

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

In the Matter of
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
File Nos. 0003652447, et al., ITC-T/C-20081121-00508, et al., and SCL- T/C-20081121-00018

MEMORANDUM OPINION AND ORDER

Adopted: November 5, 2009

Released: November 5, 2009

By the Commission: Commissioner Copps concurring and issuing a statement.

TABLE OF CONTENTS

Table with 2 columns: Heading and Paragraph #. Includes sections like I. INTRODUCTION, II. BACKGROUND, III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK, etc.

1. Expanded and Improved Services and Features	93
2. Improved Disaster Preparedness	105
3. Substantial Additional Cost Synergies	106
4. Puerto Rico Wireline Service Benefits	107
C. Conclusion	108
VII. DIVESTITURE OF MARKETS	109
A. Operating Unit Divestitures	111
B. Operation of Divestitures	112
VIII. OTHER ISSUES	120
A. Roaming	120
B. Handset Availability and Exclusive Handset Agreements	139
C. Customer Transition Matters	142
D. NEATT Objections	147
E. Cellular South Objection Regarding Mississippi 8	151
F. <i>Ex-Parte</i> Status of Proceeding	153
IX. CONDITIONS IN ADDITION TO MARKET DIVESTITURES	158
X. CONCLUSION	166
XI. ORDERING CLAUSES	167
APPENDIX A – Applications Granted	
APPENDIX B – Petitioners and Commenters	
APPENDIX C – AT&T Letter of Commitment	

I. INTRODUCTION

1. We grant today the applications of AT&T Inc. (“AT&T”) and Centennial Communications Corp. (“Centennial”) (together, the “Applicants”)¹ to transfer control of the licenses, authorizations, and spectrum leasing arrangements held by Centennial and its subsidiaries to AT&T, subject to the divestiture of certain markets and the imposition of conditions embodying certain voluntary commitments made by AT&T. Our conditioned grant is pursuant to Sections 214(a) and 310(d) of the Communications Act and Section 2 of the Cable Landing License Act,² under which we must determine whether approval of the Applicants’ proposed transaction would serve the public interest, convenience, and necessity.

2. As discussed in detail below, the proposed transaction raises competition issues because it would result in the combination of overlapping AT&T and Centennial mobile communications coverage and services in various local areas. We find that competitive harm is unlikely in most of the overlap markets, primarily because multiple other service providers currently in these markets would be an effective competitive constraint on the behavior of the merged entity. However, with regard to seven local areas – six in Louisiana and one in Mississippi – our analysis indicates that, absent a remedy, competitive harms would likely result. Accordingly, we require divestiture of Centennial’s wireless operations in these areas, which also are markets where the U.S. Department of Justice required divestitures in its review of the transaction. Moreover, in order to address additional competitive concerns, we accept several voluntary commitments made by AT&T and impose those commitments as conditions of our approval. These voluntary commitments encompass certain roaming obligations,

¹ The applications specifically pertain to licenses and spectrum leasing arrangements for the Part 22 Cellular Radiotelephone Service (“cellular”), the Part 24 Personal Communications Service (“PCS”), the Part 27 Advanced Wireless Service (“AWS-1”), the Part 27 Educational Broadband Service (“EBS”), the Part 101 Common Carrier Fixed Point-to-Point Microwave Service, and the Part 101 39 GHz, Auctioned Service, as well as international and domestic Section 214 authorizations and a cable landing license.

² 47 U.S.C. §§ 35, 214(a), 310(d).

including obligations to honor Centennial's existing agreements and to permit providers with fewer than 10 million subscribers to retain a Centennial roaming agreement for four years, or the length of the agreement, whichever is longer. We also accept AT&T's commitment to certain limitations with respect to its participation on the Board of Directors of, and services provided to, América Móvil, S.A.B. de C.V. ("América Móvil"), including restrictions on its participation in the business and operations of América Móvil in the United States (including Puerto Rico and the U.S. Virgin Islands). América Móvil, AT&T, and Centennial currently compete in the provision of wireless services in Puerto Rico and the U.S. Virgin Islands.

II. BACKGROUND

A. Description of Applicants

1. AT&T Inc.

3. AT&T, incorporated in Delaware and headquartered in Dallas, Texas, is a communications holding company.³ With its subsidiaries, affiliates, and operating companies, AT&T states that it ranks among the leading providers of telecommunications services in the United States and around the world.⁴ AT&T asserts that, as of December 31, 2008, it was a leading provider of wireless data in the U.S. wireless industry based on subscribers⁵ and the largest communications company in the world by revenue.⁶ The company reported more than \$124 billion in revenues in 2008.⁷

4. AT&T has three main operating segments: wireless, wireline, and advertising and publishing.⁸ The wireless segment consists of AT&T's subsidiary, AT&T Mobility, which provides wireless services to both business and residential customers.⁹ This segment represents approximately 39 percent of 2008 total segment operating revenues.¹⁰ AT&T has more than 78 million wireless subscribers.¹¹ Its 3G network uses High Speed Downlink Packet Access/Universal Mobile Telecommunications System ("HSDPA/UMTS") technology.¹²

5. AT&T's wireline subsidiaries provide both retail and wholesale communications services (both voice and data) domestically and internationally.¹³ This segment represents approximately 55

³ AT&T Inc., Form 10-K, at 1 (filed Feb. 25, 2009) ("AT&T 10-K").

⁴ AT&T 10-K at 1. AT&T states that it is eighth among the 2009 Fortune 500 companies, and 29th among the 2008 Global Fortune 500 companies. AT&T, About Us, Corporate Profile Quick Facts ("AT&T Quick Facts"), available at <http://www.att.com/gen/investor-relations?pid=5711> (last visited Oct. 30, 2009).

⁵ AT&T 10-K at 3.

⁶ AT&T, About Us, Corporate Profile, Key Facts About AT&T ("AT&T Corporate Profile Key Facts"), available at <http://www.att.com/gen/investor-relations?pid=5711> (last visited Oct. 30, 2009).

⁷ AT&T Quick Facts at 1.

⁸ AT&T 10-K at 3.

⁹ AT&T 10-K at 3.

¹⁰ AT&T 10-K at 3.

¹¹ AT&T Corporate Profile Key Facts.

¹² AT&T, Wireless, Our Technology at 1 ("AT&T Wireless Technology"), available at <http://www.wireless.att.com/about/our-technology.jsp> (last visited Oct. 30, 2009). AT&T also offers a High Speed Uplink Packet Access ("HSUPA")-enabled network. AT&T, About Us, Corporate Profile, Networks ("AT&T Corporate Profile Networks"), available at <http://www.att.com/gen/investor-relations?pid=5711> (last visited Oct. 30, 2009). AT&T also offers customers Wi-Fi access at more than 100,000 hot spots around the world. *Id.*

¹³ AT&T 10-K at 4.

percent of 2008 segment operating revenues.¹⁴ AT&T's U.S. wired network includes 52 million access lines and more than 16.9 million high speed Internet subscribers.¹⁵

6. The advertising and publishing segment includes AT&T's directory operations, which publish Yellow and White Pages directories and sell directory advertising and Internet-based advertising and search.¹⁶ This segment represents approximately four percent of 2008 segment operating revenues.¹⁷

7. *AT&T's Relationship with Teléfonos de México, S.A.B. de C.V. and América Móvil, S.A.B. de C.V.* AT&T currently owns approximately 9.75 percent of the equity in Teléfonos de México, S.A.B. de C.V. ("Telmex"),¹⁸ and approximately 8.82 percent of the equity in the commonly-controlled América Móvil.¹⁹ AT&T has the right to nominate three members of the Telmex 14-member Board of Directors,²⁰ and two members of the América Móvil 12-member Board of Directors.²¹ Finally, AT&T and América Móvil have a Management Services Agreement ("MSA")²² pursuant to which AT&T provides management, consulting, and technical services to América Móvil.²³

2. Centennial Communications Corp.

8. Centennial, incorporated in Delaware and headquartered in Wall, New Jersey,²⁴ is a provider of regional wireless and broadband communications services with approximately 1.1 million wireless subscribers and 789,100 access lines and equivalents.²⁵ It provides voice and data wireless service to about 633,100 wireless subscribers²⁶ in two geographic clusters in the mainland United States in parts of Indiana, Michigan, and Ohio (the Midwest cluster) and parts of Louisiana, Mississippi, and

¹⁴ AT&T 10-K at 4.

¹⁵ AT&T Corporate Profile Networks.

¹⁶ AT&T 10-K at 5.

¹⁷ AT&T 10-K at 5.

¹⁸ Response of AT&T Inc. and Centennial Communications Corp. to General Information Request Dated September 22, 2009, filed Sept. 25, 2009 ("Information Request II Response"), at 4.

¹⁹ Information Request II Response at 4.

²⁰ Response of AT&T Inc. and Centennial Communications Corp. to General Information Request Dated April 30, 2009, filed May 28, 2009 ("Information Request I Response"), at 61. At present, AT&T has granted Carso Global the right to nominate one of the three directors AT&T is entitled to nominate. Information Request I Response at 61.

²¹ Information Request I Response at 63-64.

²² Management Services Agreement between SBC International Management Services, Inc. and RadioMóvil Dipsa, S.A. de C.V., dated Feb. 27, 2002, provided as attachment IV.5.1 Information Request I Response ("MSA"). Pursuant to the Second Amendment to Management Services Agreement between SBC International Management Services, Inc., RadioMóvil Dipsa, S.A. de C.V. and América Móvil S.A. de C.V., dated Oct. 29, 2003 ("Second Amendment to MSA"), the MSA was assigned from RadioMóvil Dipsa, S.A. de C.V. to its parent, América Móvil S.A. de C.V. in response to FCC Information Request IV.5. On October 29, 2003, the MSA was assigned by RadioMóvil Dipsa, S.A. de C.V. to América Móvil. SBC International Management Services, Inc. is now called AT&T Mexico, Inc. Information Request I Response at 69.

²³ Information Request I Response at 69; *see also* América Móvil, Form 20-F, at 88 (filed June 30, 2009) ("América Móvil 20-F").

²⁴ Centennial Communications Corp., Form 10-K, at cover, 1 (filed July 30, 2009) ("Centennial 10-K").

²⁵ Centennial Communications Corp., Form 8-K, Exhibit 99.1 at 1, 3 (filed Oct. 14, 2009) ("Centennial 8-K").

²⁶ Centennial 8-K at 2.

Texas (the Southeast cluster).²⁷ In its mainland U.S. markets, Centennial utilizes Global System for Mobile Communications (“GSM”) technology that supports Enhanced Data Rates for Global Evolution (“EDGE”) and General Packet Radio Service (“GPRS”) advanced data technology, primarily using 850 MHz spectrum.²⁸ Centennial had planned to deploy a 3G UMTS network in parts of the mainland U.S. markets in 2009, but that deployment was postponed for a number of reasons.²⁹

9. Centennial also offers wireless service to approximately 424,400 subscribers in Puerto Rico and the U.S. Virgin Islands.³⁰ In this market, Centennial utilizes Code Division Multiple Access (“CDMA”) technology, which supports Evolution-Data Optimized (“EvDO”) technology.³¹ It has deployed a 100 percent 3G technology network in Puerto Rico and the U.S. Virgin Islands using EvDO Revision A (“EvDO Rev. A”) technology.³² Centennial also provides a fixed broadband wireless service in Puerto Rico under the name *Instant Internet*, which enables customers to connect their home computers or laptops to the Internet using an AC-powered device that utilizes Centennial’s wireless network.³³

10. Also in Puerto Rico, Centennial owns a 1,400 route mile fiber network connected to approximately 2,500 buildings.³⁴ Using that fiber optic network as well as its undersea fiber optic and microwave networks, Centennial provides switched voice, private line services, voice over Internet protocol (“VoIP”), international long distance, data, toll-free and Internet-related services to business and, to a lesser extent, residential customers in Puerto Rico.³⁵

11. Centennial’s wireless network covers a total aggregate population (“POPs”) of over 13 million – approximately 9 million POPs in mainland United States and 4 million POPs in Puerto Rico and the U.S. Virgin Islands.³⁶ For the year ending May 31, 2009, Centennial had consolidated revenue of \$1,051.6 million (\$583.4 million from mainland U.S. wireless operations, \$337.7 million from Puerto Rico wireless operations, and \$142.2 million from Puerto Rico broadband operations).³⁷

B. Description of Transaction

12. On November 7, 2008, AT&T and Centennial entered into an Agreement and Plan of Merger (“Merger Agreement”).³⁸ On November 21, 2008, the Applicants filed a series of applications pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended,³⁹ and Section 2 of

²⁷ Centennial 10-K at 1.

²⁸ Centennial 10-K at 2.

²⁹ Centennial 10-K at 2.

³⁰ Centennial 8-K at 2.

³¹ Centennial 10-K at 2.

³² Centennial 10-K at 2.

³³ Centennial 10-K at 2.

³⁴ Centennial 10-K at 2.

³⁵ Centennial 10-K at 2.

³⁶ Centennial 10-K at 3-4.

³⁷ Centennial 10-K at 34, 36.

³⁸ Centennial, Investor Relations, Press Release, “AT&T to Acquire Centennial Communications, Enhance Service for Wireless Customers and Businesses” (Nov. 7, 2008) at 1 (“Transaction Press Release”), available at <http://www.ir.centennialwireless.com/releasedetail.cfm?ReleaseID=346485> (last visited Oct. 16, 2009).

³⁹ 47 U.S.C. §§ 214, 310(d).

the Cable Landing License Act.⁴⁰ In these applications, the Applicants seek Commission approval of the transfer of control from Centennial to AT&T of licenses, authorizations, and spectrum leasing arrangements held by Centennial and its subsidiaries.

13. Pursuant to the Merger Agreement, Independence Merger Sub Inc. (“Merger Sub”), a newly formed, wholly-owned subsidiary of AT&T, will merge with and into Centennial, with Centennial continuing as the surviving corporation.⁴¹ After consummation of the proposed transaction, Centennial will be a wholly-owned subsidiary of AT&T.⁴² Centennial and its subsidiaries will continue to hold all their FCC authorizations and spectrum leases, and there will be no assignment of licenses or transfer of direct control of these authorizations.⁴³

14. As proposed, AT&T will acquire Centennial for \$944 million in cash and, upon consummation of the transaction, Centennial stockholders will receive \$8.50 per share.⁴⁴ Including net debt, the total enterprise is valued at approximately \$2.8 billion.⁴⁵ The Applicants state that, as a result of the proposed transaction, AT&T customers “will enjoy a better on-network calling experience in the current Centennial roaming areas [and Centennial customers] will have access to the wireless network with the best global coverage and to the nation’s premier lineup of innovative wireless devices, including iPhone 3G, an AT&T exclusive.”⁴⁶

C. Transaction Review Process

1. Commission Review

15. Between November 21, 2008 and December 11, 2008, pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended,⁴⁷ and Section 2 of the Cable Landing License Act,⁴⁸ the Applicants filed a series of applications seeking Commission approval of the proposed transfer of control of licenses and spectrum leasing arrangements held by Centennial and its subsidiaries from Centennial to AT&T. The Applicants also filed applications, pursuant to Section 214 of the Communications Act,⁴⁹ seeking consent to the transfer of control of four international and one domestic Section 214 authorizations to AT&T.⁵⁰ On December 16, 2008, the Commission released a public notice

⁴⁰ *Id.* § 35; *see generally* An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (“Cable Landing License Act”).

⁴¹ Application, Description of Transaction, Public Interest Showing and Related Demonstrations (filed Nov. 21, 2008) (“Application, Public Interest Statement”) at 2.

⁴² Application, Public Interest Statement at 2-3.

⁴³ Application, Public Interest Statement at 3.

⁴⁴ Transaction Press Release at 1.

⁴⁵ Transaction Press Release at 1.

⁴⁶ Transaction Press Release at 1.

⁴⁷ 47 U.S.C. §§ 214, 310(d).

⁴⁸ *Id.* § 35.

⁴⁹ 47 U.S.C. § 214.

⁵⁰ File Nos. ITC-T/C-20081121-00508 (Centennial Communications Corp.), ITC-T/C-20081121-00509 (Centennial Puerto Rico Operations Corp. (“CPROC”)), and ITC-T/C-20081121-00510 (Centennial Puerto Rico License Corp.) seek Commission approval for the transfer of international Section 214 authorizations from Centennial to AT&T. The Applicants have also filed an application to transfer control of the domestic Section 214 authority held by Centennial’s subsidiary, Centennial Puerto Rico Operations Corp. (“CPROC”), to AT&T.

seeking comment on the proposed transaction.⁵¹ The Comment Public Notice established a pleading cycle for the applications, with petitions to deny due January 15, 2009, oppositions due January 26, 2009, and replies due February 2, 2009.⁵²

16. In response to the Comment Public Notice, the Commission received three petitions to deny, filed by Cellular South, Inc. (“Cellular South”), Cincinnati Bell Wireless LLC (“Cincinnati Bell”), and NEATT Wireless LLC (“NEATT”),⁵³ and two comments, filed by the Rural Cellular Association (“RCA”) and Sprint Nextel Corporation (“Sprint Nextel”),⁵⁴ by the January 15, 2009 deadline. Cellular South also filed a petition for reconsideration requesting that the Commission reconsider its decision, in the Comment Public Notice, to use permit-but-disclose *ex parte* procedures for the proceeding.⁵⁵ The Applicants filed a Joint Opposition on January 26, 2009.⁵⁶ On February 2, 2009, the Commission received replies to the Joint Opposition from Cellular South,⁵⁷ Cincinnati Bell, and Sprint Nextel.⁵⁸

17. *Confidential Materials.* On March 3, 2009, the Wireless Telecommunications Bureau (“Bureau”) issued a Protective Order to ensure that any confidential or proprietary documents submitted to the Commission would be adequately protected from public disclosure and announcing the process by which interested parties could gain access to confidential information filed in the record.⁵⁹ The Bureau received acknowledgements pursuant to the Protective Order from two individuals seeking to review certain proprietary or confidential information contained in the record.⁶⁰ On May 27, 2009, the Bureau

⁵¹ See AT&T Inc. and Centennial Communications Corp. Seek FCC Consent to Transfer Control of Licenses, Leasing Arrangements, and Authorizations, WT Docket No. 08-246, *Public Notice*, 23 FCC Rcd 17966 (2008) (“Comment Public Notice”).

⁵² See *id.*

⁵³ Petition to Deny of Cellular South, Inc., filed Jan. 15, 2009 (“Cellular South Petition”); Petition of Cincinnati Bell Wireless LLC to Condition Consent or Deny Application, filed Jan. 15, 2009 (“Cincinnati Bell Petition”); Petition to Deny of NEATT Wireless, LLC, filed Jan. 15, 2009 (“NEATT Petition”).

⁵⁴ Comments of the Rural Cellular Association, filed Jan. 15, 2009 (“RCA Comments”); Comments of Sprint Nextel Corporation, filed Jan. 15, 2009 (“Sprint Nextel Comments”).

⁵⁵ Petition for Reconsideration of Cellular South, Inc., filed Jan. 15, 2009 (“Cellular South Petition for Reconsideration”). On January 23, 2009, Cellular South filed a motion to supplement its petition for reconsideration and a supplement to its petition for reconsideration. Motion of Cellular South, Inc. for Leave to File a Supplement to Its Petition for Reconsideration, filed Jan. 23, 2009 (“Cellular South Motion to Supplement”); Supplement to Petition for Reconsideration of Cellular South, Inc., filed Jan. 23, 2009 (“Cellular South Reconsideration Supplement”).

⁵⁶ Joint Opposition of AT&T Inc. and Centennial Communications Corp. to Petitions to Deny or Condition Consent, and Reply to Comments and Petition for Reconsideration, filed Jan. 26, 2009 (“Joint Opposition”).

⁵⁷ Cellular South filed two replies to the Joint Opposition. Reply of Cellular South, Inc. to Joint Opposition to Petition to Deny, filed Feb. 2, 2009 (“Cellular South Reply to Petition”); Reply of Cellular South, Inc. to Joint Opposition to Petition for Reconsideration, filed Feb. 2, 2009 (“Cellular South Reply to Petition for Reconsideration”).

⁵⁸ Reply of Cincinnati Bell Wireless LLC to Joint Opposition of AT&T Inc. and Centennial Communications Corp. to Petitions to Deny or Condition Consent, filed Feb. 2, 2009 (“Cincinnati Bell Reply”); Reply Comments of Sprint Nextel Corporation, filed Feb. 2, 2009 (“Sprint Nextel Reply”).

⁵⁹ 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, *Protective Order*, 24 FCC Rcd 2900 (WTB 2009) (“Protective Order”).

⁶⁰ Letter from Scott Feira, Arnold & Porter LLP, counsel for AT&T Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 21, 2009).

released a second protective order, as requested by the Applicants,⁶¹ to provide additional protection to those documents contained in AT&T's and Centennial's response to the first information request considered to be highly sensitive and confidential.⁶²

18. On March 3, 2009, the Bureau released a public notice announcing that Numbering Resource Utilization and Forecast ("NRUF") reports and local number portability ("LNP") data for all wireless telecommunications providers as of December 31, 2006, June 30, 2007, and December 31, 2007 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.⁶³ On June 10, 2009, the Bureau released an additional public notice announcing that the NRUF reports and LNP data for all wireless telecommunications providers as of December 31, 2008 would be placed into the record, subject to the provisions of the NRUF Protective Order.⁶⁴ The Bureau received acknowledgements pursuant to the NRUF Protective Order from eleven individuals seeking to review the NRUF and LNP data that is in the record.⁶⁵

19. *Commission Requests for Documents and Information.* On April 30, 2009, pursuant to Section 308(b) of the Communications Act,⁶⁶ the Bureau requested a number of documents and additional information from the Applicants by May 15, 2009.⁶⁷ Among other things, the Bureau asked the Applicants to provide further information regarding the public interest benefits of the transaction,

⁶¹ Letter from Joan Marsh, AT&T Inc., and Jonathan V. Cohen, Wilkinson Barker Knauer LLP, Counsel for Centennial Communications Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission (May 15, 2009); Letter from Peter J. Schildkraut, Arnold & Porter LLP, Counsel for AT&T Inc., and Jonathan V. Cohen, Wilkinson Barker Knauer LLP, Counsel for Centennial Communications Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission (May 18, 2009); Letter from Peter J. Schildkraut, Arnold & Porter LLP, Counsel for AT&T Inc., and Jonathan V. Cohen, Wilkinson Barker Knauer LLP, Counsel for Centennial Communications Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission (May 21, 2009).

⁶² 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, *Second Protective Order*, 24 FCC Rcd 7182 (WTB 2009) ("Second Protective Order").

⁶³ Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements – Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports Placed Into the Record, Subject to Protective Order, WT Docket No. 08-246, CC Docket No. 99-200, *Public Notice*, 24 FCC Rcd 2910 (WTB 2009); 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, CC Docket No. 99-200, *Protective Order*, 24 FCC Rcd 2913 (WTB 2009) ("NRUF Protective Order").

⁶⁴ Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements – Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports Placed Into the Record, Subject to Protective Order, WT Docket No. 08-246, CC Docket No. 99-200, *Public Notice*, 24 FCC Rcd 7801 (WTB 2009).

⁶⁵ Letter from Scott Feira, Arnold & Porter LLP, counsel for AT&T Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 13, 2009); Letter from Jonathan V. Cohen, Wilkinson Barker Knauer LLP, counsel for Centennial Communications Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 17, 2009); Letter from Jonathan V. Cohen, Wilkinson Barker Knauer LLP, counsel for Centennial Communications Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 18, 2009).

⁶⁶ 47 U.S.C. § 308(b).

⁶⁷ Letter from James D. Schlichting, Acting Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to William R. Drexel, AT&T Inc., and Jonathan V. Cohen, Wilkinson Barker Knauer LLP (April 30, 2009) ("Information Request I").

including license and network coverage, network integration and the transition of customers, services provided, service plans and handset availability, timelines for roll out of 3G and 4G technologies, and the merged entity's improved disaster preparedness.⁶⁸ The Bureau also requested information about the Applicants' number of subscribers, coverage, and post-transaction plans for Centennial's CDMA network in Puerto Rico and for information regarding the relationship between AT&T and América Móvil.⁶⁹ On May 15, 2009, the Applicants requested an extension until May 19, 2009 to submit a response to the Commission's request,⁷⁰ and they filed a letter, dated May 19, 2009, requesting a further extension to file the response to the information request one business day after the release of the Second Protective Order.⁷¹ The Applicants provided responsive documents and information on May 28, 2009,⁷² some of which was provided subject to the provisions of the Protective Order and the Second Protective Order.⁷³

20. On April 30, 2009, the Bureau also sent requests for information to the other wireless telephony/broadband service providers in Puerto Rico and the U.S. Virgin Islands.⁷⁴ These Third Party Requests requested information regarding each company's number of subscribers and coverage areas in Puerto Rico and the U.S. Virgin Islands.⁷⁵ The responses to these information requests were due on May 15, 2009. Sprint Nextel, PRWireless, Inc., and Vitelcom Cellular, Inc. filed their responses on or before May 15, 2009.⁷⁶ On May 15, 2009, T-Mobile requested an extension until May 22, 2009,⁷⁷ and filed its

⁶⁸ See *id.* at Attachment.

⁶⁹ See *id.*

⁷⁰ Letter from Joan Marsh, AT&T Inc., and Jonathan Cohen, Wilkinson Barker Knauer LLP, Counsel for Centennial Communications Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission (May 15, 2009).

⁷¹ Letter from Jeanine Poltronieri, AT&T Inc., and Jonathan Cohen, Wilkinson Barker Knauer LLP, Counsel for Centennial Communications Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission (May 19, 2009).

⁷² See generally Information Request I Response.

⁷³ See *id.* at 1.

⁷⁴ Letter from James D. Schlichting, Acting Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Luis Omar Rivera Zayas and Brian Clark, PRWireless, Inc., and Carl W. Northrop, Paul, Hastings, Janofsky & Walker, LLP (April 30, 2009) ("PRWireless Information Request"); Letter from James D. Schlichting, Acting Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Walter Arroyo, Puerto Rico Telephone Company, Inc., and Alejandro Cantu Jiménez, América Móvil, S.A.B. de C.V. (April 30, 2009) ("PRTC/América Móvil Information Request"); Letter from James D. Schlichting, Acting Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Lawrence R. Krevor, Sprint Nextel Corporation, and Ray Rothermel, Sprint Nextel Corporation (April 30, 2009) ("Sprint Nextel Information Request"); Letter from James D. Schlichting, Acting Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Dan Menser, T-Mobile USA, Inc., and Thomas J. Sugrue, T-Mobile USA, Inc. (April 30, 2009) ("T-Mobile Information Request"); Letter from James D. Schlichting, Acting Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Milton Wuischpard, Vitelcom Cellular, Inc., and Gregory J. Vogt, Law Offices of Gregory J. Vogt, PLLC (April 30, 2009) ("Vitelcom Information Request").

⁷⁵ See PRWireless Information Request, Attachment at 1; PRTC/América Móvil Information Request, Attachment at 1; Sprint Nextel Information Request, Attachment at 1; T-Mobile Information Request, Attachment at 1; Vitelcom Information Request, Attachment at 1.

⁷⁶ Letter from Michael Lazarus, Paul, Hastings, Janofsky & Walker LLP, Counsel to PRWireless, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (May 8, 2009); Letter from Robert H. McNamara, Director, Spectrum Management, Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 14, 2009); Letter from Bennett L. Ross, Wiley Rein LLP, Counsel to Vitelcom Cellular, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (May 15, 2009).

response on May 22, 2009.⁷⁸ Puerto Rico Telephone Company, Inc. (“PRTC”)/América Móvil requested an extension⁷⁹ and filed the majority of their respective responses on June 1, 2009.⁸⁰ On June 1, 2009, PRTC filed a further request for an extension to file coverage maps by June 10, 2009.⁸¹ PRTC submitted its coverage maps on June 10, 2009.⁸²

21. On September 22, 2009, pursuant to Section 308(b) of the Communications Act,⁸³ the Bureau requested additional documents and information from the Applicants by October 6, 2009.⁸⁴ Among other things, the Bureau asked the Applicants to provide further information regarding the relationship between AT&T and América Móvil, including details about the MSA.⁸⁵ It further requested additional information concerning the AT&T integration planning process and its impact on existing Centennial customers in the continental United States, including whether their handsets will function on AT&T’s GSM network.⁸⁶ It also requested additional information about roaming in the continental United States and Puerto Rico, and the setting of wireless prices in Puerto Rico.⁸⁷ The Applicants provided responsive documents and information on September 25, 2009,⁸⁸ some of which was provided subject to the provisions of the Protective Order.⁸⁹ AT&T filed supplemental responses to the Information Request II on October 19, 2009,⁹⁰ October 20, 2009,⁹¹ and October 29, 2009.⁹²

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⁷⁷ Letter from Sara F. Leibman, Director, Federal Regulatory Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (May 15, 2009).

⁷⁸ Letter from Sara F. Leibman, Director, Federal Regulatory Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (May 22, 2009).

⁷⁹ Letter from Michael G. Jones, Wilkie Farr & Gallagher LLP, Counsel to América Móvil, S.A.B. de C.V., to Marlene H. Dortch, Secretary, Federal Communications Commission (May 12, 2009); Letter from Thomas J. Navin, Wiley Rein LLP, Counsel to Puerto Rico Telephone Company, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (May 13, 2009).

⁸⁰ Letter from Michael G. Jones, Wilkie Farr & Gallagher LLP, Counsel to América Móvil, S.A.B. de C.V., to Marlene H. Dortch, Secretary, Federal Communications Commission (June 1, 2009); Letter from Thomas J. Navin, Wiley Rein LLP, Counsel to Puerto Rico Telephone Company, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (June 1, 2009).

⁸¹ Letter from Thomas J. Navin, Wiley Rein LLP, Counsel to Puerto Rico Telephone Company, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (June 1, 2009).

⁸² Letter from Thomas J. Navin, Wiley Rein LLP, Counsel to Puerto Rico Telephone Company, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (June 10, 2009).

⁸³ 47 U.S.C. § 308(b).

⁸⁴ Letter from Ruth Milkman, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to William R. Drexel, AT&T Inc., and Jonathan V. Cohen, Wilkinson Barker Knauer LLP (Sept. 22, 2009) (“Information Request II”).

⁸⁵ *See id.* at Attachment.

⁸⁶ *See id.*

⁸⁷ *See id.*

⁸⁸ *See generally* Information Request II Response.

⁸⁹ *See id.* at 1.

⁹⁰ *See* Supplemental Response of AT&T Inc. to General Information Request Dated September 22, 2009, filed October 19, 2009 (“AT&T Oct. 19, 2009 Supplemental Response to Information Request II”).

22. *AT&T Letter of Commitment.* On October 22, 2009, AT&T filed a letter making a number of commitments in order to expedite approval of the subject transaction.⁹³ These commitments concern roaming matters, the provision of services under the MSA, the seconding of AT&T employees to América Móvil, extension of the existing firewall to include Puerto Rico wireline and TracFone Wireless, Inc. (“TracFone”) prepaid wireless operations, AT&T’s representatives on the Board of Directors of América Móvil, and the appointment of a compliance officer and related compliance filings. These commitments are discussed in more detail below, and a copy of the AT&T Letter of Commitment is attached as Appendix C hereto.

2. Department of Justice Review

23. The Antitrust Division of the United States Department of Justice (“DOJ”) reviews telecommunications mergers pursuant to Section 7 of the Clayton Act, which prohibits mergers that may substantially lessen competition.⁹⁴ The Antitrust Division’s review is limited solely to an examination of the competitive effects of the acquisition, without reference to national security, law enforcement, or other public interest considerations. The Antitrust Division reviewed the proposed merger between AT&T and Centennial, and the DOJ concluded that the proposed merger was likely to substantially lessen competition in certain markets where AT&T and Centennial are among the most significant competitors,⁹⁵ and entered into a settlement with the Applicants designed to eliminate the anticompetitive effects of the transaction in these markets.⁹⁶ On October 13, 2009, the DOJ filed a series of documents, including a complaint and preservation of assets stipulation and order, with the United States District Court for the District of Columbia (“D.C. District Court”) reflecting this settlement,⁹⁷ and the Applicants, the DOJ, and the State of Louisiana jointly filed a proposed Final Judgment with the D.C. District

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⁹¹ See Supplemental Response of AT&T Inc. to General Information Request Dated September 22, 2009, filed October 20, 2009 (“AT&T Oct. 20, 2009 Supplemental Response to Information Request II”).

⁹² See Supplemental Response of AT&T Inc. to General Information Request Dated September 22, 2009, filed October 29, 2009 (“”).

⁹³ Letter from Joan Marsh, AT&T, Inc., to Ruth Milkman, Chief, Wireless Telecommunications Bureau (Oct. 22, 2009), at 2 (“AT&T Letter of Commitment”). The commitments are contained in Attachment A to the letter.

⁹⁴ 15 U.S.C. § 18. The DOJ does not review mergers below certain statutorily mandated dollar thresholds, which are currently approximately \$63 million (where certain other factors are present) and \$252 million. 15 U.S.C. § 18a.

⁹⁵ See United States of America and State of Louisiana v. AT&T, Inc. and Centennial Communications Corp., Complaint, Case No. 1:09-cv-01932, at 7-9 ¶¶ 17-19 (filed Oct. 13, 2009) (“DOJ AT&T-Centennial Complaint”); United States of America and State of Louisiana v. AT&T, Inc. and Centennial Communications Corp., Competitive Impact Statement, Case No. 1:09-cv-01932, at 7-10 (filed Oct. 13, 2009) (“DOJ AT&T-Centennial Competitive Impact Statement”); Justice Department Requires Divestitures in AT&T’s Acquisition of Centennial; Divestitures in Eight Cellular Marketing Areas Will Preserve Competition for Mobile Wireless Customers in Louisiana and Mississippi, *News Release* (Oct. 13, 2009), available at <http://www.justice.gov/opa/pr/2009/October/09-at-1101.html> (last visited Oct. 22, 2009).

⁹⁶ See United States of America and State of Louisiana v. AT&T, Inc. and Centennial Communications Corp., Preservation of Assets Stipulation and Order, Case No. 1:09-cv-01932, at 6 (filed Oct. 13, 2009) (“DOJ AT&T-Centennial Stipulation and Order”). All DOJ filings regarding this matter are available at <http://www.usdoj.gov/atr/cases/attcentennial.htm>.

⁹⁷ See generally DOJ AT&T-Centennial Complaint; DOJ AT&T-Centennial Competitive Impact Statement; DOJ AT&T-Centennial Stipulation and Order.

Court.⁹⁸ The DOJ will allow the merger to proceed subject to the Applicants' divestiture of the business units and related assets of Centennial in eight markets.⁹⁹

24. Specifically, under the terms of the settlement between the Applicants and the DOJ, AT&T and Centennial have agreed to divest certain cellular licenses and related assets used by Centennial in the operation of its mobile wireless telecommunications services businesses in Lafayette, LA MSA (CMA174), Alexandria, LA MSA (CMA205), Louisiana RSA 3 (CMA456), Louisiana RSA 5 (CMA458), Louisiana RSA 6 (CMA459), Louisiana RSA 7 (CMA460), Mississippi RSA 8 (CMA500), and Mississippi RSA 9 (CMA501).¹⁰⁰ AT&T and Centennial also agreed to divest Centennial's mobile wireless telecommunications services businesses in the Lake Charles MSA (CMA197), if the DOJ, in consultation with the State of Louisiana, determines that such divestiture is necessary to ensure successful divestiture in the Lafayette, LA MSA (CMA174), Louisiana RSA 5 (CMA458), Louisiana RSA 6 (CMA459), and Louisiana RSA 7 (CMA460).¹⁰¹ The divested assets will be transferred to a court-appointed management trustee ("Management Trustee"), who will manage them while AT&T seeks a third-party buyer.¹⁰² AT&T has a period of 120 days from consummation of the transaction (which can be extended for up to 60 days) to sell the assets to a third-party buyer or divest the assets to a divestiture trustee ("Divestiture Trustee").¹⁰³

25. The settlement also requires that a single purchaser acquire all of the divested business units and related assets in each of three separate regions.¹⁰⁴ These three regions are: Northern Louisiana (Alexandria, LA MSA (CMA205) and Louisiana RSA 3 (CMA456)); Southern Louisiana (Lafayette, LA MSA (CMA174), Louisiana RSA 5 (CMA458), Louisiana RSA 6 (CMA459), and Louisiana RSA 7 (CMA460)); and Mississippi (Mississippi RSA 8 (CMA500) and Mississippi RSA 9 (CMA501)).¹⁰⁵ The DOJ states that these "CMAs have been grouped to reflect the fact that carriers frequently are more competitive where they serve contiguous areas."¹⁰⁶ The DOJ also states that "in deciding on the particular packages . . . , [it] recognized that combining areas that share a significant community of interest provides greater assurance that the buyer will be an effective competitor."¹⁰⁷ In recognizing that these packages could dissuade potential buyers from attempting to acquire the divested business units,¹⁰⁸ the DOJ states

⁹⁸ See *United States of America and State of Louisiana v. AT&T, Inc. and Centennial Communications Corp.*, Proposed Final Judgment, Case No. 1:09-cv-01932 (filed Oct. 13, 2009) ("DOJ AT&T-Centennial Proposed Final Judgment").

⁹⁹ See DOJ AT&T-Centennial Proposed Final Judgment at 3-6, 7-11; DOJ AT&T-Centennial Complaint at 2; DOJ AT&T-Centennial Competitive Impact Statement at 10-13.

¹⁰⁰ See DOJ AT&T-Centennial Proposed Final Judgment at 3-6, 7-11; DOJ AT&T-Centennial Competitive Impact Statement at 10-13.

¹⁰¹ See DOJ AT&T-Centennial Proposed Final Judgment at 3-4; DOJ AT&T-Centennial Competitive Impact Statement at 10-11.

¹⁰² See DOJ AT&T-Centennial Stipulation and Order at 8-13.

¹⁰³ See DOJ AT&T-Centennial Proposed Final Judgment at 7-8.

¹⁰⁴ See DOJ AT&T-Centennial Proposed Final Judgment at 11; DOJ AT&T-Centennial Competitive Impact Statement at 11.

¹⁰⁵ See DOJ AT&T-Centennial Proposed Final Judgment at 11; DOJ AT&T-Centennial Competitive Impact Statement at 11.

¹⁰⁶ DOJ AT&T-Centennial Competitive Impact Statement at 11.

¹⁰⁷ *Id.* at 12.

¹⁰⁸ *Id.*

that it struck “a balance between these potential issues by creating bundles that are geographically linked but allowing potential buyers to effectively suggest larger packages by bidding conditionally on multiple packages.”¹⁰⁹ Further, the DOJ has the sole discretion, upon consultation with the State of Louisiana that joined in the settlement, to “allow even smaller packages of assets as appropriate to ensure a successful divestiture.”¹¹⁰

26. On October 21, 2009, the D.C. District Court signed and entered the Preservation of Assets Stipulation and Order.

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

27. 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 of licenses, authorizations, and spectrum leasing arrangements will serve the public interest, convenience, and necessity.¹¹¹ In making this assessment, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act,¹¹² other applicable statutes, and the Commission’s rules.¹¹³ If the transaction does not violate a statute or rule, we next consider whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.¹¹⁴ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.¹¹⁵ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.¹¹⁶ If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we must designate the application for hearing under Section 309(e) of the Communications Act.¹¹⁷

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ 47 U.S.C. §§ 214(a), 310(d).

¹¹² Section 310(d), 47 U.S.C. § 310(d), requires that we consider the applications as if the proposed transferee were applying for the licenses directly under Section 308 of the Act, 47 U.S.C. § 308. *See, e.g.*, Applications of 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, 17460 ¶ 26 (2008) (“*Verizon Wireless-ALLTEL Order*”); 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, 17578 ¶ 19 (2008) (“*Sprint Nextel-Clearwire Order*”); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21542 ¶ 40 (2004) (“*Cingular-AT&T Wireless Order*”).

¹¹³ *See, e.g.*, *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17460 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17578-79 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21542-43 ¶ 40.

¹¹⁴ *See, e.g.*, *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17460 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17578-79 ¶ 19; Applications of Nextel Communications, Inc. and Sprint Corporation, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 13976 ¶ 20 (2005) (“*Sprint-Nextel Order*”).

¹¹⁵ *See, e.g.*, *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17460 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17579 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

¹¹⁶ *See, e.g.*, *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17579 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

¹¹⁷ 47 U.S.C. § 309(e). *See, e.g.*, *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543-44 ¶ 40. (continued....)

28. Our public interest evaluation also 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.¹¹⁸ Our public interest analysis may also entail assessing whether the proposed transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.¹¹⁹ 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.¹²⁰

29. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.¹²¹ 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.¹²² Like the DOJ, the 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. The DOJ, however, reviews telecommunications mergers pursuant to Section 7 of the Clayton Act, and if it wishes to block a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.¹²³ Under the Commission’s review, the Applicants must show that the transaction will serve the public interest; otherwise the application is set for hearing. The DOJ’s review is also limited solely to an examination of the competitive effects of the acquisition, without reference to diversity, localism, or other public interest considerations.¹²⁴ The Commission’s competitive analysis under the public interest standard is somewhat broader, for example, considering whether a transaction will enhance, rather than merely preserve,

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Section 309(e)’s requirement applies only to those applications to which Title III of the Act applies, *i.e.*, radio station licenses. We are not required to designate for hearing applications for the transfer or assignment of Title II authorizations when we are unable to find that the public interest would be served by granting the applications, *see ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979), but of course may do so if we find that a hearing would be in the public interest.

¹¹⁸ *See, e.g., Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

¹¹⁹ *See, e.g., Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

¹²⁰ *See, e.g., Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

¹²¹ *See, e.g., Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 28; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42.

¹²² *See, e.g., Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 28; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42.

¹²³ 15 U.S.C. § 18.

¹²⁴ *See, e.g., Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 28; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 21; Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases, WT Docket No. 07-208, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 12463, 12479-80 ¶ 29 (2008) (“*Verizon Wireless-RCC Order*”).

existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant market.¹²⁵

30. Our analysis recognizes that a proposed transaction may lead to both beneficial and harmful consequences.¹²⁶ For instance, combining assets may allow a firm to reduce transaction costs and offer new products, but it may also create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.¹²⁷ Our 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.¹²⁸ Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.¹²⁹ Similarly, Section 214(c) of the Act authorizes the Commission to attach to the certificate “such terms and conditions as in its judgment the public convenience and necessity may require.”¹³⁰ Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to rely upon our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits.¹³¹ Despite this broad authority, generally 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.¹³² Thus, we generally will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.¹³³

IV. QUALIFICATIONS OF APPLICANTS

31. As noted previously, when evaluating applications for consent to transfer control of licenses, authorizations, and spectrum leasing arrangements, Section 310(d) of the Communications Act requires the Commission to determine whether the proposed transaction will serve “the public interest, convenience and necessity.”¹³⁴ Among the factors the Commission considers in its public interest review

¹²⁵ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 28; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

¹²⁶ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

¹²⁷ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

¹²⁸ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

¹²⁹ 47 U.S.C. § 303(r). See also, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17463 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

¹³⁰ 47 U.S.C. § 214(c). See also, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17463 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

¹³¹ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17463 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581-82 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43. See also *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043, 1049 (7th Cir. 1992) (discussing Commission’s authority to trade off reduction in competition for increase in diversity in enforcing public interest standard).

¹³² See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17463 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

¹³³ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17463 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

¹³⁴ 47 U.S.C. § 310(d).

is whether the applicant for a license has the requisite “citizenship, character, financial, technical, and other qualifications.”¹³⁵ Therefore, as a threshold matter, the Commission must determine whether the applicants to the proposed transaction meet the requisite qualifications to hold and transfer licenses under Section 310(d) of the Act and the Commission’s rules.¹³⁶

32. In determining whether applicants have the requisite character to be Commission licensees, we look to the Commission’s character policy initially developed in the broadcast area as guidance in resolving similar questions in common carrier license transfer proceedings.¹³⁷ Under this policy, the Commission previously has stated that it will review allegations of misconduct directly before it,¹³⁸ as well as conduct that takes place outside of the Commission.¹³⁹ With respect to Commission-related conduct, the Commission has stated that all violations of provisions of the Act, or of the Commission’s rules or polices, are predictive of an applicant’s future truthfulness and reliability, and thus have a bearing on an applicant’s character qualifications.¹⁴⁰ The Commission previously has determined that in its review of character issues, it will consider forms of adjudicated, non-Commission related misconduct that include: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition.¹⁴¹

33. When evaluating transfers of control or assignments under Section 310(d), the Commission does not, as a general rule, re-evaluate the qualifications of the transferor, unless issues related to basic qualifications have been designated for hearing by the Commission or have been

¹³⁵ *Id.* §§ 308, 310(d). See also, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 31; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

¹³⁶ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see also, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 31; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

¹³⁷ See, e.g., *WorldCom, Inc. and Its Subsidiaries (Debtors-in-Possession), Transferor, and MCI, Inc., Transferee*, WC Docket No. 02-215, *Memorandum Opinion and Order*, 18 FCC Rcd. 26484, 26493 ¶ 13 (2003). See also *Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, Report, Order and Policy Statement*, 102 F.C.C.2d 1179, 1210-11 ¶¶ 60-61 (1986) (“1986 Character Policy Statement”); *Memorandum Opinion and Order*, 1 FCC Rcd 421 (1986); *Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications, Policy Statement and Order*, 5 FCC Rcd 3252 (1990) (“1990 Character Policy Statement”), *Memorandum Opinion and Order*, 6 FCC Rcd 3448 (1991), *Memorandum Opinion and Order*, 7 FCC Rcd 6564 (1992). The Commission applies its broadcast character standards to applicants and licensees in the other radio services. See, e.g., *1990 Character Policy Statement*, 5 FCC Rcd at 3253 ¶ 10 (adopting 47 C.F.R. § 1.17 to apply prohibition against misrepresentations and material omissions to applicants, licensees, and permittees in all radio services).

¹³⁸ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 32; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582-83 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

¹³⁹ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 32; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

¹⁴⁰ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 32; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12478 n.119; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47; *1986 Character Policy Statement*, 102 F.C.C. 2d at 1209-10 ¶ 57.

¹⁴¹ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464-65 ¶ 32; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12478 n.120; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

sufficiently raised in petitions to warrant the designation of a hearing.¹⁴² No issues have been raised with respect to the basic qualifications of Centennial to hold Commission licenses, and we see no reason to re-evaluate its qualifications in considering the transaction before us. Conversely, Section 310(d) obligates the Commission to consider whether the proposed transferee is qualified to hold Commission licenses.¹⁴³ No issues have been raised with respect to the basic qualifications of the transferee, AT&T, which has repeatedly been found qualified to hold Commission licenses. We therefore find that there is no reason to re-evaluate the basic qualifications of AT&T at this time.

V. COMPETITIVE ANALYSIS

34. Our competitive analysis of the proposed transaction considers the potential competitive effects that might result from the proposed transaction.¹⁴⁴ We begin our competitive analysis by determining the appropriate market definitions for this transaction,¹⁴⁵ including a determination of the product market, geographic markets, market participants, and the input market for spectrum available for the provision of mobile telephony/broadband services. We next determine whether there is a significant increase in horizontal market concentration as a result of the proposed transaction. Transactions that do not significantly increase concentration or do not result in a concentrated market ordinarily require no further analysis of their horizontal impact. In analyzing concentration levels, we apply a two-part initial “screen” to identify those local markets in which no competitive harm clearly arises from the transaction. The first part of the screen considers changes in market concentration in the provision of “mobile telephony/broadband services” as a result of the proposed transaction, and is based on the size of the post-transaction Herfindahl-Hirschman Index (“HHI”) market concentration and the change in the HHI. The second part of the screen examines the input market for spectrum available on a market-by-market basis for the provision of “mobile telephony/broadband services.”¹⁴⁶ For those markets not eliminated by the initial screen, we conduct, on a market-by-market basis, an analysis of any potential competitive harms associated with horizontal concentration, including the potential for both unilateral and coordinated effects. We also examine other market factors that pertain to competitive effects, including the incentive

¹⁴² See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17466 ¶ 33; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12477-78 ¶ 27; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44. See also Stephen F. Sewell, Assignment and Transfers of Control of FCC Authorizations under Section 310(d) of the Communications Act of 1934, 43 FED. COMM. L.J. 277, 339-40 (1991). The policy of not approving assignments or transfers when issues regarding the licensee’s basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. See *id.* The hearing designation is required under Section 309(e) of the Communications Act, 47 U.S.C. § 309(e), only if the record presents a “substantial and material question of fact” whether grant of the application would serve the public interest, convenience, and necessity.

¹⁴³ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17466 ¶ 33; Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-153, *Memorandum Opinion and Order*, 22 FCC Rcd 20295, 20302-03 ¶ 11 (2007) (“*AT&T-Dobson Order*”); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

¹⁴⁴ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468 ¶ 40; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68; Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, at § 0.1, n.6. (Apr. 2, 1992, revised Apr. 8, 1997) (“*DOJ/FTC Merger Guidelines*”).

¹⁴⁵ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17469 ¶ 42; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583 ¶ 25; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 70.

¹⁴⁶ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468-69 ¶ 41 n.193; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583-17584 ¶ 26; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21552 ¶ 58.

and ability of other existing firms to react and of new firms to enter the market, in response to attempted exercises of market power by the merged entity as a result of the merger.¹⁴⁷

35. We note that we recently issued a *Notice of Inquiry*¹⁴⁸ regarding competition in the mobile wireless ecosystem, seeking new data and input to “shed light on the current state of competition and provide a basis and foundation for the Commission’s ongoing understanding of the mobile wireless market.”¹⁴⁹ The NOI suggests the possibility that, in light of the record compiled in that proceeding, our future analysis of the competitive effects of proposed transactions may change. We continue to review the record in that proceeding, which closed only very recently, and our competitive analysis here does not take into account evidence submitted in that record.

A. Market Definitions

36. We establish at the outset the appropriate market definitions for our evaluation of the proposed transaction. This includes establishing the product and geographic market definitions that we will apply. We also discuss the input market for spectrum and identify market participants that would compete with the proposed merged entity in the provision of mobile telephony/broadband services.

1. Product Market

37. We evaluate this proposed transaction using a combined “mobile telephony/broadband services” product market, which is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).¹⁵⁰ Mobile telephony/broadband services is the relevant product market because it includes not only the traditional wireless services identified in older transactions but also encompasses the recent significant advances in mobile broadband services technology that is rapidly evolving for next-generation services. The market for mobile telephony/broadband services includes mobile voice and data services provided over wireless broadband networks, as well as mobile voice and data services provided over less advanced, earlier generation (*e.g.*, 2G, 2.5G) legacy wireless networks. In addition, the market includes a wide array of mobile data services, ranging from handset-based mobile data services marketed primarily as an add-on to mobile voice services to standalone mobile Internet access services for laptop users. We find that both AT&T and Centennial provide services in the product market for mobile telephony/broadband services. No party in the proceeding challenged the mobile telephony/broadband definition, and we will apply this definition in our analysis of this transaction. Accordingly, our analysis herein focuses only on the potential competitive effects that relate to the mobile telephony/broadband services market.

¹⁴⁷ Horizontal transactions raise competitive concerns when they reduce the availability of choices to the point that the resulting firm has the incentive and the ability, either by itself or in coordination with other firms, to raise prices. The ability to raise prices above competitive levels is generally referred to as “market power.” Market power may also enable sellers to reduce competition on dimensions other than price, including innovation and service quality. Absent significant offsetting efficiencies or other public interest benefits, a transaction that creates or enhances market power or facilitates its use is unlikely to serve the public interest. *See, e.g., Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468 ¶ 40; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556-57 ¶ 68-69; *DOJ/FTC Merger Guidelines* § 0.1, n.6.

¹⁴⁸ *See generally* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services, WT Docket No. 09-66, *Notice of Inquiry*, FCC 09-67 (rel. Aug. 27, 2009) (“*Competition Report NOI*”).

¹⁴⁹ *Competition Report NOI* at ¶ 2.

¹⁵⁰ *See Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17469-70 ¶ 45; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583-84 ¶ 26.

2. Geographic Market

38. We conclude that for this transaction, the most appropriate geographic level for market analysis is comprised of Cellular Market Areas (“CMAs”) and Component Economic Areas (“CEAs”),¹⁵¹ except for Puerto Rico and the U.S. Virgin Islands, as explained further below.

39. The Applicants argue that the market for mobile telephony/broadband services is national in scope and that analyzing the transaction in areas as small as CMAs and CEAs would not reflect the competitive forces that could constrain anticompetitive behavior by the merged entity.¹⁵² While the Applicants acknowledge that the Commission has rejected a national geographic scope in prior proceedings,¹⁵³ they argue that on the mainland U.S., AT&T and other national wireless providers advertise and set prices on a national basis, with very little local or regional variation in pricing.¹⁵⁴ Further, they assert that on the mainland U.S., Centennial looks to the national carriers’ offerings when setting its prices and offers only national rate plans to new subscribers.¹⁵⁵ Thus, they contend local market conditions on the mainland U.S. are less relevant to AT&T’s competitive strategy than actions taken by other national wireless providers.¹⁵⁶

40. With regard to the markets in Puerto Rico and the U.S. Virgin Islands, the Applicants contend that AT&T and all other carriers serving those areas offer unlimited island-wide rate plans.¹⁵⁷ The Applicants assert that in both Puerto Rico and the U.S. Virgin Islands, AT&T’s plans and prices depend less on Centennial’s plans than those of Claro, T-Mobile, and Sprint.¹⁵⁸ The Applicants therefore conclude that the transaction will not reduce the competition that influences AT&T’s pricing and service offerings.¹⁵⁹

¹⁵¹ Because these two sets of geographic areas come from different sides of the equation – demand in one case, supply in the other – the Commission has found them to be useful cross-checks on each other and, together, they help ensure that the Commission’s analysis does not overlook local areas that require more detailed analysis. *See, e.g., Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17470-71 ¶ 49; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 51; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105.

CEAs are defined by the Bureau of Economics. CEAs are designed to represent consumers’ patterns of normal travel for personal and employment reasons and may, therefore, capture areas within which groups of consumers would be expected to shop for wireless service and service providers have an incentive to market. *See* Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURVEY OF CURRENT BUSINESS, February 1995, at 75. Conversely, CMAs are the areas in which the Commission initially granted licenses for the cellular service. Although the partitioning of licenses has altered this structure in many license areas, CMAs represent the fact that the Commission’s licensing programs have to a certain degree shaped this market by defining the initial areas in which wireless providers had spectrum on which to base service offerings, and they may therefore serve as a reasonable proxy for where consumers face the same competitors. *See Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17470-71 ¶ 49; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 51.

¹⁵² Application, Public Interest Statement at 28-29.

¹⁵³ Application, Public Interest Statement at 28.

¹⁵⁴ Application, Public Interest Statement at 28-29 (citing Declaration of Francis P. Hunt at ¶¶ 17-18; Declaration of David A. Christopher at ¶¶ 3-5).

¹⁵⁵ Application, Public Interest Statement at 29 (citing Declaration of Hunt at ¶¶ 17-18).

¹⁵⁶ Application, Public Interest Statement at 28-29.

¹⁵⁷ Application, Public Interest Statement at 29 (citing Declaration of José J. Dávila at ¶ 5).

¹⁵⁸ Application, Public Interest Statement at 29 (citing Declaration of Dávila at ¶ 5).

¹⁵⁹ Application, Public Interest Statement at 29.

41. *Discussion.* We determine that the geographic market is the area within which a consumer is most likely to shop for mobile telephony/broadband services.¹⁶⁰ For most individuals, this market will be a local area, as opposed to a larger regional or nationwide area.¹⁶¹ This is because “in response to a small but not insignificant price increase by providers” that offer service where consumers live, work or travel, most consumers are unlikely to switch to alternative wireless providers that operate only outside of such a locality.¹⁶² We conclude that with respect to the continental United States, the most appropriate geographic level for market analysis is comprised of CMAs and CEAs. Further, the Applicants’ argument that prices are set on a national level, and that consumers shop for national plans and national rates, does not undercut the finding of a local geographic market.¹⁶³ We conclude that their assertions regarding the behavior of nationwide service providers and consumers do not establish the existence of a national market.¹⁶⁴

42. For Puerto Rico and the U.S. Virgin Islands, we find that the relevant geographic markets are not CMAs or CEAs. Instead, we find that Puerto Rico and the U.S. Virgin Islands are each a separate relevant geographic market.¹⁶⁵ In this instance, we find that the relevant geographic market is larger than a CMA or CEA because of the unique characteristics of Puerto Rico and the U.S. Virgin Islands. Both of these markets are limited in their geographic scope. Puerto Rico is about 3,471 square miles, and the U.S. Virgin Islands is approximately 133 square miles.¹⁶⁶ Because these are island territories, there are no contiguous markets. Given the limited geographic scope and the isolated nature of these markets, the potential for competitive harms is likely to be realized over the entire market rather than in smaller, more localized areas. Also, the six competing mobile telephony/broadband service providers have sufficient area and population coverage throughout the territory of Puerto Rico.¹⁶⁷ Moreover, Applicants state that all the wireless carriers on the islands offer unlimited island-wide rate plans.¹⁶⁸ These pricing plans are limited to Puerto Rico and the U.S. Virgin Islands, respectively, which are geographic areas that are significantly smaller than the continental U.S. Given the various factors discussed above, it is likely that consumers in Puerto Rico have access to the same or very similar mobile telephony/broadband services,

¹⁶⁰ *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17472 ¶ 52; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 52. See also *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 89.

¹⁶¹ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17472 ¶ 52; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 52; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 89. See also Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, WT Docket No. 08-27, *Thirteenth Report*, 24 FCC Rcd 6185, 6285 ¶ 212 (WTB 2009) (indicating that the average person shops for mobile communications services in markets that include place of work, place of residence, and surrounding areas that are economically related; such areas generally are larger than counties).

¹⁶² *DOJ/FTC Merger Guidelines* §§ 1.11, 1.12.

¹⁶³ Application, Public Interest Statement at 28.

¹⁶⁴ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17472 ¶ 52; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 52; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562 ¶ 88.

¹⁶⁵ Puerto Rico is comprised of 12 CMAs and 2 CEAs. The U.S. Virgin Islands is comprised of 2 CMAs and 1 CEA.

¹⁶⁶ GROUND WATER ATLAS of the UNITED STATES, Alaska, Hawaii, Puerto Rico and the U. S. Virgin Islands, HA 730-N, U.S. Geological Survey, available at http://pubs.usgs.gov/ha/ha730/ch_n/N-PR_VItext1.html (last visited Oct. 15, 2009).

¹⁶⁷ With respect to coverage, we have considered to be “sufficient” – coverage of 70 percent or greater of the population and 50 percent or more of the area. See *AT&T-Dobson Order*, 22 FCC Rcd at 20324 n.170.

¹⁶⁸ Application, Public Interest Statement at 29 (citing Declaration of Davila at ¶ 5).

and that they have the ability and incentive to purchase service throughout the entire territory if different prices or plans are offered at different locations. Thus, for purposes of this transaction, this regional pricing combined with the unique characteristics of these territories supports our conclusion that Puerto Rico and the U.S. Virgin Islands are each separate, relevant geographic markets.

3. Input Market for Spectrum

43. In evaluating this transaction, we consider the aggregation of spectrum by AT&T. We analyze spectrum in particular bands that we determine to be “suitable” for the provision of mobile telephony/broadband services.¹⁶⁹ Consistent with our determination of a product market for mobile telephony/broadband services, we will include all spectrum suitable for the provision of wireless broadband over broadband networks, in addition to spectrum suitable for mobile voice and data services. As previously explained by the Commission, suitability is determined by whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its uses for mobile telephony/broadband service.¹⁷⁰ For the purposes of evaluating spectrum aggregation issues associated with this transaction, we include in both our market-specific spectrum screen as well as our market-by-market analysis those spectrum bands designated for cellular, PCS, Specialized Mobile Radio (“SMR”), and 700 MHz services, as well as AWS-1 and Broadband Radio Service (“BRS”) spectrum where available.

44. The Applicants assert that the Commission should include in its spectrum screen Educational Broadcasting Service (“EBS”) spectrum that is leased to commercial service providers to transmit material other than educational programming, Ancillary Terrestrial Component/Mobile Satellite Service (“ATC/MSS”) spectrum that is being used for mobile services, the 3650-3700 MHz band that may be used for mobile services, the AWS-2 and -3 spectrum once the service rules for those bands have been adopted, and the 2.3 GHz Wireless Communications Service (“WCS”) band once its service rules are amended to permit mobile operations.¹⁷¹ For purposes of this transaction, we decline to include EBS, ATC/MSS and other spectrum used by satellite providers to offer facilities-based mobile voice and data services.¹⁷² The record in this proceeding does not provide any basis for including these spectrum bands in our initial screen. Moreover, it is premature to include AWS-2 and -3 bands in our spectrum screen. The AWS-2 and -3 bands are not available for mobile telephony/broadband services because the Commission has not promulgated licensing or service rules for these bands.¹⁷³ Likewise, the Applicants

¹⁶⁹ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17473 ¶ 53; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591-92 ¶ 53; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21560-61 ¶ 81.

¹⁷⁰ *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17473 ¶ 53; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591-92 ¶ 53.

¹⁷¹ Application, Public Interest Statement at 26-27 n.132.

¹⁷² *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17479 ¶¶ 67-68; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17599-600 ¶¶ 72-73.

¹⁷³ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17477-78 ¶¶ 62-64 (finding that the AWS-1 spectrum and certain BRS spectrum should be an input into the spectrum screen on a market-by-market basis because the spectrum is available to be used by competitors to discipline behavior by the merged firm); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21560-61 ¶ 81 (finding that suitability is determined by, among other things, whether the spectrum is licensed with a mobile allocation and corresponding service rules). See also *AT&T-Dobson Order*, 22 FCC Rcd at 20312-13 ¶¶ 30-31 (finding that the 700 MHz band is suitable for mobile telephony services and including it in the spectrum screen because 18 megahertz already had been auctioned and licensed and the remaining 700 MHz band was to be auctioned in less than a year and a half, therefore making it available to discipline market power).

have not shown that the 2.3 GHz WCS band is now suitable for mobile telephony/broadband services¹⁷⁴. Thus, we decline to revise our spectrum screen as requested by the Applicants.

4. Market Participants

45. In analyzing this transaction, we find that mobile telephony/broadband services offered by facilities-based providers using cellular, PCS, and SMR spectrum and employing various technologies offer similar voice and data functionalities and are indistinguishable to the consumer.¹⁷⁵ Similarly, to the extent that entities provide facilities-based mobile telephony/broadband services using 700 MHz, AWS-1, and BRS spectrum, the Commission also considers them to be market participants.¹⁷⁶ We exclude mobile virtual network operators (MVNO"s) and resellers from consideration when computing initial concentration measures, although we acknowledge that non-facilities-based service options have an impact in the marketplace and in some instances may provide additional constraints against anticompetitive behavior.¹⁷⁷ Accordingly, we will consider facilities-based entities providing mobile telephony/broadband services using cellular, PCS, SMR, 700 MHz, AWS-1, and BRS spectrum to be market participants.

B. Initial Screen

46. In evaluating the competitive effects of this transaction, our initial screen eliminates from further review those markets in which there is clearly no competitive harm relative to today's generally competitive marketplace.¹⁷⁸ The initial screen is designed to be conservative and ensure that we do not exclude from further scrutiny any geographic areas in which the potential for anticompetitive effects exists. Our initial screen criteria identifies, for further case-by-case market analysis, those markets in which, post-transaction: (1) the HHI would be greater than 2800 and the change in HHI will be 100 or greater, or the change in HHI would be 250 or greater, regardless of the level of the HHI, and (2) the Applicants would have, on a market-by-market basis, a 10 percent or greater interest in 95 megahertz or more of PCS, SMR, and 700 MHz spectrum, where neither BRS nor AWS-1 spectrum is available; 115 megahertz or more of spectrum, where BRS spectrum is available, but AWS-1 spectrum is not available; 125 megahertz or more of spectrum, where AWS-1 spectrum is available, but BRS spectrum is not available; or 145 megahertz or more of spectrum where both AWS-1 and BRS spectrum are available.¹⁷⁹ A subsequent section examines on a case-by-case analysis those markets identified by the screen, where potential harm is possible, to determine whether harm is likely and a remedy needed.

¹⁷⁴ See, e.g., In the Matter of Consolidated Request of the WCS Coalition for Limited Waiver of Construction Deadline for 132 WCS Licenses, Request of WCS Wireless LLC for Limited Waiver of Construction Deadline for 16 WCS Licenses, Request of Cellular Inc. for Limited Waiver of Construction Deadlines for Stations KNLB242 and KNLB216 in Guam/Northern Mariana and American Samoa, WT Docket 06-102, *Order*, 21 FCC Rcd 14134, 14139 ¶ 10 (WTB 2006) (recognizing that the "unique circumstances" of the WCS band impede delivery of wireless broadband services).

¹⁷⁵ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17480-81 ¶ 71; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17600 ¶ 75 (citing *AT&T-Dobson Order*, 22 FCC Rcd at 20316 ¶ 36); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 91).

¹⁷⁶ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17480-81 ¶ 71; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17600-01 ¶ 75.

¹⁷⁷ See, e.g., *Verizon Wireless-RCC Order*, 22 FC Rcd at 12488-89 ¶ 50; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92.

¹⁷⁸ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17481 ¶ 75; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17601 ¶ 76; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 108.

¹⁷⁹ See discussion *supra* paras. 43-44.

47. For purposes of determining HHIs in this transaction, we use our December 2008 NRUF database, which tracks phone number usage by all telecommunications service providers, including wireless service providers, to estimate mobile communication subscribership levels, market shares, and concentration for various geographic markets on the mainland.¹⁸⁰ For HHIs in Puerto Rico and the U.S. Virgin Islands, we use a combination of NRUF data and data received from providers through our third-party data requests.¹⁸¹ Consistent with our discussion of the geographic market definition above, in calculating market shares and market concentration, we analyze wireless provider data using two sets of geographic areas, CEAs¹⁸² and CMAs for mainland U.S. markets.¹⁸³ For the territories of Puerto Rico and the U.S. Virgin Islands, we calculated market share and market concentration on a territory-wide basis.

48. The Applicants did not identify markets that the initial screens would capture based on the post-transaction HHI and the change in the HHI, or the change in the HHI alone. The Applicants attach to their Application a market-by-market analysis of 56 markets and state that the combined attributable spectrum held by the merged entity would meet or exceed the spectrum aggregation screen in only two markets.¹⁸⁴ Within each market, the Applicants analyzed the amount of spectrum attributable to AT&T, Centennial and the merged entity following the transaction on a county-by-county basis.¹⁸⁵ The Applicants conclude that given the existing spectrum available to current and potential competitors, there is no concern that the merged firm's spectrum aggregation would result in less than an effective competitive market for next-generation services.¹⁸⁶

49. RCA urges the Commission to require the Applicants to divest spectrum holdings where AT&T would meet or exceed the spectrum aggregation screen.¹⁸⁷ RCA states that the Applicants do not provide information on competitors providing commercial service to subscribers in the Centennial markets, and that the Commission must analyze the spectrum holdings at or near the Commission's spectrum screen.¹⁸⁸ RCA also urges the Commission to require divestiture of spectrum holdings where the merged entity would hold both cellular licenses in any market.¹⁸⁹ RCA states that the acquisition of

¹⁸⁰ These data indicate the number of assigned phone numbers that a wireless carrier has in a particular wireline rate center. Rate centers are geographic areas used by local exchange carriers for a variety of reasons, including the determination of toll rates. See HARRY NEWTON, NEWTON'S TELECOM DICTIONARY: 19TH EXPANDED & UPDATED EDITION 660 (July 2003). All mobile wireless providers must report to the FCC the quantity of their phone numbers that have been assigned to end users, thereby permitting the Commission to calculate the total number of mobile 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.

¹⁸¹ See discussion *supra* para. 20.

¹⁸² See *supra* note 151 for a description of our data analysis on a CEA basis.

¹⁸³ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17482-83 ¶ 78; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 51; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 104. See discussion justifying the use of CEAs and CMAs *supra* note 151.

¹⁸⁴ These markets are Jefferson County in CMA 500 Mississippi 8 - Claiborne and Roscommon County in CMA 477 Michigan 6 - Roscommon. See Application, Declaration of Robert D. Willig, Jonathan M. Orszag, and J. Loren Poulsen at 21 ("Declaration of Willig, Orszag and Poulsen").

¹⁸⁵ See Application, Public Interest Statement, Appendix A, Spectrum Aggregation Chart.

¹⁸⁶ Application, Declaration of Willig, Orszag and Poulsen at 21.

¹⁸⁷ RCA Comments at 3-5.

¹⁸⁸ RCA Comments at 4-5.

¹⁸⁹ RCA Comments at 2-3.

Centennial by AT&T would give AT&T both cellular licenses in eight markets.¹⁹⁰ RCA opposes any one entity holding both cellular licenses in a given market and argues that AT&T should not control the spectrum with the most desirable propagation characteristics.¹⁹¹

50. In analyzing this transaction, we decline to apply any additional scrutiny beyond a case-by-case review of the facts of the particular markets where spectrum aggregation exceeds our spectrum screen or involves cellular overlaps. The Commission has previously found that reliance on case-by-case review for aggregation of spectrum and cellular-cross interests better serves the public interest than utilizing a prophylactic rule,¹⁹² because “case-by-case review [has a] greater degree of flexibility to reach the appropriate decision in each case, reduced likelihood of prohibiting beneficial transactions or levels of investment both in urban and rural areas, and ability to account for the particular attributes of a transaction or market.”¹⁹³ For this transaction, we examine markets caught by the initial spectrum screen, based on the specific facts of those markets, to determine any potential harms and whether there is a need for any remedies.¹⁹⁴

51. Our initial HHI screen identifies a total of 24 CMAs¹⁹⁵ and 13 CEAs¹⁹⁶ that require further competitive review, as well as the territories of Puerto Rico and the U.S. Virgin Islands.¹⁹⁷ The initial spectrum screen identifies a total of two CMAs and two CEAs that require further competitive review.¹⁹⁸ One CMA and one CEA were identified by both the spectrum screen and the HHI screen.¹⁹⁹

¹⁹⁰ RCA Comments at 3. The eight markets are: CMA197 Lake Charles, Louisiana; CMA455 Louisiana 2 – Morehouse; CMA456 Louisiana 3 – De Soto; CMA458 Louisiana 5 – Beauregard; CMA459 Louisiana 6 – Iberville; CMA460 Louisiana 7 – West Feliciana; CMA500 Mississippi 8 – Claiborne; and CMA501 Mississippi 9 – Copiah.

¹⁹¹ RCA Comments at 3-4.

¹⁹² Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 02-381, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 19078, 19113 ¶ 63 (2004) (“*Rural Report and Order*”).

¹⁹³ *See id.* at 19115 ¶ 67.

¹⁹⁴ *See infra* Section V.D, Market-by-Market Analysis.

¹⁹⁵ The CMAs identified by the initial HHI screen include: CMA096 Fort Wayne, IN; CMA101 Beaumont-Port Arthur, TX; CMA129 South Bend-Mishawaka, IN; CMA132 Kalamazoo, MI; CMA174 Lafayette, LA; CMA177 – Battle Creek, MI; CMA193 Benton Harbor, MI; CMA197 Lake Charles, LA; CMA205 Alexandria, LA; CMA207 Jackson, MI; CMA223 Elkhart-Goshen, IN; CMA271 Kokomo, IN; CMA403 Indiana 1 – Newton; CMA404 Indiana 2 – Kosciusko; CMA405 Indiana 3 – Huntington; CMA 408 Indiana 6 – Randolph; CMA455 Louisiana 2 – Morehouse; CM456 Louisiana 3 – De Soto; CMA 457 Louisiana 4 – Caldwell; CMA458 Louisiana 5 – Beauregard; CMA459 Louisiana 6 – Iberville; CMA460 Louisiana 7 – West Feliciana; CMA478 Michigan 7 – Newaygo; and CMA500 Mississippi 8 Claiborne. CMA 501 Mississippi 9 – Copiah, one of the markets to be divested under the DOJ AT&T-Centennial Proposed Final Judgment, did not trigger our initial screen.

¹⁹⁶ The CEAs identified by the initial HHI screen include: CEA0220 – Alexandria, LA; CEA0840 – Beaumont-Port Arthur, TX; CEA0870 – Benton Harbor, MI; CEA2330 – Elkhart-Goshen, IN-MI; CEA2760 – Fort Wayne, IN; CEA3520 – Jackson, MI; CEA3560 – Jackson, MS-LA; CEA3720 – Kalamazoo-Battle Creek, MI; CEA3850 – Kokomo, IN; CEA3880 – Lafayette, LA; CEA3960 – Lake Charles, LA; CEA7680 – Shreveport-Bossier City, LA-AR; and CEA7800 – South Bend, IN.

¹⁹⁷ In our case-by-case review, we examine the territories of Puerto Rico and the U.S. Virgin Islands. Further competitive review of Puerto Rico is necessary based upon the HHI screen, as well as the totality of the relationship between two direct competitors in that market, AT&T and América Móvil/PRTC, and its potential anticompetitive effect on the territory of Puerto Rico. *See infra* Section V.C.2 discussing coordinated effects.

¹⁹⁸ The CMAs identified by the initial spectrum screen include CMA477 Michigan 6 – Roscommon and CMA500 Mississippi 8 – Claiborne. The CEAs identified by the initial spectrum screen include CEA3560 – Jackson, MS-LA and CEA348 - Northern Michigan.

Thus, our initial screen indicated a total of 25 CMAs and 14 CEAs that require a case-by-case competitive review, as well as the territories of Puerto Rico and the U.S. Virgin Islands.

C. Horizontal Issues

52. This section examines how the transaction could affect competitive behavior in the 25 CMAs and 14 CEAs, as well as the territories of Puerto Rico and the U.S. Virgin Islands, identified by the initial screen as requiring additional analysis to determine whether the proposed transaction would result in competitive harm. As discussed in the Commission's recent wireless transaction orders, competition may be harmed either through unilateral actions²⁰⁰ by the merged entity or through coordinated interaction²⁰¹ among firms competing in the relevant market.

53. In this Memorandum Opinion and Order, we find that extended discussions here of unilateral effect are unnecessary.²⁰² First, many aspects of our previous analyses in wireless transaction orders are unchallenged here.²⁰³ Second, we provide a market-by-market discussion of each CMA where we are requiring business unit divestitures.²⁰⁴ We therefore discuss unilateral effects at a general level only to the extent issues are raised by the parties to this proceeding.²⁰⁵ However, we find that an analysis of coordinated interaction is necessary, particularly for the territory of Puerto Rico. Based upon the record in this proceeding there is a competitive concern that AT&T's ownership interest in, management service agreements with, and representation on the Board of Directors of América Móvil increases the likelihood of coordinated interaction. Thus, a detailed discussion is necessary to examine the potential effect of this relationship.

1. Unilateral Effects

54. AT&T's acquisition of Centennial could lead to changes in the structure of the markets in the 25 CMAs, 14 CEAs, Puerto Rico, and the U.S. Virgin Islands identified by our initial screen as needing further analysis.²⁰⁶ Thus, with regard to each of these markets, we examine in more detail the possibility that the proposed transaction may lead to competitive harm through unilateral actions by the

(Continued from previous page) _____

¹⁹⁹ The CMA is CMA500 Mississippi 8 – Claiborne and the CEA is CEA3560 – Jackson, MS; both triggered the HHI and spectrum screen.

²⁰⁰ Unilateral effects are those that result when a merged firm finds it profitable to alter its behavior by increasing prices or reducing output. *DOJ/FTC Horizontal Merger Guidelines* § 2.2. See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17484 ¶ 82; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115 n.341.

²⁰¹ Coordinated interaction consists of actions by a group of firms that are profitable for each of the firms involved only because the other firms react by accommodating these actions rather than attempting to undercut them. See *DOJ/FTC Horizontal Merger Guidelines* § 2.1; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17484 ¶ 82; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151.

²⁰² See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17484-85 ¶ 83.

²⁰³ For unilateral effects, the unchallenged aspects include: (1) product differentiation and substitutability; (2) network effects; (3) marginal cost reductions; (4) spectrum and advanced wireless services; and (5) penetration. See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17484-85 ¶ 83; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12492-93 ¶ 58 n.200; *AT&T-Dobson Order*, 22 FCC Rcd at 20321 ¶ 47. For coordinated interaction, the unchallenged aspects include: (1) firm and product homogeneity; (2) existing cooperative ventures; (3) number of firms; (4) technology development; (5) response of rivals; (6) transparency of information; and (7) presence of mavericks. See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17484-85 ¶ 83; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21581-85 ¶¶ 154-163.

²⁰⁴ See discussion *infra* Section V.D, Market-by-Market Analysis.

²⁰⁵ See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17484-85 ¶ 83.

²⁰⁶ See *supra* paras. 195 and 196.

merged entity.²⁰⁷ Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by “elevating price and suppressing output.”²⁰⁸ In the case of mobile telephony/broadband services, this might take the form of delaying improvements in service quality or adversely adjusting plan features without changing the plan price.²⁰⁹ Incentives for such unilateral competitive actions vary with the nature of competition in the relevant markets.

55. The Applicants generally contend that the national commercial mobile radio services (“CMRS”) market is highly competitive and that, on a national level, the merger will have no impact on market structure and competition.²¹⁰ The Applicants analyze the potential for unilateral effects as a result of the transaction based on ten factors.²¹¹ These ten factors are: (1) the number of facilities-based competitors; (2) the combined market shares of AT&T and Centennial; (3) churn levels; (4) the degree of competition between AT&T and Centennial in a given CMA; (5) the ability of existing facilities-based competitors to expand their service offerings within the CMA; (6) the possibility of entry by licensed wireless carriers not already providing service in a given CMA; (7) competition from MVNOs and other resellers; (8) the ability of competitors in neighboring CMAs to serve customers through roaming services; (9) the spillovers from advertising by carriers in adjacent areas; and (10) the inability to target price increases.²¹²

56. In determining whether there would be an increased likelihood, on a market-by-market basis, of unilateral effects as a result of a transaction, the Commission considers, among other factors, the merging firms’ individual and combined market shares, the degree of substitutability between the merging firms, and the number of rivals with sufficient ability and capacity to respond to a unilateral action by the merged entity.²¹³ Further, this analysis considers, where appropriate, the role of MVNOs and other resellers in disciplining the market.²¹⁴

²⁰⁷ See *infra* Section V.D.2, Results of Market-Specific Analysis. See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 84; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115; see also *DOJ/FTC Merger Guidelines* § 2.

²⁰⁸ See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 84; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115; see also *DOJ/FTC Merger Guidelines* § 2.2.

²⁰⁹ The term “unilateral” refers to the method used by firms to determine strategy, not to the fact that the merged entity would be the only firm to change its strategy. The term unilateral is used to indicate that strategies are determined unilaterally by each of the firms in the market and not by explicit or tacit collusion. Other firms in the market may find it profitable to alter their behavior as a result of the merger-induced change in market structure by, for example, repositioning their products, changing capacity, or changing their own prices. These reactions can alter the total effect on the market and must be taken into account when evaluating potential unilateral effects. See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 n.306; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 n.341.

²¹⁰ Application, Public Interest Statement at 30.

²¹¹ The ten factors fall into four major categories: (1) the number of competitors and the share of the merged firm; (2) whether the merging firms’ offerings are close substitutes; (3) ease with which existing and new competitors can take customers away from the merged firm; and (4) the impact of competitive forces outside the CMA on the behavior of the merged firm. Application, Public Interest Statement at 36 (citing Declaration of Willig, Orszag, and Poulsen at ¶¶ 38-49).

²¹² Application, Declaration of Willig, Orszag, and Poulsen at ¶¶ 29-48.

²¹³ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 84; *Verizon-RCC Order*, 23 FCC Rcd at 12495-12496 ¶ 66; *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21575-21576 ¶¶ 132, 134-137.

²¹⁴ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468-69 ¶ 74; *Sprint-Nextel-Clearwire Order*, 23 FCC Rcd at 17570, 17617 ¶ 120; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92.

57. In evaluating the likelihood of harms from unilateral effects as a result of this transaction, we do not consider service via roaming agreements, advertising spillovers, or the inability by the merged entity to target price increases. The Applicants argue that consumers could acquire service from competitors in adjacent markets, even if these carriers do not have facilities-based service in the area that they live, and this service would be provided through roaming agreements.²¹⁵ We do not consider entry via roaming agreements to mitigate anticompetitive effects as a result of this transaction. There is no evidence in the record that indicates that non-facilities-based service enabled through roaming agreements is cost effective.²¹⁶ The Applicants claim that “spillovers” from advertising by carriers in adjacent areas would constrain the ability of the merged entity to raise prices or reduce service quality.²¹⁷ There is no evidence on the record that substantiates the Applicants’ claim that advertising spillovers would mitigate any potential competitive harm, and therefore we do not consider advertising spillovers in our analysis of unilateral effects of this transaction. The Applicants also argue that because of the characteristics of the wireless industry, it is unlikely post-transaction that the combined firm would be able to profitably differentiate pricing across markets.²¹⁸ We acknowledge that there is evidence that AT&T currently sets its price on a nationwide basis, and does not offer many localized promotions for either pricing plans or handsets. However, the Applicants do not quantify the cost savings or customer gains from using a nationwide versus a geographically differentiated strategy. Although a nationwide strategy may be cost effective at the present time, there is no evidence in the record that this situation would be unchanged post-transaction. We find it reasonable to assume that if geographically differentiated strategies became profitable in the future, AT&T would implement these strategies.²¹⁹

58. In summary, while harm arising from unilateral effects is unlikely in most of the markets involved in this transaction, for the reasons discussed above we find that this transaction *is* likely to result in adverse unilateral effects in many of the limited number of markets identified by the initial screen.²²⁰ In these markets, where AT&T and Centennial service areas currently overlap, it appears that AT&T and Centennial are relatively close substitutes for each other in the eyes of consumers. In many of these markets, other providers generally are unable to match the price/service options offered by the Applicants. In addition, other licensees in these markets have limited ability to reposition in response to any attempted exercise of market power by the merged firm. Further, entry by firms not currently providing service in these markets cannot be counted on to prevent possible exercise of market power. And, forces pushing firms away from setting differing prices across local markets cannot be counted on to prevent such differential pricing in the future. Therefore, as further described in the market-by-market analysis below, we find a number of markets in which other providers are not present or do not possess the capacity to prevent the exercise of unilateral market power.

²¹⁵ Application, Public Interest Statement at 38-40 (citing Declaration of Willig, Orszag, and Poulsen at ¶¶ 43-45).

²¹⁶ Application of Western Wireless Corporation and ALLTEL Corporation, *Memorandum Opinion and Order*, 20 FCC Rcd 13053, 13081 ¶ 72 (2005) (“*ALLTEL-Western Wireless Order*”).

²¹⁷ Application, Public Interest Statement at 39. *See also* Application, Declaration of Willig, Orszag, and Poulsen at ¶ 46.

²¹⁸ Application, Declaration of Willig, Orszag, and Poulsen at ¶¶ 47-48.

²¹⁹ *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13084 ¶ 83.

²²⁰ *See infra* Section V.D.2, Results of Market-Specific Analysis.

2. Coordinated Effects

59. In markets where only a few firms account for most of the sales of a product, those firms may be able to exercise market power by either explicitly or tacitly coordinating their actions.²²¹ Accordingly, one way in which a transaction may create or enhance market power or facilitate its exercise is by making such coordinated interaction among firms more likely, more successful, or more complete.²²² Successful coordination depends on two key factors. The first is the ability to reach terms that are profitable for each of the firms involved, and the second is the ability to detect and punish deviations that would undermine the coordinated interaction.²²³

60. The Applicants claim that the AT&T-Centennial transaction would not increase the likelihood of coordinated interaction in the mobile telephony/broadband services market.²²⁴ They argue that there are several factors that would make coordination more difficult, including the following: product heterogeneity; excess capacity and ease of expansion; cheating would be easy to accomplish and difficult to detect; and the uncertainty of future demand.²²⁵

61. We find that a number of market conditions may affect whether coordinated interaction is more likely as a result of the transaction, including the availability of information about market conditions, the extent of firm and product homogeneity, and the presence of maverick providers in the market.²²⁶ We acknowledge, however, that there is considerable variation across local geographic markets with regard to the number and identity of competing carriers, firm homogeneity, and the presence of network capacity. Because of this local variation, it is difficult to generalize about the impact of the transaction in facilitating coordinated interaction to restrict competition on price or non-price terms in specific markets. Therefore, we take the possibility of coordinated interaction into account in our analysis of specific markets by carefully scrutinizing, among other variables, the presence and capacity of rival carriers.

62. *Puerto Rico Market.* With respect to the Puerto Rico market, we find that there are additional significant competitive concerns relating to coordinated interaction of the merged entity and América Móvil.²²⁷ The relationship between AT&T and América Móvil has increased over time and with this transaction may raise potential significant concerns that may increase the companies' economic incentives to coordinate their business dealings in Puerto Rico. Centennial, AT&T (through Cingular), and América Móvil currently compete in Puerto Rico for pre-paid and post-paid wireless services. América Móvil wholly owns Telecomunicaciones de Puerto Rico, Inc. ("TELPRI") and its wholly-owned subsidiary, Puerto Rico Telephone Company, Inc. ("PRTC"), the incumbent local exchange carrier

²²¹ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17486 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150; *DOJ/FTC Merger Guidelines* § 0.1.

²²² See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17486 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150.

²²³ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17486 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151; *DOJ/FTC Merger Guidelines* § 2.11.

²²⁴ Application, Public Interest Statement at 40-42.

²²⁵ Application, Public Interest Statement at 40-42 (citing Declaration of Willig, Orszag, and Poulsen at ¶¶ 52-54).

²²⁶ See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487 ¶ 90; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580-86 ¶¶ 150-164.

²²⁷ América Móvil is the largest provider of wireless communications services in Latin America, based on subscribers. América Móvil, through its subsidiaries, has wireless operations in Mexico, Brazil, Argentina, Paraguay, Uruguay, Chile, Colombia, Peru, Ecuador, Guatemala, El Salvador, Honduras, Nicaragua, Panama, the Dominican Republic, and the United States. América Móvil 20-F at 17.

(“LEC”) in Puerto Rico that also offers mobile telephony/broadband services in Puerto Rico under the trade name Claro.²²⁸ AT&T does not have wireline facilities in Puerto Rico and does not actively market to residential and small to medium-sized businesses, but does provide data and voice services to large, multinational customers through arrangements with local providers, including Centennial and TELPRI.²²⁹ AT&T also does not actively market stand-alone long distance services in Puerto Rico. After the transaction, customers in Puerto Rico will continue to have numerous alternatives to AT&T for long distance, including Telefónica Larga Distancia de Puerto Rico (TLD), PRT-Larga Distancia, Sprint, Verizon, and cable VoIP providers.²³⁰ América Móvil also holds a 98.2 percent equity interest in and controls TracFone, a prepaid wireless provider in the U.S.²³¹

63. *AT&T’s Relationship with Telmex and América Móvil.* In 1990, AT&T acquired a minority ownership in Telmex as a part of a consortium organized with the goal of privatizing and modernizing the Mexican telephone system.²³² Currently, AT&T holds approximately 1,799,500,000 Series AA shares in Telmex, representing approximately 9.75 percent of Telmex’s total equity.²³³ In September 2000, AT&T acquired a minority interest in América Móvil when América Móvil was spun-off from Telmex.²³⁴ AT&T currently holds approximately 2,869,000,000 Series AA shares in América Móvil.²³⁵ This represents approximately 8.82 percent of América Móvil’s total equity.²³⁶ Although Telmex spun off América Móvil, the two companies are commonly owned.²³⁷ In March 2007, América

²²⁸ See Puerto Rico Telephone Company, Inc. FCC Form 602, File No. 0003573775 (“PRTC Form 602”), Attachment, América Móvil-TELPRI Organizational Structure (filed Sept. 9, 2008); Information Request I Response at 33; Verizon Communications, Inc., Transferor, and América Móvil, S.A.B. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI), *Memorandum Opinion and Order and Declaratory Ruling*, 22 FCC Rcd 6195, 6196 ¶ 2 (2007) (“*Verizon-América Móvil Order*”).

²²⁹ Application, Public Interest Statement at 42 (citing Declaration of Rick L. Moore at ¶¶ 34-35). Wireline service providers in Puerto Rico include Centennial, Perpa.net, WorldNet, and TELPRI/PRTC. See Application, Public Interest Statement at 43.

²³⁰ Application, Public Interest Statement at 43 n.209 (citing Declaration of Moore at ¶ 39).

²³¹ América Móvil 20-F at 52; see also PRTC Form 602, Schedule A for América Móvil, S.A.B. de C.V.

²³² Information Request I Response at 60.

²³³ Information Request II Response at 4. The Applicants further state that, in addition to the Series AA shares, Telmex has issued Series A and Series L shares. *Id.* at 4 n.2. The Series AA and A shares are “full voting shares,” while the Series L shares are entitled to vote only on certain matters. *Id.* As of May 13, 2009, AT&T held Series AA shares that represented approximately 21.1 percent of the total combined Series AA and Series A shares. *Id.* As of May 28, 2009, AT&T held 1,799,453,534 Series AA shares in Telmex, equal to approximately 9.5 percent of Telmex’s total voting securities. Information Request I Response at 60.

²³⁴ Information Request I Response at 62; Information Request II Response at 4.

²³⁵ Information Request II Response at 4. The Applicants also state that, similarly to Telmex, América Móvil has issued Series A and Series L shares in addition to the Series AA shares. *Id.* at 4 n.3. The Series AA and A shares are “full voting shares,” while the Series L shares are entitled to vote only on certain matters. *Id.* As of April 30, 2009, AT&T held Series AA shares that represented approximately 23.4 percent of the total combined Series AA and Series A shares. *Id.* As of May 28, 2009, AT&T held 2,869,670,964 Series AA shares in América Móvil, equal to approximately 8.3 percent of América Móvil’s total voting securities. Information Request I Response at 62.

²³⁶ Information Request II Response at 4.

²³⁷ See Information Request I Response at 60-64.

Móvil acquired TELPRI and PRTC.²³⁸ As a result, América Móvil, through TELPRI/PRTC, has been competing directly with AT&T and Centennial for the provision of wireless services in Puerto Rico.²³⁹

64. Because both Telmex's and América Móvil's bylaws permit only Mexican individuals and certain other Mexican institutions to hold Series AA shares in the companies, AT&T placed its shares of Telmex and América Móvil in irrevocable trusts.²⁴⁰ According to the Telmex Trust Agreement, the trustee is directed, on all matters except for the election of members of Telmex's Board of Directors and Executive Committee, to vote its shares in the same proportion as the shares of Carso Global Telecom, S.A. de C.V. ("Carso Global"), which is controlled by Carlos Slim Helú, are voted.²⁴¹ Similarly, according to the América Móvil Trust Agreement, the trustee is directed to vote its shares in the same proportion as the shares of Carso Global are voted on all matters, except for the election of members of América Móvil's Board of Directors and Executive Committee.²⁴²

65. Telmex is governed by a 14-member Board of Directors, three of which may be nominated by AT&T.²⁴³ Carso Global currently has the right to nominate nine directors, and Class L shareholders have the right to nominate the remaining two directors.²⁴⁴ At present, AT&T has granted Carso Global the right to nominate one of the three directors AT&T is entitled to nominate, so that Carso Global currently is nominating ten directors.²⁴⁵ Pursuant to the terms of a joint venture agreement, AT&T and Carso Global have agreed to vote their Series AA shares in favor of the directors nominated by the other.²⁴⁶ Telmex's Executive Committee has four members who are elected from among the directors by a majority vote of the Series AA and Series A shareholders.²⁴⁷ Carso Global has the right to nominate three Executive Committee members, while AT&T has the right to nominate one member.²⁴⁸

66. América Móvil is governed by a 12-member Board of Directors, ten of which are elected by a majority of the Series AA and Series A shareholders.²⁴⁹ The Slim family and the Control Trust (a Mexican trust that holds Series AA and Series L shares for which the Slim family are beneficiaries), through Carso Global, are entitled to appoint a majority of the Board members, as they together hold a majority of the Series AA shares.²⁵⁰ Pursuant to a shareholders agreement between Carso Global and AT&T, Carso Global has the right to nominate seven directors and AT&T has the right to nominate two directors.²⁵¹ Each of the parties has agreed to vote its Series AA shares in favor of the other's

²³⁸ América Móvil 20-F at 17; *see generally Verizon-América Móvil Order*, 22 FCC Rcd 6195.

²³⁹ América Móvil 20-F at 55.

²⁴⁰ Information Request I Response at 61, 63; Information Request II Response at 4-5.

²⁴¹ Information Request I Response at 61; Information Request II Response at 4-5.

²⁴² Information Request I Response at 63.

²⁴³ Information Request I Response at 61.

²⁴⁴ Information Request I Response at 61.

²⁴⁵ Information Request I Response at 61.

²⁴⁶ Information Request I Response at 61.

²⁴⁷ Information Request I Response at 62.

²⁴⁸ Information Request I Response at 62.

²⁴⁹ Information Request I Response at 63.

²⁵⁰ Information Request I Response at 63.

²⁵¹ Information Request I Response at 63-64.

nominees.²⁵² Class L shareholders have the right to nominate two directors.²⁵³ América Móvil's Executive Committee has up to four members, three of whom may be nominated by Carso Global, and one by AT&T.²⁵⁴

67. América Móvil and Telmex do not hold any voting or management rights in AT&T, and do not have any right to nominate any member of the AT&T Board of Directors.²⁵⁵ However, Mr. Jaime Chico Pardo, chairman of Telmex and formerly a member of the América Móvil Board of Directors, was elected to the AT&T Board of Directors on September 26, 2008, to serve, the Applicants state, in his personal capacity and not as a representative of Telmex, América Móvil, or any other company.²⁵⁶ He also serves on AT&T's Audit Committee and Corporate Development Committee.²⁵⁷ América Móvil and Telmex each owns less than five percent of AT&T's common stock.²⁵⁸

68. In addition to AT&T's ownership interests in Telmex and América Móvil, and its rights to designate members of the Boards of Directors of both companies, AT&T and América Móvil have entered into an MSA²⁵⁹ pursuant to which AT&T provides management, consulting, and technical services to América Móvil.²⁶⁰ For example, AT&T may provide "evaluation and counseling concerning material management decisions;" "counseling relating to performance of material daily operations;" "counseling connected with technical, administrative and financial planning;" and "counseling pertaining to policies in the file of rates, business relations and regulatory efforts."²⁶¹ For the first five years of the agreement, América Móvil paid AT&T \$1 million per year for the services provided under the MSA, then increased that to \$7.5 million paid to AT&T for each of the last two years, and has paid \$5 million to AT&T for 2009 work through August 2009.²⁶²

69. The MSA defines eight specific categories of counseling and advisory services to be provided under the MSA.²⁶³ AT&T has provided services under the MSA without reference to the categories of services listed in the MSA.²⁶⁴ The MSA further specifies that the services are to be provided by AT&T Mexico, Inc. with its own resources located in Mexico City.²⁶⁵ If additional resources are required, the MSA calls for additional contracts to be entered into for the provision thereof.²⁶⁶ While the

²⁵² Information Request I Response at 64.

²⁵³ Information Request I Response at 63.

²⁵⁴ Information Request I Response at 64.

²⁵⁵ Information Request I Response at 64.

²⁵⁶ Information Request I Response at 64-65.

²⁵⁷ AT&T, Investor Relations, Board of Directors, *available at* <http://www.att.com/gen/investor-relations?pid=5631> (last visited Oct. 19, 2009).

²⁵⁸ Information Request I Response at 65.

²⁵⁹ *See supra* note 22.

²⁶⁰ Information Request I Response at 69; *see also* América Móvil 20-F at 88.

²⁶¹ MSA at 3.

²⁶² Information Request II Response at 30.

²⁶³ MSA at 3.

²⁶⁴ Information Request II Response at 27.

²⁶⁵ MSA at 7.

²⁶⁶ MSA at 7.

majority of services provided to América Móvil and its subsidiaries has been provided by AT&T Mexico from resources in its Mexico City office, AT&T Mexico employees have drawn on resources outside of AT&T Mexico for assistance in providing services under the MSA to the extent necessary or appropriate.²⁶⁷ AT&T has not entered into separate contracts, as required by the MSA, with respect to such additional resources.²⁶⁸ Pursuant to the Second Amendment to MSA, the geographic scope of the MSA is defined to include the provision of services in Mexico, Guatemala, Nicaragua, El Salvador, Ecuador, Colombia, Brazil, and Argentina.²⁶⁹ [REDACTED].²⁷⁰ The Second Amendment to MSA also defined the scope of América Móvil companies to which service would be provided under the MSA as companies operating in the eight countries listed in the Second Amendment to MSA.²⁷¹ [REDACTED].²⁷²

70. AT&T has acknowledged that since América Móvil acquired TELPRI in March 2007, AT&T has in a few circumstances provided services under the MSA that relate to América Móvil's operations in Puerto Rico.²⁷³ [REDACTED].²⁷⁴ [REDACTED].²⁷⁵ [REDACTED].²⁷⁶

71. *Discussion.* We disagree with the Applicants that the merger would not change the competitive dynamics of this market for mobile telephony/broadband services. In Puerto Rico, the instant transaction combines the number [REDACTED] and [REDACTED] providers in terms of market share. América Móvil represents the [REDACTED] provider in terms of market share. AT&T, América Móvil, and Centennial represent approximately [REDACTED] percent of the wireless market in Puerto Rico. There are three other competitors in the market with market shares ranging from [REDACTED] percent to [REDACTED] percent.²⁷⁷ All of the providers in the market cover more than 70 percent of the population and more than 50 percent of the land area of Puerto Rico.²⁷⁸ AT&T, América Móvil, and Centennial combined hold up to 132 megahertz – or 36 percent of the 370 megahertz available for mobile telephony/broadband services in Puerto Rico.²⁷⁹ Given these market-specific facts, combined with the relationship between AT&T and América Móvil, including the equity interest, seats on the América

²⁶⁷ Information Request II Response at 32.

²⁶⁸ Information Request II Response at 32.

²⁶⁹ Second Amendment to MSA at 3.

²⁷⁰ Information Request II Response at 26.

²⁷¹ Second Amendment to MSA at 3.

²⁷² Information Request II Response at 26.

²⁷³ Information Request I Response at 70; Information Request II Response at 27-28.

²⁷⁴ Information Request I Response at 70; Information Request II Response at 27-28.

²⁷⁵ AT&T Oct. 19, 2009 Supplemental Response to Information Request II, at 2-5.

²⁷⁶ Information Request I Response at 70. [REDACTED]. AT&T Oct. 29, 2009 Supplemental Response to Information Request II at 2. [REDACTED]. *Id.*

²⁷⁷ Open Mobile has a [REDACTED] percent share, Sprint Nextel has a [REDACTED] percent share, and T-Mobile has a [REDACTED] percent market share.

²⁷⁸ Sprint Nextel covers approximately 56 percent of the land area of Puerto Rico while the remaining providers cover at least 70 percent of the land area. American Roamer provides data on network deployment by service provider. Combining American Roamer data with Census Bureau data provides the percent of land area and population covered within a CMA.

²⁷⁹ *See supra* Section V.B., discussing the spectrum aggregation screen.

Móvil Board of Directors, and the MSA, we find that the acquisition of Centennial by AT&T in Puerto Rico is likely to result in competitive harms.

72. We are concerned that the acquisition of Centennial by AT&T will increase the economic incentives by América Móvil and the post-merger AT&T to coordinate how they provide services in Puerto Rico, resulting in anticompetitive harms. These concerns are increased by the evidence in the record demonstrating increased opportunities for coordinated interaction and information sharing between AT&T and América Móvil since 2007, when the MSA began to extend to operations in Puerto Rico. Based on the record, we find that AT&T and América Móvil do not have an arms' length relationship under the MSA. Further, we find that the current Board structure does not adequately address the potential for sharing of competitively sensitive information. Given the proposed merger between AT&T and Centennial, it is important to ensure that the remaining mobile telephony/broadband competitors in Puerto Rico, including AT&T and América Móvil/PRTC have every incentive to compete vigorously and independently in the mobile telephony/broadband services market in Puerto Rico.

73. In addition to our concerns in the post-paid wireless market, our concern extends to whether the relationship between AT&T and América Móvil might influence behavior and provide opportunities for collusion and information exchanges with respect to their operations in the U.S. prepaid market, including in the Puerto Rico market, and to the provision of wireline services in Puerto Rico. In Puerto Rico, TELPRI/PRTC competes directly against Centennial, a competitive LEC, for wireline customers.²⁸⁰ Centennial provides fiber broadband services (voice, data, and internet services) primarily to business and some residential customers in Puerto Rico.²⁸¹ In Puerto Rico, as we stated above, AT&T does not have wireline facilities and provides some services through arrangements with local providers.²⁸² Because the acquisition of Centennial by AT&T combined with AT&T's and América Móvil's relationship, however, may create additional opportunities for collusion and information exchanges with respect to prepaid services and wireline access, the safeguards addressed in the conditions/commitments below are intended to extend to each of these wireless, wireline, and prepaid services.

74. Based on these concerns about possible collusion and the exchange of competitively sensitive information as a result of the subject transaction, we find, at a minimum, that it is essential that we adopt conditions both prohibiting AT&T from providing any consulting services to América Móvil in the United States (including Puerto Rico and the U.S. Virgin Islands) pursuant to the MSA or otherwise, and controlling the flow of competitively sensitive information about América Móvil's U.S. operations to AT&T.²⁸³ While we previously concluded that the relationship between AT&T and América Móvil did not raise competitive issues in the Puerto Rico mobile telephony market,²⁸⁴ as explained above that relationship has evolved and expanded since that determination, raising significant concerns about its potential adverse effect on competition in Puerto Rico wireless and wireline services.²⁸⁵ In addition, these

²⁸⁰ Application, Public Interest Statement at 43.

²⁸¹ Application, Public Interest Statement at 42.

²⁸² Currently, AT&T and other wireless carriers in Puerto Rico purchase wireline access from Centennial and PRTC. We note that no parties have raised concerns regarding whether the proposed acquisition of Centennial will affect wireline access for wireless providers in Puerto Rico and there is nothing in the record to suggest that there are not sufficient alternative sources for such access available in Puerto Rico that will continue to be available after this transaction.

²⁸³ See *infra* paras. 159-163.

²⁸⁴ *Verizon-América Móvil Order*, 22 FCC Rcd at 6210 ¶ 33.

²⁸⁵ Section 8 of the Clayton Act, in pertinent part, addresses interlocking directorates of competitors. 15 U.S.C. §§ 19, 21. Consistent with past practice, we leave to other appropriate antitrust law enforcement agencies the questions whether and how Section 8 of the Clayton Act should be applied to assess AT&T's nomination of two (continued....)

concerns are heightened with AT&T's proposed acquisition of Centennial. The subject transaction results in the loss of a significant facilities-based mobile telephony/broadband competitor in Puerto Rico. By contrast, when América Móvil acquired TELPRI, the Commission declined to take any action based on AT&T's minority interest in América Móvil, concluding that the acquisition was "not likely to have an adverse effect on the number of facilities-based mobile telephone providers in Puerto Rico," and that the number of facilities-based carriers and resellers/MVNOs would be sufficient to protect against any anticompetitive strategies by the two companies.²⁸⁶

D. Market-by-Market Analysis

1. Analytical Standard

75. In this section, we examine the effects of the transaction on local markets identified by our initial screen.²⁸⁷ This includes 25 CMAs, Puerto Rico, and the U.S. Virgin Islands. In our analysis we consider numerous variables that are important for predicting the incentive and ability of the merged entity to unilaterally elevate prices or suppress output and its ability to successfully restrict competition on price or non-price terms through coordinated interaction.²⁸⁸

2. Results of Market-Specific Analysis

76. After performing a market-by-market analysis, we find, in the great majority of the 27 markets identified by the initial screen, no competitive concerns requiring remedy. For instance, in most of these markets, there would be four or more competitors present post-transaction with thoroughly built-out networks and the ability to offer competitive services. In several other of these 27 markets, we conclude, based on the various particular facts in each of these markets, that the proposed transaction would be unlikely to make it profitable for the combined entity to raise price and restrict output or to engage in coordinated actions with another provider. The presence and capacity of rival service providers are such in these markets that the response of rival service providers would likely be sufficient to deter

(Continued from previous page) _____

employees to sit on the board of directors of América Móvil. See 15 U.S.C. §§ 19, 21; *cf.*, Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Company, 10 FCC Rcd 13368, 13373 n.19 (1995), *In re Sprint Corporation*, 11 FCC Rcd 1850, 1859 n.82 (1995).

²⁸⁶ *Verizon-América Móvil Order*, 22 FCC Rcd at 6209, 6210 ¶¶ 30, 33.

²⁸⁷ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487-88 ¶ 91; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17602 ¶ 79; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21649 App. D.

²⁸⁸ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17487-88 ¶ 91; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17602 ¶ 79; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 215793-99 ¶¶ 184-200. The factors we consider in each identified market include, for example, the total number of competitors in the market; their market shares, network coverage, and spectrum holdings, as compared to the merged entity's post-transaction market share, network coverage, and spectrum holdings. We derive market shares and HHIs from our analysis of data compiled in our NRUF database and data provided through our information requests. We derive network coverage from a variety of public sources and also through our information request, and we obtain spectrum holdings from our licensing databases and the Application. In addition, we examine data from our LNP database (provided to the Commission by NeuStar) through December 30, 2008. This information 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 consider the uniformity of competitive conditions in each market. Thus, in some instances, we may find that the transaction is not harmful to competition in a market if the potential harm is confined to a small enclave in the market, and this harm is likely to be ameliorated by the more favorable competitive conditions in most of the market. See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17488 ¶ 92; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 175602-3, ¶ 80; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 190.

any unilateral actions or anticompetitive behavior by the merged entity. For each of these markets, we determine that competitive harm is unlikely.²⁸⁹

77. In the seven markets listed below, our case-by-case analysis indicates that competitive harm is likely as a result of this transaction. In these markets, we are concerned that, post-transaction, competing service providers would not be sufficiently numerous to deter anticompetitive behavior by the merged entity.²⁹⁰

CMA	Name
CMA174	Lafayette, LA
CMA205	Alexandria, LA
CMA456	Louisiana 3 – De Soto
CMA458	Louisiana 5 – Beauregard
CMA459	Louisiana 6 – Iberville
CMA460	Louisiana 7 – West Feliciana
CMA500	Mississippi 8 – Claiborne

78. **Lafayette, LA (CMA174).** We find that in this market, there is a high likelihood of competitive harm due to the merged entity's high combined market share along with insufficient network coverage by other service providers in this market that would effectively counter any anticompetitive behavior by the merged entity. In this CMA, AT&T has a market share of [REDACTED] percent and Centennial has approximately [REDACTED] percent of the wireless subscribers. Thus, the merged entity would have a post-transaction market share of [REDACTED] percent. Other carriers with coverage in the CMA (see below) are: Sprint Nextel with [REDACTED] percent; T-Mobile with [REDACTED] percent; and Verizon Wireless with [REDACTED] percent. The post-merger HHI in the CMA would be [REDACTED], an increase of [REDACTED] from the current figure. The CMA has a population of about 239,086 and a population density of about 220 POPs/sq. mile. With respect to network coverage, besides the merged entity, Sprint Nextel is the only carrier with sufficient population and area coverage that could effectively discipline the market within the next two years.²⁹¹ AT&T covers 100 percent of the

²⁸⁹ See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17490-91 ¶ 98; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17603 ¶ 82. Application of the initial screen on a CEA basis does not identify any potential markets of concern that are not also identified by CMA-based application of the screen. For convenience, we limit our discussion of the markets of concern to CMAs because, upon completing our competitive analysis, we find that the most exact divestiture area to eliminate concerns of competitive harm would be CMAs. Therefore, we undertake our in-depth analysis on the basis of CMAs within the continental United States.

²⁹⁰ Application of the initial screen on a CEA basis shows that no potential markets of concern are identified that are not also identified by CMA-based application of the screen. For convenience, we limit our discussion of the markets of concern to CMAs because, upon completing our competitive analysis, we find that the most exact divestiture area to eliminate concerns of competitive harm would be CMAs. Therefore, we undertake our in-depth analysis on the basis of CMAs within the continental United States.

²⁹¹ American Roamer provides data on network deployment by service provider. Combining American Roamer data with Census Bureau data provides the percent of land area and population covered within a CMA. With respect to coverage, we have considered to be "sufficient" – coverage of 70 percent or greater of the population and 50 percent or more of the area. See *AT&T-Dobson Order*, 22 FCC Rcd at 20324 n.170.

population and 91.8 percent of the area within this CMA. Centennial covers 99.7 percent of the population and 73.8 percent of the area in this CMA. By comparison, the other providers with coverage are: Sprint Nextel with coverage of 99.9 percent of the population and 64.4 percent of the area; T-Mobile with coverage of 94.3 percent of the population and 43.8 percent of the area; and Verizon Wireless with coverage of 96.4 percent of the population and 46.4 percent of the area.

79. **Alexandria, LA (CMA205).** We find that in this market, there is a high likelihood of competitive harm due to the merged entity's high combined market share, and we find it is unlikely that the rivals with sufficient network capacity in this CMA could effectively and fully counter any anticompetitive actions by the merged entity. AT&T has a market share of [REDACTED] percent and Centennial has approximately [REDACTED] percent of the wireless subscribers. Thus, the merged entity would have a post-transaction market share of [REDACTED] percent. Other carriers with coverage in the CMA (see below) are: Sprint Nextel with [REDACTED] percent and Verizon Wireless with [REDACTED] percent. The post-merger HHI in this CMA would be [REDACTED], an increase of [REDACTED] from the current figure. The CMA has a population of about 145,035 and a population density of about 72 POPs/sq. mile. With respect to network coverage, AT&T covers 89.2 percent of the population and 65.8 percent of the area within this CMA. Centennial covers 99.9 percent of the population and 99.4 percent of the area in this CMA. By comparison, the other providers with coverage are: Sprint Nextel with coverage of 92.4 percent of the population and 76.6 percent of the area and Verizon Wireless with coverage of 93.8 percent of the population and 74.3 percent of the area.

80. **Louisiana 3 – De Soto (CMA456).** We find that in this market, there is a high likelihood of competitive harm due to the merged entity's high combined market share along with insufficient network coverage by other service providers in this market that would effectively counter any anticompetitive behavior by the merged entity. In this CMA, AT&T has a market share of [REDACTED] percent and Centennial has approximately [REDACTED] percent of the wireless subscribers. Thus, the merged entity would have a post-transaction market share of [REDACTED] percent. Other carriers with coverage in the CMA (see below) are: Sprint Nextel with [REDACTED] percent, T-Mobile with [REDACTED] percent, and Verizon Wireless with [REDACTED] percent. The post-merger HHI in the CMA would be [REDACTED], an increase of [REDACTED] from the current figure. The CMA has a population of about 150,186 and a population density of about 30 POPs/sq. mile. With respect to network coverage, there is no other carrier besides the merged entity with sufficient population and area coverage that could effectively discipline the market within the next two years.²⁹² AT&T covers 85.6 percent of the population and 61.4 percent of the area within this CMA. Centennial covers 74.8 percent of the population and 62.9 percent of the area in this CMA. By comparison, the other providers with coverage are: Sprint Nextel with coverage of 73.5 percent of the population and 48.1 percent of the area; T-Mobile with coverage of 35.8 percent of the population and 25.7 percent of the area; and Verizon Wireless with coverage of 60.4 percent of the population and 57.4 percent of the area.

81. **Louisiana 5 – Beauregard (CMA458).** We find that in this market, there is a high likelihood of competitive harm due to the merged entity's high combined market share along with insufficient network coverage by other service providers in this market that would effectively counter any anticompetitive behavior by the merged entity. In this CMA, AT&T has a market share of [REDACTED] percent and Centennial has approximately [REDACTED] percent of the wireless subscribers. Thus, the merged entity would have a post-transaction market share of [REDACTED] percent. Other carriers with coverage in the CMA (see below) are: Sprint Nextel with [REDACTED] percent, T-Mobile with [REDACTED] percent, and Verizon Wireless with [REDACTED] percent. The post-merger HHI in this CMA would be [REDACTED], an increase of [REDACTED] from the current figure. The CMA has a population of about 399,898 and a population density of 43 POPs/sq. mile. With respect to network

²⁹² *Id.*

coverage, besides the merged entity, Sprint Nextel is the only carrier with sufficient population and area coverage that could effectively discipline the market within the next two years.²⁹³ AT&T covers 99.3 percent of the population and 88.9 percent of the area within this CMA. Centennial covers 99.4 percent of the population and 83.6 percent of the area in this CMA. By comparison, the other providers with coverage are: Sprint Nextel with coverage of 94.9 percent of the population and 78.3 percent of the area; T-Mobile with coverage of 37.5 percent of the population and 18.4 percent of the area; and Verizon Wireless with coverage of 52.1 percent of the population and 27.3 percent of the area.

82. **Louisiana 6 – Iberville (CMA459).** We find that in this market, there is a high likelihood of competitive harm due to the merged entity's high combined market share along with insufficient network coverage by other service providers in this market that would effectively counter any anticompetitive behavior by the merged entity. In this CMA, AT&T has a market share of [REDACTED] percent and Centennial has approximately [REDACTED] percent of the wireless subscribers. Thus, the merged entity would have a post-transaction market share of [REDACTED] percent. Other carriers with coverage in the CMA (see below) are: Sprint Nextel with [REDACTED] percent, T-Mobile with [REDACTED] percent, and Verizon Wireless with [REDACTED] percent. The post-merger HHI in the CMA would be [REDACTED], an increase of [REDACTED] from the current figure. The CMA has a population of about 183,474 and a population density of about 78 POPs/sq. mile. With respect to network coverage, there is no other carrier besides the merged entity with sufficient population and area coverage that could effectively discipline the market within the next two years.²⁹⁴ AT&T covers 100 percent of the population and 78.1 percent of the area within this CMA. Centennial covers 71.6 percent of the population and 37 percent of the area in this CMA. By comparison, the other providers with coverage are: Sprint Nextel with coverage of 94 percent of the population and 37.9 percent of the area; T-Mobile with coverage of 64.3 percent of the population and 13.5 percent of the area; and Verizon Wireless with coverage of 97.1 percent of the population and 41.8 percent of the area.

83. **Louisiana 7 – West Feliciana (CMA460).** We find that in this market, there is a high likelihood of competitive harm due to the merged entity's high combined market share along with insufficient network coverage by other service providers in this market that would effectively counter any anticompetitive behavior by the merged entity. In this CMA, AT&T has a market share of [REDACTED] percent and Centennial has approximately [REDACTED] percent of the wireless subscribers. Thus, the merged entity would have a post-transaction market share of [REDACTED] percent. Other carriers with coverage in the CMA (see below) are: Sprint Nextel with [REDACTED] percent, T-Mobile with [REDACTED] percent, and Verizon Wireless with [REDACTED] percent. The post-merger HHI in the CMA would be [REDACTED], an increase of [REDACTED] from the current figure. The CMA has a population of about 191,510 and a population density of about 69 POPs/sq. mile. With respect to network coverage, there is no other carrier besides the merged entity with sufficient population and area coverage that could effectively discipline the market within the next two years.²⁹⁵ AT&T covers 99.4 percent of the population and 97.3 percent of the area within this CMA. Centennial covers 94.1 percent of the population and 83.7 percent of the area in this CMA. By comparison, the other providers with coverage are: Sprint Nextel with coverage of 76.8 percent of the population and 46.4 percent of the area; T-Mobile with coverage of 29.5 percent of the population and 46.4 percent of the area; and Verizon Wireless with coverage of 54.9 percent of the population and 26.6 percent of the area.

84. **Mississippi 8 – Claiborne (CMA500).** We find that in this market, there is a high likelihood of competitive harm due to the merged entity's high combined market share along with insufficient network coverage by other service providers in this market that would effectively counter any

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

anticompetitive behavior by the merged entity. This CMA was also identified by our spectrum screen. Within this CMA, one county – Jefferson County, Mississippi – triggered the spectrum screen, and this county reflects only 6 percent of the CMA population. Thus, spectrum aggregation in this county was not a determining factor to require a business unit divestiture in this market. In this CMA, AT&T has a market share of [REDACTED] percent and Centennial has approximately [REDACTED] percent of the wireless subscribers. Thus, the merged entity would have a post-transaction market share of [REDACTED] percent. Other carriers with coverage in the CMA (see below) are: Cellular South with [REDACTED] percent, Sprint Nextel with [REDACTED] percent, and Verizon Wireless with [REDACTED] percent. The post-merger HHI in the CMA would be [REDACTED], an increase of [REDACTED] from the current figure. The CMA has a population of 160,376 and a population density of about 36 POPs/sq. mile. With respect to network coverage, besides the merged entity, Cellular South is the only carrier with sufficient population and area coverage that could effectively discipline the market within the next two years.²⁹⁶ AT&T covers 85.3 percent of the population and 57.1 percent of the area within this CMA. Centennial covers 96 percent of the population and 88.6 percent of the area in this CMA. By comparison, the other providers with coverage are: Cellular South with 98.2 percent of the population and 90.3 percent of the area; Sprint Nextel with coverage of 69.5 percent of the population and 37.3 percent of the area; and Verizon Wireless with coverage of 27.2 percent of the population and 6.4 percent of the area.

85. *Puerto Rico Market.* As discussed above, we find that the record raises significant concerns about the potential for coordinated interaction between AT&T and América Móvil in Puerto Rico due to the extensive corporate interrelationship between the companies.²⁹⁷ AT&T has made certain commitments with respect to América Móvil, including restrictions on AT&T's participation on América Móvil's Board of Directors, extension of the firewall between the two companies concerning information about business and/or operations in Puerto Rico, the implementation of certain procedures to screen and redact board packages of non-public information about businesses and/or operations in Puerto Rico, amending the MSA to exclude Puerto Rico-specific operations, and appointment of a compliance officer to oversee AT&T's compliance with its commitments.²⁹⁸ We find that AT&T's commitments ameliorate our concerns about the potential for the likelihood of successful coordinated interaction by the merged entity in Puerto Rico.

86. *Conclusion.* In the above seven markets, the proposed transaction would reduce the number of competitors and result in a significant likelihood of anticompetitive behavior by the combined firm. We find that the totality of the circumstances in each of these markets would provide the incentive and ability for the combined entity to raise price and restrict output.²⁹⁹ In all seven of these markets, the merged entity has a combined market share that is significantly higher than the market share of rival service providers. In these seven markets, the merged entity's market share ranges from [REDACTED] to [REDACTED] percent of the market. Thus, the combined entity's market share ranges from [REDACTED] to [REDACTED] times the market share of all competing service providers. Given the demographics of the area and the contiguous nature of these markets, divestiture is necessary to prevent the likelihood of anticompetitive behavior of the combined firm. We conclude that the presence and capacity of rival service providers is such that the response of these providers is likely to be insufficient to deter successful unilateral effects and/or coordinated interaction by the merged entity.

²⁹⁶ *Id.*

²⁹⁷ See *supra* Section V.C.2, Coordinated Effects.

²⁹⁸ See AT&T Letter of Commitment.

²⁹⁹ These seven markets were identified by our HHI screen.

VI. POTENTIAL PUBLIC INTEREST BENEFITS

87. In addition to assessing the potential competitive harms of the proposed AT&T-Centennial transaction, we also consider whether the respective combination of these companies' wireless operations is likely to generate verifiable, transaction-specific public interest benefits.³⁰⁰ In doing so, we ask whether the resulting combined entity would be able, and would be likely, to pursue business strategies resulting in demonstrable and verifiable benefits to consumers that would not be pursued but for the combination.³⁰¹

88. As discussed below, we find that the proposed transaction is likely to result in certain transaction-specific public interest benefits. We reach this conclusion, however, recognizing that many of these benefits may be challenging to achieve in the near future because of sizable technological and financial requirements. As a result, it is difficult for us to precisely quantify either the magnitude of or the time period in which these benefits will be realized.³⁰²

A. Analytical Framework

89. 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.”³⁰³ 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.³⁰⁴

90. The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms. First, the claimed benefit must be transaction-specific. This means that the claimed benefit “must be likely to be accomplished as a result of the merger but unlikely to be realized by other means that entail fewer anticompetitive effects.”³⁰⁵ Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a merger is in the sole possession of the applicants, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude.³⁰⁶ In addition, “the magnitude of benefits must be calculated net of the cost of achieving them.”³⁰⁷ Furthermore, as the

³⁰⁰ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 114; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17614 ¶ 113; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

³⁰¹ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 114; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17614 ¶ 113; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

³⁰² See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 115; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12504 ¶ 92; *AT&T-Dobson Order*, 22 FCC Rcd at 20330 ¶ 74.

³⁰³ E.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 116; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17614 ¶ 115; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204; see also *DOJ/FTC Merger Guidelines* § 4.

³⁰⁴ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 116; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 115; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204.

³⁰⁵ E.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599-600 ¶ 205. Cf. *DOJ/FTC Merger Guidelines* § 4.

³⁰⁶ See, e.g. *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

³⁰⁷ E.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

Commission has explained, “benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present.”³⁰⁸ Third, the Commission has stated that it “will more likely find marginal cost reductions to be cognizable than reductions in fixed cost.”³⁰⁹ 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.³¹⁰

91. Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims.³¹¹ 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.”³¹² On the other hand, where potential harms appear less likely and less substantial, as is the case here, we will accept a lesser showing to approve the transaction.³¹³

B. Discussion

92. The Applicants assert that the proposed transaction will result in a number of public interest and consumer benefits. The Applicants state that the merger “will enable the combined firm to offer Centennial’s customers, especially those in rural areas, advanced services that Centennial does not currently offer, accelerate the provision of broadband and other next-generation wireless services, expand each party’s network coverage, improve customers’ wireless calling experience and create substantial economies of scale and scope that will benefit subscribers.”³¹⁴ The Applicants contend that, overall, the proposed transaction would provide substantial benefits for existing Centennial customers as well as existing and future AT&T customers.³¹⁵

1. Expanded and Improved Services and Features

93. The Applicants contend that the proposed transaction will particularly benefit Centennial’s subscribers, who will gain access to a broader range of services available on AT&T’s

³⁰⁸ E.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

³⁰⁹ E.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615-16 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205. See also *DOJ/FTC Merger Guidelines* § 4.

³¹⁰ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206; see also *DOJ/FTC Merger Guidelines* § 4.

³¹¹ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 118; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206.

³¹² E.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 118; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206. Cf. *DOJ/FTC Merger Guidelines* § 4 (“The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.”).

³¹³ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17497 ¶ 118; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 117; *Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc.*, WT Docket No. 05-339, *Memorandum Opinion and Order*, 21 FCC Rcd 11526, 11566 ¶ 109 (2006) (“*ALLTEL-Midwest Wireless Order*”).

³¹⁴ Application, Public Interest Statement at 4 (citing Declaration of Willig, Orszag, and Poulsen at ¶¶ 12, 20-21).

³¹⁵ Application, Public Interest Statement at i-ii.

national network, which covers more than 290 million people in 13,000 communities in the United States.³¹⁶

94. *Diverse Rate Plans.* The Applicants state that the post-merger company will be able to offer a wider variety of rate plans to Centennial's customers, including those in rural areas, than Centennial currently provides.³¹⁷ As a result of the merger, Centennial's customers will, according to the Applicants, have a much larger pool of wireless customers (approximately 75 million) with whom they can communicate without using their monthly minutes than is currently available to them (approximately 1 million).³¹⁸ Centennial's existing customers will, post-transaction, be able to roll over unused minutes to the next month, an option they do not currently have.³¹⁹

95. *Expanded Network Coverage.* The Applicants contend that combining AT&T's and Centennial's networks will result in an increase of network coverage for Centennial's customers from 9 million POPs in the mainland U.S. and 4 million POPs in the Caribbean to over 290 million POPs.³²⁰ The in-network coverage for Centennial's customers who currently have access to a GSM network deployed with GPRS/EDGE will increase by approximately [REDACTED] million POPs and [REDACTED] new MSAs and [REDACTED] new RSAs, covering almost [REDACTED] percent of the geographic area of the U.S.³²¹ AT&T's customers will also benefit from the combined network, which will increase the coverage of AT&T's GSM network deployed with GPRS/EDGE by more than [REDACTED] million POPs and the addition of [REDACTED] RSA.³²² The Applicants state that combining the coverage of the two networks will eliminate roaming between them and thus will benefit the customers of both companies when they travel outside their home areas "by enabling more consistent access to features, fewer dropped calls, and increased data speeds."³²³

96. *3G and 4G Deployment.* The Applicants explain that, currently, Centennial provides 3G wireless broadband services only to its customers in Puerto Rico and the U.S. Virgin Islands, using EVDO Rev. A technology.³²⁴ Centennial states that [REDACTED], Centennial has not commercially deployed 3G technology in its mainland U.S. markets.³²⁵ It also states that, [REDACTED], it does not

³¹⁶ Application, Public Interest Statement at 5.

³¹⁷ Application, Public Interest Statement at 6 (citing Declaration of Hunt at ¶ 10).

³¹⁸ Application, Public Interest Statement at 6 (citing Declaration of Hunt at ¶¶ 4, 12).

³¹⁹ Application, Public Interest Statement at 6-7 (citing Declaration of Hunt at ¶ 12).

³²⁰ Application, Public Interest Statement at 19 (citing Declaration of Hunt at ¶ 4; Declaration of Moore at ¶ 4); Centennial 10-K at 1.

³²¹ Information Request I Response at 8, 12 (calculating the difference between the combined entity's total GSM network coverage of [REDACTED] POPs in [REDACTED] MSAs, and [REDACTED] RSAs throughout [REDACTED]% of the U.S. geographic area, and Centennial's existing GSM coverage of [REDACTED] POPs in [REDACTED] MSAs and [REDACTED] RSAs throughout [REDACTED]% of the U.S. geographic area).

³²² Information Request I Response at 10, 12 (calculating the difference between the combined entity's total GSM network coverage of [REDACTED] POPs in [REDACTED] MSAs, and [REDACTED] RSAs throughout [REDACTED]% of the U.S. geographic area, and AT&T's existing GSM coverage of [REDACTED] POPs in [REDACTED] MSAs and [REDACTED] RSAs throughout [REDACTED]% of the U.S. geographic area).

³²³ Application, Public Interest Statement at 19 (citing Declaration of Hunt at ¶ 8; Declaration of Moore at ¶ 12).

³²⁴ Information Request I Response at 26; Centennial 10-K at 2.

³²⁵ Application, Public Interest Statement at 7; Information Request I Response at 45.

have any plans to launch 4G services either in the mainland U.S. or Puerto Rico and the U.S. Virgin Islands.³²⁶

97. The Applicants assert that the proposed transaction will enable AT&T to provide 3G services to Centennial's customers throughout its footprint.³²⁷ With the addition of Centennial's network infrastructure and its 850 MHz spectrum, AT&T will begin to expand its 3G network to numerous Centennial cell sites beginning in 2010,³²⁸ and AT&T estimates that the transaction will accelerate the deployment of 3G services to Centennial territories by at least [REDACTED].³²⁹ The Applicants claim that AT&T, which has deployed 3G services to 320 cities, has extensive experience, infrastructure, resources, and supplier contracts necessary for such deployment.³³⁰ AT&T commits to provide the Commission with periodic updates every six months over the next three years on its progress towards deploying 3G services in the former Centennial areas.³³¹ We accordingly condition our grant of consent to the proposed transaction on AT&T's compliance with this commitment to file periodic updates.

98. While no plans or timelines have yet been established, the Applicants assert that, as a result of the merger, AT&T will be able to roll out 4G technology more quickly in Centennial service areas where AT&T holds AWS or 700 MHz spectrum, but lacks towers or necessary infrastructure to use this spectrum.³³² Moreover, addition of the Centennial spectrum will provide AT&T with sufficient spectrum that it otherwise would not have to enable it to roll out 4G services.³³³ The post-merger company will be able to set aside a portion of its combined spectrum for LTE implementation without jeopardizing the quality of service to existing customers.³³⁴

99. *Handsets with Advanced Services Capabilities.* The Applicants assert that as a result of the proposed transaction, Centennial's customers will have access to all handset offerings and services available to new AT&T customers at that time.³³⁵ As of May 2009, AT&T offered [REDACTED] handset models, [REDACTED] of which support UMTS technology for 3G services.³³⁶ Centennial offered only [REDACTED] handset models for its customers in the mainland United States, only

³²⁶ Application, Public Interest Statement at 16 (citing Declaration of Hunt at ¶ 14); Information Request I Response at 44.

³²⁷ Application, Public Interest Statement at 16 (citing Declaration of Hunt at ¶ 14).

³²⁸ See Letter from Joan Marsh, AT&T Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 5, 2009), at 1 ("AT&T Nov. 5 *Ex Parte* Letter"); see also Application, Public Interest Statement at 16-17 (citing Declaration of Moore at ¶ 23).

³²⁹ Information Request I Response at 26.

³³⁰ Application, Public Interest Statement at 17 (citing Declaration of Moore at ¶ 23). AT&T has experience with rapid deployment of 3G services. *Id.* After it acquired Dobson in 2007, it deployed 3G services in 2008 in portions of 29 CMAs that were part of Dobson's footprint. *Id.* It tentatively planned to deploy 3G technology in portions of 43 formerly-Dobson CMAs in 2009. *Id.*

³³¹ AT&T Nov. 5 *Ex Parte* Letter at 2.

³³² Application, Public Interest Statement at 17 (citing Declaration of Moore at ¶ 22); Information Request I Response at 27; AT&T Nov. 5 *Ex Parte* Letter at 1-2.

³³³ Application, Public Interest Statement at 18 (citing Declaration of Moore at ¶ 21).

³³⁴ Application, Public Interest Statement at 18 (citing Declaration of Moore at ¶ 20); Information Request I Response at 27.

³³⁵ Information Request I Response at 24.

³³⁶ Information Request I Response at 24.

[REDACTED] of which support UMTS technology, and [REDACTED] handset models for its customers in Puerto Rico and the U.S. Virgin Islands.³³⁷ Because Centennial does not have 3G capability in its mainland U.S. service areas,³³⁸ it cannot offer its subscribers mobile video and music subscription service, location-based services, and other advanced and multimedia features that are available to AT&T subscribers.³³⁹ The Applicants maintain that, as a result of the merger and following AT&T's rollout of 3G services in Centennial's service areas, Centennial's customers will be able to use dual-mode phones with integrated Wi-Fi and GPS navigation and other innovative features such as free access at Wi-Fi hotspots at more than 17,000 locations.³⁴⁰ Finally, the Applicants also assert that, as a result of the merger, Centennial customers will be able to purchase handsets at lower costs.³⁴¹

100. *Improved International Roaming.* The Applicants assert that the proposed merger will result in an increased availability of international roaming at lower rates for Centennial's customers.³⁴² Currently, Centennial maintains roaming agreements that provide for direct interconnection with providers only in a small number of countries;³⁴³ roaming in the remaining countries is provided through Centennial's participation in clearinghouse relationships at generally higher rates.³⁴⁴ Moreover, Centennial's international roaming arrangements include data capabilities in only a minority of the countries.³⁴⁵ In contrast, AT&T claims that it has the largest international roaming availability of any U.S. carrier, and its customers benefit from better rates and broader service options.³⁴⁶ As a result of the proposed transaction, Centennial's subscribers will have access to more than 630 international roaming agreements, and will be able to use roaming voice services and roaming data services in 211 and 131 countries, respectively.³⁴⁷

101. *Open Applications Policy.* The Applicants contend that the merger will allow Centennial's customers to benefit from AT&T's Open Applications Policy.³⁴⁸ This policy will afford Centennial's customers access to more application choices, more handset options, and a more robust network on which to experience downloaded applications.³⁴⁹ AT&T offers its subscribers a broad variety of content and applications for their wireless phones.³⁵⁰ AT&T also explains that its customers can

³³⁷ Information Request I Response at 24.

³³⁸ Information Request I Response at 6, 25.

³³⁹ Application, Public Interest Statement at 7 (citing Declaration of Hunt at ¶ 11).

³⁴⁰ Application, Public Interest Statement at 8 (citing Declaration of Moore at ¶ 11).

³⁴¹ Application, Declaration of Willig, Orszag, and Poulsen at ¶¶ 15-16. *See also* Information Request I Response at 56-58.

³⁴² Application, Public Interest Statement at 9 (citing Declaration of Hunt at ¶ 9).

³⁴³ Application, Public Interest Statement at 9-10 (citing Declaration of Moore at ¶ 9).

³⁴⁴ Application, Public Interest Statements at 10 (citing Declaration of Hunt at ¶ 9). *See also* Information Request I Response at 35-36.

³⁴⁵ Application, Public Interest Statement at 10 (citing Declaration of Hunt at ¶ 9).

³⁴⁶ Information Request I Response at 36.

³⁴⁷ Application, Public Interest Statement at 10 (citing Declaration of Moore at ¶ 16).

³⁴⁸ Application, Public Interest Statement at 7 (citing Declaration of Hunt at ¶ 10; Declaration of Moore at ¶ 8); Information Request I Response at 20.

³⁴⁹ Information Request I Response at 20.

³⁵⁰ Information Request I Response at 14-15.

download any application that is compatible with their handsets.³⁵¹ In addition, AT&T states that its customers have access to a wide variety of handsets that can support various operating systems, features, applications, and functionalities.³⁵² Customers also are allowed to use their own GSM-compatible device on AT&T's GSM network.³⁵³

102. *Wireless/Wireline Integration.* The Applicants state that the proposed transaction will enable the combined entity to integrate Centennial's wireless network with AT&T's wireline network.³⁵⁴ In the mainland U.S., AT&T has incumbent LEC operations in 30 of the 41 CMAs where Centennial currently provides wireless service.³⁵⁵ Those of Centennial's customers residing in AT&T's wireline service areas will be able to take advantage of AT&T's Unity Plans, which allow free calling among AT&T's wireless and wireline residential and business phone numbers.³⁵⁶ The Applicants contend that customers that have both wireless and wireline services will also be able to take advantage of discounts, special DSL pricing, and unified billing.³⁵⁷

103. *Improved Reception and Signal Quality.* The Applicants state that the integration of AT&T's and Centennial's networks, with the associated greater cell site density, will result in better reception and signal quality for both companies' customers.³⁵⁸ The Applicants conclude that customers of the merged company will have a better customer calling experience, with more seamless service, fewer dropped calls, dead spots, and coverage gaps, and improved data speeds and feature performance.³⁵⁹

104. *Benefits for Business Customers.* The Applicants contend that the combined entity will be in a better position to provide wireless services to business customers.³⁶⁰ Centennial currently offers its business customers the same wireless products and services that are offered to consumers.³⁶¹ In contrast, AT&T has several innovative wireless services it offers to its business customers.³⁶² Centennial's business customers would, post-merger, gain access to AT&T offerings such as Corporate Digital Advantage, which includes a broad array of features and functionalities tailored to the needs of businesses, Premier Enterprise Portal Wireless Management Center, Enterprise on Demand, and Business Pooled Nation voice plan, as well as increased access to WiFi service.³⁶³

³⁵¹ Information Request I Response at 15.

³⁵² Information Request I Response at 15.

³⁵³ Information Request I Response at 15.

³⁵⁴ Application, Public Interest Statement at 8-9 (citing Declaration of Moore at ¶ 14; Declaration of Willig, Orszag, and Poulsen at ¶ 18).

³⁵⁵ Information Request I Response at 34.

³⁵⁶ Application, Public Interest Statement at 9 (citing Declaration of Moore at ¶ 9).

³⁵⁷ Application, Public Interest Statement at 9 (citing Declaration of Moore at ¶ 14).

³⁵⁸ Application, Public Interest Statement at 11.

³⁵⁹ Application, Public Interest Statement at 11 (citing Declaration of Moore at ¶ 12; Declaration of Willig, Orszag, and Poulsen at ¶¶ 20-21).

³⁶⁰ Application, Public Interest Statement at 12.

³⁶¹ Information Request I Response at 38.

³⁶² Application, Public Interest Statement at 12 (citing Declaration of Moore at ¶¶ 17-18); Information Request I Response at 38.

³⁶³ Application, Public Interest Statement at 12 (citing Declaration of Hunt at ¶ 11; Declaration of Moore at ¶¶ 17-18); Information Request I Response at 38-39.

2. Improved Disaster Preparedness

105. The Applicants contend that the merger will improve the combined entity's ability to prepare for as well as respond to emergencies, such as natural disasters, acts of terrorism, and others.³⁶⁴ They state that the combined entity will benefit from adding Centennial's experience in responding to hurricanes and other disasters with AT&T's own experience as well as its many emergency preparedness resources, such as two mobile command centers, mobile generators, and mobile cell sites that are connected via satellite or landline.³⁶⁵ The use of AT&T's 3G network has also proven critical during emergencies.³⁶⁶ The Applicants explain that because Centennial's network switches in Alexandria, Louisiana, are located outside of the typical hurricane centers closer to the Gulf Coast, they are less susceptible to power outages caused by hurricanes.³⁶⁷ The Applicants maintain that the denser network of the combined entity will be more resilient to power outages than either network would be individually.³⁶⁸ Overlap of the two networks, which operate in two separate bands (850 MHz and 1900 MHz), will ensure that emergency equipment that operates on either band can be deployed to restore service.³⁶⁹ The Applicants assert that in Puerto Rico, the combined entity will benefit from Centennial's broader presence and more extensive emergency recovery capabilities.³⁷⁰

3. Substantial Additional Cost Synergies

106. The Applicants maintain that the proposed transaction will result in substantial additional savings in costs of operations, which in turn will increase the combined entity's competitiveness and the introduction of innovative features and services.³⁷¹ The Applicants state that cost savings will result from "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."³⁷² Examples of such cost savings include: the elimination of redundant towers; shifting AT&T's current wireline traffic in Puerto Rico from PRTC to Centennial's wireline network; reduced roaming costs; and AT&T's lower cost per subscriber (due to its economies of scale) for general and administrative expenses, billing and customer care, and marketing and advertising, as well as elimination of duplicative activities in these categories of expense.³⁷³ The Applicants maintain that some portion of the savings in advertising, billing, general and administrative, and network categories will be passed on to the subscribers, as they represent reductions in the variable costs of offering cellular service.³⁷⁴ They expect cost synergies with a net present value of approximately [REDACTED].³⁷⁵

³⁶⁴ Application, Public Interest Statement at 14 (citing Declaration of Hunt at ¶ 16; Declaration of Moore at ¶ 19).

³⁶⁵ Application, Public Interest Statement at 14-15 (citing Declaration of Moore at ¶ 19; Declaration of Willig, Orszag, and Poulsen at ¶ 22).

³⁶⁶ Application, Public Interest Statement at 15.

³⁶⁷ Information Request I Response at 43. In fact, during recent hurricanes, Centennial was able to add hundreds of thousands of AT&T's Louisiana customers to its network. Information Request I Response at 43.

³⁶⁸ Information Request I Response at 43.

³⁶⁹ Information Request I Response at 43.

³⁷⁰ Information Request I Response at 43.

³⁷¹ Application, Public Interest Statement at 20.

³⁷² Application, Public Interest Statement at 21 (citing Declaration of Moore at ¶¶ 24-33).

³⁷³ Application, Public Interest Statement at 21-23 (citing Declaration of Moore at ¶¶ 26-32); Information Request I Response at 50-53.

³⁷⁴ Information Request I Response at 52.

4. Puerto Rico Wireline Service Benefits

107. In Puerto Rico, AT&T provides wireline services to a number of businesses, but because it does not own “last mile” facilities, it must rely on local services provided by third parties.³⁷⁶ AT&T’s focus is on large national and multinational companies that also have telecommunications needs in Puerto Rico.³⁷⁷ Centennial’s principal services consist of voice services (e.g., local and long distance telephony, ISDN-PRI/BRI, DS1, POTS, toll free services, and VoIP), dedicated services (e.g., private line, frame relay, ATM, and Ethernet), and Internet services (e.g., dedicated access and dial-up).³⁷⁸ The Applicants assert that as a result of the proposed merger, AT&T will be able to provide its business customers in Puerto Rico a single point of contact for their telecommunication services instead of relying on local services provided by third parties.³⁷⁹ The Applicants contend that Centennial’s business customers will also benefit by being able to travel on one network and gaining access to “AT&T’s global service offerings, including global Internet service, Enhanced VPN and other advanced managed services.”³⁸⁰

C. Conclusion

108. While we find that this transaction is likely to result in transaction-specific public interest benefits, we are not able on the basis of this record, using the sliding-scale approach described above, to conclude that they are sufficiently large or imminent to outweigh the potential harms we have identified in certain individual markets. In those markets, therefore, remedies are necessary to ameliorate likely competitive harms.

VII. DIVESTITURE OF MARKETS

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

110. In its review of proposed transactions, the Commission is empowered to impose conditions on the transfer of control of Commission licenses to mitigate the harms the transaction would likely create. Such conditions are tailored to address the specific harms anticipated based on economic analysis, examination of documents submitted in response to our inquiry, and public comment contained in the record of this proceeding. We conclude that the conditions set forth below alter the public interest balance of the proposed transaction by mitigating the potential public interest harms. Accordingly, with the conditions that we adopt in this Memorandum Opinion and Order, and assuming the Applicants’ compliance with these conditions, we find that the Applicants have demonstrated that the proposed transfer of licenses would serve the public interest, convenience, and necessity. We find that the operating unit divestitures described herein resolve certain transaction-specific competitive harms disclosed by our competitive analysis above. As discussed below,³⁸¹ we accept certain commitments

(Continued from previous page) _____

³⁷⁵ Information Request I Response at 50. [REDACTED]. Information Request I Response at 50.

³⁷⁶ Application, Public Interest Statement at 12-13 (citing Declaration of Moore at ¶ 36).

³⁷⁷ Application, Public Interest Statement at 12; Information Request I Response at 40.

³⁷⁸ Information Request I Response at 40.

³⁷⁹ Application, Public Interest Statement at 12-13 (citing Declaration of Moore at ¶ 36).

³⁸⁰ Application, Public Interest Statement at 13 (citing Declaration of Moore at ¶ 37).

³⁸¹ See discussion *infra* Part IX, Conditions in Addition to Market Divestitures.

made by AT&T and will impose these commitments as conditions designed to ensure that the proposed transaction is in the public interest by remedying additional harms which may occur as a result of the proposed transaction.

A. Operating Unit Divestitures

111. We found above that the proposed transaction would be likely to cause significant competitive harm in seven geographic markets. The Department of Justice also required divestiture of these markets. Specifically, our analysis indicated that, in those markets, there would not be an adequate number of competing service providers remaining after the transaction with sufficient network and spectrum assets to deter anticompetitive behavior by the merged entity. To address these concerns, we will require the Applicants to divest all licenses, spectrum leasing arrangements, and authorizations and related operational and network assets, which shall include certain employees, retail sites, subscribers, customers, all fixed assets, goodwill, and all spectrum associated therewith and any other assets, tangible or intangible, used in the operation of the mobile telephony/broadband services to be divested (together, the “Divestiture Assets”), of Centennial in certain markets. Specifically, we condition this grant of authority to transfer control of licenses, authorizations, and spectrum leasing arrangements held by Centennial and its subsidiaries to AT&T on the divestiture of the Divestiture Assets in the seven markets listed below:

CMA	Name
CMA174	Lafayette, LA
CMA205	Alexandria, LA
CMA456	Louisiana 3 – De Soto
CMA458	Louisiana 5 – Beauregard
CMA459	Louisiana 6 – Iberville
CMA460	Louisiana 7 – West Feliciana
CMA500	Mississippi 8 – Claiborne

B. Operation of Divestitures

112. Disposal of the Divestiture Assets in the seven geographic markets in which competitive harm is likely will be accomplished in the following way. A Management Trustee shall be appointed to serve as manager and operator of the Divestiture Assets until such assets are sold to third party purchasers or transferred to a Divestiture Trustee (who may be the same person as the Management Trustee). During the period in which the Management Trustee is in day-to-day control of the Divestiture Assets, AT&T shall retain *de jure* control and shall have the sole power to market and dispose of the Divestiture Assets to third-party buyers, subject to the Commission’s regulatory powers and processes with respect to license transfers and assignments and the terms of the agreements to be contained in any preservation of assets stipulation, proposed final judgment, or other document or agreement that may be entered into between the Applicants and the DOJ.

113. To the extent the Applicants file applications to enter into short-term *de facto* transfer spectrum leases in order to transfer certain Divestiture Assets into the trust with the Management Trustee, these applications must include a request to approve the identity of the Management Trustee and the terms

of the trust agreement (“Management Trustee Agreement”).³⁸² We require that all of the Divestiture Assets shall be transferred to the trust in accordance with the terms of this Memorandum Opinion and Order no later than upon consummation of this proposed transaction. The Management Trustee Agreement must include all reasonable and necessary rights, powers, and authorities to permit the Management Trustee to perform his duties of day-to-day management of the Divestiture Assets, in the ordinary course of business, in order to run the businesses carried on in those CMAs and to permit expeditious divestiture.³⁸³ The Management Trustee will serve at the cost and expense of the Applicants.³⁸⁴

114. From the date of release of this Memorandum Opinion and Order, and until the divestitures ordered herein have been consummated, both the Applicants and the Management Trustee shall preserve, maintain, and continue to support the Divestiture Assets and shall take all steps to manage them in a way as to permit prompt divestiture. We require that the Applicants and the Management Trustee abide by the same provisions relating to the duties of the Management Trustee and the preservation of the Divestiture Assets as those contained in any DOJ preservation of assets stipulation or any other document or agreement. We also require that, to the extent any DOJ preservation of assets stipulation or Management Trustee Agreement or other document or agreement requires the Applicants or the Management Trustee to provide DOJ with any reports, affidavits, notifications, or statements of compliance or requires that the Applicants seek any approvals from the DOJ, the Applicants will also provide such reports, affidavits, notifications, and statements to, and seek such approvals from, the Commission.

115. The Applicants will be allowed 120 days from the closing of their transaction or five days after notice of entry of any Final Judgment, whichever is later (the “Management Period”), to divest the Divestiture Assets prior to the second stage of the divestiture procedures becoming operative. Upon application by the Applicants to the Bureau, the Bureau may grant one or more extensions of the Management Period, not to exceed 60 days in the aggregate, to allow the Applicants further time to dispose of the Divestiture Assets.³⁸⁵

116. Upon expiration of the Management Period, any Divestiture Assets that remain owned by the Applicants shall be irrevocably transferred to a Divestiture Trustee, who shall be solely responsible for accomplishing disposal of the Divestiture Assets. The Applicants will submit to the Bureau, for approval, both the name of the proposed Divestiture Trustee and a draft of the divestiture trust agreement³⁸⁶ to be entered into with the Divestiture Trustee together with an appropriate application to

³⁸² See *supra* Part II.C.2, Department of Justice Review.

³⁸³ The duties and responsibilities of the Management Trustee and the terms relating to how the Divestiture Assets are to be preserved during the term of the trust are more fully set forth in the preservation of assets stipulation DOJ filed in the D.C. District Court. See *supra* Part II.C.2, Department of Justice Review. Except to the extent that any provisions herein conflict, we require that the Applicants and the Management Trustee fully comply with such provisions as if they were set forth herein *in extenso*.

³⁸⁴ See, e.g., DOJ AT&T-Centennial Stipulation and Order at 8.

³⁸⁵ If the Applicants have filed an application with the Commission seeking consent to the sale of any of the Divestiture Assets to a third party within the time periods set forth above but the Commission has not acted by the end of such period, such period will be automatically extended and shall expire five days after the Commission’s action with respect to such Divestiture Assets.

³⁸⁶ The Wireless Telecommunications Bureau will consult with the Office of General Counsel on matters relating to the identity of the proposed divestiture trustee and the terms of the divestiture trust.

effect such transfer no later than 30 days prior to the expiration of the Management Period.³⁸⁷ The Divestiture Trustee will serve at the cost and expense of the Applicants and shall file monthly reports with the Bureau setting forth his efforts to divest the Divestiture Assets.

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

118. Subject to our regulatory powers and processes, to the extent that any of the Divestiture Assets are included within any DOJ preservation of assets stipulation, DOJ proposed final judgment or any other document or agreement, we will allow the Applicants to proceed to divest such assets in accordance with the terms of the provisions of those documents.

119. To the extent that this Memorandum Opinion and Order conflicts with any document or agreement among the DOJ, the Applicants, the Management Trustee, and the Divestiture Trustee, the Applicants must nonetheless comply with the terms of this Memorandum Opinion and Order.

VIII. OTHER ISSUES

A. Roaming

120. *Background.* Roaming occurs when the subscriber of one CMRS provider travels beyond the service area of that provider and uses the facilities of another CMRS provider to place an outgoing call, to receive an incoming call, or to continue an in-progress call.³⁸⁸ Subscribers can roam manually by providing a credit card number to the host carrier, while automatic roaming allows mobile telephone subscribers to place calls while roaming as they do in their home coverage area, by simply entering a phone number and pressing "send."

121. In the *Roaming Report and Order*,³⁸⁹ the Commission determined that the automatic roaming obligation applies to real-time, two-way switched voice or data services that are interconnected with the public switched network and utilize an in-network switching facility that enables providers to reuse frequencies and accomplish seamless hand-offs of subscriber calls.³⁹⁰ The Commission determined that automatic roaming, as a common carrier obligation, does not extend to services that are classified as

³⁸⁷ Except to the extent that any provisions herein conflict, we require that the Applicants and the Divestiture Trustee fully comply with the provisions of any DOJ Proposed Final Judgment relating to the responsibilities of the Divestiture Trustee as if they were set forth herein *in extenso*.

³⁸⁸ See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20324 ¶ 59; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11561-62 ¶ 98; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21586 ¶ 166; see also Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Service, WT Docket No. 05-265, 00-193, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 15047, 15048 ¶ 2 (2005).

³⁸⁹ Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817 (2007) ("*Roaming Report and Order*" and "*Roaming Further Notice*," respectively).

³⁹⁰ See *Roaming Report and Order*, 22 FCC Rcd at 15817, 15839 ¶¶ 1, 60.

information services or to other wireless services that are not CMRS.³⁹¹ Additionally, the Commission determined that when “a reasonable request is made by a technologically compatible [CMRS] carrier, a host [CMRS] carrier must provide automatic roaming to the requesting carrier outside of the requesting carrier’s home market . . .”³⁹² on reasonable and non-discriminatory terms and conditions.³⁹³ The Commission also stated that if a carrier makes a reasonable request for automatic roaming, “then the would-be host carrier cannot refuse to negotiate an automatic roaming agreement with the requesting carrier.”³⁹⁴ The Commission also found that it would serve the public interest to extend automatic roaming obligations to push-to-talk and Short Message Services (SMS), but declined to adopt a rule extending the automatic roaming obligation beyond that to offerings such as non-interconnected services or features provided over enhanced digital networks, such as wireless broadband Internet access.³⁹⁵ Nevertheless, in the *Roaming Further Notice*, the Commission sought comment on whether it should extend the automatic roaming obligation to non-interconnected services or features, including services that have been classified as information services, such as wireless broadband Internet access service, or other non-CMRS services offered by CMRS carriers.³⁹⁶ The Commission also maintained its existing manual roaming requirement, which imposes on CMRS providers the obligation to permit customers of other service providers to roam manually on their networks.³⁹⁷ The provision of automatic roaming services is subject to the requirements of Sections 201, 202, and 208 of the Communications Act.³⁹⁸

122. Several parties assert that competition in the marketplace for roaming services will be harmed as a result of the consolidation proposed in the transaction.³⁹⁹ Cincinnati Bell contends that because Centennial is the last GSM carrier to have an appreciable facility footprint that AT&T does not cover, without conditions, AT&T will have power in the wholesale roaming market to dictate terms and prices to its remaining roaming partners.⁴⁰⁰ Cincinnati Bell also asserts that the transaction would allow AT&T to extend its anticompetitive practices into Centennial’s territory and adopt new anticompetitive practices.⁴⁰¹

123. Several parties also request that the Commission impose conditions on this transaction, such as holding or lowering the rates in AT&T and Centennial’s roaming agreements;⁴⁰² providing

³⁹¹ See *Roaming Report and Order*, 22 FCC Rcd at 15818-19, 15839 ¶¶ 2, 60.

³⁹² *Roaming Report and Order*, 22 FCC Rcd at 15818, 15831 ¶¶ 2, 33.

³⁹³ *Id.* at 15826 ¶ 23.

³⁹⁴ *Id.* at 15828 ¶ 28.

³⁹⁵ See *id.* at 15839 ¶ 60.

³⁹⁶ *Roaming Further Notice*, 22 FCC Rcd at 15845-46 ¶¶ 77-81.

³⁹⁷ 47 C.F.R. § 20.12(c) provides:

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

³⁹⁸ See generally *Roaming Report and Order*, 22 FCC Rcd at 15818, 15824 ¶¶ 1, 18.

³⁹⁹ Cincinnati Bell Petition at 3; RCA Comments at 5; Cellular South Petition at 8-9.

⁴⁰⁰ Cincinnati Bell Petition at 2-3, 6-7, 9-12; Cincinnati Bell Reply at 3.

⁴⁰¹ Cincinnati Bell Reply at 2-3.

⁴⁰² RCA Comments at 7.

carriers that roam with both AT&T and Centennial the option to select either agreement to govern post-merger;⁴⁰³ expanding AT&T and Centennial's roaming agreements to other services not covered by those agreements;⁴⁰⁴ and requiring AT&T to provide automatic data roaming.⁴⁰⁵ Cincinnati Bell also argues that the Commission should impose a condition on AT&T to honor Centennial's existing roaming agreements for at least seven years following the consummation of the merger.⁴⁰⁶ Cincinnati Bell cites Verizon Wireless's voluntary commitment in the Verizon/ALLTEL transaction to retain ALLTEL's agreements for four years, but argues that AT&T's post-merger stranglehold on the market warrants a longer period.⁴⁰⁷ According to Cincinnati Bell, the only prospect to loosen AT&T's grip is the full deployment of LTE by multiple carriers, which would eliminate the technology limitations in the roaming marketplace.⁴⁰⁸ RCA argues that, at a minimum, AT&T's roaming obligations should be clear that they apply to the entirety of the roaming agreement as well as to future services and spectrum bands of each carrier.⁴⁰⁹

124. The Applicants initially respond that the proposed transaction, with any required divestitures, will not disturb the competitive retail market, and thus Commission-imposed roaming conditions are inappropriate.⁴¹⁰ The Applicants further assert that the circumstances in the Verizon-ALLTEL transaction, which was conditioned upon roaming commitments by Verizon Wireless, could not be more different than the circumstances in the proposed transaction.⁴¹¹ For example, the Applicants state that Centennial's licensed service area covers only about 1/25th the area that ALLTEL covered, is much more densely populated, and is almost ubiquitously served by national carriers, which are Centennial's principal competitors and provide alternative roaming partners.⁴¹² In addition, the Applicants contend that in contrast to the Verizon-ALLTEL transaction, where many regional, small, and rural carriers were heavily dependent upon ALLTEL for roaming services, many of the regional, small and rural carriers that operate in Centennial's service area do not use the same technology as Centennial and thus do not roam with Centennial.⁴¹³ According to the Applicants, whereas ALLTEL and its predecessors had made

⁴⁰³ RCA Comments at 7; Cincinnati Bell Petition at 14-15; Letter from Todd B. Lantor, Counsel to Rural Cellular Association, to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 27, 2009), at 2 ("RCA Oct. 27 *Ex Parte* Letter").

⁴⁰⁴ RCA Comments at 7; Cincinnati Bell Petition at ii, 17-19.

⁴⁰⁵ Cincinnati Bell Petition at 16-19; Cellular South Petition at 2, 8-10.

⁴⁰⁶ Cincinnati Bell Petition at 13.

⁴⁰⁷ Cincinnati Bell Petition at 13-14.

⁴⁰⁸ Cincinnati Bell Petition at 14.

⁴⁰⁹ RCA Oct. 27 *Ex Parte* Letter at 2.

⁴¹⁰ Information Request II Response at 8-9.

⁴¹¹ Information Request II Response at 9-12.

⁴¹² Information Request II Response at 11.

⁴¹³ Information Request II Response at 11-12. The Applicants state that Centennial sells more than [REDACTED] percent of its roaming services in the mainland U.S. to [REDACTED] and [REDACTED]. Centennial sells more than [REDACTED] percent of its roaming services in Puerto Rico and the U.S. Virgin Islands to Sprint Nextel. Centennial's largest roaming partner that is a regional, small, or rural carrier, [REDACTED], purchased about [REDACTED] of roaming services from Centennial in the most recent fiscal year. Information Request II Response at 11-12.

roaming a major focus of their business, the provision of roaming is a small part of Centennial's business and accounts for less than seven percent of its revenues.⁴¹⁴

125. The Applicants also contend that Cincinnati Bell and RCA are attempting to achieve a sizable and unwarranted windfall in the extension of roaming privileges they now enjoy over Centennial's limited footprint throughout the entire post-merger AT&T territory.⁴¹⁵ The Applicants assert that Cincinnati Bell and RCA are seeking Commission-imposed terms that they would not be able to obtain in a normal business negotiation with AT&T.⁴¹⁶ The Applicants further assert that there is no potential competitive harm from a reduction of roaming options as a result of the proposed transaction. According to the Applicants, AT&T predominantly relies on GSM and so there is no danger that AT&T will abandon Centennial's GSM network.⁴¹⁷

126. In a letter filed in the docket for this proceeding, AT&T continues to argue that prompt approval of the transaction will unquestionably advance the public interest and agrees to voluntary roaming commitments in order to expedite approval of this transaction.⁴¹⁸ More specifically and as detailed below, AT&T states that it will honor Centennial's existing roaming agreements with other carriers.⁴¹⁹ AT&T also voluntarily commits that any carrier with fewer than 10 million subscribers that has a roaming agreement with Centennial will have the option to continue to obtain roaming services, in those areas where the carrier was obtaining roaming services, for a period of at least 48 months after closing.⁴²⁰

127. Cincinnati Bell further argues that AT&T acts in an anticompetitive manner in the roaming market, specifically, by imposing "primary carrier" requirements on its roaming partners that make it more difficult for Cincinnati Bell and similarly situated customers to roam on carriers other than AT&T in areas where AT&T provides service.⁴²¹ Accordingly, Cincinnati Bell requests that the Commission forbid AT&T to enforce any "primary carrier" requirement for carriers who elect to remain in their AT&T agreements, or to attempt to prevent such carriers from competing for nationwide

⁴¹⁴ Information Request II Response at 12.

⁴¹⁵ Information Request II Response at 12 n.20.

⁴¹⁶ Information Request II Response at 12 n.20.

⁴¹⁷ Information Request II Response at 12. According to the Applicants, there is only one non-divestiture CMA in which a GSM-based regional, small, or rural carrier is a facilities-based competitor, Indiana RSA No. 6 – Randolph (CMA408), where Cincinnati Bell is one of six current facilities-based competitors. Information Request II Response at 12-13.

⁴¹⁸ AT&T Letter of Commitment at 2.

⁴¹⁹ AT&T Letter of Commitment at 3 (AT&T makes the following voluntary commitment: "AT&T will honor Centennial's existing agreements with other carriers to obtain roaming services on Centennial's network pursuant to the rates, terms and conditions contained in Centennial's roaming agreements on the date the AT&T-Centennial merger closes ("Merger Closing Date") for the full term of those agreements, notwithstanding any change of control or termination for convenience provisions in those agreements.").

⁴²⁰ AT&T Letter of Commitment at 3 (AT&T makes the following voluntary commitment: "[A]ny carrier with fewer than 10 million subscribers that has an effective roaming agreement with Centennial on the Merger Closing Date will have the option to continue to obtain roaming services, pursuant to the rates, terms and conditions of that agreement, in those areas where the carrier was obtaining roaming services on the Centennial network on the Merger Closing Date, for the later of (i) a period of 48 months after the Merger Closing Date, or (ii) the full term of such carrier's agreement with Centennial.").

⁴²¹ Cincinnati Bell Petition at 7.

customers.⁴²² AT&T denies Cincinnati Bell's contention that AT&T requires that its roaming partners treat it as a "primary carrier" and argues that Cincinnati Bell attempted to use its roaming agreement with AT&T to resell AT&T's services to customers outside of Cincinnati Bell's service area.⁴²³

128. Some commenters also raise the issue of interoperability in conjunction with roaming.⁴²⁴ Cellular South states that "[w]hen networks are interoperable, connectivity is not interrupted during inter-carrier handoffs and the customer who is roaming on another network does not lose functionality on his or her device."⁴²⁵ RCA contends that large carriers, like AT&T, are known to create "moats" around their service areas, and without interoperability, calls near the edge of a license area are not sustained.⁴²⁶ Both RCA and Cellular South argue that the Commission should require AT&T to negotiate in good faith for interoperability agreements for voice and data services with other carriers along with the automatic roaming agreements.⁴²⁷ AT&T argues that the issues related to interoperability are unrelated to this merger and concern the wireless industry generally.⁴²⁸ AT&T notes that the Commission has a longstanding policy of not considering arguments in merger proceedings that are better addressed in other Commission proceedings and not imposing conditions to remedy pre-existing harms or harms that are unrelated to the transaction.⁴²⁹

129. *Discussion.* We condition our approval of this transaction on AT&T's commitment to honor Centennial's existing agreements with other carriers to obtain roaming services on Centennial's network pursuant to the rates, terms and conditions contained in Centennial's roaming agreements on the date the AT&T-Centennial merger closes ("Merger Closing Date") for the full term of those agreements, notwithstanding any change of control or termination for convenience provisions in those agreements. We also condition our approval of this transaction on AT&T's commitment that any carrier with fewer than 10 million subscribers that has an effective roaming agreement with Centennial on the Merger Closing Date will have the option to continue to obtain roaming services, pursuant to the rates, terms and conditions of that agreement, in those areas where the carrier was obtaining roaming services on the Centennial network on the Merger Closing Date, for the later of (i) a period of 48 months after the Merger Closing Date, or (ii) the full term of such carrier's agreement with Centennial. This commitment does not apply to (a) any properties other than those AT&T is acquiring through the Centennial merger and (b) any properties that are to be divested. This commitment also does not limit AT&T's right in these areas to

⁴²² Cincinnati Bell Petition at ii, 3, 12-15, 24; Cincinnati Bell Reply at 3.

⁴²³ Joint Opposition at 7 n.16.

⁴²⁴ RCA Comments at iii, 8-9; Cellular South Petition at 9-10.

⁴²⁵ Cellular South Petition at 9.

⁴²⁶ RCA Comments at 8-9.

⁴²⁷ RCA Comments at i, iii, 7-9; Cellular South Petition at 2, 9-10.

⁴²⁸ Joint Opposition at i, 4-5.

⁴²⁹ Joint Opposition at 4-5 (citing a number of Commission orders, including *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581-82 ¶ 22; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462-63 ¶ 29; AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74, *Memorandum Opinion and Order*, 22 FCC Rcd 5662, 5674-75 ¶ 22 (2007); SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control, WC Docket No. 05-65, *Memorandum Opinion and Order*, 20 FCC Rcd 18290, 18303 ¶ 19 (2005); *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545-46 ¶ 43; Applications of Craig O. McCaw and Am. Tel. & Tel. Co. for Consent to the Transfer of Control of McCaw Cellular Communications, Inc. and its Subsidiaries, *Memorandum Opinion and Order*, 9 FCC Rcd 5836, 5904 ¶ 123 (1994)).

reasonably manage its networks in an efficient manner to support the provision of 3G or 4G services to customers. In addition, this commitment shall not be interpreted to restrict AT&T's ability to modify, upgrade, or sunset Centennial's existing network, features or functionalities, in whole or in part, as AT&T implements its network technology of choice in these areas. Similarly, nothing in this commitment will be construed as limiting the rights of any carrier to pursue roaming arrangements pursuant to Commission rules and the remedies they afford.

130. We find that AT&T's roaming-related commitments, along with the package of divestitures on which we are conditioning our approval of this transaction, are sufficient to prevent competitive harm that this transaction would likely cause in certain geographic markets. We do not find that the specific facts of this situation warrant a condition that AT&T honor Centennial's existing roaming agreements, all or in part, for a period of seven years, as suggested in the record by some parties. Instead, we conclude that given the circumstances of this transaction, a period of four years ensures sufficient time, if necessary, for small carriers to resolve any roaming-related issues created specifically by the transaction. Additionally, we find that given the specific circumstances of this transaction, AT&T's four-year roaming commitment with respect to small carriers provides a sufficient safeguard on the ability of small carriers to continue roaming on Centennial's network that AT&T is acquiring. In particular, we note that many of the regional, small, and rural carriers that operate in Centennial's service area do not use the same network technology as Centennial and thus do not roam on Centennial's network. We also note that roaming is a small part of Centennial's business, and that the limited geographic size of Centennial's service area (only about two percent of the 48 contiguous states) similarly limits the impact of this transaction on the availability of roaming services. In addition, we note that the relatively high population density of Centennial's licensed service area (over 105 persons per square mile) makes it more likely that other carriers will build out networks in the areas that Centennial serves. Accordingly, we find that applying AT&T's four-year roaming commitment to those areas where carriers currently obtain roaming services from Centennial, along with the package of divestitures on which we are conditioning our approval of this transaction, would prevent significant competitive harm that this transaction would likely cause in Centennial's service areas as a result of the loss of Centennial as a roaming partner in those areas.

131. We also note that Centennial provides automatic roaming services on its GSM network, and there is no indication that AT&T will stop providing such services to any requesting carrier after the merger. Further, we remind carriers that roaming is a common carrier service subject to the protections afforded by Sections 201, 202, and 208 of the Communications Act.⁴³⁰ When a CMRS carrier receives a reasonable request for roaming, pursuant to Sections 201 and 202, that carrier is required to provide roaming on reasonable and non-discriminatory terms and conditions.⁴³¹ If a requesting carrier believes that particular acts or practices relating to roaming are unjust and unreasonable,⁴³² it may file a complaint with the Commission pursuant to Section 208.⁴³³

132. With regard to any additional roaming-related concerns raised in the record, as discussed elsewhere in this Memorandum Opinion and Order, we find that the package of divestitures on which we are conditioning our approval of this transaction, along with the roaming conditions described above, sufficient to prevent any transaction-specific competitive harm that this transaction would likely cause in certain geographic markets. Based on this finding that the divestitures, as well as AT&T's roaming related commitments, will protect competition at the retail level in those geographic markets, we conclude

⁴³⁰ 47 U.S.C. §§ 201, 202, 208.

⁴³¹ See generally *Roaming Report and Order*, 22 FCC Rcd at 15818-19, 15824, 15826-29 ¶¶ 1-2, 18, 23-29.

⁴³² See generally *id.* at 15830-31 ¶¶ 33-35 (discussing reasonableness).

⁴³³ See generally *id.* at 15818, 15829-30 ¶¶ 1, 30-32.

that this transaction will not alter competitive market conditions to harm consumers of mobile telephony/broadband services. We note that our conclusion here is consistent with the Commission's prior findings that competition in the retail market is sufficient to protect consumers against potential harm arising from intercarrier roaming arrangements and practices.⁴³⁴

133. 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.⁴³⁵ A number of parties raised more general concerns about roaming in the record of this transaction, including issues related to automatic voice and data roaming, interoperability, and primary carrier requirements. We conclude that these concerns would be more appropriately addressed in other proceedings.⁴³⁶ For instance, we are considering, in the context of the *Roaming Further Notice*, whether to extend the automatic roaming obligation to non-interconnected services or features, including services that have been classified as information services.⁴³⁷ Any decisions reached or rules adopted in other proceedings related to roaming will apply with equal force to AT&T.

134. *Puerto Rico and the U.S. Virgin Islands.* In Puerto Rico, Centennial currently operates a 3G CDMA network on which Sprint Nextel roams. Two other providers also operate 3G CDMA networks in Puerto Rico: OpenMobile and Claro (a subsidiary of América Móvil).⁴³⁸ T-Mobile and AT&T operate GSM networks in Puerto Rico. In the U.S. Virgin Islands, Centennial and Sprint Nextel operate the CDMA networks, while AT&T and Innovative Wireless operate GSM networks in the territory. Centennial's largest roaming partner in Puerto Rico and the U.S. Virgin Islands is [REDACTED], which purchases more than [REDACTED] percent of Centennial's roaming services in those areas.⁴³⁹ As discussed below, AT&T commits to operate and maintain a CDMA network for the provision of roaming services in Puerto Rico and the U.S. Virgin Islands for 18 months after the transaction closing date.⁴⁴⁰

⁴³⁴ See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17525 ¶ 179; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12503 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21591 ¶ 180; *Roaming Report and Order*, 22 FCC Rcd at 15822 ¶ 13.

⁴³⁵ See, e.g., *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12480-81 ¶ 30; *AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 14; *Sprint Nextel Order*, 20 FCC Rcd at 13979 ¶ 23.

⁴³⁶ See generally *Roaming Further Notice*.

⁴³⁷ *Id.*

⁴³⁸ América Móvil is currently completing a GSM overlay for its existing CDMA network, and will also maintain its 3G CDMA network. See América Móvil Annual Progress Report for the Deployment of the Infrastructure Used to Provide Basic Telephone and Broadband Services in Puerto Rico, WT Docket No. 06-113, filed July 8, 2009, at 3.

⁴³⁹ Information Request II Response at 11-12. In Information Request II, the Commission asked whether the roaming conditions in the *Verizon Wireless-ALLTEL Order* are or are not appropriate for the AT&T-Centennial transaction with respect to the continental U.S., Puerto Rico, and the U.S. Virgin Islands. The Commission also inquired as to the nature of the services (*i.e.*, voice, data, etc.) for which Centennial provides automatic roaming in the continental U.S., Puerto Rico, and the U.S. Virgin Islands. In addition, the Commission asked which carriers roam on Centennial's 3G CDMA network in Puerto Rico and the U.S. Virgin Islands, and the respective percent of Centennial's roaming traffic, in terms of both minutes and revenues, for which each roaming partner's use accounts.

⁴⁴⁰ AT&T Letter of Commitment at 3 (AT&T makes the following voluntary commitment: "Notwithstanding any obligation in this commitment, AT&T will operate and maintain a CDMA network in Puerto Rico and the U.S. Virgin Islands for 18 months after the Merger Closing Date. After that time, AT&T will have no obligation to operate or maintain a CDMA network in Puerto Rico or the U.S. Virgin Islands.").

135. Sprint Nextel requests roaming conditions similar to those imposed in the *Verizon Wireless-ALLTEL Order*, stating they may be necessary “to protect the interests of Centennial’s current 430,000 CDMA customers and the hundreds of thousands of additional Americans who rely upon CDMA roaming with Centennial to complete calls in Puerto Rico”⁴⁴¹ and also asks that AT&T explain how long it intends to maintain Centennial’s CDMA network and whether it intends to honor Centennial’s current roaming agreements.⁴⁴² In response to Sprint Nextel’s concerns about the potential loss of a CDMA roaming partner in Puerto Rico, AT&T argues that, unlike in the Verizon Wireless-ALLTEL transaction that resulted in certain areas having no GSM provider,⁴⁴³ other CDMA carriers will continue to operate as potential roaming partners in Puerto Rico and the U.S. Virgin Islands after this transaction.⁴⁴⁴ Further, AT&T notes that Sprint Nextel possesses spectrum licenses in Puerto Rico and the U.S. Virgin Islands, which it could use to expand its CDMA networks in those areas, making it inappropriate for the Commission to prevent AT&T from making technology changes only to allow Sprint Nextel and other carriers to avoid having to improve their networks.⁴⁴⁵

136. [REDACTED].⁴⁴⁶ [REDACTED].⁴⁴⁷ According to the Applicants, CDMA roaming opportunities will continue to exist in Puerto Rico after the merger because in addition to Centennial, three other carriers – Sprint Nextel, Open Mobile, and Claro – employ CDMA technology in their networks. The Applicants state that “all three of these carriers currently provide facilities-based service in each CMA in Puerto Rico, with the single exception of CMA 725 – Ciales, where Sprint Nextel does not currently provide service.”⁴⁴⁸ In the U.S. Virgin Islands, the Applicants state Sprint Nextel has a CDMA network in both CMAs.⁴⁴⁹ The Applicants state that after closing, AT&T “will continue to provide CDMA roaming on just and reasonable terms until the network transition to GSM is completed.”⁴⁵⁰

⁴⁴¹ Sprint Nextel Comments at 8-9.

⁴⁴² Sprint Nextel Comments at 7-9; Sprint Nextel Reply Comments at 2.

⁴⁴³ See *Verizon Wireless-ALLTEL Order*, 23 FCC Red at 17518, 17523 ¶¶ 161, 176.

⁴⁴⁴ Joint Opposition at 11 n.32.

⁴⁴⁵ Joint Opposition at 11 n.32. In reply, Sprint Nextel states that shutting down Centennial’s CDMA network could force CDMA customers who rely on Centennial’s network to purchase new handsets, especially because other CDMA networks in Puerto Rico do not offer 3G services. Sprint Nextel Reply at 2-3, 4. Sprint Nextel further notes, in the Verizon Wireless-RCC transaction, Verizon Wireless committed to maintain RCC’s GSM network for at least 18 months, to honor RCC’s GSM roaming agreements, and to provide to RCC’s GSM customers a free comparable handset or a discounted higher-end CDMA handset. Sprint Nextel Reply at 3-4. While Sprint Nextel acknowledges that it could build its own CDMA network in Puerto Rico, it asserts that because the build out would take at least 18 months, AT&T should explain its plan for its CDMA network during that time. Sprint Nextel Reply at 4.

⁴⁴⁶ Information Request I Response at 30. In Information Request I, the Commission asked whether AT&T plans to shut down Centennial’s CDMA network or operate it and, if AT&T plans to operate it, for what period of time. The Commission also asked the Applicants whether there are other networks that operate CDMA 3G technology in Puerto Rico and the U.S. Virgin Islands and that provide comparable alternatives to Centennial’s CDMA network. In addition, the Commission asked whether AT&T plans to renew or extend Centennial’s CDMA roaming contracts when their terms expire and whether AT&T plans to enter into new CDMA roaming contracts.

⁴⁴⁷ Information Request I Response at 30-31.

⁴⁴⁸ Information Request I Response at 32 (footnote omitted). The Applicants note that Claro is in the process of overlaying a GSM/UMTS network but has stated that it has no plans to turn off the existing CDMA/EVDO network it purchased from Verizon. *Id.*

⁴⁴⁹ Information Request I Response at 33.

⁴⁵⁰ Information Request I Response at 34.

137. In a subsequent *ex parte* filing, Sprint Nextel clarified it is not asking the Commission to prevent or delay AT&T's conversion of Centennial's CDMA network to GSM technology.⁴⁵¹ Sprint Nextel stated that, while it has been actively assessing other CDMA roaming options in Puerto Rico, it will need a post-merger transition period in order to implement any alternative roaming arrangements that may be necessary.⁴⁵² Accordingly, Sprint Nextel respectfully requested that the Commission require AT&T to support CDMA roaming in Puerto Rico pursuant to the same rates, terms, and conditions as Centennial's existing CDMA roaming agreements for a period of at least 18 months from the date the transaction closes.⁴⁵³ In response, AT&T voluntarily commits to operate and maintain a CDMA network for the provision of roaming services in Puerto Rico and the U.S. Virgin Islands for 18 months after the transaction closing date.⁴⁵⁴

138. *Discussion.* We condition our approval of this transaction on AT&T's commitment to operate and maintain a CDMA network in Puerto Rico and the U.S. Virgin Islands for 18 months after the Merger Closing Date. After that time, AT&T will have no obligation to operate or maintain a CDMA network in Puerto Rico or the U.S. Virgin Islands. We find that a period of eighteen months will allow carriers using Centennial's CDMA network sufficient time to implement alternatives. We also find this approach appropriate for both Puerto Rico and the U.S. Virgin Islands, where [REDACTED].

B. Handset Availability and Exclusive Handset Agreements

139. Several commenters contend that the Commission should prevent AT&T from engaging in exclusive handset arrangements as a condition of approval of this transaction⁴⁵⁵ or defer action on the transaction until it resolves the separate handset exclusivity proceeding.⁴⁵⁶ RCA argues that exclusive handset arrangements give carriers monopolistic control over desired handsets, enabling them to exact from consumers higher prices for services and accessories, undesirable terms of service, and premium prices for the handsets.⁴⁵⁷ While Cincinnati Bell acknowledges that some of the handset exclusivity issues raised in this proceeding may overlap with issues in the pending handset exclusivity proceeding, it asserts that the Commission must nonetheless address the transaction-specific issues within the context of this proceeding, particularly because the handset exclusivity proceeding may not be completed for many months.⁴⁵⁸

140. Cincinnati Bell also contends that adopting a handset condition in this merger similar to the "Verizon Handset Commitment" will at least serve to mitigate the competitive harm resulting from AT&T's acquisition of Centennial.⁴⁵⁹ In July of this year, Verizon Wireless committed to eliminate any

⁴⁵¹ Letter from Charles W. McKee, Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 9, 2009), at 2 ("Sprint Nextel Oct. 9 *Ex Parte* Letter").

⁴⁵² Sprint Nextel Oct. 9 *Ex Parte* Letter at 1-2.

⁴⁵³ Sprint Nextel Oct. 9 *Ex Parte* Letter at 1.

⁴⁵⁴ See AT&T Letter of Commitment at 3 (AT&T makes a voluntary commitment to operate and maintain a CDMA network in Puerto Rico and the U.S. Virgin Islands for 18 months after the Merger Closing Date and stating that, after that time, it will have no obligation to operate or maintain a CDMA network in Puerto Rico or the U.S. Virgin Islands).

⁴⁵⁵ RCA Comments at 9-12; Cincinnati Bell Petition at ii, 3, 24.

⁴⁵⁶ Cellular South Petition at 2, 7-8.

⁴⁵⁷ RCA Comments at 10.

⁴⁵⁸ Cincinnati Bell Reply at 8-10.

⁴⁵⁹ Letter from Jean L. Kiddo, counsel for Cincinnati Bell Wireless LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 19, 2009), at 2-3 ("Cincinnati Bell Oct. 19 *Ex Parte* Letter").

new long-term handset exclusivity arrangements regarding small wireless carriers and to permit full access by such carriers to any manufacturer's portfolio of prototypes and products in development.⁴⁶⁰ Without a condition similar to Verizon Wireless's commitment, Cincinnati Bell states that the merger will exacerbate the inequality in bargaining positions and make it easier for AT&T to impose exclusivity requirements on handset manufacturers.⁴⁶¹ Similarly, RCA argues that the merger should be conditioned upon AT&T's commitment to limit its exclusive handset arrangement to a maximum of six months at which point all of its handsets would immediately be made available to regional and rural carriers, consistent with the commitment made by Verizon Wireless.⁴⁶² In response, the Applicants contend handset exclusivity issues involve the wireless industry generally, and the concerns raised are not transaction-specific and are not appropriate for Commission consideration here.⁴⁶³ AT&T further states that it will be responding to claims regarding exclusive handset arrangements in the industry-wide proceeding.⁴⁶⁴ Finally, the Applicants argue that imposing proposed regulatory changes on AT&T alone would harm the public interest by constraining AT&T's ability to compete and discouraging it from investing.⁴⁶⁵

141. *Discussion.* We find that the proposed conditions prohibiting exclusive handset arrangements are not narrowly tailored to prevent a transaction-specific harm, but apply broadly across the industry and are more appropriate for a Commission proceeding where all interested industry parties have an opportunity to file comments.⁴⁶⁶ RCA filed a petition asking the Commission to review exclusive handset agreements on an industry-wide basis,⁴⁶⁷ and the Commission will be able to develop a comprehensive approach on handset exclusivity based on a full record in that proceeding.⁴⁶⁸

C. Customer Transition Matters

142. Consolidation of the Centennial and AT&T networks will require two primary categories of transition for Centennial's customers. First, Centennial's customers in the mainland U.S. will be transitioned from Centennial's current GSM operations to the GSM capabilities provided by AT&T. Second, Centennial's customers in Puerto Rico and the U.S. Virgin Islands will be transitioned from its

⁴⁶⁰ Letter from John T. Scott, III, Vice President & Deputy General Counsel, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, RM-11497, WT Docket No. 09-66 (July 17, 2009), attachments. Verizon Wireless defined "small" as carriers with 500,000 customers or less (and subsequently expanded that definition to extend to a carrier with approximately 800,000 customers.) *Id.* See also Cincinnati Bell Oct. 19 *Ex Parte* Letter at 1, attachment.

⁴⁶¹ Cincinnati Bell Petition at 20. See also Cincinnati Bell Oct. 19 *Ex Parte* Letter at 2.

⁴⁶² RCA Oct. 27 *Ex Parte* Letter at 2-3.

⁴⁶³ Joint Opposition at i, 1-2, 4-7. AT&T also "incorporates by reference" its comments filed in the pending proceeding addressing handset exclusivity. *Id.* at 7 n.15.

⁴⁶⁴ *Id.* at 6.

⁴⁶⁵ *Id.*

⁴⁶⁶ See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468 ¶ 185.

⁴⁶⁷ See Rural Cellular Association Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, filed May 20, 2008; Wireless Telecommunications Bureau Seeks Comment On Petition For Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers And Handset Manufacturers, *Public Notice*, DA 08-2278 (Oct. 10, 2008). See also RCA Oct. 27 *Ex Parte* Letter at 1-3.

⁴⁶⁸ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21592 ¶ 183.

current CDMA network to AT&T's GSM operations. We seek to ensure that these transitions are as successful as possible with minimal disruption to customers.

143. *Integration of GSM Networks.* Subject to revisions and budgetary considerations, the Applicants expect "the bulk of the integration of Centennial's GSM/EDGE network in the mainland United States to be completed within [REDACTED] after the closing of the [] transaction."⁴⁶⁹ They plan swaps, dual banding, sectorization, and other Radio Access Network site modification, as well as E911 integration tasks, to begin in [REDACTED].⁴⁷⁰ Core network integration, mobile switching center expansion, and base station controller expansion is expected to begin in [REDACTED].⁴⁷¹ Transport readiness work is expected to begin in [REDACTED].⁴⁷² Signaling work is planned to begin and be completed in the [REDACTED].⁴⁷³ Lastly, the Mobility Network Reliability Center and National Dispatch Center integration are expected to begin and be completed in the [REDACTED].⁴⁷⁴

144. *Centennial's CDMA Network.* At the end of April 2009, Centennial had approximately 425,000 subscribers in Puerto Rico and the U.S. Virgin Islands, where it currently uses CDMA technology.⁴⁷⁵ [REDACTED].⁴⁷⁶ [REDACTED].⁴⁷⁷ [REDACTED].⁴⁷⁸ [REDACTED].⁴⁷⁹ [REDACTED].⁴⁸⁰ [REDACTED].⁴⁸¹ [REDACTED].⁴⁸²

145. AT&T represents that it will take steps to ensure that (1) AT&T's 3G coverage areas are backward-compatible with the 2G phones used by some Centennial's customers, and, (2) in overlap areas with both 850 MHz and 1900 MHz coverage, subscribers' handsets use the 850 MHz spectrum.⁴⁸³

146. Based on the record before us, we anticipate a smooth transition in both Centennial's mainland U.S. service areas and in Puerto Rico and the U.S. Virgin Islands. AT&T has experience in transitioning customers on both GSM and CDMA networks,⁴⁸⁴ and we believe they have the experience

⁴⁶⁹ Information Request I Response at 28. As discussed above, AT&T has committed to maintain the CDMA network in Puerto Rico and the U.S. Virgin Islands for a period of 18 months after the closing of the merger. See AT&T Commitment Letter at 3.

⁴⁷⁰ Information Request I Response at 28.

⁴⁷¹ Information Request I Response at 28.

⁴⁷² Information Request I Response at 28-29.

⁴⁷³ Information Request I Response at 29.

⁴⁷⁴ Information Request I Response at 29.

⁴⁷⁵ Information Request I Response at 31.

⁴⁷⁶ Information Request I Response at 13.

⁴⁷⁷ Information Request I Response at 30-31.

⁴⁷⁸ Information Request I Response at 31.

⁴⁷⁹ Information Request I Response at 13.

⁴⁸⁰ Information Request I Response at 31.

⁴⁸¹ Information Request I Response at 31.

⁴⁸² Information Request I Response at 30.

⁴⁸³ Information Request I Response at 37.

⁴⁸⁴ See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20332-35 ¶¶ 73-84; Wireless Telecommunications Bureau Grants Consent for the Assignment of Licenses to AT&T Wireless Services Inc. and United States Cellular Corporation, *Public Notice*, 18 FCC Rcd 11971 (2005).

and resources to ensure a smooth transition. At the same time, we will monitor the situation in the Centennial service areas to ensure that the transition is smooth and is in the public interest.

D. NEATT Objections

147. By way of background, NEATT acquired certain divestiture assets from AT&T in northeastern Arkansas in March 2005 pursuant to a Commission-required divestiture.⁴⁸⁵ In its petition to deny the subject transaction, NEATT asserts that AT&T has failed to demonstrate that the public interest will be served by allowing AT&T to increase its wireless spectrum holdings through the acquisition of the Centennial properties, which will allow greater concentration in markets that NEATT asserts are generally rural.⁴⁸⁶ NEATT alleges that AT&T used its economic and financial power to suppress competition by preventing NEATT from being an effective competitor in northeastern Arkansas.⁴⁸⁷ NEATT claims that these actions have resulted in inferior service and higher prices to the consumer, and allowed AT&T to become a monopolist provider of GSM service.⁴⁸⁸ NEATT challenges the actions of AT&T in divesting the northeastern Arkansas facilities to NEATT, including the term of the transition services agreement, allegations of improper customer recruitment by AT&T, the transfer of long-term tower leases to NEATT, the transfer of outdated equipment making it difficult for NEATT to be competitive, and the withholding of payments by AT&T.⁴⁸⁹

148. NEATT requests that the Commission not approve this transaction until its formal complaint against AT&T pending at the DOJ is resolved.⁴⁹⁰ If the Commission grants the applications prior to the resolution of its complaint, NEATT requests that the transaction be conditioned on the final resolution of the complaint.⁴⁹¹ NEATT further requests that the Commission condition the transaction on: (1) requiring AT&T to reach a settlement with NEATT within 30 days after approval of the transaction and to submit the settlement to the Commission's General Counsel for approval; (2) requiring AT&T to assist minority and women-owned businesses in acquiring divestiture markets from this transaction and to submit quarterly reports to the Commission on such efforts; and (3) making all future Commission divestiture requirements subject to a similar agreement with the DOJ.⁴⁹²

149. The Applicants claim that the issues raised by NEATT concern a private contractual dispute,⁴⁹³ are already pending before the Commission and the DOJ, and are best addressed in those proceedings.⁴⁹⁴

150. We find that the issues raised by NEATT should be resolved in the ongoing proceedings before this Commission and the DOJ and not in the context of the subject transaction. NEATT has failed to show how its allegations regarding AT&T's actions in connection with the previous divestiture in

⁴⁸⁵ Application to Transfer Control of Dempster Newco LLC from Cingular Wireless LLC to Northeastern Arkansas Telephone and Transport, L.L.C., FCC File No. 50002CWTC05 (filed Mar. 16, 2005).

⁴⁸⁶ NEATT Petition at 2.

⁴⁸⁷ NEATT Petition at 2, 4.

⁴⁸⁸ NEATT Petition at 4.

⁴⁸⁹ NEATT Petition at 3.

⁴⁹⁰ NEATT Petition at 4.

⁴⁹¹ NEATT Petition at 4.

⁴⁹² NEATT Petition at 2.

⁴⁹³ Joint Opposition at 7 & n.16.

⁴⁹⁴ Joint Opposition at 8 n.19.

northeastern Arkansas are related to the proposed transaction before us. As observed above, the Commission generally will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction at issue.⁴⁹⁵

E. Cellular South Objection Regarding Mississippi 8

151. Cellular South objects to AT&T's acquisition of a controlling interest in Centennial's authorization for Mississippi 8 (CMA500) on the grounds that it violates a Commission-approved "full-market" settlement agreement ("Agreement") that BellSouth Mobility, Inc.⁴⁹⁶ ("BellSouth") and Cellular Holding, Inc.⁴⁹⁷ ("Cellular Holding") (collectively, the "Parties") entered into in 1989.⁴⁹⁸ According to the Agreement, the Parties agreed that Cellular Holding would be the surviving applicant for the Block B (wireline) cellular license for Mississippi 8.⁴⁹⁹ BellSouth retained an option to obtain the Block B authorization for the Claiborne County portion of the Mississippi 8 market, which it later exercised.⁵⁰⁰ The Parties also agreed that neither would hold "any interest in a second and competing cellular service or any applicant proposing to provide such service"⁵⁰¹ in Mississippi 8, as long as they hold any interest in Block B license for that market.⁵⁰² Cellular South argues that if AT&T acquires a controlling interest in Centennial's Block A cellular license in the Mississippi 8 market, AT&T would hold an interest in a "second and competing cellular service," in violation of the Agreement.⁵⁰³ The Applicants reject this argument, claiming that the Agreement represents a private contractual matter, which is beyond the scope of Commission review in this proceeding.⁵⁰⁴ Cellular South responds that the Agreement is not a "run-of-the-mill business or commercial contract," but rather a full-market settlement whose terms and conditions were approved by the Commission when it granted Cellular Holding's surviving application.⁵⁰⁵

⁴⁹⁵ See *supra* para. 30, citing *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17463 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

⁴⁹⁶ BellSouth Mobility was succeeded by New Cingular Wireless PCS, LLC ("Cingular Wireless"), which is controlled by AT&T. Cellular South Petition at 6.

⁴⁹⁷ Cellular Holding, Inc. is a previously used corporate name for Cellular South. Cellular South Petition at 6.

⁴⁹⁸ See Cellular South Petition at 5-7, Exhibit 1. Cellular South also objects to AT&T gaining control over all 50 MHz of cellular spectrum in parts of the following CMAs: Lake Charles, Louisiana (CMA197); Louisiana 2 – Morehouse (CMA455); Louisiana 3 – De Soto (CMA456); Louisiana 5 – Beauregard (CMA458); Louisiana 6 – Iberville (CMA459); Louisiana 7 – West Feliciana (CMA460); and Mississippi 9 (CMA501). *Id.* at 5. The Commission has thoroughly evaluated the risks of competitive harm in these and other markets as a part of its competitive analysis, and it will condition grant of the proposed transaction on the divestiture of Centennial's business units CMA 456, CMA458, CMA459, and CMA460. See *supra* para 111. Moreover, the DOJ, based on the findings of its competitive analysis, will allow the merger to proceed subject to the divestiture of Centennial's business units in, among others, the markets of concern to Cellular South, except CMA455 and possibly CMA197. See DOJ Proposed Final Judgment at 3, 7.

⁴⁹⁹ Cellular South Petition, Exhibit 1 at 1, 7.

⁵⁰⁰ Cellular South Petition at 6, Exhibit 1 at 7.

⁵⁰¹ Cellular South Petition, Exhibit 1 at 5 ¶ G.

⁵⁰² Cellular South Petition, Exhibit 1 at 5 ¶ G.

⁵⁰³ Cellular South Petition at 6.

⁵⁰⁴ Joint Opposition at 8.

⁵⁰⁵ Cellular South Reply to Joint Opposition to Petition at 2-3.

Therefore, the Applicant argue, a possible violation of such agreement is subject to the Commission's jurisdiction.⁵⁰⁶

152. We consider these arguments moot. Centennial's cellular operations in CMA500 will be divested as per the Commission's requirements⁵⁰⁷ and the requirements of the Department of Justice.⁵⁰⁸ In addition, the market is included in the application of Cellco Partnership d/b/a Verizon Wireless and certain of its subsidiaries ("Verizon Wireless") and AT&T seeking Commission approval of the assignment or transfer of control of certain wireless licenses and related authorizations in Louisiana and Mississippi to Verizon Wireless.⁵⁰⁹ Therefore, we conclude that this transaction will not result in AT&T holding an interest in both Blocks A and B cellular licenses in the Mississippi 8 market. In any event, we agree with the Applicants that the Agreement constitutes a private contractual matter between New Cingular Wireless and Cellular South that is beyond the Commission's jurisdiction. The Commission has a long-standing policy to defer to state and local courts on private contractual disputes,⁵¹⁰ and has traditionally declined to enforce private settlement agreements, "even when the agreements have been filed with the Commission."⁵¹¹

F. *Ex-Parte* Status of Proceeding

153. In the public notice seeking comment on the proposed transaction, the Wireless Telecommunications Bureau ("Bureau"), pursuant to its authority under section 1.1200(a) of the Commission's Rules,⁵¹² announced that this proceeding would be governed by permit-but-disclose *ex parte* procedures that are applicable to proceedings under section 1.1206 of the Commission's Rules.⁵¹³ On January 15, 2009, Cellular South filed a petition for reconsideration objecting to the *ex parte* status of the proceeding, asserting that the Bureau's decision was a violation of section 1.1208 of the Commission's Rules and Section 309(d) of the Communications Act, as well as procedural and due process rights.⁵¹⁴

154. We disagree. In what otherwise would be a restricted proceeding under section 1.1208, the Commission and its staff have the discretion to apply permit-but-disclose *ex parte* procedures under section 1.1206 if the agency or its staff determine that the proceeding "involves primarily issues of broadly applicable policy."⁵¹⁵ Cellular South argues that the Commission did not present the required public policy determination.⁵¹⁶ Although the Comment Public Notice did not fully articulate the reasons for reclassifying the proceeding as permit-but-disclose, we find that Bureau nonetheless appropriately

⁵⁰⁶ Cellular South Reply to Joint Opposition to Petition at 6.

⁵⁰⁷ See *supra* para. 111.

⁵⁰⁸ See DOJ AT&T-Centennial Proposed Final Judgment at 3, 7.

⁵⁰⁹ See Cellco Partnership d/b/a Verizon Wireless and AT&T Inc. Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations and Request Declaratory Ruling on Foreign Ownership, WT Docket No. 09-121, *Public Notice*, DA 09-1978 (rel. Aug. 31, 2009). See also FCC File No. 0003888722.

⁵¹⁰ See *Listeners Guild v. Federal Communications Commission*, 813 F.2d 465 (D.C. Cir. 1987).

⁵¹¹ *MCA, Inc. v. Garden State Broadcasting Ltd. Partnership*, 1988 WL 100993 (D.N.J. Sep 29, 1988) (NO. CIV. A. 88-2508), p. 5.

⁵¹² 47 C.F.R. § 1.1200(a).

⁵¹³ *Id.* § 1.1206. See also Comment Public Notice, 23 FCC Rcd at 17966.

⁵¹⁴ See generally Cellular South Petition for Reconsideration.

⁵¹⁵ 47 C.F.R. § 1.1208 n.2.

⁵¹⁶ Cellular South Petition for Reconsideration at 5.

exercised its discretion. The Commission has previously determined that transactions like the proposed merger between AT&T and Centennial “involve[] broad public policy issues and we reaffirm that judgment here.”⁵¹⁷ For example, our major transaction proceedings generally include consideration of wireless competition issues and the possible effects on actual and potential customers. We note that permit-but-disclose *ex parte* procedures have been applied in the majority of recent merger cases.⁵¹⁸ The public policy determination underlying the decision to use permit-but-disclose *ex parte* procedures for significant transactions is thus reflected in a well-established administrative practice. It does not imply, as Centennial contends, that the *ex parte* rules have been ignored.

155. We further find that the use of permit-but-disclose procedures in this proceeding does not violate the requirement of Section 309(d) of the Communications Acts that allegations of fact in petitions to deny be supported by an affidavit. The affidavit requirement set forth in the section requires an affidavit only for petitions to deny and the applicant’s reply to such petitions. The affidavit requirement does not apply to other filings and does not preclude the Commission from considering other filings. Moreover, the purpose in seeking public comment is to invite information from a variety of perspectives regarding broad public policy concerns, as well as to adduce potential benefits and harms the transaction may cause. We do not believe that Section 309(d) precludes us from doing this. The requirement for a supporting affidavit relates to “specific allegations of fact sufficient to show that . . . grant of the application would be prima facie inconsistent with [the requirements of the Communications Act].” It does not apply to “matters which [the Commission] may officially notice.”⁵¹⁹ We believe that we may take official notice of the kind of policy-related concerns raised by the *ex parte* filings.⁵²⁰

156. Finally, we find that the use of permit-but-disclose procedures does not conflict with other procedural rules applicable to this proceeding or considerations of due process. Cellular South contends that by filing a petition to deny, the company acquired procedural rights that “involve being served with copies of papers that Centennial and AT&T may file with the Commission.”⁵²¹ Cellular South asserts that this right extends to Centennial’s and AT&T’s filings in response to Cellular South’s petitions.⁵²² While the rules cited by Centennial provide for the service of some pleadings, they do not bar the Commission or its staff from soliciting additional types of pleadings to which the service requirements do not apply.⁵²³ In this regard, the use of permit-but-disclose *ex parte* procedures in lieu of

⁵¹⁷ See, e.g., “Permit But Disclose” Ex Parte Status Accorded to Proceeding Involving Applications Filed by Voicestream Wireless Corporation, Omnipoint Corporation, Cook Inlet/VS GSM II PCS, LLC and Cook Inlet/VS GSM III PCS, LLC for Consent to Transfer of Control and Assignment of Licenses and Authorizations, *Public Notice*, 15 FCC Rcd 6939 (1999).

⁵¹⁸ See, e.g., Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer Licenses, Spectrum Manager and *De Facto* Transfer Leasing Arrangements, and Authorizations, and Request a Declaratory Ruling on Foreign Ownership, WT Docket No. 08-95, *Public Notice*, 23 FCC Rcd 10004 (2008); Sprint Nextel Corporation and Clearwire Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 08-94, *Public Notice*, 23 FCC Rcd 9988 (2008); Verizon Wireless and Rural Cellular Corporation Seek FCC Consent to Transfer Control of Licenses, Spectrum Manager Leases, and Authorization, WT Docket No. 07-208, *Public Notice*, 22 FCC Rcd 18356 (2007).

⁵¹⁹ 47 U.S.C. §310(d)(2).

⁵²⁰ See *City of Erie v. Pap’s A.M.*, 529 U.S. 277, 298 (2000) (administrative agency may take official notice of “legislative facts” within its special knowledge), citing *FCC v. National Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978) (Commission’s expertise in predicting the anticompetitive impact of broadcasting co-ownership).

⁵²¹ Cellular South Petition for Reconsideration at 10.

⁵²² *Id.* at 10.

⁵²³ In particular, we do not construe the service requirement of 47 C.F.R. § 1.927(i) to extend beyond the context of the applicant’s duty to serve amendments to its application and related pleadings on the petitioner to deny.

service does not in itself deprive parties of basic due process. The use of permit-but-disclose procedures serves to give the parties adequate notice of allegations concerning them and a fair opportunity to respond.⁵²⁴ While *ex parte* presentations need not be served on Cellular South, they are readily available on the Commission's web site on the ECFS system and can be accessed, reviewed, and responded to in a timely manner by Cellular South. Due process does not require more.⁵²⁵

157. Cellular South asserts that the Commission has in the past accepted *ex parte* presentations without enough time for interested parties to respond before the Commission took action.⁵²⁶ We do not reach complaints about procedures in prior proceedings. Cellular South has pointed to no actions in this proceeding that deprived it or other parties of basic fairness. Nonetheless, we agree that a comprehensive reexamination of our *ex parte* practices is warranted and expect to include such reexamination as part of our FCC reform efforts.⁵²⁷

IX. CONDITIONS IN ADDITION TO MARKET DIVESTITURES

158. As noted previously, AT&T filed a Letter of Commitment with the Commission on October 22, 2009, and that letter is attached as Appendix C. The letter contains eight sets of commitments by AT&T. The first commitment involves the continued provision of roaming services in Centennial's service areas subsequent to the consummation of the proposed transaction.⁵²⁸ The roaming-related commitments for the mainland United States, and the conditions based on them, are discussed above in paragraph 129. In addition, this first commitment includes AT&T's commitment that it will operate and maintain its CDMA network in Puerto Rico and the U.S. Virgin Islands for 18 months after the closing of the proposed transaction.⁵²⁹ Continued operation and maintenance of the Puerto Rico/U.S. Virgin Islands CDMA network as a condition of our action in this Memorandum Opinion and Order is discussed above in paragraph 138.

159. The second through fourth commitments relate to AT&T's provision of services under the Management Services Agreement and its seconding of employees to América Móvil.⁵³⁰ These limitations, along with others discussed below, are essential to ameliorate our concerns about the potential likelihood of successful coordinated interaction by the merged entity in Puerto Rico. We accordingly condition our grant of consent to the proposed transaction on AT&T not providing consulting or other services, directly or indirectly, pursuant to the MSA or otherwise to América Móvil businesses and/or operations within the United States (including Puerto Rico and the U.S. Virgin Islands), unless the provision of such services is for the benefit of América Móvil and its subsidiaries as a whole and thus only incidentally benefits América Móvil's businesses and/or operations in the United States (including

⁵²⁴ See *Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings*, 10 FCC Rcd 3240 ¶¶ 20-22 (1995).

⁵²⁵ See *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985) ("The essential requirements of due process . . . are notice and an opportunity to respond").

⁵²⁶ Cellular South Petition for Reconsideration at 14.

⁵²⁷ We note that as a first step in these efforts, on October 28, 2009, the Office of the General Counsel held a public forum on possible modifications to our *ex parte* rules. See October 28 Workshop Focuses on Improving Disclosure of Ex Parte Contacts, *News Release* (Oct. 22, 2009).

⁵²⁸ AT&T Letter of Commitment at 3.

⁵²⁹ AT&T Letter of Commitment at 3.

⁵³⁰ AT&T Letter of Commitment at 3-4.

Puerto Rico and the U.S. Virgin Islands). This condition will not bar AT&T from entering into arm's-length commercial arrangements with América Móvil, such as reseller and roaming agreements.⁵³¹

160. We also condition our action with respect to the pending transfer of control applications on AT&T not seconding employees to: (1) América Móvil to provide services for the benefit of América Móvil's businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands) unless the provision of such services is for the benefit of América Móvil and its subsidiaries as a whole and thus only incidentally benefits América Móvil's businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands); or (2) América Móvil's subsidiaries operating its wireless or wireline businesses in Puerto Rico or its wireless prepaid business in the United States.⁵³² For any employee currently seconded to América Móvil or who has been seconded to América Móvil since April 1, 2007, and who during such secondment provided services for the benefit of América Móvil businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands) unless the provision of such services is for the benefit of América Móvil and its subsidiaries as a whole and thus only incidentally benefits América Móvil's businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands), we require that AT&T not assign that person to any position within AT&T's Puerto Rico or U.S. prepaid wireless businesses for a period of 24 months post-secondment.⁵³³

161. AT&T's fifth commitment involves AT&T extending the information flow safeguards it previously put in place for Puerto Rico wireless services to cover the wireline business and/or operation and the U.S. prepaid wireless business and/or operation as well.⁵³⁴ We consider these provisions to be critical requirements necessary to prevent the flow of non-public competitively sensitive information. We therefore condition our grant of approval in this Memorandum Opinion and Order on AT&T completely implementing the restrictions listed as item 5.A.1-5.1.6 of the AT&T Letter of Commitment, and we will make those commitments conditions of this order.⁵³⁵ In addition, we condition this order on AT&T implementing all necessary procedures, including screening and redacting board packages, to ensure that no non-public, competitively sensitive information directly pertaining to or derived from América Móvil's businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands) is provided to any AT&T representative on the América Móvil Board of Directors.⁵³⁶ This requirement provides an additional step to help ensure that AT&T's Board representatives do not inadvertently receive non-public competitively sensitive information from or about América Móvil's businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands).

162. AT&T's sixth and seventh commitments concern a separate committee of the América Móvil Board of Directors established to handle matters related to América Móvil's businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands).⁵³⁷ Specifically, [REDACTED].⁵³⁸ [REDACTED].⁵³⁹ [REDACTED].⁵⁴⁰ It is a condition of this order that once the

⁵³¹ See AT&T Letter of Commitment at 3.

⁵³² See AT&T Letter of Commitment at 3-4.

⁵³³ See AT&T Letter of Commitment at 4.

⁵³⁴ AT&T Letter of Commitment at 4-5.

⁵³⁵ See AT&T Letter of Commitment at 4-5.

⁵³⁶ See AT&T Letter of Commitment at 5.

⁵³⁷ AT&T Letter of Commitment at 5-6.

⁵³⁸ Information Request II Response at 3, Attachment II.1.1 at 8-9.

⁵³⁹ Information Request II Response at 3, Attachment II.1.1 at 8.

AT&T/Centennial transaction is closed, this committee must be formed and in place prior to any AT&T representatives participating in any meeting of the América Móvil Board of Directors.⁵⁴¹

163. To ensure that this new committee is maintained in place, we condition this order on the requirement that, if América Móvil alters this special board committee in a way that places any responsibility for América Móvil's Puerto Rico or U.S. businesses and/or operations with the full América Móvil Board of Directors on which AT&T representatives sit, AT&T will notify the Commission in writing within five business days so that the Commission may investigate whether any additional or alternative firewall or other remedies are required.⁵⁴² Moreover, notwithstanding the creation of this special board committee, we require that, to the extent that any issue relating specifically or primarily to those business and/or operations comes before the full América Móvil Board of Directors, either from the special committee or through any other channel, AT&T representatives on the América Móvil Board of Directors must recuse themselves and must not otherwise participate in any deliberations or decisions on those issues.⁵⁴³

164. We consider these conditions and requirements to be essential elements of our consideration to grant the pending applications. We accordingly accept AT&T's commitment to appoint a compliance officer to oversee AT&T's compliance with the commitments it has listed in items 2-7 of this Commitment Letter and hereby make such appointment and oversight a condition of this order.⁵⁴⁴ The compliance officer is required to take the following actions: (1) communicate the nature and extent of the requirements set forth in items 2-7 of the AT&T Commitment Letter and as discussed herein to AT&T representatives on the América Móvil Board of Directors, AT&T employees seconded to América Móvil, AT&T Mexico employees, and AT&T employees with direct responsibility for marketing activities specific to AT&T's Puerto Rico operations and U.S. prepaid wireless business, along with the fact that AT&T would consider any violation to be a serious matter that could result in disciplinary action or dismissal; (2) act as a point of contact for such personnel who have information to report regarding a violation or possible violation of these requirements; and (3) investigate and act upon any known or reported violations of these requirements. The compliance officer shall be required to submit a compliance plan to the Commission within 45 days of the closing of the proposed transaction, and shall file a report with the Commission every six months that includes information for the reporting period on: (i) the compliance officer's monitoring activities; (ii) any violations of the requirements set forth above; and (iii) any and all steps taken to address and/or resolve any identified violations. The first report shall be filed 45 days after the six-month anniversary of the closing of the proposed transaction and shall include a certification by the compliance officer that he or she is familiar with the requirements of the Communications Act of 1934, as amended, as well as the rules and regulations implemented in connection therewith.

165. In the event that AT&T and América Móvil in the future are no longer competitors in the United States (including Puerto Rico) or in the event that AT&T ceases to have any representatives appointed to the América Móvil Board of Directors or AT&T ceases to hold an equity interest in América Móvil, AT&T must seek relief from any or all of these conditions, and these conditions will remain in

(Continued from previous page) _____

⁵⁴⁰ Information Request II Response at 3, Attachment II.1.1 at 9.

⁵⁴¹ [REDACTED]. AT&T Oct. 29, 2009 Supplemental Response to Information Request II at 2.

⁵⁴² See AT&T Letter of Commitment at 5.

⁵⁴³ See AT&T Letter of Commitment at 6.

⁵⁴⁴ AT&T Letter of Commitment at 6.

effect until such time as the Commission or the Wireless Telecommunications Bureau modifies or lifts any of these conditions.⁵⁴⁵

X. CONCLUSION

166. We find that competitive harm is unlikely in most mobile telephony/broadband markets as a result of this transaction. As discussed above, however, with regard to seven local mobile telephony/broadband services markets, our market-by-market analysis shows that likely competitive harms exceed likely benefits of the transaction, and we therefore require remedies to ameliorate the expected harm. We also find that it is in the public interest to condition this transaction on AT&T's compliance with conditions discussed herein.

XI. ORDERING CLAUSES

167. Accordingly, having reviewed the applications, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to Sections 4(i) and (j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, and Section 2 of the Cable Landing License Act, 47 U.S.C. §§ 35, 154(i), (j), 214, 309, 310(d), the applications for the transfer of control of domestic and international Section 214 authorizations, cable landing license, and licenses and spectrum leasing arrangements from Centennial Communications Corp. and its subsidiaries to AT&T Inc. set forth in Appendix A are GRANTED, to the extent specified in this Memorandum Opinion and Order and subject to the conditions specified herein.

168. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petitions to Deny the transfer of control of licenses and spectrum leasing arrangements from Centennial Communications Corp. and its subsidiaries to AT&T Inc. are DENIED IN PART and GRANTED IN PART for the reasons stated herein.

169. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petition for Reconsideration filed by Cellular South, Inc. is DENIED for the reasons stated herein.

170. IT IS FURTHER ORDERED that the above grant shall include authority for AT&T Inc. to acquire control of: (a) any license or authorization issued to Centennial Communications Corp. and its subsidiaries during the Commission's consideration of the transfer of control applications or the period required for consummation of the transaction following approval; (b) construction permits held by such licensees that mature into licenses after closing; and (c) applications filed by such licensees and that are pending at the time of consummation of the proposed transfer of control.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵⁴⁵ See AT&T Letter of Commitment at 6-7.

APPENDIX A

Applications Granted

SECTION 310(d) APPLICATIONS

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0003652447	Bauce Communications of Beaumont, Inc.	KNKA454
0003652455	Centennial Michiana License Company LLC	KNKA428
0003652457	Centennial Puerto Rico License Corp.	KNLF250
0003652459	Centennial Southeast License Company LLC	KNKA748
0003652461	Elkhart Metronet, Inc.	KNKA741
0003652467	Lafayette Cellular Telephone Company	KNKA458

<u>File No.</u>	<u>Lessee</u>	<u>Lead Lease ID Number</u>
0003668912	Centennial Puerto Rico License Corp.	L000004145
0003674680	Centennial Puerto Rico License Corp.	L000004147

SECTION 214 AUTHORIZATIONS

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20081121-00508	Centennial Communications Corp.	ITC-214-20000817-00545 ITC-214-19970923-00579
ITC-T/C-20081121-00509	Centennial Puerto Rico Operations Corp.	ITC-214-19980918-00669
ITC-T/C-20081121-00510	Centennial Puerto Rico License Corp.	ITC-214-19980430-00923

The Applicants have also filed an application to transfer control of the domestic Section 214 authority held by Centennial's subsidiary, Centennial Puerto Rico Operations Corp. ("CPROC") to AT&T in connection with the transaction described above.

CABLE LANDING LICENSE APPLICATION

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
SCL-T/C-20081121-00018	Centennial Puerto Rico License Corp.	SCL-LIC-19980101-00036

APPENDIX B

Petitioners and Commenters

Petitions:

Cellular South, Inc. (2)
Cincinnati Bell Wireless LLC
NEATT Wireless LLC

Comments:

Rural Cellular Association
Sprint Nextel Corporation

Opposition:

AT&T Inc. and Centennial Communications Corp.

Replies:

Cellular South, Inc. (2)
Cincinnati Bell Wireless LLC
Sprint Nextel Corporation

APPENDIX C

AT&T Letter of Commitment



Joan Marsh
Vice President –
Federal Regulatory

AT&T Services, Inc.
1120 20th Street, N.W.
Suite 1000
Washington, D.C. 20036

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832.213.0172 Fax
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October 22, 2009

VIA ECFS

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

Re: AT&T Inc. and Centennial Communications Corp. Applications for
Consent to Transfer Control of Commission Licenses, Authorizations, and
Spectrum Leasing Arrangements. WT Docket No. 08-246

Dear Ms. Milkman:

AT&T and Centennial have demonstrated that their merger will generate numerous significant public interest benefits without any harm to competition. Centennial'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. The merger will enable AT&T to provide Centennial's customers 3G services that Centennial has no plan currently to provide on its own. Moreover, the merger will enable AT&T to provide 4G services in areas where neither carrier may have provided services absent the merger. Substantial operational cost savings will flow from the merger, and Centennial's customers will benefit from AT&T's unique disaster recovery capabilities.

The transaction also has significant benefits for wireline customers in Puerto Rico. Centennial's broadband network in Puerto Rico will be combined with AT&T's global network and advanced service offerings to allow for end-to-end service over a single network. Upgrading the communications infrastructure in this way will enhance Puerto Rico's competitiveness and make Puerto Rico a more attractive location for multinational businesses.

These public interest benefits will be achieved without any harm to competition, particularly in light of the divestitures that will occur.

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.

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

Sincerely,

A handwritten signature in black ink, appearing to be 'JM', followed by a horizontal line extending to the right.

Joan Marsh

cc: James D. Schlichting
Paul E. Murray
Katherine M. Harris

Attachment A

1. AT&T will honor Centennial's existing agreements with other carriers to obtain roaming services on Centennial's network pursuant to the rates, terms and conditions contained in Centennial's roaming agreements on the date the AT&T-Centennial merger closes ("Merger Closing Date") for the full term of those agreements, notwithstanding any change of control or termination for convenience provisions in those agreements. In addition, any carrier with fewer than 10 million subscribers that has an effective roaming agreement with Centennial on the Merger Closing Date will have the option to continue to obtain roaming services, pursuant to the rates, terms and conditions of that agreement, in those areas where the carrier was obtaining roaming services on the Centennial network on the Merger Closing Date, for the later of (i) a period of 48 months after the Merger Closing Date, or (ii) the full term of such carrier's agreement with Centennial.

This commitment does not apply to (a) any properties other than those AT&T is acquiring through the Centennial merger and (b) any properties that are to be divested.

This commitment does not limit AT&T's right in these areas to reasonably manage its networks in an efficient manner to support the provision of 3G or 4G services to customers. Indeed, one of the primary public interest benefits of this transaction is that it will enable AT&T to provide 3G and, ultimately, 4G services to more of Centennial's customers than Centennial could have done on its own. Therefore, this commitment shall not be interpreted to restrict AT&T's ability to modify, upgrade, or sunset Centennial's existing network, features or functionalities, in whole or in part, as AT&T implements its network technology of choice in these areas.

Notwithstanding any obligation in this commitment, AT&T will operate and maintain a CDMA network in Puerto Rico and the U.S. Virgin Islands for 18 months after the Merger Closing Date. After that time, AT&T will have no obligation to operate or maintain a CDMA network in Puerto Rico or the U.S. Virgin Islands.

2. AT&T shall not provide consulting or other services, directly or indirectly, pursuant to the MSA or otherwise to América Móvil S.A.B. de C.V. ("AMX") businesses and/or operations within the United States (including Puerto Rico and the U.S. Virgin Islands), unless the provision of such services is for the benefit of AMX and its subsidiaries as a whole and thus only incidentally benefits AMX's businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands). In addition, AT&T may enter into arm's-length commercial arrangements with AMX, such as reseller and roaming agreements. AT&T will clarify with AMX that it will provide only such services under the MSA.

3. AT&T shall not second employees to: (i) AMX to provide services for the benefit of AMX businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands) unless the provision of such services is for the benefit of

AMX and its subsidiaries as a whole and thus only incidentally benefits AMX's businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands); or (ii) AMX's subsidiaries operating its wireless or wireline businesses in Puerto Rico, or its wireless prepaid business in the U.S.

4. AT&T shall not assign any employee who (a) currently is seconded to AMX or has been seconded to AMX since April 1, 2007 and (b) during such secondment provided services for the benefit of AMX businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands) unless the provision of such services is for the benefit of AMX and its subsidiaries as a whole and thus only incidentally benefits AMX's businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands) to any position within AT&T's Puerto Rico or U.S. pre-paid wireless businesses for a period of 24 months post-secondment.

5. AT&T shall extend the information flow safeguards that it has currently in place for Puerto Rico wireless services¹ to cover the Puerto Rico wireline business and/or operation and the U.S. prepaid wireless business and/or operation as well. Specifically, AT&T will implement the following protections:

- A. Extend the existing firewall to include wireline, as well as wireless, services in Puerto Rico and AMX's U.S. prepaid wireless business and/or operation ("TracFone"). Accordingly,
 - 1. No AT&T employee, officer or director responsible for the management of the AT&T wireless or wireline business and/or operations in Puerto Rico, or AT&T U.S. prepaid wireless business and/or operations (with the exception of AT&T corporate officers who are not responsible for the day-to-day management of AT&T's business and/or operations in Puerto Rico and the US Virgin Islands or its U.S. prepaid wireless business), shall serve as an officer or director of AMX or member of any committee of AMX's Board of Directors.
 - 2. No AT&T employee, officer or director shall provide non-public, competitively sensitive information directly pertaining to or derived from the AT&T wireless or wireline business and/or operations in Puerto Rico to:
 - (i) AMX employees, officers or directors; or
 - (ii) any AT&T employee, officer or director who serves on the AMX Board of Directors or any committee thereof.
 - 3. No AT&T employee, officer or director shall provide non-public, competitively sensitive information directly

¹ Letter from Wayne Watts, Senior Vice President and Associate General Counsel, AT&T Inc., to Michael J. Hirrel, Telecommunications & Media Section of the United States Department of Justice's Antitrust Division (May 30, 2006).

pertaining to or derived from the AT&T U.S. prepaid wireless business or operations to: (i) AMX employees, officers or directors; or (ii) any AT&T employee, officer or director who serves on the AMX Board of Directors or any committee thereof.

4. No AT&T employee, officer or director shall provide non-public, competitively sensitive information directly pertaining to or derived from AMX's business and/or operations in Puerto Rico received from AMX to AT&T employees, officers or directors responsible for the management of the AT&T wireless or wireline businesses and/or operations in Puerto Rico (with the exception of AT&T corporate officers who are not responsible for the day-to-day management of AT&T's business and/or operations in Puerto Rico and the U.S. Virgin Islands or its U.S. prepaid wireless business).
 5. No AT&T employee, officer or director shall provide non-public, competitively sensitive information received from AMX directly pertaining to or derived from AMX's TracFone business to AT&T employees, officers or directors responsible for the management of AT&T's U.S. prepaid wireless business and/or operations (with the exception of AT&T corporate officers who are not responsible for the day-to-day management of AT&T's business and/or operations in Puerto Rico and the U.S. Virgin Islands or its U.S. prepaid wireless business).
 6. AT&T will not use contractors or agents to perform any task that an AT&T employee, officer or director could not perform pursuant to 1-5 above.
- B. AT&T will implement procedures, including screening and redacting board packages, to ensure that no non-public, competitively-sensitive information directly pertaining to or derived from AMX's businesses and/or operations in the United States (including Puerto Rico and the U.S. Virgin Islands) is provided to any AT&T representative on the AMX Board of Directors.

6. If AMX alters the special board committee that was created on September 10, 2009 in a way that places any responsibility for AMX's Puerto Rico or U.S. businesses and/or operations with the full AMX Board of Directors on which AT&T representatives sit, AT&T will notify the FCC in writing within 5 business days so the Commission can investigate whether any additional firewall remedies are required.

7. Notwithstanding the AMX board resolution creating a special committee with full responsibility for AMX's Puerto Rico and U.S. businesses and/or operations, to the extent any issue relating specifically or primarily to those business and/or operations comes before the full AMX Board of Directors, either from the special committee or through any other channel, AT&T representatives on the AMX Board of Directors will not be present for nor otherwise participate in any deliberations or decisions on those issues.

8. AT&T will appoint a compliance officer (the "Compliance Officer") to oversee AT&T's compliance with Commitments 2-7. The Compliance Officer will (i) communicate the nature and extent of Commitments 2-7 to AT&T representatives on the AMX Board of Directors, AT&T employees seconded to AMX, AT&T Mexico employees, and AT&T employees with direct responsibility for marketing activities specific to AT&T's Puerto Rico operations and U.S. prepaid wireless business, along with the fact that AT&T would consider any violation to be a serious matter that could result in disciplinary action or dismissal; (ii) act as a point of contact for such personnel who have information to report regarding a violation or possible violation of Commitments 2-7; and (iii) investigate and act upon any known or reported violations of the Commitments 2-7.

To effectuate this commitment, the Compliance Officer shall submit a compliance plan to the FCC within 45 days from the Merger Closing Date and shall provide the FCC with a report every 6 months that shall provide information on (i) the monitoring activities undertaken during the report period; (ii) any violations of Commitments 2-7 that were identified during the report period; (iii) and any and all steps taken to address and/or resolve identified violations. The first such report shall be filed 45 days following the 6-month anniversary of the Merger Closing Date and that report shall include a one-time certification by the Compliance Officer that he/she is familiar with the requirements of the Telecom Act and the rules and regulations implemented in connection therewith related to FCC auction proceedings.

* * *

Notwithstanding anything to the contrary in Commitments 2-8, AT&T, to the extent permitted by law, will be free to continue the customary and reasonable exchange of non-public information with AMX in furtherance of any bona fide (1) merger, acquisition, joint venture or similar transactions involving AT&T or its subsidiaries and AMX or its subsidiaries, or (2) arm's-length commercial arrangements, such as reseller and roaming agreements.

If circumstances change such that AT&T and AMX are no longer competitors in the United States (including Puerto Rico) or in the event that AT&T ceases to have any representatives appointed to the AMX Board of Directors or AT&T ceases to hold an equity interest in AMX, AT&T will provide notice of such change of circumstances to the Wireless Telecommunications Bureau of the Commission, and will determine in cooperation with the Wireless Telecommunications Bureau whether changes in these policies are appropriate. Unless and until the Wireless Telecommunications Bureau

agrees that any or all of the policies are no longer necessary, such policies shall remain in full force and effect.

The commitments described herein will be null and void if the transaction is not consummated.

**CONCURRING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: 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.

This transaction does not appear to be the vehicle for major changes in the Commission's approach to mergers in the wireless sector. For many years now I have expressed concern over the rising tide of economic concentration in our telecommunications and media industries. But the tide continued to run through those years. Consumers have paid a heavy cost, in terms of dollars, confusion and constricted services, because the FCC permitted—even encouraged—this concentration to happen. In both theory and practice, too much power in too few hands is not a good prescription for America's communications future.

Regarding the instant transaction—which is clearly on a fast track for approval—I believe the ameliorative requirements imposed by the Department of Justice for divestiture in eight markets significantly improve the original terms of this merger. Additionally, AT&T says it is committed to moving Centennial customers to newer generation wireless technologies currently unavailable to most of them. While the company's assertion that it will do this lacks solid commitment, there do appear to be market incentives at work to encourage the redemption of some of these promises. I will be closely monitoring the implementation of this transaction with an eye to ensuring that Centennial subscribers do in fact experience the tangible benefits they are entitled to expect—next generation wireless services, accelerated provision of broadband, and other up-to-date customer services. That being said, I continue to be skeptical of commercial marriages based on pledges that big companies “go rural” for better or for worse. Too many rural areas have been abandoned when the marriage didn't produce the big company profits sought by the market.

The competitive analysis employed in this merger review is certainly an improvement over the often-careless methodology applied in other recent wireless transactions. For instance, the ever-shifting and somewhat out-of-control spectrum screen employed by the last Commission is not generally invoked here. Nonetheless that process still stands, and I reiterate my concern with the screen as it exists. I applaud the Chairman for addressing this matter in the recently-issued Wireless Competition NOI which will hopefully result in changes in the way this Commission analyzes the competitive effects of proposed transactions—changes that I have been encouraging since almost the inception of the screen. I hope the NOI will lead to *expeditious change* because more mergers mean less competition.

For the reasons described above, I limit my vote on this item to a concurrence.