DESCRIPTION OF TRANSACTION,

PUBLIC INTEREST SHOWING

AND RELATED DEMONSTRATIONS

EXECUTIVE SUMMARY

These Applications seek Commission consent to transfer to AT&T Inc. ("AT&T") control of wireless licenses — principally AWS, PCS, and associated microwave licenses and international Section 214 authorizations — held by Leap Wireless International, Inc. ("Leap") and its subsidiaries. The transaction will bring significant transaction-specific benefits and will not cause competitive harm.

Combining AT&T's nationwide network with Leap's prepaid/no-contract business will benefit consumers seeking a high-quality, competitively-priced prepaid wireless experience. Leap has years of experience marketing prepaid/no-contract service and an established retail distribution system, and its Cricket brand is well recognized in its service areas. AT&T has a fast and reliable nationwide 4G LTE/HSPA+ network that provides its customers a level and variety of services that Leap does not and cannot offer. Combining Leap's established Cricket brand, spectrum, customer base, distribution network, and experience selling prepaid/no-contract service with AT&T's nationwide 4G LTE/HSPA+ network, suite of advanced devices and services, and financial resources, will bring consumers a compelling, nationwide, facilities-based alternative for a full range of prepaid/no-contract services. This will include low-cost, value-priced products as well as higher-end, data-oriented products.

Consumer demand for prepaid/no-contract service is growing, and wireless carriers with strong prepaid/no-contract offerings recently have become even stronger competitors. At the same time, customer demand for robust high-speed data services is also growing, as customers increasingly demand higher data throughput speeds to support mobile applications and mobile broadband use. The combined company will be able to address that demand more effectively than either company could on its own.

Leap's limited network footprint allows it to offer facilities-based services to less than one-third of the U.S. population, and Leap relies on other wireless carriers for roaming and MVNO services outside of its network footprint. Leap's financial resources and limited spectrum depth make it uneconomic to upgrade its current 3G CDMA platform to LTE throughout its network; to date it has deployed LTE technology in only 11 metropolitan areas covering approximately 21 million people and has little prospect today of financing significant further upgrades to cover the remainder of its network footprint. Leap has experienced a 22 percent drop in the number of Leap customers between March 31, 2012 and June 30, 2013, meaning that its fixed costs are spread over a smaller customer base. Leap's variable costs per customer have also been increasing, resulting in increasing pressure on its operating margins.

For its part, AT&T's recent efforts to expand its prepaid/no-contract offerings are just getting underway and face significant challenges in establishing a competitive presence in the market. The combination will benefit both companies' customers, enhance the combined company's ability to compete against the many other wireless service providers with strong prepaid offerings, and can be expected to stimulate a further competitive response by other wireless carriers, further benefiting consumers.

The transaction also will result in an improved network experience for customers of both companies. AT&T can make use of Leap's PCS and AWS spectrum more efficiently to enhance AT&T's LTE deployment, which will promote the policies of the Commission's National Broadband Plan. Leap's current network uses less than half of its spectrum in the areas where it provides facilities-based service, and Leap holds additional spectrum, covering 41 million people, that is outside Leap's network footprint and is not currently in use. Leap's spectrum is particularly well suited for use by AT&T because AT&T's 4G LTE network includes AWS

spectrum and will soon include PCS spectrum as well. Because Leap's spectrum holdings are complementary to AT&T's 4G LTE deployments, AT&T will be able to deploy Leap's unused spectrum within a year in many cases, and within 60-90 days in certain areas. AT&T's 4G deployments are far more efficient and offer customers higher throughput speeds than Leap's 3G EVDO and limited narrow-bandwidth LTE deployments. By migrating Leap customers to AT&T's network, the combined company will be able to provide customers with a better network experience. Moreover, by integrating a few thousand of Leap's cell sites into the AT&T network, AT&T will be able to improve network capacity and performance in metropolitan areas through site densification.

In addition, the transaction will result in substantial operating synergies from, among other things: reducing interconnection and backhaul expenses; shrinking customer acquisition and customer care costs and certain other scale-based costs; and reducing general and administrative costs. There also will be substantial savings in roaming and resale expenses because the combined company will offer a significantly greater on-net footprint and expanded coverage compared to Leap's current network, obviating the need to obtain MVNO services from other providers.

These benefits will be achieved without harm to competition. Leap today does not compete as a facilities-based provider at the national level and plays only a modest role in most of its operating markets at the local level. Indeed, both the Commission and the Department of Justice have concluded that regional carriers such as Leap do not affect the pricing or other key competitive decisions of the four nationwide wireless carriers. Because this transaction does not reduce the number of national wireless carriers, it will not have an adverse impact on competition nationally. The four nationwide carriers offer service in nearly all local areas where

Leap operates, and other regional competitors offer service in a number of these areas as well, ensuring competition will remain strong in these areas. Moreover, in every CMA involved in this transaction, the four national carriers already hold spectrum, and there are other spectrum holders that can deploy their spectrum or make it available for use by other carriers. The modest increase in AT&T's spectrum holdings from the transaction, thus, does not raise competitive concerns.

This transaction clearly is in the public interest, and these Applications should be granted expeditiously and unconditionally.

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ATTACHMENTS:

Declaration of Rick L. Moore

Declaration of William Hogg

Declaration of S. Douglas Hutcheson

Declaration of Dr. Mark Israel

Appendix A: Spectrum Aggregation Chart

Appendix B: Competitor Chart

I. INTRODUCTION

AT&T Inc. ("AT&T") and Leap Wireless International, Inc. ("Leap") have agreed to transfer to AT&T control of Leap's wireless telecommunications business, including AWS, PCS, and microwave licenses and international Section 214 authorizations held by Leap and certain of its subsidiaries. For the reasons demonstrated below, the Commission should grant these transfer Applications expeditiously.

II. DESCRIPTION OF THE APPLICANTS AND THE TRANSACTION

A. The Applicants

AT&T is a leading provider of wireless, Wi-Fi, high-speed Internet, local and long distance voice, mobile broadband, and advanced TV services, as well as worldwide wireless coverage and IP-based business communications services.[1]

Leap is a wireless carrier that offers services under the "Cricket®" brand. Cricket service offerings provide customers with prepaid/no-contract wireless services for a flat rate without requiring a fixed-term contract ("prepaid/no-contract" services).[2] As of June 30, 2013, Leap had approximately 4.8 million customers and owns wireless licenses covering approximately 137 million people, of whom approximately 96 million are covered by Leap's network footprint.[3] Leap provides coverage outside of its network footprint through resale and roaming relationships with other wireless carriers.[4]

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[1] AT&T Inc., Annual Report (Form 10-K), at 1-2 (Feb. 22, 2013).
[2] Leap Wireless Int'l, Inc., Annual Report (Form 10-K), at 2 (Feb. 25, 2013) ("*Leap 2012 10-K*").
[3] Declaration of S. Douglas Hutcheson, CEO, Leap Wireless Int'l, Inc. ¶ 2 (Aug. 1, 2013) ("Hutcheson Decl.") (attached).
[4] Leap Wireless Int'l, Inc. Quarterly Report (Form 10-Q), at 27 (May 2, 2013) ("*Leap Q1 2013 10-Q*").

B. Qualifications

The Commission has concluded repeatedly that AT&T has the qualifications required by the Communications Act to control Commission authorizations,[5] and nothing has changed to disturb this conclusion. Nor can there be any question about Leap's character or qualifications to hold Commission authorizations.[6]

C. Description of the Transaction

AT&T has agreed to acquire Leap in an all-cash transaction.[7] The total cash consideration is $15.00 per share and expected to be approximately $1.3 billion, and AT&T will acquire all of Leap's outstanding indebtedness. Leap had approximately $3.6 billion of outstanding indebtedness (net debt of approximately $2.7 billion) as of June 30, 2013.[8] Mariner Acquisition Sub Inc., a newly formed, wholly-owned subsidiary of AT&T, will be merged with and into Leap, leaving Leap as the surviving entity. As a result, Leap will become a wholly-owned subsidiary of AT&T.

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[5] *See, e.g.*, *Application of AT&T Inc. & Qualcomm Inc. for Consent to Assign Licenses & Authorizations*, Order, 26 FCC Rcd 17,589, 17,601 ¶ 28 (2011) ("*AT&T/Qualcomm Order*"); *Applications of AT&T Inc. & Cellco P'ship d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses & Authorizations & Modify a Spectrum Leasing Arrangement*, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8720 ¶ 29 (2010) ("*AT&T/Verizon Order*"); *Applications of AT&T Inc. & Centennial Commc'ns Corp. for Consent to Transfer Control of Licenses, Authorizations & Spectrum Leasing Arrangements*, Memorandum Opinion and Order, 24 FCC Rcd 13,915, 13,931 ¶ 33 (2009) ("*AT&T/Centennial Order*").

[6] *See, e.g.*, *Applications of Cellco P'ship d/b/a Verizon Wireless & SpectrumCo LLC & Cox TMI, LLC for Consent to Assign AWS-1 Licenses*, Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd 10,698, 10,712 ¶ 35 (2012) ("*Verizon/SpectrumCo Order*"); *Applications of Leap Wireless Int'l, Inc., & Its Subsidiaries for Consent to the Assignment of Licenses*, Memorandum Opinion and Order, 19 FCC Rcd 14,909, 14,916 ¶ 11 (2004).

[7] As a condition to AT&T's obligation to consummate the merger, Leap is required to dispose of its ownership interests in PR Wireless, LLC and Flat Wireless, LLC, in which case such interests would not be acquired by AT&T.

[8] Hutcheson Decl. ¶ 12. Net debt is calculated as total indebtedness *minus* unrestricted cash, cash equivalents and short-term investments.

In addition to cash, Leap's shareholders will each receive a contingent value right ("CVR"), which will entitle them to net proceeds received from the sale of Leap's Lower 700 MHz A Block license in Chicago (the "Chicago License"). The licensee for the Chicago License will become a subsidiary of AT&T, but Leap's designated stockholders' representative will exercise *de facto* control over the Chicago License. The stockholders' representative will have the power to make all decisions and to act on behalf of and as agent for the CVR holders. Leap has formed an indirect, wholly-owned subsidiary, Laser, Inc. ("Laser"), a Delaware corporation, to serve as the stockholders' representative.

The stockholders' representative will have the responsibility for maintaining the Chicago License, including entering into a consensual arrangement to address the technical issues relating to the digital television protection criteria applicable to the Channel 51 broadcast station signal adjacent to the Chicago License,[9] and to conduct a sale process with respect to the Chicago License for the benefit of the former Leap shareholders. If the stockholders' representative fails to enter into an agreement to sell the Chicago License within two years after the closing of the AT&T/Leap transaction (or if an agreement has been entered into, but the Chicago License has not been sold by the third anniversary of the closing of the AT&T/Leap transaction), then AT&T will have the right to sell the license, and the net proceeds will go to the former Leap shareholders. This arrangement serves the public interest with regard to the Chicago License, maximizing its utility for subscribers, while ensuring its orderly disposition to an independent third party.

[9] *See Cricket License Co., LLC Request for Waiver or Limited Extension of Time to Construct Lower 700 MHz A Block,* Request of Cricket License Co., LLC for Extension of Time, WT Dkt No. 12-332 (filed June 3, 2013).

III. THE STANDARD OF REVIEW

Under Sections 310(d) and 214(a) of the Communications Act of 1934, as amended,[10] the Commission first must assess whether a transaction complies with the Communications Act, other applicable statutes, the Commission's rules, and federal communications policy. The Commission then weighs any potential public interest harms of the proposed transaction against the potential public interest benefits. The applicants must prove that the proposed transaction, on balance, serves the public interest.[11] Under the Commission's sliding scale approach, where potential public interest harms appear unlikely, the Commission does not require a detailed showing of transaction-specific benefits.[12] Further, the Commission "may not consider whether the public interest, convenience, and necessity might be served by" a transaction involving an entity "other than the proposed transferee."[13] The Commission repeatedly has found that an assignment or transfer proceeding is not the proper forum for addressing general industry issues that are not specific to the transaction.[14]

These Applications demonstrate that the transaction will serve the public interest, will not result in harms to competition and will not violate any law or rule, require a waiver of a rule, or

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[10] 47 U.S.C. §§ 214(a), 310(d).

[11] *See AT&T/Verizon Order*, 25 FCC Rcd at 8716 ¶ 22; *AT&T/Centennial Order*, 24 FCC Rcd at 13,927 ¶ 27.

[12] *Applications of SOFTBANK CORP., Starburst II, Inc., Sprint Nextel Corp., & Clearwire Corp. for Consent to Transfer Control of Licenses & Authorizations*, IB Dkt No. 12-343, Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, FCC 13-92 ¶ 102 (rel. July 5, 2013) ("*Sprint/SoftBank Order*") ("[U]nder the Commission's sliding scale approach, where potential public interest harms appear unlikely . . . we will accept a lesser showing of public interest benefits.").

[13] 47 U.S.C. § 310(d).

[14] *See, e.g.*, *Sprint/SoftBank Order* ¶ 74; *Verizon/SpectrumCo Order*, 27 FCC Rcd at 10,698, 10,733-34 ¶ 94; *AT&T/Qualcomm Order*, 26 FCC Rcd at 17,622 ¶ 79; *AT&T/Centennial Order*, 24 FCC Rcd at 13,972 ¶ 141; *AT&T Inc. & BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5692 ¶ 56 n.154 (2007) ("*AT&T/BellSouth Order*").

result in any unjust enrichment concerns. Nor will the transaction otherwise frustrate or undermine the Commission's policies and enforcement of the Communications Act.

IV. THE TRANSACTION WILL SERVE THE PUBLIC INTEREST

This transaction will yield strong and diverse public interest benefits:

- First, the transaction will lead to expanded and improved choices for consumers and increased competition, including nationwide availability of Cricket-branded value offerings over advanced 4G broadband networks.

- Second, the transaction will further the Administration's and Commission's goals, as well as benefit the public interest, by putting Leap's spectrum, much of which is currently unused, to more efficient use in AT&T's 4G LTE network, supplying AT&T with additional network capacity, and providing customers of both companies with an improved network experience.

- Third, the transaction will result in significant cost savings and other synergies.

The Commission has repeatedly credited near-term, verifiable transaction-specific public interest benefits like those that will be generated in this transaction, and it should do so here.[15]

A. The Transaction Will Expand and Improve Choices for Consumers and Will Increase Competition

As the Commission has recognized, vigorous competition to attract value-conscious customers to prepaid/no-contract services is intensifying. In recent years, providers have

[15] *See Applications of Deutsche Telekom AG, T-Mobile USA, Inc., & MetroPCS Commc'ns for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 2322, 2349, ¶ 74 (IB WTB 2013) ("*T-Mobile/MetroPCS Order*"); *Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corp., Horizon Wi-Com, LLC, NextWave Wireless, Inc., & San Diego Gas & Elec. Co. for Consent to Assign & Transfer Licenses*, Memorandum Opinion and Order, 27 FCC Rcd 16,459, 16,474-75 ¶¶ 40-45 (2012) ("*AT&T/WCS Order*"); *AT&T/Centennial Order*, 24 FCC Rcd at 13,959 ¶ 106; *Applications of Cellco P'ship d/b/a Verizon Wireless & Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, & Spectrum Manager & De Facto Transfer Leasing Arrangements*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17,444, 17,512-15 ¶¶ 147-56 (2008) ("*Verizon/ALLTEL Order*"); *Applications of AT&T Inc. & Dobson Commc'ns Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd 20,295, 20,334-35 ¶¶ 82-83 (2007) ("*AT&T/Dobson Order*") (crediting cost synergies in roaming, network, advertising, and overhead costs).

"[taken] actions to compete aggressively for customers of smartphones and other data services," offering unlimited prepaid/no-contract plans, data service packages, and an increasingly diverse array of devices.[16] T-Mobile USA ("T-Mobile"), which has acquired additional spectrum from Verizon Wireless, AT&T, and its acquisition of MetroPCS, is aggressively rolling out 4G service[17] and has heightened its business focus on lower-cost, no-contract service.[18] Among other things, it is expanding the MetroPCS brand nationwide utilizing T-Mobile's 4G LTE network.[19] In addition, Sprint now has bolstered its financial and operational position from its

[16] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report & Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Servs.*, Sixteenth Report, 28 FCC Rcd 3700, 3810, 3811-12 ¶¶ 159, 161-64 (2013) ("*Sixteenth Report*").

[17] *See* Press Release, T-Mobile, T-Mobile USA Reports First Quarter 2013 Results (May 8, 2013), *available at* http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle&ID=1816790&highlight= ("T-Mobile USA's capital expenditures for the first quarter of 2013 were $1.1 billion, in support of an accelerating network modernization program on pace to achieve 200 million covered pops with 4G LTE by the end of 2013."); Press Release, T-Mobile, T-Mobile and MetroPCS Combination Complete - Wireless Revolution Just Beginning (May 1, 2013), *available at* http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle&ID=1813495&highlight= ("[E]nhanced spectrum position [from T-Mobile-MetroPCS merger] . . . provides a path to at least 20+20 MHz of 4G LTE in approximately 90% of the top 25 metro areas in 2014."); *see also* Declaration of Dr. Mark Israel, Executive Vice President, Compass Lexecon, ¶¶ 35-37 (Aug. 1, 2013) ("Israel Decl.") (attached).

[18] *See* Press Release, T-Mobile, T-Mobile Makes Bold "Un-carrier" Moves (Mar. 26, 2013), *available at* http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle&ID=1802239&highlight= (stating that T-Mobile's "Un-carrier" approach, and Simple Choice Plans, "eliminate[] restrictive annual contracts," giving customers "far more flexibility with how they buy and use wireless devices." Customers "can purchase great devices, pay for them in affordable, interest-free monthly installments, and upgrade anytime they like.").

[19] *See* Phil Goldstein, *T-Mobile to expand MetroPCS footprint by 100M POPs*, FierceWireless (May 15, 2013), *available at* http://www.fiercewireless.com/story/t-mobile-expand-metropcs-footprint-100m-pops/2013-05-15 (quoting T-Mobile CTO Neville Ray that "with the combined company 'we're in this very strong spectrum position,'" and explaining that T-Mobile "plans to significantly expand the footprint where its MetroPCS brand offers service—by around 100 million POPs over the next six quarters" and "will be 'expanding to 15 additional major metropolitan areas very quickly'"). *See also T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2348 ¶ 74; Israel Decl. ¶ 36; Press Release, T-Mobile, MetroPCS Takes on New Markets: Doubles Reach in Less than Three Months (July 25, 2013), *available at* http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle&ID=1841246&highlight=.

recent acquisition by SoftBank.[20] Its acquisition of nationwide spectrum depth for 4G from its recent transaction with Clearwire[21] will also enable it to expand its successful Boost and Virgin Mobile brands.[22]

Leap has been part of this competitive mix, but faces significant challenges in competing effectively against the LTE service offerings of the nationwide wireless carriers.[23] The proposed transaction will expand and improve the service offerings available under the Cricket brand using AT&T's fast and reliable 4G network and will enable the combined company to offer high-quality nationwide, facilities-based prepaid/no-contract services more effectively. This, in turn, will put added competitive pressure on T-Mobile, Sprint, and other providers to respond with improved offerings of their own, thereby stimulating greater competition and benefiting all wireless customers.

[20] According to Sprint, SoftBank's acquisition will allow Sprint "to strengthen its balance sheet and invest in its network and its broadband wireless service." *Sprint/SoftBank Order* ¶ 14. Sprint also has acquired spectrum and nearly 420,000 customers in the Midwest from US Cellular. Press Release, Sprint Nextel Corp., Sprint Closes Transaction to Acquire U.S. Cellular Spectrum and Customers in the Midwest (May 17, 2013), *available at* http://newsroom.sprint.com/news-releases/sprint-closes-transaction-to-acquire-us-cellular-spectrum-and-customers-in-the-midwest.htm. *See* Israel Decl. ¶ 34.

[21] Deutsche Bank Markets Research, "*Sprint Nextel Corp.: The New Spectrum Powerhouse; Reinstating Coverage at Buy*," (July 11, 2013) at 2 (stating that the Clearwire transaction resulted in "extensive spectrum holdings, which we believe position it to deploy the highest capacity (and potentially highest speed) LTE network in the US … Sprint has the largest total spectrum portfolio in the US, and … more spectrum that is free-and-clear to support LTE than all of its national competitors combined."). *See also* Israel Decl. ¶ 34.

[22] Press Release, Sprint Nextel Corp., Boost Mobile and Virgin Mobile USA Each Strengthen Their 4G LTE Lineups With Award-Winning Samsung Galaxy S III in June (May 21, 2013), *available at* http://newsroom.sprint.com/news-releases/boost-mobile-and-virgin-mobile-usa-each-strengthen-their-4g-lte-lineups-with-award-winning-samsung-galaxy-s-iii-in-june.htm; *see also* Israel Decl. ¶¶ 33-34.

[23] As Leap has noted in public filings, the Sprint/SoftBank, Sprint/Clearwire, and T-Mobile/MetroPCS transactions "could further intensify the competitive pressures we face. In particular, the combination of T-Mobile and MetroPCS may result in the new, combined company having a new or significantly increased sales presence in our markets and offering prepaid and other wireless services . . .." *Leap Q1 2013 10-Q* at 46-47.

1. The transaction will improve the combined company's services and offer benefits to customers of both companies

AT&T and Leap have a complementary set of assets that will strengthen the Cricket brand and enable the combined company's nationwide offering to compete more effectively with other providers. As explained in the attached Declaration of Rick L. Moore, AT&T Senior Vice President, Corporate Development, AT&T intends to use the Cricket brand and expand the availability of the Cricket service offerings nationwide.[24] The Cricket brand has widespread customer recognition and retail distribution through Leap stores and dealerships in Leap's current network footprint, which provide a backbone for an expedited national rollout of the brand. In addition, Leap's experience in marketing and selling prepaid/no-contract service, its distribution network located in close proximity to target customers, and its existing customer base provide a solid platform to launch this nationwide offering.

For its part, AT&T has been investing heavily in constructing a robust nationwide 4G network using the most advanced 4G mobile broadband technologies available — LTE and HSPA+. Today, AT&T's LTE network reaches over 225 million people[25] and is acclaimed for its speed and reliability.[26] AT&T's nationwide 4G LTE/HSPA+ network, its superior range of devices and broader array of services, and its greater financial resources make it possible to

[24] Declaration of Rick L. Moore, Senior Vice President, Corporate Development, AT&T Inc., ¶ 5 (Aug.1, 2013) ("Moore Decl."); *see also* Israel Decl. ¶¶ 59-63.

[25] Press Release, AT&T Inc., AT&T's Fastest 4G LTE Network Now Also Nation's Most Reliable (July 18, 2013), *available at* http://www.att.com/gen/press-room?pid=24543&cdvn=news&newsarticleid=36751.

[26] Leah Yamshon and Mark Sullivan, *AT&T Clocks Best Overall Speeds with 3G/4G Combo*, PCWorld/TechHive (May 23, 2013), *available at* http://www.techhive.com/article/2039571/atandt-clocks-best-overall-speeds-with-3g-4g-combo.html; Sascha Segan, *Fastest Mobile Networks 2013*, PC Magazine (June 17, 2013), *available at* http://www.pcmag.com/fastest-mobile-networks; Patrick Linder, *Tale of the Tally: 125 Markets and Hundreds of RootScore Awards*, RootMetrics (July 22, 2013), *available at* http://rootmetrics.com/blog/trends-were-seeing/tale-of-the-tally-125-markets-and-hundreds-of-rootscore-awards/.

create stronger and more competitive offerings that can compete more effectively against the LTE service offerings of combined T-Mobile/MetroPCS, Sprint (including its Boost Mobile and Virgin Mobile USA brands), Verizon Wireless, and TracFone/Straight Talk, among others.

Existing Leap customers will benefit from access to a more robust national network and a broader array of services.[27] AT&T's nationwide 4G LTE/HSPA+ network provides its wireless customers a level and variety of services that Leap does not and cannot offer. The combined company will offer Leap customers access to AT&T's nationwide network footprint, superior choice in handsets, more robust data services, and Wi-Fi hotspots across the country.[28] At the same time, AT&T will honor the rate plans of existing Leap customers. For new customers, the combined company will continue to offer competitive rate plans that appeal to value-conscious customers, including the option of choosing low-cost devices and low-cost services.

The Commission has long recognized that increasing the diversity and range of features and services available to customers is in the public interest, and should do so here.[29] As the Wireless Telecommunications and International Bureaus recently stated, with respect to the combination of T-Mobile and MetroPCS, "[e]xisting MetroPCS customers [gain] access to a

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[27] *See T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2348 ¶ 74.

[28] Moore Decl. ¶ 18.

[29] *See, e.g.*, *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2348 ¶ 74; *AT&T/Verizon Order*, 25 FCC Rcd at 8738-41 ¶¶ 79-86; *AT&T/Dobson Order*, 22 FCC Rcd at 20,330-34 ¶¶ 73-82; *Midwest Wireless Holdings, L.L.C. & Alltel Commc'ns, Inc. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 21 FCC Rcd 11,526, 11,564-66 ¶¶ 105-09, 111-12 (2006) ("*Midwest Wireless Order*"); *Applications of W. Wireless Corp. & Alltel Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13,053, 13,101-04 ¶¶ 135-36, 138-40 (2005) ("*Western Wireless Order*"); *Applications of Nextel Commc'ns, Inc. & Sprint Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13,967, 14,013-14 ¶¶ 129-130 (2005) ("*Sprint/Nextel Order")*; *Applications of AT&T Wireless Servs., Inc. & Cingular Wireless Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21,522, 21,604-05 ¶¶ 216-20 (2004) ("*Cingular/AT&T Wireless Order*").

more robust, national network and a broader array of service and handset options"[30] and "[c]onsumers outside of MetroPCS's current limited service area will have the benefit of the MetroPCS service plans becoming available as an additional option."[31] Similar benefits will accrue to consumers here, as Leap customers will retain the benefit of low-cost prepaid/no-contract service, with the added advantages of a nationwide 4G LTE/HSPA+ network and improved handset and service options, and customers outside of Leap's limited footprint will benefit from an attractive national competitive offering. Indeed, the AT&T/Leap and T-Mobile/MetroPCS transactions together transform two small, regional providers that rarely competed head-to-head into enhanced, well-financed national offerings that will compete with each other and other providers across the country.[32]

2. Absent this transaction Leap could not become a national, facilities-based carrier

Since its inception, Leap has focused on providing facilities-based service in selected metropolitan areas only.[33] Leap's network footprint covers less than one-third of the U.S. population.[34] As such, Leap is not a nationwide facilities-based provider and has no current

[30] *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2348 ¶ 74. *See also, e.g.*, *AT&T/Dobson Order*, 22 FCC Rcd at 20,333-34 ¶¶ 79-81 (recognizing the public interest benefits that accrue to customers of a regional wireless carrier from increasing the diversity and range of features and services available to them); *AT&T/Verizon Order*, 25 FCC Rcd at 8739 ¶ 80; *AT&T/Centennial Order*, 24 FCC Rcd at 13,956-57 ¶ 99.

[31] *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2348 ¶ 74.

[32] *See* Scott Moritz, *T-Mobile Adds 15 MetroPCS Cities to Vie With AT&T, Leap*, Bloomberg News (July 25, 2013) ("T-Mobile US Inc., the fourth-largest U.S. wireless carrier, is expanding its MetroPCS service to 15 new cities, including 13 in rival Leap Wireless International Inc.'s territory. . . . 'This gets us into those Leap markets now, arriving months in advance of AT&T,' said MetroPCS Chief Operating Officer Tom Keys.'").

[33] Hutcheson Decl. ¶ 2.

[34] *Id.*

plans to become one.[35] Leap has attempted to expand its retail footprint through an MVNO arrangement, but that strategy has fallen short of expectations, and Leap has significantly reduced the number of retailer locations selling Cricket service outside of its network footprint.[36] Leap's 3G MVNO offering has attracted a relatively small number of customers, and Leap is not yet offering 4G services on an MVNO basis.[37]

Within its facilities-based footprint, Leap has trailed behind the nationwide providers in upgrading to 4G technology. Leap has deployed LTE technology in only 11 metropolitan areas covering approximately 21 million people and offers only slower, less spectrally efficient 3G CDMA EVDO elsewhere to 65 percent of its subscribers.[38] Moreover, even where Leap has deployed LTE, it has done so in less spectrally efficient narrow-bandwidth deployments — with the majority being 3x3 MHz, and none larger than 5x5 MHz — that provide substantially slower throughput speeds than its LTE competitors.[39] The high cost of LTE deployment, coupled with Leap's limited spectrum depth, have constrained both Leap's ability to deploy LTE services across its network footprint and to provide the data throughput speeds required to remain competitive.[40] As discussed in further detail below, Leap's decline in performance since early 2012 further diminishes Leap's ability to gain the scale and scope of a national facilities-based provider absent this transaction.[41] Meanwhile, intensifying competition in the wireless industry,

[35] *Id.*
[36] *Id.* ¶¶ 8, 13.
[37] *Id.* ¶ 13.
[38] *Id.* ¶ 9.
[39] *Id.* ¶ 11; *see also* Declaration of William Hogg, Senior Vice President, Network Planning and Engineering, AT&T Services Inc., ¶¶ 5, 11 (Aug. 1, 2013) ("Hogg Decl.") (attached).
[40] Hutcheson Decl. ¶¶ 11-12.
[41] *See* Section V.B.3, *infra*; *see also* Israel Decl. ¶¶ 39-42.

particularly from carriers with nationwide LTE networks, is likely to negatively impact Leap's ability to attract and retain customers in the future.[42]

3. AT&T's efforts in competing for prepaid customers

While AT&T has been marketing prepaid services under the "AT&T GoPhone" brand for many years, it has done so primarily as a complement to its postpaid service. AT&T generally has not aimed to match the offerings of prepaid/no-contract companies such as Cricket and others, particularly in recent years.[43] GoPhone is aimed primarily at capturing incremental customers who do not qualify for, or whose wireless needs are not a good match for, AT&T's postpaid plans.[44] AT&T GoPhone has not achieved nearly the same level of customer appeal as AT&T postpaid service.[45] In an attempt to increase its appeal to a broader set of customers, AT&T recently launched a new standalone prepaid brand called "Aio Wireless" ("Aio"). Aio was conceived as a start-up, completely separate and apart from the AT&T brand, with an entirely separate retail distribution network (which still needs to be built). It is available today in 7 metropolitan areas in Florida and Texas.[46] Aio still faces significant challenges to establish nationwide retail distribution, build brand recognition, and develop a significant customer base.[47]

* * *

By combining Leap's established Cricket brand, customer base, distribution network, and experience in selling prepaid service with AT&T's nationwide 4G LTE/HSPA+ network, advanced devices and services, and financial resources, the combined company more quickly

[42] Hutcheson Decl. ¶ 5.
[43] Moore Decl. ¶ 9.
[44] *Id.*
[45] *Id.*
[46] *Id.* ¶ 10 n.4.
[47] *Id.* ¶ 10.

will bring consumers nationwide a higher-quality, more robust, and competitive prepaid offering.[48] That offering will be strengthened further by the spectral, network-related, and cost saving efficiencies discussed below. Accordingly, the transaction will serve the public interest by expanding and improving wireless choices for consumers and increasing competition and innovation for wireless services nationwide.

B. The Combination of AT&T's and Leap's Network Assets Will Result in an Improved Network Experience for Customers of Both Companies

The complementary network assets of AT&T and Leap will deliver an improved network experience for customers of both companies. As explained in the attached Declaration of William Hogg, AT&T Senior Vice President of Network Planning and Engineering, AT&T will deploy Leap's spectrum holdings for 4G LTE services,[49] fulfilling the statutory and stated Commission goal of putting spectrum to "efficient and intensive use."[50] This and other network-related efficiencies, including the integration of Leap cell sites to create a more dense network grid, will enhance AT&T's network and provide an improved 4G network experience for its customers.

1. AT&T will utilize Leap's spectrum more efficiently

The Administration and the Commission have recognized repeatedly that the demand for wireless broadband services is exploding and that the wireless industry needs additional spectrum to meet this demand.[51] As President Obama stated, "[e]xpanded wireless broadband access will trigger the creation of innovative new businesses, provide cost-effective connections

[48] *Id.* ¶¶ 4, 8, 11, 14.
[49] Hogg Decl. ¶ 7.
[50] *See* 47 U.S.C. § 309(j)(3)(D).
[51] *See, e.g.*, *Policies Regarding Mobile Spectrum Holdings*, Notice of Proposed Rulemaking, 27 FCC Rcd 11,710, 11,716-17 ¶ 12 (2012).

in rural areas, increase productivity, improve public safety, and allow for the development of mobile telemedicine, telework, distance learning, and other new applications that will transform Americans' lives," but that can "only happen if there is adequate spectrum available."[52] In light of this burgeoning demand, the National Broadband Plan calls for spectrum to be put to its most efficient use.[53]

This transaction will do just that. Leap currently is using only about 42 percent of its spectrum in the markets in which it offers facilities-based service, an area covering 96 million people.[54] In areas outside of its network footprint, Leap holds unused AWS and PCS spectrum covering about 41 million people.[55]

In contrast, AT&T will use this spectrum, incorporating it into, and increasing the capacity of, its state-of-the-art LTE network,[56] thereby providing the very types of benefits that President Obama envisioned.[57] AT&T already is deploying AWS spectrum in its LTE network

[52] *See* President Barack Obama, "Unleashing the Wireless Broadband Revolution" (June 28, 2010), *available at* http://www.whitehouse.gov/the-press-office/presidential-memorandum-unleashing-wireless-broadband-revolution; *see also FCC Commissioner Jessica Rosenworcel on Presidential Memorandum Promoting Efficient Use of Spectrum by Federal Agencies,* Press Release (June 14, 2013) ("President Obama has recognized the importance of finding new spectrum to ensure America's leadership in mobile broadband. We are on a hunt for new opportunities for commercial spectrum to reach the 500 megahertz benchmark for new wireless broadband use in the Executive Order from the President nearly three years ago.").

[53] *See* Connecting America: The National Broadband Plan at 77-83 (2010) ("NBP"), *available at* http://download.broadband.gov/plan/national-broadband-plan.pdf.

[54] Hutcheson Decl. ¶ 10; LEAP - Q3 2012 Leap Wireless International Earnings Conference Call at 13 (Nov. 7, 2012) ("In terms of what percentage is not used, we have got spectrum covering 137 million PoPs, we operate covering about 95 million PoPs, we said out of those 95 million about 40% of the spectrum is utilized . . . across those 95 million PoPs.").

[55] Hutcheson Decl. ¶ 10.

[56] Because AT&T also uses PCS spectrum for AT&T's HSPA+ technology, AT&T will have the flexibility to use a portion of Leap's PCS spectrum on AT&T's HSPA+ network as required to support transitioning customers.

[57] AT&T currently covers more than 225 million people. *See* Press Release, AT&T Inc., AT&T's Fastest 4G LTE Network Now Also Nation's Most Reliable (July 18, 2013), *available at* http://www.att.com/gen/press-room?pid=24543&cdvn=news&newsarticleid=36751. AT&T

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and will begin deploying LTE service over PCS spectrum by the end of this year.[58] Therefore, the AWS and PCS spectrum to be transferred here can be readily integrated into AT&T's LTE network to enhance the network and provide customers an improved wireless experience.[59]

Specifically, in the areas where AT&T currently anticipates it will already be utilizing AWS spectrum for LTE service at the time of closing, AT&T preliminarily has determined that it will be able to deploy Leap's unused, contiguous AWS spectrum in as little as 60 to 90 days.[60] This includes approximately 50 CMAs, covering metropolitan areas such as Denver, Colo.; Greenville, S.C.; and Baton Rouge, La., as well as less populated areas such as Bryan-College Station, Tex.; Lincoln, Ill.; and Clinton, Okla.[61] More broadly, based on AT&T's current post-transaction plans for deploying additional spectrum to expand LTE capacity in certain markets, AT&T preliminarily estimates that it will be able to deploy the unused, contiguous Leap spectrum in many additional areas within 12 months after the close of this transaction.[62] This would include over 160 CMAs, encompassing large metropolitan areas such as Chicago, Ill.; Washington, D.C.; San Diego, Cal.; and Milwaukee, Wis., as well as less populated areas such as Chase, Neb.; Piute, Utah; and Hudspeth, Tex.[63] These projected deployments will further the Commission's goal of increased LTE deployment outside the largest urban areas.[64]

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expects to cover nearly 270 million people in 400 markets by the end of 2013, and its LTE deployment is expected to be substantially complete by the summer of 2014. Hogg Decl. ¶ 6.

[58] Hogg Decl. ¶ 6.

[59] *Id*. ¶¶ 7-9; Israel Decl. ¶¶ 54-56.

[60] Hogg Decl. ¶ 8.

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *See, e.g., Sprint/SoftBank Order* ¶ 102 ("In particular, Softbank's provision of greater resources for transitioning the existing networks of Sprint and Clearwire to LTE technology could accelerate Sprint's rollout of advanced mobile broadband services, thereby supporting our

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The transaction also will allow more efficient use of the Leap spectrum than was possible on the Leap network. Leap primarily has deployed its spectrum to support CDMA EVDO technology,[65] which is far less spectrally efficient than AT&T's 4G network. To the limited extent that Leap has deployed LTE, it has done so in 3x3 MHz and 5x5 MHz block configurations.[66] In contrast, AT&T is typically deploying spectrum to support LTE in 10x10 MHz blocks, with 5x5 MHz configuration as a minimum.[67]

AT&T will be able to refarm Leap spectrum into AT&T's LTE network even before the full customer migration and network integration is completed, as Leap customers are transitioned to AT&T's network, reducing traffic on that spectrum so that it can be repurposed for LTE deployment.[68] The remaining Leap spectrum will be available for redeployment on AT&T's LTE network shortly after AT&T completes the migration of Leap customers to AT&T's networks, which is expected within 18 months of closing.[69]

In many areas, the addition of Leap spectrum will allow AT&T to deploy LTE services in larger, more robust, contiguous 10x10 MHz (or greater) blocks of spectrum. For example, in many areas the transaction will give AT&T a contiguous 10x10 MHz block of AWS where AT&T currently has none (*e.g.*, Philadelphia, Pa.; Washington, D.C.; San Diego, Cal.;

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goal of expanding mobile broadband deployment throughout the country."); Julius Genachowski, Chairman, FCC, Winning the Global Bandwidth Race: Opportunities and Challenges for Mobile Broadband, Remarks at the University Of Pennsylvania (Oct. 4, 2012), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-316661A1.pdf ("Smart public investment in wireless infrastructure is necessary too. We created a new Mobility Fund to support 3G and 4G networks in unserved rural areas."); *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663, 17,781 ¶ 322 (2011).

[65] Hutcheson Decl. ¶ 9.

[66] *Id.* ¶ 11.

[67] Hogg Decl. ¶ 5 and n.4.

[68] *Id.* ¶ 9.

[69] *Id.*

Plaquemines, La.; Alton-Granite City, Ill.; Oconee, S.C.; and Pine Bluff, Ark.).[70] In other license areas, the transaction will permit a move from a 5x5 MHz deployment to a contiguous 10x10 MHz or greater AWS deployment (*e.g.*, Lafayette, La.; Racine, Wis.; and Las Cruces, N.M.).[71]

2. AT&T will integrate Leap cell sites

In addition, AT&T's preliminary analysis of Leap cell sites indicates that AT&T will be able to productively integrate a few thousand complementary Leap cell sites into its network.[72] The integration of these cell sites will create a denser network grid that will increase network capacity and improve network performance and allow AT&T to more efficiently utilize its spectrum holdings.[73]

3. Customers of both companies will benefit from the improved network performance

In the *T-Mobile/MetroPCS Order*, the Wireless Telecommunications and International Bureaus found that customers "would experience improved service quality, particularly in major metropolitan markets in which the existing T-Mobile USA and MetroPCS networks would be combined."[74] Here, too, customers of both companies will benefit from an enhanced and expanded network. In particular, Leap customers will have access to a superior, nationwide 4G network that offers significant performance improvements, including better coverage, data throughput speeds, and service quality.[75] Moreover, Leap customers will enjoy access to

[70] *Id.* ¶ 7.
[71] *Id.*
[72] *Id.* ¶ 10.
[73] *Id.* ¶¶ 10, 12; *see also* Israel Decl. ¶¶ 71-72.
[74] *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2348 ¶ 74.
[75] Hogg Decl. ¶ 11.

AT&T's nationwide network post-transaction, rather than relying on third-party networks outside of Leap's limited network footprint, further expanding the benefits of more seamless service and a better customer experience.[76]

As described above, Leap customers also will gain access to a broader and more robust LTE network.[77] The increased capacity resulting from the integration of Leap's spectrum into AT&T's LTE network will result in greater spectral efficiencies, including improvements in throughput speeds, peak data rates, and latency.[78] As a result of AT&T's generally more spectrally efficient HSPA+ and LTE technologies, customers of both companies, in particular Leap customers who only have access to CDMA EVDO services today, will see improvements in throughput speeds and latency.[79] These improvements will result in a more enjoyable customer experience, including faster streaming of video, faster uploading of image and video files, and a more responsive and robust web browsing experience.[80] The greater cell site density resulting from the incorporation of Leap cell sites will enable faster data speeds and improved coverage by reducing places where customers experience dropped connections, dead spots, and coverage gaps.[81] The Commission consistently has found that improving services and network quality are important public interest benefits and should do so here as well.[82]

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[76] *Id.* ¶ 12.
[77] *Id.* ¶ 11.
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Id.* ¶ 12.
[82] *See, e.g.*, *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2344, 2348 ¶¶ 63, 74; *AT&T/Centennial Order*, 24 FCC Rcd at 13,958 ¶ 103; *Midwest Wireless Order*, 21 FCC Rcd at 11,568 ¶ 116; *Western Wireless Order*, 20 FCC Rcd at 13,104-05 ¶ 141.

C. The Transaction Will Result in Significant Cost Savings

The transaction will result in significant savings in network and operating costs, as described in greater detail in the attached Declaration of Mr. Moore.[83]

For example, as Leap's cell sites are integrated into AT&T's network, and other sites decommissioned without affecting network performance, AT&T can eliminate lease, utility, maintenance, and other site-related expenses.[84] In addition, AT&T expects to reduce interconnection and backhaul expenses by switching to existing AT&T facilities where possible and by utilizing its increased scale, as compared to Leap's, to negotiate improved rates.[85]

Additional savings will result from optimization of the distribution network of the combined company, resulting in enhanced retail coverage and customer service, along with significant cost savings.[86] Likewise, the combined company will be able to achieve efficiencies in advertising and marketing,[87] as well as substantial savings in the area of customer support, equipment, and general and administrative costs.[88] These latter savings include savings from combining and optimizing customer support functions (such as call center and billing operations), while maintaining a high level of support.[89] There will be additional cost savings from removing redundancy in corporate and overhead functions.[90] Also, the roaming and resale expenses that Leap would have paid as a standalone company will be substantially reduced

[83] Moore Decl. ¶¶ 20-23.
[84] *Id.* ¶ 21; *see also* Israel Decl. ¶ 76.
[85] Moore Decl. ¶ 21.
[86] Moore Decl. ¶ 22.
[87] *Id.*
[88] *Id.*
[89] *Id.*; *see also* Israel Decl. ¶ 75.
[90] Moore Decl. ¶ 22.

because the combined company will offer a significantly greater on-net footprint than Leap could possibly hope to obtain and will no longer need to obtain MVNO services from other providers.[91]

Consumers will benefit from these cost reductions. As Dr. Israel explains, among these "cost synergies identified are several that, as a matter of economics, are properly understood to be marginal cost savings and thus they will lead to lower prices for consumers than would prevail absent such cost savings."[92] For example, the reduction of roaming expenses, the combining and optimizing of customer support functions, and the reduction in backhaul costs are among the sources of marginal cost savings that will result from the transaction.[93] As Dr. Israel also explains, network integration efficiencies create direct consumer benefits in "the form of improved network quality (due to reduced congestion), as well as lower marginal costs; thus quality-adjusted prices will be lower and output higher than they would be absent the transaction."[94]

As in past transactions, the Commission should credit these synergies.[95] AT&T has a strong track record of realizing synergies from prior transactions, and AT&T is well-positioned to achieve these synergies in a timely fashion.[96]

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[91] *Id.*; *see also* Israel Decl. ¶ 74.
[92] Israel Decl. ¶ 73.
[93] *Id.* ¶¶ 74-76.
[94] *Id.* ¶ 69.
[95] *See, e.g.*, *AT&T/Centennial Order*, 24 FCC Rcd at 13,959 ¶ 106; *Verizon/ALLTEL Order*, 23 FCC Rcd at 17,512-15 ¶¶ 147-56; *AT&T/Dobson Order*, 22 FCC Rcd at 20,334-35 ¶¶ 82-83 (crediting cost synergies in roaming, network, advertising, and overhead costs).
[96] Moore Decl. ¶¶ 25-29.

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

As described above,[97] providers of mobile wireless services compete aggressively across many dimensions, and are increasingly seeking to attract customers with a wide array of rate plans, including unlimited postpaid and prepaid/no-contract plans, data service packages, and increasingly diverse devices.[98] This competition is only intensifying with the recent strengthening of T-Mobile through spectrum acquisitions and its combination with MetroPCS and the strengthening of Sprint via the significant capital infusion from SoftBank.[99] This transaction will enable the combined company to add to that competitive fray a nationwide, facilities-based, prepaid/no-contract offering using AT&T's 4G LTE/HSPA+ network, which, in turn, can be expected to stimulate a further competitive response by other carriers for the benefit of value-oriented customers.

At the same time, the transaction will not harm competition in any relevant market.

- First, the Commission's staff and the Department of Justice have concluded previously that Leap does not materially affect the pricing or other key competitive decisions of the nationwide wireless carriers such as AT&T.[100] This transaction does not reduce the number of national wireless carriers, and it will have no adverse impact on competition at the national level.

- Second, there will not be an adverse impact on competition at the local level. The local areas in which Leap operates, which tend to be metropolitan areas, are, and will remain,

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[97] *See* Section IV.A, *supra*.

[98] *See Sixteenth Report*, 28 FCC Rcd at 3810, 3811-12 ¶¶ 159, 161-64.

[99] *See* Section IV.A., *supra.*

[100] *See Applications of AT&T Inc. & Deutsche Telekom AG, for Consent to Assign or Transfer Control of Licenses and Authorizations*, Staff Analysis and Findings, 26 FCC Rcd 16,184, 16,223 ¶ 65 (2011) ("*FCC Staff Report*") (finding that regional providers, including Leap, "would likely need to substantially alter their existing business models and services to significantly constrain the nationwide providers"); *Verizon/SpectrumCo Order*, 27 FCC Rcd at 10,718-19 ¶ 57; *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2333 ¶ 32; *Sprint/SoftBank Order* ¶ 38.

competitive in light of Leap's generally modest presence in those areas and competition from the national carriers as well as other providers.

- Third, spectrum aggregation is not an issue. The areas where the screen would be hit had a total population (as of the 2010 census) of only about 7 million, and in all of those areas robust competition from many competitors with significant spectrum holdings will remain. By contrast, the screen would not be hit in Leap's remaining CMAs, which had a total population of about 130 million.

A. Market Definition

1. Relevant Product Market

The Commission consistently has defined the relevant product market for transactions such as this as "mobile telephony/broadband services," which is "comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services)."[101] This product market includes a wide array of mobile data services, such as mobile Internet access services for laptop users, and mobile voice and data services provided over advanced wireless broadband, such as 3G and 4G networks.[102] The Commission's approach was most recently confirmed when the Wireless Telecommunications and International Bureaus relied upon this definition in approving the T-Mobile/MetroPCS merger.[103] As Dr. Israel describes in his declaration, examination of the

[101] *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2332 ¶ 28; *see also AT&T/WCS Order*, 27 FCC Rcd at 16,468 ¶ 24; *Verizon/SpectrumCo Order*, 27 FCC Rcd at 10,717 ¶ 53; *Verizon/ALLTEL Order*, 23 FCC Rcd at 17,473 ¶ 53; *AT&T/Qualcomm Order*, 26 FCC Rcd at 17,603 ¶ 33; *AT&T/Centennial Order*, 24 FCC Rcd at 13,932 ¶ 37.

[102] *Verizon/ALLTEL Order*, 23 FCC Rcd at 17,470 ¶¶ 46-47.

[103] *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2332 ¶ 28. In doing so, the Bureaus declined to analyze a separate, narrower product market for "value wireless services." *Id.* ("[W]e find that T-Mobile USA and MetroPCS provide services in the combined mobile telephony/broadband services product market and therefore use the product market definition that the Commission has applied in recent transactions."); *see also Sprint/SoftBank Order* ¶ 37 ("We continue to use the product market definition that the Commission has applied in recent transactions: a combined 'mobile telephony/broadband services' product market . . . .").

offerings of various wireless providers makes clear that all such products are correctly viewed as a single product market.[104]

2. Relevant Geographic Market

The Commission and Department of Justice traditionally have analyzed the potential competitive effects of wireless transactions such as this one at the level of local geographic markets approximated by individual CMAs.[105] In reviewing recent wireless transactions, however, both agencies have emphasized the importance of national competition and, specifically, concluded that key decisions of national carriers are made at the national level and are driven by competition from other national providers.[106] The Commission repeatedly has found that prices and service plan offerings of AT&T and the other nationwide wireless carriers do not vary by location, and that the vast majority of their advertising is also national.[107] As the Commission explained in its decision approving the AT&T/Qualcomm transaction:

[104] Israel Decl. ¶ 13.

[105] *See, e.g.*, *Verizon/ALLTEL Order*, 23 FCC Rcd at 17,470 ¶ 49; *Application of Cellco P'ship d/b/a Verizon Wireless & Rural Cellular Corp. for Consent to Transfer Control of Licenses, Authorizations, & Spectrum Manager Leases & Petition for Declaratory Ruling*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 12,463, 12,485 ¶ 41 (2008) ("*Verizon/RCC Order*"); *AT&T/Dobson Order*, 22 FCC Rcd at 20,310 ¶ 25.

[106] In its report on the proposed AT&T/T-Mobile transaction, the Commission staff found that "two key competitive variables - prices and service plan offerings - do not vary for most providers across most geographic markets where they sell services. In particular, the four nationwide facilities-based providers of retail wireless services . . . set the same rates for a given plan wherever they sell service and do not alter the plans they offer depending on the location." *FCC Staff Report*, 26 FCC Rcd at 16,206 ¶ 34. Similarly, in its complaint challenging the proposed AT&T/T-Mobile transaction, DOJ alleged that, "[b]ecause competitive decisions affecting technology, plans, prices, and device offerings are typically made at a national, rather than a local, level, the rivals that affect those decisions generally are those with sufficient national scale and scope, i.e., the Big Four." *United States v. AT&T Inc.*, No. 11-01560, Second Amended Compl. ¶ 19 (D.D.C. filed Sept. 30, 2011), *available at* http://www.justice.gov/atr/cases/f275700/275756.pdf ("*Am. Compl.*").

[107] *See, e.g.*, *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2333 ¶ 32; *Verizon/SpectrumCo Order*, 27 FCC Rcd at 10,718 ¶ 57; *Sprint/SoftBank Order* ¶ 38.

> The four nationwide providers of retail wireless services (AT&T, Verizon Wireless, Sprint, and T-Mobile) as well as some other providers set the same rates for a given plan everywhere and do not alter the plans they offer depending on the location. The vast amount of provider advertising is national, and nationwide retail stores such as Wal-Mart, Best Buy, and RadioShack, which sell plans at the same rates in every store, play an important role marketing retail wireless services. In addition, under the current market structure certain key elements, such as the development and the deployment of mobile broadband equipment and devices, are largely developed and deployed on a national scale. Because of the important national characteristics, competition that occurs at a local level is unlikely to affect, for example, the pricing and plans that the nationwide providers offer unless there is enough competition in enough local markets to make a nationwide pricing or plan change economically rational.[108]

The Commission has reaffirmed these conclusions in several recent orders, including Verizon/SpectrumCo,[109] T-Mobile/MetroPCS,[110] and Sprint/SoftBank.[111]

As explained below, this reasoning leads inescapably to the conclusion that Leap does not affect AT&T's competitive decisions. Whether the relevant market is viewed as national or local, this transaction will not harm competition.

B. The Transaction Will Not Harm Competition at the National Level

Because Leap is not a nationwide facilities-based competitor, this transaction does not reduce the number of national competitors, and therefore does not harm competition at the national level. Moreover, Leap's subscribers account for less than two percent of all mobile

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[108] *AT&T/Qualcomm Order*, 26 FCC Rcd at 17,604-05 ¶ 35 (footnotes omitted).

[109] *Verizon/SpectrumCo Order*, 27 FCC Rcd at 10,718-19 ¶ 57.

[110] *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2333 ¶ 32.

[111] *Sprint/SoftBank Order* ¶ 38 ("[T]he Commission also has evaluated a transaction's competitive effects at the national level where a transaction exhibits certain national characteristics that provide potential cause for concern. For purposes of evaluating the competitive effects of the proposed transactions, we use local markets as well as national markets, given the national characteristics of the proposed transactions."); s*ee also FCC Staff Report*, 26 FCC Rcd at 16,206 ¶ 34 n. 106 (concluding that there was no "evidence in the record that local competition affects national pricing and service plan decisions in any meaningful way").

wireless services subscribers.[112] In 2011, when Leap was near its competitive zenith and had embarked on a nationwide MVNO-based retail strategy, the Commission staff and the Department of Justice concluded that Leap had minimal influence on the competitive decision-making of AT&T and other national carriers.[113] Given Leap's business decline since the first quarter of 2012, as described below, there is no basis for a contrary conclusion today.[114] Thus, as to the key dimensions of competition that the Commission and the Department of Justice have found to be driven primarily by national carriers, this transaction will have no effect.

1. Leap and AT&T are not close competitors

Even a brief survey of the products offered by AT&T, Leap, and other wireless providers demonstrates that AT&T and Leap are not close competitors.[115] Leap is a provider of prepaid/no-contract service offerings that compete primarily with those from T-Mobile/MetroPCS, Sprint, and TracFone.[116] In contrast, AT&T's principal focus is its postpaid business. Its AT&T branded prepaid offering, AT&T GoPhone, is positioned as a complement to postpaid offerings.[117]

[112] Israel Decl. ¶ 18.

[113] *See, e.g.*, *FCC Staff Report*, 26 FCC Rcd at 16,222-23 ¶ 65 ("The services offered by providers such as MetroPCS and Leap tend to attract a subset of customers who are more price sensitive, not too concerned by their more limited geographic scope, who have lower data usage rates than average, and who seem to have a lower willingness to pay for the latest handsets. These customers are unlikely to prefer the nationwide providers generally and, of particular relevance to analyzing unilateral effects, are unlikely to include those AT&T customers who have T-Mobile as their second choice (or vice versa)."); *Am. Compl.* ¶ 35 ("[B]ecause each of the four nationwide firms typically offers prices, plans, and devices on a national basis, the regional and local providers . . . exert little influence on these aspects of competition.").

[114] *See* Israel Decl. ¶¶ 39-42.

[115] *See id.* ¶¶ 29-30, 32-38.

[116] *See* Hutcheson Decl. ¶ 16.

[117] *See* Moore Decl. ¶ 9.

Analysis to date of porting data points to the same conclusion. Recent porting data shows less than half the subscriber diversion from Leap to AT&T and from AT&T to Leap than would be predicted by AT&T's overall share in Leap's footprint.[118] Diversion from AT&T to Leap places Leap significantly behind Verizon, Sprint, and T-Mobile/MetroPCS among AT&T's competitors.[119]

2. Other competitors' offerings compete more closely with Leap's offerings

Wireless carriers and brands other than AT&T are much closer and more significant competitors to Leap.[120] Leap perceives Sprint and T-Mobile, in particular, as more significant competitors than AT&T,[121] and Leap customers port their numbers to Sprint and T-Mobile far more often than they do to AT&T.[122] Indeed, these companies have been increasingly focused on prepaid/no-contract value offerings, which has placed considerable competitive pressure on Leap.[123] T-Mobile now offers prepaid service under three brands: its traditional T-Mobile brand;[124] its GoSmart flanker brand launched in February;[125] and, following the recent merger, the retained MetroPCS brand, which is being rolled out nationwide supported by a stronger 4G

[118] *See* Israel Decl. ¶¶ 27-28.
[119] *See id.* ¶ 28.
[120] *See id*. ¶¶ 32-38.
[121] *See* Hutcheson Decl. ¶ 16.
[122] *See* Israel Decl. ¶ 27. While prepaid customers port their numbers less often than postpaid customers, these data are probative and are consistent with other data points including the obvious differences in business models. *See id.* ¶¶ 26-27.
[123] *See* Hutcheson Decl. ¶ 16.
[124] Zach Epstein, *T-Mobile's Contract-Free Unlimited Data Plan Launches Today*, BGR (Jan. 9, 2013), *available at* http://bgr.com/2013/01/09/t-mobile-unlimited-data-no-contract-286450/ (announcing T-Mobile's launch of no-contract unlimited data plans earlier this year).
[125] *See* Press Release, T-Mobile, GoSmart Mobile Launches Nationwide No-Contract Wireless Service for Budget-Conscious Consumers (Feb. 19, 2013), *available at* http://support.t-mobile.com/thread/39160?start=0&tstart=0.

network.[126] Leap expects increased head-to-head competition from MetroPCS as it has begun to expand aggressively into Leap territories since its merger with T-Mobile.[127] In fact, in July 2013, T-Mobile announced a roll-out of MetroPCS into 15 new areas, specifically targeting Leap customers: "We plan to arrive months in advance of AT&T and go right into the places where those Leap customers are who are hungry for something new and offer them something superior."[128] And T-Mobile's LTE rollout will strengthen the competitive position of these brands further.[129]

Sprint (with its Virgin Mobile and Boost prepaid brands) is present in most local areas with a national network and extensive spectrum holdings.[130] It continues to innovate with aggressive pricing: "One of the most aggressive actions," explains RCR Wireless, "in the second quarter [of 2013] was Virgin Mobile USA's new iPhone pricing."[131] According to Sprint's CEO, it has been "developing the critical pieces of [the company's] multi-brand strategy" and its

[126] *See* Mike Dano, *T-Mobile Reiterates Support for GoSmart Mobile, Despite MetroPCS Merger*, FierceWireless (Apr. 26, 2013), *available at* http://www.fiercewireless.com/story/t-mobile-reiterates-support-gosmart-mobile-despite-metropcs-merger/2013-04-26 (describing plans to take MetroPCS brand nationwide post-merger).
[127] *See* Hutcheson Decl. ¶ 16.
[128] Sinead Carew, *MetroPCS Doubles Operating Markets to Compete with Leap*, Reuters (July 25, 2013), *available at* http://www.reuters.com/article/2013/07/25/us-tmobile-metropcs-idUSBRE96O16620130725; *see also* Scott Moritz, *T-Mobile Adds 15 MetroPCS Cities to Vie With AT&T, Leap*, Bloomberg News (July 25, 2013), *available at* http://www.bloomberg.com /news/2013-07-25/t-mobile-adds-15-metropcs-cities-to-vie-with-at-t-leap.html.
[129] *See* Israel Decl. ¶ 36.
[130] *See id.* ¶ 34.
[131] Jim Patterson, *Reality Check: Wireless Earnings Drivers for the Second Quarter*, RCR Wireless (June 25, 2013), *available at* http://www.rcrwireless.com/article/20130625/opinion/ reality-check-wireless-earnings-drivers-second-quarter/.

"approach to the prepaid market can truly set [Sprint] apart from the competition with tailored offers that will address specific needs in this growing market."[132]

These firms, along with MetroPCS where it competed with Leap, have positioned themselves as the closest competition to Leap. But other firms compete with Leap as well. Verizon Wireless has recently refocused on the prepaid segment, reducing prepaid rate plan prices in an effort to gain customers.[133]

MVNOs, most notably TracFone/Straight Talk, offer an additional source of competitive constraint on Leap and other providers that specialize in prepaid/no-contract offerings.[134] As the

[132] Press Release, Sprint Nextel Corp., Sprint's Prepaid Multi-Brand Strategy Focuses on Distinct Consumer Segments (May 6, 2010), *available at* http://newsroom.sprint.com/news-releases/sprints-prepaid-multi-brand-strategy-focuses-on-distinct-customer-segments.htm; s*ee also* Roger Cheng, *Sprint Will Reportedly Enter Prepaid Business Itself*, CNET (Jan. 3, 2013), *available at* http://news.cnet.com/8301-1035_3-57561768-94/sprint-will-reportedly-enter-prepaid-business-itself/ (noting that Sprint's new entry into the prepaid market itself, in addition to its Virgin Mobile and Boost Mobile brands, "mark[s] an expansion of Sprint's already significant push into the prepaid business").

[133] *See* Brian Malina, *Smartphone Options for the Budget-Minded*, Verizon Wireless News Center (May 15, 2013), *available at* http://news.verizonwireless.com/news/2013/02/new-prepaid-smartphone-plans.html.

[134] *See* Hutcheson Decl. ¶ 16; *see also Sixteenth Report*, 28 FCC Rcd at 3741 ¶ 35 ("Some facilities-based providers, especially those that specialize in pre-paid plans, state that they compete with MVNOs, including TracFone.") (citing Leap Wireless Int'l, Inc., Annual Report (Form 10-K), at 9 (Feb. 21, 2012) ("*Leap 2011 10-K*") and MetroPCS Commc'ns, Inc., Annual Report (Form 10-K), at 11 (Feb. 29, 2012) ("*MetroPCS 2011 10-K*")); s*ee also Leap 2011 10-K* at 9 ("[A] number of MVNOs offer competitively-priced service offerings. For example, Trac[F]one Wireless sells wireless offerings in Wal-Mart under its 'Straight Talk' brand using a number of other carriers' wireless networks. We also face additional competition in the prepaid segment from lifeline service offerings by competitors including Trac[F]one (through its SafeLink offerings) and Sprint Nextel (through its Assurance Wireless offerings)."); *MetroPCS 2011 10-K* at 11 ("In addition to facilities-based wireless broadband mobile carriers, the wireless broadband mobile industry also includes carriers such as Trac[F]one and PagePlus that are solely non-facility based mobile virtual network operators, or MVNOs, and some, such as Cricket Communications, which is a combination of facilities based and non-facilities based carrier, that contract with wireless network operators to provide a separately branded wireless service. In some cases these MVNOs have business arrangements with one of the other major nationwide carriers, which may give them access to a more extensive network than ours and we believe at lower prices than we pay for roaming for access to service out of our service areas. These MVNOs offer increasingly competitive service plans similar to the service plans we provide in addition to offering more traditional prepaid plans that charge by the minute.").

Commission previously has concluded, MVNOs can increase competition and consumer welfare in the wireless industry.[135] TracFone/Straight Talk takes advantage of a highly competitive wholesale wireless market to assure that it is able to compete effectively and aggressively with facilities-based carriers, particularly for prepaid/no-contract service.[136]

3. Leap's challenges to competing effectively are increasing

Since 2011, Leap has become a much less effective competitive force, while some of its most significant competitors have become stronger. Leap has not earned a net annual profit in any of the past seven years, and its only profitable quarter in recent years was due primarily to recognizing a gain on the sale of some AWS and PCS spectrum, rather than operating profits.[137] Indeed, Leap has experienced over a billion dollars in net losses over the last several years.[138]

Leap's performance has declined significantly since the first quarter of 2012, with end-of-period customer numbers falling from a peak of nearly 6.2 million as of March 31, 2012 to about 4.8 million as of June 30, 2013, a decline of approximately 22 percent over five quarters.[139] As customer numbers fall, Leap's fixed (and semi-fixed) costs are spread over a

[135] *See Sixteenth Report*, 28 FCC Rcd at 3741 ¶ 35 ("The strategic partnerships between MVNOs and facilities-based providers increase competition and consumer welfare by providing service to various market segments using the capacity of the hosting facilities-based provider and the marketing strategy and distribution network of the MVNO.").

[136] *See* Mike Dano, *F.J. Pollak's TracFone: The Most Successful Wireless Provider You've Never Heard of*, FierceWireless (Oct. 4, 2012), *available at* http://www.fiercewireless.com/story/fj-pollaks-tracfone-most-successful-wireless-provider-youve-never-heard/2012-10-03 ("Part of TracFone's secret sauce is that the company can play the nation's top wireless carriers against each other. Since TracFone has MVNO deals with Sprint Nextel, AT&T Mobility, T-Mobile USA, Verizon Wireless and others, the company can sell services through whichever carrier is currently offering the best rates."); *see also Sixteenth Report*, 28 FCC Rcd at 3741 ¶ 36 ("[W]hile MVNOs compete for retail customers with some facilities-based providers, facilities-based providers compete with each other for wholesale customers.").

[137] Hutcheson Decl. ¶ 6.

[138] *Id.*

[139] *Id.* ¶ 5; Leap Wireless Int'l, Inc., Quarterly Report (Form 10-Q), at 32 (Apr. 27, 2012).

smaller customer base at a time when Leap's variable costs per customer have also been rising, which has resulted in increasing pressure on operating margins.[140] For example, Leap's costs per gross customer addition rose 31%, from $296 in the second quarter of 2012 to $387 in the second quarter of 2013, and Leap's cash costs per user rose 21% over the same period from $22.91 to $27.79.[141] Cost-reduction initiatives introduced as a result of Leap's declining customer base and associated decline in revenues may further negatively impact customer acquisition and retention in the future.[142]

Leap is also heavily leveraged, with $3.6 billion in outstanding indebtedness as of June 30, 2013.[143] In addition to debt servicing costs, Leap's significant indebtedness constrains its ability to raise additional debt to finance capital expenditures (including for LTE deployment), purchase additional spectrum, and make other business investments that Leap may need to meet customer demands and remain competitive.[144]

As a result of a declining customer base and associated decline in service revenues, Leap has undertaken various cost-reduction initiatives, including reductions in its planned capital expenditures (such as for LTE network deployment) and in other investments to improve the business.[145] Most of Leap's network offers 3G CDMA EVDO technology, but Leap is facing increasing pressure to provide LTE services to its customers in order to meet expanding

[140] Hutcheson Decl. ¶ 6.
[141] *Id.*
[142] *See id.*
[143] *See id.* ¶ 12; *see also Leap Q1 2013 10-Q* at 36-37 ($3.3 billion of outstanding debt as of March 31, 2013); *Leap 2012 10-K* at 19 ($3.3 billion of outstanding debt as of December 31, 2012).
[144] Hutcheson Decl. ¶ 12.
[145] *Id.* ¶¶ 6-8.

consumer demand for 4G wireless services.[146] However, Leap's limited spectrum holdings and current debt load restrict its ability to both support the 3G network relied upon by the majority of Leap's customers and invest in a robust LTE network.[147] To date, Leap has deployed LTE technology in only 11 metropolitan areas, covering approximately 21 million people.[148] As wireless data traffic continues to climb, the constraints on Leap's LTE deployment will likely increasingly hamper Leap's ability to compete with national carriers.[149] Leap has also contracted its distribution footprint, with a significant number of company- and dealer-owned retail outlets closing in the first part of 2013.[150]

By contrast, while Leap's competitive position has declined, other carriers are stronger today.[151] T-Mobile (with MetroPCS) has deployed LTE "in 116 markets nationwide, covering 157 million POPs," about half of which use "a 10x10 MHz spectrum configuration,"[152] and Sprint (with Boost and Virgin Mobile) has deployed LTE in 88 cities (with more than 170 to launch in the coming months), and will be adding 800 MHz spectrum to its LTE deployment by the fourth quarter of this year.[153] And Verizon Wireless has announced that its LTE network covers 89 percent of the U.S. population.[154]

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[146] *Id.* ¶ 9.
[147] *See id.* ¶¶ 7, 9, 12.
[148] *Id.* ¶ 9.
[149] *Id.*
[150] *Id.* ¶ 8.
[151] *See Leap Q1 2013 10-Q* at 27-28, 46-47; *Leap 2012 10-K at* 6-7, 15-16. *See* Section IV.A, *supra.*
[152] Sue Marek, *T-Mobile Exceeds Mid-Year LTE Deployment Goal, Hits 116 Markets*, FierceWireless (July 10, 2013), *available at* http://www.fiercebroadbandwireless.com/story/t-mobile-exceeds-mid-year-lte-deployment-goal-hits-116-markets/2013-07-10#ixzz2ZzpcJ5EV.
[153] Sprint - Q1 2013 Earnings Conference Call at 13-14 (Apr. 24, 2013).
[154] Verizon Communications Inc., Annual Report (Form 10-K), at 2 (Feb. 26, 2013).

C. The Transaction Will Not Harm Competition at the Local Level

Nor are there any competitive concerns at the local level. First, for many of the CMAs affected by the transaction, Leap today has spectrum, but no wireless operations and no present plans to expand its commercial network into those areas.[155] Thus, with respect to those areas this transaction is a spectrum-only acquisition, which, as the Commission has repeatedly recognized, raises no horizontal competitive concerns.[156] To the contrary, in those local areas (and others throughout the country where Leap does not, and has no plans to, operate a network), AT&T's utilization of Leap spectrum and expansion of the Cricket brand will only promote competition and innovation.[157]

Second, even in the CMAs where Leap does offer service today, competition will remain vigorous. Leap generally has only a modest presence even in the areas where it does offer facilities-based service.[158] As explained above, AT&T and Leap are not close competitors, and Leap is not one of the carriers that the Commission has recognized as influencing the key competitive decisions of AT&T, which are made at the national level.[159] Moreover, the transaction does not reduce the number, or in any way impair the competitiveness, of the national carriers in the local areas served by Leap. With only a handful of exceptions, each of the four

[155] *See* Hutcheson Decl. ¶¶ 10, 12.

[156] *See, e.g.*, *AT&T/WCS Order*, 27 FCC Rcd at 16,467-68 ¶ 22 & n.64 ("Because the instant transactions do not result in the acquisition of wireless business units and customers or change the number of firms in any market, we do not apply an initial screen based on the size of the post-transaction Herfindahl-Hirschman Index ('HHI') of market concentration and the change in the HHI."); *AT&T/Qualcomm Order*, 26 FCC Rcd at 17,601 ¶ 29 ("This transaction does not result in the acquisition of wireless business units and customers or change the number of firms in any market, so our competitive analysis considers only the competitive effects associated with the increases in spectrum that would be held by AT&T post-transaction.").

[157] *See* Section IV.A.1, *supra*.

[158] *See* Israel Decl. ¶¶ 20-21. Leap has more than five percent of subscribers in only 43 CMAs and more than ten percent of subscribers in just 14 CMAs. *Id.* ¶ 21.

[159] *See* Section V.B.1 & nn.105, 112, *supra*.

national competitors will continue to compete in the CMAs where Leap operates, and in some CMAs there is additional competition from regional providers.[160] The four national carriers also hold spectrum in all such CMAs.[161] This competition will ensure that consumers are not harmed by the combination of AT&T and Leap.

Finally, if a firm's current market position overstates its future competitive significance, analysis of a transaction must be based on the firm's future ability to compete.[162] Here, even Leap's modest share in the local areas in which it currently operates may well overstate its future competitive significance, given the network, spectral, financial, and other challenges described above.[163] It is well-settled that "where a firm's market share has been steadily declining, it may be appropriate to take a lower projected share as a measure rather than the last actual share."[164] Moreover, where there are "recent or ongoing changes in market conditions," such as "if a new technology that is important to long-term competitive viability is available to other firms in the market, but is not available to a particular firm," the "reasonably predictable effects" should be

[160] *See* Israel Decl. ¶ 21.

[161] *See* Appendix A.

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

[163] *See* Sections IV.A.2, V.B.3, *supra*; Israel Decl. ¶¶ 39-42.

[164] 4A Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law* § 960 (4th ed. 2013); *see also id.* § 962 ("A firm's current market share may exaggerate its future market potential because the firm either lacks sufficient inputs to maintain sales at the existing level or would incur significantly higher costs in doing so. . . . In such a case, to look at today's sales certainly exaggerates the competitive significance of the firm.").

considered in interpreting market share data.[165] In the present case, Leap's current lack of 4G services in most of the local areas it serves and the challenges it faces to deploying a competitive LTE service across its footprint described above (while other providers of prepaid/no-contract service are expanding their 4G coverage) will further diminish Leap's competitive presence in the future absent the proposed transaction.[166] In contrast, through the proposed transaction, competition will be enhanced in many local areas as AT&T plans to maintain and promote the Cricket brand in the markets where it is currently offered — and in many more across the nation — on a superior and expanded network that will enable subscribers to enjoy significant performance improvements.[167]

D. The Transaction Raises No Spectrum Aggregation Concerns

The spectrum screen identifies local markets where an entity would possess, after a transaction, more than approximately one third of the total spectrum suitable and available for the provision of mobile telephony/broadband services.[168] Where the initial screen is hit, a further

[165] *Horizontal Merger Guidelines* § 5.2; *see also Application of Gen. Elec. Co., GE Subsidiary, Inc. 21, & MCI Commc'ns Corp. for Authority to Transfer Control of RCA Global Commc'ns, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 2803, 2808 ¶ 37 (1988) ("Even in a highly concentrated market, a horizontal acquisition may not necessarily lessen competition where the merged companies lack market power to control prices or exclude competition because of other pertinent factors such as . . . changing market conditions.") (citing *United States v. Gen. Dynamics Corp.*, 415 U.S. at 497-98).

[166] *See* Hutcheson Decl. ¶ 11; Israel Decl. ¶¶ 40, 42.

[167] *See* Section IV.A, *supra*.

[168] *Verizon/SpectrumCo Order*, 27 FCC Rcd at 10,719 ¶ 59. The Commission's current screen is triggered where applicants would have "102 megahertz or more of cellular, PCS, SMR, 700 MHz, and WCS spectrum, where neither BRS nor AWS-1 spectrum is available; 121 megahertz or more of spectrum, where BRS spectrum is available, but AWS-1 spectrum is not available; 132 megahertz or more of spectrum, where AWS-1 spectrum is available, but BRS spectrum is not available; or 151 megahertz or more of spectrum where both AWS-1 and BRS spectrum are available." *AT&T/WCS Order*, 27 FCC Rcd at 16,472 ¶ 33 n.94.

case-by-case review is conducted to determine whether the combination would be likely to cause anticompetitive effects.[169]

As the attached Appendix A demonstrates, this transaction would trigger the Commission's current spectrum screen in only 38 CMAs out of a total of 356 CMAs where AT&T will be acquiring spectrum from Leap.[170] In most of those, the screen would be exceeded by only a small amount: the combined spectrum holdings will exceed the current screen by more than 5 MHz in only 17 of the 356 CMAs where AT&T will be acquiring spectrum from Leap. The areas where the screen is hit have a total population (as of the 2010 census) of only about 7 million people out of approximately 137 million in Leap's licensed service area. Of course, if all "suitable" and "available" spectrum were included in the screen, including the BRS/EBS spectrum bands that Sprint/Clearwire are using today to provide mobile broadband services, the screen would not be triggered in any of the affected CMAs.

In any event, an aggregation that hits the spectrum screen does not establish a local spectrum aggregation problem that needs to be remedied.[171] It merely indicates the need for a more detailed analysis of spectrum availability and competition in the pertinent area.[172] Here, further examination of the 38 CMAs where the screen would be triggered by this transaction confirms that the transaction raises no competitive issues. As Dr. Israel explains, there are no

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[169] *AT&T/WCS Order*, 27 FCC Rcd at 16,472 ¶¶ 33-34.

[170] *See* Appendix A. Leap's 700 MHz A Block license in the Chicago area should not be attributable to AT&T because, as described above, the parties intend to divest this license in accordance with the terms of the agreement with the CVR holders. Thus, this license is not included in the spectrum aggregation analysis in Appendix A. Also, because AT&T will not be acquiring Leap's interests in PR Wireless and Flat Wireless, these interests have not been included in the spectrum aggregation analysis set forth in Appendix A.

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

[172] *Id.*

spectrum aggregation concerns in such areas where there can be no serious claim that entry and expansion are limited by spectrum scarcity.[173]

In each CMA involved in this transaction, all four national carriers already hold spectrum, and there are other spectrum holders that can deploy their spectrum or make it available for use by other carriers. Therefore, the modest increase in AT&T's spectrum holdings through this transaction does not raise competitive concerns.

VI. RELATED GOVERNMENTAL FILINGS

The Department of Justice will conduct its own review of the competitive aspects of this transaction pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976[174] and the rules promulgated thereunder. The Applicants have submitted a notification form and an associated documentary appendix to the Department and the Federal Trade Commission, and they fully expect that this review will confirm that the transaction does not raise any competitive issues.

There will be regulatory or informational filings in Arizona, California, Hawaii, Louisiana, and West Virginia.

VII. MISCELLANEOUS REGULATORY ISSUES

A. After-Acquired Authorizations

The list of call signs included in each application is intended to include all of the licenses, authorizations, and spectrum leases held by the respective licensees or lessees that are subject to the transaction. However, Leap's licensees or lessees may now have on file, and may hereafter file, additional requests for authorizations for new or modified facilities that

[173] *See* Israel Decl. ¶ 46.
[174] 15 U.S.C. § 18a.

may be granted, or it may enter into new spectrum leases before the Commission takes action on these Applications. Accordingly, the Applicants request that any Commission approval of the Applications filed for this transaction include authority for AT&T to acquire control of: (1) any authorization issued to Leap or its subsidiaries while this transaction is pending before the Commission and the period required for consummation of the transaction; (2) any construction permits held by Leap or its subsidiaries that mature into licenses after closing; (3) any applications or lease notifications that are pending at the time of consummation; and (4) any leases of spectrum into which Leap or its subsidiaries enter as lessees while this transaction is pending before the Commission and the period required for consummation of the transaction. Such action would be consistent with prior decisions of the Commission.[175] Moreover, because AT&T is acquiring Leap and all of its FCC authorizations, AT&T requests that Commission approval include any authorizations that may have been inadvertently omitted.

B. Blanket Exemption to Cut-Off Rules

The public notice announcing this transaction will provide adequate notice to the public with respect to the licenses involved, including any for which license modifications are now pending. Therefore, no waiver needs to be sought from Sections 1.927(h), 1.929(a)(2) and

[175] *See, e.g.*, *Sprint/SoftBank Order* ¶ 157; *AT&T/Verizon Order*, 25 FCC Rcd at 8773 ¶ 165; *AT&T/Centennial Order*, 24 FCC Rcd at 13,981 ¶ 170; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21,626 ¶ 275; *Applications for Consent to the Transfer of Control of Licenses & Section 214 Authorizations from S. New Eng. Telecoms. Corp. to SBC Commc'ns, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 21,292, 21,317 ¶ 49 (1998); *Applications of NYNEX Corp. & Bell Atl. Corp*., Memorandum Opinion and Order, 12 FCC Rcd 19,985, 20,097 ¶ 247 (1997) ("*NYNEX/Bell Atlantic Order*"); *Applications of Pac. Telesis Group & SBC Commc'ns, Inc*., Memorandum Opinion and Order, 12 FCC Rcd 2624, 2665 ¶ 93 (1997); *Applications of Craig O. McCaw & Am. Tel. & Tel. Co.*, Memorandum Opinion and Order, 9 FCC Rcd 5836, 5909 ¶ 137 n.300 (1994) ("*McCaw/AT&T Order"*), *aff'd sub nom. SBC Commc'ns Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995), *recons. in part*, 10 FCC Rcd 11,786 (1995).

1.933(b) of the Commission's rules[176] to provide a blanket exemption from any applicable cut-off rules in cases where the Applicants file amendments to pending applications to reflect the consummation of the proposed transfers of control.[177]

C. Trafficking

To the extent any authorizations for unconstructed microwave systems are covered by this transaction, these authorizations are merely incidental, with no separate payment being made for any individual authorization or facility. Accordingly, there is no reason to review the transaction from a trafficking perspective.[178]

D. Environmental Impact

As required by Section 1.923(e) of the Commission's rules,[179] the Applicants state that the transfer of control of licenses and leases involved in this transaction will not have a significant environmental effect, as defined by Section 1.1307 of the Commission's rules.[180] A transfer of control of licenses and leases does not involve any engineering changes and, therefore, cannot have a significant environmental impact.

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[176] 47 C.F.R. §§ 1.927(h), 1.929(a)(2), 1.933(b).

[177] *See, e.g., Applications of PacifiCorp Holdings, Inc., & Century Tel. Enters., Inc. for Consent to Transfer Control of Pac. Telecom, Inc., a Subsidiary of PacifiCorp Holdings, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 8891, 8915-16, ¶ 45 (1997); *NYNEX/Bell Atlantic Order*, 12 FCC Rcd at 20,091-92 ¶ 234; *McCaw/AT&T Order*, 9 FCC Rcd at 5909 ¶ 137 n.300.

[178] *See* 47 C.F.R. § 1.948(i) (noting that the Commission may request additional information regarding trafficking if it appears that a transaction involves unconstructed authorizations that were obtained for the principal purpose of speculation); *id*. § 101.55(c)-(d) (permitting transfers of unconstructed microwave facilities that are "incidental to a sale of other facilities or merger of interests").

[179] *Id.* § 1.923(e)(2).

[180] *Id.* § 1.1307.

VIII. CONCLUSION

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

DECLARATION OF RICK L. MOORE
SENIOR VICE PRESIDENT, AT&T INC.

I, Rick L. Moore, hereby declare the following:

1. My name is Rick L. Moore. I am the Senior Vice President of Corporate Development for AT&T Inc. ("AT&T") with responsibility for all of AT&T's strategic initiatives involving mergers, acquisitions, dispositions, and other significant transactions. For over 20 years I have been involved in the analysis, negotiation, and implementation of numerous transactions on behalf of AT&T and its affiliates. I joined the company in 1976 and held various sales, product marketing, and product management positions before moving to strategic planning and corporate development matters beginning in 1983. I hold a B.S. degree in Economics from Southwest Missouri State University.

2. I have knowledge of and participated in the strategic business decisions that led AT&T to pursue the merger with Leap Wireless International, Inc. ("Leap"). I also have reviewed the declarations of William Hogg, Senior Vice President of Network Planning and Engineering, AT&T Services, Inc., and S. Douglas Hutcheson, Chief Executive Officer for Leap, in this proceeding and have relied on them in developing this testimony. In addition, I have consulted with other AT&T executives in developing my testimony.

3. The purpose of this Declaration is to explain AT&T's strategic rationale for this transaction; describe how the combination of AT&T and Leap will give consumers nationwide greater choice and an improved suite of "prepaid/no-contract"[1] offerings; and summarize AT&T's analysis of the cost savings and other economic synergies from the transaction. The

[1] "Prepaid/no-contract" means wireless services for a flat rate without requiring a fixed-term contract.

declaration of my colleague, Mr. Hogg, describes how the combination of AT&T and Leap will enable a better network experience for customers of both companies.

I. INTRODUCTION

4. This transaction will bring together Leap's "Cricket" brand, distribution network, customer base, and experience in selling prepaid/no-contract service with AT&T's nationwide 4G LTE and HSPA+ network, advanced devices and services, and financial resources. Consumers nationwide will have an improved alternative for high-quality and affordable prepaid/no-contract wireless services. AT&T will offer a full range of prepaid/no-contract services as well as a high-quality wireless experience. This will include low-cost, value priced products as well as higher end, data-oriented products.

5. For Leap customers, the transition to AT&T will produce tangible and immediate benefits. As described in the declaration of Mr. Hutcheson, Leap faces serious limitations that prevent it from establishing a meaningful national presence and deploying LTE on a widespread basis.[2] This transaction will take the Cricket brand national and use Leap's distribution network and recognized brand name as a platform for a more competitive national prepaid offering to consumers.

6. Another important benefit relates to Leap's spectrum. As explained in greater detail by Mr. Hogg, the combination of AT&T's and Leap's network assets will allow the combined company to provide an improved network experience to its customers. The transaction will maximize the utility of Leap's spectrum holdings, which can be deployed to enhance AT&T's 4G LTE network. And, AT&T will integrate a few thousand complementary

[2] Declaration of S. Douglas Hutcheson, Chief Executive Officer, Leap Wireless International, Inc. ¶¶ 4-15 (August 1, 2013) ("Hutcheson Decl.").

Leap cell sites, which will provide increased cell density and greater capacity in certain areas of its network.

7. The transaction will result in significant network and operating savings and other synergies. Interconnection and backhaul expenses will be reduced; roaming expenses will decrease; redundant cell sites will be decommissioned; customer acquisition and customer care costs and certain other scale-based costs will decrease; and there will be an overall reduction in general and administrative costs.

II. THE TRANSACTION WILL LEAD TO EXPANDED AND IMPROVED CHOICES FOR CONSUMERS AND WILL INCREASE COMPETITION

8. By combining Leap's Cricket brand, customer base, distribution network, and experience in selling prepaid service with AT&T's nationwide 4G LTE and HSPA+ network, device portfolio, and financial resources, the transaction will enable AT&T to offer an improved, nationwide prepaid/no-contract product and enhance its ability to compete against other strong providers.

9. As explained in Mr. Hutcheson's declaration, Leap has an established prepaid/no-contract business, but now faces numerous limitations and challenges, such as a limited, facilities-based LTE footprint, limited spectrum depth, limited MVNO customer base, and other disadvantages that prevent it from competing nationally and have reduced its overall competitive capabilities.[3] While AT&T has been marketing prepaid services under the "AT&T GoPhone" brand for many years, it has done so primarily as a complement to its postpaid business and AT&T generally has not aimed to match the offerings of prepaid/no-contract companies such as Cricket and others, particularly in recent years. AT&T GoPhone has not achieved nearly the

[3] *Id.* ¶¶ 3-15.

same level of customer appeal as AT&T postpaid service. I understand from the GoPhone marketing team that GoPhone is aimed primarily at capturing incremental customers who do not qualify for, or whose wireless needs are not a good match for, AT&T's postpaid plans. For instance, GoPhone does not offer smartphone rate plans with large data options, as other prepaid providers offer, since AT&T prefers to address demand for such offerings through its postpaid service.

10. In an attempt to increase its appeal to a broader set of customers, AT&T recently launched a new brand, "Aio Wireless" ("Aio"), initially in three metro areas.[4] Aio was conceived as a start-up, completely separate and apart from the AT&T brand and existing distribution channels. Today, Aio still needs to establish widespread retail distribution, build brand recognition, and develop a significant customer base.

11. Leap, in contrast, has an established prepaid Cricket brand that is well-known in its service area[5] and that AT&T intends to retain and expand nationwide. Equally important, Leap has an established distribution network, a significant subscriber base of about 4.8 million customers (as of June 30, 2013), and experience in marketing and selling no-contract service, all of which can be leveraged to expedite AT&T's establishment of a competitive nationwide presence more rapidly than AT&T's new brand could achieve on its own.

12. For example, Leap's existing distribution system will facilitate AT&T's planned national rollout of its new prepaid offering in a number of markets where AT&T otherwise would have to identify and establish new retail channels for Aio. Resources currently allocated

[4] On May 9, 2013 Aio launched in Houston, Orlando, and Tampa. It has since expanded to four additional Florida markets and will continue to roll out distribution channels in other markets. Aio's current plans forecast completion of a national retail rollout for 220 million retail POPs by the end of 2016.

[5] Hutcheson Decl. ¶ 3.

for Aio's rollout of retail distribution channels in those markets can be redeployed for expansion in other areas, which will further accelerate the establishment of a nationwide presence. In addition, Leap's prepaid subscriber base of about 4.8 million customers (as of June 30, 2013), would enable AT&T to reach scale sooner than was projected for Aio, thereby lowering certain of AT&T's operating costs on a per customer basis, as described in Section IV below.

13. After the transaction, the Cricket brand will be distributed nationally, and its customers will have access to improved prepaid/no-contract offerings and a nationwide 4G network. As explained in Mr. Hutcheson's declaration, it would be difficult, if not impossible, for Leap to accomplish these goals on its own.[6]

14. AT&T can integrate certain valuable elements of Leap's prepaid business with AT&T's nationwide 4G LTE and HSPA+ network, advanced suite of devices and services, and financial resources to provide a full range of improved prepaid/no-contract offerings on a nationwide basis. Accordingly, the proposed transaction will enable the combined company to better compete for prepaid subscribers.

III. THE COMBINATION OF LEAP'S AND AT&T'S NETWORKS WILL PROVIDE CUSTOMERS WITH AN IMPROVED WIRELESS EXPERIENCE

15. As discussed above, Leap customers will benefit from improved service quality and a broader range of advanced products and services. AT&T's nationwide network provides its wireless customers with a level and variety of services that Leap cannot offer. At the same time, as part of AT&T's plan to preserve and expand the Cricket brand, low-cost devices and low-cost services will remain available to value-driven customers. Accordingly, AT&T will address the needs of all prepaid subscribers, including those who value low-cost options.

[6] Hutcheson Decl. ¶¶ 7-9, 15.

16. Leap customers will have access to a significantly superior, nationwide 4G network, which Leap could not develop on its own, given its limited footprint and spectrum and its declining financial and competitive condition. AT&T's nationwide deployment of 4G LTE and HSPA+ will offer a significantly greater on-net 4G footprint compared to Leap's current network deployment. AT&T also will be able to integrate many existing Leap cell sites into its network, providing greater cell density, increasing network capacity, and improving network performance in these areas for customers of both companies.[7]

17. Even where Leap has a network, its customers will enjoy higher quality services over the enhanced and expanded networks that will result from the deployment of unused spectrum, the integration of the Leap and AT&T networks, and the densification of cell sites.[8] Given Leap's current limited 4G LTE rollout (11 metro areas covering 21 million POPs) and deployment plans,[9] Leap customers will gain access to a broader and more robust LTE network as a result of the transaction. While Leap has deployed LTE in a handful of metro areas, those deployments have been in spectrally inefficient, small block 3x3 MHz or 5x5 MHz configurations that generally support throughput speeds on par with AT&T's HSPA+ network and lower than AT&T's more robust LTE network, which typically deploys 10x10 MHz configurations.[10] As Mr. Hogg describes, because of AT&T's more spectrally efficient LTE and HSPA+ technologies, customers of both companies, in particular Leap customers who only have access to CDMA EVDO services today, will see improvements in throughput speeds and

[7] Declaration of William Hogg, Senior Vice President of Network Planning and Engineering, AT&T Services Inc., ¶ 10 (August 1, 2013) ("Hogg Decl.").

[8] *Id.* ¶ 11.

[9] Hutcheson Decl. ¶ 9.

[10] Hogg Decl. ¶¶ 5, 11. The peak data rate for a 10x10 MHz block, for example, is twice that of a 5x5 MHz block. *Id.* ¶ 11 n.6.

latency.[11] These speed and spectral efficiency improvements translate into an improved customer experience, including, among other benefits, faster streaming of video, faster uploading of image and video files, and a more responsive and robust web browsing experience.[12]

18. AT&T will offer superior choice in handsets; more robust data services; and access to AT&T's nationwide network footprint and Wi-Fi hotspots across the country.[13] We will honor the rate plans of existing Leap customers. For new customers, AT&T will continue to offer competitive rate plans that appeal to value-conscious customers, including the option of choosing low-cost devices and low-cost services.

19. AT&T will be able to transition Leap customers in a timely and efficient manner so that they swiftly receive the benefits of AT&T's network. AT&T has experience with integrating networks and transitioning customers following previous transactions. In his declaration, Mr. Hogg has described AT&T's plans to integrate Leap's network assets quickly and efficiently to improve the network experience of customers of both companies.

IV. THE TRANSACTION WILL RESULT IN SUBSTANTIAL COST SAVINGS AND OTHER SYNERGIES

20. We estimate that the transaction will result in significant savings in network and operating costs and other synergies. To determine the value of the expected synergies in this transaction, we took the same approach as in prior transactions by building a pro forma view of how the integrated company would operate, as compared to the operations of AT&T and Leap as standalone companies. We utilized a standard discounted cash flow methodology of the sort typically employed by AT&T and many other companies to calculate the net present value of

[11] *Id.* ¶ 11.

[12] *Id.*

[13] AT&T has more than 32,000 Wi-Fi hotspots nationwide.

synergies. The inputs for this process included consultations with subject matter experts in the Aio organization, finance, and network planning and engineering to obtain informed views about key parameters, and then to test and validate our assumptions. Our methodology also was informed by our past experience from other transactions and integration efforts. These and other inputs were all factored into our methodology to determine the expected cost savings and other synergies in the categories described below.

21. *Network Benefits.* We expect significant cost savings from combining the networks of the two companies. Many of Leap's cell sites will be productively integrated into our network to increase capacity, as Mr. Hogg explains in his declaration, but other sites will be decommissioned without affecting network performance. This will eliminate lease, utility, maintenance, and other site-related expenses. We also expect to reduce interconnection and backhaul expenses, as compared to what Leap would have paid on its own, by switching to existing AT&T facilities where possible and by utilizing our increased scale, as compared to Leap's, to negotiate improved rates.

22. *Operational Benefits*. We expect that the transaction will reduce numerous operational costs. For example, the roaming expenses that Leap would have paid as a standalone company will be substantially reduced because AT&T will offer a significantly greater on-net footprint and expanded coverage in comparison to Leap's current network. We will optimize the combined company's distribution network to enhance both retail coverage and customer service while eliminating significant cost. AT&T will be able to maximize the effectiveness of its advertising and marketing spend. In addition, there are substantial synergy opportunities in the area of customer support, equipment, and general and administrative costs. These include cost savings that will result from combining and optimizing customer support functions, including

call center and billing operations, while maintaining a high level of support. There also will be cost savings from removing redundancy in corporate and overhead functions.

23. *Other Synergies*. We expect that AT&T's more attractive service offerings, as compared to those that Leap could have offered on its own, and improved network performance, as compared to Leap's network, will reduce churn, allow the combined company to attract and retain a larger share of new prepaid customers, and increase prepaid smartphone sales.

24. We intend to treat both AT&T's and Leap's employees fairly in the integration process. AT&T is one of the largest private-sector employers of full-time union labor. AT&T provides well paying jobs with benefits and respects the rights of its workers by remaining neutral and allowing them the choice of union representation. AT&T is committed to investing in our employees so they can help us deliver the benefits of this transaction to our customers. Because AT&T intends to maintain Leap's sales and distribution systems, jobs in those areas largely will be preserved. Overall, force reduction will largely occur through natural attrition across the work forces of both companies.

25. AT&T has a history of successfully integrating complex, value-creating acquisitions. The insights we have gained in prior integration efforts will be applied to the integration of Leap's operations. For example, AT&T met the synergy targets set for network integration and expansion in connection with the acquisition of Centennial Communications Corp. in 2009. Centennial had not commercially deployed 3G on the U.S. mainland before being acquired by AT&T. In the continental U.S., AT&T successfully upgraded the 2G network in the acquired footprint.

26. AT&T also realized customer experience and billing and care synergies for the transaction. The company maintained legacy centers to support legacy customers until they were

migrated to the new network. As a result, AT&T's integration of customer care call centers closely followed the network integration and enhancement and maintained a high level of customer care and experience.

27. AT&T also has successfully integrated the assets it acquired in 2010 from Verizon Wireless, in connection with Verizon's acquisition of Alltel Corporation. The customer migration process was successfully completed on time and as projected, and AT&T retained more customers than expected. Network integration and enhancement were accomplished while providing a high quality of services and benefits to customers.

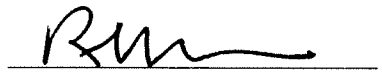
28. The merger of AT&T Wireless and Cingular in 2004 is another example of our ability to execute on synergy plans. Within two years of the transaction, most of the integration work was complete, and merger synergies were being realized. By 2006, we dramatically expanded our 3G footprint in the combined company's network. After the acquisition, we improved Cingular's customer retention and at the same time achieved lower operating expenses associated with sales, customer care, certain network costs, and general and administrative functions. Additionally, within three years of the acquisition we were able to outperform our own integration plans in key areas such as IT and billing, sales, and marketing as a result of efficiencies associated with the acquisition.

29. The insights we have acquired through such prior merger integration efforts will be applied to the integration of Leap's operations, resulting in cost savings and synergies from the proposed transaction.

V. CONCLUSION

In sum, the combination of Leap and AT&T will create a competitive nationwide provider of high-quality and affordable prepaid/no-contract wireless services and the transaction will enable the combined company to compete more effectively for prepaid/no-contract subscribers. The proposed transaction will result in numerous benefits for customers of both companies, including improved nationwide prepaid/no-contract offerings, a superior range of devices and wireless services, a better network experience from utilization of Leap's unused spectrum and the combination of both companies' network assets, and substantial operating cost savings and synergies.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 1, 2013.

Signed: 

Rick L. Moore
Senior Vice President of
Corporate Development
AT&T Inc.

DECLARATION OF WILLIAM HOGG

1. My name is William Hogg, and I am Senior Vice President of Network Planning and Engineering, AT&T Services, Inc. ("AT&T"). In that position, I am responsible for the wireline and wireless network engineering functions of the company. I manage the network capital plan and am charged with integrating acquired assets into the company. My wireless responsibilities range from expanding and increasing the capacity of our mobile broadband networks, to improving the quality of our wireless services, to planning and deploying new network technologies, including AT&T's current upgrade to Long Term Evolution ("LTE").

2. Prior to my current position, I served as President of Mobility Network Operations, where I oversaw all phases of network engineering, cell site, and other construction activities, and operations and maintenance across the entire wireless footprint. I hold Bachelor's and Master's degrees in Electrical Engineering from the Georgia Institute of Technology, as well as a Master's degree in Business Administration from the University of South Florida.

3. The purpose of this Declaration is to discuss (1) AT&T's ability to deploy Leap's AWS and PCS spectrum, much of which is unused, on AT&T's network, (2) AT&T's preliminary plans to integrate many of the Leap cell sites into AT&T's network, and (3) how the integration of Leap's spectrum and cell sites into the AT&T network will result in an improved network experience for customers of both companies.

4. As explained in the Declaration of S. Douglas Hutcheson, Leap holds AWS and PCS spectrum in various parts of the country that it has not deployed, including spectrum covering approximately 41 million people outside its network footprint.[1] Within its network

[1] Declaration of S. Douglas Hutcheson ¶ 10.

footprint, Leap has deployed only about 42% of its spectrum,[2] meaning that there are a significant number of spectrum licenses for which Leap is utilizing only a portion of a spectrum band or is not utilizing a spectrum band at all.

5. According to Mr. Hutcheson, with regard to the spectrum that Leap currently is using, Leap primarily has deployed its spectrum to support 3G CDMA EVDO technology,[3] which is less spectrally efficient and supports lower throughput speeds than AT&T's 4G HSPA+ and LTE networks. While Leap has deployed LTE in a handful of metro areas, those deployments have been in small block 3x3 MHz or 5x5 MHz configurations that generally support throughput speeds on par with AT&T's HSPA+ network and lower than AT&T's more robust LTE network, which typically deploys 10x10 MHz configurations.[4]

6. AT&T now covers more than 225 million people with its 4G LTE network. The company's LTE network is expected to cover nearly 270 million people in 400 markets by the end of 2013, and its LTE deployment is expected to be substantially complete by the summer of 2014. AT&T is currently deploying its 4G LTE network using AWS and Lower 700 MHz B and C Block spectrum. AT&T is in the process of deploying PCS spectrum for LTE service, and will begin commercial LTE service in that band in the initial markets (*e.g.*, Washington, D.C., Baltimore, Dallas, Philadelphia, New York City and San Francisco) by the end of this year. AT&T also plans to cover 300 million people by the end of 2013 with its 4G HSPA+ service, which uses PCS spectrum, as well as cellular spectrum.

7. Because Leap's spectrum holdings are complementary to AT&T's 4G spectrum deployments, AT&T will deploy Leap's spectrum in a more spectrally efficient manner that will

[2] *Id.*

[3] *Id.* ¶ 9.

[4] *Id.* ¶ 11. AT&T deploys LTE in 5x5 MHz configurations at a minimum.

result in faster and better quality LTE service for *both* Leap and AT&T customers.[5] In license areas where Leap's AWS spectrum is contiguous, or is contiguous with AT&T's spectrum, AT&T will be able to deploy LTE services in larger, more robust, contiguous 10x10 MHz (or greater) blocks of spectrum. In many areas, for example, the transaction will give AT&T a contiguous 10x10 MHz block of AWS where AT&T currently has *none* (*e.g.*, Philadelphia, Pa.; Washington, D.C.; Houston, Tex.; St. Louis, Mo.; Baltimore, Md.; San Diego, Cal.; Plaquemines, La..; Alton-Granite City, Ill.; Oconee, S.C.; and Pine Bluff, Ark.). In other license areas, the transaction will permit AT&T to move from a 5x5 MHz deployment to a contiguous 10x10 MHz or greater AWS deployment (*e.g.*, Lafayette, La.; Racine, Wis.; Las Cruces, N.M.; Hinesville, Ga.; and Jennings, La.).

8. AT&T preliminarily has determined that it will be able to deploy Leap's unused, contiguous AWS spectrum in as little as 60 to 90 days, in the markets where AT&T currently anticipates it will already be utilizing AWS spectrum for LTE service at the time of closing. This includes approximately 50 CMAs, covering metropolitan areas such as Denver, Colo.; Greenville, S.C.; and Baton Rouge, La., as well as less populated areas such as Bryan-College Station, Tex.; Lincoln, Ill.; and Clinton, Okla. Moreover, based on AT&T's current plans for deploying additional spectrum to expand LTE capacity in certain markets, AT&T preliminarily estimates that it will be able to deploy unused Leap spectrum in many additional areas within 12 months after the close of this transaction. This would include over 160 CMAs, encompassing large metropolitan areas such as Chicago, Ill.; Washington, D.C.; San Diego, Cal.; and

[5] Because AT&T also uses PCS spectrum for AT&T's HSPA+ technology, AT&T will have the flexibility to use a portion of Leap's PCS spectrum on AT&T's HSPA+ network as required to support transitioning customers.

Milwaukee, Wis., as well as less populated areas such as Chase, Neb.; Piute, Utah; and Hudspeth, Tex.

9. With respect to the spectrum Leap is currently using, declining traffic on Leap's networks as customers transition to AT&T's networks will likely present a myriad of opportunities to refarm Leap spectrum into AT&T's LTE network even before the full customer migration and network integration is completed. AT&T's preliminary integration plans call for the full transition of Leap's customers to AT&T's network in all affected markets within 18 months after closing.

10. AT&T will be able to integrate many existing Leap cell sites into its network, providing greater cell density, increasing network capacity, and improving network performance in these areas for customers of both companies. A preliminary analysis of Leap cell sites, based on the proximity to existing AT&T cell sites, indicates that AT&T will be able to productively integrate a few thousand Leap sites into its network. The remaining Leap sites will be decommissioned. The analysis of sites that can be productively integrated is necessarily preliminary at this point in the transaction process. AT&T will be able to determine more precisely the number and location of Leap sites to be integrated after AT&T audits the Leap cell sites and completes network transition planning.

11. Customers of both companies will experience faster, higher quality services over the enhanced and expanded networks that will result from the deployment of unused spectrum, the integration of the Leap and AT&T networks, and the densification of cell sites. As a result of AT&T's generally more spectrally efficient HSPA+ and LTE technologies, customers of both companies, in particular Leap customers who only have access to CDMA EVDO services today, will see improvements in throughput speeds and latency. For example, in markets where Leap

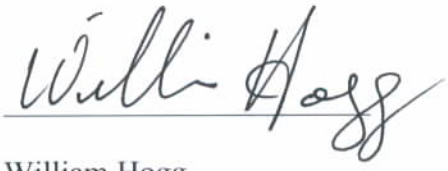
offers only CDMA EVDO service (*e.g.*, Washington, D.C.; St. Louis, Mo.; Chattanooga, Tenn.; San Diego, Cal.; Moffat, Colo.; Pine Bluff, Ark.; and Steubenville-Weirton, Ohio), AT&T operates much faster HSPA+ and LTE networks. And in the vast majority of the areas where Leap has spectrally inefficient small 3x3 MHz and 5x5 MHz block LTE deployments, AT&T already is typically deploying spectrum in LTE configurations of 10x10 MHz (*e.g.*, Philadelphia, Pa.; Houston, Tex.; Tucson, Ariz.; Wilmington, Del.; Las Vegas, Nev.; and Brownsville, Tex.).[6] These speed and spectral efficiency improvements translate into an improved customer experience, including, among other benefits, faster streaming of video, faster uploading of image and video files, and a more responsive and robust web browsing experience.

12. Leap customers also will enjoy access to AT&T's nationwide network post-transaction, rather than relying on third-party networks outside of Leap's limited network footprint, further expanding the benefits of more seamless service and a better customer experience. Greater cell site density will enable faster data speeds and improved coverage by reducing places where customers experience dropped connections, dead spots, and coverage gaps. Overall, AT&T and Leap customers will experience improvements in network accessibility and retainability.

13. AT&T has the experience, management team, and resources necessary to quickly integrate Leap's CDMA customers and network into AT&T's HSPA+ and LTE network, having successfully transitioned CDMA networks and customers in previous transactions, including the acquisition of divested Alltel assets in 2010 and the merger with Centennial Communications Corp. in 2009.

[6] The peak data rate for a 10x10 MHz block, for example, is twice that of a 5x5 MHz block.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 1, 2013.

Signed: 

William Hogg
Senior Vice President of Network
Planning and Engineering
AT&T Services, Inc.

DECLARATION OF S. DOUGLAS HUTCHESON

I, S. Douglas Hutcheson, hereby declare the following:

1. I am Chief Executive Officer ("CEO") for Leap Wireless International, Inc. ("Leap"), a position I have held since 2005. I joined Leap as a member of its founding management team in 1998 and have held a number of roles within the company since then, including President, Chief Financial Officer, and a number of Vice President positions in which I had responsibility for areas including strategic planning as well as product and business development. I am also a member of Leap's Board of Directors. In my CEO role, I am responsible for developing and implementing high-level strategies for the company as well as its overall management.

2. Leap is a wireless communications carrier that offers digital wireless services in the United States under the "Cricket" brand. The company's Cricket service offerings provide customers with unlimited wireless services for a prepaid flat rate without requiring a fixed-term contract or a credit check. In addition, a small portion of Cricket' s customers purchase flat rate, prepaid, limited minute plans. Leap launched its Cricket prepaid service offering in March 1999, and has over 14 years of experience in marketing and selling no-contract service. Leap's business model has, since inception, focused on providing facilities-based wireless service in selected metropolitan areas only. As of June 30, 2013, Leap had approximately 4.8 million customers and owns wireless licenses covering approximately 137 million people, approximately 96 million of whom are covered by Leap's own network footprint. As such, Leap is not a nationwide facilities-based provider and, for the reasons I explain below, has no current plans to become one.

3. The Cricket brand is widely recognized by its target customers, and Cricket has widespread retail distribution outlets in close proximity to target customers within Leap's network footprint. Leap provides coverage outside of its network footprint through resale as a Mobile Virtual Network Operator ("MVNO") and via roaming relationships with other wireless carriers.

4. The retail wireless market has changed significantly in recent years. Wireless data traffic in the U.S. is reported to have more than doubled year-over-year since 2009—from 108 billion MBs in the second half of 2009 to 633 billion MBs in the first half of 2012[1]—and these exponential increases in data traffic are expected to continue.[2] Customers increasingly demand 4G service to transmit and receive data more quickly and more reliably. Leap would need to upgrade its network to LTE in order to meet this expanding consumer demand for 4G wireless services, but, as I explain further below, Leap has not deployed 4G service as quickly and extensively as other carriers.

5. Amidst this structural change in the wireless industry, Leap's financial position has deteriorated in recent quarters. Leap has experienced net subscriber losses in each of the last five quarters. The number of subscribers declined approximately 22% over that time period from approximately 6.2 million subscribers as of March 31, 2012 to approximately 4.8 million subscribers as of June 30, 2013. Intensifying competition in the wireless industry, particularly from carriers with nationwide LTE networks, is likely to negatively impact Leap's ability to attract and retain customers in the future.

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[1] *See* http://files.ctia.org/pdf/CTIA_Survey_MY_2012_Graphics-_final.pdf.

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

6. Lower gross customer additions and a lower weighted-average number of customers mean that Leap's fixed (and semi-fixed) costs are spread over a smaller customer base. At the same time, variable costs per customer have increased, resulting in increasing pressure on Leap's operating margins. Leap's costs per gross customer addition have risen from $296 per gross customer addition in 2Q 2012 to $387 per gross customer addition in 2Q 2013—a 31% increase—due primarily to spreading fixed (and semi-fixed) selling and marketing costs over fewer gross customer additions. At the same time, Leap's cash costs per user have risen from $22.91 in 2Q 2012 to $27.79 in 2Q 2013—a 21% increase due primarily to spreading fixed (and semi-fixed) costs over fewer subscribers as well as increases in per-customer product expenses and upgrade subsidies for existing customers. Cost-reduction initiatives introduced as a result of Leap's declining customer base and an associated decline in service revenues may further negatively impact customer acquisition and retention in the future. Leap also has experienced over a billion dollars in net losses over the last several years. Leap has not earned a net annual profit in any of the past seven years, and its only profitable quarter in recent years was primarily due to recognizing a gain on the sale of some AWS and PCS spectrum holdings, rather than from operating profits.

7. These changes, combined with Leap's high level of indebtedness, have negatively impacted Leap's ability to invest in expanding and improving its business. Against the backdrop of declining customer numbers, Leap has taken a number of actions, including evaluating alternatives to LTE network deployment to provide LTE services to its customers and making repeated reductions of its level of capital expenditures. For example, for 2012, Leap initially budgeted $600 million to $650 million of capital expenditures but ultimately spent only $434.4 million. For 2013, Leap initially budgeted just $275 million to $325 million, but by May 2013

Leap had further reduced its capital expenditures budget for the year to just $250 million to $300 million.

8. Leap has taken a number of additional measures to cut costs. For example, Leap is contracting its distribution footprint, reversing an ambitious expansion plan that had been implemented in 2010. Leap reduced the number of company and dealer doors in the first half of 2013 and over the last several quarters terminated all of its national retail dealer relationships other than its relationships with Walmart and Radio Shack. As a result, Leap reduced the number of its national retail outlets from approximately 13,000 at the end of the second quarter of 2012 to approximately 5,000 at the end of first quarter of 2013. In addition, Leap has reduced administrative and corporate support costs through reductions in personnel, cutting non-customer facing positions by 11 percent in the fourth quarter of 2012.

9. Leap's network operates primarily on 3G CDMA EDVO technology but Leap is facing increasing pressure to provide LTE services to its customers in order to meet expanding consumer demand for data speed. Given the financial constraints and Leap's limited spectrum resources described above, Leap has limited its deployment of LTE technology and has overlaid LTE in only 11 metropolitan areas, covering approximately 21 million people. Sixty-five percent of Cricket subscribers do not have access to LTE in their home markets. In contrast, Verizon has announced that its LTE network covers 89% of the United States.[3] As wireless data traffic continues to climb, the constraints on Leap's LTE deployment will likely increasingly hamper Leap's ability to compete with national carriers.

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[3] Verizon Wireless Form10-K For Fiscal Year Ended December 31, 2012, at 2, available at http://eol.edgarexplorer.com/EFX_dll/EDGARpro.dll?FetchFilingHTML1?SessionID=DicR6Dh7j8kwYa-&ID=9114533 (last visited July 19, 2013).

10. Leap holds AWS and PCS spectrum in various parts of the country that it has not deployed due to the expected costs of building-out that spectrum and of seeking to acquire customers, compared to the economic benefits Leap could expect to gain in those markets. Within its network footprint (which covers 96 million people), Leap has deployed only about 42% of its spectrum. Outside its network footprint, Leap holds spectrum covering approximately 41 million people that it has not yet deployed. Leap's underutilized spectrum includes unused channels on spectrum it has deployed and spectrum in markets that it has not yet built out.

11. Leap holds an average of only 23 MHz of spectrum in operating markets (i.e., where Leap has facilities-based operations), generally consisting of PCS and AWS spectrum. Leap's limited spectrum holdings make it difficult for the company to deploy a robust and competitive LTE network (10 x 10 MHz or greater) while maintaining the 3G network used by the majority of Leap's existing customers. A majority of Leap's LTE markets (covering approximately 14 million PoPs in total) operate on 3x3 MHz of spectrum, and Leap's remaining LTE markets (covering less than 7 million PoPs in total) operate on 5x5 MHz channels. These relatively small channels limit the speed of the network. In contrast, we understand that the national providers enjoy 10x10 MHz LTE channels in many markets. This puts Leap at a competitive disadvantage. For example, it has been reported that Verizon LTE users experience average download speeds of 14.3 Mbps and average upload speeds of up to 8.5 Mbps[4], while Leap LTE users experience average download speeds of 3 Mbps and average upload speeds of 1 Mbps.

12. A highly leveraged balance sheet also impedes Leap's ability to further build out its LTE network. Leap had $3.6 billion of outstanding debt as of June 30, 2013 (or net debt of

[4] *See* http://rootmetrics.com/special-reports/lte-performance-review/.

approximately $2.7 billion, calculated as total indebtedness, minus unrestricted cash, cash equivalents, and short-term investments). The outstanding debt is up from $2.8 billion as of March 31, 2011. Leap's ratio of interest to operating income (before depreciation and amortization) was 47% for the three months ended June 30, 2013. This debt load limits Leap's ability to finance capital expenditures (including for LTE deployment, as discussed above), to purchase additional spectrum, and to make other business investments that Leap may need to meet customer demands and remain competitive. Leap thus has no current plans to expand its current spectrum holdings in any significant way or to build commercial facilities outside of its current network footprint.

13. Leap has attempted to expand its retail footprint by combining MVNO services with facilities-based services, but those efforts have fallen short of expectations. Leap's 3G MVNO offering has only attracted a relatively small number of customers, and Leap is not yet offering 4G services on an MVNO basis.

14. Handsets are another area where Leap faces challenges competing with national providers. To reduce expensive subsidies to subscribers, Leap increased handset prices across the board in the third quarter of 2012, a move that resulted in a decrease in new subscribers. Due to the high cost of handsets and the fact that pre-paid customers typically purchase their handsets up-front, Leap has also recently announced a new device-financing program designed to provide a broad range of consumers with attractive options to purchase the handsets they want over time. While we believe we have designed this program to meet the needs of consumers who prefer an alternative to full up-front payment for a handset and expect that it will increase sales, the actual performance of this program remains uncertain. If default rates and other factors are not

consistent with our initial expectations, these programs may result in further increases in Leap's costs.

15. As a result of these challenges, Leap is a weaker competitive force today than it was in 2011 when the Federal Communications Commission and Department of Justice determined that it did not present a meaningful competitive constraint on a proposed AT&T-T-Mobile combination.

16. In contrast, Leap's competitors have grown stronger since 2011. In the last 18 months, T-Mobile has gained significant spectrum from AT&T, Verizon, and its acquisition of MetroPCS that it has used to become a more formidable competitor. While Leap has always viewed T-Mobile as a close competitor, T-Mobile has intensified competition with its prepaid wireless offerings, including its new GoSmart brand. In addition, Leap expects increased head-to-head competition from the T-Mobile MetroPCS brand, which has begun to expand aggressively into Leap markets since MetroPCS's merger with T-Mobile. That merger expanded MetroPCS's potential geographic reach nationwide to more areas where Leap offers service and also has provided it access to T-Mobile's LTE network. Sprint's Virgin mobile and Boost pre-paid brands are also already present in most areas covered by the Leap network footprint with a strong network (including LTE) and extensive spectrum holdings, and we expect Sprint to invest further in its LTE network following Softbank's acquisition of a controlling stake in the company and infusion of capital. Indeed, these companies have been increasing their focus on prepaid/no-contract value offerings, which has placed additional competitive pressure on Leap. MVNOs, most notably TracFone/StraightTalk, offer an additional source of competitive constraint on Leap and other providers that specialize in prepaid/non contract offerings. In contrast to the competitors discussed above, porting data collected by Leap shows that AT&T

has not been a significant competitor to Leap. Rather, Leap perceives T-Mobile/MetroPCS, Sprint and TracFone to be its most significant competitors.

17. The proposed transaction with AT&T will solve the problems outlined above and will benefit Leap's customers. For example, Leap's customers will gain access to a significantly superior, nationwide 4G network than Leap could readily develop on its own given its limited footprint, limited spectrum holdings, and debt load. In contrast to Leap's limited LTE deployment of 3x3 MHz and 5x5 MHz channel blocks, AT&T's LTE deployment is at least 5x5 MHz, and 10x10 MHz in many markets. In addition, Leap customers will be on-net nationwide, rather than relying on roaming and MVNO relationships using third-party networks, resulting in more seamless service and a better customer experience.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 1, 2013.

By: 

S. Douglas Hutcheson

An Economic Analysis of Competitive Effects and Consumer Benefits from the Proposed Acquisition of Leap Wireless by AT&T

Mark A. Israel

August 1, 2013

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I. INTRODUCTION

A. QUALIFICATIONS

1. I am Mark A. Israel. I am an Executive Vice President at Compass Lexecon, an economic consulting firm, as well as Managing Director of Compass Lexecon's Washington, D.C. office. From August 2000 to June 2006, I served as a full-time member of the faculty at Kellogg School of Management, Northwestern University. I received my Ph.D. in economics from Stanford University in 2001.

2. I specialize in the economics of industrial organization, which is the study of markets and competition, including the study of antitrust and regulatory issues, as well as applied econometrics and the economics of information. At Kellogg and Stanford, I taught graduate-level courses covering topics including business strategy, industrial organization economics, and econometrics. My research has been published in leading economics journals including the *American Economic Review,* the *Rand Journal of Economics,* the *Review of Industrial Organization, Information Economics and Policy,* and *Antitrust Source.*

3. I have been a consultant at Compass Lexecon since 2006. My work has focused on the application of theoretical models and econometric methods to the analysis of mergers, antitrust issues including a wide variety of single-firm and multi-firm conduct, class certification, and damages estimation. My work has involved a range of industries including wireless telecommunications, cable television, other high technology industries, airlines, railroads, retail, consumer beverages, financial markets, pharmaceuticals, and publishing. I have authored expert reports, declarations, and affidavits that have been submitted to government agencies and federal courts on behalf of various clients. Among these, I have submitted declarations to the Federal Communications Commission regarding wireless competition and spectrum aggregation.

B. ASSIGNMENT AND SUMMARY OF CONCLUSIONS

4. I have been asked by counsel for AT&T Inc. ("AT&T") and Leap Wireless International, Inc. ("Leap") to assess from an economic point of view the likely competitive effects and potential for consumer harm or benefits arising from the proposed acquisition of Leap by AT&T.

My work in this matter is ongoing and thus the opinions offered in this Declaration are subject to revision if new information or additional analysis warrants such revision.

5. Although my work in this matter is ongoing, the evidence I have reviewed to date—including data, documents, and declarations submitted by AT&T and Leap executives in these proceedings—leads me to the following conclusion: *Significant adverse competitive effects are unlikely and the transaction will result in the kinds of efficiencies that directly benefit consumers. As such, based on the evidence I have reviewed to date, I conclude that the proposed merger is procompetitive and in the public interest.*

6. There are no significant competitive concerns from the proposed transaction because Leap is a small and declining regional wireless provider and AT&T is a national wireless provider that is a fairly distant competitor to Leap. As I detail below, it is readily apparent that Leap is not a significant source of price constraint on AT&T today. In addition, the qualitative and quantitative evidence I have examined reveals limited substitution from Leap to AT&T and little role for AT&T to constrain Leap's prices, despite AT&T's size. As such, there is unlikely to be significant competitive harm from the transaction.

7. In contrast to the low risk of significant competitive harm from the transaction, the declarations by William Hogg, Rick Moore, and Douglas Hutcheson[1] provide evidence for significant efficiencies from the transaction of the sort that, as a matter of economics, should be expected to generate substantial consumer benefits. These efficiencies derive from the fact that Leap and AT&T possess assets that are more valuable in combination than separately, thus explaining why the acquisition makes economic sense. Simply put, Leap's spectrum holdings (including substantial amounts of unused spectrum), Leap's distribution network and experience in running that distribution network for its prepaid offering, and Leap's established Cricket brand name are more productive and thus more valuable when used in combination with AT&T's

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[1] Declaration of William Hogg, Senior Vice President, Network Planning and Engineering, AT&T Services Inc. (hereinafter, *Hogg Declaration*); Declaration of Rick L. Moore, Senior Vice President, AT&T Inc. (hereinafter, *Moore Declaration*); Declaration of S. Douglas Hutcheson, Chief Executive Officer, Leap Wireless International, Inc. (hereinafter, *Hutcheson Declaration*).

superior, nationwide network than when used on their own. Moreover, as Mr. Hogg explains, the existence of network integration efficiencies means that the Leap and AT&T networks and customers can be combined in a way that increases the company's spectral efficiency and also increases network quality for both AT&T and Leap customers.

8. As a matter of economics, consumers can expect to benefit from these efficiencies through the creation of a more attractive, nationwide prepaid offering more quickly and more effectively than either firm could offer on its own, expansion of that prepaid offering into areas not currently served by Leap, and reduced quality-adjusted prices due to better network quality and lower marginal costs than in the absence of the transaction.

9. The remainder of this Declaration is structured as follows:

- Section II reviews the prior product market definition used by U.S. regulatory agencies in reviewing wireless mergers—all mobile wireless telecommunications services—and explains why that market definition is appropriate for evaluation of the proposed transaction.
- Section III explains why the proposed transaction is unlikely to lead to significant competitive harm.
    - Leap is a small, regional competitor, meaning that significant national competitive effects are not plausible.
    - Subscriber shares in smaller geographic areas, specifically CMAs, show that, in the great majority of cases, Leap has a very small share and/or sufficient other competitors would remain after the proposed transaction to provide effective constraints on AT&T post-merger. Even if there are some smaller geographic areas where combined subscriber shares are higher, additional analysis would be needed to establish a material risk of significant competitive effects from the proposed transaction. My preliminary analysis indicates that, overall, a more granular examination of the evidence would demonstrate that any adverse competitive effects would be small and certainly not widespread. This evidence includes the

following: (1) neither the Federal Communications Commission nor the Department of Justice has considered Leap to be an important competitor in the past, and Leap recently has been declining in competitive significance; (2) porting data show that substitution between AT&T and Leap is limited; and (3) the products sold by AT&T and Leap are differentiated, with several closer competitors for each than each is for the other.

- The combined spectrum holdings of AT&T and Leap would not be likely to lead to adverse competitive effects. There are few instances where the combined spectrum holdings trigger the spectrum screen established by the Federal Communications Commission in order to identify local areas for closer scrutiny, but triggering the screen does not signify that a transaction will have adverse competitive effects. In those few areas where Leap has spectrum and the combined spectrum holdings are above the screen – often in very small amounts – other competitors have significant amounts of spectrum and likely could expand in the unlikely event that the aggregation of spectrum had any adverse effects on the output markets.

- Section IV reviews evidence of the substantial efficiencies expected from the transaction and shows that, as a matter of economics, these efficiencies are of the type that will result in direct consumer benefits.

II. AS THE AGENCIES HAVE FOUND IN PREVIOUS TRANSACTIONS, THE RELEVANT PRODUCT MARKET IN THIS TRANSACTION IS ALL MOBILE WIRELESS TELECOMMUNICATIONS SERVICES

A. IN PRIOR WIRELESS TRANSACTIONS, THE AGENCIES HAVE USED A RELEVANT PRODUCT MARKET CONSISTING OF ALL MOBILE WIRELESS TELECOMMUNICATIONS SERVICES

10. The Federal Communications Commission ("Commission") and the Department of Justice ("DOJ") (collectively, "the agencies") have reviewed several transactions between

mobile wireless providers in recent years. In their reviews of these transactions, the agencies have consistently defined the relevant product market for antitrust purposes as including all mobile telephony/broadband services.

11. The Commission has repeatedly found that the relevant product market in which to assess a wireless merger is an all-wireless market.[2] Just within the past five months, the Commission has again affirmed this approach in both the Sprint/Softbank/Clearwire transaction and the T-Mobile/MetroPCS transaction. In the Sprint/Softbank/Clearwire transaction, the Commission adopted a "combined 'mobile telephony/broadband services' product market," noting that no party to the proceeding challenged that product market definition.[3] In the T-Mobile/MetroPCS transaction, the Commission explicitly rejected a commenter's suggestion that separate product markets exist for "value" wireless services and "premium" wireless services, stating that,[4]

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[2] Commission Staff also adopted an all-wireless product market in its 2011 analysis of the AT&T/T-Mobile merger application. In its report, Commission Staff rejected certain commenters' suggestions that the "proposed transaction should be analyzed within separate product markets, for example, for postpaid and pre-paid wireless services, or for smartphone devices." (*In the Matter of Applications of AT&T Inc. and Deutsche Telekom AG for Consent To Assign or Transfer Control of Licenses and Authorizations*, Staff Analysis and Findings, WT Docket No. 11-65 (hereinafter, *AT&T/T-Mobile Staff Report*), ¶ 30.) Instead, Commission Staff defined a relevant product market consisting of all wireless services, stating:

> Consistent with the Commission's approach in recent wireless transactions, where it has analyzed transactions by using a combined 'mobile telephony/broadband services' product market, we analyze this transaction within a product market comprised of voice and data services, including mobile voice and data services provided over advanced broadband networks.

(*AT&T/T-Mobile Staff Report*, ¶ 31.)

[3] *In the Matter of Applications of SOFTBANK CORP., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation For Consent to Transfer Control of Licenses and Authorizations; Petitions for Reconsideration of Applications of Clearwire Corporation for Pro Forma Transfer of Control*, Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, IB Docket No. 12-343, FCC 13-92, rel. July 5, 2013, ¶ 37.

[4] *In the Matter of Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. For Consent To Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order and Declaratory Ruling, WT Docket 12-301, DA 13-384, rel. March 12, 2013 (hereinafter, *T-Mobile/MetroPCS Order*), ¶ 28.

> [W]e find that T-Mobile USA and MetroPCS provide services in the combined mobile telephony/broadband services product market and therefore use the product market definition that the Commission has applied in recent transactions: a combined 'mobile telephony/broadband services' product market that is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks.

12. Similarly, in its complaint against the proposed AT&T/T-Mobile merger, the DOJ asserted that there was a single product market consisting of "mobile wireless telecommunications services," concluding that "[i]n the face of a small but significant price increase imposed by a hypothetical monopolist it is unlikely that a sufficient number of customers would switch some or all of their usage from mobile wireless telecommunications services to fixed wireless or wireline services such that the price increase or reduction in innovation would be unprofitable."[5]

B. THE AGENCIES' ESTABLISHED PRODUCT MARKET DEFINITION IS APPROPRIATE FOR EVALUATING THE PRESENT TRANSACTION

13. In defining a single product market, the agencies have correctly recognized that the set of options for accessing mobile wireless networks does not break neatly into distinct groupings, such as could form the basis of meaningfully distinct markets. Rather, although the underlying product being sold in each instance is access to a mobile wireless network, the product offerings make up a continuum of different bundles of features. Indeed, the lines between different types of wireless plans are even more blurred today than they were in the past—including when the agencies defined markets for all mobile wireless telecommunication services. Several specific examples demonstrate the lack of clear breaks into distinct offerings in today's marketplace:

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[5] Second Amended Complaint, *United States of America, et al. v. AT&T Inc., et al.*, Civil Action No. 11-01560, September 30, 2011 (hereinafter, *AT&T/T-Mobile Complaint*), ¶ 12. DOJ alleged both local markets for all wireless services, and a national market for all wireless services sold to "enterprise and government customers." In the latter market, DOJ discounted the importance of regional providers, stating that there were only four (national) competitors in that market and that "[l]ocal and regional providers have an insignificant presence because enterprise and government customers typically require their providers to have nationwide networks, and because local and regional carriers generally refrain from bidding for out-of-network business due to the costs associated with paying roaming rates for services in locations outside of their network footprints." (*AT&T/T-Mobile Complaint*, ¶ 41.)

- Historically, one distinction between contract and no-contract[6] plans was that, with the protection of a contract in place, providers would offer upfront handset subsidies that were recouped via payments over the life of the contract (often 24 months) or a penalty for early termination.[7] However, marketplace developments largely have rendered this distinction between contract and no-contract plans moot. For example, T-Mobile has introduced a no-contract plan (marketed as T-Mobile's "Jump" plan) that permits customers to buy a phone via an upfront down payment plus 24 monthly installments, with early departure from T-Mobile triggering a requirement to pay for the phone in full.[8] AT&T and Verizon have introduced (or announced) similar plans marketed as AT&T's "Next" plan and Verizon's "Edge" plan.[9] Leap very recently introduced a plan that provides financing over a 24-month period for certain handsets.[10] Such plans reduce to little more than semantics the distinction between contract plans with handset subsidies and penalties for early departure on the one hand, and no-contract plans with down payments, installment plans, and full payment upon early departure on the other.

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6 I use "no-contract plan" to refer generally to wireless service plans that do not have a fixed contractual term longer than a single month.

7 "T-Mobile's move is a striking change for the industry, as all Tier 1 operators for many years have subsidized the cost of devices in exchange for customers agreeing to a two-year contract." (Phil Goldstein, "T-Mobile kills device subsidies," *FierceWireless*, available at http://www.fiercewireless.com/story/t-mobile-kills-device-subsidies/2012-12-06#ixzz2ZdA7Om7u, last visited July 30, 2013.)

8 *See*, http://www.androidcentral.com/t-mobile-s-new-plans-frequently-asked-questions.

9 *See*, http://www.tuaw.com/2013/07/22/verizon-edge-program-lets-users-trade-in-their-old-iphones-for-n/.

10 Leap News Release, "Cricket Unveils Phone Payment Plan Enabling Customers to Buy the Phones They Really Want," July 17, 2013 (*available at* http://newsroom.leapwireless.com/Press-Releases/Cricket-Unveils-Phone-Payment-Plan-Enabling-Customers-to-Buy-the-Phones-They-Really-Want-64a.aspx, *last visited* July 30, 2013).

- Another distinction that historically has existed between plans has been access to particular handsets, particularly the iPhone. Although some handsets still are available exclusively on particular networks, a wide range of providers now offer their customers the iPhone – including the most recent version, the iPhone 5 – under a wide variety of contract, no-contract, postpaid, and prepaid plans.

- In addition, service plans cannot be categorized simply as either inexpensive, no-contract plans with restrictive data limits or expensive, contract plans with unlimited data usage. For example, T-Mobile offers a no-contract plan for use with the Samsung Galaxy S III handset with unlimited voice, unlimited text, and unlimited data, for a monthly charge of $90.[11] Sprint offers a two-year contract plan for use with the Samsung Galaxy S III handset with unlimited voice, unlimited text, and unlimited data, for a monthly charge of only $80.[12] Although both plans offer unlimited data, the Sprint contract plan has a lower monthly charge than the T-Mobile no-contract plan. And I note that Leap has long been known for its inexpensive, no-contract plans with unlimited data, and so has always defied such a categorization.

III. THE PROPOSED TRANSACTION IS UNLIKELY TO LEAD TO SIGNIFICANT COMPETITIVE HARM IN THE MARKET FOR MOBILE WIRELESS TELECOMMUNICATIONS SERVICES

14. In this section, I explain why the proposed transaction should not raise significant competitive concerns in the market for mobile wireless telecommunications services. In analyzing competition for subscribers, the Commission has, in previous wireless mergers, defined local geographic markets (based on CMAs) as well as examined the potential for a

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[11] *See*, http://www.t-mobile.com/shop/plans/individual-plans.aspx; http://www.t-mobile.com/shop/Phones/cell-phone-detail.aspx?cell-phone=Samsung-Galaxy-S-III-LTE-Marble-White-16GB. The T-Mobile plan includes a handset that is financed over 24 months.

[12] *See*, http://shop.sprint.com/mysprint/shop_landing.jsp?pagename=whysprint&plan=unlimited. The Sprint plan includes a handset subsidy with a two-year contract.

transaction to have anticompetitive effects in a national market.[13] I have not performed a detailed competitive analysis at a granular level in all local areas. However, it is evident from the facts that I set forth below that the proposed acquisition does not raise broad concerns of competitive harm. Whether the relevant geographic markets are considered to be local or national, the proposed transaction is unlikely to lead to a significant decrease in competition.

15. In addition, the Commission considers the merging parties' combined spectrum holdings at the county level, and in areas where those holdings exceed certain levels (1/3 of the total spectrum considered by the Commission to be suitable and available for the provision of mobile telephony/broadband service) the Commission examines more closely whether the proposed aggregation of spectrum will be likely to have adverse competitive effects. I also explain in this section why the spectrum that would be held by AT&T post- transaction is unlikely to lead to competitive harm.

A. CONVENTIONAL METRICS DEMONSTRATE THAT THE PROPOSED TRANSACTION RAISES NO COMPETITIVE CONCERN NATIONALLY

16. In this section, I show that, by standard metrics, the proposed transaction should not be expected to generate significant competitive harm on a nationwide basis.[14]

17. The agencies typically look at concentration metrics to provide an initial assessment of the likely competitive effects from a merger. As described in the *Horizontal Merger Guidelines,*[15]

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13 *T-Mobile/MetroPCS Order,* ¶ 29.

14 Among other things, an analysis of nationwide competition is informative regarding post-merger incentives for the large portion of AT&T's prices (*e.g.*, national rate plans) that are uniform nationwide. (In reviewing the AT&T/T-Mobile transaction, the DOJ found that, "[f]or a variety of reasons, there is little or no regional variation in the pricing plans offered by the Big Four nationwide carriers. Nationwide pricing simplifies customer service and billing, reduces consumer confusion that might otherwise result from regional pricing disparities, and allows the carriers to take advantage of nationwide advertising in promoting their services. Similarly, when the Big Four carriers make devices available to the public, they typically make them available nationwide. This too minimizes customers' confusion and dissatisfaction, and allows the carriers to take advantage of nationwide marketing." *AT&T/T-Mobile Complaint,* ¶ 18.)

> Market concentration is often one useful indicator of likely competitive effects of a merger. In evaluating market concentration, the Agencies consider both the post-merger level of market concentration and the change in concentration resulting from a merger. Market shares may not fully reflect the competitive significance of firms in the market or the impact of a merger. They are used in conjunction with other evidence of competitive effects.

18. Table 1 below reports national subscriber shares and concentration measures for the four national providers and Leap, based on AT&T's internal estimates.[16] Although AT&T is the second largest wireless provider nationally, with just under 30 percent of subscribers, Leap has less than 2 percent of all subscribers. The increment to AT&T's national share from the proposed acquisition thus is very small, AT&T would remain the second largest provider in the country, and the change in HHI is within the range (a change of less than 100) for which the *Horizontal Merger Guidelines* indicate a merger would be "unlikely to have adverse competitive effects and ordinarily require no further analysis."[17]

Table 1: National Shares and Concentration

	AT&T	Leap	Verizon	Sprint	T-Mobile	Others	Post-merger HHI	Delta HHI
Share of Subscribers	29.8%	1.7%	34.8%	16.9%	12.8%	4.1%	2,655	99.9

Note: MetroPCS combined with T-Mobile.
Source: Based on AT&T internal estimates, March 2013.

19. In addition, as discussed below, Leap's share has been falling, which strengthens the conclusion of minimal competitive effects at the national level.

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15 *Horizontal Merger Guidelines*, § 5.3.

16 AT&T's internal share estimates correspond to the share of subscribers served by each provider, excluding machine-to-machine connections. Subscribers of an MVNO provider generally are attributed to the underlying facilities operator.

17 *Horizontal Merger Guidelines* at 19. As is always the case, small changes in shares can push a transaction just above or just below the safe harbor threshold. But such small changes would not change the basic conclusion that effects from the transaction at the national level are minimal.

B. CONVENTIONAL METRICS AND AVAILABLE EVIDENCE DEMONSTRATE THAT THE PROPOSED TRANSACTION RAISES LITTLE CAUSE FOR COMPETITIVE CONCERN IN CMAS WHERE LEAP IS PRESENT

1. Leap has a small share and there are many other competitors in most CMAs where Leap is present

20. The Commission has in previous matters used CMAs to represent local markets and used Numbering Resource Utilization Forecast ("NRUF") data to calculate subscriber shares. I do not have access to NRUF data, but I have reviewed internal estimates of subscriber shares at the CMA level routinely prepared by AT&T. Because of the lack of a protective order in this matter, I report here only at a high level the results of my share analysis. I conclude that the transaction raises no significant competitive concerns for this set of CMAs as a whole because Leap generally has a small share, and in those CMAs where Leap's share is non-negligible, several other substantial competitors will remain after the proposed merger.

21. AT&T's internal share estimates show that there are few CMAs where Leap has significant share. Of 721 CMAs in the U.S.,[18] Leap is present with more than two percent of subscribers in only 100 CMAs,[19] but Leap has more than five percent of subscribers in only 43 CMAs and more than ten percent of subscribers in only 14 CMAs. In all but a handful of the

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[18] My analysis includes the 721 CMAs for which AT&T share estimates were available; these data include all CMAs in the 50 states and the District of Columbia, and five CMAs in Puerto Rico.

[19] In some local areas, the AT&T estimates show a Leap share of less than two percent; I exclude these areas from my analysis. Excluding these areas does not risk missing areas of important competitive impact. Indeed, the two-percent cutoff that I employ is the same as that used by the Commission (for example, in its most recent CMRS Competition Report) to count a wireless provider as a competitor in a local market. I note that, in its CMRS Competition Report, the Commission further stated that using a five-percent cutoff may provide "greater assurance of a meaningful choice for consumers." (*In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 11-186, Sixteenth Report, FCC 13-34, rel. March 21, 2013 (hereinafter, *16th CMRS Competition Report*), ¶ 50.)

Leap's MVNO subscribers are a *de minimis* share of its total subscribers so whether the AT&T estimates attribute those subscribers to Leap or the underlying carrier does not materially affect my share calculations.

CMAs where Leap has a non-negligible share, consumers will continue to enjoy the benefits of competition from four national, facilities-based providers after the proposed transaction, and in some CMAs there is additional competition from a regional provider.[20]

2. Available evidence indicates that even in CMAs where Leap has a non-negligible share, there is little reason for competitive concern

22. To date, I have not performed a detailed competitive analysis of every CMA where Leap has a non-negligible share. In such a detailed analysis, however, several key factors beyond the shares of the merging parties and the number of post-merger competitors should be considered. My initial assessment of the data and other evidence indicates that it is very unlikely that the proposed merger will have significant adverse competitive effects and that it certainly will not have widespread adverse effects across the CMAs where AT&T is acquiring Leap assets.

(a) The agencies have concluded that Leap and AT&T are not particularly close competitors

23. Statements by the Commission have confirmed that AT&T and Leap are not close competitors. In part this is because the Commission has concluded that the customer differentiation of regional providers such as Leap means that regional providers do not affect pricing or other key competitive decisions of national wireless providers.[21] For example, in its consideration of the AT&T/T-Mobile merger, Commission Staff concluded that:[22]

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[20] Other providers are counted as competitors based on their share of subscribers. (AT&T internal estimates.)

[21] DOJ reached a similar conclusion in the proposed merger of AT&T and T-Mobile, alleging that "[t]hey [local or regional providers] are therefore limited in their ability to competitively constrain the Big Four national carriers." (*AT&T/T-Mobile Complaint*, ¶ 35.)

[22] *AT&T/T-Mobile Staff Report*, ¶ 65. The Commission also has concluded that national carriers set key competitive variables – pricing and service plans – at a national level, implying that regional providers have only limited competitive impact on national providers. (*See, In the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses Applications of Verizon Wireless and Leap for Consent To Exchange Lower 700 MHz, AWS-1, and PCS Licenses Applications of T-Mobile License LLC and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign Licenses,* Memorandum Opinion and Order and Declaratory Order, FCC 12-95, (rel. August 23, 2012), ¶ 57.)

> The services offered by providers such as MetroPCS and Leap tend to attract a subset of customers who are more price sensitive, not too concerned by their more limited geographic scope, who have lower data usage rates than average, and who seem to have a lower willingness to pay for the latest handsets. These customers are unlikely to prefer the nationwide providers generally and, of particular relevance to analyzing unilateral effects, are unlikely to include those AT&T customers who have T-Mobile as their second choice (or vice versa).

24. In addition, because this statement indicates that Leap customers are "unlikely to prefer the nationwide providers" like AT&T, this means that the potential for substitution from Leap to AT&T is not likely to be large. This implies that AT&T is not an important source of constraint on Leap's prices today and that the merger would not lead to significant upward pressure on Leap's prices.

(b) Empirical evidence finds little substitution between AT&T and Leap

25. As a matter of economics, the degree of competition between two firms depends on the extent of consumer substitution between them. That is, for AT&T and Leap to be close competitors, it would need to be the case that a substantial portion of subscribers who left AT&T would switch to Leap and vice versa. Generally, the more substitutable are two companies' products, the higher is the diversion ratio between the two, and the larger are the potential anticompetitive effects from a merger. In contrast, a lower diversion ratio means that the firms in question are not particularly close competitors, thus limiting any competitive concerns.

26. To provide an initial look at the extent of diversion between AT&T and Leap, relative to other providers, I rely on porting data from the merging parties to estimate diversion.[23, 24] For a

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[23] Porting data contains information on the number of subscriber phone numbers of a wireless provider that are transferred to another wireless provider when a subscriber switches providers and keeps his phone number. I used AT&T port-out data to calculate the diversion of AT&T subscribers to Leap as (count of AT&T phone numbers ported to Leap / count of AT&T phone numbers ported to all providers). Similarly, I used Leap port-out data to calculate the diversion of Leap subscribers to AT&T as (count of Leap phone numbers ported to AT&T / count of Leap phone numbers ported to all providers). Diversion ratios to other carriers from AT&T and Leap were computed similarly.

subscriber who switches away from one provider and keeps his phone number, porting data show to which other wireless provider the subscriber switched. Although porting (or other switching) data are one useful indicator of the degree of substitution between providers, they are imperfect and need to be evaluated in the context of other qualitative evidence (such as contained in this Declaration) and other empirical work. For example, porting data include only subscribers who keep their phone numbers when switching, meaning that the data capture only a subset of switchers. In addition (and perhaps even more important), porting data, like most other switching data, do not capture only those customers who switch due to changes in quality-adjusted prices (the relevant sample for antitrust analysis), but rather include people who switch for any reason. A likely effect of this is that porting data may capture those who switch because they are looking for something different in a new provider (*e.g.*, switching from Leap to AT&T due to faster network speeds, different handset availability, or other reasons), whereas those who switch solely due to a price increase at their current provider may be more apt to switch to another provider with a similar offering at a better price.

27. Despite these limitations, porting data provide a useful indicator of the degree of substitution between providers. An examination of recent porting data finds limited substitution between AT&T and Leap, suggesting that the diversion ratio between them is small. Porting data show that only 13 percent of subscribers leaving Leap go to AT&T.[25] This is only 43 percent of the diversion to AT&T that would be predicted by AT&T's overall share in CMAs where Leap has at least two percent of subscribers, indicating that AT&T's share overstates the

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[24] Porting (and other switching) data is imperfect for the measurement of diversion ratios, because such data capture only switching between firms, not a decision by a customer to drop wireless service altogether following a price increase by the wireless provider. Diversion ratios based on data that ignore the option of dropping wireless service altogether are necessarily too high, as they ignore an option, making my analysis conservative.

[25] Leap's porting data attribute AT&T resellers to AT&T; if such resellers were excluded the estimated diversion rate would be even lower.

likely competitive effect of a merger of AT&T and Leap. Indeed, this diversion rate ranks AT&T behind Sprint, T-Mobile/MetroPCS, and Verizon as a source of diversion from Leap.

28. Although only a small percentage of Leap subscribers that port out choose AT&T, an even smaller percentage of AT&T subscribers that port out choose Leap. The porting data show that only 3.3 percent of subscribers leaving AT&T go to Leap. This is only 45 percent of the diversion to Leap that would be predicted by Leap's share in CMAs where Leap has at least a two percent share of subscribers. This diversion rate to Leap places Leap significantly behind Verizon, Sprint, and T-Mobile/MetroPCS among AT&T's competitors. Thus, even in areas where Leap may have a substantial share, the fact that Leap is a tiny source of diversion from AT&T minimizes any potential competitive concerns inferred from shares alone.

(c) Examining the details of the products offered by the merging parties, relative to other providers, confirms that AT&T and Leap are not particularly close competitors

29. The limited substitution between AT&T and Leap shown above is not surprising but rather is consistent with the differentiated nature of their products. The current products offered by AT&T and Leap are differentiated in the features offered and the consumers to which they are targeted. Other competitors in the wireless market sell products that are more similar to AT&T's products or Leap's products than AT&T's and Leap's products are to each other.

30. Leap is an "All You Can Eat" ("AYCE") provider, offering subscribers unlimited wireless services for a flat fee each month, with no contractual obligations or credit check.[26] In contrast, AT&T's principal focus is on postpaid customers. I understand that, as a rule, AT&T has not tried to use its branded prepaid offering, GoPhone, to match the offerings of AYCE carriers like Cricket, who are attempting to appeal to a broader set of customers.[27] For example,

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[26] *Hutcheson Declaration*, ¶ 2.

[27] *Moore Declaration*, ¶ 9.

GoPhone does not offer smartphone rate plans with large data options to match the offerings of certain AYCE carriers, such as Cricket.[28]

31. GoPhone has had only limited success.[29] AT&T has recently launched a prepaid flanker brand, Aio, in a few metropolitan areas to attempt to appeal to a broader set of customers.[30] However, although Aio might be closer in product space to Leap than the great majority of AT&T's postpaid and other prepaid business, the existence of Aio does not raise tangible competitive concerns for the transaction. Aio is a nascent business that currently has very few subscribers, and thus it cannot be considered today to be a significant participant in the wireless market or even a significant offering among prepaid products. Moreover, Aio's likely growth is speculative, particularly given the fact that AT&T has decided that the new brand will be completely separate from the AT&T brand name and distribution network.

(d) Other products are much closer substitutes for Cricket than the AT&T offerings

32. In the remainder of this section, I discuss the current competitive position of both T-Mobile/MetroPCS and Sprint, further demonstrating that these providers are closer substitutes for Leap than is AT&T and that any attempt by the merged parties to raise prices (including on prepaid offerings in particular) would likely cede substantial share to each of these providers.[31]

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28 *See*, rate plan offerings of GoPhone and Cricket, respectively, at http://www.att.com/shop/wireless/plans/prepaidplans_and html and http://www.mycricket.com/cell-phone-plans#4g-lte-plans.

29 For example, in the fourth quarter of 2012, AT&T had a net addition of 780,000 postpaid subscribers (AT&T's largest quarterly increase in three years) but a net loss of 166,000 prepaid subscribers, "primarily due to declines in GoPhone and session-based tablets." (AT&T Press Release on Q4 2012 Financial Results, *available at* http://www.att.com/gen/press-room?pid=23672&cdvn=news&newsarticleid=35937, *site visited* July 30, 2013.)

30 *Moore Declaration*, ¶ 10.

31 My focus on these companies' prepaid offerings should not be taken as an indication that the companies do not also compete with their postpaid offerings in the same relevant product market. Rather, as noted earlier, the market includes differentiated products, some of which are closer substitutes than others.

33. Sprint offers prepaid service through several brands, most notably Virgin Mobile and Boost Mobile, and had an estimated share of prepaid subscribers over 20 percent and almost 20 percent of gross prepaid adds in the first quarter of 2013.[32] Sprint's two prepaid brands are targeted at different types of customers. For example, Virgin Mobile targets young, data-driven customers with low cost unlimited text and data plans.[33] Boost Mobile, on the other hand, is a "more upscale brand," with a broader target audience that includes small and medium-sized business owners who are willing to pay more for better devices and better service.[34] Sprint also recently announced a new Sprint-branded prepaid service, called "Sprint As You Go," which Sprint considers part of its postpaid product portfolio,[35] but which some analysts describe as a prepaid service.[36]

34. Sprint reported that its Boost and Virgin brands performed well in 2012, with year-over-year improvements in ARPU and churn, and that the two brands accounted for nearly half of the 2012 additions to the Sprint customer base.[37] Furthermore, Sprint recently completed transactions with Japanese firm Softbank and U.S. broadband wireless firm Clearwire that analysts believe will improve Sprint's competitive position. As noted in a recent Deutsche Bank report on Sprint, the Clearwire transaction resulted in "extensive spectrum holdings, which we believe position [Sprint] to deploy the highest capacity (and potentially highest speed) LTE

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32 AT&T internal estimates.

33 Rivka Little, "Sprint's Boost-Virgin Strategy Slowly Unfolds," *The Prepaid Press*, March 15, 2010 (*available at* http://www.prepaid-press.com/wordpress/?page_id=2940, *last visited* July 30, 2103); *See, also*, http://newsroom.sprint.com/news-releases/sprints-prepaid-multi-brand-strategy-focuses-on-distinct-customer-segments.htm.

34 Rivka Little, "Sprint's Boost-Virgin Strategy Slowly Unfolds," *The Prepaid Press*, March 15, 2010 (*available at* http://www.prepaid-press.com/wordpress/?page_id=2940, *last visited* July 30, 2103).

35 Sprint Nextel Corporation, Form 10-Q, for the quarter ended March 31, 2013, at 23.

36 Dan Graziano, "Sprint Will Reportedly Launch Its Own Prepaid Plans on January 25th," BGR.com, January 3, 2013 (*available at* http://bgr.com/2013/01/03/sprint-prepaid-service-rumor-280581/, *last visited* July 30, 2013).

37 *See*, Sprint Nextel Corporation, 2012 Q4 Earnings Conference Call, at 18, 19.

network in the US … Sprint has the largest total spectrum portfolio in the US, and … more spectrum that is free-and-clear to support LTE than all of its national competitors combined." [38]

35. Following their recent merger, the combined T-Mobile/MetroPCS became one of the largest providers of prepaid offerings, with an estimated share of subscribers over 20 percent and an even higher share of gross prepaid adds in the first quarter of 2013.[39] Post-merger, the MetroPCS prepaid brand is likely to be in many more CMAs and both T-Mobile and MetroPCS prepaid products will benefit from a strong and improving network. For example, T-Mobile stated that, following the completion of the MetroPCS merger, it would expand the MetroPCS brand to "15 additional major metropolitan areas very quickly," and it announced the launch of the MetroPCS brand in those markets less than three months later.[40] The CEO of T-Mobile USA recently stated that the "combination of T-Mobile and MetroPCS creates an even stronger disruptive force in the U.S. wireless market. . . . Together, as America's Un-carrier, we'll continue our legacy of marketplace innovation by tearing up the old playbook and rewriting the rules of wireless to benefit consumers."[41] Industry observers have agreed with these assessments. For example, analyst RW Baird noted at the announcement of the T-Mobile/MetroPCS merger that the "merger is designed to provide MetroPCS with the financial and spectrum resources to roll out its product offering in additional markets, which should

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38 Deutsche Bank, "Sprint Nextel Corp.: The new spectrum powerhouse; reinstating coverage at Buy," July 11, 2013 at 2.

39 AT&T internal estimates. Data for T-Mobile includes MetroPCS.

40 Phil Goldstein, "T-Mobile to expand MetroPCS footprint by 100M POPs," FierceWireless, May 15, 2013 (*available at* http://www.fiercewireless.com/story/t-mobile-expand-metropcs-footprint-100m-pops/2013-05-15#ixzz2X39NYYfc, *last visited* July 30, 2013); T-Mobile News Release, "MetroPCS Takes on New Markets: Doubles Reach in Less than Three Months," July 25, 2013 (*available at* http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle&ID=1841246&highlight= , *site visited* July 30, 2013).

41 T-Mobile News Release, "T-Mobile and MetroPCS Combination Complete - Wireless Revolution Just Beginning," May 1, 2013 (*available at* http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle&ID=1813495&highlight=, *last visited* July 30, 2013).

benefit consumers in the form of greater choice."[42] T-Mobile USA's CFO, who was formerly CFO of MetroPCS, recently stated that "MetroPCS will continue its legacy distribution and dealer operations, and is well positioned to gain market share."[43]

36. Additionally, T-Mobile has announced that former MetroPCS customers will be transitioned to the T-Mobile network to free up the legacy MetroPCS spectrum for LTE deployment. As T-Mobile has announced, the combination of the two firms' spectrum portfolios "provides a path to at least 20x20 MHz of 4G LTE in approximately 90% of the top 25 metro areas in 2014."[44] This LTE deployment likely will make the combined T-Mobile/MetroPCS an even more formidable competitor in the future (and one that would be much more difficult for Leap to compete with on its own).

37. Finally, T-Mobile has stated repeatedly (and recently) its plan to target Leap customers. For example, T-Mobile USA's CEO recently characterized the company's expansion of the MetroPCS brand into 15 new geographic areas as a strike at Leap's customer base: "The best way to think about [the expansion] is T-Mobile network, T-Mobile devices, Leap customers."[45]

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42 Abby Ellin, "What the T-Mobile/MetroPCS Merger Means for Cost-Conscious Consumers," ABC News online, Oct. 5, 2012 (*available at* http://abcnews.go.com/blogs/business/2012/10/what-the-t-mobilemetropcs-merger-means-for-cost-conscious-consumers/, *last visited* July 30, 2013).

43 Phil Goldstein, "T-Mobile to expand MetroPCS footprint by 100M POPs," FierceWireless, May 15, 2013 (*available at* http://www.fiercewireless.com/story/t-mobile-expand-metropcs-footprint-100m-pops/2013-05-15#ixzz2X39NYYfc, *last visited* July 30, 2013).

44 T-Mobile News Release, "T-Mobile and MetroPCS Combination Complete - Wireless Revolution Just Beginning," May 1, 2013 (*available at* http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle&ID=1813495&highlight=., *last visited* July 30, 2013).

45 "T-Mobile CEO Hints at New Prepaid Plan, Says He's 'Intrigued' by Dish's Vision," *available at* http://www.fiercewireless.com/story/t-mobile-ceo-hints-new-prepaid-plan-says-hes-intrigued-dishs-vision/2013-07-12, *last visited* July 30, 2013; see also J. Sahagian, "This Is How T-Mobile Is Challenging AT&T in Prepaid," at http://wallstcheatsheet.com/stocks/this-is-how-t-mobile-is-challenging-att-in-prepaid.html/?a=viewall.

38. In sum, given the existence of several more competitively significant prepaid brands that compete directly with Leap, each of which is well-positioned to expand, any attempt by the merged firm to raise prices would likely cede share to these other well-positioned competitors.

(e) Leap has been declining in competitive significance in recent years and likely will decline further, meaning that current shares and diversion ratios overstate its future competitive significance

39. Both the opinions expressed by the agencies on the lack of close competition between AT&T and Leap and the empirical evidence presented thus far are retrospective analyses reflecting historical conditions. A proper analysis of competitive effects would look at expected competitive conditions in the future, not just current conditions. Such a forward-looking perspective reinforces the lack of competitive concerns from the proposed transaction, as Leap's share has declined markedly over the last fifteen months and Leap faces considerable difficulties in competing in future.

40. The number of Leap subscribers has declined from 6.2 million in March 2012 to 4.8 million in June 2013, a 22 percent reduction.[46] Because the raw number of subscribers may decline due to poor economic conditions – which could be reversed – a loss in subscribers over the last 15 months alone does not indicate that Leap will fail to recover or continue to decline. However, the loss in subscribers already has had real effects on Leap's competitive future: the subscriber losses have reduced Leap's profitability and, combined with a high debt load, made it difficult for Leap profitably to finance capital expenditures (including for LTE deployments), purchase additional spectrum, and make other business investments needed to meet customer demands and remain competitive.[47] Leap sought to reduce its costs in response to its ongoing losses by reducing its capital expenditures in 2012 to only about two-thirds of the originally budgeted amount,[48] and Leap reduced its capital expenditure budget even further in 2013.[49]

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46 *Hutcheson Declaration*, ¶ 5.

47 *Id.*, ¶¶ 6-7, 12.

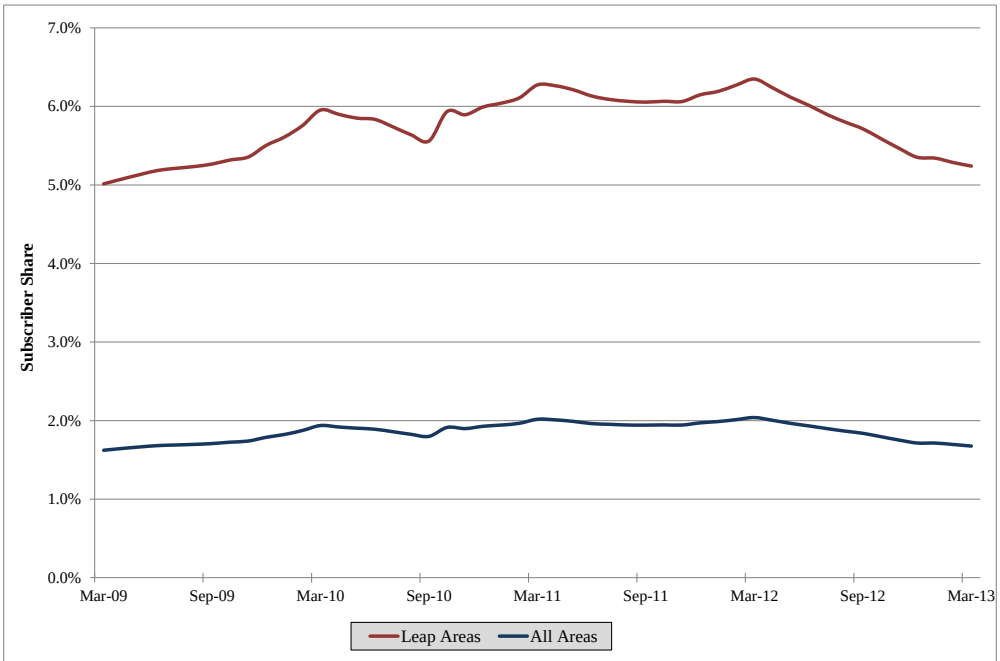
48 *Id.*, ¶ 7.

49 *Id.*

Hence, Leap's subscriber decline may fairly be expected to continue because, as detailed by Leap's CEO, Leap faces obstacles to launching a competitive LTE network across its network footprint and customers are increasingly demanding 4G data services and other companies are moving ahead with their rollouts of 4G LTE services.[50]

41. In addition, Leap has not only lost subscribers, which negatively impacts its ability to invest in its network, it also has lost share, indicating that its position relative to other wireless providers is declining. Figure 1 below shows Leap's share of subscribers across all CMAs and across the CMAs where Leap has at least two percent of subscribers. Leap's share grew between March 2009 and March 2012, but then began a rapid decline. If this decline in share continues, then Leap's competitive significance would also decline further.

Figure 1: Leap Subscriber Share, March 2009 – March 2013



Note: Leap areas defined as those CMAs with at least a 2% share in March 2013.
Source: AT&T internal estimates.

42. In summary, Leap's decline in subscribership started fairly recently, but it has been rapid and may be difficult to reverse given the obstacles Leap faces in developing a competitive LTE

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50 *Id.*, ¶¶ 4, 11, 12, 16.

offering and thus is in an increasingly weak position relative to its competitors. Given that Leap was not considered to be an effective competitive constraint to the national providers in the past, it is difficult to see how an even weaker Leap could be an effective competitive constraint in the future.

C. CONVENTIONAL METRICS AND AVAILABLE EVIDENCE DEMONSTRATE THAT THE PROPOSED TRANSACTION RAISES LITTLE CAUSE FOR COMPETITIVE CONCERN REGARDING SPECTRUM HOLDINGS

1. AT&T and Leap's combined spectrum holdings are below the Commission's spectrum screen in the great majority of CMAs where Leap has spectrum

43. The combination of AT&T's and Leap's spectrum holdings does not indicate a reason for concern across CMAs. Leap holds spectrum licenses in 356 CMAs that will be transferred to AT&T. Of these 356 CMAs, only 38 CMAs have at least one county in which the combined spectrum holdings exceed the Commission's spectrum screen threshold. None of these 38 CMAs are among CMAs 1-100. In most areas where the combined holdings of AT&T and Leap trigger the screen, the overage is quite small. For example, in 21 of the 38 CMAs at issue, in every county in which the screen is triggered, the threshold is exceeded by just five MHz or less. Thus, in the vast majority of Leap's 356 CMAs, the combined AT&T-Leap spectrum holdings either do not trigger the screen or exceed the threshold by only a small amount.

44. In addition, even though there are some CMAs where the combined AT&T-Leap spectrum holdings trigger the Commission's spectrum screen, the spectrum screen threshold currently is set too low for it to provide a meaningful indication of whether competition in wireless services might be curtailed due to one provider's accumulation of spectrum. Due to Commission actions and technological advances, the spectrum suitable for use in the provision of wireless services has increased over time. This has at least two consequences for application of the spectrum screen. First, even if the screen were helpful, it must be updated to account for this additional spectrum. Although the Commission recently added WCS spectrum to its screen calculations, other pieces of spectrum are suitable and indeed in some cases are already being

deployed for the provision of wireless services.[51] Thus the total amount of relevant spectrum is larger than that currently considered by the Commission. Consequently, even if one thought that one-third of the total was an appropriate threshold level, the Commission's threshold is too low (measured in MHz) because the total spectrum used in the calculation excludes spectrum that should be included. Second, the more spectrum that is available, all else equal, the lower the threshold can be (measured as a percentage of total available spectrum) and still ensure that enough spectrum remains to support the competitive provision of service by other providers. If more spectrum were available, then the spectrum screen threshold (in MHz) needed to ensure that two competitors each could have licenses to a particular amount of spectrum increases one-for-one with the increase in the total spectrum. When the threshold is set at a fixed share (one-third) of the total available spectrum, however, the threshold increases only one MHz for every three MHz increase in total available spectrum.[52] This results in a spectrum screen that becomes increasingly restrictive over time as spectrum expands. Thus, even where the spectrum screen is triggered, the screen threshold itself is set too low.

2. Available evidence reveals that AT&T's and Leap's combined spectrum holdings cause little competitive concern

45. In general, an aggregation of spectrum in the hands of one provider causes a concern only if other providers are sufficiently restricted in their holdings of spectrum that they are unable to counter an anticompetitive output restriction. Looking across the CMAs where Leap has spectrum that will be acquired by AT&T reveals no such concern with regard to the post-merger spectrum holdings of the merging parties. This follows because the output expansion needed to counter an anticompetitive post-merger output restriction by the merging parties is small enough

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51 *See,* Mark A. Israel and Michael L. Katz, "Economic Analysis of Public Policy Regarding Mobile Spectrum Holdings," November 28, 2012, attachment to Comments of AT&T Inc., *In the Matter of Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, ¶ 85.

52 *Id.*, ¶ 64.

that the other providers in the industry – all of whom have sizable LTE networks[53] – would almost surely have sufficient capacity to expand to counter the threat.[54]

46. In addition, the CMAs where the combined AT&T and Leap spectrum holdings exceed the Commission's screen generally are areas where concerns about spectrum aggregation are most obviously without basis, as they are less populous areas where wireless networks tend to experience fewer capacity constraints and thus where entry and expansion are not generally constrained by lack of adequate capacity to carry additional wireless traffic. None of the CMAs are among the most populous in the country, with population densities not only far below that of CMAs 1-100, but also far below the median CMA population density.

IV. THE PROPOSED TRANSACTION CREATES SUBSTANTIAL EFFICIENCIES THAT PROVIDE DIRECT CONSUMER BENEFITS

A. AS INDICATED BY THE HOGG, MOORE, AND HUTCHESON DECLARATIONS, THE TRANSACTION WILL RESULT IN SUBSTANTIAL EFFICIENCIES

47. AT&T and Leap each have explained their strategic rationales for the transaction via other Declarations they have submitted and their joint Public Interest Statement.[55] The fact that

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53 Verizon's 4G LTE network currently covers more than 298 million people (about 95 percent of the U.S. population). Sprint expects its 4G LTE network to cover 200 million people by the end of 2013. T-Mobile has LTE service covering 157 million people. (http://news.verizonwireless.com/LTE/Overview.html; http://newsroom.sprint.com/news-releases/sprint-turns-up-4g-lte-in-41-more-locations-expands-lte-coverage-to-151-markets.htm, Sue Marek, "T-Mobile exceeds mid-year LTE deployment goal, hits 116 markets," FierceWireless, July 10, 2013 (*available at* http://www.fiercebroadbandwireless.com/story/t-mobile-exceeds-mid-year-lte-deployment-goal-hits-116-markets/2013-07-10#ixzz2ZzpcJ5EV, *last visited* July 30, 2013).

54 To see this, note that Leap has a small share of subscribers, just over five percent across the CMAs in which it has non-negligible share. Even if Leap's output were to decrease by 20 percent post-merger, that equates to about one percent of all subscribers in the Leap CMAs. Providers other than AT&T and Leap have about 65 percent of subscribers in the Leap CMAs (based on internal AT&T estimates). This means that if the other providers were able to expand their subscriber base by (on average) well less than two percent (.01/.65), they could replace the lost Leap output. Hence, given the spectrum holdings of providers other than the merging parties in all areas where Leap currently has non-negligible share, it is apparent that there is no area where other providers do not collectively have the ability to respond to a post-merger output restriction.

the transaction is in the interest of both parties follows from a simple economic consideration: Leap currently possesses assets that are more productive when integrated into the AT&T large-scale, nationwide network than they are on their own. As such, economics teaches that the parties can engage in a transaction that leaves them both better off, with AT&T paying a price below its value for the assets but above Leap's value.[56]

48. These Leap assets, and the reasons why they are more valuable on the AT&T network, include:

- *Leap's spectrum holdings*. Leap holds PCS and AWS spectrum licenses in 356 CMAs, covering approximately 137 million people ("POPs"), with an average of 20.7 MHz of spectrum per CMA.[57] Leap has not deployed all of its spectrum, however, and its network footprint covers only 96 million of the approximately 137 million POPs covered by its spectrum (meaning that roughly 30 percent of the POPs covered by Leap's spectrum holdings live in areas where Leap does not operate using its own network).[58] Even within its network footprint, Leap has

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55 Description of Transaction, Public Interest Showing, and Related Demonstrations, § 4; *Moore Declaration*, ¶¶ 4-7; *Hogg Declaration*, ¶¶ 7-12.

56 In the study of business strategy, assets that are more valuable together than separately—and thus that may form the basis of mutually profitable transactions in which one party purchases the assets of the other party—are known as "cospecialized assets." (*See*, David Besanko, *et al.* (2004), *Economics of Strategy*, 3rd ed. (New York, NY: John Wiley & Sons) at 427.)

57 Data on covered POPs from *Hutcheson Declaration*, ¶ 2. Leap spectrum in each CMA is calculated as the population-weighted MHz of spectrum held in each county of the CMA, aggregated across all counties in the CMA. To aggregate across CMAs, I also weight by population. I have restricted my analysis to spectrum bands that currently are included in the FCC's spectrum screen. As I have noted in an earlier Commission proceeding, however, other spectrum bands are available for (and in some cases are currently being used to provide) wireless services, including LTE service. (Mark A. Israel and Michael L. Katz, "Economic Analysis of Public Policy regarding Mobile Spectrum Holdings," November 28, 2012, attachment to Comments of AT&T Inc., *In the Matter of Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, ¶ 85.)

58 *Hutcheson Declaration*, ¶ 2.

deployed just 42 percent of its spectrum.[59] Because the AT&T network also operates using PCS and AWS spectrum, AT&T will be able to put this spectrum to use, thus utilizing currently unutilized spectrum in many CMAs.[60] In addition, AT&T will more effectively utilize the spectrum in Leap's network footprint by using it on a more spectrally efficient network and a denser combined grid of cell sites.[61]

- *Other Leap assets.* In addition to its spectrum holdings, Leap has several unique assets, including the Cricket brand name, a differentiated customer base, a distribution network, and know-how. Such assets are more valuable when combined with the superior AT&T network, which includes nationwide coverage, more complete coverage due to a larger network of cell sites in areas served by both AT&T and Leap, and access to a broader/faster LTE network.[62] As described in the Moore Declaration, AT&T expects that it will be able to use the Cricket brand name to create a national prepaid offering more quickly and more effectively than it could have done with its own Aio offering, thus benefiting customers in areas outside Cricket's current network.[63]

49. In this section, I rely on the statements made in the Hogg, Moore, and Hutcheson Declarations and explain why the combination of complementary Leap and AT&T assets, described by the applicants, creates not just benefits for both parties but also benefits for consumers of mobile wireless services.[64] These consumer benefits derive from the fact that

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59 *Id.*, ¶ 10.

60 *Hogg Declaration*, ¶¶ 6-8.

61 *Id.*, ¶¶ 9-10.

62 *Id.*, ¶¶ 10-12; *see also, Moore Declaration*, ¶¶ 16-17.

63 *Moore Declaration*, ¶¶ 8-14.

64 At this point, I have not conducted an independent economic analysis of the statements made in these Declarations. I have reviewed the Declarations to confirm that the statements make sense as a matter of economics and based on my experience in mobile wireless transactions. Such

combining Leap's spectrum, brand, customer base, and distribution network/know-how with AT&T's nationwide network and scale yields lower marginal costs and/or better network quality than either firm could achieve on its own in the near term. As a matter of fundamental economics, both reduced marginal cost and improved quality lead to lower quality-adjusted prices, benefiting consumers.[65]

50. Throughout this section, in addition to explaining the sources of lower marginal cost and higher quality, I rely on a basic economic concept: if the transaction increases the quantity of mobile wireless services sold, it should be expected to enhance consumer welfare. If, all else equal, a mobile wireless provider is able to attract more subscribers and/or reduce its churn, it must be offering consumers a better product. Thus, I explain how the efficiencies created by the transaction are likely to increase industry output and reduce the parties' churn, thus demonstrating the associated consumer benefits.

51. In this section, I describe five sources of consumer benefits from the transaction, each of which yields lower quality-adjusted prices and higher output:

- In CMAs where Leap has spectrum but Cricket is not currently operating, the transaction will result in utilization of currently unutilized Leap spectrum, thus directly increasing output.
- The transaction will enable expansion of the Cricket brand into areas where it is currently absent (and do so more quickly and more effectively than AT&T's Aio brand could establish an effective competitive presence in such areas across the country), thus increasing consumer choice and mobile wireless competition in those areas.

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statements by experienced business executives are the sort of evidence on which economists commonly rely.

65 Even a monopolist that realizes marginal cost reductions will lower prices. (*See*, Dennis W. Carlton and Jeffrey M. Perloff (2005), *Modern Industrial Organization,* 4th ed., at 571.)

- In current Cricket CMAs, current and future Cricket customers will benefit from the superior quality of the AT&T network, thus reducing the quality-adjusted price to Cricket consumers, as evidenced by expected reductions in churn.
- In CMAs where Cricket is currently active, the transaction will result in network integration efficiencies due to the ability to deploy AT&T's and Leap's joint spectrum holdings on AT&T's more spectrally efficient LTE network and over AT&T's cell tower network as expanded by the integration of many of Leap's existing cell sites, thus improving network quality and/or lowering marginal costs.
- Cricket customers will benefit from lower quality-adjusted prices (than absent the transaction) due to reduced marginal costs associated with roaming, customer service, backhaul, *etc.*

B. AS A MATTER OF ECONOMICS, THESE EFFICIENCIES WILL RESULT IN DIRECT CONSUMER BENEFITS.

1. Increased spectrum utilization

52. The first source of consumer benefit is straightforward: AT&T will more fully utilize Leap's spectrum, thus leading directly to expanded industry output.

53. As noted above, Leap currently has AWS and PCS spectrum covering approximately 137 million POPs, but it has built out service in areas covering only 96 million POPs.[66] Within the service areas covering 96 million POPs, Leap only utilizes 42 percent of its spectrum.[67] Leap does not expect to be able to increase its spectrum utilization significantly in the near future because its debt load is too high to allow it to access financing to invest in all the assets needed (including spectrum and facilities) for the profitable deployment of a robust LTE network

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66 *Hutcheson Declaration*, ¶ 2.

67 *Id.*, ¶ 10; Jerry Elliott, COO, Leap Wireless International, Inc., 3Q 2012 Earnings Conference Call (August 6, 2012), at 3 ("In terms of what percentage is not used, we have got spectrum covering 137 million PoPs, we operate covering about 95 million PoPs, we said out of those 95 million about 40% of the spectrum is utilized . . . across those 95 million PoPs.").

outside of a limited area.[68] Currently, Leap has built out only eleven metro areas covering 21 million POPs.[69]

54. In contrast, as explained in the Hogg Declaration, AT&T intends to utilize Leap's spectrum for AT&T's LTE network.[70] In particular, as explained by Mr. Hogg, AT&T is currently using AWS spectrum as part of its LTE rollout (along with Lower 700 MHz B and C Block spectrum), and AT&T is in the process of deploying PCS spectrum for LTE service in several areas.[71] AT&T can deploy Leap's spectrum in a more spectrally efficient manner that will result in faster and better quality LTE service for both Leap and AT&T customers.[72]

55. As Mr. Hogg explains, AT&T preliminarily has determined that in many CMAs it will be able to deploy the Leap spectrum that is currently unutilized without having to transition any Leap customers to AT&T. In approximately 50 CMAs where AT&T will already be utilizing AWS spectrum for LTE service at the time of closing, AT&T estimates that it will be able to deploy Leap's unused contiguous AWS spectrum in as little as 60-90 days.[73] Moreover, based on its plans for deploying additional spectrum to expand LTE capacity in certain CMAs, AT&T estimates that it will be able to deploy unused Leap spectrum in over 160 CMAs within 12 months after closing.[74]

56. The benefits from increased spectrum utilization are straightforward. First, as Mr. Hogg explains, the combined spectrum will enable the company to "deploy LTE services in larger, more robust, contiguous 10x10 MHz (or greater) blocks of spectrum," including in areas where AT&T currently has no AWS spectrum or where it could only deploy AWS spectrum in a 5x5

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68 *Hutcheson Declaration*, ¶ 12.

69 *Id.*, ¶ 9.

70 *Hogg Declaration*, ¶ 7. AT&T's LTE network now covers more than 225 million people and is expected to cover nearly 270 million people by the end of 2013. (*Id.*, ¶ 6.)

71 *Id.*, ¶ 6.

72 *Id.*, ¶ 7.

73 *Id.*, ¶ 8.

74 *Id.*

LTE configuration absent the transaction.[75] Mr. Hogg also explains that "[a]s a result of AT&T's generally more spectrally efficient HSPA+ and LTE technologies, customers of both companies, in particular Leap customers who only have access to CDMA EVDO services today, will see improvements in throughput speeds and latency."[76] The consumer benefits associated with these more spectrally efficient deployments are clear because, as Mr. Hogg describes, "speed and spectral efficiency improvements translate into an improved customer experience, including, among other benefits, faster streaming of video, faster uploading of image and video files, and a more responsive and robust web browsing experience."[77]

57. Second, increased spectrum utilization reduces the marginal costs of expansion for reasons the Commission has explained.[78] As wireless providers expand, *i.e.*, serve more subscribers, they must expand network capacity (or sacrifice quality), and the cheapest way to do so is generally to deploy unused spectrum on existing towers.[79] Once a wireless firm runs out of spectrum to deploy on existing towers, it has to start increasing the "re-use" of spectrum by adding new cell towers in a given area ("splitting cells"). As a capacity-expansion alternative, I understand that adding new towers is significantly more expensive than adding spectrum on existing towers, often increasingly so as firms begin running out of desirable locations for towers

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75 *Id.*, ¶ 7.

76 *Id.*, ¶ 11.

77 *Id.*

78 *See*, for example, "The Public Safety Nationwide Interoperable Broadband Network: A New Model for Capacity, Performance and Cost," FCC White Paper, June 2010, at 5. S*ee, also,* "Mobile Broadband: The Benefits of Additional Spectrum," Federal Communications Commission, OBI Technical Paper No. 6, October 2010. In the former paper, the Commission explains that cellular network capacity is approximately equal to (the number of cell sites * the number of sectors per cell site * the amount of spectrum deployed per sector * spectral efficiency) ÷ the frequency reuse factor. Because of its multiplicative form, this formula implies that the marginal cost of increasing capacity is lower when spectrum is combined and fully utilized and that combining spectrum and cell sites from different providers increases capacity, *i.e.*, there are increasing returns to scale.

79 It is important to note that a provider cannot "avoid" these costs by simply choosing not to build as many towers. Failure to undertake infrastructure investments means network quality will fall and the associated "costs" will still affect quality-adjusted prices.

in an area. Hence, by deploying Leap's spectrum assets more fully, AT&T can substantially reduce its incremental expansion costs, thus creating incentives to lower prices (relative to what they would be without such spectrum) and to expand output.

58. Put simply, the proposed transaction will result in the transfer of spectrum from a provider that is underutilizing it today and has limited opportunities profitably to increase usage going forward to one that has clear plans to deploy the spectrum in the near term, meaning the spectrum will be used more efficiently post-transaction. The benefits to consumers are clear; as stated in the National Broadband Plan, "[m]ore efficient allocation and assignment of spectrum will reduce deployment costs, drive investment and benefit consumers through better performance and lower prices."[80]

2. National expansion of Cricket brand

59. A second source of consumer benefits comes from AT&T's plan to utilize its nationwide network to extend the Cricket brand beyond its current footprint to national distribution.[81] Introducing the Cricket brand (on the AT&T network) into many new areas will expand consumer choice and increase competition in those areas.

60. Before turning to the details of the present transaction, it is worth considering the lessons of recent history. In explaining its decision to purchase MetroPCS, T-Mobile pointed to, among other things, the ability to extend the MetroPCS brand well beyond the MetroPCS standalone footprint in a way that MetroPCS could not do on its own.[82] And, as described in Section III.B.2(d) above, it appears that T-Mobile is now delivering on this promise.

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80 *See*, Connecting America: The National Broadband Plan, (rel. March 16, 2010), *available at* http://download.broadband.gov/plan/national-broadband-plan.pdf, at XII.

81 Cricket currently has limited distribution outside of the area where it operates its own network.

82 *In the Matter of Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. For Consent To Transfer of Control of Licenses and Authorizations*, Description of Transaction, Public Interest Showing, and Related Demonstrations, WT Docket No. 12-301, at iii.

61. Similar to MetroPCS's position before the T-Mobile transaction, Cricket appears largely confined to its current footprint. As described in the Hutcheson Declaration, Leap has focused, since its inception, on providing facilities-based service in selected metropolitan areas only.[83] Leap's network footprint covers less than one-third of the U.S. population.[84] Leap has attempted to expand its retail footprint through an MVNO arrangement, but that strategy has fallen far short of expectations, and Leap has significantly reduced the number of retailer locations selling Cricket service both inside and outside of its network footprint.[85] Leap's 3G MVNO offering has only a small number of customers, and Leap is not yet offering 4G on an MVNO basis.[86] In addition, as described in the Hutcheson Declaration and explained above, Leap's limited spectrum holdings and large debt burden have significantly hindered Leap's ability profitably to build beyond its currently limited footprint.[87]

62. In contrast, AT&T has a nationwide network, and I understand it faces borrowing costs well below Leap's borrowing costs. In addition, AT&T has a stated intention to take an AYCE, no-contract product national. As explained in the Moore Declaration, AT&T has launched Aio (starting with a small number of metro areas) in an attempt to "increase its appeal to a broader set of customers."[88] But as Mr. Moore explains further, "Aio was conceived as a start-up, completely separate and apart from the AT&T brand and existing distribution channels. Today,

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83 *Hutcheson Declaration*, ¶ 2.

84 Leap's network covers 96 million POPs, and the U.S. population is about 314 million. (*Id.*, ¶ 2; http://quickfacts.census.gov/qfd/states/00000.html.)

85 "We significantly reduced the number of locations in which we offer our products in the nationwide retail channel from approximately 13,000 locations at June 30, 2012 to approximately 5,000 locations at March 31, 2013, which may impact our sales volumes." (Leap Wireless International, Inc., Form 10-Q for the quarter ended March 31, 2013, at 49.) *See also, Hutcheson Declaration*, ¶ 8.

86 *Id.*, ¶ 13.

87 *Id.*, ¶¶ 6-7, 12.

88 *Moore Declaration*, ¶ 10.

Aio still needs to establish widespread retail distribution, build brand recognition, and develop a significant customer base."[89]

63. The Moore Declaration contains more detail on AT&T's approach and the expected benefits,[90] but several things are clear: (i) AT&T has intentions to take an AYCE no-contract offering national; (ii) AT&T has a greater ability to take the Leap offering national than does Leap due to AT&T's nationwide network and lower borrowing costs; (iii) Leap brings both experience in distributing a prepaid offering and an established brand name that AT&T would not otherwise have in the new Aio brand;[91] (iv) AT&T should be able to build a national prepaid offering faster and more effectively by starting with an established brand and distribution network/know-how than by building a product from scratch, as it would have to do with Aio;[92] and (v) due to the efficiencies associated with the proposed transaction, *any* prepaid offering from AT&T will be more effective (with higher quality and lower marginal cost and thus lower quality-adjusted price) than such an offering would be on its own.

3. Improved network quality for Cricket customers

64. Even in CMAs where both Leap and AT&T are present today, the proposed transaction will create a product offering that does not exist today: the Cricket brand and distribution network using the AT&T mobile wireless network. As a result, current Cricket customers will experience improved network quality, and new customers—who might previously have chosen Cricket but-for its lower-quality network—will be able to switch to Cricket.

65. Although the Cricket brand name and distribution network/know-how are valued by Cricket's customer base, Leap's network lags behind competitors, which at least partially explains Cricket's recent struggles. As noted above, Leap has rolled out LTE only in limited areas, meaning that 65 percent of Cricket subscribers do not have access to Leap LTE in their

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89 *Id.*

90 *Id.*, ¶¶ 8-14.

91 *Id,*, ¶ 10-13.

92 *Id.*

home areas.[93] Post-transaction, following the 18-month time period that AT&T estimates it will take to transition Cricket customers to the AT&T network, the Cricket customers will have access to LTE service wherever AT&T has deployed it,[94] thus creating an option for many of them—Cricket service on an LTE network—that does not exist for them today. These areas where Leap does not offer LTE service today but where Cricket customers will be able to access AT&T's LTE service after the transition include Washington, D.C.; St. Louis, Missouri; Chattanooga, Tennessee; San Diego, California; Moffat, Colorado; Pine Bluff, Arkansas; and Steubenville-Weirton, Ohio.[95]

66. Moreover, Mr. Hutcheson notes that Leap only averages 23 MHz of spectrum where it operates and that, even in areas where it has rolled out LTE, it needs to support its base of 3G CDMA customers using much of this spectrum.[96] As a result of having limited spectrum but still needing to support 3G service, 2/3 of the 21 million Cricket subscribers with access to LTE are in areas where Leap's LTE network operates on 3x3 MHz channels, with the remaining 1/3 in areas with 5x5 MHz channels.[97] As Mr. Hogg explains, Leap's LTE deployments generally support throughput speeds on par with AT&T's HSPA+ network and lower than AT&T's more robust LTE network.[98] The difference in speed between these models is quite dramatic, with a 10x10 deployment yielding peak speeds more than twice as fast as deployment in 5x5 channels.[99] AT&T has deployed LTE in a 10x10 MHz configuration in, for example,

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93 *Hutcheson Declaration*, ¶ 9.

94 As noted above, Mr. Hogg indicates that "AT&T now covers more than 225 million people with its 4G LTE network. The company's LTE network is expected to cover nearly 270 million people in 400 markets by the end of 2013, and its LTE deployment is expected to be substantially complete by the summer of 2014." (*Hogg Declaration*, ¶ 6.)

95 *Id.*, ¶ 11.

96 *Hutcheson Declaration*, ¶ 11.

97 *Id.*

98 *Hogg Declaration*, ¶ 5.

99 *Id.*, ¶ 11, n. 6. Verizon's LTE network is estimated to have average download speeds of 14.3 Mbps and average upload speeds of 8.5 Mbps, while customers on Leap's LTE network

Philadelphia, Pennsylvania; Houston, Texas; Tucson, Arizona; Wilmington, Delaware; Las Vegas, Nevada; and Brownsville, Texas,[100] and thus Cricket customers in those areas would be among those who would benefit from having access to AT&T's faster LTE network. As noted above, these faster speeds (and the associated spectral efficiency) generally result in a better customer experience on the network.

67. In addition to the LTE-related advantages, the AT&T network offers several other advantages for Leap customers. As explained by Mr. Hogg, these benefits include the following:

- "Greater cell site density will enable faster data speeds and improved coverage by reducing places where customers experience dropped connections, dead spots, and coverage gaps."[101]
- "Leap customers also will enjoy access to AT&T's nationwide network post-transaction, rather than relying on third-party networks outside of Leap's limited network footprint, further expanding the benefits of more seamless service and a better customer experience."[102]

68. As explained in the Moore Declaration, the expectation that improved network quality will generate significant consumer benefits has been accounted for in AT&T's financial modeling of the proposed transaction by incorporating the revenue benefits of lower Cricket churn.[103] This is a good example of the core logic of the transaction: putting Cricket subscribers on the AT&T network is expected to reduce their churn, meaning that AT&T would generate more revenue from those subscribers than Leap could (helping to motivate the transaction from a

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experience average download speeds of 3 Mbps and average upload speeds of 1 Mbps. (*See, Hutcheson Declaration*, ¶ 11.)

100 *Hogg Declaration*, ¶ 11.

101 *Id.*, ¶ 12.

102 *Id.*

103 *Moore Declaration*, ¶ 23.

strategic and financial point of view), while simultaneously demonstrating benefits to Cricket consumers.

4. **Network integration efficiencies**

69. The network integration efficiencies described in the Hogg Declaration also will create direct consumer benefits in current Cricket CMAs. These will take the form of improved network quality (due to reduced congestion), as well as lower marginal costs; thus quality-adjusted prices will be lower and output higher than they would be absent the transaction.

70. As explained in the Hogg Declaration, the network integration efficiencies from the combination of Leap and AT&T networks come from at least the following sources:

- AT&T will be able to make use of spectrum licenses that Leap currently is not using in as little as 60-90 days in areas where AT&T will have LTE service utilizing contiguous AWS **s**pectrum and, more generally, within 12 months after closing in certain CMAs where AT&T plans to deploy additional spectrum to increase LTE capacity.[104]
- AT&T plans to deploy the Leap spectrum on the AT&T LTE network, which is generally more spectrally efficient than Leap's network.[105]
- The spectrum that Leap is currently utilizing can be "re-used" via the denser combined cell tower network of AT&T and Leap. And by adding some Leap cell towers to AT&T's network, the AT&T spectrum can be re-used over more cell towers.[106] As explained above, better ability to re-use spectrum over a denser cell network provides a lower cost method of expanding capacity, relative to the need

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104 *Hogg Declaration*, ¶ 8.

105 *Id.*, ¶ 7. Because AT&T also uses PCS spectrum for AT&T's HSPA+ technology, AT&T may use a portion of Leap's PCS spectrum on AT&T's HSPA+ network as required to support transitioning customers. (*Id.*, ¶ 7, n. 5.)

106 For a related discussion, *see*, "Mobile Broadband: The Benefits of Additional Spectrum," Federal Communications Commission, OBI Technical Paper No. 6, October 2010.

to split cells or otherwise expand capacity. The ability to achieve this efficiency and thus reduce costs of any required capacity expansion will be fully realized once the networks are integrated.

71. The transaction's network integration efficiencies created by combining spectrum and cell towers create customer benefits in at least two ways. First, as explained in the Hogg Declaration, these network integration efficiencies will improve network quality for the customers of AT&T and Leap,[107] thus directly lowering the quality-adjusted price. The quality improvements occur both from deploying LTE over larger blocks of spectrum, as explained above, and because "[g]reater cell site density will enable faster data speeds and improved coverage by reducing places where customers experience dropped connections, dead spots, and coverage gaps."[108]

72. Second, as explained above, the ability to use AT&T's and Leap's combined spectrum holdings on AT&T's spectrally efficient LTE network and to integrate Leap cell sites into AT&T's cell network enables AT&T to rely more heavily on deploying additional spectrum to expand capacity, rather than the higher cost options such as cell splits. This occurs because: (i) on the more spectrally efficient LTE network, each "unit" of spectrum can carry more traffic at a given quality level (see the Commission's capacity formula in note 78); (ii) existing cell towers will be able to make use of more spectrum (as the additional spectrum is deployed at these towers), and (iii) future cell splits will "go farther" since they will have a larger base of spectrum to re-use. As a result, marginal costs of expansion are reduced. As described above, such reductions in the marginal cost of expansion create incentives to lower prices (and/or increase quality, thus lowering quality-adjusted prices) and expand output.[109]

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107 *Hogg Declaration*, ¶¶ 11-12.

108 *Id.*, ¶ 12.

109 Note that, within the Cricket footprint, the marginal cost savings described here and the network quality benefits for Cricket subscribers described above are additive: All existing Cricket subscribers experience better quality and, at the same time, the incremental cost of adding new subscribers is lower.

5. **Other cost savings**

73. The Moore Declaration also outlines additional cost synergies from the transaction that I understand AT&T identified using its well-established methodology for evaluating transactions and presented to its Board of Directors in support of the transaction. Among the cost synergies identified are several that, as a matter of economics, are properly understood to be marginal cost savings and thus they will lead to lower prices for consumers than would prevail absent such cost savings. In this section, I discuss some of these additional sources of marginal cost savings from the transaction.

74. First, Mr. Moore explains that "roaming expenses that Leap would have paid as a standalone company will be substantially reduced because AT&T will offer a significantly greater on-net footprint and expanded coverage in comparison to Leap's current network."[110] This synergy is economically straightforward: Today, Leap (and/or Cricket subscribers, via roaming fees) has to pay other carriers for access to their networks when Cricket subscribers are roaming. Once post-merger integration is achieved, Cricket subscribers will be able to rely on the nationwide AT&T network and roaming will be substantially reduced.[111] This is not to say that the use of the AT&T network is costless; it surely is not, given capacity considerations. Rather, the cost savings arise because other carriers likely include at least some markup over cost in the price they charge Leap for roaming access, but, post-merger, AT&T's cost will include only the true cost of using the network. Such "elimination of double marginalization" is a true marginal cost saving:[112] the cost of providing service to Leap's customers is reduced and prices (including roaming charges) should be expected to be lower as a result.

75. Second, Mr. Moore also describes "cost savings that will result from combining and optimizing customer support functions, including call center and billing operations, while

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110 *Moore Declaration*, ¶ 22.

111 *Id.*

112 For a discussion of double marginalization, *see*, Dennis W. Carlton and Jeffrey M. Perloff (2005), *Modern Industrial Organization*, 4th ed. (Boston: Pearson/Addison-Wesley), at 415-417.

maintaining a high level of support."[113] Such synergies reduce the cost associated with serving incremental customers and thus are an additional source of marginal cost savings.

76. Third, Mr. Moore describes reduced backhaul costs both because AT&T can shift some Leap backhaul to AT&T facilities (thus eliminating double marginalization, as with the roaming savings described above) and because AT&T can utilize its scale to negotiate better backhaul rates.[114] Each of these savings will reduce the operating expenses associated with cell sites. As explained above, attracting additional subscribers or additional usage by current subscribers both require network expansion including additional cell sites, so lowering the capital and operating costs associated with cell sites reduces the marginal costs of network expansion, thus creating incentives to lower prices and expand output.

V. CONCLUSION

77. Although my work in this matter is ongoing, the evidence I have reviewed to date—including data, documents, and Declarations submitted by AT&T and Leap executives in these proceedings—leads me to the following conclusion: *Significant adverse competitive effects are unlikely and the transaction will result in the kinds of efficiencies that directly benefit consumers. As such, based on the evidence I have reviewed to date, I conclude that the proposed merger is procompetitive and in the public interest.*

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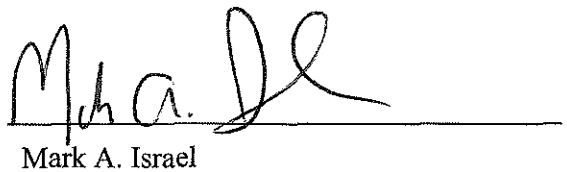
113 *Moore Declaration*, ¶ 22.

114 *Id.*, ¶ 21.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.



Mark A. Israel

August 1, 2013