Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of AT&T Inc. and Atlantic Tele-Network, Inc.	)	WT Docket No. 13-54
	)	
	)	
For Consent To Transfer Control of and Assign Licenses and Authorizations	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: September 20, 2013 **Released: September 20, 2013**

By the Chief, Wireless Telecommunications Bureau, and Chief, International Bureau

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I. INTRODUCTION

1. In this Memorandum Opinion and Order, we approve, subject to conditions, the applications of AT&T and ATN (together, the "Applicants") for Commission consent to the transfer of control of, and assignment of, a number of cellular, Personal Communications Services ("PCS"), Lower 700 MHz Band B and C Block, and common carrier fixed point-to-point microwave licenses; spectrum leasing authorizations; and an international section 214 authorization from ATN's wholly-owned subsidiary, Allied, to AT&T.[1]

[1] Applications of Allied Wireless Communications Corporation, AWCC Acquisition Company, LLC, and AT&T Inc. for Consent To Transfer Control of and Assign Licenses and Spectrum Leases, and for New Authorizations To Lease Spectrum, ULS File Nos. 0005632405, 0005631527, 0005631556, 0005631562, 0005631563, 0005631565, 0005631586, 0005632708, 0005632710, 0005632713, and 0005632716 (filed Feb. 5, 2013; amended Apr. 3, 2013) (File No. 0005632405 is designated as the lead application ("Lead Application")); the application for consent to assign an international section 214 authorization from Allied Wireless Communications Corporation to AWCC Acquisition Company LLC has been assigned File No. ITC-ASG-20130206-00051 (collectively, the "Applications").

2. As a result of the proposed transaction, approximately 620,000 customers, as well as network equipment and other assets, will be transferred from Allied to AT&T. Based on our analysis, we find that the proposed transaction will likely cause some competitive and other public interest harms in several local markets. We find, however, that the proposed transaction is likely to result in public interest benefits that, when combined with voluntary commitments from AT&T, will mitigate our competitive concerns. AT&T's voluntary commitments in the areas of network deployment, roaming, and customer transition (as well as its recently supplemented filings regarding customer transition) allow us to conclude that the proposed transaction overall is in the public interest.

II. BACKGROUND

A. Description of Applicants

1. AT&T

3. AT&T Inc. ("AT&T"), headquartered in Dallas, Texas, is a communications holding company that ranks among the leading providers of telecommunications services in the United States.[2] As of December 31, 2012, AT&T reported more than $127 billion in revenues, of which its wireless services accounted for approximately 52 percent, and had approximately 107 million wireless subscribers.[3] AT&T's nationwide wireless network currently covers approximately 308 million people, or 99.8 percent of the population of the mainland United States.[4] The company is transitioning to a wireless network that uses the fourth generation Long Term Evolution ("LTE") mobile technology, and the company expects to largely complete this transition by the end of 2014.[5]

2. ATN

4. Atlantic Tele-Network, Inc. ("ATN"), headquartered in Beverly, Massachusetts,[6] is a provider of wireless, wireline, mobile broadband, and advanced TV services in the United States, Bermuda, and the Caribbean.[7] For the fiscal year 2012, ATN reported approximately $741 million in

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[2] *See* AT&T Inc., SEC Form 10-K, at 1 (filed Feb. 22, 2013) ("AT&T 10-K), *available at* http://www.sec.gov/Archives/edgar/data/732717/000073271713000017/ye12_10k.htm.

[3] *See* AT&T Inc. 2012 Annual Report, Ex. 13 (filed Feb. 22, 2013), at 1, 5, *available at* http://www.sec.gov/Archives/edgar/data/732717/000073271713000017/ex13.htm.

[4] Of the 308 million people covered by its wireless network, AT&T covers 301.3 million people with 3G, 294.6 million people with High Speed Packet Access+ ("HSPA+"), and 221.6 million people with LTE. Mosaik Solutions Data ("Mosaik"), July 2013.

[5] *See* AT&T 10-K at 2.

[6] Lead Application, Exhibit 1, Description of Transaction, Public Interest Showing and Related Demonstrations at 2 ("Public Interest Statement").

[7] *See* Atlantic Tele-Network, Inc., SEC Form 10-K at 2 (for the fiscal year ended Dec. 31, 2012) ("ATN 10-K"), *available at* http://www.sec.gov/Archives/edgar/data/879585/000104746913002987/a2213629z10-k.htm.

revenues, of which its U.S. wireless services accounted for approximately 73 percent.[8] In 2010, ATN acquired control of the retail operations, wireless licenses, and related authorizations in 26 of the 105 markets that the Commission and the U.S. Department of Justice ("DOJ") had required be divested as a condition of approving Verizon Wireless's acquisition of ALLTEL Corporation.[9] Through its subsidiary, Allied Wireless Communications Corporation ("Allied"), ATN continues to provide retail wireless voice and data services under the ALLTEL brand in these primarily rural areas to approximately 620,000 subscribers.[10] Allied's network currently covers approximately 4.7 million people, or approximately 1.5 percent of the population of the mainland United States. Allied currently offers 2G and 3G services in most of its service territories,[11] and has conducted technical field trials to evaluate upgrading its network to LTE.[12]

B. Description of Transaction

5. On February 5, 2013, AT&T and ATN filed the Applications pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (the "Communications Act"),[13] seeking Commission consent to the transfer of control of, and assignment of, a number of cellular, PCS, Lower 700 MHz Band B and C Block, and common carrier fixed point-to-point microwave licenses, spectrum leasing authorizations, and an international section 214 authorization. Allied will contribute the licenses, leases, authorizations, ownership interests, and other assets (including networks and subscribers) to its wholly-owned subsidiary, AWCC Acquisition Company, LLC ("AWCC"), and Allied subsequently will transfer its 100 percent interest in AWCC to a wholly-owned, indirect subsidiary of AT&T.[14] AT&T is purchasing all of the assets used by Allied in its "ALLTEL" operations.

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[8] *See* ATN 10-K at 45.

[9] *See* Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless, WT Docket No. 09-119, *Memorandum Opinion and Order*, 25 FCC Rcd 3763, 3772 ¶ 18 (2010) ("*ATN-Verizon Wireless Order*"). *See also United States, et. al v. Verizon Communications, Inc., and ALLTEL Corporation*, 607 F.Supp.2d 1, 5-10 (D.D.C. 2009) ("*U.S. v. Verizon Comm.*").

[10] *See* ATN 10-K at 3; Public Interest Statement at 2-3. The subscriber count includes 35,000 customers attributable to the unconsolidated partnership Georgia RSA #8 Partnership, in which ATN has an approximate 33% interest. *See id.* at 3 n.8; *see also* n.117 *infra*. ATN also has wholesale and data roaming wireless operations that are not involved in this transaction. Public Interest Statement at 3.

[11] Of the 4.7 million people covered by its wireless network, ATN covers 4.5 million people with 3G. Mosaik, July 2013.

[12] *See* ATN 10-K at 4.

[13] 47 U.S.C. §§ 214, 310(d).

[14] In addition to assigning the licenses it holds to AWCC (*see* ULS File No. 0005632405), Allied would transfer to AT&T ownership of interests in five partnerships that are spectrum licensees (*see* ULS File Nos. 0005631527, 0005631556, 0005631562, 0005631563, and 0005631565), as well as control of a partnership that leases spectrum from a third party (*see* ULS File No. 0005631586). Lastly, partnerships in which Allied holds an interest have filed applications for new authorizations to lease spectrum to AWCC (in lieu of applications for Allied to assign existing (continued….)

6. In these transactions, AT&T is proposing to acquire 10 to 57 megahertz of spectrum in 162 counties in 30 Cellular Market Areas ("CMAs") across parts of Alabama, Georgia, Idaho, Illinois, North Carolina, Ohio, South Carolina, and Washington, as well as Allied's retail operations located in mostly rural parts of Georgia, Idaho, Illinois, North Carolina, Ohio, and South Carolina.[15] ATN asserts that it has struggled to adjust to demand in its markets for mobile broadband services and to make the necessitated network upgrades,[16] while AT&T claims it will transition Allied's customers to a 4G network.[17] AT&T uses "4G" to encompass both its HSPA+ and its LTE service offerings, and in this order, we will use this term to have this same meaning.

C. Transaction Review Process

7. On February 5, 2013, the Applicants filed the Applications. On March 5, 2013, the Commission released a public notice announcing acceptance of the Applications for filing and establishing a pleading cycle, with petitions to deny due April 4, 2013, oppositions due April 15, 2013, and replies due April 22, 2013.[18] In response to the *Comment Public Notice*, the Commission received two petitions to deny and one comment, a Joint Opposition from the Applicants, and two replies.[19] We address issues raised in these filings below.

8. On June 5, 2013, pursuant to section 308(b) of the Communications Act, the Wireless Telecommunications Bureau ("Wireless Bureau") requested additional information and documents from AT&T and ATN.[20] The Wireless Bureau also released protective orders to ensure that any confidential or proprietary documents submitted to the Commission would be adequately protected from public

(Continued from previous page)

spectrum leasing authorizations to AWCC) (*see* ULS File Nos. 0005632708, 0005632710, 0005632713, and 0005632716). All of these spectrum interests have been attributed to AT&T for purposes of our competitive analysis.

[15] *See* Public Interest Statement at 1.

[16] *See id.* at 7.

[17] *See id.* at 7.

[18] AT&T Inc. and Atlantic Tele-Network, Inc. Seek FCC Consent to the Transfer of Control and Assignment of Licenses, Spectrum Leasing Authorizations, and an International Section 214 Authorization, *Public Notice*, 28 FCC Rcd 2165 (2013) ("*Comment Public Notice*").

[19] *See* Appendix A *infra*. Maneesh Pangasa filed a number of comments after the comment period closed.

[20] *See* Letter from Ruth Milkman, Chief, Wireless Telecommunications Bureau, to Michael P. Goggin, AT&T Inc., WT Docket No. 13-54 (June 5, 2013); Letter from Ruth Milkman, Chief, Wireless Telecommunications Bureau, to Douglas J. Minster, Allied Wireless Communications Corporation, WT Docket No. 13-54 (June 5, 2013).). On August 27, 2013, the Wireless Bureau suspended the informal 180-day clock for reviewing transactions because AT&T had not provided detailed responses on its plans to transition Allied's significant prepaid customer base. *See* Letter from Ruth Milkman, Chief, Wireless Telecommunications Bureau, to Michael Goggin, AT&T, Inc., and Douglas J. Minster, Allied Wireless Communications Corporation, WT Docket No. 13-55 (Aug. 27, 2013). AT&T provided additional information on those and other issues on August 28, 2013 and September 18, 2013. *See* AT&T Third Supplemental Response, August 28, 2013; AT&T Fifth Supplemental Response, September 18, 2013.

disclosure, and to announce the process by which interested parties could gain access to confidential information filed in the record.[21] Also on June 5, 2013, the Wireless Bureau released a public notice announcing that Numbering Resource Utilization and Forecast ("NRUF") reports and local number portability ("LNP") data would be placed into the record and adopted a protective order pursuant to which the Applicants and third parties would be allowed to review the specific NRUF reports and LNP data placed into the record.[22]

9. Maneesh Pangasa, in a document submitted in this proceeding and in the proceeding addressing the transfer of various spectrum licenses by AT&T, Verizon Wireless, and Grain,[23] urges the Commission to combine its review of both sets of proposed transactions.[24] In addition to being late-filed, the statement appears to reflect several procedural defects, including a failure to serve the Applicants.[25] Mr. Pangasa supplemented this statement with five other submissions that raise general concerns about spectrum aggregation and various wireless industry practices.

10. We have declined to consolidate the proceedings as Mr. Pangasa requests in his late-filed statement.[26] The Commission has broad authority to "conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice."[27] The Pangasa

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[21] Applications of AT&T Inc. and Atlantic Tele-Network, Inc. for Consent To Transfer Control and Assign Licenses and Authorizations, WT Docket No. 13-54, *Protective Order*, 28 FCC Rcd 8197 (WTB 2013); Applications of AT&T Inc. and Atlantic Tele-Network, Inc. for Consent To Transfer Control and Assign Licenses and Authorizations, WT Docket No. 13-54, *Second Protective Order*, 28 FCC Rcd 8204 (WTB 2013); Applications of AT&T Inc. and Atlantic Tele-Network, Inc. for Consent To Transfer Control and Assign Licenses and Authorizations, WT Docket No. 13-54, Supplement to Second Protective Order, Appendix A (Revised), 28 FCC Rcd 8886 (WTB 2013) (together, the "*Protective Orders*"). The unredacted version of this Memorandum Opinion and Order shall be available upon request to qualified persons who have executed the signed acknowledgements required by the *Protective Orders*. Qualified persons who have not yet signed the required acknowledgments may do so in order to obtain the confidential version of this Memorandum Opinion and Order.

[22] Applications of AT&T Inc., and Atlantic Tele-Network, Inc. for Consent To Transfer Control and Assign Licenses and Authorizations, Numbering Resource Utilization and Forecast Reports and Local Numbering Portability Reports to Be Placed Into the Record, Subject to Protective Order, WT Docket No. 13-54, *Public Notice*, 28 FCC Rcd 8219 (WTB 2013); Applications of AT&T Inc., and Atlantic Tele-Network, Inc. for Consent To Transfer Control and Assign Licenses and Authorizations, WT Docket No. 13-54, *NRUF/LNP Protective Order*, 28 FCC Rcd 8213 (WTB 2013).

[23] *See* WT Docket No. 13-56; Application of AT&T Mobility Spectrum LLC, ULS File No. 0005627587 (filed Feb. 6, 2013) (designated as the lead application in that transaction).

[24] *See* Maneesh Pangasa Statement for the Record (filed May 10, 2013) ("Pangasa Statement").

[25] Other apparent defects include failure to provide the filer's name, street address, telephone number, or signature.

[26] Applications of AT&T Inc., Cellco Partnership d/b/a Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC, and Grain Spectrum II, LLC For Consent To Assign and Lease AWS-1 and Lower 700 MHz Licenses, WT Docket No. 13-56, *Memorandum Opinion and Order*, DA 13-1854, at ¶ 12 (WTB rel. Sept. 3, 2013) ("*AT&T-Verizon Wireless-Grain Order*").

[27] 47 U.S.C. § 154(j); *see FCC v. Schreiber,* 381 U.S. 279 (1965).

Statement does not explain why the Commission should consolidate these proceedings. Mr. Pangasa does not identify any substantive issues or competitive harms that would result from approval of the transactions, and he fails as well to provide any evidence specific to these transactions. As such, we see no basis to formally consolidate these proceedings.

11. More recently, Mr. Pangasa filed a request that the Commission combine its review of this transaction with the review of the recently filed AT&T-Leap Wireless transaction.[28] For the same reasons, and with the same legal basis, that we declined to consolidate review of this transaction with our review of the AT&T-Verizon Wireless-Grain transaction, we have declined to consolidate this transaction proceeding with the AT&T-Leap Wireless proceeding.

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

12. Pursuant to sections 214(a) and 310(d) of the Communications Act, we must determine whether the Applicants have demonstrated that the proposed transfer of control and assignment of licenses, authorizations, and spectrum leasing arrangements will serve the public interest, convenience, and necessity.[29] In making this assessment, we first examine whether the proposed transaction complies with the specific provisions of the Communications Act,[30] other applicable statutes, and the Commission's rules.[31] If the transaction does not violate a statute or rule, we next consider whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives

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[28] *See* Maneesh Pangasa Statement for the Record (filed Sept. 6, 2013) ("Pangasa Second Statement"). *See also* AT&T Inc., Leap Wireless International, Inc., Cricket License Company, LLC, and Leap Licenseco, Inc. Seek Consent to the Transfer of Control of AWS-1 Licenses, PCS Licenses, and Common Carrier Fixed Point to Point Microwave Licenses, and International 214 Authorizations, and the Assignment of One 700 MHz License, WT Docket No. 13-1831, *Public Notice*, DA 13-1831 (rel. Aug. 28, 2013). The Pangasa Second Statement suffers from the same procedural defects as the Pangasa Statement.

[29] *See* 47 U.S.C. §§ 214(a), 310(d).

[30] Section 310(d) requires that we consider the application as if the proposed assignee were applying for the licenses directly under Section 308 of the Act, 47 U.S.C. § 308. *See, e.g.*, Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses, WT Docket No. 12-4, *Memorandum Opinion and Order and Declaratory Ruling*, 27 FCC Rcd 10698, 10710 ¶ 28 (2012) ("*Verizon Wireless-SpectrumCo Order*").

[31] *See, e.g.,* Applications of GCI Communication Corp., ACS Wireless License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. for Consent To Assign Licenses to The Alaska Wireless Network, WT Docket No. 12-187, *Memorandum Opinion and Order and Declaratory Ruling*, 28 FCC Rcd 10433, 10442 ¶ 23 (2013) ("*Alaska Wireless Order*"); Applications of SOFTBANK CORP., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation, IB Docket No. 12-343, *Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration*, 28 FCC Rcd 9642, 9650 ¶ 23 (2013) ("*SoftBank-Sprint Order*"); Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corporation, Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas & Electric Company For Consent To Assign and Transfer Licenses, WT Docket No. 12-240, *Memorandum Opinion and Order*, 27 FCC Rcd 16459, 16463-64 ¶ 10 (2012) ("*AT&T-WCS Order*"); *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710 ¶ 28.

or implementation of the Communications Act or related statutes.[32] We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.[33] The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.[34]

13. Our public interest evaluation necessarily encompasses the "broad aims of the Communications Act," which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest.[35] Our public interest analysis also can entail assessing whether the proposed transaction will affect the quality of communications services or result in the provision of new or additional services to consumers.[36] In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.[37]

14. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.[38] The Commission and the DOJ each have independent authority to examine the competitive impacts of proposed communications mergers and transactions involving transfers of Commission licenses, but the standards governing the Commission's competitive review differ somewhat from those applied by the DOJ.[39] Like the DOJ, the

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[32] *See, e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10442 ¶ 23; *SoftBank-Sprint Order*, 28 FCC Rcd at 9650-51 ¶ 23; *AT&T-WCS Order*, 27 FCC Rcd at 16463-64 ¶ 10; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710 ¶ 28.

[33] *See, e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10442 ¶ 23; *SoftBank-Sprint Order*, 28 FCC Rcd at 9651 ¶ 23; *AT&T-WCS Order*, 27 FCC Rcd at 16463-64 ¶ 10; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710 ¶ 28.

[34] *See, e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10442 ¶ 23; *SoftBank-Sprint Order*, 28 FCC Rcd at 9651 ¶ 23; *AT&T-WCS Order*, 27 FCC Rcd at 16463-64 ¶ 10; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710 ¶ 28.

[35] *See, e.g.,* Application of AT&T Inc. and Qualcomm Incorporated For Consent To Assign Licenses and Authorizations, WT Docket No. 11-18*, Order*, 26 FCC Rcd 17589, 17603 ¶ 23 n.96 (2011) (*"AT&T-Qualcomm Order*"). *See also Alaska Wireless Order*, 28 FCC Rcd at 10442 ¶ 24; *SoftBank-Sprint Order*, 28 FCC Rcd at 9651 ¶ 24; Applications of AT&T Inc. and Centennial Communications Corp. For Consent To Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements, WT Docket No. 08-246, *Memorandum Opinion and Order,* 24 FCC Rcd 13915, 13928 ¶ 28 (2009) ("*AT&T-Centennial Order*").

[36] *See, e.g., Alaska Wireless Order*, 28 FCC Rcd at 10442 ¶ 24; *SoftBank-Sprint Order*, 28 FCC Rcd at 9651 ¶ 24; *AT&T-WCS Order*, 27 FCC Rcd at 16464 ¶ 11; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10752 ¶ 143.

[37] *See, e.g., Alaska Wireless Order*, 28 FCC Rcd at 10442-43 ¶ 24; *SoftBank-Sprint Order*, 28 FCC Rcd at 9651 ¶ 24; *AT&T-WCS Order*, 27 FCC Rcd at 16464 ¶ 11; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 24.

[38] *See, e.g.*, *Alaska Wireless OrderI* 28 FCC Rcd at 10443 ¶ 25; *SoftBank-Sprint Order*, 28 FCC Rcd at 9651 ¶ 25; *AT&T-WCS Order*, 27 FCC Rcd at 16464-65 ¶ 12; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710 ¶ 29.

[39] *See, e.g., Alaska Wireless Order*, 28 FCC Rcd at 10443 ¶ 25; *SoftBank-Sprint Order*, 28 FCC Rcd at 9651-52 ¶ 25; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17599-17600 ¶ 25.

Commission considers how a transaction will affect competition by defining a relevant market, looking at the market power of incumbent competitors, and analyzing barriers to entry, potential competition, and the efficiencies, if any, that may result from the transaction.[40] The DOJ, however, reviews telecommunications mergers pursuant to section 7 of the Clayton Act, and if it sues to block a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.[41] The DOJ's review also is limited solely to an examination of the competitive effects of the acquisition, without reference to other public interest considerations.[42] The Commission's competitive analysis under the public interest standard is somewhat broader, considering, for example, whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant market.[43] Under the Commission's review, the Applicants must show that the transaction will serve the public interest; otherwise the application is set for hearing.[44] Finally, the Commission's public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.[45]

IV. QUALIFICATIONS OF APPLICANTS

15. Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite "citizenship, character, financial, technical, and other qualifications."[46] Therefore, as a threshold matter, the Commission must determine whether the applicants to the proposed transaction – both the assignee and the assignor – meet the requisite

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[40] *See, e.g, Alaska Wireless Order*, 28 FCC Rcd at 10443 ¶ 25; *SoftBank-Sprint Order*, 28 FCC Rcd at 9652 ¶ 25; *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 29.

[41] 15 U.S.C. § 18.

[42] *See, e.g., Alaska Wireless Order*, 28 FCC Rcd at 10443 ¶ 25; *SoftBank-Sprint Order*, 28 FCC Rcd at 9652 ¶ 25; *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 29.

[43] *See, e.g., Alaska Wireless Order*, 28 FCC Rcd at 10443 ¶ 25; *SoftBank-Sprint Order*, 28 FCC Rcd at 9652 ¶ 25; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17599-17600 ¶ 25.

[44] 47 U.S.C. § 309(e); *see also AT&T-WCS Order,* 27 FCC Rcd at 16464-65 ¶ 12; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 25; Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, *Memorandum Opinion and Order and Report and Order*, 23 FCC Rcd 12348, 12364 ¶ 30 (2008); News Corp. and DIRECTV Group, Inc. and Liberty Media Corp. for Authority To Transfer Control, *Memorandum Opinion and Order*, 23 FCC Rcd 3265, 3277 ¶ 22 (2008).

[45] 47 U.S.C. §§ 214(c) (authorizing the Commission to impose "such terms and conditions as in its judgment the public convenience and necessity may require"), 303(r) (authorizing the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Communications Act); *see*, *e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10443 ¶ 26; *SoftBank-Sprint Order*, 28 FCC Rcd at 9652 ¶ 25; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10711 ¶ 30.

[46] 47 U.S.C. §§ 308, 310(d); *see also, e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10444 ¶ 28; *SoftBank-Sprint Order*, 28 FCC Rcd at 9652 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10712 ¶ 33.

qualifications requirements to hold and transfer licenses under section 310(d) and the Commission's rules.[47]

16. *Discussion*. As an initial matter, we note that no parties have raised issues with respect to the basic qualifications of ATN. The Commission generally does not reevaluate the qualifications of assignors unless issues related to basic qualifications have been sufficiently raised in petitions to warrant designation for hearing.[48] We find that there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Communications Act and our rules, regulations, and policies, of ATN.

17. In addition, no issues have been raised with respect to the basic qualifications of AT&T. AT&T previously and repeatedly has been found qualified to hold Commission licenses.[49] We find that there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Communications Act and our rules, regulations, and policies, of AT&T.

V. POTENTIAL PUBLIC INTEREST HARMS

18. In reviewing applications involving a proposed transaction, the Commission evaluates the potential public interest harms, including potential competitive harms that may result from the transaction.[50] The Commission undertakes a case-by-case review of the competitive effects of any increase in market concentration or in spectrum holdings in the relevant markets.[51] The Commission's competitive analysis of wireless transactions focuses initially on markets where the acquisition of customers and/or spectrum would result in significant concentration of either or both, and thereby could lead to competitive harm.[52] In its analysis, the Commission has used an initial screen to help identify those markets that provide particular reason for further competitive analysis. As set out in various transactions orders, however, the Commission has not limited its consideration of potential

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[47] *See* 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; *see also, e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10444-45 ¶ 28; *SoftBank-Sprint Order*, 28 FCC Rcd at 9652-53 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10712 ¶ 33.

[48] *See, e.g., Alaska Wireless Order*, 28 FCC Rcd at 10445 ¶ 29; *SoftBank-Sprint Order*, 28 FCC Rcd at 9653 ¶ 27; *AT&T-WCS Order*, 27 FCC Rcd at 16466 ¶ 18.

[49] *See*, *e.g.*, *AT&T-Verizon Wireless-Grain Order*, DA 13-1854, at ¶ 17; *AT&T-WCS Order*, 27 FCC Rcd at 16466-67 ¶ 19.

[50] *See, e.g., SoftBank-Sprint Order*, 28 FCC Rcd at 9656 ¶ 34; *Verizon Wireless-SpectrumCo Order,* 27 FCC Rcd at 10716 ¶¶ 47-48, 10734 ¶ 95; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17622-23 ¶ 81.

[51] *See, e.g., Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31; *AT&T-Centennial Order,* 24 FCC Rcd at 13938 ¶ 50.

[52] *See, e.g., SoftBank-Sprint Order*, 28 FCC Rcd at 9656 ¶ 34.

competitive harms solely to markets identified by its initial screen, if it encounters other factors that may bear on the public interest inquiry.[53]

A. Competitive Overview and Market Definitions

1. Competitive Overview

19. Horizontal transactions such as the proposed transaction, in which rival firms in the same market are combining, raise potential competitive concerns when the combined entity has the incentive and the ability, either by itself or in coordination with other service providers, to raise prices, lower quality, or otherwise harm competition in a relevant market.[54] In our market-by-market analysis, we examine the likelihood of competitive harm by estimating the extent to which market concentration, as measured by the Herfindahl-Hirschman Index ("HHI"), would increase as a result of the proposed transaction.[55] We assess the potential competitive effects, post-transaction, of these increases in market concentration. In our market-by-market analysis, we also examine the likely competitive effects of an increase in spectrum holdings on the marketplace.[56] Spectrum is an essential input in the provision of mobile wireless services, and ensuring that sufficient spectrum is available for incumbent licensees as well as potential new entrants is critical to promoting effective competition and innovation in the marketplace.[57]

20. In considering the applications before us, we find, as detailed below, that the proposed transaction would likely lead to competitive or other public interest harms in the provision of mobile wireless services in several local markets.

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[53] *See, e.g., SoftBank-Sprint Order,* 28 FCC Rcd at 9656 ¶ 35; *AT&T-WCS Order*, 27 FCC Rcd at 16467 ¶ 21 (recognizing the proposition that the "Commission is not . . . limited in its consideration of potential competitive harms solely to markets identified by its initial screen" and, in addition to considering 10 local markets identified by the screen, analyzing the national market because the proposed acquisition would be in a substantial majority of local markets across the country); *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17609-10 ¶¶ 49-50 (recognizing that up to three markets could be triggered by the screen, but considering more broadly AT&T's post-transaction holdings under 1 GHz because, *inter alia*, of the record in that proceeding and the substantial holdings that the company would then have under 1 GHz).

[54] *See, e.g., SoftBank-Sprint Order*, 28 FCC Rcd at 9656 ¶ 34; *AT&T-Centennial Order*, 24 FCC Rcd at 13931-32 ¶ 34, 13939-42 ¶¶ 54, 56-57, 59, 61, 13948 ¶ 75; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468-69 ¶¶ 40-43, 17484-85 ¶¶ 82-83, 17487-88 ¶¶ 91-92.

[55] To assess whether the increase in horizontal market concentration is significant or not, we consider the absolute level of the post-transaction HHI, a widely utilized measure of market concentration, as well as the change in the HHI. *See* Section V.B.I *infra*.

[56] *See, e.g., Alaska Wireless Order*, 28 FCC Rcd at 10446 ¶ 33; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

[57] *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16467 ¶ 20; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; *AT&T-Qualcomm Order,* 26 FCC Rcd at 17601-02 ¶ 30.

2. Market Definitions

21. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,[58] including a determination of the product market, the geographic market, the input market for spectrum suitable and available for the provision of mobile wireless services, and the market participants.

22. *Product Market.* We continue to use the product market definition that the Commission has applied in recent transactions: a combined "mobile telephony/broadband services" product market that is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).[59] We note that no party in the proceeding challenged this mobile telephony/broadband services product market definition.

23. *Geographic Market.* The Commission has found that the relevant geographic markets for certain wireless transactions generally are "local" and also has evaluated a transaction's competitive effects at the national level where a transaction exhibits certain national characteristics that provide cause for concern.[60] As discussed below, for this transaction, we continue to use CMAs as the local geographic markets, and find no reason to analyze competitive effects at a national level.

24. The Applicants argue that it does not matter whether the geographic market is viewed as local or national since AT&T and Allied are not close competitors, and, further, that Allied exerts no influence on the competitive decision making of AT&T because of its small size and unusual footprint.[61] The Applicants also note that the transaction does not reduce the number of nationwide competitors in any market.[62] No other party to the proceeding addresses whether we should use a local or national geographic market definition or both.

25. The Commission has found that the relevant geographic markets for wireless transactions generally are "local"[63] because most consumers use their mobile telephony/broadband services where they live, work, and shop, and so purchase their services from service providers that

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[58] *See, e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10447 ¶ 34; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 36; *AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 23.

[59] *See, e.g., Alaska Wireless Order*, 28 FCC Rcd at 10447 ¶ 35; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 37; *AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 24.

[60] *See, e.g., Alaska Wireless Order*, 28 FCC Rcd at 10447-48 ¶ 36; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 38; *AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 24; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10717 ¶ 54.

[61] Public Interest Statement at 16-18.

[62] *Id.* at 17.

[63] *See, e.g., Alaska Wireless Order*, 28 FCC Rcd at 10447-48 ¶ 36; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 38; *AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 25.

offer and market services locally.[64] Service sold in distant locations is not a good substitute for service near a consumer's home or work.[65] In addition, service providers compete at the local level in terms of coverage, service quality, and localized promotions.[66] As the Commission has previously recognized, however, two key competitive variables – prices and service plan offerings – do not vary for most providers across most geographic markets.[67]

26. While the Commission has in the past, where appropriate, analyzed in detail a transaction's competitive effects at the national level, we see no reason to do so here. Through the proposed transaction, AT&T would acquire a regionally dispersed network that covers approximately 4.7 million people or under two percent of the population of the mainland United States. Given the limited local nature of the proposed transaction, we find it unlikely that there would be any significant effects of the transaction at the national level.[68] We therefore focus our analysis on any potential competitive harm that would likely be realized at the local level.[69]

27. *Input Market for Spectrum.* When a proposed transaction would increase the concentration of spectrum holdings in any local market, the Commission evaluates the acquiring firm's post-transaction holdings of spectrum that is "suitable" and "available" in the near term for the provision of mobile telephony/broadband services.[70] The Commission previously has determined that cellular, broadband PCS, Specialized Mobile Radio ("SMR"), and 700 MHz band spectrum, as well as Advanced Wireless Services ("AWS-1") and Broadband Radio Service ("BRS") spectrum where

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[64] *See, e.g.*, *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 38; *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 26; *see also Sixteenth Annual Competition Report,* 28 FCC Rcd at 3735 ¶¶ 22-23.

[65] *See, e.g., Alaska Wireless Order*, 28 FCC Rcd at 10448 ¶ 37; *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 56.

[66] *See, e.g., Alaska Wireless Order*, 28 FCC Rcd at 10448; *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 56.

[67] *See, e.g., AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 27; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718-19 ¶ 57; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604-05 ¶¶ 34-37.

[68] *See, e.g., SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 38; *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 28; *Verizon Wireless-SpectrumCo Order,* 27 FCC Rcd at 10719 ¶ 58. AT&T would be gaining approximately 620,000 subscribers in (mostly rural) markets, accounting for less than 1% of its current nationwide subscriber base of approximately 107 million. Given the limited geographical scope and size of the proposed transaction, AT&T would be unlikely to have an incentive to unilaterally increase its nationwide prices. In addition, it is unlikely that the proposed transaction would change the incentive for any coordinated conduct on a national basis among the four nationwide service providers.

[69] *See, e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10448 ¶ 37; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 38; *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 26.

[70] *See*, *e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10448 ¶ 37; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657-58 ¶ 39; *AT&T-WCS Order*, 27 FCC Rcd at 16469-70 ¶ 29; *Verizon Wireless-SpectrumCo Order,* 27 FCC Rcd at 10719 ¶ 59.

available,[71] and most recently, Wireless Communications Services ("WCS") spectrum, all meet this definition, and they have therefore been included in the initial spectrum screen.[72]

28. For purposes of the instant transaction, we decline to modify the current input market for spectrum. No party has argued that the Commission should modify in this proceeding which spectrum bands are included in this input market,[73] and we note that this issue, along with a range of other related issues, are being considered by the Commission in its ongoing review of its policies regarding mobile spectrum holdings.[74]

29. *Market Participants*: As in previous transactions, we will consider only facilities-based entities providing mobile telephony/broadband services using cellular, PCS, SMR, 700 MHz, AWS-1, BRS, and WCS spectrum to be market participants, but will continue to assess the effect of mobile virtual network operators and resellers in our competitive evaluation.[75]

B. Competitive Effects of Transaction

1. Initial Screen

30. As discussed above, we apply a two-part screen to help identify local markets where competitive concerns are more likely.[76] The first part of the screen is based on the size of the post-

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[71] *See*, *e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10449 ¶ 38; *SoftBank-Sprint Order*, 28 FCC Rcd at 9658 ¶ 39; Sprint Nextel Corporation and Clearwire Corporation Applications for Consent To Transfer Control of Licenses, Leases, and Authorizations, WT Docket No. 08-94, *Memorandum Opinion and Order*, 23 FCC Rcd 17570, 17591-92 ¶ 53 (2008).

[72] *See*, *e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10449 ¶ 38; *SoftBank-Sprint Order*, 28 FCC Rcd at 9659-60 ¶ 42; *AT&T-WCS Order*, 27 FCC Rcd at 16470-71 ¶ 31.

[73] As discussed in Section V.B.1 *infra*, certain parties did request changes to the screen other than which bands are included.

[74] *See generally* Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269, *Notice of Proposed Rulemaking*, 27 FCC Rcd 11710 (2012) ("*Mobile Spectrum Holdings NPRM*"). In the *Mobile Spectrum Holdings NPRM*, the Commission noted that during the pendency of the rulemaking proceeding, it would continue to apply its current case-by-case approach to evaluate mobile spectrum holdings in secondary market transactions and initial spectrum licensing after auctions. *See Mobile Spectrum Holdings NPRM*, 27 FCC Rcd 11710, 11718 ¶ 16 n.59. *See also AT&T-WCS Order*, 27 FCC Rcd at 16470 ¶ 30.

[75] *See, e.g., Alaska Wireless Order*, 28 FCC Rcd at 10449-50 ¶ 41; *SoftBank-Sprint Order*, 28 FCC Rcd at 9660 ¶ 43; Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc., WT Docket No. 12-301, *Memorandum Opinion and Order and Declaratory Ruling*, 28 FCC Rcd at 2334-35 ¶ 37 (WTB, IB 2013) ("*T-Mobile-MetroPCS Order*").

[76] *See, e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10450 ¶ 42; *SoftBank-Sprint Order*, 28 FCC Rcd at 9660 ¶ 44; Applications of AT&T Inc. and Cellco Partnership d/b/a/ Verizon Wireless, WT Docket No. 09-104, *Memorandum Opinion and Order*, 25 FCC Rcd 8704, 8720-21 ¶ 32 (2010) ("*AT&T-Verizon Wireless Order*").

transaction HHI, and the change in the HHI.[77] For purposes of determining HHIs in this transaction, we use our December 2012 NRUF database, which tracks phone number usage by all telecommunications service providers.[78] Consistent with our discussion of the local geographic market definition above, in calculating HHIs and the change in the HHI, we analyze service provider data by CMA. The second part of the screen, which is applied on a county-by-county basis, identifies local markets where an entity would acquire more than approximately one-third of the total spectrum suitable and available for the provision of mobile telephony/broadband services.[79] Furthermore, because AT&T is acquiring spectrum below 1 GHz in the majority of the CMAs, we also examine the possible competitive effects resulting from an increase in mobile spectrum holdings below 1 GHz, consistent with Commission precedent.[80]

31. *Record*. Public Knowledge argues that the transaction should be denied until the Commission completes its review in the *Mobile Spectrum Holdings Proceeding*.[81] RTG urges the Commission to impose a reduced spectrum screen until the conclusion of that proceeding.[82] RTG argues that AT&T should be required to divest or lease spectrum in markets where the company would control more than 25 percent of all suitable and available spectrum or 40 percent of all suitable and available

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[77] Our initial HHI screen identifies, for further case-by-case market analysis, those markets in which, post-transaction: (1) the HHI would be greater than 2800 and the change in HHI would be 100 or greater; or (2) the change in HHI would be 250 or greater, regardless of the level of the HHI. *See, e.g., Alaska Wireless Order*, 28 FCC Rcd at 10450 ¶ 42 n. 135; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8724-25 ¶ 42.

[78] These data indicate the number of assigned phone numbers that a wireless service provider has in a particular wireline rate center. Rate centers are geographic areas used by local exchange carriers for a variety of reasons, including the determination of toll rates. *See* HARRY NEWTON, NEWTON'S TELECOM DICTIONARY: 19TH EXPANDED & UPDATED EDITION 660 (July 2003). All mobile wireless providers must report to the FCC the quantity of their phone numbers that have been assigned to end users, thereby permitting the Commission to calculate the total number of mobile subscribers. For purposes of geographical analysis, the rate center data can be associated with a geographic point, and all of those points that fall within a county boundary can be aggregated together and associated with much larger geographic areas based on counties.

[79] *See, e.g., Alaska Wireless Order*, 28 FCC Rcd at 10450 ¶ 42; *AT&T-WCS Order*, 27 FCC Rcd at 16469-70 ¶ 29; *Verizon Wireless-SpectrumCo Order,* 27 FCC Rcd at 10719 ¶ 59. In particular, the spectrum screen is triggered where the Applicants would have, on a market-by-market basis, a 10% or greater interest in: 102 megahertz or more of cellular, PCS, SMR, 700 MHz, and WCS spectrum, where neither BRS nor AWS-1 spectrum is available; 121 megahertz or more of spectrum, where BRS spectrum is available, but AWS-1 spectrum is not available; 132 megahertz or more of spectrum, where AWS-1 spectrum is available, but BRS spectrum is not available; or 151 megahertz or more of spectrum where both AWS-1 and BRS spectrum are available. *See AT&T-WCS Order*, 27 FCC Rcd at 16471 ¶ 33 n.94.

[80] *See AT&T-Qualcomm Order,* 26 FCC Rcd at 17601-02 ¶ 30.

[81] Public Knowledge and the Writers Guild of America, West Petition To Deny (filed Apr. 4, 2013) at 3 ("Public Knowledge Petition"). *See generally Mobile Spectrum Holdings NPRM.*

[82] Rural Telecommunications Group, Inc. Comments (filed Apr. 4, 2013) at 2-3 ("RTG Comments"). Specifically, in its application of the screen, RTG includes 14 megahertz of SMR spectrum, and 70 megahertz of lower 700 MHz spectrum, which when combined with the other spectrum bands, gives a total of 429.5 megahertz. *Id.* at 4-5.

spectrum below 1 GHz.[83] Blue Wireless argues that BRS and AWS-1 spectrum should not be counted in the spectrum screen in CMA 587 (Ohio 3 – Ashtabula) because the spectrum is not currently in use by wireless providers in Ohio 3 – Ashtabula and, thus, that the Commission should not deem it available for mobile telephony/broadband service.[84]

32. The Applicants assert that claims made by RTG and Public Knowledge relating to the changes to the spectrum screen are not transaction-specific and thus are not appropriate to consider.[85] The Applicants also assert that AWS-1 and BRS are available in Ohio 3 – Ashtabula and that the spectrum should be included in the spectrum screen, as the availability of AWS-1 spectrum is readily verified from the National Telecommunications and Information Administration's December 1, 2012 report, and Clearwire has filed a construction notification with the Commission demonstrating that BRS spectrum is available under the proper legal test.[86]

33. *Discussion*. For purposes of the instant transaction, we decline to modify the current spectrum screen with respect to the trigger level and spectrum amounts. As noted above, the Commission is reviewing these issues, along with a number of related issues, in an ongoing rulemaking proceeding.[87] In addition, we find that AWS-1 and BRS spectrum are "available" in Ohio 3 – Ashtabula for purposes of application of our spectrum screen as the availability of AWS-1 spectrum has been verified[88] and BRS spectrum has been transitioned in this market.[89]

2. Competitive Analysis

34. The market for mobile telephony/broadband services in the United States is differentiated. Service providers compete not only on the basis of price but also on other variables such

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[83] RTG Comments at 4-6. Further, RTG states that in the *Mobile Spectrum Holdings* proceeding it recommended that all carriers be required to divest excess spectrum within an 18-month period but in the instant transaction, it now proposes long-term spectrum leasing as an alternative to divestiture. *Id.* at 6-7.

[84] Buffalo-Lake Erie Wireless Systems Co., L.L.C. Petition to Deny (filed Apr. 4, 2013) at 2-4 ("Blue Wireless Petition"). *See also* Buffalo-Lake Erie Wireless Systems Co., L.L.C. Reply (filed Apr. 22, 2013) at 3 ("Blue Wireless Reply").

[85] Joint Opposition at 11-12 (noting that both Public Knowledge and RTG are participating in the *Mobile Spectrum Holdings* proceeding where these arguments are pertinent).

[86] Joint Opposition at 6-8.

[87] *See Mobile Spectrum Holdings NPRM*, 27 FCC Rcd at 11725-28 ¶¶ 33-38.

[88] *See* National Telecommunications and Information Administration, AWS (1710-1755 MHz) Transition, at http://www.ntia.doc.gov/category/aws-1710-1755-mhz-transition.

[89] *See* Letter from Robert H. McNamara, Director, Spectrum Management, Government Affairs, Sprint Nextel, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 06-136 (filed Dec. 12, 2007).

as plan features, call quality, geographic coverage, and customer service.[90] Competition may be harmed either through unilateral actions by the combined entity, or through coordinated interaction among service providers competing in the relevant market.

35. Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by increasing its price or otherwise harming competition.[91] In the case of the provision of mobile telephony/broadband services, in addition to increasing prices, this might take the form of delaying improvements in service quality, adversely adjusting the features of a service offering without changing the price of the plan, or reducing the rate of new product development or other innovation in a relevant market. Coordinated effects arise when firms take actions that are profitable for each of them only as a result of the accommodating reactions of others.[92] Either or both unilateral and coordinated effects may arise from a proposed transaction, and the distinction between them is not always clear cut.[93]

36. We examine the possibility of anticompetitive harms arising from the proposed transaction that would affect the provision of mobile telephony/broadband services. We evaluate, generally, the likely competitive effect of increased market and spectrum concentration, and assess whether, post-transaction, the combined entity would have the incentive and ability to harm

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[90] While service providers can change some of these conduct variables, for example, price and customer service, relatively quickly, other variables – particularly non-price variables such as quality and coverage – require investments in spectrum or infrastructure and are not easily modified. *See, e.g.*, Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent To Transfer Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements and Petition For Declaratory Ruling that the Transaction Is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444, 17485 ¶ 85 (2008) ("*Verizon Wireless-ALLTEL Order*"); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21570, ¶ 116 (2004).

[91] *See, e.g.*, Horizontal Merger Guidelines, U.S. Department of Justice and the Federal Trade Commission, August 19, 2010, at § 6, p. 20 ("*2010 DOJ/FTC Horizontal Merger Guidelines*") ("A merger between firms selling differentiated products may diminish competition by enabling the merged firm to profit by unilaterally raising the price of one or both products above the pre-merger level."). *See also*, *e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10451 ¶ 44; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2336 ¶ 42; *AT&T-Centennial Order*, 24 FCC Rcd at 13939-40 ¶ 54; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 84.

[92] A merger may diminish competition by enabling or encouraging post-merger coordinated interaction among firms in the relevant market that harms customers. *2010 DOJ/FTC Horizontal Merger Guidelines* at § 7, p. 24. *See also*, *e.g., Alaska Wireless Order*, 28 FCC Rcd at 10460-61 ¶ 65; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2336-37 ¶ 43; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17491 ¶ 101; *AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 59.

[93] *See 2010 DOJ/FTC Horizontal Merger Guidelines* at § 2. *See also*, *e.g., Alaska Wireless Order*, 28 FCC Rcd at 10446 ¶ 33 n.104.

competition in any local market by adversely changing any local promotions, decreasing its investment in network coverage or network quality, or reducing its customer service.

37. *Record*. RTG, Public Knowledge, and Blue Wireless argue that the elimination of Allied would result in competitive harm in terms of spectrum holdings and market concentration.[94] RTG asserts that competitive harm results from spectrum concentration in any market with fewer than four providers regardless of whether those providers are nationwide or not.[95] RTG contends that each incremental addition of spectrum entrenches the duopoly position of AT&T and Verizon Wireless while debilitating all small providers in the country.[96] Public Knowledge argues that it is difficult to conceive how spectrum that would be competitively harmful if held by Verizon Wireless would not cause similar competitive harm if held by AT&T,[97] and notes that the spectrum aggregation screen is triggered.[98] Public Knowledge asserts that the transaction only entrenches the largest wireless carriers' market dominance – the opposite result of what the original market divestiture from Verizon Wireless-ALLTEL was expected to do.[99] Further, Blue Wireless argues that the markets were originally sold to Allied because AT&T could not buy them given the market concentration at the time.[100] Blue Wireless contends that an analysis of the market concentration will confirm the lack of relative competition in the market today with AT&T and Verizon Wireless as duopoly firms.[101] Blue Wireless argues that the record does not support the argument that Allied is a failing company that is hard-pressed to survive absent this transaction.[102]

38. The Applicants respond that, post-transaction, at least four competitors would remain in almost every area affected by the proposed transaction.[103] The Applicants argue that claims of a duopoly overlook the fact that AT&T and Verizon Wireless occupy vastly different competitive positions

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[94] RTG Comments at 3-4; Public Knowledge Petition at 4-7; Blue Wireless Petition at 5-6; Rural Telecommunications Group, Inc. Reply Comments (filed Apr. 22, 2013) at 1-4 ("RTG Reply Comments").

[95] RTG Comments at 3.

[96] RTG Reply Comments at 3.

[97] Public Knowledge Petition at 3.

[98] *Id*.

[99] *Id.* at 7.

[100] Letter from Donald J. Evans, Counsel for Buffalo-Lake Erie Wireless, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket 13-54, attachment at 6 (filed May 14, 2013) ("Blue Wireless May 14th *Ex parte*"); Blue Wireless Petition at 6.

[101] Blue Wireless Petition at 5-6.

[102] Letter from Donald J. Evans, Counsel for Buffalo-Lake Erie Wireless, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket 13-54, 4 (filed Aug. 15, 2013) ("Blue Wireless Aug. 15th *Ex parte*").

[103] Joint Opposition at 3-4.

in the relevant CMAs.[104] The Applicants argue that the proposed transaction is procompetitive given Allied's declining significance and AT&T's existing modest presence in Allied's territory.[105]

39. *Discussion*: In our market-by-market analysis set out below, we examine the likelihood of competitive harm by assessing the potential competitive effects of any significant increases in market and spectrum concentration on the marketplace. Further, in the instant transaction, AT&T is acquiring spectrum below 1 GHz in the majority of the CMAs, and consistent with Commission precedent, we also examine whether AT&T's post-transaction aggregation of spectrum below 1 GHz could foreclose or raise the costs of other service providers in these markets, and thereby prevent such rival service providers from exerting an effective competitive constraint in the marketplace.[106]

40. Our application of the initial HHI screen to the proposed transaction triggers 21 local markets.[107] In addition, our application of the initial total spectrum screen triggers one local market, CMA 587 (Ohio 3 – Ashtabula), which is also triggered by the HHI screen.[108] As part of our analysis of these markets, we also consider the potential impact of the aggregation of spectrum below 1 GHz by AT&T.[109] We evaluate whether it is likely that there would be any competitive or other public interest harms resulting from increased market or spectrum concentration in these markets.

41. In undertaking our market-by-market analysis,[110] we consider various competitive variables that help to predict the likelihood of competitive harm post-transaction.[111] In our review, we

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[104] *Id.* at 6.

[105] *Id.* at 4.

[106] *See AT&T-Qualcomm Order,* 26 FCC Rcd at 17601-02 ¶ 30.

[107] The 21 CMAs that trigger the HHI screen are: CMA 166 (Hickory, NC); CMA 227 (Anderson, SC); CMA 231 (Mansfield, OH); CMA 261 (Albany, GA); CMA 377 (Georgia 7 – Hancock); CMA 378 (Georgia 8 – Warren); CMA 379 (Georgia 9 – Marion); CMA 380 (Georgia 10 – Bleckley); CMA 382 (Georgia 12 – Liberty); CMA 383 (Georgia 13 – Early); CMA 390 (Idaho 3 – Lemhi); CMA 401 (Illinois 8 – Washington); CMA 402 (Illinois 9 – Clay); CMA 566 (North Carolina 2 – Yancey); CMA 569 (North Carolina 5 – Anson); CMA 586 (Ohio 2 – Sandusky); CMA 587 (Ohio 3 – Ashtabula); CMA 625 (South Carolina 1 – Oconee); CMA 626 (South Carolina 2 – Laurens); CMA 627 (South Carolina 3 – Cherokee); and CMA 631 (South Carolina 7 – Calhoun).

[108] In all markets implicated by the proposed transaction, the appropriate trigger is 151 megahertz. Post-transaction, AT&T would hold 155 megahertz of spectrum in CMA 587, which triggers the spectrum screen by 4 megahertz.

[109] AT&T would acquire 25 megahertz of cellular spectrum across 26 CMAs, and 12 megahertz of Lower 700 MHz Band spectrum across 9 CMAs. The maximum amount of spectrum below 1 GHz that AT&T would hold in any market, post-transaction, is 55 megahertz, or just over one-third of the total amount of spectrum below 1 GHz that the Commission has determined is suitable and available for the provision of mobile telephony/broadband services. *See also AT&T-Verizon Wireless-Grain Order,* DA 13-1854, at ¶ 41 n.115. We find that the potential for competitive harm from these spectrum acquisitions, apart from their inclusion in our analysis of individual markets discussed below, is unlikely.

[110] We derive market shares and HHIs from our analysis of data compiled in our 2012 NRUF and LNP database. We derive network coverage from Mosaik July 2013 data and 2010 U.S. Census data, and we obtain spectrum holdings (continued….)

organize our market-by-market analysis in state-bounded clusters consistent with the Modified Final Judgment in *United States v. Verizon Communications Inc. and ALLTEL Corporation*.[112] The Modified Final Judgment directed that the majority of the markets be divested in clusters, each cluster to be sold to a single purchaser unless DOJ approval was obtained to break up a cluster to multiple acquirers, and our analysis is mindful of this direction in analyzing the potential competitive effects.[113] The DOJ clustered the divested CMAs together to promote competition, as service providers may benefit from potential efficiencies from serving a larger geographic area, and are likely to be more competitive when serving contiguous areas.[114] In deciding the particular clusters, the DOJ "recognized that selling areas with significant linkages across these areas provides greater assurance that the buyer will be an effective competitor."[115]

42. After carefully evaluating the various market characteristics that may indicate whether there would be a likelihood of competitive harm from AT&T's proposed acquisition of Allied, we find that, with the exception of the Ohio markets, competitive harm is likely in at least one local market in each of the six state clusters. In our evaluation of the other triggered markets in the state clusters, we

(Continued from previous page)

from our licensing databases and the Applications. In addition, we examine porting data from our 2012 LNP database, as well as from data submitted by the Applicants, which includes each instance of a customer porting a phone number from one mobile provider to another, and indicates both the origin and destination provider. We also utilized and analyzed the additional data as provided by the Applicants through our information requests.

[111] These competitive variables include, but are not limited to: the total number of rival service providers; the number of rival firms that can offer competitive nationwide service plans; the coverage by technology of the firms' respective networks; the rival firms' market shares; the combined entity's post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum holdings of each of the rival service providers. *See, e.g., Alaska Wireless Order*, 28 FCC Rcd at 10454-56 ¶¶ 51-55; *AT&T-WCS Order*, 27 FCC Rcd at 16472 ¶ 34; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10725-26 ¶ 72.

[112] On October 30, 2008, DOJ filed a series of documents reflecting the settlement between the DOJ and Verizon Wireless and ALLTEL Corporation designed to eliminate the anticompetitive effects of the Verizon Wireless-ALLTEL merger in certain markets, and the parties jointly filed proposed Final Judgments. *See ATN-Verizon Wireless Order*, 25 FCC Rcd 3763, 3772 ¶ 18. On April 7, 2010, the DOJ approved the proposed divestiture of 26 markets to ATN. *See U.S. v. Verizon Comm.*, 607 F.Supp.2d at 5-10 (D.D.C. 2009), as modified, United States, et. al v. Verizon Communications, Inc., and ALLTEL Corporation, 2011 WL 1882488, 6-9 (D.D.C. 2011) ("Modified Final Judgment").

[113] *See U.S. v. Verizon Comm.*, 607 F.Supp.2d at 7-9. The Modified Final Judgment will expire on April 23, 2019, ten years from the date of its entry. *U.S. v. Verizon Comm.*, 607 F.Supp.2d at 14.

[114] *See United States, State of Alabama, State of California, State of Iowa, State of Kansas, State of Minnesota, State of North Dakota, and State of South Dakota, Plaintiffs, v. Verizon Communications, Inc. and Alltel Corporation*, *Defendants*, 2008 WL 5737926 (Trial Filing) (D.D.C. Oct. 30, 2008) Competitive Impact Statement, at 16 (No. 108-CV-01878).

[115] *Id.*

find that the likelihood of competitive harm is low in certain of the triggered markets, based on the particular facts in each market, which include but are not limited to capacity and the ability of other rival service providers to offer competitive services.[116] We discuss below our reasons for finding competitive harm likely in several of the triggered markets, beginning with our analysis of the Georgia markets, and then evaluating in turn the markets in Idaho, North Carolina, South Carolina, and Illinois.

43. *Georgia*: This cluster contains nine local markets,[117] seven of which are rural.[118] Seven of the nine Georgia markets trigger the HHI screen; with the exception of CMA 261 (Albany, GA), the triggered markets are rural. Our market-by-market analysis identifies concerns that, post-transaction, competitive harm would be likely in five of these seven local markets.[119] The number of service providers with significant market presence would be reduced from three to two in all five of these rural markets.[120] Currently, AT&T's market share ranges from approximately **[REDACTED]** percent and Allied's market share ranges from approximately **[REDACTED]** percent. Across the five markets, the market share of the combined entity would range from approximately **[REDACTED]** percent.[121] Verizon

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[116] *See AT&T-Centennial Order*, FCC Rcd at 13948-49 ¶ 76.

[117] The markets are CMA 153 (Columbus, GA-AL), CMA 261 (Albany, GA), CMA 376 (Georgia 6 – Spalding), CMA 377 (Georgia 7 – Hancock), CMA 378 (Georgia 8 – Warren), CMA 379 (Georgia 9 – Marion), CMA 380 (Georgia 10 – Bleckley), CMA 382 (Georgia 12 – Liberty), and CMA 383 (Georgia 13 – Early). In CMA 378 (Georgia 8 – Warren), the license is held by Georgia RSA #8 Partnership, in which Allied has an approximate 33% interest. Eight of these nine CMAs were included in the DOJ cluster; Allied subsequently acquired an additional 12 megahertz of 700 MHz B block spectrum in CMA 153.

[118] The population density is measured by the number of people per square mile using Census 2010 data. Rural markets are characterized by fewer than 100 people per square mile. *See* Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum Based Services, *Report and Order*, 19 FCC Rcd 19078, 19087-88 (2004).

[119] These five markets are CMA 377 (Georgia 7 – Hancock) with a population of 144,313 and a population density of 48.4, CMA 378 (Georgia 8 – Warren) with a population of 182,793 and a population density of 39.7, CMA 379 (Georgia 9 – Marion) with a population of 131,255 and a population density of 33.9, CMA 380 (Georgia 10 – Bleckley) with a population of 182,694 and a population density of 43.9, and CMA 383 (Georgia 13 – Early) with a population of 157,078 and a population density of 41.5.

[120] In CMA 377, the post-transaction HHI is **[REDACTED]** and the change in the HHI is **[REDACTED]**. The respective values are **[REDACTED]** in CMA 378**, [REDACTED]** in CMA 379**, [REDACTED]** in CMA 380, and **[REDACTED]** in CMA 383. In this Memorandum Opinion and Order, "[**REDACTED**]," "[**BEGIN CONFIDENTIAL**]" and "[**END CONFIDENTIAL**]," and "[**BEGIN HIGHLY CONFIDENTIAL**]" and "[**END HIGHLY CONFIDENTIAL**]" indicates confidential or proprietary information, or analysis based on such information, submitted pursuant to the *Protective Orders* in this proceeding.

[121] As proxied by porting data, AT&T and Allied are not close substitutes in these markets. Approximately **[REDACTED]**% of Allied's subscribers ported to AT&T and approximately **[REDACTED]**% of AT&T's subscribers ported to Allied in 2012. 2012 LNP Data; ATN IR Response, June 19, 2013, at 45-46; AT&T IR Response, June 19, 2013, at 32.

Wireless's market share ranges from approximately **[REDACTED]** percent.[122] With respect to network coverage, Verizon Wireless would be the only other service provider besides the combined entity with significant total coverage post-transaction.[123] Further, Verizon Wireless has deployed a significant LTE network in these markets.[124] AT&T has significant total coverage, and while its HSPA+ or LTE coverage varies by market, it covers no more than approximately 43 percent of the land area with HSPA+ and its LTE deployment is substantially more limited.[125] Across the five markets, the two other nationwide service providers, Sprint and T-Mobile, each hold **[REDACTED]** percent of the market, and neither has significant advanced broadband coverage in any market.[126]

[122] With regard to spectrum, post-transaction AT&T's spectrum holdings would range from 73-125 megahertz of spectrum across the five markets, including 43-55 megahertz of spectrum below 1 GHz, while Verizon Wireless's spectrum holdings range from 77-117 megahertz, Sprint's spectrum holdings range from 104.75-118.25 megahertz, and T-Mobile's spectrum holdings range from 45-90 megahertz. Other licensees also hold spectrum in parts of or throughout the five markets, with spectrum holdings in their licensed areas ranging from 6-40 megahertz.

[123] The Commission has previously found coverage of 70% or more of the population and 50% or more of the land area as presumptively sufficient for a provider to have a competitive presence in a market. *See, e.g., T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2339 ¶ 50 n.119; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8733 ¶ 65. Population and land area coverage are derived from Mosaik, July 2013, and the 2010 U.S. Census data.

[124] Verizon Wireless's total coverage is at least 98% of the population and 92% of the land area. Further, its LTE network covers at least 96% of the population and 84% of the land area in these five markets.

[125] AT&T covers over 70% of the population with HSPA+ in CMA 377 and CMA 383, and over 30% of the population with LTE in CMA 377 and CMA 380, and has at least 34% HSPA+ population coverage in the other three markets, but does not have significant HSPA+ or LTE land area coverage in any of these Georgia markets, with its HSPA+ land area coverage ranging from approximately 10% to 43%, and its LTE land area coverage ranging from less than 1% to 29%.

[126] We note that T-Mobile has significant total population and land coverage in CMA 378 and CMA 379, and Sprint does not have significant total population or land area coverage in any of these five markets. Further, while Southern Linc has significant total population and land area coverage in all five markets, it has a **[REDACTED]** market share and limited spectrum and is unlikely to be able to effectively respond to any anticompetitive behavior.

44. Post-transaction, AT&T and Verizon Wireless between them would account for approximately **[REDACTED]** percent of the market's subscribers. Post-transaction, we also note that AT&T and Verizon Wireless would be the only two service providers that would have both a significant market share and significant total coverage in terms of population and land area in the markets. Of the two other nationwide service providers, neither Sprint nor T-Mobile has a significant market presence or significant 3G or advanced broadband coverage in any of these markets, which would likely limit their ability to quickly and effectively respond to any anticompetitive behavior. In light of the particular facts of these five markets, including but not limited to the reduction in the number of significant service providers, capacity, and the ability of other rival service providers to offer competitive services, we find that the proposed transaction would likely lessen competition in these five rural markets, and thus would likely harm the public interest.

45. *Idaho*: This cluster contains four rural local markets,[127] one of which (CMA 390 (Idaho 3 – Lemhi)) triggers the HHI screen. Post-transaction, the number of service providers with significant market presence would be reduced from three to two.[128] Currently, AT&T's market share is approximately **[REDACTED]** percent and Allied's market share is approximately **[REDACTED]** percent. Post-transaction, the market share of the combined entity would be approximately **[REDACTED]** percent.[129] Verizon Wireless's market share is approximately **[REDACTED]** percent, and no other service provider is present in the market.[130] This market is exceptionally rural, with a population of 19,332, and a population density of 1.7. With respect to network coverage, no service providers, including the combined entity, would have significant total coverage post-transaction, and further, advanced broadband coverage is extremely limited.[131] AT&T covers approximately 30 percent of

[127] The markets are CMA 388 (Idaho 1 – Boundary), CMA 389 (Idaho 2 – Idaho), CMA 390 (Idaho 3 – Lemhi), and CMA 700 (Washington 8 – Whitman). We note that CMA 389 and CMA 390 only made up the DOJ cluster, and Allied is assigning an additional 10 megahertz of PCS spectrum to AT&T in CMA 388 and CMA 700.

[128] The post-transaction HHI is **[REDACTED]** and the change in the HHI is **[REDACTED]**.

[129] As proxied by porting data, AT&T and Allied are not close substitutes in this market. Approximately **[REDACTED]**% of Allied's subscribers ported to AT&T and approximately **[REDACTED]**% of AT&T's subscribers ported to Allied in 2012. 2012 LNP Data; ATN IR Response, June 19, 2013, at 45-46; AT&T IR Response, June 19, 2013, at 32.

[130] AT&T would hold 93-108 megahertz of spectrum post-transaction, including 43 megahertz of spectrum below 1 GHz, while Verizon Wireless holds 57-77 megahertz, Sprint holds 57-112.5 megahertz, and T-Mobile holds 50-60 megahertz of spectrum. Other licensees also hold spectrum in parts of or throughout the market, with spectrum holdings in their licensed areas ranging from 6-49 megahertz.

[131] As neither AT&T nor Allied currently have significant total coverage, there would not be a reduction in the number of service providers in terms of network coverage. Currently, Allied's, AT&T's, and Verizon Wireless's total coverage ranges from approximately 39% to 59% of the population and 6% to 22% of the land area. The only other service providers with any network coverage are T-Mobile, which covers approximately 53% of the population and 8% of the land area, and Syringa Wireless, which covers approximately 18% of the population and 30% of the land area.

the population and two percent of the land area with HSPA+, but has no LTE deployment, while Verizon Wireless covers approximately 42 percent of the population and three percent of the land area with its LTE network.

46. Post-transaction, AT&T and Verizon Wireless between them would account for approximately **[REDACTED]** percent of the market's subscribers. The two other nationwide service providers are present in this market only in the form of T-Mobile's limited 2G and 3G coverage.[132] Thus, we find that neither Sprint nor T-Mobile would be able to quickly and effectively respond to any anticompetitive behavior. In light of the particular facts of this market, including but not limited to the reduction in the number of significant service providers, capacity, and the ability of other rival service providers to offer competitive services, we find that the proposed transaction would likely lessen competition in this rural market, and thus would likely harm the public interest.

47. *North Carolina*: This cluster contains three local markets,[133] one of which is rural, and all three trigger the HHI screen. We find that there is some likelihood for competitive harm in rural CMA 569 (North Carolina 5 – Anson).[134] AT&T's market share is approximately **[REDACTED]** percent and Allied's market share is approximately **[REDACTED]** percent. The combined entity would hold over **[REDACTED]** of the market post-transaction.[135] Verizon Wireless's market share is approximately **[REDACTED]** percent, and Sprint holds approximately **[REDACTED]** percent of the market.[136] With respect to network coverage, besides the combined entity, two other service providers, Verizon Wireless and T-Mobile, would have significant total coverage post-transaction.[137]

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[132] T-Mobile's 3G coverage is approximately 33% of the population and 3% of the land area.

[133] The three markets are CMA 166 (Hickory, NC) with a population of 282,468 and a population density of 242.0, CMA 566 (North Carolina 2 – Yancey) with a population of 185,302 and a population density of 118.4, and CMA 569 (North Carolina 5 – Anson) with a population of 137,542 and a population density of 75.7.

[134] The post-transaction HHI is **[REDACTED]** and the change in the HHI is **[REDACTED]**.

[135] As proxied by porting data, AT&T and Allied are not particularly close substitutes in this market. Approximately **[REDACTED]**% of Allied's subscribers ported to AT&T and approximately **[REDACTED]**% of AT&T's subscribers ported to Allied in 2012. 2012 LNP Data; ATN IR Response, June 19, 2013, at 45-46; AT&T IR Response, June 19, 2013, at 32.

[136] Post-transaction, AT&T would hold 103-123 megahertz of spectrum, including 43 megahertz of spectrum below 1 GHz, Verizon Wireless holds 97-107 megahertz, Sprint holds 68.75-103.25 megahertz, and T-Mobile holds 40-50 megahertz. Other licensees also hold spectrum in parts of or throughout the market, with spectrum holdings in their licensed areas ranging from 6-22 megahertz.

[137] Verizon Wireless's total coverage extends to approximately 98% of the population and 92% of the land area, while it has deployed LTE to approximately 80% of the population and 69% of the land area. T-Mobile's total coverage extends to approximately 82% of the population and 57% of the land area. Further, as well as its significant total coverage, AT&T covers approximately 73% of the population and 41% of the land area with HSPA+ but has less than 1% LTE deployment.

48. Post-transaction, AT&T and Verizon Wireless between them would account for approximately **[REDACTED]** percent of the market's subscribers. Post-transaction, we also note that AT&T and Verizon Wireless would be the only two service providers that would have both a significant market share and significant total coverage in terms of population and land area in the market. While Sprint has a significant market share, it does not have significant 2G or 3G coverage, and while T-Mobile has significant total coverage, it does not have a significant market share.[138] This would likely limit the ability of either Sprint or T-Mobile to quickly and effectively respond to any anticompetitive behavior. In light of the particular facts of this market, including but not limited to the reduction in the number of significant service providers, capacity, and the ability of other rival service providers to offer competitive services, we find that competition would likely be lessened in this market, and thus, the proposed transaction would likely harm the public interest.

49. *South Carolina*: This cluster contains five local markets,[139] three of which are rural, and all five trigger the HHI screen. We find that there is some likelihood of competitive harm in CMAs 627 and 631.[140] AT&T's market share ranges from approximately **[REDACTED]** percent and Allied's market share ranges from approximately **[REDACTED]** percent. The market share of the combined entity, post-transaction, would range from approximately percent.[141] Verizon Wireless's market share ranges from approximately **[REDACTED]** percent, and Sprint holds approximately **[REDACTED]**

[138] Sprint's 2G and 3G coverage is just less than significant, it covers approximately 69% of the population and 40% of the land area. Although T-Mobile has significant total coverage, it has not built out a network capable of offering advanced broadband services, and further, it has some retail presence, but holds only a **[REDACTED]**% market share.

[139] The markets are CMA 227 (Anderson, SC) with a population of 187,126 and a population density of 260.8, CMA 625 (South Carolina 1 – Oconee) with a population of 74,273 and a population density of 118.4, CMA 626 (South Carolina 2 – Laurens) with a population of 256,216 and a population density of 70.9, CMA 627 (South Carolina 3 – Cherokee) with a population of 141,399 and a population density of 65.0, and CMA 631 (South Carolina 7 – Calhoun) with a population of 156,703 and a population density of 55.1. We note that DOJ required that CMA 625, CMA 626, CMA 627, and CMA 631 be divested to the same acquirer as the wireless business assets in CMA 227 pursuant to the proposed Modified Final Judgment in *United States v. Bell Atlantic Corp. et al.,* Civ No. 1:99CV01119 (EGS) (D.D.C. May 7, 1999).

[140] The post-transaction HHI for CMA 627 is **[REDACTED]** and the change in the HHI is **[REDACTED]**, while the respective values are **[REDACTED]** in CMA 631.

[141] As proxied by porting data, AT&T and Allied are not particularly close substitutes in these markets. Approximately **[REDACTED]**% of Allied's subscribers ported to AT&T and approximately **[REDACTED]**% of AT&T's subscribers ported to Allied in 2012 in the two markets. 2012 LNP Data; ATN IR Response, June 19, 2013, at 45-46; AT&T IR Response, June 19, 2013, at 32.

percent in both markets.[142] With respect to network coverage, only two other service providers other than the combined entity, Verizon Wireless and T-Mobile, would have significant total coverage post-transaction.[143]

50. Post-transaction, AT&T and Verizon Wireless between them would account for approximately **[REDACTED]** percent of the two markets' subscribers. Post-transaction, we also note that AT&T and Verizon Wireless would be the only two service providers that would have both a significant market share and significant total coverage in terms of population and land area in each market. While Sprint has a significant market share, it does not have significant 2G or 3G coverage, and while T-Mobile has significant total coverage, it does not have a significant market share.[144] This would likely limit the ability of either Sprint or T-Mobile to quickly and effectively respond to any anticompetitive behavior. In light of the particular facts of these two markets, including but not limited to the reduction in the number of significant service providers, capacity, and the ability of other rival service providers to offer competitive services, we find that competition would likely be lessened in these two rural markets, and thus, the proposed transaction would likely harm the public interest.

51. *Illinois*: This cluster contains two rural local markets,[145] both of which trigger the HHI screen. We find that there is some potential for competitive harm in CMA 401.[146] AT&T's market share is approximately **[REDACTED]** percent and Allied's market share is approximately **[REDACTED]** percent**.** Post-transaction, the market share of the combined entity would be approximately **[REDACTED]** percent.[147] In this market, Verizon Wireless holds approximately **[REDACTED]** percent and Sprint holds

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[142] Post-transaction, AT&T would hold 103-115 megahertz of spectrum, including 43-55 megahertz of spectrum below 1 GHz, while Verizon Wireless holds 77-107 megahertz, Sprint holds 75.25-112.5 megahertz, and T-Mobile holds 40-100 megahertz. Other licensees also hold spectrum in parts of or throughout the two markets, with spectrum holdings in their licensed areas ranging from 6-32 megahertz.

[143] As well as total coverage to at least 96% of the population and 81% of the land area, Verizon Wireless covers 89% to 97% of the population and 72% to 86% of the land area with LTE in the two markets. T-Mobile's total coverage extends to at least 81% of the population and 58% of the land area. Further, AT&T covers 57% to 73% of the population and 29% to 41% of the land area with HSPA+, and also has 42% population and 20% land area LTE coverage in CMA 631.

[144] With its 2G and 3G offerings, Sprint covers 61% and 51% of the population and 29% and 27% of the land area in CMA 627 and CMA 631 respectively. T-Mobile has significant total coverage in both markets, but has not built out a network capable of offering advanced broadband services, and although it has some retail presence in both markets, it holds **[REDACTED]**% market share.

[145] The two markets are CMA 401 (Illinois 8 – Washington) with a population of 335,723 and a population density of 66.8 and CMA 402 (Illinois 9 – Clay) with a population of 144,723 and a population density of 31.8.

[146] In CMA 401, the post-transaction HHI is **[REDACTED]** and the change in the HHI is **[REDACTED].**

[147] As proxied by porting data, AT&T and Allied are not close substitutes in this market. Approximately **[REDACTED]**% of Allied's subscribers ported to AT&T and approximately **[REDACTED]**% of AT&T's (continued….)

approximately **[REDACTED]** percent of the market.[148] With respect to network coverage, we find that post-transaction, besides the combined entity, two rival service providers, Verizon Wireless and T-Mobile, would have significant total coverage.[149]

52. Post-transaction, AT&T and Verizon Wireless between them would account for approximately **[REDACTED]** percent of the market's subscribers. Post-transaction, we also note that AT&T and Verizon Wireless would be the only two service providers that would have both a significant market share and significant total coverage in terms of population and land area in the market. While Sprint has a **[REDACTED]** percent market share, it does not have significant 2G or 3G coverage, and while T-Mobile has significant total coverage, it does not have a significant market share.[150] This would likely limit the ability of the other two nationwide service providers to quickly and effectively respond to any anticompetitive behavior. In light of the particular facts of this market, including but not limited to the reduction in the number of significant service providers, capacity, and the ability of other rival service providers to offer competitive services, we find that competition would likely be lessened in this market, and thus, the proposed transaction would likely harm the public interest.

53. *Ohio.* This cluster is comprised of seven non-rural CMAs[151] and three of these CMAs trigger the HHI screen.[152] After a close review of the particular facts of these markets, we do not find that competitive harm is likely in the Ohio cluster.

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subscribers ported to Allied in 2012. 2012 LNP Data; ATN IR Response, June 19, 2013, at 45-46; AT&T IR Response, June 19, 2013, at 32.

[148] Post-transaction, AT&T would hold 125-145 megahertz of spectrum, including 55 megahertz of spectrum below 1 GHz, while Verizon Wireless holds 67-97 megahertz, Sprint holds 72.625-122.75 megahertz, and T-Mobile holds 30-60 megahertz. Other licensees also hold spectrum in parts of or throughout the market, with spectrum holdings in their licensed areas ranging from 6-62 megahertz.

[149] T-Mobile's total coverage extends to approximately 92% of the population and 85% the land area, while Verizon Wireless's population and land area percentages are 99% and 97%, respectively. Further, AT&T covers 66% of the population and 42% of the land area with HSPA+, and 49% of the population and 28% of the land area with LTE, while Verizon Wireless's LTE network covers 95% and 91%, respectively.

[150] While T-Mobile has significant total coverage, it holds only a **[REDACTED]** market share**,** and has no retail presence nor has it built out a network capable of offering advanced broadband services. In contrast, although Sprint has **[REDACTED]**% of the market, it covers approximately 50% of the land area, but only 67% of the population with its 2G and 3G service offerings

[151] The DOJ cluster includes CMA 158 (Lima, OH) with a population of 215,523 and a population density of 127.1, CMA 231 (Mansfield, OH) with a population of 124,475 and a population density of 251.3, CMA 586 (Ohio 2 – Sandusky) with a population of 254,394 and a population density of 149.2, CMA 587 (Ohio 3 – Ashtabula) with a population 101,497 and a population density of 144.6, CMA 589 (Ohio 5 – Hancock) with a population of 239,740 and a population density of 108.3, and CMA 590 (Ohio 6 – Morrow) with a population of 509,166 and a population density of 142.3. We note that DOJ required that CMA 158, CMA 231, CMA 586, CMA 589, and CMA 590 be divested to the same acquirer as the wireless business assets in CMA 587 pursuant to the proposed Modified Final Judgment in *United States v. Bell Atlantic Corp. et al.,* Civ No. 1:99CV01119 (EGS) (D.D.C. May 7, 1999). (continued….)

54. Blue Wireless asserts that CMA 587 (Ohio 3 – Ashtabula) is a densely concentrated market and AT&T and Verizon Wireless dominate the market with their spectrum holdings.[153] Further,

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Additionally, Alltel Wireless has since acquired 12 megahertz of 700 MHz Lower B-Block in CMA 588 (Ohio 4 - Mercer) with a population of 241,354 and a population density of 102.3.

[152] In CMAs 231, the post-transaction HHI is **[REDACTED]** and the change in the HHI is **[REDACTED].** The respective values are **[REDACTED]** in CMA 586 and **[REDACTED]** in CMA 587**.**

[153] Blue Wireless Petition at 5.

Blue Wireless argues that neither Sprint nor T-Mobile should be considered a facilities-based provider in the market because Sprint provides wireless service in CMA 587 pursuant to a roaming agreement, and T-Mobile provides minimal voice-only coverage and no 3G or 4G service.[154] In addition, Blue Wireless argues that Allied's rates are very competitive against the major wireless providers and customers will incur a higher cost if forced to migrate to another provider.[155]

55. Based on our review of the record, we find that in CMA 587 (Ohio 3 – Ashtabula), in addition to AT&T and Verizon Wireless, Sprint and T-Mobile are both facilities-based providers that would have a significant market presence post-transaction, and that competitive harm would be unlikely. In addition to AT&T and Verizon Wireless, both Sprint and T-Mobile have over a **[REDACTED]** percent market share. Further, while AT&T would hold 155 megahertz of spectrum post-transaction, including 55 megahertz of spectrum below 1 GHz, Verizon Wireless holds 109 megahertz of spectrum, Sprint holds 90.375 megahertz of spectrum, and T-Mobile holds 60 megahertz of spectrum. In addition, other licensees also hold spectrum throughout the market, with spectrum holdings ranging from 6 to 10 megahertz. Moreover, as well as AT&T and Verizon Wireless, both Sprint and T-Mobile have significant total coverage, and AT&T has significant HSPA+ coverage, while Verizon Wireless has significant LTE coverage.[156] We find that the particular facts in Ohio 3 – Ashtabula, including but not limited to capacity and the ability of other rival service providers to offer competitive services, as well as the particular facts in the other markets in Ohio in general, make it unlikely that competition would be lessened, and thus the proposed transaction would not be likely to harm the public interest.

56. In undertaking our market-by-market analysis, organized in state-bounded clusters, we have considered various competitive variables that helped us to predict the likelihood of competitive harm post-transaction, as discussed above.[157] We find that, with the exception of the Ohio markets, that competitive harm is likely in at least one local market in each of the six state clusters. We find that the totality of the circumstances in ten local markets would be likely to provide an incentive to act

[154] Blue Wireless Reply at 4-5.

[155] Letter from Donald J. Evans, Counsel for Buffalo-Lake Erie Wireless, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket 13-54,Attachment (filed May 24, 2013) (noting that loss of ALLTEL as a carrier in Ohio 3 – Ashtabula would have an adverse impact on consumer choice).

[156] Verizon Wireless covers 99% of the population and 97% of the land area with LTE, and AT&T covers 83% of the population and 60% of the land area with HSPA+. Sprint's total coverage is 82% of the population and 61% of the land area, while T-Mobile covers 99% of the population and 97% of the land area. Both Sprint and T-Mobile's coverage is 2G.

[157] We note that as an additional method to assess the potential for unilateral competitive effects, we also conducted certain analyses consistent with the *2010 DOJ/FTC Horizontal Merger Guidelines*, which yielded results in line with our other analyses. *See 2010 DOJ/FTC Horizontal Merger Guidelines* § 6.1, p. 21.

anticompetitively.[158] As discussed, in light of the particular facts of these ten markets, including but not limited to the reduction in the number of significant service providers, capacity and the ability of other rival service providers to offer competitive services, we find that competition would likely be lessened in these markets, and thus, the proposed transaction would likely harm the public interest.

[158] Those ten markets are CMA 377 (Georgia 7 – Hancock), CMA 378 (Georgia 8 – Warren), CMA 379 (Georgia 9 – Marion), CMA 380 (Georgia 10 – Bleckley), CMA 383 (Georgia 13 – Early), CMA 390 (Idaho 3 – Lemhi), CMA 569 (North Carolina 5 – Anson), CMA 627 (South Carolina 3 – Cherokee), CMA 631 (South Carolina 7 – Calhoun), and CMA 401 (Illinois 8 – Washington).

C. Roaming

57. RTG and Blue Wireless argue that the loss of Allied as a Code Division Multiple Access ("CDMA") roaming partner eliminates competitive pressure on nationwide providers to maintain reasonable roaming rates and compete fairly in the marketplace.[159] RTG and Blue Wireless further argue that roaming rates faced by small providers are excessive and the problem of negotiating reasonable roaming rates is compounded with each acquisition by the major wireless providers.[160]

58. According to the Applicants, AT&T is assuming Allied's contractual obligations to maintain a CDMA network to provide roaming services.[161] The Applicants assert that Verizon Wireless, Sprint, and other wireless providers are also available for roaming agreements.[162] Lastly, the Applicants assert that the Commission's roaming rules protect against unreasonable roaming terms, and providers can readily file complaints with the Commission pursuant to established roaming rules.[163]

59. *Discussion*. With regard to the arguments expressing concern about the availability of roaming, we find that the Commission's general roaming policies and rules should ensure that entities can obtain roaming agreements on reasonable terms and conditions. In the event that a service provider, including Blue Wireless, encounters difficulties in obtaining desired roaming services under our rules and policies, it can file complaints with the Commission pursuant to our established roaming rules.[164] We conclude that the other data roaming conditions proposed by RTG and Blue Wireless are

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[159] RTG Comments at 3; Blue Wireless Comments at 2. Further, RTG urges the Commission to impose roaming conditions in markets where AT&T would hold over 40 percent of spectrum below 1 GHz or over 25 percent of all available spectrum. RTG Comments at 7. In addition, Blue Wireless argues that Allied is a potential roaming partner through its legacy agreement with the former wireless provider ALLTEL, and that Blue Wireless would be harmed if AT&T is allowed to transition Allied's CDMA network to Global System for Mobile Communications ("GSM"). Blue Wireless Petition at 2; Blue Wireless Reply at 2-3.

[160] RTG Reply Comments at 4; Blue Wireless Aug. 15th *Ex parte* at 2 (asserting that reasonable roaming rates are a product of a multi-player marketplace where multiple providers with differing geographic coverage areas need to roam on each other's networks, and that competitive marketplace model becomes less and less accurate each time a large regional provider is bought up by one of the two majors). *See also* RTG Reply Comments at 4 (arguing that it is necessary for customers of competing providers to have access to cost-effective data roaming).

[161] Joint Opposition at 10.

[162] Joint Opposition at 8-9. The Applicants also dispute the assertions of Blue Wireless that the company has a roaming agreement with Allied. Joint Opposition at 8.

[163] Joint Opposition at 10.

[164] *See* Roaming Obligations of Commercial Mobile Radio Service Providers, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817, 15828 ¶ 27 (2007) ("[W]e recognize that automatic roaming benefits mobile telephony subscribers by promoting seamless CMRS service around the country, and reducing inconsistent coverage and service qualities."); Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 25 FCC Rcd 4181, 4192 ¶ 2 (2010) (eliminates the home roaming exclusion and establishes the same general obligation to provide automatic voice roaming, regardless of whether the provider requesting roaming holds spectrum in an area); Reexamination of (continued….)

not narrowly tailored to remedy any purported harms arising out of this transaction, and accordingly, we will not impose these proposed conditions.

60. The Commission has recognized, however, that the continued ability of wireless customers to roam is an important concern when wireless service providers intend to transition network technology as a result of a proposed transaction.[165] Thus, the Commission has previously conditioned consent of a proposed transaction on the ability of wireless service providers to have access, on behalf of their customers, to roaming services in the areas affected by the transaction for a specified period of time.[166] Following Allied's acquisition of the ALLTEL divestiture markets, it acquired various roaming agreements.[167] The Applicants say that, under the purchase agreement, AT&T is assuming Allied's current contractual roaming obligations to maintain a CDMA network and to provide roaming services.[168] Our analysis finds that the various roaming agreements to be assumed by AT&T have differing expiration dates, and raise questions whether the CDMA network for roaming will be maintained for all providers for a reasonable period of time.

D. Other Issues

61. *Record*. Public Knowledge and RTG urge the Commission, should it decide to approve the proposed transaction, to impose other conditions that they assert will promote competition and offset any harms that might otherwise result.[169] First, in light of the 700 MHz licenses that would be transferred to AT&T pursuant to this transaction, Public Knowledge and RTG recommend that the Commission impose 700 MHz interoperability requirements on AT&T.[170] Second, Public Knowledge and RTG urge the Commission to require as a condition of any license transfers that AT&T not enter into any exclusive equipment deals that disadvantage smaller operators.[171] Third, Public Knowledge

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Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, *Second Report and Order*, 26 FCC Rcd 5411 (2011), aff'd sub nom. *Cellco Partnership v. FCC*, 700 F.3d 534 (DC Cir. 2012)..

[165] *AT&T-Verizon Wireless Order,* 25 FCC Rcd at 8746-88748 ¶¶ 95-101.

[166] *AT&T-Verizon Wireless Order,* 25 FCC Rcd at 8746-88748 ¶¶ 95-101.

[167] ATN-000057075; ATN IR Response, June 19, 2013, at 26-28. Further, we note that Allied derives some revenue when roaming partners of ATN's subsidiary, Commnet Wireless, roam in Allied markets pursuant to Commnet GSM roaming agreements. *Id.* at 26. Under the purchase agreement, the Commnet GSM roaming agreements are excluded assets and are not subject to the transaction because they are not primarily related to Allied's business. *Id.* at 26. Commnet is a separate wholly-owned subsidiary of ATN that provides wholesale service, and the income derived from its GSM network covers parts of Idaho, Illinois and Georgia. We note that post-transaction, AT&T and T-Mobile remain potential GSM roaming partners in these areas.

[168] Joint Opposition at 10.

[169] Public Knowledge Petition at 4-6; RTG Comments at 7; RTG Reply Comments at 5.

[170] Public Knowledge Petition at 4-5; RTG Comments at 8-9.

[171] Public Knowledge Petition at 5; RTG Comments at 9.

recommends that any early termination fees imposed by AT&T be tied to specific equipment costs on a pro-rated basis.[172] Finally, Public Knowledge states that service providers with an advantage in special access and backhaul provision are able to leverage that advantage to keep their costs low,[173] and asserts that therefore the Commission should require that a provider that would increase its market power as a result of the proposed transaction should make its backhaul and special access services available to competitors on the same terms it enjoys.[174]

62. The Applicants assert that Public Knowledge and RTG have not identified any transaction-specific harms that the proposed interoperability, handset exclusivity, early termination fee, and special access and backhaul conditions would address.[175] Instead, according to the Applicants, these proposed conditions relate only to alleged harms that exist regardless of the transaction and that are or were the subject of industry-wide proceedings, and consistent with past practice, we should decline to impose these conditions.[176]

63. *Discussion*. We conclude that the conditions proposed by Public Knowledge and RTG regarding interoperability, handset exclusivity, early termination fees, and special access and backhaul obligations are not narrowly tailored to remedy any purported harms arising out of this transaction. In particular, regarding the interoperability issues raised by Public Knowledge and RTG, we note that the Commission has an ongoing rulemaking proceeding to address such issues on an industry-wide basis, and that recent filings in that proceeding propose a voluntary industry solution to implement interoperability for all paired spectrum in the lower 700 MHz band.[177] We accordingly will not impose these proposed conditions.

VI. POTENTIAL PUBLIC INTEREST BENEFITS

64. After assessing the potential competitive harms of the proposed transaction, we next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public

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[172] Public Knowledge Petition at 5-6.

[173] *Id.* at 6.

[174] *Id*.

[175] Joint Opposition at 11.

[176] *Id.* at 12-13.

[177] Letter from Joan Marsh, Vice Pres. Fed. Regulatory, AT&T Services, Inc. to the Hon. Mignon Clyburn, Chairwoman, FCC, WT Docket No. 12-69 (filed Sept. 10, 2013); Letter from Jeffrey H. Blum, Senior Vice Pres. & Dep. Gen. Counsel, DISH Network, Corp., to the Hon. Mignon Clyburn, Chairwoman, FCC, WT Docket No. 12-69 (filed Sept. 10, 2013); Letter from Grant Spellmeyer, Vice Pres. Fed. Affairs & Pub. Policy, US Cellular, Ben Moncrief, Dir. – Govt. Relations, C Spire Wireless, Scott Wills, Vulcan Wireless LLC, Allison Cryor DiNardo, Pres., Gen. Partner, King Street Wireless, L.P., Nash Nyland, Gen. Counsel, Cavalier Wireless LLC, T.Clark Akers, Exec. Vice Pres. Continuum 700 LLC, and Steven K. Berry, Pres. and CEO, Competitive Carriers Association to the Hon. Mignon Clyburn, Chairwoman, FCC, WT Docket No. 12-69 (filed Sept. 10, 2013).

interest benefits that outweigh any identified competitive harms.[178] As discussed below, we anticipate that the proposed transaction likely would facilitate certain transaction-specific public interest benefits, but not to the degree that we can conclude that these public interest benefits would likely outweigh the competitive concerns identified above. We reach our conclusion regarding public interest benefits recognizing that it is difficult for us to precisely quantify either the magnitude of or the time period in which these benefits would be realized.[179] When the transaction-specific public interest benefits are coupled with AT&T's voluntary commitments with respect to buildout, roaming, and customer transition (as well as the additional information provided by AT&T regarding its customer transition plans) as discussed below, we find that it is in the public interest to approve the proposed transaction.

A. Analytical Framework

65. The Commission has recognized that "[e]fficiencies generated through a merger can mitigate competitive harms if such efficiencies enhance the merged firm's ability and incentive to compete and therefore result in lower prices, improved quality of service, enhanced service or new products."[180] Under Commission precedent, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms.[181]

66. The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms.[182] First, the claimed benefit must be transaction-specific.[183] Second, the claimed benefit must be verifiable.[184] Because much of the information relating

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[178] *See*, *e.g.*, Applications of AT&T Inc. and Cellular South, Inc. For Consent To Assign Licenses Covering Parts of Alabama, Georgia, and Tennessee, ULS File Nos. 0005597386 and 0005597395, *Memorandum Opinion and Order*, DA 13-783, ¶ 16 (WTB rel. Aug. 20, 2013) ("*AT&T-CellSouth Order*"); *Alaska Wireless Order*, 28 FCC Rcd at 10467 ¶ 85; *SoftBank-Sprint Order*, 28 FCC Rcd at 9677-78 ¶ 91; *T-Mobile-MetroPCS Order*, 28 FCC Rcd 2322, 2341 ¶ 56; *AT&T-WCS Order*, 27 FCC Rcd at 16474 ¶ 40; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 95.

[179] *See, e.g., SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 91; *AT&T-WCS Order*, 27 FCC Rcd at 16459 ¶ 40; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623 ¶ 82.

[180] *See, e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 86; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 92; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342 ¶ 57; *AT&T-WCS Order*, 27 FCC Rcd at 16474-75 ¶ 41; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 96.

[181] *See, e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 86; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 92; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342 ¶ 57; *AT&T-WCS Order*, 27 FCC Rcd at 16474-75 ¶ 41; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 96.

[182] *See*, *e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 93; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342 ¶ 58; *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 97.

[183] *See*, *e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 93; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342 ¶ 58; *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42.

to the potential benefits of a transaction is in the sole possession of the applicants, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude. Third, the Commission has stated that it "will more likely find marginal cost reductions to be cognizable than reductions in fixed cost."[185] The Commission has justified this criterion on the ground that, in general, reductions in marginal cost are more likely to result in lower prices for consumers.[186] In addition, "the magnitude of benefits must be calculated net of the cost of achieving them."[187] Further, benefits expected to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the distant future are inherently more speculative than predictions that are expected to occur closer to the present.[188] Finally, the Commission applies a "sliding scale approach" to evaluating benefit claims.[189] Under this sliding scale approach, where potential harms appear "both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand."[190]

B. Potential Benefits

67. The Applicants claim that the proposed transaction would benefit the customers of both companies.[191] According to the Applicants, Allied customers would gain access to more services and

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[184] *See*, *e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 93; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342 ¶ 58; *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 97.

[185] *See, e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 97; *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 90.

[186] *See*, *e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 97; *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 90.

[187] *See, e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 93; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342 ¶ 58; *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 97.

[188] *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 90.

[189] *See, e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 88; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 93; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342 ¶ 59; *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 98.

[190] *See, e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 88; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678-79 ¶ 93; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342 ¶ 59; *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 98; *cf. 2010 DOJ/FTC Horizontal Merger Guidelines* at § 10, p. 31 ("The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.").

[191] Public Interest Statement at 6.

features, experience improved service, and benefit from economies of scale and scope.[192] The Applicants assert further that Allied faces a number of significant impediments to being able to deploy high-quality 4G service, without which it will struggle to remain competitive.[193] The Applicants also claim that the proposed transaction would extend AT&T's network coverage in rural areas.[194]

1. Deployment of Advanced Broadband Technologies

68. The Applicants assert that the proposed transaction would bring advanced 4G service to more customers than Allied could cover on its own and at a much faster pace.[195] The Applicants claim that Allied does not currently have sufficient spectrum to build a 4G network,[196] and further assert that it has been unable to acquire additional spectrum that would allow for a 4G upgrade.[197] Moreover, the Applicants allege that even a limited 4G deployment would require virtually all of Allied's available spectrum in most markets and thereby degrade the customer experience for its 2G and 3G customers.[198]

69. The Applicants maintain that AT&T expects to integrate the networks and transition Allied's customers to its 4G network.[199] In seven of these CMAs, AT&T currently holds 12 megahertz of Lower 700 MHz Band B or C Block spectrum with an initial LTE deployment of 5x5 megahertz.[200] In these seven markets, AT&T claims that the additional spectrum will not only allow it to deploy LTE with a 10x10 megahertz configuration,[201] but that its LTE handsets will support service in the Lower 700 MHz Band frequencies to be transferred from Allied to AT&T.[202] Moreover, AT&T represents that it can integrate the Allied 700 MHz spectrum in these seven markets where it already has 700 MHz operations within 60 to 90 days of the closing of the proposed transaction.[203]

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[192] *Id.* at 6.

[193] Joint Opposition at 4.

[194] Public Interest Statement at 6, 10.

[195] *Id.* at 7.

[196] *Id.* at 7, 22.

[197] Lead Application, Declaration of William F. Kreisher, Senior Vice President, Corporate Development, Atlantic Tele-Network, Inc., at 7 ("Kreisher Declaration").

[198] *Id.* at 7.

[199] Public Interest Statement at 7, 10.

[200] AT&T IR Response, June 19, 2013, at 7-8. In the remaining two CMAs where Allied holds a Lower 700 MHz Band license, AT&T currently has no Lower 700 MHz Band B or C Block spectrum. *Id.* at 8.

[201] AT&T IR Response, June 19, 2013, at 8. *See also AT&T-Verizon Wireless-Grain Order*, DA 13-1854, at ¶ 58 n.176; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10726 ¶ 73.

[202] AT&T IR Response, June 19, 2013, at 8.

[203] *Id*.

70. AT&T asserts that it plans to deploy 4G HSPA+ on **[REDACTED]** sites in the integrated network in Allied's territory.[204] AT&T estimates that it will incorporate **[REDACTED]** of Allied's cell sites into AT&T's network,[205] and it asserts that it plans to deploy LTE on **[REDACTED]** of these sites.[206]

2. Expanded and Improved Services and Features

71. According to the Applicants, post-transaction, Allied's customers would gain access to a range of services available on AT&T's network,[207] with the result that the proposed transaction would result in better service and a better customer experience for these customers.[208] Among other things, the Applicants claim, Allied's customers would have access to a wider variety of rate plans and a more robust set of data services.[209] This access also would include the ability to make and receive calls in more than 225 countries, access data services in more than 200 countries, and use nearly 190,000 WiFi hot spots globally.[210] The Applicants also indicate that the proposed transaction would benefit Allied customers in AT&T's wireline service areas by allowing them to receive wireline/wireless bundle discounts.[211]

72. In contrast, according to the Applicants and as explained above, Allied currently operates ten noncontiguous "island properties,"[212] and further, 78 percent of Allied's subscribers reside in a county that is on the border of Allied's licensed areas.[213] Because of this, the Applicants claim that many of Allied's customers experience degraded service due to, *e.g.*, dropped calls and signal loss,[214] and ATN has had limited success in remedying this situation.[215]

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[204] AT&T Second Supplemental IR Response, July 17, 2013, at 2.

[205] AT&T IR Response, June 19, 2013, at 15.

[206] AT&T Second Supplemental IR Response, July 17, 2013, at 2.

[207] Public Interest Statement at 8.

[208] *Id.* at 1, 8-9.

[209] *Id.* at 9.

[210] *Id.* at 8.

[211] *Id.* at 9.

[212] Allied notes that, unlike any other regional carrier, its ten non-contiguous and unnaturally shaped rural island properties surround metropolitan areas but do not include the metropolitan areas themselves where most subscribers work or spend significant amounts of time. ATN IR Response, June 19, 2013, at 27.

[213] Public Interest Statement at 19-21.

[214] *Id.* at 21.

[215] ATN IR Response, June 19, 2013, at 31-33.

3. Cost Savings

73. According to the Applicants, the proposed transaction would yield substantial cost savings due to, among other things, "reduced per-subscriber costs of acquiring customers, the reduction of general and administrative costs, the consolidation of cell sites, the reduction of network operating

expenses, and the consolidation of customer billing functions."[216] The Applicants assert that AT&T expects to save costs through decommissioning redundant Allied sites.[217] AT&T expects to decommission **[REDACTED]**.[218] Further, AT&T anticipates achieving net operational synergies of **[REDACTED]**.[219] AT&T also claims that sales and marketing expenses would be reduced by **[REDACTED]**.[220] Finally, the Applicants assert that roaming costs will decline sharply as a result of the transaction.[221] The Applicants allege that these savings will benefit subscribers.[222]

74. The Applicants claim that Allied's "island properties" have led to inefficiencies and higher expenses in a number of different operational areas, including switching and interconnection infrastructure, redundant field network and sales expenses, and advertising.[223] Further, the Applicants note that Allied incurs unusually high roaming expenses because customers spend significantly more time off-network than customers on more contiguous networks; this situation is exacerbated, according to the Applicants, by the rapidly increasing rate of mobile broadband usage.[224]

4. Benefits to AT&T's Customers

75. The Applicants assert that not only will Allied's customers benefit from the proposed transaction, but so will AT&T's customers.[225] The Applicants allege that AT&T has limited coverage in many of the areas now served by Allied.[226] The Applicants represent very generally that the integration

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[216] Public Interest Statement at 11. *See also* AT&T IR Response, June 19, 2013, at 10-14.

[217] Public Interest Statement at 11.

[218] AT&T IR Response, June 19, 2013, at 12.

[219] *Id.* at 11. The underlying model and data for estimating these cost savings is provided in ATTF-ATN00000096.

[220] AT&T IR Response, June 19, 2013, at 12.

[221] Public Interest Statement at 11.

[222] *Id.* at 6.

[223] *Id.* at 21-22; Joint Opposition at 4. Allied states that the impact of the company's scattered footprint has been exacerbated in three ways since 2010: 1) explosive data growth has increased long-term roaming exposure; 2) network edges were created in unnatural locations leading to service quality issues and churn elevation; and 3) misalignment with Designated Market Areas ("DMAs") for media purchasing led to inefficiencies resulting in limited brand awareness and customer advertising. ATN IR Response, June 19, 2013, at 20-23.

[224] Public Interest Statement at 22; Joint Opposition at 4. Allied argues that, in addition to straining the company's 3G network and limited spectrum capacity, high data roaming usage has been particularly burdensome due to its roaming cost structure. Allied asserts that approximately 10% of Allied subscriber's calls and data down/uploads occur on other carriers' networks – a number that is 5-15 times the industry roaming average of only 1-3%. ATN IR Response, June 19, 2013, at 25.

[225] Public Interest Statement at 6.

[226] *Id.* at 10.

of the two networks will broaden and deepen coverage, increase capacity in areas where the networks overlap and AT&T integrates complementary Allied cell sites, and expand the availability of 4G network

coverage, all of which would lead to a better customer experience for the customers of AT&T and Allied, particularly in rural areas.[227]

5. Customer Transition Plans

76. With regard to customer transition, AT&T's original statements – in the Public Interest Statement – were limited only to general representations, *e.g.,* that it would integrate the Allied customers "rapidly and seamlessly," so that these customers would relatively quickly experience the benefits of transitioning to the AT&T network.[228] AT&T noted in the Public Interest Statement that it has experience transitioning customers in previous transactions, a number of which have been far larger.[229]

77. AT&T provided some additional information about its customer transition plans in June and July in its responses to the Wireless Bureau's information requests. AT&T explained that it expected that it would migrate the majority of Allied customers **[REDACTED]** and as soon as the network is ready.[230] AT&T said it would **[REDACTED]**.[231] AT&T also said that it planned **[REDACTED]**.[232] For postpaid customers with term contracts, AT&T stated it planned **[REDACTED]**.[233] AT&T commented that it was **[REDACTED]**.[234] AT&T also indicated that those postpaid customers **[REDACTED]**.[235]

78. In late August and September, AT&T provided more details about its plans for migrating Allied's prepaid customers. AT&T alleged that prepaid customers frequently upgrade their devices, and thus AT&T expected that a large percentage of Allied's existing CDMA prepaid customer would be quickly and naturally migrated to the upgraded network.[236] AT&T states that it plans to migrate prepaid customers to its LTE/HSPA+/GSM network by allowing them to purchase HSPA+ and HSPA+/LTE devices, which also are backward compatible to GSM, as it launches network upgrades.[237] AT&T says it would continue to support CDMA prepaid service until at least July 2014 so that Allied's prepaid

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[227] *Id*.

[228] *Id.* at 7, 9

[229] *Id.* at 9.

[230] AT&T IR Response, June 19, 2013, at 23.

[231] *Id*.

[232] *Id*. Customers alternatively can choose to purchase a different handset. *Id.* at 23-24.

[233] *Id.* at 24. To the extent AT&T is unable to make this offer, such customers will have the option of choosing another AT&T plan or terminating contracts with no early termination fee. *Id*.

[234] *Id*.

[235] AT&T Second Supplemental Response, July 17, 2013, at 12.

[236] AT&T Third Supplemental Response, August 28, 2013, at 3.

[237] *Id.*

customers who choose not to migrate to the upgraded network or defer migration may continue using their existing CDMA devices on Allied's network until that time.[238] According to AT&T, Allied prepaid customers will continue to use their service at their current pricing plans once the transaction closes.[239] AT&T also plans to provide prepaid customers incentives in the form of discounted devices and/or bundles of free minutes to migrate more quickly.[240] Moreover, AT&T says that, to the extent Allied prepaid customers remain active on the CDMA network near the end of the transition period for each market, it intends to make an attractive migration offer to incent those remaining customers to migrate to the AT&T HSPA+ or LTE network.[241] AT&T says the objective of these efforts is that, at the end of the transition period for each market, no more than ten percent of the active Allied prepaid customers at the date of closing will still need to be migrated.[242]

79. According to AT&T, Allied's Lifeline customers will initially be able to continue to use their phones as they do today.[243] It is AT&T's intent to transition these customers to a comparable postpaid plan, with a price substantially similar to their Allied Lifeline plan, while they are still supported by Allied's network.[244] Once transitioned, they will be treated as a postpaid customer for purposes of customer migration and migrated to an equivalent postpaid plan, with a price substantially similar to the customer's original Lifeline plan and with a comparable device pre-selected by AT&T at no charge.[245] Lifeline customers will also be permitted to terminate service at any time with no early termination fee, prior to migration, so that they may consider alternative Lifeline service providers.[246] AT&T will attempt, to the extent feasible, to provide customers with information about available Lifeline service providers in the market.[247]

80. As Allied postpaid customers are migrated to AT&T's network, AT&T asserts that most will be provided the option of retaining their current plan.[248] AT&T represents, however, that it reserves

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[238] *Id.*

[239] AT&T Fifth Supplemental Response, September 18, 2013, at 2.

[240] AT&T Third Supplemental Response, August 28, 2013, at 3-4.

[241] AT&T Fifth Supplemental Response, September 18, 2013, at 2.

[242] *Id.*

[243] *Id.* at 3.

[244] *Id.*

[245] *Id.*

[246] *Id.*

[247] *Id.*

[248] *Id.* at 2.

the right to terminate plans that serve 150 customers or fewer and offer those customers a comparable plan on migration.[249]

C. Discussion

81. We have reviewed the claims of the Applicants regarding the benefits they allege will result from the proposed transaction, as well as their responses to our requests for additional information and documents. Our review indicates that, given the particular facts of its unique "island properties," Allied is facing significant limitations in providing its customers with advanced technology service offerings.[250] Moreover, the record provides general support for the Applicants' contentions that the proposed transaction would in fact result in benefits for customers in the Allied service territories, particularly with respect to the deployment of HSPA+ and LTE service offerings. As presented in this record, however, these benefits are not sufficient by themselves to outweigh the likely competitive problems we have found with respect to the proposed transaction.

82. Our review of the record indicates that following the ALLTEL divestiture, Allied faced certain network quality challenges.[251] The competitive difficulties of its unusual footprint combined with an explosion in data usage led to increased data roaming costs per subscriber[252] and an increase in churn because of service quality problems. As supported by the Applicants in the record, Allied's customers have had a degraded customer experience at the many edges of Allied's service areas, including dropped calls and signal loss.[253] After reviewing all of the interrogatory responses and documents submitted by the Applicants, we concluded that Allied suffers from numerous obstacles, such as access to spectrum,[254] network inefficiencies,[255] higher per-subscriber costs,[256] and higher than typical levels of customer churn.[257]

83. We conclude that the record supports a finding that Allied sought to operate a successful wireless business in the subject markets,[258] made substantial capital investments, and took

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[249] *Id*.

[250] *See* para. 82 *infra*.

[251] *See* ATN IR Response, June 19, 2013, at 9.

[252] *Id.* at 20; ATN-000008512. Allied notes that **[REDACTED]**. ATN IR Response, June 19, 2013, at 20, 25-26, 35.

[253] Public Interest Statement at 21. Allied explains that its subscribers on the edges of the network **[REDACTED]**. ATN IR Response, June 19, 2013, at 21, 28. *See also* ATN000008512 (stating that **[REDACTED])**.

[254] ATN IR Response, June 19, 2013, at 41-42.

[255] *Id.* at 20-23.

[256] *Id.* at 39-40.

[257] *Id.* at 21, 25-26.

[258] *Id.* at 21, 27-31.

numerous steps to mitigate or overcome the obstacles it faced, including the significant network quality issues attendant on its "island properties."[259] Since acquiring the divestiture markets in 2010, Allied has made capital investments totaling approximately **[REDACTED]** in the CMAs involved in this transaction.[260] Further,

[259] In an effort to improve service, Allied **[REDACTED]**. *Id.* at 10.

[260] *Id.* at 7. For example, Allied spent approximately **[REDACTED]** constructing a total of **[REDACTED]** new cell sites in its various service territories. *Id.* at 13, 14. Further, Allied invested approximately $**[REDACTED]** million in steps to expand cell site capacity. *Id.* at 13.

we agree that Allied attempted to implement various potential strategies to improve its competitive positioning from 2010 to the present through spectrum purchases, joint ventures, and strategic roaming agreements. However, despite considerable efforts, **[REDACTED]**.[261] Notwithstanding its investments and its efforts to address the problems negatively affecting the customer experience of many of its customers, its market share has declined markedly since 2010.[262] We find that, despite its attempts to find a solution, given the markets that it serves, Allied would be unlikely to be able to develop a network capable of offering competitive advanced broadband services in the near future.[263]

84. The Applicants emphasize in making their case as to why the proposed transaction is in the public interest that effectuation of the proposed deal "will bring advanced broadband services to more customers than Allied could cover economically on its own and at a much faster pace."[264] AT&T asserts that its experience, infrastructure, and supplier contracts will permit swift delivery of the benefits of an enhanced mobile Internet experience.[265] Given the lack of specificity and the information we have about the extent of AT&T's current deployment of 4G technology in the overlap markets, we are concerned about the timeliness with which AT&T will act to deploy 4G offerings in the areas to be acquired from Allied. As a result, this claimed benefit holds only limited weight.

85. As discussed above, the Applicants initially provided little in the way of detailed support for their customer transition plans. In particular, AT&T represented that it has had experience transitioning customers in previous transactions, many of which have been far larger and with far more customers than is the case with the proposed transaction before us.[266] The Applicants then asserted that the Commission should recognize "the importance of such experience in ensuring the promised

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[261] ATN-000023469; ATN-000029184 (demonstrating Allied's attempts to **[REDACTED]**.

[262] Since June 2010, Allied's subscribers have declined from approximately **[REDACTED]** to approximately **[REDACTED]** in December 2012, a loss of approximately **[REDACTED]**%. NRUF and LNP, June 2010, December 2012.

[263] Blue Wireless argues that a review of Allied's roaming expenses and subscribers demonstrates that the wireless provider is thriving and does not support Allied's arguments that the increase in demand for mobile broadband has had a deleterious effect on ATN's roaming costs and its ability to invest in its network and that it would be difficult for Allied to survive absent the proposed transaction. Blue Wireless Aug. 15th *Ex parte* at 3. However, we note that our conclusions here are not based on a finding that Allied is a "failing firm." In addition, our review of the record indicates that the decrease in Allied's roaming expenses per subscriber in 2012 does not demonstrate that Allied's wireless business is now thriving, but is primarily related to **[REDACTED]**. *See* Allied IR Response at 33; ATN000036096.

[264] Public Interest Statement at 7.

[265] *Id.*

[266] *Id.* at 9.

benefits will be realized."[267] As described above, AT&T has recently provided significantly more information

[267] *Id.*

about the steps it plans to take to transition Allied's postpaid, prepaid, and Lifeline customers.[268] Nonetheless, without the commitments AT&T is making regarding transition of Allied customers to the AT&T network, we would be unable to find that AT&T's customer transition plans are sufficient under our public interest review.

86. Our evaluation of the claimed public interest benefits gives limited weight to many of the benefits presented that would go to Allied's customers as a result of the proposed transaction, such as their gaining access to expanded features and service offerings such as a more robust set of data services, free access to 31,000 Wi-Fi hotspots for eligible subscribers, access to AT&T's nationwide footprint when traveling,[269] and wireline/wireless bundles in parts of 97 counties in 21 CMAs across five clusters.[270] These asserted benefits are already available to Allied customers in locations where AT&T is already offering these services as a competitor to Allied.

87. The Applicants assert that the transaction would expand network coverage in many predominantly rural areas.[271] However, we find, based on the record and our analysis of the data, that there is already substantial geographical overlap between the networks of the two providers. This claimed benefit accordingly is not particularly compelling.

88. Our analysis of the cost savings that the Applicants contend the proposed transaction would yield indicates that, although notable, they mostly are due to reductions in fixed costs. We generally find that reductions in fixed cost are less cognizable than reductions in marginal costs because the former are less likely to result in lower prices for consumers,[272] making it difficult here to quantify the magnitude of these asserted benefits.

89. We find, based on the record before us and the Applicants' claims as discussed above, that certain public interest benefits may potentially result from the proposed transaction. However, using the sliding-scale approach, we are unable on the basis of this record to conclude that these public interest benefits are sufficiently large to outweigh the potential public interest harms we have identified in certain individual markets.

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[268] *See* AT&T IR Response, June 19, 2013, at 23-24; AT&T Third Supplemental Response, August 28, 2013, at 2-4; AT&T Fifth Supplemental Response, September 18, 2013, at 2-3.

[269] Public Interest Statement at 9.

[270] These 97 counties comprise a population of 3.3 million (U.S. Census 2010) and **[REDACTED]** Allied subscribers (December 2012 NRUF and LNP).

[271] Public Interest Statement at 10.

[272] *See*, *e.g.*, *Alaska Wireless Order*, ¶ 87; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 97; *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 90.

D. Remedies

90. The Commission's review of a proposed transaction entails a thorough examination of the potential public interest harms and any verifiable, transaction-specific benefits, including any voluntary commitments made by the Applicants to further the public interest. As part of this process, the Commission may impose additional remedial conditions to address potential harms likely to result from the proposed transaction or to help ensure the realization of any promised potential benefits.[273] If, on balance, after taking into consideration any voluntary commitments and additional remedial conditions, the potential benefits associated with the proposed transaction outweigh any remaining potential harms,

the Commission would find that the proposed transaction serves the public interest. We note that the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (i.e., transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes.[274]

91. As described above, under our sliding-scale approach we cannot conclude based on this record that the potential benefits are sufficiently large, specific, and imminent to outweigh these potential harms. In conjunction with recent filings supplementing the record on some key issues, however, AT&T has made several voluntary commitments that, when coupled with the potential benefits, allow us to find that the proposed transaction overall would be in the public interest. In particular, AT&T filed a letter on September 18, 2013,[275] in which it has voluntarily committed to undertake an aggressive build-out schedule for upgraded networks in the Allied service areas that it is acquiring through these transactions,[276] as well as provided a roaming commitment that helps ensure a reasonable transition for providers who have been relying on CDMA and Evolution Data Optimized ("EV-DO") roaming through the Allied networks.[277] Further, AT&T has provided certain commitments with respect to customer transition and migration.[278]

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[273] *See, e.g., Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10739-40 ¶ 111; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8718 ¶ 25; *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 30.

[274] *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8747-48 ¶ 101.

[275] Letter from Joan Marsh, Vice President – Federal Regulatory, AT&T, to Ruth Milkman, Chief, Wireless Telecommunications Bureau, WT Docket No. 13-54 (filed Sept. 18, 2013) ("AT&T Commitment Letter").

[276] *See* discussion ¶¶ 92-94 *infra.*

[277] *See* discussion ¶¶ 95-96 *infra.*

[278] *See* discussion ¶¶ 97-98 *infra.*

1. Network Deployment Commitments

92. AT&T has committed to deploy 4G HSPA+ service at all current Allied cell sites that will be integrated into the AT&T network within 15 months of the transaction closing.[279] Similarly, AT&T has committed, within 18 months of the transaction closing, to deploy 4G LTE service at all current Allied cell sites that will be integrated into the AT&T network, and at which AT&T holds AWS-1 or Lower 700 MHz Band B or C Block spectrum and where high speed backhaul service is currently available[280] to AT&T.[281] AT&T expects to deploy high speed broadband service at an additional ten percent of the integrated cell sites within 36 months after the date of the transaction closing.[282] Based on AT&T's anticipated deployment schedule, AT&T estimates that 100 percent of the population covered in the Allied markets will have access to HSPA+ services on AT&T's network within 15 months of closing.[283] AT&T further estimates that 75 percent of the population covered in the Allied markets will have access to LTE services on AT&T's network within 18 months of closing and approximately 85 percent within 36 months of closing.[284]

93. We find that these commitments will lead to significant public interest benefits regarding access to advanced broadband technologies by consumers in these service territories, including customers of both Allied and AT&T. For instance, in the 30 markets subject to the proposed transaction, we find that there would be an approximate 20 percent gain in HSPA+ population coverage, and a 27 percent gain in HSPA+ land area coverage as a result of these commitments. In addition, we estimate that the benefits in coverage are greater in the ten local markets in which we find harms are likely – with an approximate 33 percent gain in population coverage and a 39 percent in land area.[285] As one example, in Georgia, where we find harm likely in five of the markets, the gains from increased

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[279] AT&T Commitment Letter at 3.

[280] AT&T notes that it has preliminarily identified a fiber Ethernet to the cell backhaul solution at approximately 70% of the Allied cell sites that will be integrated into the AT&T network. AT&T commits to work diligently to identify backhaul solutions for sites currently lacking fiber backhaul availability and shall report to the Commission on its progress in that regard in the progress reports that it will be periodically filing pursuant to its commitment letter. AT&T Commitment Letter at 3.

[281] AT&T Commitment Letter at 3. AT&T asserts that its ability to meet these commitments is, to a certain extent, dependent on the actions of third parties. As a result, in the event AT&T, despite its commercially reasonable efforts, is unable to deploy HSPA+ or LTE service at one or more cell sites because of its inability to obtain necessary regulatory approvals, cell site access, field strength agreements to resolve interference concerns, or for other good cause, AT&T seeks to preserve the opportunity to seek a waiver of this commitment as to the affected cell sites. AT&T Commitment Letter at 3 n.3.

[282] AT&T Commitment Letter at 3.

[283] AT&T Fifth Supplemental Response, September 18, 2013, at 1.

[284] *Id.*

[285] The gains from increased HSPA+ and LTE coverage are estimated on a population weighted average basis, utilizing Mosaik, July 2013, and 2010 U.S. Census data.

HSPA+ coverage would encompass approximately 29 percent of the population and 53 percent of the land area, and would result in 15 months in HSPA+ coverage of close to 100 percent of the population and approximately 83 percent of the land area in these markets. Finally, we estimate that AT&T currently covers only approximately 22 percent of the population of the Allied markets with LTE, so that AT&T's estimated increase in LTE coverage to 75 percent of this population within 18 months would more than triple its current LTE coverage, resulting in more than half of the population in these markets receiving LTE coverage that they do not have today.

94. Accordingly, we impose the commitments made by AT&T with respect to network buildout as a condition of our consent to the proposed transaction. AT&T's commitments outlined above will help to ensure that all consumers in the current Allied service territories will benefit from the deployment of advanced 4G network technologies.

2. Roaming Commitments

95. AT&T has committed to offer CDMA voice and data roaming services, consistent with applicable Commission rules, over Allied's 3G EV-DO network until at least June 15, 2015 (except at nine sites in CMA 381 and CMA 384).[286] AT&T commits to honoring the prices, terms, and conditions of the roaming agreements that it is assuming from Allied.[287] AT&T's commitment would apply only to properties it is acquiring as a result of the transaction with Allied (except as otherwise excluded), and does not apply to any properties that AT&T would not control upon consummation of the proposed transaction.[288] In the absence of this commitment, service providers that currently have or need CDMA roaming services in the Allied service areas confront uncertainty about the ongoing availability of such roaming services.

96. We impose the commitment made by AT&T to continue to offer CDMA voice and data roaming services over Allied's 3G EV-DO network until at least June 15, 2015, as a condition of our consent to the proposed transaction. As a result of this commitment, wireless service providers will retain the ability for their customers to roam pursuant to the Commission's roaming rules on the existing Allied CDMA network. These same providers will have at least 18 months subsequent to the closing of the proposed transaction to take the necessary steps to obtain alternative CDMA roaming arrangements in the current Allied service areas, if that is what they choose to do. We find that AT&T's

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[286] AT&T Commitment Letter at 3. At these nine sites, Allied currently provides CDMA roaming service using lease spectrum and does not otherwise hold spectrum in these two CMAs. AT&T is not acquiring these spectrum leases and will not be providing CDMA roaming services at these nine sites after the closing. *Id.* at 3 n.1.

[287] *Id.* at 3. AT&T states that this commitment on its part would not require it to modify the rates or other terms and conditions of any CDMA roaming agreement it assumes from Allied. *Id.*

[288] *Id.* In CMA 378, Allied service is provided through GA RSA #8 Partnership ("Partnership"), in which Allied holds a 30% interest that it is transferring to AT&T. If AT&T acquires *de facto* control of the Partnership, then the commitment will apply to the Partnership. *Id.* at 3 n.2.

voluntary commitment to maintain the CDMA network for an additional period of time is in the public interest.

3. Customer Transition Commitments

97. AT&T has made a number of commitments with respect to its plans for transition of the existing Allied customers to the AT&T network. At such time as AT&T is ready to transition a postpaid Allied customer to AT&T's network, AT&T indicates that it will offer the customer a handset comparable to his or her existing handset, at no cost to the customer and without requiring a contract extension.[289] AT&T plans to provide each such Allied customer with a list of comparable handsets from which they may choose at no cost, as well as the option to purchase a different handset.[290] AT&T represents that all the devices it plans to offer Allied customers as comparable replacements for their CDMA devices will be 3G UMTS terrestrial radio access devices or better.[291] The significance of this plan is that even if an Allied customer currently has a 2G device, AT&T will provide a 3G or better device to that customer at no cost to the customer.[292] Finally, an Allied customer with a CDMA iPhone as of the date of the closing will receive the same or a more recent iPhone model that works on AT&T's network without an additional change and without having to change their existing rate plan.[293]

98. We impose the commitments made by AT&T regarding the transition of the current Allied subscribers to the AT&T network as a condition of our consent to the proposed transaction. These commitments, along with the additional explanations of its customer transition plans provided by AT&T,[294] provide greater assurance that the transition from the existing CDMA network to AT&T's network will be successful with minimal disruption to customers. At the same time, recognizing the potential issues that might arise in this type of transition, we will carefully monitor AT&T's implementation of these commitments and its announced transition plans.

4. Progress Reports

99. AT&T has committed that it will file quarterly reports with the Commission for a period of three years following the date on which the transaction closes for purposes of reporting on the status of its implementation of these commitments.[295] Among other things, these quarterly reports will

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[289] *Id.* at 3-4.

[290] *Id.* at 4. Each Allied customer who chooses a device from the provided list will receive a new device. *Id.*

[291] *Id.*

[292] *Id.*

[293] *Id.* As is the case with all Alled customers, customers with iPhones will have the option to upgrade their device and adopt an AT&T rate plan that is compatible with the upgraded device. *Id*.

[294] *See* AT&T Third Supplemental Response, August 28, 2013, at 1-4; AT&T Fifth Supplemental Response, September 18, 2013, at 2-3.

[295] AT&T Commitment Letter at 4.

include a discussion of the efforts undertaken by AT&T to migrate prepaid customers and the status of such migration.[296] If the network deployment commitments are not met within the three-year reporting period, this reporting requirement, with respect to those deployment commitments, will be extended until such time that these commitments have been fully satisfied or have been waived by the Commission.[297] We will condition consent to the proposed transaction on AT&T complying with this quarterly reporting obligation. AT&T's submission of these reports will allow Commission staff to monitor the progress of AT&T's efforts.[298]

VII. BALANCING THE PUBLIC INTEREST BENEFITS AND THE HARMS

100. In considering the Applications, we find that the proposed transaction results in some probable competitive harm, and that under our sliding-scale approach, we cannot conclude that the potential public interest benefits will outweigh these public interest harms. However, when we consider AT&T's voluntary commitments in the areas of roaming, network deployment, and customer transition in conjunction with certain public interest benefits, our competitive concerns will likely be mitigated.

VIII. CONCLUSION

101. For the reasons stated above, we find that the proposed transaction is overall in the public interest, and accordingly, we approve it.

IX. ORDERING CLAUSES

102. ACCORDINGLY, having reviewed the Applications and the record in these matters, IT IS ORDERED that, pursuant to Sections 4(i) and (j), 214, 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 303(r), 309, 310(d), the applications for the transfer of control of and assignment of cellular, PCS, Lower 700 MHz Band B and C Block, and common carrier fixed point-to-point microwave licenses, spectrum leasing authorizations, and an international

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[296] AT&T Fifth Supplemental Response, September 18, 2013, at 3.

[297] AT&T Commitment Letter at 4.

[298] Allied was a winning bidder in the Mobility Fund Phase I auction (Auction 901) and was authorized to receive $45,853,493.28 in Mobility Fund Phase I support, secured by letters of credit. Pursuant to the Commission's rules, a winning bidder in Auction 901 that is authorized to receive Mobility Fund Phase I support will be subject to repayment of the support disbursed together with an additional performance default payment of ten percent on the total level of support for which the winning bidder is eligible if it fails or is unable to meet its minimum coverage or service requirements or fails to fulfill any term or condition of Mobility Fund Phase I support. Upon consummation of this Transaction, Allied will no longer satisfy the spectrum access requirements necessary to receive Mobility Fund Phase I support and Allied will be subject to the ten percent default payment in the amount of $4,585,349.34. In accordance with the September 18, 2013 letter submitted by ATN and Allied, Allied will satisfy its performance default payment obligation on or before consummation of the Transaction. *See* Letter from Leonard Q. Slap, Senior Vice President, General Counsel and Secretary, Atlantic Tele-Network, Inc., and Secretary, Allied Wireless Communications Corporation, to Ruth Milkman, Chief, Wireless Telecommunications Bureau, WT Docket 13-54 (Sept. 18, 2013). If Allied fails to satisfy this default payment on or before consummation, the Commission will, consistent with its rules, proceed to draw upon Allied's letters of credit.

section 214 authorization are GRANTED to the extent specified in this Memorandum Opinion and Order and subject to the conditions specified herein.

103. IT IS FURTHER ORDERED that the above grant shall include authority for the transfer or assignment of any applications regarding the Allied assets that are pending at the time of consummation as well as any licenses or authorizations that may have inadvertently been omitted from the application forms filed by the Applicants.

104. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, and 310(d), the petitions to deny the Applications filed by Buffalo-Lake Erie Wireless Systems Co., L.L.C. and Public Knowledge, and The Writers Guild of America, West are DENIED for the reasons stated herein.

105. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, §§ 154(i), (j), 309, and 310(d), the request for conditions in the Petitions or Comments filed by Buffalo-Lake Erie Wireless Systems Co., L.L.C., Public Knowledge and The Writers Guild of America, West, and the Rural Telecommunications Group, Inc. are DENIED for the reasons stated herein

106. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, and 310(d), the request for consolidation in the Statement filed by Maneesh Pangasa is DENIED for the reasons stated herein.

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

108. This action is taken under delegated authority pursuant to sections 0.51, 0.131, 0.261, and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.51, 0.131, 0.261, and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Ruth Milkman

Chief

Wireless Telecommunications Bureau

Mindel De La Torre

Chief

International Bureau

APPENDIX A

Commenters in WT Docket No. 13-54

Petitions To Deny and Comments:

Buffalo-Lake Erie Wireless Systems Co., L.L.C. ("Blue Wireless") (Petition To Deny)

Public Knowledge and The Writers Guild of America, West (Petition To Deny)

Rural Telecommunications Group, Inc. (Comment)

Opposition:

AT&T Inc. and Atlantic Tele-Network, Inc. (Joint Opposition)

Replies:

Buffalo-Lake Erie Wireless Systems Co., L.L.C

Rural Telecommunications Group, Inc.

APPENDIX B
AT&T Commitment Letter

Joan Marsh
Vice President –
Federal Regulatory

AT&T Services, Inc.
1120 20th Street, N.W.
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September 18, 2013

VIA ELECTRONIC FILING

Ruth Milkman
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Applications of AT&T Inc. and Atlantic Tele-Network, Inc. for Consent To the Transfer of Control of Licenses and Authorizations Held by Atlantic Tele-Network, Inc. and Its Subsidiaries*, WT Docket No. 13-54

Dear Ms. Milkman:

AT&T Inc. ("AT&T") and Atlantic Tele-Network, Inc. ("ATNI") have demonstrated that the transfer of control of the retail operations and associated assets of Allied Wireless Communications Corporation ("Allied") to AT&T will generate numerous significant public interest benefits without any harm to competition. Allied's wireless customers will enjoy the full range of capabilities available on AT&T's network, including a greater variety of rate plans, an expanded selection of handsets with advanced service capabilities, enhanced international roaming opportunities, and improved reception and signal quality. The transaction will foster the Administration's objective of promoting broadband deployment in the United States and will enable AT&T to provide Allied's customers advanced broadband services in areas that Allied has no plan currently to provide on its own.

These public interest benefits will be achieved without any harm to competition. In view of the absence of any competitive harm and the abundant public interest benefits that will flow from the transaction, prompt approval will unquestionably advance the public interest. Nevertheless, in order to expedite approval of this transaction, AT&T makes the commitments set forth in Attachment A hereto, which are conditioned on and would take effect upon the closing of the transaction.

In accordance with the Commission's rules, this letter is being filed electronically with the Secretary for inclusion in the public record.

Sincerely,

Joan Marsh

cc: James D. Schlichting
Susan Singer
Kathy Harris

Attachment A

Roaming: AT&T will offer CDMA voice and data roaming services, consistent with applicable Commission roaming rules, over Allied's 3G EV-DO network until at least June 17, 2015, except at Allied's nine sites in CMAs 381 and 384.[1] AT&T commits to honor the prices, terms and conditions of the contracts that AT&T is assuming from Allied. Nothing in this commitment will require AT&T to modify the rates or other terms or conditions of any CDMA roaming agreement it assumes from Allied. This commitment does not apply to (a) any properties other than those that AT&T is acquiring through the Allied transaction, or (b) any properties that AT&T does not control.[2]

Network Deployment:[3]

HSPA+: Within fifteen months of closing, AT&T will deploy 4G HSPA+ service at all current Allied sites that will be integrated into the AT&T network.

LTE: Within eighteen months of closing, AT&T will deploy 4G LTE service at all current Allied cell sites that will be integrated into the AT&T network and at which AT&T currently holds AWS or Lower 700 MHz B or C block spectrum where high-speed backhaul service is currently available to AT&T. AT&T preliminarily has identified a fiber Ethernet-to-the-Cell ("ETTC") backhaul solution at approximately 70% of Allied cell sites that will be integrated into the AT&T network. AT&T expects to deploy high-speed backhaul solutions at an additional 10% of the integrated Allied sites within 36 months of closing. AT&T shall use its best efforts to identify backhaul solutions for sites currently lacking fiber backhaul availability and shall report to the Commission, on a quarterly basis, on its progress in that regard in the Progress Reports provided for herein.

Postpaid Customer Migration: At the point that AT&T is ready to transition a postpaid Allied customer to AT&T's network, AT&T will offer the customer a handset comparable to his or her existing handset at no cost to the customer and without requiring

[1] Allied currently provides CDMA roaming services from these nine sites using leased spectrum because it otherwise does not hold spectrum in these two CMAs. AT&T is not assuming Allied's lease of this spectrum in the transaction. AT&T therefore will not be able to provide CDMA roaming services from these nine sites to any carrier.

[2] In CMA378, Allied branded service is provided through Georgia RSA #8 Partnership (the "Partnership") in which Allied holds a one-third interest, which will be transferred to AT&T in this transaction. If AT&T acquires *de facto* control of the Partnership, this commitment will apply to the Partnership.

[3] AT&T's ability to meet these commitments is, to a certain extent, dependent on the actions of third parties. In the event, AT&T, despite its commercially reasonable efforts, is unable to deploy HSPA+ or LTE service at one or more cell sites because of its inability to obtain necessary: (a) regulatory approvals (*e.g.*, zoning, rights-of-way, structural amendments, *etc.*); (b) cell site access; or (c) field strength agreements with adjacent licensees to resolve interference concerns; or for other good cause, AT&T reserves the right to seek a waiver of this commitment as to the affected cell sites. Any such waiver sought by AT&T shall be filed no later than 15 months after closing. Any such waiver shall be adjudicated pursuant to the waiver standards articulated in 47 C.F.R. §§ 1.3; 1.925.

a contract extension. AT&T will provide each customer with a list of comparable handsets from which they may choose at no cost, as well as the option to purchase a different handset. Each Allied customer that chooses a handset from the list provided will receive a new handset.

All handsets that AT&T offers Allied customers as comparable replacements for their CDMA devices will be 3G UMTS Terrestrial Radio Access handsets or better. This means that, even if an Allied customer has a 2G handset, the Allied customer will be offered a 3G or better handset at no cost to the customer.

Allied customers with CDMA iPhones as of the date of close will be offered the same or a more recent iPhone model that works on AT&T's network without an additional charge and without having to change their existing rate plans. In addition, as is the case for all Allied customers, customers with iPhones will have the option of upgrading their handset and adopting an AT&T rate plan that is compatible with the upgraded handset.

Progress Reports: AT&T shall file with the Commission a quarterly detailed report for three years following the date the transaction closes to report on the status of its implementation of these commitments and its customer migration plans. If the network deployment commitments are not met within the three-year time reporting period, this reporting requirement shall be extended, with respect to those deployment commitments, until such time that those deployment commitments are fully met or waived by the FCC.