen has been set at 70 MHz, approximately one-third of the 200 MHz of spectrum that the Commission has previously deemed available for mobile telephony.¹⁰⁹ As explained in the *Cingular-AT&T Wireless Order*,

As an initial matter, although 70 MHz represents a little more than one-third of the [200 MHz of] total bandwidth available for mobile telephony [when considering cellular, broadband PCS, and SMR spectrum bands], we emphasize that a market may contain more than three viable competitors even where one entity controls this amount of spectrum, because many carriers are competing successfully with far lower amounts of bandwidth today.... Nevertheless, in line with the conservative approach embodied in this initial screen, the function of which was simply to eliminate from further consideration any market in which there is no potential for

(Continued from previous page) _____

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).

¹⁰⁶ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562 ¶ 88.

¹⁰⁷ See *id.* at 21560-61 ¶ 81; see also *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14877 ¶ 28; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 ¶ 21; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11543 ¶ 31; *Sprint-Nextel Order*, 20 FCC Rcd at 13992 ¶ 61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 41.

¹⁰⁸ 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*, 21 FCC Rcd 10947 10971-72 ¶¶ 62-64 ("*Eleventh Competition Report*"); see also *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14877 ¶ 28 n. 95; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 ¶ 21 n.103; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11543 ¶ 31 n.130; *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.

¹⁰⁹ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21569-70 ¶ 109; see also *Sprint-Nextel Order*, 20 FCC Rcd at 13994 ¶ 65; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13074 ¶ 49.

competitive harm as a result of this transaction, we subjected to further review any market in which one entity controls more than one-third of this critical input.¹¹⁰

28. In last year's *GCI-Alaska DigiTel Order*, we recognized the need to reevaluate the input market based on changes that were taking place in additional spectrum bands that can be used in providing mobile telephony services:

We do, however, anticipate that sometime in the near future, as [700 MHz and AWS-1] spectrum becomes available for more immediate use, as technological developments lead to performance and equipment advances, and as spectrum allocations are revised, the Commission will need to re-evaluate whether additional spectrum should be viewed as suitable for the provision of mobile telephony services.¹¹¹

29. The Applicants analyze the transaction using an initial screen of 70 MHz, including PCS, cellular and SMR spectrum.¹¹² The Applicants indicate that, using this screen, the proposed transaction will not lead to concerns about new entry or the ability of competitors to provide next-generation services.¹¹³ In addition, the Applicants argue that consideration of "new spectrum the Commission has now licensed and will soon license" in the input market further alleviates any post-merger competitive concerns.¹¹⁴ Mid-Tex Cellular, in requesting that the Commission require the combined entity to divest "CMRS spectrum" in excess of 70 MHz in any county in Texas 9B2 RSA (part of Texas 9-Runnels (CMA660)), includes AWS-1 spectrum as part of the relevant input market.¹¹⁵

30. In light of recent developments discussed below, we now find that, applying the criteria identified in the *Cingular-AT&T Wireless Order*, the input market also includes throughout the nation an additional 80 MHz of the 698-806 MHz spectrum band ("700 MHz spectrum"), bringing the total amount of spectrum suitable for mobile telephony nationwide to approximately 280 MHz.¹¹⁶ Also consistent with

¹¹⁰ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21569-70 at ¶ 109. See also *Sprint-Nextel Order*, 20 FCC Rcd at 13994 at ¶ 65; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13074 ¶ 49.

¹¹¹ *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14878-79 ¶ 30. See also *ALLTEL-Midwest Order*, 21 FCC Rcd at 11543 18 ¶ 31 n.129; *Sprint-Nextel Order*, 20 FCC Rcd at 13992-93 n.156; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 10371 n.127; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21561 n.283.

¹¹² Application, Exhibit 1 at 17, 28-30.

¹¹³ *Id.* at 17.

¹¹⁴ *Id.* at 18.

¹¹⁵ Mid-Tex Cellular Petition to Deny at 2 n.3. Mid-Tex Cellular also requests that the Commission closely scrutinize the competitive impact of the proposed transaction on Texas 9B2 RSA in light of the recently proposed acquisition by AT&T of 700 MHz spectrum currently held by Aloha Spectrum Holdings Company LLC ("Aloha"). Mid-Tex Cellular Supplement at 1-3. We decline to consider the impact of AT&T's acquisition of Aloha's 700 MHz spectrum in the context of this proposed transaction. The competitive effects of AT&T's proposed acquisition of this 700 MHz spectrum will be considered in the context of the Commission's evaluation of the AT&T-Aloha transaction.

¹¹⁶ See, e.g., <http://www.cellular-news.com/story/22318.php> (Alcatel-Lucent shows its CDMA2000 mobile network solution for the 700 MHz band). See also, e.g., Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the (continued....)

the Commission's previous reasoning for applying a spectrum aggregation screen based approximately on one-third of the total bandwidth available for mobile telephony, we revise the spectrum aggregation screen to 95 MHz, approximately one-third of the 280 MHz of the spectrum suitable for mobile telephony today. As with the Commission's previous orders, setting this screen at approximately one third of the total suitable spectrum is designed to be conservative and ensure that any markets in which there is potential competitive harm based on spectrum aggregation is identified and subjected to more in-depth analysis. Under the revised screen we are adopting, we adopt a similarly conservative approach, finding that there is no need for additional analysis where there was at least 185 MHz of spectrum (of the 280 MHz of mobile telephony spectrum) available to other firms to compete in the provision of mobile telephony services.

31. We conclude that the commercial spectrum in the 700 MHz band is suitable for the provision of mobile telephony service, as defined above, and should be considered a component of the input market for spectrum when evaluating this transaction. This 700 MHz spectrum not only is technically capable of supporting mobile services, but also is in many respects ideally suited for the provision of these services. We are also confident at this point in time that it will be licensed and available on a nationwide basis in the sufficiently near-term – less than a year and a half¹¹⁷ – that the prospect of its availability will discipline current market behavior.¹¹⁸ Specifically, the Commission already has auctioned and issued authorizations for 18 megahertz of 700 MHz spectrum – 12 megahertz paired and 6 megahertz unpaired – and these licensees are permitted to operate fixed or mobile services, provided that they comply with relevant technical and operational rules contained in Part 27, and at least one licensee is currently using that spectrum to provide mobile service.¹¹⁹ For example, Qualcomm's MediaFLO service uses 700 MHz spectrum to provide mobile video programming.¹²⁰ Licenses covering another 62 MHz allocated for commercial use will be auctioned in Auction 73, scheduled to begin January 24, 2008, with auction

(Continued from previous page)

Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007); and Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76, *Public Notice*, DA 07-4171 (rel. Oct 5, 2007).

¹¹⁷ We note the DOJ/FTC Merger Guidelines state that a significant market impact from entry must result within two years for the entry to be considered "timely," and thus potentially a factor ameliorating the enhancement of market power or hindering its exercise. *DOJ/FTC Merger Guidelines* § 3.2. The timing of nationwide availability of the 700 MHz spectrum falls well within this period.

¹¹⁸ We note that East Kentucky Network, in responding to the Applicants' allegations that it failed to disclose in its petition that it holds a 700 MHz license in CMA450, argues that its 700 MHz license offers "no near-term prospect for improvement of the competitive circumstances in the region." East Kentucky Network Reply at 4. East Kentucky Network argues that handsets using 700 MHz spectrum for voice services that are compatible with CDMA cellular and PCS systems are not readily available, and even if they were, co-channel television incumbents preclude East Kentucky Network from using its 700 MHz license. *Id.*; Kuzehkanani Declaration at 1. As discussed below, we are ordering a business unit divestiture in CMA450 for other reasons, but note that the alleged absence of particular kinds of mobile devices for 700 MHz spectrum does not mean that we should not consider 700 MHz spectrum as part of the input market in this transaction.

¹¹⁹ Section 27.60 permits licensees to operate in the Band and provide reasonable protection to incumbent TV stations.

¹²⁰ *Verizon Wireless Lifts Curtain on V CAST Mobile TV; True Broadcast Quality, the Best of TV*, News Release, Verizon Wireless, Jan. 7, 2007.

procedures having been announced on October 5, 2007.¹²¹ Statutory deadlines for both commencing the auction and for depositing the proceeds with the U.S. Treasury dictate this timeframe for assigning the spectrum. More importantly, all of this spectrum will be cleared of broadcast incumbents and available for mobile use by February 17, 2009, the statutory date mandated by Congress for the completion of the Digital Television transition.¹²²

32. At this time, however, we find it is not appropriate to include other spectrum bands – particularly AWS-1 and BRS spectrum – in the initial spectrum screen that we apply to the input markets for mobile telephony spectrum. These bands do meet one of the criteria for suitability. AWS-1 and BRS spectrum is capable of supporting mobile services given its physical properties and the state of equipment technology. And the spectrum is licensed with allocation and service rules that allow mobile uses.¹²³ However, we conclude that neither AWS-1 spectrum (1710-1755 MHz and 2110-2155 MHz) nor BRS spectrum is available on a nationwide basis. In many markets, this spectrum is currently committed to another use that effectively precludes its use for mobile telephony, and it is unclear whether it will be available for mobile use in the sufficiently near-term. Excluding this spectrum on this basis at this time is appropriate since we have always intended our screen to be conservative, that is, erring in the direction of identifying more rather than fewer markets for in-depth review.¹²⁴ Limiting the scope of suitable spectrum as described here continues this cautious approach with regard to spectrum aggregation.

33. The AWS-1 spectrum is not generally available for mobile use as yet due to the ongoing clearance of governmental and non-governmental incumbent users. Moreover, the clearance process has no single timetable.¹²⁵ Rather, different pieces of the band are on different clearance schedules, with some extending beyond another two years.¹²⁶ Therefore, we cannot find that the AWS-1 spectrum

¹²¹ Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76, *Public Notice*, DA 07-4171 (rel. October 5, 2007) (“700 MHz Procedures Public Notice”).

¹²² See Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (“DRA”) (amending Section 309(j)(14) and Section 337(e) of the Communications Act, as amended). Title III of the DRA is the DTV Act.

¹²³ As of April 30, 2007, the Wireless Telecommunications Bureau had granted all of the 1,087 AWS-1 licenses won in Auction 66, with the exception of one license subject to a November 13, 2007 deadline for the applicant to file a certification to qualify for a Tribal Land Bidding Credit.

¹²⁴ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69 ¶¶ 108-09; see also *Sprint-Nextel Order*, 20 FCC Rcd at 13993-94 ¶¶ 62, 65; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 10374 ¶ 49.

¹²⁵ See Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66, *Public Notice*, 21 FCC Rcd 4562, 4573-77 (2006) (describing incumbents in the 1710-55 MHz and 2110-55 MHz bands).

¹²⁶ See National Telecommunications and Information Administration, 1710-1755 MHz Introduction, <http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm> (last visited Oct. 22, 2007) (provides information on AWS relocation, including a relocation schedule and cost summary for AWS-1 relocation); see also Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Service to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, Service Rules for Advances Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Ninth Report and Order and Order*, 21 FCC Rcd 4473 (2006) (recon. pending) (establishing procedures for the relocation of Broadband Radio Service (BRS) operations from the 2150-2160/62 MHz band and Fixed Microwave Service (FS) operations in the 2.1 GHz band); The Federal Communications Commission and the National Telecommunications and Information Administration – Coordination Procedures in the 1710-1755 MHz Band, *Public Notice*, WTB Docket No. 02-353, 21 FCC Rcd 4730 (2006) (providing guidance to assist AWS-1 licensees in protecting from interference incumbent federal government operations until they have been relocated to other frequency bands or technologies); Letter from Michael D. Gallagher, Assistant Secretary for Communications and Information, United States Department of Commerce, to Kevin J. Martin, Chairman, Federal Communications (continued....)

capacity will be available on a nationwide basis soon enough to be treated as a factor affecting current behavior in every market.

34. Similarly, the availability of BRS spectrum for new mobile uses depends on the ongoing transition process.¹²⁷ This process, while well advanced, is not complete,¹²⁸ and is by its nature local. As a result, progress will differ significantly from market to market. Thus in the case of this spectrum, too, we cannot find that it will be available on a nationwide basis soon enough to be treated as a factor affecting current behavior nationwide.

35. In our detailed, case-by-case analysis of markets caught by the initial screen, however, we do consider the extent to which AWS-1 or BRS licenses are in fact available *locally*, and if so, include them in the local spectrum input market. As these spectrum bands, and perhaps others, become available for more immediate use on a nationwide basis, we expect to continue to update our initial spectrum screen.¹²⁹

(Continued from previous page) _____

Commission, dated December 27, 2005 (notifying the Commission of the estimated relocation costs and timelines for relocation of eligible federal entities assigned to frequencies from 1710 to 1755 MHz).

¹²⁷ On July 29, 2004, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking* that revamped the rules and policies governing the licensing of services in the 2500-2690 MHz MDS/ITFS band. See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 03-66, 19 FCC Rcd 14165 (2004) (*BRS/EBS R&O* and *FNPRM* as appropriate). In particular, the Commission adopted a new band plan that restructures the 2500-2690 MHz band into upper and lower-band segments for low-power operations (UBS and LBS, respectively), and a mid-band segment (MBS) for high-power operations. The Commission also adopted a transition plan for relocating EBS licensees and BRS licensees from their current channel locations to their new spectrum blocks in the LBS, MBS, or UBS. Specifically, the transition occurs in the following five phases: (1) initiating the transition process by filing an Initiation Plan with the Commission; (2) planning the transition; (3) reimbursing the costs of the transition; (4) terminating existing operations in transitioned markets; and (5) completing the transition by filing the Post-transition Notification with the Commission and sending a copy to all affected BRS and EBS licensees. *Id.* at 14198 ¶ 74. On April 27, 2006, the Commission released a *Third Memorandum Opinion and Order and Second Report and Order* that, among other things, revised the transition area size from Major Economic Areas (MEAs) to Basic Trading Areas (BTAs). Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Third Memorandum Opinion and Order and Second Report and Order*, WT Docket No. 03-66, 21 FCC Rcd 5606, 5642 ¶ 65 (2006).

¹²⁸ Currently, Initiation Plans have been filed in 327 out of 493 BTAs, and the transition has been completed in 113 BTAs.

¹²⁹ Although the degree to which AWS-1 or BRS licenses will be employed to provide mobile rather than fixed services is not entirely clear, based on our experience and current market trends, we find that a considerable portion of this capacity will be dedicated to mobile service. In addition, any attempt to exercise market power in mobile telephony markets would result in profit opportunities for entrants and so work to attract this spectrum to the mobile sector. At least one AWS license winner has announced plans to deploy a 3G next-generation network using the spectrum licenses it acquired in Auction 66, and is reported to be rolling out its 3G network. See T-Mobile USA Secures Rights from FCC for Auctioned Spectrum, News Release, T-Mobile, Nov. 30, 2006; Simon Flannery et al., 700 MHz Primer: Beachfront Property For Sale, Morgan Stanley Research, Morgan Stanley & Co. Incorporated, Feb. 14, 2007, at 4; Federal Court Allows Wireless Carriers, Handset Makers to Import Qualcomm Chips, TRDAILY, Sept. 13, 2007, at 7; <http://www.intomobile.com/2006/11/27/nokia-selected-to-deploy-wcdma-3g-for-t-mobile-usa.html> (Nokia selected to deploy WCDMA 3G for T-Mobile in the AWS spectrum); <http://www.phonescoop.com/news/item.php?n=2348> (T-Mobile's first 3G phone from Nokia quad-band GSM/EDGE radios as well as AWS 1700 MHz WCDMA). See also Q2 2007 Leap Wireless International Earnings Conference Call – Final, FD (Fair Disclosure) Wire, August 7, 2007 (Leap Wireless is working with the suppliers, to develop an attractive portfolio of AWS capable handsets, for the first half of 2008). On May 21, 2007, Clearwire (continued....)

36. *Market participants.* In its recent wireless merger orders, when computing initial measures of market concentration, the Commission limited its analysis of transactions involving mobile telephony services to cellular, PCS, and SMR facilities-based service providers, and excluded satellite service providers, wireless VoIP providers, MVNOs, and resellers from consideration.¹³⁰ We continue to find that mobile telephony offered by facilities-based providers using cellular, PCS, and SMR spectrum and employing various technologies offer the same basic voice and data functionality and are indistinguishable to the consumer.¹³¹ As discussed above, because of recent developments we also will consider 700 MHz spectrum in our spectrum analysis. To the extent that entities provide facilities-based mobile telephony services using 700 MHz spectrum, we also consider them to be market participants. In addition, we will consider AWS-1 and BRS providers market participants in our in-depth analysis of individual local markets not eliminated by our initial screen to the extent that they provide mobile telephony services.

37. The Applicants assert that “any analysis of the competitive effects of a merger between wireless service providers today must also take account of a new generation of [MVNOs] and other resellers that have emerged to challenge the facilities-based service providers.”¹³² The Applicants note the growth in subscriber numbers for mobile resellers and the entrance of new actors in the mobile reseller market, including cable companies seeking to leverage their market presence and installed customer base. Nonetheless, the Applicants maintain that “even if the analysis is limited to facilities-based service providers, the transaction still will not harm competition.”¹³³ East Kentucky Network asserts that the

(Continued from previous page) _____

Corporation announced that it has successfully completed the first phase of one of the country's first mobile WiMAX field trials in the Portland, Oregon using infrastructure equipment based on the IEEE 802.16e standard and relying on Clearwire's spectrum in the 2.5GHz frequency band. *See*

http://newsroom.clearwire.com/phoenix.zhtml?c=214419&p=irol-newsArticle_print&ID=1036441&highlight=

¹³⁰ *See GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 ¶ 31; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 ¶ 22; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *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. Although satellite providers offer facilities-based mobile voice and data services, the price of these services is, at present, significantly higher than for services offered by cellular, PCS, or SMR providers. Therefore, most consumers would not view satellite phones as substitutes for mobile telephony. *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 Oct. 12, 2006). *See also GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 n.108; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 n.104; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38. We also do not consider wireless VoIP providers as providing the same functionality as mobile telephony providers because the service they provide now is nomadic rather than mobile. *See GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 n.108; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 n.104; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *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). *See GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 n.108; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 n.104; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544-45 n.134; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 n.151.

¹³¹ *See, e.g., GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 ¶ 31; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 32; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 91.

¹³² Application, Exhibit 1 at 20.

¹³³ *Id.* at 22.

Applicants' desire to include MVNOs in the analysis "does not consider the fact that these services are not yet widely available and will likely remain unavailable for a long time – especially in rural markets such as east Kentucky."¹³⁴

38. Under Commission precedent, we generally limit our analysis to facilities-based service providers, either nationwide or regional, excluding MVNOs and resellers from consideration when computing initial concentration measures. While the Commission has acknowledged that non-facilities based service options have an impact in the marketplace and in some instances may provide additional constraints against anti-competitive behavior, to date, in evaluating mergers among wireless service providers, the Commission has not included resellers or MVNOs in its initial screen.¹³⁵ We take account of the role of resellers and MVNOs, to the extent necessary, in our discussion of likely competitive effects below.¹³⁶ Accordingly, we will use the same market participant definition in this analysis as the Commission has in its recent wireless merger orders, and expand this analysis to include facilities-based entities that are using 700 MHz spectrum.

B. Initial Screen

39. Having determined the appropriate market definitions for this transaction, our competitive analysis next applies the Commission's initial screen, followed by a further case-by-case review of the markets identified by that screen. As discussed in previous wireless merger orders, the purpose of this initial screen is to eliminate from further review those markets in which there is clearly no competitive harm relative to today's generally competitive marketplace.¹³⁷ It is designed to be conservative and ensure that we did not exclude from further scrutiny any geographic areas in which the potential for anticompetitive effects exists. In addition to market concentration, which is measured with HHI data, we consider the input market of spectrum that is suitable for the provision of mobile telephony services because spectrum is a necessary resource for wireless service providers to compete effectively. This initial screen is only the beginning of our competitive analysis. Subsequent sections examine in a case-by-case analysis those markets identified by the screen, where potential harm is possible, in order to determine whether harm is in fact likely and a remedy needed.

40. For this transaction, we use our December 2006 Numbering Resource Utilization/Forecast ("NRUF") database, which tracks phone number usage by all telecommunications service providers, including wireless service providers, to estimate mobile telephony subscribership levels, market shares, and concentration for various geographic markets.¹³⁸ Consistent with our discussion of geographic

¹³⁴ East Kentucky Network Reply at 12.

¹³⁵ See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 ¶ 31; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 ¶ 22; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *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.

¹³⁶ *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14881 ¶ 35; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 38; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92.

¹³⁷ See, e.g., *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14881 ¶ 36; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11547 n.151; *Sprint-Nextel Order* at 20 FCC Rcd 13993 ¶ 62; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073-74 ¶ 48; *Cingular-AT&T Wireless Order* 19 FCCR at 21568-69 ¶¶ 106-109.

¹³⁸ 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 providers must report to the FCC the quantity of their phone numbers that have been assigned to end users, thereby permitting the Commission to calculate the total number of mobile (continued....)

market definition above, in calculating market shares and market concentration, we analyze carrier data using two sets of geographic areas, CEAs¹³⁹ and CMAs.¹⁴⁰ Our initial screen criteria identifies, for further case-by-case market analysis, those markets in which, post- transaction: (1) the HHI would be greater than 2800 and the change in HHI will be 100 or greater, (2) the change in HHI would be 250 or greater, regardless of the level of the HHI, and (3) the Applicants would have a 10 percent or greater interest in 95 MHz or more of cellular, PCS, SMR, and 700 MHz spectrum.

41. Our initial screen identifies a total of 32 CMAs and 29 CEAs that require further competitive review. Neither the Applicants nor Petitioners identify markets that would be captured using any particular initial screens. The Applicants do state, however, that there is facilities-based service overlap in 38 CMAs.¹⁴¹

C. Horizontal Issues

42. This section examines how the transaction could affect competitive behavior in the 32 CMAs and 29 CEAs identified by the initial screen as requiring additional analysis to determine whether the proposed transaction would result in competitive harm. As discussed in the Commission's recent wireless

(Continued from previous page) _____

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 wireless service providers. *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.

¹³⁹ 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* Kenneth P. Johnson & John R. Kort, *2004 Redefinition of the BEA Economic Areas*, SURV. OF CURRENT BUS., Nov. 2004, at 68-71. For purposes of this transaction, we did not adopt the new CEA definitions.

¹⁴⁰ *See e.g.*, *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14890-91 ¶ 61; *DoCoMo-Guam Order*, 21 FCC Rcd at 13596 n.110; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11545 ¶ 35; *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. *See* discussion justifying the use of CEAs and CMAs *supra* ¶ 25.

¹⁴¹ Willig and Oszag Declaration at 14.

merger orders, competition may be harmed either through unilateral actions¹⁴² by the merged entity or through coordinated interaction¹⁴³ among firms competing in the relevant market.

43. In this order, we find that extended qualitative discussions of unilateral effects and coordinated interaction are unnecessary.¹⁴⁴ First, many aspects of our previous analyses in the wireless merger orders are unchallenged here.¹⁴⁵ Second, because only a limited number of local areas require in-

¹⁴² 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 *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 ¶ 68; *DoCoMo-Guam Order*, 21 FCC Rcd at 13597 ¶ 25, n.112; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11550 ¶ 47; *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.

¹⁴³ Coordinated interaction consists of actions by a group of firms that are profitable for each of the firms involved only because the other firms react by accommodating these actions rather than attempting to undercut them. See *DOJ/FTC Horizontal Merger Guidelines* § 2.1; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14896 ¶ 77; *DoCoMo-Guam Order*, 21 FCC Rcd at 13597 ¶ 25, n.113; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11554 ¶ 60; *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.

¹⁴⁴ 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 *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14894-99 ¶¶ 69-85; *DoCoMo-Guam Order*, 21 FCC Rcd at 13597 n.114; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11550-55 ¶¶ 47-62; *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.

¹⁴⁵ For unilateral effects, the unchallenged aspects include: (1) product differentiation and substitutability (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549 n.73; *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 *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549 n.73; *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 *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 14009 ¶ 115). For coordinated interaction, the unchallenged aspects include: (1) firm and product homogeneity (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549 n.73; *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 *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549 n.73; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21585 ¶ 163); (3) number of firms (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 13996 ¶¶ 71-72); (4) technology development (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at (continued....))

depth analysis, it is feasible to provide a market-by-market discussion of each CMA where we are requiring business unit divestitures.¹⁴⁶ We therefore discuss unilateral effects and coordinated interaction at a general level only to the extent issues are raised by the parties to this proceeding.¹⁴⁷

44. *Unilateral Actions.* AT&T's acquisition of Dobson could lead to changes in the structure of the 32 CMAs or 29 CEAs identified above by our initial screen for further analysis. Thus, we have examined in more detail the possibility that the merger may lead to competitive harm through unilateral actions by the merged entity.¹⁴⁸ Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by "elevating price and suppressing output."¹⁴⁹ As discussed in the Commission's wireless merger orders, in the case of mobile telephony service, as defined above, this might take the form of delaying improvements in service quality or adversely adjusting plan features without changing the plan price.¹⁵⁰ Incentives for such unilateral competitive actions vary with the nature of competition in the relevant markets.

45. As we explain below, the market for mobile telephony service in the United States appears to be differentiated. Wireless service providers do not offer a completely homogeneous service. Rather, the service providers compete vigorously on the basis not only of price but also of other plan features, call quality and geographic coverage, and customer service. While service providers can change some of

(Continued from previous page)

13598 n.115; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 13998-99 ¶¶ 81-83); (5) response of rivals (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 13999-14000 ¶¶ 84-88); (6) transparency of information (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549 n.73; *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 *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549 n.73; *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).

¹⁴⁶ See discussion *supra* Appendix A.

¹⁴⁷ See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893-94 ¶ 68; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11549-50 ¶ 46.

¹⁴⁸ See *ALLTEL-Midwest Order*, 21 FCC Rcd at 11550 ¶ 47; *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.

¹⁴⁹ See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14894 ¶ 69; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11550 ¶ 47; *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.

¹⁵⁰ 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 *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.204; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11550 n.176; *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.

these attributes relatively quickly, others – particularly non-price attributes such as quality and coverage – require investments in spectrum or infrastructure and are not easily modified.

46. Rather than applying an initial screen of the kind the Commission has used in the past (and which we continue to use here), the Applicants instead focus their discussion of unilateral competition factors on the 38 CMAs where AT&T and Dobson currently have overlapping facilities-based services.¹⁵¹ The Applicants assert that the number of competitors in each of the 38 CMAs is robust, with national service providers Sprint, T-Mobile, and Verizon having facilities-based services in 25 of the 38 CMAs. In the remaining 13 CMAs, two of those three national service providers are providing facilities-based service. Further, the Applicants argue ALLTEL and/or US Cellular offer service in 9 of the remaining 13 CMAs.¹⁵² The Applicants also assert that, although they lack the data to calculate markets shares for all firms, it is clear that the combined AT&T-Dobson market share post-merger “in some areas” would be too small to create concern “in those areas.”¹⁵³ They do not address whether concern based on market share is appropriate in other areas.

47. The Applicants claim they do not have data necessary to quantify the exact extent to which customers view AT&T and Dobson as close substitutes, but offer the views of AT&T executives that Dobson is less of a competitor/substitute for AT&T than are other national service providers.¹⁵⁴ Regarding the dynamism of the industry, and the ease with which competitors can take customers from the newly merged firm, the Applicants assert that the rate at which market share can change through “churn” more accurately reflects the nature of the competitive climate in today’s wireless telephony marketplace than does a static measure such as market share. In addition, they argue, non-facilities-based service providers are an increasing source of competition.¹⁵⁵ On the question of whether competing firms can expand their services to compete with the new entity, we have in the past examined questions such as the technological capacity of competitors to add new subscribers quickly to existing systems, as well as the possibility of expansion of those systems through, *e.g.*, greater buildout or use of additional spectrum where available.¹⁵⁶

48. *Coordinated Interaction.* As discussed in the previous wireless merger orders, 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.¹⁵⁷ 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.¹⁵⁸ Successful coordination

¹⁵¹ Willig and Orszag Declaration at 5.

¹⁵² *Id.* at 15.

¹⁵³ *Id.* at 16.

¹⁵⁴ *Id.* at 17. *See also* Roth Declaration at 3; Application, Exhibit 1 at 30-31.

¹⁵⁵ Willig and Orszag Declaration at 16, 19-20; Application, Exhibit 1 at 31.

¹⁵⁶ *See, e.g., ALLTEL-Midwest Order*, 21 FCC Rcd at 11552 ¶ 50; *Sprint-Nextel Order*, 20 FCC Rcd at 14007-08 ¶¶ 108-114; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13079 ¶ 65; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21575-76 ¶¶ 134-37.

¹⁵⁷ *See GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14896 ¶ 77; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11554 ¶ 60; *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.

¹⁵⁸ *See GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14896 ¶ 77; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11554 ¶ 60; *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.

depends on two key factors. The first is the ability to reach terms that are profitable for each of the firms involved, and the second is the ability to detect and punish deviations that would undermine the coordinated interaction.¹⁵⁹

49. The Applicants claim that the AT&T-Dobson 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, in addition to the factors cited above, coordination of activities by nominal competitors is deterred by their mutual inability to detect violations of any agreement or enforce penalties for doing so, and by the uncertainty of future demand for wireless services, which makes coordinated interaction difficult.¹⁶⁰

50. Neither the comments of the Applicants or of Petitioners on coordinated interaction cause us to alter our general views on this topic, as set out in the Commission's recent wireless merger orders.¹⁶¹ Thus, those views underpin the market-by-market analysis to which we now turn.

D. Market-by-Market Analysis

1. Analytical Standard

51. In this section, we undertake a granular analysis of local markets using the approach the Commission adopted in its recent wireless merger orders.¹⁶² In undertaking this market-by-market analysis, we consider variables that the general analyses in these orders have shown are important for predicting the incentive and ability of service providers to successfully restrict competition on price or non-price terms through coordinated interaction, and the incentive and ability of the merged entity unilaterally to elevate prices or suppress output.¹⁶³ These include: the total number of rival service providers; the number of rival firms that can offer competitive nationwide service plans; the coverage of the firms' respective networks; the rival firms' market shares; the merged entity's post-transaction market share and how that share changes as a result of the 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 service providers. In reaching determinations, we balance these factors on a market-specific basis, and consider the totality of the circumstances in each market.

52. Thus, for example, if our count of the number of rival service providers and our scrutiny of their spectrum holdings and network coverage indicates that the response of rival service providers will likely be sufficient to limit the ability and incentive of the combined entity to raise prices unilaterally, we would find that the transaction is not harmful to competition in a specific market even in the presence of a

¹⁵⁹ See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14896 ¶ 77; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11554 ¶ 60; *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.

¹⁶⁰ Willig and Orszag Declaration at 24-25.

¹⁶¹ See *ALLTEL-Midwest Order*, 21 FCC Rcd at 11555 ¶ 62; *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.

¹⁶² See, e.g., *ALLTEL-Midwest Order*, 21 FCC Rcd at 11555, 11574-75 ¶ 63, App.; *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.

¹⁶³ See, e.g., *ALLTEL-Midwest Order*, 21 FCC Rcd at 11555 ¶ 63; *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.

relatively high post-transaction market share of the combined entity.¹⁶⁴ 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.¹⁶⁵

2. Results of Analysis

53. Our market-by-market analysis finds that there would be a significant likelihood of harm in the proposed transaction, either from unilateral effects or coordinated interaction, in four of the 32 CMAs identified by the initial screen. As the Commission determined in its previous wireless merger orders, this multi-factor, market-specific analysis, which employs a combination of data sources, provides a reliable basis for making our determinations herein.¹⁶⁶

54. For these markets, the market share and HHI information are derived from our analysis of data compiled in our NRUF database, which tracks phone number usage by all telecommunications service providers, including wireless service providers. 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. 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.

55. In addition, we examine data from our LNP database through December 30, 2006. 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.¹⁶⁷ We also analyze carrier launch and coverage information available from a variety of public sources, as well as information regarding spectrum holdings,¹⁶⁸ which we obtained from our licensing databases and from the Applications.

56. *Specific Markets in which Competitive Harm is Likely.* We list, below, the four markets in which our case-by-case analysis indicated that competitive harm is likely as a result of this transaction. Detailed discussion of these markets is contained in Appendix A. As we did in the *Cingular-AT&T Wireless Order*, we find that, in any market in which the merger would reduce the number of competitors to two or fewer, a market with this degree of concentration presents a significant likelihood of successful unilateral effects and/or coordinated interaction even if the merged entity's market share is not especially high.¹⁶⁹ The following four markets, which are the markets where we are requiring business unit divestitures, represent all the markets in which the acquisition will reduce the number of fully constructed

¹⁶⁴ See, e.g., *ALLTEL-Midwest Order*, 21 FCC Rcd at 11555 ¶ 64; *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.

¹⁶⁵ See, e.g., *ALLTEL-Midwest Order*, 21 FCC Rcd at 11555 ¶ 64; *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.

¹⁶⁶ *ALLTEL-Midwest Order*, 21 FCC Rcd at 11556 ¶ 65; *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.

¹⁶⁷ This data was provided to the Commission by NeuStar.

¹⁶⁸ Sprint Nextel's SMR spectrum holdings are not included in its spectrum aggregation totals.

¹⁶⁹ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 191. See also *Sprint-Nextel Order*, 20 FCC Rcd at 14011 ¶ 119; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13096 ¶ 118.

operators from three to two, or (in one case) from two to one.¹⁷⁰ In these markets, we expect that the post-transaction market share or spectrum holdings of the combined entity likely make it profitable for the entity to raise price and restrict output, and the presence and capacity of rival service providers, taking into account near-term opportunities to obtain access to additional spectrum, are such that the response of rival service providers is likely insufficient to deter such unilateral actions.

57. Most of these four markets are smaller markets with high market shares for the merged entity and few competing service providers. In these markets, we are concerned that, post-merger, competing service providers would not be sufficiently numerous to deter anticompetitive behavior by the merged entity.¹⁷¹

CMA	Name
CMA448	Kentucky 6 - Madison
CMA450	Kentucky 8 - Mason
CMA600	Oklahoma 5 - Rogers Mills
CMA661	Texas 10 - Navarro

E. Other Issues

1. Roaming

58. *Background.* T-Mobile in its comments, and Mid-Tex Cellular and East Kentucky Network in their petitions, raise concerns about the potential for the transaction to have an adverse impact on roaming arrangements and request that the Commission prevent such adverse outcomes by imposing certain conditions on the transaction.

59. 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.¹⁷² Subscribers can roam manually by providing a credit card number to the host carrier, while automatic roaming allows mobile telephone subscribers to place calls while roaming as they do in their home coverage area, by simply entering a phone number and pressing “send.” The provision of roaming is subject to the requirements of Section 201, 202, and 208 of

¹⁷⁰ For purposes of this determination, we define fully built-out as having coverage of at least 70% of the population in the CMA.

¹⁷¹ Application of the initial screen on a CEA basis shows that no potential markets of concern are identified that are not also identified by CMA application of the screen. For convenience, we limit our discussion of the markets of concern to CMAs because, upon completing our competitive analysis, we find that the most exact divestiture area to eliminate concerns of competitive harm would be CMAs. Therefore, we undertake our in-depth analysis on the basis of CMA areas only.

¹⁷² See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14901 ¶ 91; *DoCoMo-Guam Order*, 21 FCC Rcd at 13600 ¶ 33; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11561-62 ¶ 98; *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 Docket No. 05-265, 00-193, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 15047, 15048 ¶ 2 (2005) (“*Roaming Notice*”).

the Communications Act.¹⁷³ In August 2007, the Commission determined that when “a reasonable request is made by a technologically compatible [commercial mobile radio service] carrier, a host [commercial mobile radio service] carrier must provide automatic roaming to the requesting carrier outside of the requesting carrier’s home market . . .”¹⁷⁴ on reasonable and non-discriminatory terms and conditions.¹⁷⁵ The Commission also said that if a carrier makes a reasonable request for automatic roaming, “then the would-be host carrier cannot refuse to negotiate an automatic roaming agreement with the requesting carrier.”¹⁷⁶ At the same time, the Commission maintained its existing manual roaming requirement, which imposes on CMRS providers the obligation to permit customers of other service providers to roam manually on their networks.¹⁷⁷

60. Specifically, T-Mobile notes that AT&T’s acquisition of Dobson will reduce the number of GSM service providers by one in multiple cellular market areas in which AT&T and Dobson currently operate and argues that, coupled with the Commission’s recently adopted “home market exclusion” to the new automatic roaming requirement, AT&T’s market position following the merger will provide it with significant leverage to deny roaming arrangements in many areas or to force its roaming partners to accept less favorable roaming rates, terms, and conditions.¹⁷⁸ T-Mobile requests that the Commission condition its approval of the transaction on two requirements: first, that AT&T continue to honor Dobson’s existing roaming agreements with T-Mobile and other service providers; and second, that AT&T provide automatic roaming services at just and reasonable rates, terms, and conditions to other compatible service providers in all service areas, regardless of whether the other service providers may have wireless licenses or spectrum usage rights in the same areas.¹⁷⁹

61. Mid-Tex Cellular alleges that, prior to their proposed merger, AT&T and Dobson entered into preferential roaming agreements with one another, and argues that the purpose and effect of this preferential roaming treatment and AT&T’s proposed acquisition of Dobson is to eliminate competitors by driving out of business smaller, rural service providers that AT&T is not acquiring.¹⁸⁰ Mid-Tex Cellular expresses concern that AT&T will use its market dominance gained as a result of the merger to engage in anti-competitive discriminatory pricing practices, such as charging Mid-Tex Cellular roaming premiums, leveraging increased subscriber share to exact discriminatory roaming rates, or favoring larger service providers in “sweetheart” roaming agreements.¹⁸¹ To eliminate these anti-competitive practices,

¹⁷³ Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 07-143, at 2 ¶ 1 (“*Roaming Report and Order*”).

¹⁷⁴ *Id.* at 2 ¶ 2. *See also id.* at 15 ¶ 33.

¹⁷⁵ *Id.* at 10 ¶ 23.

¹⁷⁶ *Id.* at 12 ¶ 28.

¹⁷⁷ 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.

¹⁷⁸ T-Mobile Comments at 5; T-Mobile Reply Comments at 1-3.

¹⁷⁹ T-Mobile Comments at 1-2, 6.

¹⁸⁰ Mid-Tex Cellular Petition to Deny at 8.

¹⁸¹ *Id.*, at 9; Mid-Tex Cellular Reply at 4.

Mid-Tex Cellular requests that the Commission limit the amount of cellular spectrum that AT&T holds in the Texas 9B2 market and require AT&T to enter into a roaming agreement that does not discriminate based on volume discounts or geographic location.¹⁸² In particular, Mid-Tex Cellular requests that the Commission condition its approval of the merger on a requirement that AT&T offer Mid-Tex Cellular its lowest roaming rate regardless of the volume of minutes Mix-Tex roams on AT&T's network.¹⁸³

62. Finally, East Kentucky Network argues that, because AT&T will acquire control of a both of the 800 MHz cellular licenses in CMA450 through the proposed Dobson merger, the merger will reduce the prospects for an effective CDMA competitor to emerge in CMA450 and thereby deprive East Kentucky Network of a reliable roaming partner in that market.¹⁸⁴ East Kentucky Network, a CDMA operator, provides wireless services in direct competition with an AT&T affiliate in two neighboring rural service areas – CMA451 and CMA452 – and argues that allowing AT&T to hold both cellular licenses in CMA450 will impair its ability to compete with AT&T in CMA451 and CMA452 because customers in those two markets need to use their cellphones when traveling in CMA450 and the absence of a reliable wireless network using CDMA technology in CMA450 results in inadequate roaming service for its customers in that market.¹⁸⁵ East Kentucky Network further argues that the 800 MHz cellular spectrum has superior propagation characteristics when compared to 1900 MHz PCS spectrum, that it is economically more efficient to use cellular spectrum to serve the sparsely populated rural and mountainous terrain of CMA450 for this reason, and that the merger will relegate CDMA operators to use of 1900 MHz PCS spectrum that will require a more costly buildout to achieve the same geographic coverage.¹⁸⁶ East Kentucky Network requests that one of the 800 MHz cellular licenses for CMA450 be made available for East Kentucky Network to purchase at an affordable price, or alternatively that the license be sold to another CDMA operator that commits to a comprehensive buildout plan in CMA450.¹⁸⁷

63. The Applicants reply that T-Mobile's and Mid-Tex Cellular's requests for roaming conditions are without merit and request that the Commission approve the transaction without conditions.¹⁸⁸ The Applicants note that T-Mobile's request for a "home roaming" condition and Mid-Tex Cellular's request for "most favored" rate requirements were considered and rejected in the Commission's recent *Roaming Report and Order*, and argue that concerns with these conclusions of the *Roaming Report and Order* are properly addressed through further comments or petitions for reconsideration in the rulemaking, and not in the form of requests for merger conditions.¹⁸⁹ The Applicants similarly argue that a merger application is not the appropriate forum for enforcing T-Mobile's contractual rights under its roaming agreement with Dobson, and that the Commission's roaming order made clear that the Commission will not intervene in the setting of rates in roaming agreements unless a specific complaint is filed with the Commission alleging that such rates are unreasonable or discriminatory.¹⁹⁰ They further argue that, because AT&T will continue to need to rely on smaller regional service providers in particular, as well as T-Mobile, as roaming partners to provide roaming services in areas where AT&T may not have coverage, this

¹⁸² Mid-Tex Cellular Petition to Deny at 9.

¹⁸³ *Id.*; Mid-Tex Cellular Reply at 5.

¹⁸⁴ East Kentucky Network Petition to Deny at iii, 5.

¹⁸⁵ *Id.* at iii, 2-5; Declaration of Gerald Robinette, at 1-2; Declaration of Paul DeLong, at 1-2.

¹⁸⁶ East Kentucky Network Petition to Deny at 5; Declaration of Gerald Robinette, at 2.

¹⁸⁷ East Kentucky Network Petition to Deny at 13-14.

¹⁸⁸ Joint Opposition at ii, 8.

¹⁸⁹ *Id.* at 9.

¹⁹⁰ *Id.* at 10.

transaction will not materially diminish the availability of roaming services or its incentives to enter into roaming agreements.¹⁹¹

64. The Applicants likewise argue that East Kentucky Network's claims about being foreclosed from acquiring spectrum in CMA450 are without merit.¹⁹² The Applicants note that nine other wireless service providers besides AT&T and Dobson have managed to secure spectrum in CMA450, and argue that East Kentucky Network has not shown why it merits extraordinary Commission assistance to do what many others have done on their own.¹⁹³ They add that the purported lack of CDMA roaming options in CMA450 is the result of business decisions by the various service providers operating in the CMA rather than a consequence of the merger, and that the merger will not eliminate any CDMA roaming partners for East Kentucky Network inasmuch as both AT&T and Dobson currently use GSM.¹⁹⁴

65. *Discussion.* The Commission has previously found that competition in the retail market is sufficient to protect consumers against potential harm arising from intercarrier roaming arrangements and practices.¹⁹⁵ As discussed elsewhere in this Order, we find that the proposed transaction would be likely to cause significant competitive harm in a limited number of geographic markets, and that a package of divestitures of licenses and related network assets on which we are conditioning our grant of authority to transfer control of licenses from Dobson to AT&T is sufficient to prevent competitive harm in those markets. Because the divestitures will protect competition at the retail level in those geographic markets, we conclude that the transaction will not alter competitive market conditions in such a way as to harm consumers of mobile telephony services, including roaming services. Accordingly, we decline to impose any conditions relating to roaming rates or arrangements on the transaction.

66. We further note that the markets in which we are requiring divestitures include CMA450. We emphasize, however, that the need for divestiture in CMA450, as well the other markets identified in our competitive analysis, is based on the potential for the transaction to cause competitive harm due to a reduction in the number of competitors in general, and not on any potential for the transaction to have an adverse effect on roaming arrangements in particular through its impact on the number or reliability of roaming partners using either GSM or CDMA as their network technology. We also find that the alleged absence of a reliable CDMA roaming partner in CMA450 is not a consequence of this transaction, and that the transaction is not likely to have any negative impact on the number of actual or potential CDMA roaming partners in this or any other geographic market. We decline, finally, to take the novel step of conditioning the divestiture of the cellular license in CMA450 on its sale at an affordable price to East Kentucky Network or to any other CDMA operator.¹⁹⁶

67. In addition, we emphasize that the clarifications and the obligations adopted in our *Roaming Report and Order* were intended to address concerns expressed by certain service providers that other providers would deny reasonable requests for an automatic roaming agreement or charge unreasonable or discriminatory roaming rates, and that those obligation will continue to apply squarely to AT&T after the

¹⁹¹ *Id.* at 10-11.

¹⁹² *Id.* at 6-7.

¹⁹³ *Id.* at 7.

¹⁹⁴ *Id.* at 6-7.

¹⁹⁵ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21591 ¶ 180; *Roaming Report and Order*, at 6 ¶ 13; see also *DoCoMo-Guam Order*, 21 FCC Rcd at 13602 ¶ 36; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11563-64 ¶ 104.

¹⁹⁶ We note that it is a long-standing principle of the Commission not to dictate licensees' technology choices. See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21608 ¶ 227; Spectrum Policy Task Force, ET Docket No. 02-135, *Report*, at 14 (rel. Nov. 2002).

closing of this transaction.¹⁹⁷ As stated in the *Roaming Report and Order*, automatic roaming is a common carrier service, and the provisioning of automatic roaming service is subject to the requirements of Section 201, 202, and 208 of the Communications Act.¹⁹⁸ Accordingly, all charges and practices by CMRS service providers in connection with roaming services must be just and reasonable. Section 208 provides that complaints may be filed with the Commission against common carriers subject to the Communications Act.¹⁹⁹ As noted in the *Roaming Report and Order*, we intend to address roaming related complaints expeditiously on a case-by-case basis.²⁰⁰ We also note that there are more suitable ways of addressing some of the concerns raised in the record than attaching conditions to this transaction. In particular, the proper venue to address concerns with the findings in the *Roaming Report and Order* (e.g., home market roaming exclusion) is in the roaming rulemaking proceeding through pending petitions for reconsideration, and not in the merger.²⁰¹ In addition, the review of the application to transfer control of licenses from Dobson to AT&T is not the appropriate forum for determining other service providers' contractual rights under their roaming agreements with Dobson. Such contractual matters are best resolved on a case by-case-basis. Therefore, we decline to place any specific roaming conditions on our approval of the proposed transaction.

2. Eligible Telecommunications Carrier Status

68. *Background.* Mid-Tex Cellular argues that the Commission should not allow AT&T to acquire Dobson's competitive ETC status in Texas 9B2 RSA.²⁰² Instead, Mid-Tex Cellular argues that the Commission should require AT&T to obtain its own competitive ETC designation, based on its own demonstrations of commitment to improving service in rural areas, before it is entitled to the Universal Service Fund ("USF") support received by Dobson.²⁰³

69. *Discussion.* Section 214(e)(2) of the Act provides state commissions with the primary responsibility for performing ETC designations.²⁰⁴ In this particular instance, the Public Utility Commission of Texas ("Texas Commission") exercised its jurisdiction under section 214(e)(2) of the Act and designated Dobson as a competitive ETC on February 2, 2005.²⁰⁵ The status of Dobson's ETC designation post-merger is therefore a matter for the Texas Commission. Accordingly, the appropriate

¹⁹⁷ *Roaming Report and Order*, FCC 07-143, at 12-13 ¶ 28.

¹⁹⁸ *Id.* at 2 ¶ 1.

¹⁹⁹ See 47 U.S.C. § 208.

²⁰⁰ *Roaming Report and Order*, FCC 07-143, at 13-14 ¶¶ 30-31.

²⁰¹ Petitions for Reconsideration of Action in Rulemaking Proceeding, *Public Notice*, Report No. 2837, Oct. 12, 2007; 72 Fed. Reg. 59532.

²⁰² Mid-Tex Cellular Petition to Deny at 10.

²⁰³ *Id.*

²⁰⁴ 47 U.S.C. § 214(e)(2); see also Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and Insular Areas, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208, 12255 ¶ 93 (2000); Federal-State Joint on Universal Service, CC Docket No. 96-45, *Report and Order*, 20 FCC Rcd 6371 (2005).

²⁰⁵ Application of Dobson Cellular Systems, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. 241(e) and P.U.C. Subst. R. 26.418, PUC Docket No. 29144, SOAH Docket no. 473-04-4450, *Order* (2005).

forum for Mid-Tex Cellular to raise any concerns about Dobson's ETC designation under sections 214 and 254 of the Act is the Texas Commission.²⁰⁶

70. The Federal-State Joint Board on Universal Service ("Joint Board") and the Commission have each recognized and addressed the need to control the explosive growth in high-cost universal service support disbursements to competitive eligible telecommunications carriers ("ETCs").²⁰⁷ Specifically, the Joint Board recommended that the Commission impose an interim, emergency cap on the amount of high-cost support that competitive ETCs may receive for each state based on the average level of competitive ETC support distributed in that state in 2006.²⁰⁸ In the ALLTEL-Atlantis transaction, the Commission imposed, as a condition of the transaction, an interim cap on ALLTEL's high-cost, competitive ETC support based on its level of competitive ETC support as of June 2007.²⁰⁹ AT&T is currently the second largest beneficiary of competitive ETC funding, and Dobson is the seventh largest.²¹⁰

71. AT&T has voluntarily agreed to an interim cap which, like the cap established as a condition of the ALLTEL-Atlantis transaction, is based on AT&T and Dobson's level of competitive ETC support as of June 2007.²¹¹ AT&T explains that it is making this voluntary commitment in light of the Commission's decision to condition the ALLTEL-Atlantis transaction and "to minimize pressure on the federal universal service fund caused by rapidly increasing demand for high-cost universal service support."²¹² AT&T states that this interim cap "shall be set at twelve times the level of support that AT&T Mobility and Dobson collectively were eligible to receive as competitive ETCs for the month of June 2007."²¹³ Further, AT&T states that "[t]his cap shall apply until the earlier of comprehensive universal service reform addressing issues related to the distribution of high-cost support; or the elimination or modification of the interim cap . . . on high-cost, competitive ETC support provided to ALLTEL."²¹⁴

²⁰⁶ 47 U.S.C. §§ 214, 254; *see also* 47 C.F.R. §§ 54.313(a), 54.314(a) (for providers to be eligible for high-cost universal service support, states are required to file an annual certification stating all federal USF provided to ETCs under its jurisdiction will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended).

²⁰⁷ *See* Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, *Recommended Decision*, 22 FCC Rcd 8998, 8998 ¶ 1 (Fed.-State Jt. Bd. 2007) ("*Recommended Decision*"); Applications of ALLTEL Corporation, Transferor, and Atlantis Holdings LLC, Transferee, For Consent To Transfer Control of Licenses, Leases and Authorizations, WT Docket No. 07-128, *Memorandum Opinion and Order*, FCC 07-185 (rel. Oct. 26, 2007) ("*ALLTEL-Atlantis Order*").

²⁰⁸ *Recommended Decision*, 22 FCC Rcd at 8998 ¶ 1.

²⁰⁹ *ALLTEL-Atlantis Order*, FCC 07-185, at 5 ¶ 9.

²¹⁰ Kevin W. Caves and Jeffrey A. Eisenach, The Effects of Providing Universal Service Subsidies to Wireless Carriers, attached to Ex Parte Letter, from Jeffrey A. Eisenach, Chairman, Criterion Economics, LLC, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 96-45 and 05-337, at 18-19 (filed Jun. 13, 2007) (analyzing year 2006 data).

²¹¹ *Ex Parte* Letter from Robert W. Quinn, Jr., Senior Vice President, Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 8, 2007).

²¹² *Id.* at 2.

²¹³ *Id.*

²¹⁴ *Id.* *See also* *ALLTEL-Atlantis Order*, FCC 07-185, at 5 ¶ 9 (stating that the "interim cap on high-cost, competitive ETC support provided to ALLTEL as a condition of this transaction will apply until fundamental comprehensive reforms are adopted to address issues related to the distribution of support and to ensure that the universal service fund will be sustainable for future years").

72. We condition this proposed transaction on this voluntary commitment to an interim cap on high-cost, competitive ETC support. However, as we stated in the *ALLTEL-Atlantis Order*,²¹⁵ we find that it is in the public interest to adopt a limited exception from the application of the interim cap condition to AT&T and Dobson. Specifically, AT&T and Dobson will not be subject to the interim cap condition to the extent AT&T and Dobson (1) file cost data showing their own per-line costs of providing service in a supported service area upon which their high cost universal service support would be based, and (2) demonstrate that their networks are in compliance with section 20.18(h) of the Commission's rules specifying E911 location accuracy as measured at a geographical level defined by the coverage area of each Public Safety Answering Point (PSAP).

F. Public Interest Benefits

73. In addition to assessing the potential competitive harms of the proposed AT&T Dobson transaction, we also consider whether the respective combination of these companies' wireless operations is likely to generate verifiable, merger-specific public interest benefits.²¹⁶ 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 would not be pursued but for the combination.²¹⁷

74. As discussed below, we find that the proposed transaction is likely to result in certain 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 precisely quantify either the magnitude of or the time period in which these benefits will be realized.²¹⁸

1. Analytical Framework

75. 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.”²¹⁹ Under

²¹⁵ *ALLTEL-Atlantis Order*, FCC 07-185, at 5 ¶ 10.

²¹⁶ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5760 ¶ 200; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14908 ¶ 109; *DoCoMo-Guam Order*, 21 FCC Rcd at 13603 ¶ 39; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 105; *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.

²¹⁷ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5760 ¶ 200; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14908 ¶ 109; *DoCoMo-Guam Order*, 21 FCC Rcd at 13603 ¶ 39; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 105; *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.

²¹⁸ See, e.g., *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14909 ¶ 110; *DoCoMo-Guam Order*, 21 FCC Rcd at 13603 ¶ 40.

²¹⁹ E.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5760 ¶ 201; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14909 ¶ 111; *DoCoMo-Guam Order*, 21 FCC Rcd at 13603 ¶ 41; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 107; *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.

Commission precedent, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms.²²⁰

76. The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms. First, the claimed benefit must be transaction- 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.”²²¹ 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.²²² In addition, as the Commission has noted, “the magnitude of benefits must be calculated net of the cost of achieving them.”²²³ Furthermore, as the Commission has previously explained, “benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present.”²²⁴ Third, the Commission has stated that it “will more likely find marginal cost reductions to be cognizable than reductions in fixed

²²⁰ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5760-61 ¶ 201; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14909 ¶ 111; *DoCoMo-Guam Order*, 21 FCC Rcd at 13603 ¶ 41; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 107; *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.

²²¹ *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14909 ¶ 112; *DoCoMo-Guam Order*, 21 FCC Rcd at 13603-04 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 108; *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-DirecTV 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, 20063-64 ¶ 158 (“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 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.

²²² See *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14909-10 ¶ 112; *DoCoMo-Guam Order*, 21 FCC Rcd at 13604 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564-65 ¶ 108; *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.

²²³ *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 112; *DoCoMo-Guam Order*, 21 FCC Rcd at 13604 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565 ¶ 108; *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.

²²⁴ *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 112; *DoCoMo-Guam Order*, 21 FCC Rcd at 13604 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565 ¶ 108; *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-DirecTV HDO*, 17 FCC Rcd at 20630 ¶ 190).

cost.”²²⁵ 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.²²⁶

77. Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims.²²⁷ 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.”²²⁸ 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 transaction.²²⁹

2. Discussion

78. The Applicants allege that the proposed transaction will result in numerous public interest and consumer benefits, especially for rural customers.²³⁰ Generally, the Applicants state that the merger of AT&T and Dobson would expand and improve the services and features available to Dobson’s rural customers,²³¹ including hastening deployment of advanced services and innovative products,²³² and enhancing service quality.²³³ In addition, the Applicants contend that the merger will result in synergies of scope and scale and roaming benefits.²³⁴

²²⁵ *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 112; *DoCoMo-Guam Order*, 21 FCC Rcd at 13604 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565 ¶ 108; *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.

²²⁶ See *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 112; *DoCoMo-Guam Order*, 21 FCC Rcd at 13604 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565 ¶ 108; *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.

²²⁷ *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 203; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 113; *DoCoMo-Guam Order*, 21 FCC Rcd at 13605 ¶ 43; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565 ¶ 109; *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.

²²⁸ *AT&T-BellSouth Order*, 22 FCC Rcd at 5671-72 ¶ 203; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 113; *DoCoMo-Guam Order*, 21 FCC Rcd at 13605 ¶ 43; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565-66 ¶ 109; *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.”).

²²⁹ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 203; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 113; *DoCoMo-Guam Order*, 21 FCC Rcd at 13605 ¶ 43; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11566 ¶ 109; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 185; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 195.

²³⁰ Application, Exhibit 1 at i.

²³¹ *Id.*

²³² *Id.* at ii.

²³³ *Id.*

²³⁴ *Id.* at ii-iii.

79. *Expanded and Improved Services and Features, Particularly in Rural Areas.* The Applicants and assert that the proposed transaction will expand and improve the services and features available to Dobson's customers.²³⁵ For example, the Applicants state that the combined company will be able to offer the iPhone, with its "innovative and unique multimedia features never before seen in a cellular phone" to all of Dobson's customers, including those in Alaska and rural areas.²³⁶ Similarly, the Applicants state that the combined entity will be able to offer Dobson's customers handsets with integrated Wi-Fi or GPS navigation—features that were previously unavailable to Dobson's primarily rural and suburban subscribers.²³⁷ In addition, the Applicants contend that the combined company's integrated wireline/wireless network will allow the merged company to offer "converged applications that use three screens – TV, PC and mobile."²³⁸ The Applicants envision that a customer will be able to "select streaming video content on a PC, watch part of it on a TV, and then leave home and watch the rest of the program from a mobile phone remotely."²³⁹ In addition, the Applicants state that such an integrated network will enable their customers to use a wireless handset to remotely control a digital video record at home or facilitate the use of dual-mode phones "that will shift seamlessly between wireless and broadband VoIP networks."²⁴⁰ The Applicants also state that, because Dobson's network overlaps minimally with AT&T's, the proposed transaction would expand geographic coverage for both companies' customers.²⁴¹ Dobson's cellular spectrum will enhance AT&T's service quality in the applicable rural and suburban markets.²⁴²

80. The Applicants state that subscribers will also benefit from a wider range of rate plans.²⁴³ For example, the Applicants note that Dobson customers who reside in AT&T's wireline service area will be able to subscribe to the company's recently introduced "Unity Plan" and take advantage of free calling between and among the merged company's more than 100 million wireless and wireline subscribers.²⁴⁴ The Applicants contend that the combined company's integrated wireline/wireless network will also allow the company to offer unified billing for wired and wireless services with associated discounts and special DSL pricing for customers subscribing to both wireline and wireless services.²⁴⁵

81. Other benefits of the merger identified by the Applicants include increased roaming coverage internationally,²⁴⁶ improved reception and signal quality due to "greater cell site density in areas with

²³⁵ *Id.* at 5. *See also* Governor Granholm Comments at 1.

²³⁶ Application, Exhibit 1 at 5.

²³⁷ *Id.* at 5-6.

²³⁸ *Id.* at 7.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Press Release at 2. *See also* Governor Granholm Comments at 1.

²⁴² Press Release at 2. *See also* Governor Granholm Comments at 1.

²⁴³ Application, Exhibit 1 at 5. *See also* Governor Granholm Comments at 1.

²⁴⁴ Application, Exhibit 1 at 5.

²⁴⁵ *Id.* at 7.

²⁴⁶ *Id.* at 8.

overlapping spectrum and complementary overlapping tower facilities,²⁴⁷ and improved and expanded services for Dobson's business customers.²⁴⁸

82. *Roaming.* The Applicants contend that the combination of their largely complementary facilities-based networks will eliminate roaming between AT&T and Dobson and will lower the marginal cost of providing service.²⁴⁹ The Applicants state that many of the rural and suburban areas served by Dobson are adjacent to major metropolitan areas served by AT&T.²⁵⁰ As a result, the Applicants state, Dobson must enter roaming agreements in order to provide service for its rural and suburban customers when they travel to the nearby downtown metropolitan area.²⁵¹ In fact, the Applicants state that AT&T is Dobson's largest roaming partner.²⁵² The Applicants further state that, in general, AT&T must also use roaming arrangements when its customers in downtown metropolitan areas travel to the adjacent rural and suburban communities served by Dobson.²⁵³ The Applicants contend that the elimination of roaming between the two companies should reduce their combined roaming fees by more than \$1 billion over the next five years, based on 2006 roaming rates.²⁵⁴ The Applicants note that the Commission has consistently found that such reductions in marginal costs for wireless service providers are "likely to benefit consumers through lower price and/or increased service."²⁵⁵ The Applicants argue that "[t]hese marginal cost reductions are also likely to stimulate competition from other service providers,"²⁵⁶ make the combined company a more effective competitor, and "free[] resources to support the combined company's introduction of innovative new features and services."²⁵⁷

83. *Economies of Scale and Operating Synergies.* The Applicants state that the proposed transaction will create significant economies of scale and scope that will make the combined company a more effective competitor and free resources to enhance the combined company's ability to introduce innovative new features and services.²⁵⁸ The Applicants contend that the merger-specific synergies have

²⁴⁷ *Id.* at 9.

²⁴⁸ *Id.* at 8-9.

²⁴⁹ *Id.* at 11. Dobson facilities-based service territory encompasses parts of 17 states, primarily in rural and suburban areas. AT&T provides facilities-based coverage in all of the country's top 100 major metropolitan areas, which Dobson does not serve. *Id.* at 10.

²⁵⁰ *Id.* at 10. These areas include, Lexington, Kentucky; Minneapolis, Minnesota; New York, New York; Pittsburgh, Pennsylvania; Kansas City, Missouri; Kansas City, Kansas; San Antonio and Austin, Texas; Washington, DC; Detroit, Michigan; and Oklahoma City, Oklahoma, among others. *Id.*

²⁵¹ *Id.*

²⁵² *Id.* at 11. AT&T accounts for approximately 84 percent of Dobson's roaming traffic. *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.* See also Press Release at 2.

²⁵⁵ Application, Exhibit 1 at 11 (citing *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21605 ¶ 219); accord *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13108-09 ¶ 151 ("ALLTEL's merger with WWC would reduce its roaming costs in geographic markets where ALLTEL and WWC's service areas do no overlap, and the elimination of roaming agreements in these markets would directly benefit...its customers....").

²⁵⁶ Application, Exhibit 1 at 11.

²⁵⁷ *Id.* at 12.

²⁵⁸ *Id.* See also Governor Granholm Comments at 1.

a net present value of \$2.5 billion.²⁵⁹ The Applicants contend that these cost savings are achieved through a number of avenues. First, the Applicants state that the reduction of two brands to one and the international strength of the AT&T brand will result in significant marketing and advertising savings, thereby reducing customer acquisition costs.²⁶⁰ The Applicants anticipate that customer acquisition costs will be further reduced by a reduction in handset procurement costs, closure of duplicative retail sales locations and economies of scale with third-party vendors.²⁶¹ Second, the Applicant state that significant synergies will result from consolidating or eliminating duplicate customer billing functions.²⁶² Third, the Applicants expect to achieve substantial savings in network operating expenses by decommissioning redundant towers where it is possible to do so without negative effects on customer service.²⁶³ Fourth, the Applicants anticipate substantial cost savings stemming from elimination of redundant general and administrative costs, such as savings on purchases of IT equipment.²⁶⁴ The Applicants state that, because of Dobson's smaller customer base, Dobson's "general and administrative costs account for a larger portion of its annual expense per customer than AT&T's expense per customer."²⁶⁵ The Applicants argue that, because of the economies of scale derived from AT&T's subscriber base, AT&T will be able to absorb Dobson's operations at a lower cost per subscriber than Dobson could achieve without the transaction.²⁶⁶ Finally, the Applicants state that the combined company will achieve savings on network-related capital expenditures, capital expenditures on information technology, expenses associated with redundant retail store closures, and corporate call center capital expenses.²⁶⁷

3. Conclusion

84. While we find that this transaction is likely to result in transaction-specific public interest benefits, 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

85. 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.

²⁵⁹ Application, Exhibit 1 at 12; Press Release at 2. The Applicants contend that this figure is attainable given AT&T's (and SBC Communications Inc., its corporate predecessor) demonstrable record of achieving and exceeding synergies projections in connection with prior transactions. Application, Exhibit 1 at 12.

²⁶⁰ Application, Exhibit 1 at 13.

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.* at 14. The Applicants note that such tower decommissioning would not interfere with their anticipated increase in cell density noted *supra* at ¶ 81.

²⁶⁴ Application, Exhibit 1 at 14.

²⁶⁵ *Id.* at 14-15.

²⁶⁶ *Id.* at 15.

²⁶⁷ *Id.*

86. 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, as well as the condition regarding an interim cap on high-cost, competitive ETC support received by AT&T and Dobson,²⁶⁸ 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.

87. As we discussed elsewhere and below, we decline to impose additional conditions proposed by East Kentucky Network, Mid-Tex Cellular, and T-Mobile that we find are not designed to remedy merger-specific harms.

A. Operating Unit Divestitures

88. 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 service providers remaining after the merger with sufficient network and spectrum assets to deter anticompetitive behavior by the merged entity. To address these concerns, we will require the Applicants to divest all licenses and related operational and network assets, including certain employees, retail sites, and subscribers ("Divestiture Assets"), of either AT&T or Dobson, in certain markets. Specifically, we condition this grant of authority to transfer control of licenses from Dobson to AT&T on the divestiture of the Divestiture Assets (including all fixed assets, customers, goodwill and spectrum associated therewith) in the following markets.

CMA	Name
CMA448	Kentucky 6 - Madison
CMA450	Kentucky 8 - Mason
CMA600	Oklahoma 5 - Rogers Mills
CMA661	Texas 10 - Navarro

89. East Kentucky Network requests that the Commission require the merged entity to divest one of the two cellular licenses in CMA450 either to East Kentucky Network "if it is made available at a price [it] can afford" or to a CDMA operator that commits to build out in the market.²⁶⁹ While we agree with East Kentucky Network that there is significant likelihood of competitive harm as a result of this transaction in CMA450, we disagree with East Kentucky Network's proposed remedy. Instead, we require a more extensive remedy – the divestiture of either AT&T or Dobson's licenses and related operational and network assets, including certain employees, retail sites, and subscribers, in CMA450. Accordingly, we decline to require divestiture of cellular spectrum in CMA450 to East Kentucky Network or to impose a condition that the buyer must be willing to deploy CDMA technology using the divested assets. As referenced above, it is the Commission's long-standing policy not to dictate licensees' technology choices.²⁷⁰

²⁶⁸ See discussion *supra* ¶ 72.

²⁶⁹ East Kentucky Network Petition to Deny at 13-14.

²⁷⁰ See, e.g., Cingular-AT&T Wireless Order, 19 FCC Rcd at 21608 ¶ 227; Spectrum Policy Task Force, ET Docket No. 02-135, *Report*, at 14 (rel. Nov. 2002).

B. Spectrum

90. Mid-Tex Cellular requests that the application with respect to the Texas 9B2 RSA be denied or conditioned based upon the divestiture of spectrum in excess of 70 MHz in any county in this market. Mid-Tex Cellular argues that because of the spectrum holdings and market share of the merged entity in Texas RSA 9B2, the Commission should require the merged entity to divest cellular, PCS and AWS spectrum in excess of 70 MHz in any county in Texas RSA 9B2.²⁷¹ When calculating the amount of spectrum owned by a merged AT&T and Dobson in various Texas counties, Mid-Tex Cellular uses “total CMRS Spectrum,” which it defines as cellular, PCS, and AWS spectrum.²⁷² However, Mid-Tex Cellular also cites the Commission’s previous use of a 70 MHz initial spectrum screen, which, as discussed above, is based on an analysis that does not include AWS or 700 MHz.

91. We disagree with Mid-Tex Cellular’s analysis of spectrum holdings. As the Applicants point out, Mid-Tex Cellular’s calculations of the merged entity’s spectrum holdings in Texas RSA 9B2 include the Applicants’ AWS-1 holdings, but not the additional AWS-1 spectrum when calculating the total available spectrum.²⁷³ In addition, Mid-Tex Cellular is treating the 70 MHz initial screen as an absolute value instead of analyzing the market based on the total spectrum available to other providers, as the Commission analyzes spectrum holdings. In effect, Mid-Tex Cellular is calculating the Applicants’ merged spectrum holding percentages with AWS-1 in the numerator of the fraction, but not the denominator.²⁷⁴

92. We also reject Mid-Tex Cellular’s requests that we condition this transaction by significantly limiting the merged entity’s ability to participate in the upcoming 700 MHz auction. In its petition, Mid-Tex Cellular requests that the Commission condition approval of the proposed transaction by prohibiting the merged entity from bidding in Auction 73 for any 700 MHz licenses in any area in which the merged entity controls or has a 10 percent or greater interest in 70 MHz of CMRS spectrum.²⁷⁵ In that filing, Mid-Tex Cellular argues that the Commission imposed a similar spectrum divestiture in the Cingular-AT&T Wireless transaction.²⁷⁶ In its Reply, Mid-Tex Cellular modifies its proposed condition, and now requests that the Commission not preclude the merged entity’s participation in Auction 73, but condition the instant transaction on requiring that, within 12 months of the conclusion of the auction, the merged entity divest “any spectrum in excess of 70 MHz held in any county in which it has interests in more than 70 MHz of CMRS spectrum.”²⁷⁷ The Applicants argue that the Commission specifically declined to impose any eligibility requirements in terms of participation in Auction 73.²⁷⁸ Further, the Applicants state that Mid-Tex Cellular’s reliance on the *Cingular-AT&T Wireless Order* is misplaced because Cingular voluntarily committed not to participate in PCS Auction 58.²⁷⁹

²⁷¹ Mid-Tex Cellular Petition to Deny at 7. Mid-Tex estimates that the merged entity will hold almost two thirds of the market share in Texas RSA 9B2 and two to three times the amount of spectrum of the next largest spectrum holder in the market. *Id.* at 6; Mid-Tex Cellular Reply at 2-3.

²⁷² Mid-Tex Cellular Petition to Deny at 2.

²⁷³ Joint Opposition at 3-5.

²⁷⁴ *Id.* at 3.

²⁷⁵ Mid-Tex Cellular Petition to Deny at 7.

²⁷⁶ *Id.*

²⁷⁷ Mid-Tex Cellular Reply at 4.

²⁷⁸ Joint Opposition at 12 (citing *700 MHz Second Report and Order* at ¶¶ 256-59).

²⁷⁹ *Id.* at 13-14.

93. We decline to require the spectrum divestitures that Mid-Tex Cellular requests.²⁸⁰ With respect to Mid-Tex Cellular's request for spectrum divestitures in Texas RSA 9B2, our in-depth analysis²⁸¹ of Texas 9-Runnels CMA (CMA660) of which Texas RSA 9B2 is a part, demonstrates that the requested spectrum divestitures are not warranted on competitive grounds because there are sufficient other facilities-based providers in this market with sufficient spectrum to compete in the provision of mobile telephony services.²⁸² Further, we decline to address Mid-Tex Cellular's request to implement a condition requiring AT&T to divest CMRS spectrum holding in excess of 70 MHz post Auction 73. Although Mid-Tex Cellular states that such a condition is consistent with actions taken by the Commission in the *Cingular-AT&T Wireless Order*, the Commission adopted this condition in the context of that transaction because Cingular and AT&T indicated that, if their applications were granted and the merger was consummated, it would not apply to bid in PCS Auction 58 for any licenses in any BTA in which Cingular would control, or had a 10 percent or greater interest in, 70 MHz or more of cellular and/or PCS spectrum.²⁸³ The Commission stated that Cingular committed itself to this restriction without regard to any finding that obtaining additional spectrum in PCS Auction 58 would result in competitive harm in any of these markets.²⁸⁴ Finally, the issue of whether the Commission should adopt spectrum aggregation limits in the context of Auction 73 has been raised in Petitions for Reconsideration of the *700 MHz Second Report and Order* and will be addressed in the context of that rulemaking proceeding.²⁸⁵

94. In sum, in the analysis represented in this Memorandum Opinion and Order, we have fully taken account of the likely competitive effect harms resulting from this transaction, and we have imposed remedies consistent with that analysis.

C. Operation of Divestitures

95. Divestiture of the Operating Units, 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, AT&T 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 and DOJ Proposed Final

²⁸⁰ Similarly, because we find that the applications do not present a substantial and material question of fact and that grant of these applications with conditions serves the public interest, we dismiss Mid-Tex Cellular's request to designate the applications for hearing pursuant to Section 309(e) of the Act. 47 U.S.C. § 309(e). See Mid-Tex Cellular Petition to Deny at 7.

²⁸¹ Such a condition too closely resembles the Commission's former cap on spectrum aggregation, which the Commission eliminated in 2001 in favor of a tailored case-by-case approach. See *generally* 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, *Report and Order*, 16 FCC Rcd 22668 (2001).

²⁸² The Texas 9-Runnels CMA (CMA660) was caught by our initial screen. This market will be more fully discussed in Appendix B (discussing this particular Non-Divestiture market).

²⁸³ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21598-99 ¶ 200.

²⁸⁴ *Id.*

²⁸⁵ See *In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Band*, WT Dkt. No. 06-150, Petition for Reconsideration of the Ad Hoc Public Interest Spectrum Coalition at 1-5 (filed Sep. 24, 2007); *In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Band*, WT Dkt. No. 06-150, Petition for Reconsideration of Frontline Wireless, LLC at 8-11 (filed Sep. 25, 2007).

Judgment.²⁸⁶

96. AT&T filed, on November 13, 2007, applications to enter into a short-term *de facto* transfer spectrum leasing arrangement in order to transfer certain Divestiture Assets in CMA448, CMA450, and CMA600 into the trust with the Management Trustee, and these applications include, as we require, a request to approve the identity of the Management Trustee and the terms of the trust agreement (“Management Trustee Agreement”).²⁸⁷ We require that the remaining Divestiture Assets in CMA448, CMA450, CMA600, and CMA661 shall be transferred to the trust in accordance with the terms of this Order. AT&T and Dobson will have three business days after the adoption of this Order to file applications to enter into the necessary short-term *de facto* transfer spectrum leasing arrangements to transfer the Divestiture Assets in these markets to the Management Trustee and will have five business days after the adoption of this order to transfer the Divestiture Assets in these markets to the Management Trustee. 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.²⁸⁸ The Management Trustee will serve at the cost and expense of the Applicants.²⁸⁹

97. 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 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.²⁹⁰ 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 with any reports or requires that the Applicants seek any approvals from DOJ, the Applicants will also provide such reports to, and seek such approvals from, the Commission.²⁹¹

98. 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.²⁹² Upon

²⁸⁶ DOJ Stipulation at 8-20; DOJ Proposed Final Judgment at 7-20.

²⁸⁷ Application for Short-Term *De Facto* Transfer Spectrum Leasing Arrangement between Oklahoma Independent RSA 5 Partnership and W. Stephen Cannon, Management Trustee, File No. 0003228645, at Exhibit 2 (filed Nov. 13, 2007); Application for Short-Term *De Facto* Transfer Spectrum Leasing Arrangement between American Cellular Corporation and W. Stephen Cannon, Management Trustee, File No. 0003228650, at Exhibit 2 (filed Nov. 13, 2007). These applications were granted on November 14, 2007.

²⁸⁸ An amendment to the Management Trustee Agreement adding the assets associated with the business units in the CMAs, which the Commission is requiring that the Applicants divest, will be filed with the applications to enter into the spectrum leasing arrangements in these markets. 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 filed in the District Court for the District of Columbia on October 30, 2007, and in the Management Trustee Agreement. *See supra* ¶¶ 8-9. 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*.

²⁸⁹ DOJ Stipulation at 8; *see also* Management Trustee Agreement.

²⁹⁰ DOJ Stipulation at 8-20.

²⁹¹ *Id.* at 10-11; *see also* Management Trustee Agreement.

²⁹² DOJ Proposed Final Judgment at 8.

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.²⁹³

99. 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 agreement²⁹⁴ 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.²⁹⁵ 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.

100. 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.

101. 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.

102. To the extent that this Order, the Management Trust or Divestiture Trust conflicts with anything issued by the DOJ, the Applicants, the Management Trustee and the Divestiture Trustee must nonetheless comply with terms of this Order.

VI. CONCLUSION

103. 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,

²⁹³ 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.

²⁹⁴ 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.

²⁹⁵ 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*.

and we therefore require remedies to ameliorate the expected harm. We also condition the proposed transaction to place an interim cap on high-cost, competitive Eligible Telecommunications Carrier support provided to AT&T and Dobson.

VII. ORDERING CLAUSES

104. Accordingly, having reviewed the applications, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, 310 (b), 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 Dobson Communications Corporation to AT&T, Inc. are GRANTED, to the extent specified in this Memorandum Opinion and Order and subject to the conditions specified herein.

105. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and sections 63.04 and 63.24 of the Commission's rules, 47 C.F.R. §§ 63.04, 63.24, the applications to transfer control of domestic and international section 214 authorizations from Dobson Communications Corporation to AT&T, Inc. are GRANTED.

106. IT IS FURTHER ORDERED that the above grant shall include authority for AT&T, Inc. to acquire control of: (a) any license or authorization issued to Dobson Communications Corporation 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.

107. IT IS FURTHER ORDERED that the Commission's grant of the transfer of control of licenses from Dobson to AT&T is conditioned upon the completion of the divestitures described in Part V of this Memorandum Opinion and Order.

108. IT IS FURTHER ORDERED that the Commission's grant of the transfer of control of licenses from Dobson to AT&T is conditioned upon AT&T's commitment to an interim cap of high-cost, competitive ETC support, which is based on AT&T and Dobson's level of competitive ETC support as of June 2007, as described in Part IV.E.2 of this Memorandum Opinion and Order.

109. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petitions to Deny the transfer of control of licenses from Dobson Communications Corporation to AT&T, Inc. filed by East Kentucky Network, LLC and Mid-Tex Cellular LTD. are DENIED and GRANTED IN PART for the reasons stated herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Market-Specific Analysis of Markets Involving Divestiture

Set forth below is a detailed examination of each of the CMA markets in which we determine that the public interest would not be served by the proposed transfer of control of Dobson to AT&T and would likely lead to anticompetitive harms, absent a remedy.

The market share and HHI information appearing herein are derived from our analysis of three sets of data: geographic service provision data, Local Number Portability (LNP) data, and data compiled in our Numbering Resource Utilization / Forecast (NRUF) database. Using these different sets of data to cross-check against each other, we find that they essentially corroborate each other. When combined with the other factors in our multi-factor, market-specific analysis, we have a reliable basis for drawing competition-related conclusions based on the totality of the circumstances that are present in a given market.

Kentucky 6-Madison (CMA448)

In the Kentucky 6-Madison CMA (which has a population of about 277,683), there are four wireless service providers with a market share greater than [REDACTED] percent, which is the standard we have raised in recent wireless orders to identify service providers with sufficient share to be counted as actual competitors in the market. AT&T has [REDACTED] percent of the wireless subscribers while Dobson has [REDACTED] percent. If these two entities were combined, this would lead to a post-merger share of [REDACTED] percent. The two other carriers in this CMA with market share greater than [REDACTED] percent are: Sprint Nextel, with [REDACTED] percent of the subscribers, and T-Mobile with [REDACTED] percent. There are also three facilities-based service providers in this CMA with market share less than [REDACTED] percent – BlueGrass with [REDACTED] percent, Ramcell with [REDACTED] percent, and Verizon Wireless with [REDACTED] percent.

The post-merger HHI in the CMA would be [REDACTED], representing an increase of [REDACTED] from the current figure. These numbers indicate a likelihood that there would be a major change in the character of competition after the merger in this CMA.

In terms of network coverage of this CMA, both AT&T and Dobson have launched service in all eight counties of the CMA and have network coverage throughout it as well. In addition, Sprint Nextel covers 91 percent of the population and 75 percent of the land area; and T-Mobile covers 69 percent of the population and only 36 percent of the land area. Sprint Nextel network significantly covers six out of the eight counties and T-Mobile's significantly covers three out of the eight counties. This transaction results in a reduction of competitors to three or fewer service providers in seven out of eight counties and these counties reflect approximately 75 percent of the CMA population.

We also have analyzed wireless LNP data to gauge how consumers view the substitutability of AT&T and Dobson. 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. Thus, we can determine the aggregate customer flows between AT&T and Dobson for the Kentucky 6-Madison CMA. As discussed in recent merger orders, there are several reasons why the porting data may not accurately reflect the substitutability between AT&T and Dobson.²⁹⁶

²⁹⁶ See, e.g., *Sprint-Nextel Order*, 20 FCC Rcd at 14004-05 ¶ 102.

AT&T had a total of [REDACTED] mobile-to-mobile ports out through year-end 2006: [REDACTED] ports were to Dobson (reflecting [REDACTED] percent of AT&T's ports), [REDACTED] to Sprint Nextel (reflecting [REDACTED] percent of AT&T's ports), and [REDACTED] to T-Mobile (reflecting [REDACTED] percent of AT&T's ports). Dobson had a total of [REDACTED] mobile to mobile ports out through year-end 2006: [REDACTED] ports were to AT&T ([REDACTED] percent of Dobson's ports), [REDACTED] to Sprint Nextel (reflecting [REDACTED] percent of Dobson's ports), and [REDACTED] to T-Mobile (reflecting [REDACTED] percent of Dobson's ports).

With regard to AWS-1 spectrum, it does not appear that there is any required relocation of transmitters or receivers by government users in the CMA.²⁹⁷ As a result, AWS-1 spectrum in this CMA is available for deployment by commercial licensees. With regard to BRS spectrum, a transition plan has been filed for one out of four BTAs that coincide with this CMA, but a completion notification has not been filed for this plan. Therefore, BRS spectrum is not included in the analysis of the competitive effects of this transaction for this CMA.

The merged entity would hold between 55-105 MHz of cellular, PCS, SMR and 700 MHz spectrum on a county-by-county basis within the CMA. AT&T and Dobson combined would also hold an additional 20 MHz of AWS-1 spectrum throughout the Madison CMA. In summary, the merged entity's total spectrum aggregation on a county-by-county basis in this CMA would come to 75-125 MHz out of a possible 370 MHz, reflecting approximately 20 to 32 percent of the spectrum currently available for the provision of mobile telephony services.

With the consideration of cellular, PCS, SMR, 700 MHz, and AWS-1 spectrum, eight additional licensees hold spectrum throughout the entire CMA – Appalachian Wireless, Barat Wireless, Leap, Qualcomm, SpectrumCo., Sprint Nextel, T-Mobile, and Verizon Wireless. Also, three other licensees hold this spectrum in various counties in this CMA – BlueGrass Cellular, Northstar, and Ramcell.

Conclusion. A full business unit divestiture is required in this CMA because there is a significant likelihood of competitive harm. If a divestiture in this CMA were not required, there would be three or fewer facilities-based providers (including the merged entity) that would be considered sufficiently built out in this CMA. As a result, there would be a significant increase in the probability that the merged entity would behave in an anti-competitive manner. The proposed transaction would involve combining the [REDACTED] and [REDACTED] largest providers in terms of market share and the resulting entity would be more than [REDACTED] to [REDACTED] times as large as the other two service providers in the CMA with a greater than [REDACTED] percent market share. Further, this transaction would reduce the number of service providers to three or fewer in seven of the eight counties and these seven counties reflect approximately 75 percent of the CMA population. Combined with the fact that AT&T would have approximately [REDACTED] percent of the subscribers, we find it highly likely that AT&T would be able to profitably raise prices or lower the quality of wireless service. Therefore, on the basis of the record, we conclude that there is a substantial risk that the transaction, without conditions, would lead to anticompetitive harms in this CMA.

Kentucky 8-Mason (CMA450)

²⁹⁷ See <http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm> (providing information on AWS relocation, including a relocation schedule and cost summary for AWS-1 relocation).

In the Kentucky 8-Mason CMA (which has a population of about 124,331), AT&T and Dobson are the only two service providers with more than [REDACTED] percent market share. AT&T has [REDACTED] percent of the wireless subscribers while Dobson has [REDACTED] percent. If these two entities were combined, this would lead to a post-merger share of [REDACTED] percent. There are four facilities-based service providers in this CMA with less than a [REDACTED] percent share – Appalachian Wireless with [REDACTED] percent, Sprint Nextel with [REDACTED] percent, T-Mobile with [REDACTED] percent, and Verizon Wireless with [REDACTED] percent.

The post-merger HHI in the CMA would be [REDACTED], representing an increase of [REDACTED] from the current figure. These numbers indicate a likelihood that there would be a major change in the character of competition after the merger in this CMA.

In terms of network coverage of this CMA, both AT&T and Dobson have launched service in all ten counties of the CMA and have network coverage throughout all counties as well. Sprint Nextel covers 60 percent of the population and 41 percent of the land area. T-Mobile and Verizon Wireless each cover less than 20 percent of the population and less than 10 percent of the land area.

We also have analyzed wireless LNP data to gauge how consumers view the substitutability of AT&T and Dobson. AT&T had a total of [REDACTED] mobile-to-mobile ports out through year-end 2006: [REDACTED] ports were to Dobson (reflecting [REDACTED] percent of AT&T's ports), [REDACTED] to Sprint Nextel (reflecting [REDACTED] percent of AT&T's ports), [REDACTED] to T-Mobile (reflecting [REDACTED] percent of AT&T's ports), and [REDACTED] to Verizon Wireless (reflecting [REDACTED] percent of AT&T's ports). Dobson had a total of [REDACTED] mobile to mobile ports out through year-end 2006: [REDACTED] ports were to AT&T ([REDACTED] percent of Dobson's ports), [REDACTED] to Sprint Nextel (reflecting [REDACTED] percent of Dobson's ports), [REDACTED] to T-Mobile (reflecting [REDACTED] percent of Dobson's ports), and [REDACTED] to Verizon Wireless (reflecting [REDACTED] percent of Dobson's ports).

With regard to AWS-1 spectrum, it does not appear that there is any required relocation of transmitters or receivers by government users in the CMA. As a result, AWS-1 spectrum in this CMA is available for deployment by commercial licensees. With regard to BRS spectrum, BRS spectrum, a transition plan has been filed for all of the BTAs that coincide with this CMA but a completion notification has not been filed for these plans. Therefore, BRS spectrum is not included in the analysis of the competitive effects of this transaction for this CMA.

The merged entity would hold between 65-90 MHz of cellular, PCS, SMR, and 700 MHz spectrum on a county-by-county basis within the CMA. AT&T and Dobson combined would also hold an additional 20-40 MHz of AWS-1 spectrum on a county-by-county basis within the CMA. In summary, the merged entity's total spectrum aggregation on a county-by-county basis in this CMA would come to 85-130 MHz out of a possible 370 MHz, reflecting approximately 23 to 35 percent of the spectrum currently available for the provision of mobile telephony services.

With the consideration of cellular, PCS, SMR, 700 MHz, and AWS-1 spectrum, six additional licensees hold spectrum throughout the entire CMA – Appalachian Wireless, Leap, Qualcomm, Sprint Nextel, T-Mobile, and Verizon Wireless. Also, seven other licensees hold this spectrum in various counties in this CMA – Atlantic Wireless, Barat Wireless, Cincinnati Bell, Ntelos, Scott Reiter, SpectrumCo., and Wirefree.

Conclusion. A full business unit divestiture is required in this CMA because there is a significant likelihood of competitive harm. If a divestiture in this CMA was not required, there effectively would be

a monopoly (the merged entity) in this market. Post transaction, the merged entity would be the only facilities-based provider that would be sufficiently built out in this CMA, and as a result, there would be a significant increase in the probability that the merged entity would behave in an anti-competitive manner. No other carrier appears to have the facilities in place to respond quickly and effectively to any anticompetitive actions by the merged entity. Therefore on the basis of the record, we conclude that there is a substantial risk that the transaction, without conditions, would lead to anticompetitive harms in this CMA.

Oklahoma 5-Roger Mills (CMA600)

In the Oklahoma 5-Roger Mills CMA (which has a population of about 60,223), there are four wireless service providers with a market share greater than [REDACTED] percent. AT&T has [REDACTED] percent of the wireless subscribers while Dobson has [REDACTED] percent. If these two entities were combined, this would lead to a post-merger share of [REDACTED] percent. The two other carriers in this CMA with market share greater than [REDACTED] percent are: Pioneer Enid, with [REDACTED] percent and Sprint Nextel, with [REDACTED] percent of the subscribers. There are two facilities-based service providers in this CMA with market share less than [REDACTED] percent – T-Mobile with [REDACTED] percent and U.S. Cellular with [REDACTED] percent.

The post-merger HHI in the CMA would be [REDACTED], with an increase of [REDACTED] from the current figure. These numbers indicate a likelihood that there would be a major change in the character of competition after the merger in this CMA.

In terms of network coverage of this CMA, AT&T has launched throughout the CMA and has a network throughout as well, covering 100 percent of the population and 99 percent of the land area. Dobson has launched in part of this CMA and its network covers approximately 70 percent of the population and land area of the CMA. In addition, Pioneer Enid covers 67 percent of the population and 84 percent of the land area, and Sprint Nextel covers 72 percent of the population and 56 percent of the land area.

We also have analyzed wireless LNP data to gauge how consumers view the substitutability of AT&T and Dobson. AT&T had a total of [REDACTED] mobile-to-mobile ports out through year-end 2006: [REDACTED] ports were to Dobson (reflecting [REDACTED] percent of AT&T's ports), [REDACTED] to Sprint Nextel (reflecting [REDACTED] percent of AT&T's ports), and [REDACTED] to Pioneer Enid (reflecting [REDACTED] percent of AT&T's ports). Dobson had a total of [REDACTED] mobile-to-mobile ports out through year-end 2006: [REDACTED] ports were to AT&T ([REDACTED] percent of Dobson's ports), [REDACTED] to Sprint Nextel (reflecting [REDACTED] percent of Dobson's ports), and [REDACTED] to Pioneer Enid (reflecting [REDACTED] percent of Dobson's ports).

With regard to AWS-1 spectrum, it does not appear that there is any required relocation of transmitters or receivers by government users in the CMA. As a result, AWS-1 spectrum in this CMA is available for deployment by commercial licensees. With regard to BRS spectrum, a transition plan has been filed for the BTA that coincides with this CMA. Therefore, BRS spectrum is included in the analysis of the competitive effects of this transaction for this CMA.

The merged entity would hold between 45-90 MHz of cellular, PCS, SMR and 700 MHz spectrum on a county-by-county basis within the CMA. Neither AT&T nor Dobson holds BRS spectrum in this CMA. AT&T and Dobson combined would also hold an additional 30 MHz of AWS-1 spectrum

throughout the Roger Mills CMA. In summary, the merged entity's total spectrum aggregation on a county-by-county basis within this CMA would come to 75-120 MHz out of a possible 443 MHz, reflecting approximately 17 to 27 percent of the spectrum currently available for the provision of mobile telephony services.

With the consideration of cellular, PCS, SMR, 700 MHz, AWS-1, and BRS spectrum, eight additional licensees hold spectrum throughout the entire CMA – Leap, Pioneer Enid, Qualcomm, SpectrumCo., Sprint Nextel, T-Mobile, U.S. Cellular, and Verizon Wireless. Also, five licensees hold this spectrum in various counties in this CMA – Baypoint TV, Clearwire, Hinton CATV, Libmont Communications, and Nextwave.

Conclusion. A full business unit divestiture is required in this CMA because there is a significant likelihood of competitive harm. If a divestiture in this CMA was not required, there would be two facilities-based providers (including the merged entity) that would be considered sufficiently built out in this CMA. As a result, there would be a significant increase in the probability that the merged entity would behave in an anti-competitive manner. The proposed transaction would involve combining the [REDACTED] and [REDACTED] largest providers in terms of market share and the resulting entity would be [REDACTED] as large as the next largest service provider and over [REDACTED] as large as the other service provider in the CMA with a greater than [REDACTED] percent market share. Further, the number of service providers with network facilities covering a significant portion of the CMA population would be reduced from three to two. Combined with the fact that AT&T would have approximately [REDACTED] percent of the subscribers, we find it highly likely that AT&T would be able to profitably raise prices or lower the quality of wireless service. Therefore, on the basis of the record, we conclude that there is a substantial risk that the transaction, without conditions, would lead to anticompetitive harms in this CMA.

Texas 10-Navarro (CMA661)

In the Texas 10-Navarro CMA (which has a population of about 335,717), there are five wireless service providers with a market share greater than [REDACTED] percent. AT&T has [REDACTED] percent of the wireless subscribers while Dobson has [REDACTED] percent. If these two entities were combined, this would lead to a post-merger share of [REDACTED] percent. The other carriers with market share greater than [REDACTED] percent in this CMA are: ALLTEL, with [REDACTED] percent, Sprint Nextel, with [REDACTED] percent, and Verizon Wireless with [REDACTED] percent of the subscribers. There is one facilities-based service provider with less than a [REDACTED] percent share in the Navarro CMA – T-Mobile with [REDACTED] percent.

The post-merger HHI in the CMA would be [REDACTED], with an increase of [REDACTED] from the current figure. These numbers indicate a likelihood that there would be a major change in the character of competition after the merger in this CMA.

In terms of network coverage of this CMA, AT&T and Dobson are launched throughout the CMA and both have network coverage throughout as well. AT&T covers 96 percent of the population and 94 percent of the land area whereas Dobson covers 100 percent of the population and land area of the Navarro CMA. In addition, ALLTEL covers 82 percent of the population and 81 percent of the land area, Sprint Nextel covers 62 percent of the population and 46 percent of the land area, and Verizon Wireless covers 56 percent of the population and 46 percent of the land area.

We also have analyzed wireless LNP data to gauge how consumers view the substitutability of AT&T and Dobson. AT&T had a total of [REDACTED] mobile-to-mobile ports out through year-end 2006: [REDACTED] ports were to Dobson (reflecting [REDACTED] percent of AT&T's ports), [REDACTED] were to ALLTEL (reflecting [REDACTED] percent of AT&T's ports), [REDACTED] to Sprint Nextel (reflecting [REDACTED] percent of AT&T's ports), and [REDACTED] to Verizon Wireless (reflecting [REDACTED] percent of AT&T's ports). Dobson had a total of [REDACTED] mobile-to-mobile ports out through year-end 2006: [REDACTED] ports were to AT&T ([REDACTED] percent of Dobson's ports), [REDACTED] were to ALLTEL (reflecting [REDACTED] percent of Dobson's ports), [REDACTED] to Sprint Nextel (reflecting [REDACTED] percent of Dobson's ports), and [REDACTED] to Verizon Wireless (reflecting [REDACTED] percent of Dobson's ports).

With regard to AWS-1 spectrum, it does not appear that there is any required relocation of transmitters or receivers by government users in the CMA, therefore AWS-1 spectrum in this CMA is available for deployment by commercial licensees. In regards to BRS spectrum, a transition plan has been filed for the five BTAs that coincide with the Navarro CMA. However, completion notifications have been filed for only three of the five BTAs. These three BTAs encompass six out of 10 counties in this CMA, and reflect approximately 64 percent of the CMA population and 58 percent of the land area. Since over half the CMA's population and land area have completed notifications filed and a transition plan has been filed for the remainder of the BTAs associated with this CMA, we will include the BRS spectrum as part of our analysis.

The merged entity would hold between 55-90 MHz of cellular, PCS, SMR and 700 MHz spectrum on a county-by-county basis within the CMA. Neither AT&T nor Dobson holds BRS spectrum in this CMA. AT&T and Dobson combined would also hold an additional 30 MHz of AWS-1 spectrum throughout the Navarro CMA. In summary, the merged entity's total spectrum aggregation on a county-by-county basis within this CMA would come to 105-120 MHz out of a possible 443 MHz, reflecting approximately 24 to 27 percent of the spectrum currently available for the provision of mobile telephony services.

With the consideration of cellular, PCS, SMR, 700 MHz, AWS-1, and BRS spectrum, seven additional licensees hold spectrum throughout the entire CMA—Leap, Peoples Wireless, Qualcomm, Spectrum Co., Sprint Nextel, T-Mobile, and Verizon Wireless. Also, eleven other licensees hold this spectrum in various counties in the Navarro CMA – Alda Wireless, ALLTEL, Atlantic Wireless, Clearwire, JRZ Associates, Libmont Communications, Lipscomb Interests, L.M. Beal, MetroPCS, PCTV Gold, and Sungilt.

Conclusion. A full business unit divestiture is required in this CMA because there is a significant likelihood of competitive harm. If a divestiture in this CMA was not required, there would be two facilities-based providers remaining in the market (including the merged entity) that would be considered sufficiently built out in this CMA. As a result, there would be an increase in the probability that the merged entity would behave in an anti-competitive manner. The proposed transaction would involve combining the [REDACTED] and [REDACTED] largest providers in terms of market share and the resulting entity would be [REDACTED] as large as the next two largest service providers and almost [REDACTED] as large as the other service provider in the CMA with a greater than [REDACTED] percent market share. Further, the number of service providers with network facilities covering more than half of the CMA land area would be reduced from three to two. Combined with the fact that AT&T would have approximately [REDACTED] percent of the subscribers, we find it highly likely that AT&T would be able to profitably raise prices or lower the quality of wireless service. Therefore, on the basis of the record, we conclude that there is a substantial risk that the transaction, without conditions, would lead to anticompetitive harms in this CMA.

APPENDIX B**Market Specific Analysis of Texas-9 Runnels (CMA660)**

Set forth below is a detailed examination of Texas 9 Runnels CMA (CMA660) – of which Texas RSA 9B2 – a CMA market for which our initial screen indicated additional review was necessary but in which we determine that the public interest would be served by the proposed transfer of control of Dobson to AT&T and would likely not lead to anticompetitive harms that require a remedy.

The market share and HHI information appearing herein are derived from our analysis of three sets of data: geographic service provision data, Local Number Portability (LNP) data, and data compiled in our Numbering Resource Utilization / Forecast (NRUF) database. Using these different sets of data to cross-check against each other, we find that they essentially corroborate each other. When combined with the other factors in our multi-factor, market-specific analysis, we have a reliable basis for drawing competition-related conclusions based on the totality of the circumstances that are present in the market.

Texas-9 Runnels (CMA660)

In the Texas-9 Runnels CMA (which has a population of about 193,442), there are seven wireless service providers with market share greater than [REDACTED] percent, which is the standard we have used in recent wireless merger orders to identify service providers with sufficient share to be counted as actual competitors in the market. AT&T has [REDACTED] percent of the wireless subscribers while Dobson has [REDACTED] percent. If these two entities were combined, this would lead to a post-merger share of [REDACTED] percent. The five other service providers in this CMA with market share greater than [REDACTED] percent are: ALLTEL with [REDACTED] percent, Mid-Tex Cellular with [REDACTED] percent, Sprint Nextel with [REDACTED] percent, T-Mobile with [REDACTED] percent, and Verizon Wireless with [REDACTED] percent. There are no other service providers with market share in this CMA.

The post-merger HHI in the CMA would be [REDACTED], representing an increase of [REDACTED] from the current figure. Based on the additional analysis below, however, we conclude that the level of competition in this CMA, post-transaction, would be more robust than the HHI figures suggest for several reasons.

In terms of network coverage of this CMA, AT&T's network covers 40 percent of the CMA area and covers 42 percent of the CMA population. AT&T's network covers a significant portion of only five of eleven counties of this CMA. Dobson's network covers 98 percent of the CMA area and covers 100 percent of the CMA population. Two other service providers, Sprint Nextel and T-Mobile, cover a significant portion of the population of the Runnels CMA. Sprint Nextel covers 84 percent of the CMA population and T-Mobile covers 66 percent of the CMA population. Although Mid-Tex's network does not cover as much of the population as Sprint Nextel's or T-Mobile's network, it covers a greater share of the population (58 percent) than does AT&T's network. Further, Sprint Nextel's network covers a significant portion of ten of the eleven counties that comprise this CMA. T-Mobile only has significant network coverage in five counties. Finally, this transaction results in three or fewer providers in only two out of eleven counties, and these two counties reflect only 12 percent of the total CMA population.

We also have analyzed wireless LNP data to gauge how consumers view the substitutability of AT&T and Dobson. AT&T had a total of [REDACTED] mobile-to-mobile ports out in 2006: [REDACTED] of these ports were to Dobson (reflecting [REDACTED] percent of AT&T's ports),

[REDACTED] to ALLTEL (reflecting [REDACTED] percent of AT&T's ports), [REDACTED] to Mid-Tex (reflecting [REDACTED] percent of AT&T's ports), [REDACTED] to Sprint Nextel (reflecting [REDACTED] percent of AT&T's ports), [REDACTED] to T-Mobile (reflecting [REDACTED] percent of AT&T's ports), and [REDACTED] to Verizon Wireless (reflecting [REDACTED] percent of AT&T's ports). Dobson had a total of [REDACTED] mobile-to-mobile ports out in 2006: [REDACTED] ports were to AT&T ([REDACTED] percent of Dobson's ports), [REDACTED] to ALLTEL (reflecting [REDACTED] percent of Dobson's ports), [REDACTED] to Mid-Tex (reflecting [REDACTED] percent of Dobson's ports), [REDACTED] to Sprint Nextel (reflecting [REDACTED] percent of Dobson's ports), [REDACTED] to T-Mobile (reflecting [REDACTED] percent of Dobson's ports), and [REDACTED] to Verizon Wireless (reflecting [REDACTED] percent of Dobson's ports).

With regard to AWS-1 spectrum, it does not appear that there is any required relocation of transmitters or receivers by government users in the CMA. As a result, AWS-1 spectrum in this CMA is available for deployment by commercial licensees.

The merged entity would hold between 45 and 90 MHz of cellular, PCS, SMR and 700 MHz spectrum on a county-by-county basis within the CMA. AT&T and Dobson combined would hold an additional 10 to 20 MHz of AWS-1 spectrum on a county-by-county basis in the CMA. In summary, the merged entity's total spectrum aggregation on a county-by-county basis in this CMA would come to 55-100 MHz out of a possible 370 MHz, reflecting approximately 15 to 27 percent of the spectrum currently available for the provision of mobile telephony services.

With the consideration of cellular, PCS, SMR, 700 MHz, and AWS-1 spectrum, eight additional licensees hold spectrum throughout the entire CMA – Leap, Lin Television, Qualcomm, Sprint Nextel, T-Mobile, Texas Telephone Coop, and Verizon Wireless. Also seven other licensees hold spectrum in various counties in the CMA – ALLTEL, Coleman, CT Cube, Global Telecom, Mid-Tex, MetroPCS, and SpectrumCo.

Conclusion. A full business unit divestiture is not required in this CMA. In the Runnels CMA, there effectively would be no change in the number of facilities-based service providers because AT&T, because it covers less than 50 percent of the CMA population, is not considered a facilities-based service provider today. Post-transaction, we find that there would be two providers with significant build out and one additional carrier that could expand its network in a timely manner to mitigate any competitive harm. Although the merged entity would have [REDACTED] market share in this CMA, six carriers with market share greater than [REDACTED] percent would remain in the market. Further, there are three service providers that cover a greater percent of the population than AT&T – Mid Tex, Sprint Nextel, and T-Mobile. In addition, the transaction reduces the number of providers to 3 or fewer only in counties that reflect only twelve percent of the CMA population. Therefore, the service providers in the market should be able to respond effectively to anticompetitive actions by the merged entity. As a result, it appears that the transaction is not likely to result in competitive harms in the Texas-9 Runnels CMA. Thus, we see no need for any type of spectrum or business unit divestiture in this market.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS
CONCURRING IN PART, DISSENTING IN PART**

Re: Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-153.

In this proceeding I vote (in the closest of calls) to concur in the underlying transaction, and to dissent (no close call at all) from a significant portion of the competitive analysis the Commission employs to justify its decision. The changed analysis is so unwarranted that I came within an inch of dissenting to the entire item.

Since the Commission's short-sighted decision a few years ago to eliminate the CMRS spectrum aggregation limit, we have seen a wave of consolidation among wireless incumbents and a general drawing down on the storehouse of wireless competition that industry investment and wise FCC policy throughout the 1990s created. I continue to have concerns about ever-increasing concentration in the wireless sector. In this specific transaction, the Order allows an independent wireless company largely focused on serving rural America to be acquired by one of the two leading wireless companies – companies that are owned in whole or in part by the leading wireline telephone companies. In terms of intermodal competition, the order is silent, despite the reality that a parent company may be more than a little reluctant to employ its spectrum holdings to put competitive pressure on – or cannibalize existing revenue from – its wireline offerings. In terms of intramodal competition, I fear this concentration could have important effects on the availability of roaming services and the choices consumers have. The Order does condition the transaction on divestitures of business units in four markets in which, post-transaction, there would be fewer than three facilities-based providers. I would prefer our remedies to be more extensive, and I am convinced that our statutory obligation to ensure that mergers are in the public interest provides ample authority for the Commission to go further than it did. Nevertheless, I ultimately concur in today's decision because this transaction can serve the public interest by making upgraded networks, services and products available more quickly to many of Dobson's rural customers.

I must dissent, however, to the order's dramatic change to the initial spectrum screen used in our case-by-case competitive analysis of wireless transactions in the post-spectrum cap world. When we moved away from the spectrum cap's bright-line test, the Commission committed to employing a multi-factor, case-by-case analysis that insured, among other things, that the Commission took a hard look at markets in which a merged entity would have excessive spectrum holdings. Up until today's decision, the initial spectrum screen flagged for more detailed Commission review any market in which the merged entity would hold 70 megahertz, which represents approximately one-third of the existing 200 megahertz of spectrum suitable for mobile telephony purposes. This initial screen recognizes that spectrum is a publicly owned resource and is both a critical market input and significant barrier to entry. It is therefore not surprising that Congress gave the Commission very specific responsibilities to promote competition, the efficient and intensive use of spectrum, and diverse control of spectrum by a wide variety of entities. Today's decision appears to ignore those Congressional directives, however, and radically inflates the screen to 95 megahertz – in essence, finding that there is nothing *per se* problematic from a competitive standpoint with a single entity holding up to 94 megahertz of spectrum in a given market. This sets a truly dangerous precedent.

In the Commission's rush to increase the screen's denominator to 280 megahertz by including 80 megahertz of commercial 700 MHz spectrum, we utterly fail to address the reality that the majority of this spectrum is quite possibly years away from being a part of any real numerator. Competition and, more importantly, consumers are put at risk by this type of sloppy math. The order concludes that the 700 MHz

spectrum is available on a nationwide basis and that a potential competitor can make a significant market impact by using this 700 MHz spectrum to discipline the mobile telephony market in “less than a year and a half.” Unfortunately, this conclusion fails to overcome the troubling facts that (1) the auction and licensing process for the majority of the 700 MHz spectrum has yet to occur, and as a result, we have no idea who will be the relevant licensees (the identity of which could be highly important to the maintenance of competition); (2) it is an assumption based on faith to conclude that all of this spectrum will be immediately useful for the purposes envisioned herein on February 17, 2009; and, (3) it is not entirely clear when equipment will be readily available for mobile telephony purposes in the 700 MHz band. Moreover, the Order ignores evidence in the record that even the 18 megahertz of 700 MHz spectrum previously auctioned and licensed currently is not able to impact the market. One of the petitioners, a current 700 MHz licensee, argues that its 700 MHz license does not create any near-term prospects to discipline the mobile telephony market, due largely to the current unavailability of 700 MHz equipment. Even the Applicants do not request the order’s drastic departure from the existing spectrum screen. Finally, the encouragement of a competitive wireless environment must include factors other than simply juggling numerators and denominators; it must take into account the practical realities of the marketplace. The only clear formula I see at work here is a formula for more wireless industry consolidation.

The Commission should not pretend to examine markets in which a merged entity would have an excessive amount of mobile telephony spectrum, while it hides its head in the sand by prematurely bumping up the spectrum screen to preclude such review. I would have preferred that we wait and see how the mobile telephony market develops before we included the 700 MHz spectrum in our initial spectrum screen, and AWS and BRS in the competitive analysis. I am particularly troubled by the fact that the order breaks with precedent at a time when the Commission has pending before it several other significant wireless transactions in addition to petitions for reconsideration of the 700 MHz Second Report and Order raising the issue of whether some type of spectrum aggregation limits are necessary in the 700 MHz band in order to meet our Congressional directives. Frankly, this new methodology—if it goes uncorrected—does more to dissuade me from future approvals of transactions than it does to encourage me.

Finally, I also express concerns about AT&T’s commitment to subject itself to an interim cap on the high-cost universal service support the company receives as a competitive eligible telecommunications carrier (CETC). As I explained in my partial dissent to the recent ALLTEL-Atlantis transaction and in my dissent to the Joint Board’s recommendation (in May of this year) for a general CETC cap, piecemeal Universal Service Fund (USF) reform is actually counter-productive to the far more important goal of rationally implementing comprehensive reform, particularly when the Joint Board currently is working hard to provide the Commission a recommendation on broader reform.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
APPROVING IN PART, DISSENTING IN PART**

Re: Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-153.

I generally approve this merger because I believe it will expand and improve services and features that will be available to rural customers. The combined entity will be able to offer the latest wireless technologies and services to traditionally underserved customers in rural America - benefits already available to many urban consumers. I am pleased that Dobson's rural customers will be able to take advantage of Wi-Fi and GPS-enabled handsets, new innovative service features, rate plans and an expanded geographic coverage.

Of course, a merger like this requires a thorough public interest review to ensure that we do not inadvertently disadvantage the very communities we are trying to protect. An unchecked merger could harm the competitive environment in some communities in ways that the market is unlikely to overcome. So while I appreciate the Commission staff's analysis of the markets affected by the merger and fully support our decision to require divestiture in the markets identified in our Memorandum Opinion and Order, I am concerned that some markets have fallen through the cracks.

In addition, I am very troubled that this item includes, as part of its evaluation of the input market for spectrum and the potential competitive harms, the 80 MHz of the 698-806 MHz spectrum band ("700 MHz") in the total amount of spectrum suitable for mobile telephony nationwide. The majority concludes that the timing of nationwide availability of the 700 MHz spectrum falls within the two-year time frame set out in the Merger Guidelines for when a significant market impact from entry must result.²⁹⁸ Hence, the Order determines that this additional spectrum should be considered a component of the input market for spectrum for evaluating this transaction. This determination results in a 25 percent increase in the spectrum aggregation screen to 95 percent – a notable change which raises concerns regarding increased likelihood of competitive harm in certain overlapping markets. Significantly, we do not know what the complete impact of the 700 MHz auction will be, how that spectrum will be distributed and whether any single party, including the acquiring party in this proceeding, might get a disproportionate share of the spectrum. For these reasons, I am unable to fully support this aspect of the item.

With regard to AT&T's voluntary commitment to an interim cap on its high-cost, competitive eligible telecommunications carrier support, I must also reiterate that my support for this transfer of control does not prejudice my consideration of the broad policy issues regarding whether an interim cap on universal service support is the appropriate vehicle to address the growth of the high cost fund. And while the interim cap included in this Order is voluntary, it is an issue that I continue to believe should be resolved in the relevant proceeding.

For these reasons, I approve and dissent in part in my decision today.

²⁹⁸ Horizontal Merger Guidelines, U.S. Department of Justice and Federal Trade Commission, § 3.2 "Timeliness of Entry."

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: Applications of AT&T Inc. and Dobson Communications Corporation For Consent to Transfer Control of Licenses and Authorizations, File Nos. 0003092368, et al., WT Docket No. 07-153.

I am pleased to support approval of this transaction given the numerous public interest and consumer benefits, especially for rural and suburban Alaskan consumers. The merger will provide Dobson's customers with access to the full range of services available on AT&T's national GSM-EDGE network and will allow Dobson's customers to make and receive voice calls in more than 190 countries, and access data services in 120 countries, through AT&T's roaming partners. As discussed below, however, I question the necessity of introducing a new economic analytical framework as part of this Order.

In today's order, the Commission adds 700 MHz band spectrum to its market screen for spectrum suitable for provision of mobile telephony services. While it is certainly important that we update our analytical tools from time to time, this action is decidedly premature and introduces an unnecessary level of complexity into the Commission's market analyses. I also wonder how the new framework will affect participation in the forthcoming auction of 700 MHz spectrum.

The Order concludes that 700 MHz band spectrum "not only is technically capable of supporting mobile services, but also is in many respects ideally suited for the provision of these services." This may be true; however, at this preliminary stage, we have little, if any, idea how auction winners will elect to use this spectrum. Nor should we -- the Part 27 licensing rules expressly welcome flexible uses within this band. And, at least one current operator is deploying mobile broadcast services. The Order also concludes that 700 MHz band spectrum "is available on a nationwide basis." Actually, Congress has determined that the spectrum will not be fully available until February 17, 2009, which is over one year away.

The fact is that the capabilities of the 700 MHz band spectrum are irrelevant until the band is licensed, cleared of incumbent users, built out, and used to provide services to America's consumers. Moreover, I wonder whether the distinctions for the purposes of this market screen between the cellular, PCS, SMR, 700 MHz, AWS-1 and BRS spectrum bands are still necessary or appropriate. Perhaps our overdue 12th *Annual Wireless Competition Report* will more thoroughly analyze this issue.

Once again, the Commission raises more questions than it answers, and appears to bind future Commission action, and dictate or bind government policy. I am concerned that we are regulating unnecessarily without thinking through possible unintended consequences. This is especially unfortunate given the critical need for market certainty as we approach the 700 MHz auction.