FCC Form 603
Exhibit 1

DESCRIPTION OF TRANSACTION,

PUBLIC INTEREST SHOWING

AND RELATED DEMONSTRATIONS

INTRODUCTION AND EXECUTIVE SUMMARY

The National Broadband Plan recommends the repurposing of underutilized spectrum to meet the exploding consumer demand for mobile broadband devices and data-intensive services. The transaction described in this Application does just that. AT&T will acquire Lower 700 MHz D and E block spectrum that Qualcomm had used to provide a mobile video service that did not succeed. AT&T will deploy innovative technology to use this spectrum to improve service on the national LTE network that AT&T is building. As a result, consumers will enjoy a faster and better experience over AT&T's LTE network than would have been possible absent this transaction, and the spectrum now licensed to Qualcomm will be used in a highly efficient manner to support the demand for mobile broadband. Moreover, these benefits will be achieved without any harm to competition, making this transaction in the public interest.

The exploding demand for wireless broadband services, and the need for new spectrum to provide those services, is beyond question. The Commission itself recently estimated a 35-fold increase in mobile data traffic from 2009 to 2014, an estimate that Chairman Genachowski considers conservative. As Chairman Genachowski has observed, "An advanced Internet-connected smartphone . . . generates 30 times the data volume of the cellphones they replaced," and "[a] wireless netbook generates 450 times more data."

AT&T – a leader in deploying mobile broadband technology and equipment with great appeal to consumers – has experienced firsthand the explosion in data traffic. Mobile data usage over AT&T's network increased by a factor of 30 between the third quarter 2007 and the third quarter 2010 and by a factor of 50 between 2007 and 2009. AT&T will need additional spectrum to keep up with the continuing spike in consumer demand for cutting-edge, data-intensive mobile broadband devices and services.

The spectrum that AT&T will acquire in this transaction to help it meet this demand is underused. Qualcomm's attempt to use this spectrum to provide a one-way, scheduled-programming, broadcast-type service on a subscription basis was not viable in the current mobile broadband market where consumers crave on-demand programming. AT&T's acquisition of the Qualcomm Spectrum will enable a better and higher use of this spectrum to bring significant, tangible benefits to consumers.

AT&T will employ an innovative new technology called supplemental downlink to integrate this spectrum into its LTE network. Unlike the spectrum in most of the other bands in which wireless data services are currently offered, the Lower 700 MHz D and E block spectrum is not paired. Supplemental downlink will make it possible to bond the unpaired Qualcomm Spectrum with the paired spectrum AT&T uses in its LTE network. The resulting increase in capacity will provide faster download speeds and an enhanced user experience for the growing number of mobile broadband users. Customers may be able to download videos, files, and other services in half of the time as would have been possible absent this transaction. Customers also may experience a more seamless video or gaming experience and better resolution as a result of the increased throughput on the downlink.

Such public benefits will not come at the expense of competition. There will be no increase in market concentration because AT&T is acquiring only spectrum; it is not acquiring a commercial wireless business or customers. The transaction will not affect existing carriers' holdings of spectrum to provide 3G and 4G services. The spectrum screen that the Commission currently uses to identify potential competitive harms is not triggered. The transaction also will not result in the loss of competition since Qualcomm made the independent decision to exit the mobile video business. This transaction thus creates no competitive harms. To the contrary, it

will spur competition by enabling AT&T to compete with the numerous other carriers that are rapidly deploying – or soon will be deploying – advanced mobile broadband services using LTE, WiMAX, or other technologies.

In light of the transaction's significant public benefits and absence of competitive harms, the Commission should expeditiously and unconditionally grant this Application.

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DESCRIPTION OF TRANSACTION,
PUBLIC INTEREST SHOWING
AND RELATED DEMONSTRATIONS

I. OVERVIEW

This Application seeks the Commission's approval for an assignment of licenses held by Qualcomm Inc. ("Qualcomm") to AT&T Mobility Spectrum LLC, a wholly-owned, indirect subsidiary of AT&T Inc. (collectively with its subsidiaries and affiliates, "AT&T"). As detailed below, this transaction advances the National Broadband Plan's goal of putting spectrum to its most valuable and efficient use, and thus furthers the public interest, by enabling AT&T to repurpose Qualcomm's underutilized Lower 700 MHz D and E block spectrum for the cutting-edge, two-way broadband services most demanded by customers. AT&T plans to use supplemental downlink technology (also referred to as carrier aggregation technology) to couple this spectrum with paired spectrum AT&T already holds. Coupling the spectrum will allow AT&T to provide a more robust wireless broadband service over its LTE network.

These public interest benefits will be realized without any competitive harms. The transaction does not increase market concentration because AT&T is acquiring only spectrum; it is not acquiring a commercial wireless business or customers. This transaction also does not trigger the spectrum screen that the Commission uses to identify potential competitive harms in wireless transactions. The transaction will not result in a loss of competition since Qualcomm made an independent decision to exit the mobile video business. The transaction will not affect other carriers' holdings of spectrum to provide mobile broadband services. Instead, this transaction will foster competition in an already intensely competitive mobile broadband market

by permitting AT&T to provide a more robust service over its LTE network. Thus, the Commission should approve this Application quickly without any conditions.

II. DESCRIPTION OF THE APPLICANTS AND THEIR EXISTING BUSINESSES

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

Qualcomm is a leader in the development and commercialization of next generation mobile broadband technologies, including those based on Code Division Multiple Access ("CDMA") technology and Orthogonal Frequency Division Multiplexing Access ("OFDMA") technology, as well as mobile broadcast technologies.[2] Qualcomm holds licenses in the Lower 700 MHz band, including six D block licenses, which together provide a nationwide footprint, and five E block licenses in the Boston, Los Angeles, New York, Philadelphia, and San Francisco Economic Areas ("Qualcomm Spectrum"). The Qualcomm Spectrum has been used for the FLO TV mobile television offering, but after an exhaustive review of its strategic options, Qualcomm determined that this business model was not viable and decided to shut down that business and sell the spectrum.[3]

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[1] *See* AT&T Inc., Annual Report (Form 10-K), at 1 (Feb. 25, 2010); Press Release, AT&T Inc., AT&T Agrees to Acquire Wireless Spectrum from Qualcomm (Dec. 20, 2010) ("AT&T/Qualcomm Press Release"), *available at* http://www.att.com/gen/press-room?pid=18854&cdvn=news&newsarticleid=31447&mapcode=financial|wireless.

[2] *See* Qualcomm Inc., Annual Report (Form 10-K), at 1-2 (Nov. 3, 2010).

[3] *See* Declaration of David Wise ¶¶ 3, 7, 12-13 ("Wise Declaration"); *see also* Qualcomm Inc., Fourth Quarter Fiscal 2010 Earnings Presentation, at 11 (Nov. 3, 2010) (discussing the FLO TV restructuring plan), *available at* http://files.shareholder.com/downloads/QCOM/1095072441x0x415205/833e4c60-ffd9-41d8-b2a8-738194cf77c1/QCOM_Q410EarningsWebFinal.pdf.

The Commission has concluded repeatedly that AT&T has the qualifications required by the Communications Act to control Commission authorizations,[4] and nothing has changed to disturb this conclusion. Nor can there be any question about Qualcomm's character or qualifications to hold Commission authorizations.[5]

III. DESCRIPTION OF THE TRANSACTION

Qualcomm has agreed to assign, upon obtaining Commission consent and all other necessary regulatory approvals, all eleven of its D and E block licenses in the Lower 700 MHz band to AT&T Mobility Spectrum LLC. The purchase price for the acquired assets is $1.925 billion.[6]

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[4] *See*, *e.g.*, *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. 13915, 13931, ¶ 33 (2009) ("*AT&T/Centennial Order*"); *Application of Aloha Spectrum Holdings Co. LLC & AT&T Mobility II LLC*, Memorandum Opinion and Order, 23 FCC Rcd. 2234, 2236, ¶ 8 (2008) ("*AT&T/Aloha Order*"); *AT&T Inc. & BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd. 5662, 5758, ¶ 194 (2007) ("*AT&T/BellSouth Order*"); *SBC Commc'ns Inc. & AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd. 18290, 18379-81, ¶¶ 173-76 (2005) ("*SBC/AT&T Order*"); *Applications of AT&T Wireless Servs., Inc. & Cingular Wireless Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd. 21522, 21548, ¶ 48 (2004) ("*Cingular/AT&T Wireless Order*").

[5] *See*, *e.g.*, *Wireless Telecomms. Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications,* De Facto *Transfer Lease Applications & Spectrum Manager Lease Notifications Action*, Public Notice, Rpt. No. 2049, 2005 WL 106914, at 8 (WTB Jan. 19, 2005) (approving the assignment of KD43919 from Aloha Partners, L.P. to Qualcomm Incorporated); *see also Wireless Telecomms. Bureau Grants 700 MHz Band Licenses*, Public Notice, Attach. A1, 23 FCC Rcd. 10134, 10142 (WTB 2008) (granting licenses to Qualcomm as winning bidder in Auction No. 73).

[6] *See* AT&T/Qualcomm Press Release.

IV. THE STANDARD OF REVIEW

In deciding whether to grant this application under section 310(d) of the Communications Act of 1934, as amended,[7] the Commission must first assess whether the proposed transaction complies with the specific provisions of the Communications Act, other applicable statutes, the Commission's rules, and federal communications policy. The Commission then weighs any potential public interest harms of the proposed transaction against the potential public interest benefits. The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.[8]

This transaction does not violate any law or rule. Nor does it impede the realization of the objectives of the Communications Act or the Commission's ability to implement the Act. To the contrary, this transaction will result in public interest benefits without harming competition and, accordingly, the Commission should approve it expeditiously and without conditions.

V. THE TRANSACTION WILL SERVE THE PUBLIC INTEREST

This transaction will further the goals of the National Broadband Plan and advance the public interest by repurposing underutilized spectrum and enabling AT&T to provide a more robust wireless broadband service that meets consumer demand for innovative, spectrum-intensive wireless data and content services.

A. This Transaction Furthers National Broadband Plan Objectives

The National Broadband Plan establishes a national policy that spectrum should be put to its most valuable and efficient use in light of the rapid growth of broadband usage and the

[7] 47 U.S.C. § 310(d).

[8] *See AT&T/Verizon Order*, 25 FCC Rcd. at 8716, ¶ 22; *AT&T/Centennial Order*, 24 FCC Rcd. at 13927, ¶ 27.

resulting strain on networks.[9] In addition, the National Broadband Plan aims to unlock the full potential of 4G, which is expected to be critical to ensuring that this country remains globally competitive.[10] This transaction furthers these goals.

In particular, this transaction will enable underutilized spectrum to be repurposed for use in the provision of wireless broadband service. In 2001, the Commission divided the 48 MHz of spectrum in the Lower 700 MHz Band into blocks of paired and unpaired spectrum to accommodate a range of new fixed, mobile, and broadcast services and technologies.[11] More specifically, the Lower 700 MHz D and E blocks were both designated as unpaired 6 MHz channels.[12] At that time, the Commission concluded that the two 6 MHz unpaired blocks would "add flexibility to our band plan while offering the minimum capacity for the provision of additional new services" and noted "the support by broadcasters for 6-megahertz blocks."[13]

Since the Lower 700 MHz Band plan was finalized and the spectrum was auctioned, the provision of wireless services in the United States has undergone a sea change. The intervening years have seen dramatic increases in the use of wireless broadband services, the continuous roll-out of even more powerful devices, and the development of numerous new wireless broadband services, particularly the growth of user-customized wireless video streaming. Furthermore, the new LTE Advanced standard and supplemental downlink technology soon will allow carriers to

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[9] *See* FCC, Connecting America: The National Broadband Plan 76-77 (2010) (recognizing that "the use of wireless broadband is growing rapidly" and putting additional strain on networks) ("NBP"), *available at* http://download.broadband.gov/plan/national-broadband-plan.pdf.

[10] *See id.* at 78.

[11] *See Reallocation & Serv. Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd. 1022, 1053-54, ¶¶ 76-78 (2002).

[12] *See id.* at 1054, ¶ 77.

[13] *Id.* at 1056, ¶ 84.

bond additional unpaired spectrum to existing spectrum holdings to provide improved downlink capacity in response to increased consumer demand.

Moreover, the market has shown that the Lower 700 MHz D and E blocks cannot and will not be put to full and efficient use as stand-alone one-way 6 MHz licenses. Qualcomm's FLO TV service entailed an intense and costly effort[14] to utilize the spectrum within those constraints. However, as the mobile video business evolved, FLO TV's business model that focused on a one-way, broadcast-type, stand-alone subscription service in which content was available via a pre determined master schedule did not prove to be viable, as evidenced by FLO TV's disappointing subscribership figures and mounting losses.[15]

Qualcomm attempted to offer FLO TV predominantly on a wholesale basis through distribution relationships with AT&T and Verizon Wireless, and the FLO TV service focused on delivery of mobile video content to small screen, mobile devices. Qualcomm also offered its own retail FLO TV service via a device known as the FLO TV Personal Television mobile device ("PTV"), and later a FLO Enabled Auto device and Personal DVD player ("PDVD"). The PTV, FLO Enabled Auto device, and the PDVD were not mobile phones.[16] Neither the wholesale nor the retail method proved successful, however.[17] Instead of a mobile broadcast-

[14] *See* Wise Declaration ¶ 10.

[15] *See id*.

[16] *See id.* ¶ 9; *see also* Glen Dickson, *FLO TV Makes Retail Push*, Broadcasting & Cable, Nov. 13, 2009, *available at* http://www.broadcastingcable.com/article/389092-FLO_TV_Makes_Retail_Push.php.

[17] *See* Wise Declaration ¶¶ 10-13; *see also* Don Clark, *Qualcomm CEO Comes Clean About Mobile TV Miscues*, Wall St. J. Blog (Dec. 1, 2010, 1:05 PM) ("Wall Street Journal Blog"), http://blogs.wsj.com/digits/2010/12/01/qualcomm-ceo-comes-clean-about-mobile-tv-miscues/.

type service providing content to subscribers on a master schedule, consumers have shown a strong preference for viewing mobile content on-demand.[18]

Accordingly, in light of FLO TV's business model not proving to be economically viable, Qualcomm announced its plan to shut down the FLO TV business and evaluate its strategic options.[19] After an extensive review of its options, Qualcomm reached an agreement to sell the spectrum to AT&T.[20]

Given the inherent limitations of the unpaired spectrum, and the apparent lack of commercial viability for the FLO TV service, there is a risk that the unpaired Lower 700 MHz D and E blocks will remain under-utilized unless they can be used in conjunction with other paired spectrum to enhance broadband capacity. As a carrier with a nationwide footprint, AT&T's acquisition of the spectrum will promote the full and efficient utilization of the Qualcomm Spectrum.

In particular, AT&T plans to deploy the Qualcomm Spectrum as supplemental downlink on its nationwide LTE network using carrier aggregation technology, which technology should be included in the expected LTE Advanced standard releases.[21] These standards will permit the previously unpaired Qualcomm Spectrum to bond with other spectrum that AT&T uses to deploy mobile broadband services over its LTE network.[22] As discussed below, upon the release of the LTE Advanced standards, AT&T plans to move aggressively to integrate the Qualcomm

[18] *See* Wall Street Journal Blog.
[19] *See* Wise Declaration ¶¶ 11-12.
[20] *See id.* ¶ 13.
[21] *See* Declaration of Kristin S. Rinne ¶ 8 ("Rinne Declaration").
[22] *See id.* ¶ 5.

Spectrum into its LTE network.[23] Doing so will ensure that the spectrum is put to a significantly more valuable and efficient use, will benefit far more consumers, and will be an important step towards meeting the "growing demand for wireless broadband services and [ensuring] that America keeps pace with the global wireless revolution."[24]

Indeed, as discussed below, the Commission itself has recognized the public policy imperative of making more spectrum available to meet the nation's wireless broadband needs.[25] By repurposing underutilized spectrum to that end, this transaction will further an important public interest.

B. This Transaction Will Help AT&T To Address the Exploding Demand for Wireless Broadband Service

1. The Rapid Spread of Wireless Broadband Devices and the Growing Demand for Bandwidth-Intensive Applications and Services Require Additional Spectrum

The Commission has recognized repeatedly that consumer demand for wireless broadband services and devices is exploding[26] and carriers need spectrum to meet this demand.

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[23] *See id.* ¶ 8.

[24] NBP at 84. Moreover, the repurposing of the Lower 700 MHz D and E block spectrum should significantly reduce the potential for interference with Lower 700 MHz A block devices. The Lower 700 MHz band plan presents unique technical limitations and challenges for all licensees. Even assuming deployment of LTE by carriers on the Lower 700 MHz A, B, and C blocks, and AT&T's use of the Lower 700 MHz D and E blocks as supplemental downlink with non-700 MHz spectrum, some technical limitations and challenges will remain. However, if the Lower 700 MHz D and E block spectrum is integrated into AT&T's LTE network and used for supplemental downlink, transmitters using the spectrum will be deployed closer to the ground and at power levels much lower than those permitted under the Commission's rules for broadcast services (allowed up to 50 kilowatts). This substantial reduction in transmission power on the Lower 700 MHz D and E blocks will mitigate interference into the Lower 700 MHz A block receive band, thereby advancing the public interest. *See* Rinne Declaration ¶ 19.

[25] *See* Section V.B.1 below.

[26] *See*, *e.g.*, FCC Labs, FCC, Report on Trends in Wireless Devices 1 (2011) ("In 2010, the number of wireless transmitters authorized by the FCC for use in the market was nearly 12,000 – that's almost four times the amount of a decade ago. As the wireless market has grown from under 100 million subscribers at the dawn of the century, to near triple that amount today, device innovation has continued apace, bringing a new world of handsets, remote controllers, services,

Footnote continued on next page

The FCC has noted that demand is being driven by both the deployment of faster networks and the development of innovative devices and applications:

> Networks, devices, and applications drive each other in a virtuous cycle. If networks are fast, reliable and widely available, companies produce more powerful, more capable devices to connect to those networks. These devices, in turn, encourage . . . exciting applications and content. These new applications . . . bring new users online and increase use among those who already subscribe to broadband services.[27]

The Commission also has stated that "within the next five years, the amount of mobile data traffic in North America will increase by a factor of twenty to over forty times the level of data traffic in 2009."[28] The FCC Staff believes that "mobile data demand will exceed available capacity by 2013."[29] According to the Commission, it is estimated that "40 to 150 megahertz *per operator*" will be required to meet future demand.[30] Commission Chairman Julius Genachowski has said that

> [a]n advanced Internet-connected smartphone . . . generates 30 times the data volume of the cellphones they replaced. A wireless netbook generates 450 times more data . . . . Today, *one-quarter* of American wireless subscribers have smartphones. And Nielsen

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and applications directly to Americans."), *available at* http://www.fcc.gov/oet/info/documents/reports/wirelessdevices.pdf.

[27] NBP at 15.

[28] *Amendment of Part 101 of the Comm'n's Rules to Facilitate the Use of Microwave for Wireless Backhaul & Other Uses & to Provide Additional Flexibility to Broad. Auxiliary Serv. & Operational Fixed Microwave Licensees*, WT Dkt No. 10-153, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 10-146, ¶ 3 (rel. Aug. 5, 2010).

[29] OBI Technical Paper No. 6, FCC, Mobile Broadband: The Benefits of Additional Spectrum 18 (Oct. 2010), *available at* http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1021/DOC-302324A1.pdf; *see also id.* at 9 ("[These] projections . . . reveal[] strong expected growth in mobile data traffic from 2009 levels – by a factor of five by 2011, more than 20 times by 2013, and reaching 35 times 2009 levels by 2014.").

[30] NBP at 84 (emphasis in original).

> projects that smartphone penetration will more than double by the end of 2011, and keep climbing. Data from multiple sources submitted as part of our broadband record tell us to expect a *40-fold* increase in mobile Internet demand over the next 5 years. And those projections were prepared before the iPad was introduced. That 40-fold increase in demand compares to a three-fold increase in spectrum for mobile broadband coming online.[31]

The Commission has recognized the potential consumer harm if carriers are unable to obtain the spectrum necessary to meet growing consumer needs. Without additional spectrum, "users of mobile services will be faced with congestion and degraded service, or much higher prices, or both," and "lack of sufficient spectrum will lead to more blocked and/or dropped calls/connections, slower connection rates and significantly higher prices for desirable applications and services."[32]

The FCC's forecast and supporting analysis are fully borne out by what AT&T sees on a daily basis in its wireless broadband networks. AT&T has been a leader in rolling out technology and equipment that has met consumer demand for data-intensive and high-speed services.[33] As a result, AT&T has experienced firsthand the explosion in data traffic. AT&T

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[31] Julius Genachowski, Chairman, FCC, Remarks at the NAB Show 2010, at 4 (Apr. 13, 2010) (emphasis in original), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-297469A1.pdf; *see also* Julius Genachowski, Chairman, FCC, Prepared Remarks at the 2011 International Consumers Electronics Show, at 4 (Jan. 7, 2011) ("Genachowski CES Speech") ("The amount of spectrum available for mobile broadband represents about a threefold increase over where we were a few years ago. Sounds good, until you see the forecasts of a 35X increase in mobile broadband traffic over the next 5 years. And I believe that projection is conservative, not fully accounting for the explosive growth of tablets and what I predict we'll see from 4G."), *available at* http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0107/DOC-303984A1.pdf.

[32] *Innovation in the Broad. Television Bands: Allocations, Channel Sharing & Improvements to VHF*, ET Dkt No. 10-235, Notice of Proposed Rulemaking, FCC 10-196, ¶ 11 (rel. Nov. 30, 2010); *see also* Genachowski CES Speech at 5 ("We need to free up more spectrum. . . . If we don't tackle the spectrum crunch now, network congestion will grow, and consumer frustration will grow with it. We'll put our country's economic competitiveness at risk, and squander the opportunity to lead the world in mobile.").

[33] *See*, *e.g.*, Press Release, AT&T Inc., AT&T Announces Plans to Deliver Nation's Most Advanced Mobile Broadband Experience (Jan. 5, 2011) ("AT&T CES Press Release") ("In the

Footnote continued on next page

experienced a whopping 3,000 percent increase in mobile broadband use from the third quarter of 2007 to the third quarter of 2010.[34] At the end of the third quarter of this year, 57.3 percent of AT&T's postpaid subscribers had an integrated device, up from 42 percent a year earlier.[35] Indeed, AT&T activated more than 8 million postpaid integrated devices in the third quarter of 2010, the most quarterly activations ever.[36]

Furthermore, a new wave of emerging wireless devices for innovative uses will add to the demand. Just this month, AT&T announced that it plans to launch two 4G tablets, including its first LTE tablet, by mid-summer, and additional LTE tablets are planned for the second half of 2011.[37] AT&T also recently announced a new division geared toward health information technology.[38] AT&T is pioneering the wireless connection of mobile health care devices. Among AT&T's initiatives will be machine-to-machine applications that "can use sensors and wireless devices, including so-called medical jewelry, to monitor vital signs and other diagnostic

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first half of 2011, AT&T plans to feature a best-in-class portfolio of HSPA+ devices; in the second half of the year, it plans to also add LTE devices, including a leading collection of smartphones, tablets, modems and mobile hotspots."), *available at* http://www.att.com/gen/press-room?pid=18885&cdvn=news&newsarticleid=31477&mapcode=consumer|financial.

[34] *See* Stephen Lawson, *AT&T Mobile Data Growth Eases - to 30x*, ITWorld.com (Nov. 17, 2010), http://www.itworld.com/mobile-amp-wireless/127888/atampt-mobile-data-growth-eases-30x. Mobile data usage over AT&T's network increased by a factor of 50 between 2007 and 2009. *See* AT&T Inc., 2009 Annual Report 4 (2010).

[35] *See* Press Release, AT&T Inc., Record Wireless Sales, Strong Revenue and Earnings Growth Highlight AT&T's Third-Quarter Results (Oct. 21, 2010) ("AT&T Third Quarter Press Release"), *available at* http://www.att.com/gen/press-room?pid=18677&cdvn=news&newsarticleid=31312&mapcode=financial. An integrated device includes "handsets with QWERTY or virtual keyboards in addition to voice functionality and are a key driver of wireless data usage." *Id.*

[36] *Id.*

[37] *See* AT&T CES Press Release.

[38] *See* Pamela Lewis Dolan, *AT&T Forms Health IT Division*, amednews.com (Nov. 24, 2010) ("Health IT Division Article"), http://www.ama-assn.org/amednews/2010/11/22/bisg1124.htm.

data from chronically ill or elderly patients and transfer that [sic] data automatically to a medical professional."[39] Such devices can "reduce hospital re-admissions and diagnose problems more rapidly, especially conditions that don't conveniently appear when a patient is in the doctor's office."[40] Other innovations include automated pill bottle caps, which prompt patients to follow their medication schedules,[41] and smart slippers for fall prevention.[42] AT&T believes that "networking solutions using cloud-based mobility and telepresence technologies can help the overall industry deliver better care to people while driving costs out of the system."[43]

2. This Transaction Will Help AT&T To Address the Growing Demand for Wireless Broadband Services, and Bolster Its Ability to Provide the Experience Its Customers Will Expect in the Years Ahead

AT&T is constantly striving to increase the efficiency of its spectrum resources to address the exponential growth in data traffic. This effort includes adding and expanding cell sites, enhancing backhaul capacity, including deploying fiber, and adding Wi-Fi hotspots and in-building distributed antenna systems.[44] Despite these intensive efforts, it is indisputable that AT&T must expand capacity to address the demand in many areas in order to remain competitive.[45] AT&T's customers have quickly adopted wireless broadband devices and thus

[39] Carol Wilson, *Priority Care: AT&T Takes on Healthcare IT*, LightReading.com (Jan. 4, 2011), http://www.lightreading.com/document.asp?doc_id=202367.

[40] *Id.*

[41] *See* Brian T. Horowitz, *Electronic Pill Bottle Cap Increases Medication Use, Study Says*, eWeek.com (June 28, 2010), http://www.eweek.com/c/a/Health-Care-IT/Electronic-Pill-Bottle-Cap-Increases-Medication-Use-Study-298626/.

[42] *See* Brian Dolan, *AT&T Develops "Smart Slippers" for Fall Prevention*, MobiHealthNews (Dec. 7, 2009), http://mobihealthnews.com/5675/att-develops-smart-slippers-for-fall-prevention/.

[43] Health IT Division Article (quoting John Stankey, President and CEO of AT&T Business Solutions).

[44] *See* Rinne Declaration ¶ 10.

[45] *See* Joan Marsh, *Wireless Is Different*, AT&T Pub. Policy Blog (Aug. 13, 2010, 2:23 PM), http://attpublicpolicy.com/government-policy/wireless-is-different/.

they use more spectrum-intensive data services. AT&T has more smartphone users than any other carrier.[46]

To meet growing consumer demand for mobile broadband service, AT&T plans to begin LTE deployment in the middle of this year over its 700 MHz and AWS spectrum,[47] which it expects largely to complete by the end of 2013.[48] Using this clear spectrum will permit AT&T to roll out LTE without disrupting service to the wireless subscribers using existing AT&T wireless services.[49] However, at current rates of growth, AT&T needs additional spectrum just to keep pace with increased consumer demand and innovative, spectrum-hungry new technologies and applications. Currently, AT&T has a nationwide average of only 27.1 MHz of 700 MHz and AWS spectrum[50] for its deployment of LTE service, and, as indicated on the Spectrum Aggregation Chart submitted with this Application, there are large areas of the country where AT&T holds no 700 MHz or AWS spectrum.[51]

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[46] *See* Press Release, AT&T Inc., AT&T Expands Industry's Leading Lineup of Popular Smartphones (Mar. 22, 2010), *available at* http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=30650&mapcode=consumer.

[47] *See* Rinne Declaration ¶¶ 5, 11; *see also* AT&T - 4G LTE Mobile Broadband, http://www.wireless.att.com/learn/why/technology/4g-lte.jsp (last visited Jan. 10, 2011).

[48] *See* AT&T CES Press Release (CEO Randall Stephenson noting that "[r]ecent tax law incentives, along with other policy developments, have allowed us to accelerate the capital investment – beginning in 2011 – to largely complete our LTE network build by the end of 2013.").

[49] *See Int'l Comparison & Consumer Survey Requirements in the Broadband Data Improvement Act*, GN Dkt No. 09-47, Comments of AT&T Inc. on NBP Public Notice #6, at 13 (filed Oct. 23, 2009) ("AT&T NBP Public Notice #6 Comments"), *available at* https://prodnet.www.neca.org/wawatch/wwpdf/1023att.pdf.

[50] *See Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993; Annual Report & Analysis of Competitive Mkt. Conditions with Respect to Mobile Wireless, Including Commercial Mobile Servs.*, WT Dkt No. 09-66, Fourteenth Report, FCC 10-81, at 148, Table 26 (rel. May 20, 2010) ("*Fourteenth Competition Report*").

[51] *See* App. A . As discussed below, where AT&T currently does not hold 700 MHz or AWS spectrum, AT&T may take steps to clear a portion of its 850 and 1900 MHz spectrum for LTE after customers begin transitioning from 3G to 4G devices.

The Qualcomm Spectrum will enable AT&T to expand capacity on its LTE network[52] and provide a more robust and competitive service.[53] The 6 MHz of Lower 700 MHz D block spectrum nationwide complements AT&T's existing holdings and will provide additional capacity everywhere.[54] In addition, Qualcomm's Lower 700 MHz E block licenses in the New York, Los Angeles, San Francisco, Boston, and Philadelphia Economic Areas will give AT&T a total of 12 more MHz of capacity in these areas of particularly high demand.[55]

As noted above, AT&T plans to deploy the Qualcomm Spectrum as supplemental downlink, using the carrier aggregation technology, which will be enabled after the LTE Advanced standards are released.[56] Supplemental downlink technology will allow AT&T to add substantial capacity on its LTE network by combining Qualcomm's unpaired 700 MHz spectrum with AT&T's paired spectrum. Supplemental downlink technology permits the bonding of non-contiguous spectrum, including unpaired spectrum, into a single wider channel. In addition, supplemental downlink can be used to provide additional downlink capacity to address the asymmetry of data flow that results from wireless broadband users currently consuming more

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[52] *See* AT&T/Qualcomm Press Release.

[53] *See* Rinne Declaration ¶ 6. While AT&T is currently using HSPA+ to deliver 4G services, it plans to deploy LTE going forward as it will support faster download speeds. *See* Kevin Fitchard, *Testing Finds HSPA+ Speeds Still No Match for LTE*, Connected Planet (June 1, 2010), http://connectedplanetonline.com/3g4g/news/test-hspa-plus-lte-06110/.

[54] *See* AT&T/Qualcomm Press Release.

[55] *See* Rinne Declaration ¶ 13.

[56] *See* Press Release, Marketwire, 3G Americas Publishes Research Report on 3GPP Mobile Broadband Evolution (Sept. 13, 2010), *available at* http://www.marketwire.com/press-release/The-Transition-to-4G-1317739.htm. The 3rd Generation Partnership Project ("3GPP") is a collaboration between groups of telecommunications associations to make globally applicable mobile phone system specifications. 3GPP prepares, approves, and maintains technical specifications and technical reports for mobile telecommunications systems, including for LTE and the further evolution to LTE Advanced. *See* 3GPP - About 3GPP, http://www.3gpp.org/About-3GPP (last visited Jan. 10, 2011). AT&T is expecting 3GPP LTE Release 10 this year and 3GPP LTE Release 11 in 2012. *See* Rinne Declaration ¶ 8; *see also* 3GPP - Releases, http://www.3gpp.org/releases (last visited Jan. 12, 2011).

downlink than uplink capacity. Such asymmetry is caused by, for example, the consumption of video and other data-heavy media content with one-sided data flows.[57]

AT&T and likely other carriers will make significant use of supplemental downlink technology as they strive to meet consumers' seemingly ever-growing appetite for wireless broadband services.[58] Such technology will permit carriers to manage their spectrum efficiently and to give consumers what they want.[59] Anticipating such widespread carrier use, Qualcomm is "integrating carrier aggregation technology into its chipset roadmap to enable supplemental downlink and intends to market the technology globally."[60] Qualcomm expects "[t]his new technology . . . to create opportunities around the world in markets where unpaired spectrum bands can be made available for wireless operators to use in conjunction with existing paired bands to obtain substantial improvements in their mobile broadband networks."[61]

In those areas where AT&T will rely on AWS spectrum for its LTE network, AT&T will bond existing AWS spectrum with the Qualcomm Spectrum to expand the downlink capacity. In addition, where AT&T currently does not hold 700 MHz or AWS spectrum, the transaction will enable AT&T to bond the unpaired Qualcomm Spectrum with 850 or 1900 MHz spectrum, which AT&T may clear for LTE as customers begin transitioning to LTE devices.[62] This

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[57] *See* Rinne Declaration ¶ 6.

[58] *See id.* ¶ 7.

[59] *See id.*

[60] Press Release, Qualcomm Inc., Qualcomm Announces Agreement for Sale of 700 MHz Spectrum Licenses (Dec. 20, 2010), *available at* http://www.qualcomm.com/news/releases/2010/12/20/qualcomm-announces-agreement-sale-700-mhz-spectrum-licenses.

[61] *Id.*

[62] *See* Rinne Declaration ¶ 15; *see also* Phil Goldstein, *AT&T, Verizon Push LTE Plans, Advantages*, FierceWireless (Mar. 19, 2010), http://www.fiercewireless.com/story/t-verizon-push-lte-plans-advantages/2010-03-19.

transaction will permit AT&T to expand the downlink capacity for the LTE service to meet the capacity and speed needs of its LTE customers.[63]

AT&T has no plans to integrate the spectrum with its Lower 700 MHz B or C block spectrum. The pairing of the Lower 700 MHz B or C blocks with the Lower 700 MHz D or E blocks would create an unacceptable level of self-interference within a device supporting this feature because these blocks are directly adjacent, and there is not enough frequency separation to mitigate interference.[64]

Once handsets and network equipment utilizing supplemental downlink are available, AT&T anticipates promptly taking steps to incorporate the technology into its network. AT&T expects customers to be able to utilize handsets and other equipment incorporating the spectrum as early as 2014.[65]

[63] *See* Rinne Declaration ¶ 6.

[64] *See id.* ¶ 16. However, in those areas where AT&T already holds Lower 700 MHz B or C block spectrum, AT&T will be able to combine the Qualcomm Spectrum with AWS, 850 MHz or 1900 MHz spectrum. The interference issues raised above only prevent AT&T from using the Qualcomm Spectrum with the Lower 700 MHz B or C block spectrum simultaneously within a handset. *See id.* ¶ 17.

[65] *See id.* ¶ 8. AT&T has both the resources and expertise to ensure that the spectrum is fully utilized in AT&T's LTE network. AT&T's overall capital expenditures in the first three quarters of 2010 totaled $13.7 billion versus $11.6 billion for the same period in 2009. *See* AT&T Third Quarter Press Release. AT&T's wireless segment made up 41 percent of capital spending (excluding interest during construction) and increased 62 percent for the first nine months. *See* AT&T Inc., Quarterly Report (Form 10-Q), at 35 (Nov. 5, 2010) ("AT&T 2010 Third Quarter Report"). The wireless expenditures were used for "network capacity expansion, integration and upgrades to [the] Universal Mobile Telecommunications System/High-Speed Packet Access network and the initial deployment of long-term evolution (4G) equipment for trials." *Id.*

3. Consumers Will Benefit from a More Robust Service over AT&T's LTE Network That Offers Faster Speeds and Better Service

As a result of AT&T adding the Qualcomm Spectrum to the LTE network, customers will experience a faster and better service over the LTE network, and AT&T will be able to accommodate a far larger number of customers using mobile broadband services, than would have been possible without this transaction.[66] The expanded capacity on the LTE network will help AT&T handle the skyrocketing traffic growth generated by consumers downloading movies and video clips, playing online video games, and using other data-intensive applications and services.[67] In areas where Qualcomm holds both Lower 700 MHz D and E block spectrum, AT&T will be able to expand the LTE downlink capacity by an additional 10 MHz, with 2 MHz reserved for a guardband.[68] In areas where Qualcomm holds only Lower 700 MHz D block spectrum, AT&T will be able to use as much as 5 MHz of the spectrum to expand the LTE downlink capacity, with 1 MHz reserved for a guardband.[69] In each case, the Qualcomm Spectrum substantially will boost the capacity that otherwise would have been available.

This increase in capacity will result in a better customer experience than would have been possible absent this transaction.[70] For example, when downlink capacity is doubled from 10 MHz to 20 MHz, customers may experience a doubling of peak speed.[71] This may permit the downloading of videos, files, and other services in half of the time that would have been

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[66] Further, the addition of the Qualcomm Spectrum will result in improvements to AT&T's LTE network, such as trunking efficiency gains, higher peak speeds, a significant increase in throughput, and lower latencies in the network. *See* Rinne Declaration ¶ 20.

[67] *See id.* ¶¶ 7, 9, 11.

[68] *See id.* ¶ 13.

[69] *See id.* ¶ 14.

[70] *See id.* ¶ 20.

[71] *See id.* ¶ 21.

achievable prior to this transaction.[72] Customers of online gaming and video services may note a more seamless video or gaming experience and better resolution as a result of the increased throughput on the downlink.[73]

Ultimately, this transaction will benefit all of AT&T's customers. Having more spectrum it can dedicate to its LTE network will allow AT&T to relieve demand on its spectrum capacity for other non-LTE services and thereby help reduce network congestion and provide a higher quality experience to all AT&T customers.[74]

VI. THE TRANSACTION WILL ENHANCE COMPETITION

This transaction creates no competitive harms. Indeed, this transaction does not even trigger any of the screens that the Commission uses to identify potential competitive harms in wireless transactions. Nor does this transaction eliminate any existing competition. Instead, this transaction will foster increased competition by enabling AT&T to offer more robust wireless broadband services over its LTE network in a vigorously competitive marketplace.

A. The Transaction Will Not Harm Competition in the Provision of Mobile Telephony/Broadband Services

1. Market Definition

Application of the Commission's traditional competitive analysis to this transaction identifies no conceivable competitive harms. The Commission begins its analysis of wireless transactions by defining the appropriate product market, geographic markets, market participants, and input market for spectrum.[75] In recent wireless transactions, the Commission

[72] *See id.*

[73] *See id.*

[74] *See id.* ¶ 22.

[75] *See*, *e.g.*, *AT&T/Verizon Order*, 25 FCC Rcd. at 8720, ¶ 30.

generally has found (i) there is a combined "mobile telephony/broadband services" product market; (ii) the geographic market consists of Cellular Market Areas ("CMAs") and Component Economic Areas ("CEAs"); (iii) the input market for spectrum consists of cellular, PCS, SMR, 700 MHz, and, where available, AWS-1 and 55.5 MHz of BRS; and (iv) the market participants are facilities-based entities providing mobile telephony/broadband services using cellular, PCS, SMR, 700 MHz, AWS-1, and BRS spectrum.[76]

2. Horizontal Market Concentration

The Commission next determines whether there is a significant increase in horizontal market concentration as a result of the proposed transaction. Transactions that do not significantly increase concentration or do not result in a concentrated market ordinarily require no further analysis of their horizontal impact.[77] In analyzing concentration levels, the Commission applies a two-part initial "screen" to identify those local markets where, without further analysis, it is clear that the transaction would result in no potential competitive harm, and those local markets where further competitive analysis is required to determine whether the transaction has the potential to harm competition.

The first part of the screen considers changes in market concentration in the provision of "mobile telephony/broadband services" as a result of the proposed transaction, and is based on

[76] *See*, *e.g.*, *id.* at 8721-24, ¶¶ 35-41. Consistent with its prior advocacy, AT&T continues to believe that many of these definitions merit updating. For example, AT&T has argued that the geographic market is nationwide, resellers are significant market participants, and other spectrum, such as EBS and MSS ATC, should be considered. *See*, *e.g.*, *AT&T/Centennial Order*, 24 FCC Rcd. at 13935-36, ¶ 44; *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*, Description of Transaction, Public Interest Showing and Related Demonstrations, at 22-23 & n.58 (filed May 22, 2009); *Sprint Nextel Corp. & Clearwire Corp. Seek FCC Consent to Transfer Control of Licenses & Authorizations*, WT Dkt No. 08-94, Petition to Deny of AT&T Inc., at 2-8 (filed July 24, 2008).

[77] *See AT&T/Verizon Order*, 25 FCC Rcd. at 8721, ¶ 31.

the size of the post-transaction Herfindahl-Hirschman Index ("HHI") of market concentration and the change in the HHI.[78] The second part of the screen examines the input market for spectrum available on a market-by-market basis for the provision of "mobile telephony/broadband services."[79] These screens are only the first step in the Commission's competitive analysis and trigger in the identified markets an analysis of any potential competitive harms associated with horizontal concentration, including the potential for both unilateral and coordinated effects.[80]

Because no commercial wireless business or customers are being acquired, this transaction does not increase market concentration, and the market concentration screens cannot be triggered. The competitive analysis thus can proceed directly to the spectrum screen.

a. There Is No Spectrum Aggregation Concern in This Transaction

Application of the FCC's current spectrum aggregation screen demonstrates that this transaction poses no risk of harm to competition anywhere. There is no place where the acquisition of the Qualcomm Spectrum will cause AT&T to hit the Commission's current spectrum screen. If all spectrum that is currently available for mobile services, such as EBS and MSS ATC, plus the new spectrum the Commission plans to allocate for mobile wireless services, is taken into account, it is even clearer that there can be no reasonable concern that this transaction would result in any aggregation of spectrum that would raise any potential threat to competition in wireless services.[81]

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[78] *Id.* at 8724-25, ¶ 42

[79] *Id.*

[80] *Id.* at 8727, ¶ 49.

[81] *See AT&T/Aloha Order*, 23 FCC Rcd. at 2237, ¶ 12.

b. Even Under a Revised Spectrum Screen, There Would Be No Spectrum Aggregation Concern

In several recent license transfer proceedings,[82] AT&T has been asked to provide data concerning its holdings of the 25 MHz of WCS that a recent Commission order intended to make usable for mobile broadband services (and correspondingly increase the initial screen by 9 MHz or approximately one third of the WCS spectrum).[83] We note that a revised screen has not been established, but even if such modifications to the screen were made, AT&T's attributable spectrum would still be below any initial screen that included WCS spectrum except in a small number of counties where numerous carriers hold spectrum and competition is robust.[84] If the FCC were to revise its screen to include all spectrum available for mobile wireless services, it is clear that there are no areas where this transaction would require further analysis to conclude that no competitive harms were likely.

(i) A Revised Spectrum Screen Must Include All BRS/EBS and MSS/ATC Spectrum

If the FCC revises its spectrum screen for this transaction to include WCS spectrum on the theory that it is now available for mobile telephony/broadband services, AT&T believes that consistency requires that the FCC also include *all* 194 MHz of BRS/EBS spectrum and MSS/ATC spectrum in establishing the screen. Recent developments in the market for the provision of mobile telephony/broadband services make clear that all 194 MHz of the BRS/EBS band can be used – not just the 55.5 MHz previously considered by the Commission. Likewise,

[82] *See* ULS File Nos. 0004330200, 0004352233 & 0004532749.

[83] *See Amendment of Part 27 of the Comm'n's Rules to Govern the Operation of Wireless Commc'ns Servs. in the 2.3 GHz Band*, WT Dkt No. 07-293, Report and Order and Second Report and Order, FCC 10-82 (rel. May 20, 2010) ("WCS Report and Order") (recons. filed).

[84] This screen would be hit in two counties in Kentucky (Muhlenberg and Ohio) and one county in Nevada (Washoe).

AT&T believes that MSS/ATC spectrum is now being deployed to provide terrestrial mobile broadband service as well.[85]

(a) BRS/EBS Spectrum

Two years ago, the Commission included barely one quarter of BRS/EBS spectrum in the screen based on the ongoing BRS/EBS spectrum transition, the "nascent" nature of WiMAX services, and the determination that certain sub-bands of the BRS/EBS band were not ideal for mobile broadband.[86] AT&T believes that none of these reasons remains valid today. Clearwire and its partners (including Sprint and Time Warner Cable) are making widespread use of WiMAX service in numerous regions. Sprint's 4G technology, which utilizes Clearwire's WiMAX network, is now available in 71 metropolitan areas across the country, including Atlanta, Boston, Chicago, Dallas, Los Angeles, and New York City.[87] Clearwire's WiMAX service passed 110 million people in these 71 areas as of December 30, 2010, and the company plans to continue to expand its 4G coverage.[88] Time Warner Cable – using Clearwire's WiMAX network[89] – is offering 4G data service in seventeen metropolitan areas.[90] Comcast also offers its

[85] In the National Broadband Plan, the FCC recognized that the MSS band is usable for terrestrial broadband. *See* NBP at 87, Ex. 5-G. As discussed below, satellite carriers have announced plans to provide terrestrial mobile broadband service using the MSS band.

[86] *See Sprint Nextel Corp. & Clearwire Corp. Applications for Consent to Transfer Control of Licenses, Leases & Authorizations*, Memorandum Order and Opinion, 23 FCC Rcd. 17570, 17586, 17597-99, ¶¶ 36, 65-71 (2008).

[87] *See* News Release, Sprint Nextel, Tech Lovers Rejoice! The San Francisco Bay Area is Wired with Sprint 4G (Dec. 28, 2010), *available at* http://newsroom.sprint.com/article_display.cfm?article_id=1751.

[88] *See* Press Release, Clearwire Corp., Clearwire to Present at Citi 21st Annual Global Entertainment, Media & Telecommunications Conference (Dec. 30, 2010) ("Clearwire Citi Press Release"), *available at* http://investors.clearwire.com/phoenix.zhtml?c=214419&p=irol-newsArticle&ID=1511390&highlight=.

[89] *See* Amandeep Dhaliwal, *Sprint, Clearwire, Time Warner to Bring Their Own Branded WiMax 4G to New York*, TopNews (Oct. 19, 2010), http://topnews.us/content/227772-sprint-clearwire-time-warner-bring-their-own-branded-wimax-4g-new-york.

4G wireless data service, High-Speed 2Go, via the Clearwire data network (in which Comcast is an investor) in over 30 cities, including Atlanta, Chicago, Philadelphia, and Portland.[91] In addition, Sprint and Clearwire have stressed the importance of WiMAX to their future plans. Clearwire has emphasized the extent of its spectrum holdings, stating that it had access to 150 MHz in the 2.5 GHz band in the nation's top 100 metro areas.[92] Clearwire's CEO Bill Morrow stated, "As we continue to formulate our plans for the future, we remain confident that *our unmatched spectrum portfolio* and all-IP network will keep us extremely well positioned in this . . . market."[93] Sprint Nextel CEO Dan Hesse similarly told the Financial Times, "We have the spectrum resources where we could add LTE if we choose to do that, on top of the WiMAX network. . . .The beauty of having a lot of spectrum is we have a lot of flexibility."[94] In another interview, he reiterated how Sprint Nextel's vast spectrum holdings make it more competitive,

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Footnote continued from previous page

[90] *See* Time Warner Cable - Where is 4G Available?, http://www.timewarnercable.com/nynj/site.faqs/MobileInte/MobileInte/Where-is-4G-available (last visited Jan. 10, 2011).

[91] *See* Comcast Corp. - Where does Comcast offer XFINITY Internet 2go service?, http://customer.comcast.com/Pages/FAQViewer.aspx?seoid=available-areas-hs2go-3g (last visited Jan. 10, 2011); *see also* Press Release, Comcast Corp., Comcast Begins National Rollout of High-Speed Wireless Data Service (June 29, 2009), *available at* http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=887.

[92] Dan Meyer, *Clearwire Posts Strong Customer Growth, Clears Path for Technology Options*, RCR Wireless, May 6, 2010, *available at* http://www.rcrwireless.com/ARTICLE/20100506/QUARTERLY_EARNINGS/100509964/clearwire-posts-strong-customer-growth-clears-path-for-technology.

[93] Press Release, Clearwire Corp., Clearwire Reports Strong Second Quarter 2010 Results (Aug. 4, 2010) (emphasis added), *available at* http://investors.clearwire.com/phoenix.zhtml?c=198722&p=irol-newsArticle&id=1456458.

[94] Andrew Parker & Paul Taylor, *Sprint's 4G Move Opens Way to Merger*, FT.com (July 12, 2010), http://www.ft.com/cms/s/0/c4d6eb6a-8de0-11df-9153-00144feab49a,dwp_uuid=9c33700c-4c86-11da-89df-0000779e2340.html#axzz1AfJBGsmY.

saying "We have a lot of spectrum. . . . That means we can offer a lot of bandwidth at lower cost. . . . Are you dealing with 10 megahertz of spectrum or 120 megahertz?"[95]

The BRS/EBS transition has been completed in most areas of the country, and AT&T believes that it would defy logic to continue to exclude the spectrum from the screen on the basis of those few places where no party even has a sufficient interest to initiate a timely transition. The Commission has noted that "[a]s of March 8, 2010, the transition has been completed in 438 out of 493 BTAs," and that "[i]n the remaining BTAs, virtually all other licensees are subject to a pending transition plan or have filed self-transition plans."[96]

AT&T believes that it should be readily apparent that, to the extent that the FCC has, in the past, expressed reservations about the commercial acceptance and technical feasibility of WiMAX, those concerns have been laid to rest. Indeed, the Commission itself has identified the entire 194 MHz of BRS/EBS spectrum as suitable for mobile use. In the *Fourteenth Competition Report*, the FCC compiled a table listing "Flexible Use Spectrum Usable for Mobile Wireless Service," including 194 MHz for BRS/EBS.[97] That table notes that "EBS licenses must be held by educational institutions," but explicitly recognizes that "EBS licensees can lease a significant portion of their spectrum to commercial operators."[98] Similarly, the National Broadband Plan also identifies 194 MHz of BRS/EBS spectrum as "now coming online for mobile broadband deployment."[99] Consistent with the widespread availability of broadband services in the 2.5

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[95] *Interview: Dan Hesse of Sprint*, Global Telecoms Bus. (Aug. 14, 2009), http://www.globaltelecomsbusiness.com/Article/2274044/Search/Results/Interview-Dan-Hesse-of-Sprint.html?Keywords=hesse.

[96] *Fourteenth Competition Report* at App. A, ¶ 21.

[97] *Id.* ¶ 259, Table 24.

[98] *Id.*; *see also* 47 C.F.R. § 27.1214(b)(1) (permitting 95 percent to be leased).

[99] NBP at 84-85, Ex. 5-F.

GHz band and the Commission's own recognition that all spectrum in the band is suitable for mobile broadband, AT&T believes that the screen should be modified to include all 194 MHz of BRS/EBS spectrum.

(b) MSS/ATC Spectrum

Given recent developments in satellite carriers' plans to use MSS/ATC spectrum to provide mobile broadband service, AT&T believes that the Commission also should include MSS/ATC spectrum in the spectrum screen. In its review of the state of wireless competition in the *Fourteenth Competition Report*, the Commission noted that several MSS providers had "plans to offer high-speed data services, especially in connection with terrestrial networks using their Ancillary Terrestrial Component (ATC) authority."[100] However, the FCC noted that "[a]s of the end of 2009 . . . no mobile services have been offered using ATC."[101] That fact will no longer be true in 2011.

LightSquared is expected to begin the rollout of a wholesale mobile broadband service using MSS/ATC spectrum in 2011, and the Commission has recognized that such service will increase competition in mobile broadband services. By the third quarter of 2011, LightSquared – which is backed by Harbinger Capital – plans to launch a nationwide wholesale LTE network that ultimately will include 40,000 cell sites that will cover 92 percent of the U.S. population.[102] The network will allow for terrestrial-only, satellite-only, or integrated satellite-terrestrial

[100] *Fourteenth Competition Report* ¶ 37.

[101] *Id.*

[102] *See* LightSquared - Nationwide LTE Broadband Network, http://www.lightsquared.com/what-we-do/network/ (last visited Jan. 11, 2011); *see also* Phil Goldstein, *LightSquared Suffers Satellite Glitch, Stays on Track for LTE Launch*, FierceWireless (Dec. 9, 2010) ("Goldstein Article"), http://www.fiercewireless.com/story/lightsquared-suffers-satellite-glitch-stays-track-lte-launch/2010-12-09.

services.[103] LightSquared will provide its terrestrial service using MSS spectrum that Harbinger Capital recently acquired from SkyTerra. Harbinger/SkyTerra will build the satellite/terrestrial mobile broadband network "using spectrum from the L-Band (10 megahertz now, and an additional 30 megahertz in the future through a cooperation agreement with Inmarsat)."[104] The Commission approved the Harbinger/SkyTerra transaction, in part, because it would introduce a nationwide terrestrial 4G network that would provide additional competition to national wireless carriers.[105] "[U]sing its terrestrial network, Harbinger proposes to provide service to at least 100 million people in the United States by the end of 2012 with an increase to at least 260 million people in the United States by the end of 2015. The 4G mobile voice and data services available through Harbinger's broadband network would enable it to provide a service that complements and enhances competition in the provision of terrestrial wireless services provided by terrestrial carriers such as AT&T, Verizon Wireless, Sprint, T-Mobile, Clearwire, and others, particularly in the area of mobile broadband services."[106]

In addition, TerreStar launched a satellite in July 2009 and plans to use its 2 GHz MSS band spectrum to offer integrated satellite and terrestrial voice, data, and video services.[107] As of

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[103] *See* Goldstein Article.

[104] *Fixed & Mobile Servs. in the Mobile Satellite Serv. Bands*, Notice of Proposed Rulemaking and Notice of Inquiry, 25 FCC Rcd. 9481, 9485, ¶ 7 (2010) ("*Mobile Satellite NPRM*").

[105] *SkyTerra Commc'ns, Inc. & Harbinger Capital Partners Funds*, Memorandum Opinion and Order and Declaratory Ruling, 25 FCC Rcd. 3059, 3088- 89, ¶¶ 68-73 (IB, OET & WTB 2010) ("*SkyTerra/Harbinger Order*") (recons. filed) (approving Harbinger's acquisition of SkyTerra in part because of Harbinger's plans to "deploy an additional, nationwide facilities-based mobile broadband network").

[106] *Id.* at 3086, ¶ 59.

[107] *Mobile Satellite NPRM*, 25 FCC Rcd. at 9483-84, ¶ 6.

January 13, 2010, TerreStar was granted Commission authority to "integrate terrestrial use of [its] 20 MHz S Band spectrum into its next generation mobile wireless network."[108]

New DBSD Satellite Services, a subsidiary of DBSD North America, launched a satellite in April 2008 and plans to offer mobile video, navigation, and emergency assistance services to vehicles or mobile personal communications devices.[109] The Commission authorized DBSD to "to integrate an ancillary terrestrial component (ATC) into its MSS system to provide integrated satellite and terrestrial services."[110] DBSD is currently "building a hybrid system to offer satellite and terrestrial wireless services" that is "designed to provide wireless voice, data, video, and/or Internet service" throughout the country on all types of mobile devices.[111]

Moreover, beyond the aforementioned industry developments, the Commission is seeking through a rulemaking to add further flexibility in the use of MSS spectrum for the provision of mobile broadband services.[112]

In all, with the inclusion of WCS spectrum, an additional 138.5 MHz of BRS/EBS spectrum, and MSS/ATC spectrum, the chart below shows that there are more than 600 MHz of spectrum available for mobile broadband services which AT&T believes the Commission must consider in evaluating the impact of this acquisition on any input market for spectrum. AT&T will not hold more than one third of this total spectrum anywhere. AT&T's acquisition of 6 to

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[108] Press Release, TerreStar Networks, FCC Grants TerreStar ATC Authority (Jan. 14, 2010), *available at* http://www.terrestar.com/press/20100114.html.

[109] *See Mobile Satellite NPRM*, 25 FCC Rcd. at 9484, ¶ 6.

[110] ICO Global Communications - About us: Overview - DBSD North America Alpha Trials, http://www.ico.com/_about/ (last visited Jan. 10, 2011).

[111] *Id.*

[112] *See Mobile Satellite NPRM.*

12 MHz of 700 MHz spectrum in any given county will have no appreciable impact on the spectrum available to competitors.

Spectrum Available for Mobile Broadband Services

Band	Spectrum
Cellular	50 MHz
PCS	130 MHz
SMR	19 MHz
700 MHz	80 MHz
AWS-1	90 MHz
BRS/EBS	194 MHz
MSS ATC	90 MHz
WCS	25 MHz
TOTAL	678 MHz

(ii) There Is No Basis for a Screen on Spectrum Under 1 GHz

The Wireless Telecommunications Bureau also has raised questions about the amount of spectrum AT&T and Verizon hold under 1 GHz.[113] As explained in its comments in the Commission's Fifteenth Annual Wireless Competition proceeding, AT&T believes that this concern is unwarranted and that there is no analytical basis for favoring spectrum under 1 GHz for several reasons, including that (1) access to spectrum below 1 GHz is not vital to competition, as demonstrated by how the introduction of 120 MHz of PCS spectrum revolutionized the industry; (2) in today's 3G and 4G market, where network providers are striving to increase capacity and throughput to keep up with the explosive increases in data traffic, spectrum above 1 GHz can provide greater capacity;[114] and (3) there is no real world

[113] *See*, *e.g.*, *New Cingular Wireless PCS, LLC & D&E Investments, Inc. Seek FCC Consent to the Assignment of Lower 700 MHz Band Licenses*, Public Notice, 2011 WL 41873 at *1, DA 11-10 (WTB rel. Jan. 5, 2011); *Wireless Telecomms. Bureau Seeks Comments on the State of Mobile Wireless Competition*, Public Notice, 25 FCC Rcd. 8416, 8431 (2010).

[114] Indeed, the Commission has noted that "higher-frequency spectrum may be particularly effective for providing significant capacity, or increasing capacity, within a smaller geographic area," and that "higher-frequency spectrum can be ideally suited for providing high capacity where it is needed, such as in high traffic urban areas." *Fourteenth Competition Report* ¶ 272.

evidence to demonstrate that a lack of spectrum below 1 GHz is a handicap to new entry or expansion, as demonstrated by Clearwire's rapid deployment of a nationwide wireless broadband network using 2.5 GHz spectrum.[115] Indeed, as noted above, Clearwire and Sprint both have pointed publicly to their large BRS/EBS spectrum holdings as a competitive advantage. Also, of all the carriers we noted above that are currently offering 4G service – Verizon, Clearwire, Sprint, T-Mobile, and MetroPCS – all but Verizon are doing so using spectrum above 1 GHz.[116] AT&T will provide 4G speeds through its HSPA+ and LTE networks using a mix of spectrum, including AWS, 850 MHz, 1900 MHz, and 700 MHz.[117]

B. This Transaction Will Not Result in a Loss of Competition

Qualcomm made an independent decision to exit the mobile video business, and there will be no loss of competition as a result of its selling the spectrum used for its FLO TV service to AT&T. As discussed above, Qualcomm made the decision to exit the mobile television service business because the business model on which it focused – a one-way, broadcast-type, stand-alone subscription service in which content was available via a pre determined master

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[115] *See The State of Mobile Wireless Competition*, WT Dkt No. 10-133, Comments of AT&T Inc., at 24-27 (filed July 30, 2010) ("AT&T 15th Wireless Competition Report Comments").

[116] *See* News Release, Verizon Wireless, Verizon Wireless Unveils Suite of 4G LTE Smartphones, Tablets, a MiFi, Hotspot and Notebooks (Jan. 6, 2011), *available at* http://news.vzw.com/news/2011/01/pr2011-01-06n.html; *Fourteenth Competition Report* at 148, Table 26.

[117] *See* Rinne Declaration ¶ 13; *see also* AT&T's CES Press Release ("AT&T is the only U.S. company committed to delivering 4G using both HSPA+ and LTE technologies."). Although there may not be agreement over what 4G means, HSPA+, LTE, and WiMAX are capable of providing speeds typically considered to be 4G. *See*, *e.g.*, Sacha Segan, *WiMAX vs. HSPA+: The Hands-On Test*, PCMag.com (Feb. 16, 2010), http://www.pcmag.com/article2/0,2817,2359139,00.asp; Press Release, International Telecommunications Union, ITU World Radiocommunication Seminar Highlights Future Communication Technologies (Dec. 6, 2010), *available at* http://www.itu.int/net/pressoffice/press_releases/2010/48.aspx.

schedule – did not prove to be viable. Consumers simply did not adopt this service.[118] Indeed, the other nascent providers of this type of service – such as Modeo – abandoned their efforts even before launching service. Other business models have proven more attractive, and consumers will continue to have access to numerous and more popular options for downloading, streaming, sharing, and viewing video over a multitude of mobile devices that are supported by numerous wireless carriers.

C. The Wireless Market Is Robustly Competitive

The market for wireless services continues to be robustly competitive, and this transaction will not change that.[119] Carriers are racing to roll out new 4G services to keep up with customer demand and the ever-advancing capabilities of wireless devices (not to mention each other). This transaction will foster increased competition by enabling AT&T to offer a more robust LTE deployment than it could absent this transaction. In addition, the transaction will not affect other competitors' holdings of spectrum to provide 3G and 4G service. There is no shortage of competition in advanced mobile broadband services.

1. Existing Carriers Have Sufficient Spectrum to Roll Out 4G Service

Several carriers have already launched and are rapidly rolling out 4G service. Of the four major national carriers, Sprint, which has an average nationwide holding of about 185.7 MHz of spectrum (133.2 MHz of BRS/EBS available through its venture with Clearwire, 34.8 MHz of

[118] *See* Section V.A above.

[119] Seventy-four percent of Americans can choose among five or more facilities-based wireless providers, ninety-one percent have a choice of four or more, and ninety-six percent have access to three or more. *See The State of Mobile Wireless Competition*, WT Dkt No. 10-133, Comments of CTIA-The Wireless Association®, at 37 (filed July 30, 2010). Moreover, wireless providers continue to make substantial investments in their networks, with cumulative capital expenditures totaling more than $285 billion in 2009, representing an increase of more than $20 billion from 2008. *See id.* at 6.

PCS, and 17.7 MHz of SMR), has the most spectrum available, and more than twice as much spectrum, on average, as AT&T.[120] Verizon currently holds slightly more spectrum than AT&T, a national average of 87.7 MHz and 82 MHz respectively,[121] and this transaction will leave both carriers with similar spectrum positions. T-Mobile holds 50.4 MHz of spectrum on a nationwide average basis,[122] which is proportionately more than AT&T given that T-Mobile supports a customer base slightly more than one third of the size of AT&T's.[123]

In December 2010, Verizon Wireless launched its 4G LTE network in 39 major metropolitan areas, covering 110 million people. Verizon Wireless' 4G LTE network will cover virtually all of the company's current nationwide 3G footprint by the end of 2013.[124] Verizon plans to utilize its nationwide, contiguous 22 MHz Upper C Block 700 MHz spectrum, which covers the entire lower 48 states plus Hawaii, to deploy its 4G LTE network.[125] In addition, as part of its 4G LTE network deployment, Verizon Wireless plans to collaborate with rural carriers to build and operate a 4G network in rural areas, using Verizon Wireless' 700 MHz spectrum.[126]

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[120] *See Fourteenth Competition Report* at 148, Table 26.

[121] *See id.* Verizon holds 24.3 MHz cellular, 20 MHz PCS, 13.5 MHz AWS, and 29.9 700 MHz and AT&T holds 21.2 MHz cellular, 33.7 MHz PCS, 10.1 MHz AWS, and 17 MHz 700 MHz.

[122] *See id.* T-Mobile holds a very small amount of cellular spectrum, 25.6 MHz PCS, and 24.8 MHz AWS. *See id.*

[123] As of September 2010, T-Mobile had 33.8 million customers and AT&T had 92.8 million wireless customers. *See* AT&T 2010 Third Quarter Report at 24; Press Release, T-Mobile USA, T-Mobile USA Reports Third Quarter 2010 Results (Nov. 5, 2010), *available at* http://www.t-mobile.com/Cms/Files/Published/0000BDF20016F5DD010312E2BDE4AE9B/5657114502E70FF3012B59F6EC3E60E2/file/TMUSQ32010PressReleaseFinal%5B1%5D.pdf.

[124] *See* Press Release, Verizon Communications, Verizon Communications Reports Continued Strong Growth in Cash Flow, Wireless and FiOS in 3Q (Oct. 22, 2010) ("Verizon 3Q Press Release"), *available at* http://newscenter.verizon.com/press-releases/verizon/2010/verizon-communications-4.html. Wireless customers in the U.S. have more choices for service and more voice minutes and more data than customers in other countries. *See* AT&T 15th Wireless Competition Report Comments at 28.

[125] *See* Verizon 3Q Press Release.

[126] Press Release, Verizon Communications, Verizon Reports Strong Wireless, FiOS Customer

Footnote continued on next page

As noted above, Sprint and Clearwire are providing WiMAX service in 71 metropolitan areas.[127] Clearwire is marketing its 4G service as "CLEAR®."[128] As of the third quarter of 2010, CLEAR subscribership was on pace to reach 4 million by year end, nearly double the company's original estimate.[129] As of December 30, 2010, Clearwire's 4G network covered areas where more than 110 million people live.[130] Clearwire is growing coverage and subscribership rapidly, and 2010 third quarter revenue was more than twice the revenue for the same period in 2009.[131] According to the company, it is testing coexistence scenarios for WiMAX and LTE using FDD and TDD configurations.[132] Sprint, which uses Clearwire's WiMAX network, already offers a number of WiMAX-capable devices. The HTC Evo™ 4G smartphone, introduced in March 2010, runs on the Android operating system and offers dual 3G/4G capability, so the device can connect to whichever is providing better coverage.[133] With similar capabilities, as well as a

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Footnote continued from previous page
Growth; Increased Enterprise Revenues; Strong Cash Flow in 2Q (July 23,2010), *available at* http://news.vzw.com/news/index.html?year=2010&section=&month=&states=&sp_q=spectrum&searchBtn=.

[127] *See* Victor Godinez, *Verizon, Other Wireless Carriers Vary on Standards for High-Speed 4G Service*, Dallas Morning News (Dec. 8, 2010), *available at* http://www.dallasnews.com/sharedcontent/dws/bus/stories/DN-4G_05bus.ART0.State.Edition1.1b925ff.html.

[128] *See* Press Release, Clearwire Corp., CLEAR 4G Mobile Internet from Clearwire Lights Up San Francisco (Dec. 28, 2010) ("The company markets its 4G service through its own brand called CLEAR® as well as through its wholesale relationships with Sprint, Comcast and Time Warner Cable."), *available at* http://newsroom.clearwire.com/phoenix.zhtml?c=214419&p=irol-newsArticle&ID=1510865&highlight=.

[129] *See* Press Release, Clearwire Corp., Clearwire Reports Record Subscriber and Revenue Growth in Third Quarter 2010 (Nov. 4, 2010) ("Clearwire 3Q Press Release"), *available at* http://investors.clearwire.com/phoenix.zhtml?c=198722&p=irol-newsArticle&id=1492261.

[130] *See* Clearwire Citi Press Release.

[131] *See* Clearwire 3Q Press Release.

[132] *See id.*

[133] *See* Press Release, Sprint Nextel, HTC EVO™ 4G Fact Sheet (Mar. 23, 2010), *available at* http://newsroom.sprint.com/article_print.cfm?article_id=1412.

slide-out QWERTY keyboard, is the HTC Evo Shift™ 4G, introduced in January 2011.[134] Sprint also offers the USB U600 and the USB U1901, both of which allow 4G connectivity through a USB drive.[135] In addition, Sprint offers the MiFi 3G/4G Mobile Hotspot by Novatel Wireless, which creates a Wi-Fi hotspot that can support up to five devices.[136] Two Dell laptop models with built-in 4G capability also are available through Sprint, the Dell Inspiron 11z and the Dell Inspiron Mini 10.[137]

For its part, T-Mobile says that "by virtue of its ongoing 3G and now HSPA+ 4G network build-out, T-Mobile now has the largest network in the U.S. where consumers can benefit from 4G speeds."[138] Further, T-Mobile recently announced that its HSPA+ 4G network now reaches 100 major metropolitan areas and covers approximately 200 million people.[139] T-Mobile also has announced plans to double the speed of its 4G network in order to bring speeds of up to 42 Mbps to 140 million people by the end of this year.[140]

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[134] *See* Press Release, Sprint Nextel, HTC EVO Shift™ 4G Fact Sheet (Jan. 4, 2011), *available at* http://newsroom.sprint.com/news/htc-evo-shift-4g-fact-sheet.htm.

[135] *See* Sprint - Sprint Phones, http://shop.sprint.com/NASApp/onlinestore/en/Action/SubmitRegionAction?isUpgradePathForCoverage=false&currZipCode=&upgradeOption=&nextPage=DisplayPhones&equipmentSKUurlPart=%3FcurrentPage%3DphonePage&filterStringParamName=&newZipCode=10022&x=0&y=0 (last visited Jan. 10, 2011) ("Sprint Phone Website").

[136] *See* Press Release, Sprint Nextel, MiFi® 3G/4G Mobile Hotspot by Novatel Wireless Fact Sheet (Jan. 4, 2011), *available at* http://newsroom.sprint.com/news/novatel-mifi-3g-4g-fact-sheet.htm.

[137] *See* Sprint Phone Website.

[138] *Preserving the Open Internet*, GN Dkt No. 09-191, Ex Parte Notice of T-Mobile USA, Inc., at 1 (filed Dec. 7, 2010).

[139] *See* Press Release, T-Mobile USA, T-Mobile USA CEO and President Philipp Humm Highlights the Company's Network Leadership and Focus on Fueling Data Adoption (Jan. 6, 2011), *available at* http://press.t-mobile.com/articles/T-Mobile-Humm-Highlights-Network-Leadership-CES.

[140] *See* Kevin C. Tofel, *T-Mobile's HSPA+ Doubling Down on Speeds in 2011*, CNNMoney.com (Jan. 6, 2011), http://money.cnn.com/news/newsfeeds/gigaom/big-tech/broadband_t_mobiles_hspa_doubling_down_on_speeds_in_2011.html.

MetroPCS was the first carrier to launch 4G LTE service.[141] As of January 3, 2011, the company offers 4G LTE service in nine metropolitan areas, including Boston, Dallas-Fort Worth, Detroit, Las Vegas, Los Angeles, New York City, Philadelphia, Sacramento, and San Francisco. In 2011, MetroPCS plans to expand 4G LTE service to more metropolitan areas, including Atlanta, Jacksonville, Miami, Orlando, and Tampa, and will continue its build-out of metropolitan areas where it already provides 4G LTE service.[142] MetroPCS owns wireless spectrum, including PCS, AWS, and 700 MHz licenses, covering a total population of 144 million people in over 11,000 cities and towns in the United States,[143] and currently serves more than 7.9 million subscribers in its primarily metropolitan service territory.[144]

Furthermore, as noted above, LightSquared is expected to begin the rollout of a wholesale mobile broadband service using MSS/ATC spectrum this year. The company plans to launch a nationwide wholesale LTE network that ultimately will include 40,000 cell sites covering 92 percent of the U.S. population.[145] The Commission recognized the importance of the entry of this new competitor to nationwide carrier competition, noting that the 4G mobile voice and data services the company will provide will enhance competition to AT&T, Verizon

[141] *See* Press Release, MetroPCS, MetroPCS Launches First 4G LTE Services in the United States and Unveils World's First Commercially Available 4G LTE Phone (Sept. 21, 2010), *available at* http://www.metropcs.com/presscenter/articles/mpcs-news-20100921.aspx.

[142] *See* Press Release, MetroPCS, MetroPCS' New 4G LTE Plans Offer Unprecedented Value and Choice with Prices Starting at Just $40 (Jan. 3, 2011) ("MetroPCS 4G Press Release"), *available at* http://www.metropcs.com/presscenter/newsreleasedetails.aspx?id=1.

[143] *See* MetroPCS Commc'ns Inc., Annual Report (Form 10-K), at 5 (Mar. 1, 2010).

[144] *See* MetroPCS 4G Press Release.

[145] *See* Goldstein Article; Donny Jackson, *LightSquared Inks Deal with Qualcomm, Wholesale Partners*, Urgent Comm. (Oct. 7, 2010), http://urgentcomm.com/networks_and_systems/news/lightsquared-qualcomm-deal-20101007/.

Wireless, Sprint, T-Mobile, Clearwire, and others, in the provision of mobile broadband services.[146]

2. Other Regional Carriers Have Sufficient Spectrum To Provide Mobile Broadband Services

Numerous regional and local carriers also are providing 3G services, and a number are planning to introduce LTE service. Cricket, a subsidiary of Leap Wireless International, Inc., offers unlimited wireless services, including through its affiliate, Denali Spectrum Operations, in 35 states and the District of Columbia.[147] Cricket and Denali own PCS and AWS covering approximately 184.2 million POPs, and the network footprint in their operating areas covers approximately 94.2 million POPs.[148] Cricket provides service to 5.1 million customers,[149] offering "wireless voice and broadband Internet services over the latest technology, high-quality, all-digital 3G CDMA2000 1X and 1xEV-DO wireless network."[150]

U.S. Cellular, which has 6.1 million customers, offers its wireless service in five geographical clusters that cover portions of 26 states and have a total population of 46.3 million.[151] Over the last six years, U.S. Cellular has obtained 152 700 MHz licenses, 17 AWS licenses, and 16 PCS licenses.[152] U.S. Cellular has been offering 3G services since 2006, and by

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[146] *See SkyTerra/Harbinger Order*, 25 FCC Rcd. at 3086, ¶ 59.

[147] *See* Leap Wireless Int'l, Quarterly Report (Form 10-Q), at 41 (Nov. 3, 2010).

[148] *See id.*

[149] *See id.*

[150] *See* Press Release, Leap Wireless, Cricket Debuts Muve Music Service at 2011 International CES (Jan. 3, 2011), *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle&ID=1511817&highlight=.

[151] *See* U.S. Cellular Corp., Annual Report (Form 10-K), at 1-2 (Feb. 25, 2010) ("U.S. Cellular Annual Report").

[152] *See id.* at 3.

the end of September 2010, U.S. Cellular's 3G network had covered approximately 98 percent of its customers.[153] U.S. Cellular plans to launch a 4G network in 2012.[154]

nTelos operates its wireless business primarily in Virginia, West Virginia, and parts of Maryland and Pennsylvania with over 430,000 post-paid subscribers as of September 2010, which represents 7.5 percent of its total covered population.[155] At the end of 2009, nTelos held PCS licenses in 29 Basic Trading Areas and seven AWS licenses.[156] As of September 2010, nTelos had an average spectrum holding of 23.0 MHz in its service areas[157] and had deployed 3G EV-DO Rev. A technology to 83 percent of its cell sites, giving it the technical ability to support high-speed mobile wireless data services.[158]

Allied Wireless Communications Corporation ("AWCC"), a subsidiary of Atlantic Tele-Network, offers wireless voice and data services to retail customers in the Southeast and Midwest, as well as wholesale wireless voice and data roaming services to other wireless carriers.[159] "AWCC serves more than 800,000 wireless subscribers in six states – Georgia, North Carolina, South Carolina, Illinois, Ohio, and Idaho."[160] AWCC provides its service pursuant to "various commercial mobile radio services (or CMRS) licenses, such as cellular and broadband

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[153] *See* U.S. Cellular Corp., Quarterly Report (Form 10-Q), at 26 (Nov. 4, 2010).

[154] *See* Michelle Maisto, *U.S. Cellular Plans to Launch 4G LTE in 2012: Report*, eWeek.com. (Nov. 11, 2010), http://www.eweek.com/c/a/Mobile-and-Wireless/US-Cellular-Plans-to-Launch-4G-LTE-in-2012-Report-389276/.

[155] *See* nTelos Holdings Corp., Quarterly Report (Form 10-Q), at 18 (Nov. 5, 2010) ("nTelos 2010 3Q 10-Q").

[156] *See* nTelos Holdings Corp., Annual Report (Form 10-K), at 3-5 (Feb. 26, 2010).

[157] *See* nTelos Holdings Corp., Investor Conference Call Slideshow Presentation, Separation of the Wireless and Wireline Companies (Dec. 8, 2010).

[158] *See* nTelos 2010 3Q 10-Q at 18.

[159] *See* Atlantic Tele-Network, Inc., Quarterly Report (Form 10-Q), at 7 (Nov. 9, 2010).

[160] *See* AWCC - About Us: AWCC Fast Facts, http://www.awcc.com/about.html (last visited Jan. 11, 2011).

Personal Communications Services (or PCS) licenses, and broadband radio service (or BRS) licenses . . . and pursuant to leases of spectrum."[161]

Cellular South serves over 870,000 customers in primarily rural areas.[162] Specifically, it provides cellular and PCS service in Mississippi, Alabama, and Georgia, and it holds authorizations to provide PCS, AWS, and/or 700 MHz service in portions of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, Tennessee, and Virginia.[163] In February 2010, Cellular South completed its acquisition of Corr Wireless, a carrier serving approximately 1.3 million POPs in northern Alabama and a portion of Georgia.[164] Cellular South continues to expand its 3G service primarily in Mississippi and Alabama[165] and, in November 2010, announced that it plans to offer 4G service by the end of 2011.[166]

On November 19, 2010, Cox unveiled its new mobile phone service in Hampton Roads, Virginia; Omaha; Nebraska; and Orange County, California.[167] Cox plans to deploy LTE

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[161] *See* Atlantic Tele-Network, Inc., Annual Report (Form 10-K), at 15 (Mar. 16, 2010).

[162] *See* Press Release, Cellular South, Cellular South CEO: Wireless Consumers Deserve Better Access to LTE (Nov. 17, 2010) (filed with Letter from Eric Graham, Vice President, Strategic and Government Relations, Cellular South to Marlene Dortch, Secretary, FCC (RM-11592; Dec. 6, 2010)).

[163] *See Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993; Annual Report & Analysis of Competitive Mkt. Conditions with Respect to Mobile Wireless, Including Commercial Mobile Servs.*, WT Dkt No. 09-66, Comments of Cellular South, Inc., at 2 (filed Sept. 30, 2009).

[164] *See* Press Release, Cellular South, Cellular South Completes Acquisition of Alabama-based Corr Wireless Communications (Feb. 3, 2010), *available at* https://www.cellularsouth.com/news/2010/20100203.html.

[165] *See* Press Release, Cellular South, Cellular South Expands Advanced 3G Mobile Broadband Network in Mobile and Baldwin Counties (Mar. 15, 2010), *available at* https://www.cellularsouth.com/news/2010/20100315.html.

[166] *See* Jessica Dolcourt, *Cellular South to Launch Samsung Smartphones on Future 4G LTE Network*, cnet.com (Nov. 17, 2010), *available* http://www.cnet.com/8301-17918_1-20023148-85.html.

[167] *See* Press Release, Cox Communications, Cox Unveils Unprecedented 'Unbelievably Fair(SM)' Wireless Plans, Bringing More Value to the Bundle (Nov. 19, 2010), *available at* http://cox.mediaroom.com/index.php?s=43&item=516.

services on its 700 MHz spectrum, and has been conducting LTE voice and video trials on its AWS and 700 MHz spectrum.[168]

3. The FCC and Administration Have Committed to Make 500 MHz of Additional Spectrum Available, Much of It Within the Next Five Years

Not only does the existing spectrum input market allow many competitors to roll out 4G service, but additional spectrum will be made available in coming years that will provide further spectrum resources for competitors. The FCC plans to repurpose 300 MHz of spectrum for mobile broadband use over the next five years.[169] The National Broadband Plan recommends the repurposing and auction of 190 MHz of spectrum for terrestrial broadband, as well as the revision of rules to make another 110 MHz in the WCS and MSS bands suitable for mobile broadband.[170] The FCC has already begun implementing this plan, including initiating

[168] *See* Phil Goldstein, *Cox Stays Mum about Wireless Launch Details*, FierceWireless (Sept. 20, 2010), http://www.fiercewireless.com/story/cox-stays-mum-about-wireless-launch-details/2010-09-20?utm_medium=rss&utm_source=rss.

[169] *See* NBP at 84. In addition to making more spectrum available, the FCC is exploring how to make better use of existing spectrum. *See Promoting More Efficient Use of Spectrum Through Dynamic Spectrum Use Techs.*, ET Dkt No. 10-237, Notice of Inquiry, FCC 10-198 (rel. Nov. 30, 2010).

[170] *See* NBP at 84. The FCC has issued an order that aims to make WCS available for mobile broadband service although significant challenges must be addressed before this can be done. *See Amendment of Part 27 of the Comm'n's Rules to Govern the Operation of Wireless Commc'ns Servs. in the 2.3 GHz Band*, WT Dkt No. 07-293, AT&T Inc. Petition for Partial Reconsideration, at 1-2 (filed Sept. 1, 2010); *see also Amendment of Part 27 of the Comm'n's Rules to Govern the Operation of Wireless Commc'ns Servs. in the 2.3 GHz Band*, WT Dkt No. 07-293, WCS Coalition Petition for Partial Reconsideration, at 1-2 (filed Sept. 1, 2010).

rulemakings to amend the Broadcast TV band and MSS band rules[171] and revising the WCS technical rules.[172]

On November 15, 2010, the National Telecommunication and Information Administration ("NTIA") released a Ten-Year Plan[173] and a Fast Track Evaluation Report[174] addressing possibilities for making additional spectrum available for wireless broadband use.[175] Intended to "jump-start the effort to make 500 megahertz of spectrum available," the Fast Track Evaluation Report isolates 115 MHz that can be repurposed for wireless broadband use within five years and sets out a plan to make that spectrum available.[176] It also recommends further review of 65 MHz that are additional candidates for repurposing within five years.[177]

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[171] *See Innovation in the Broad. Television Bands: Allocations, Channel Sharing & Improvements to VHF*, ET Dkt No. 10-235, Notice of Proposed Rulemaking, FCC 10-196 (rel. Nov. 30, 2010); *Fixed & Mobile Servs. in the Mobile Satellite Serv. Bands at 1525-1559 MHz & 1626.5-1660.5 MHz, 1610-1626.5 MHz & 2483.5-2500 MHz & 2000-2020 MHz & 2180-2200 MHz*, ET Dkt No. 10-142, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 10-126 (rel. July 15, 2010).

[172] *See* WCS Report and Order.

[173] *See* NTIA, U.S. Dept. of Commerce, Plan and Timetable to Make Available 500 Megahertz of Spectrum for Wireless Broadband (Oct. 2010) ("NTIA Ten-Year Plan"), *available at* http://www.ntia.doc.gov/reports/2010/TenYearPlan_11152010.pdf.

[174] *See* NTIA, U.S. Dept. of Commerce, An Assessment of the Near-Term Viability of Accommodating Wireless Broadband Systems in the 1675-1710 MHz, 1755-1780 MHz, 3500-3650 MHz, 4200-4220 MHz & 4380-4400 MHz (Oct. 2010) ("Fast Track Evaluation"), *available at* http://www.ntia.doc.gov/reports/2010/FastTrackEvaluation_11152010.pdf.

[175] On June 28, 2010, President Obama signed a Presidential Memorandum directing the Secretary of Commerce, through NTIA, to collaborate with the Federal Communications Commission to produce a ten-year plan and timetable for making 500 megahertz of spectrum available for wireless broadband. *See* Presidential Memorandum, Unleashing the Wireless Broadband Revolution, 75 Fed. Reg. 38387 (July 1, 2010). The NTIA plan was released pursuant to this Memorandum. *See* NTIA Ten-Year Plan.

[176] Fast Track Evaluation at iv-v.

[177] *See id.*

Given the current availability of spectrum for competitors, the imminent availability of still more spectrum, and the intense competition in the roll out of new mobile services, there is no reason for competitive concern about AT&T's acquisition of the Qualcomm Spectrum.

VII. 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[178] 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.

[178] 15 U.S.C. § 18a.

VIII. MISCELLANEOUS REGULATORY ISSUES

A. After-Acquired Authorizations

The Applicants request that any Commission approval of this Application include authority for AT&T to be assigned any applications regarding the Qualcomm Spectrum that are pending at the time of consummation. Such action would be consistent with prior decisions of the Commission. The Applicants intend for AT&T to acquire all of Qualcomm's Lower 700 MHz D and E block licenses:

Call Sign	License Area
WPZA235	EAG701 Northeast
WPZA236	EAG702 Mid-Atlantic
WPZA237	EAG703 Southeast
WPZA238	EAG704 Great Lakes
WPZA239	EAG705 Central/Mountain
WPWU989	EAG706 Pacific
WQIZ616	BEA003 Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH-RI-VT
WQIZ617	BEA010 New York-North New Jersey-Long Island, NY-NJ-CT-PA-MA-VT
WQIZ618	BEA012 Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD
WQIZ619	BEA160 Los Angeles-Riverside-Orange County, CA-AZ
WQIZ620	BEA163 San Francisco-Oakland-San Jose, CA

Accordingly, the Applicants also request that Commission approval include any of those licenses that may have been inadvertently omitted from the Form 603 when the Applicants filed this Application.

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) and 1.929(a)(2) of the Commission's rules 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.

C. Designated Entity Issues

The unjust enrichment provisions of section 1.2111 of the Commission's rules[179] are not implicated by this transaction. WPWU989, the D block license for EAG706 (Pacific), originally was acquired in Auction No. 44 by Aloha Partners, L.P. ("Aloha"), which qualified as an "entrepreneur" and received a 25 percent bidding credit.[180] Aloha assigned WPWU989 to Qualcomm on October 6, 2004.[181] As Qualcomm did not qualify as a "designated entity," Aloha had to make an "unjust enrichment" payment before that transaction could close.[182] Accordingly, WPWU989 is now freely transferable to AT&T.

D. Consideration

The E block licenses that are the subject of this Application were acquired through competitive bidding procedures within the last three years and were granted on June 26, 2008. Pursuant to section 1.2111(a) of the Commission's rules,[183] the Applicants are filing with the Commission, pursuant to a request for confidential treatment, the contract governing this transaction.[184]

E. There Is No Need for Anti-Trafficking Review

Although Qualcomm has not deployed facilities using its E block licenses, Qualcomm clearly did not acquire these authorizations "for the principal purpose of speculation or profitable

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[179] 47 C.F.R. § 1.2111(b)-(d).

[180] *See* ULS File No. 0001814127, Ex. A (describing Aloha's eligibility for bidding credits in the application to assign WPWU989 from Aloha to Qualcomm). The 35 percent credit for entrepreneurs was not available for D block licenses. 47 C.F.R. §§ 1.2111(f)(2), 27.702.

[181] *See* ULS File No. 0001917819 (providing notification of consummation of the assignment in ULS File No. 0001814127).

[182] 47 C.F.R. § 1.2111(d); ULS File No. 0001814127, Ex. A.

[183] 47 C.F.R. § 1.2111(a).

[184] Spectrum Acquisition Agreement By and Between AT&T Services, Inc. & Qualcomm Incorporated (dated Dec. 17, 2010).

resale."[185] Thus, there is no need for the Commission to review this transaction for trafficking. "Commission review for the purposes of determining whether trafficking has occurred is *discretionary*."[186] And the Commission has found that "the auction process, by requiring initial licensees to pay market value for their authorizations, effectively safeguards against such speculation."[187] Further inquiry would be unnecessary.

IX. CONCLUSION

For the foregoing reasons, the Commission should conclude that the assignment of the Qualcomm Spectrum to AT&T Mobility Spectrum LLC serves the public interest, convenience and necessity, and should expeditiously, and unconditionally, grant this Application.

[185] 47 C.F.R. § 1.948(i)(1) (defining trafficking); *see also* Press Release, Qualcomm Inc., Qualcomm Wins Licenses to Double Its Spectrum in 28 Key East and West Coast Markets to Expand Award-Winning FLO TV Service (Apr. 3, 2008) (quoting Dr. Paul E. Jacobs, CEO of Qualcomm, as saying, "Our strategic purchase of E block licenses will enhance our efforts in the mobile TV space and further MediaFLO USA's mission to bring world-class mobile entertainment to American consumers."), *available at* http://www.qualcomm.com/news/releases/2008/04/03/qualcomm-wins-licenses-double-its-spectrum-28-key-east-and-west-coast-marke.

[186] *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 Leasing Arrangements*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd. 17444, 17536, ¶ 209 (2008) (emphasis added).

[187] *Forbearance from Applying Provisions of the Commc'ns Act to Wireless Telecomms. Carriers*, First Report and Order, 15 FCC Rcd. 17414, 17429, ¶ 33 (2000).