

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

In the Matter of)	
)	
Applications of Cellco Partnership d/b/a)	WT Docket No. 12-4
Verizon Wireless and SpectrumCo LLC and Cox)	
TMI, LLC For Consent To Assign AWS-1)	
Licenses)	
)	
Applications of Verizon Wireless and Leap for)	ULS File Nos. 0004942973, 0004942992,
Consent To Exchange Lower 700 MHz, AWS-1,)	0004952444, 0004949596, and 0004949598
and PCS Licenses)	
)	
Applications of T-Mobile License LLC and Cellco)	WT Docket 12-175
Partnership d/b/a Verizon Wireless for Consent to)	
Assign Licenses)	

MEMORANDUM OPINION AND ORDER AND DECLARATORY RULING

Adopted: August 21, 2012

Released: August 23, 2012

By the Commission: Chairman Genachowski and Commissioners Clyburn and Rosenworcel issuing separate statements; Commissioners McDowell and Pai approving in part, concurring in part and issuing separate statements.

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I. INTRODUCTION

1. In late 2011, the Commission received multiple applications seeking to assign to Verizon Wireless a substantial number of licenses for Advanced Wireless Services (“AWS”)-1 spectrum, a key spectrum band suitable for the provision of commercial mobile broadband services. The first application sought to assign to Verizon Wireless a significant number of AWS-1 licenses, as well as certain Personal Communications Services (“PCS”) licenses, from affiliates of Leap Wireless International Inc. (collectively, “Leap”). It also sought to assign to Leap from Verizon Wireless one Lower 700 MHz A Block license. Shortly thereafter, we received applications seeking to assign to Verizon Wireless AWS-1 licenses providing near nationwide coverage from Comcast, Time Warner Cable, and Bright House Networks (via SpectrumCo, LLC), and from Cox, respectively (hereinafter, collectively, “the Cable Companies”). These applications were part of a larger transaction between Verizon Wireless and the Cable Companies that also includes commercial arrangements under which: (1) Verizon Wireless and the cable operators will act as sales agents of one another’s services; (2) each of the cable operators may become resellers of Verizon Wireless’s services; and (3) the parties (other than Cox), through a joint venture, seek to develop ways to integrate wireline and wireless services (collectively, “the Commercial Agreements”). Finally, in June, 2012, Verizon Wireless and T-Mobile filed five applications seeking Commission consent for the full and partial assignments of AWS-1 licenses by and between T-Mobile and Verizon Wireless.

2. As discussed below, as part of our determination as to whether the transactions are in the public interest, we evaluate the competitive effects of Verizon Wireless’s post-transaction spectrum holdings on a local and national level, and both overall and within the AWS-1 spectrum band. Based on these dimensions, we find that, absent mitigating measures, the acquisition by Verizon Wireless of

spectrum from SpectrumCo, Cox, and Leap would be substantially likely to result in certain public interest harms through foreclosure or raising of rivals' costs, and that the associated benefits would be insufficient to determine on balance that the transaction as proposed was in the public interest. Specifically, we find that (1) these transactions raise competitive issues with respect to Verizon Wireless's aggregation of spectrum and its substantial aggregation within the unique AWS-1 band; and (2) the data roaming market may be further constrained as a result of the transaction.

3. In addition, after a thorough review, we conclude that, though nascent, the Commercial Agreements as originally drafted had the potential to reduce competition and harm consumers in a manner that would also render the transaction inconsistent with the public interest. Specifically, while the Commercial Agreements had the potential to offer consumer benefits, as initially conceived they raised potential competitive concerns with respect to: (1) wireline broadband, video, and voice services; (2) wireless home broadband services; (3) wireless/wireline integration services; and (4) mobile wireless services.

4. To address the serious concerns raised by Commission staff regarding Verizon Wireless's aggregation of spectrum, in late June, Verizon Wireless reached an agreement with T-Mobile to, among other things, assign a significant number of AWS-1 licenses from Verizon Wireless to T-Mobile, including a number of licenses that Verizon Wireless was proposing to acquire from SpectrumCo, Cox, and Leap. In addition, on August 15, 2012, Verizon Wireless filed a letter offering certain commitments with respect to the provision of roaming service and to the aggressive buildout of the AWS-1 licenses it would acquire in these pending transactions. We conclude that the filing of the T-Mobile/Verizon Wireless application and the Verizon Wireless commitments mitigate the spectrum concentration harms that would otherwise result from the proposed transfers of spectrum to Verizon Wireless, and we apply conditions to Verizon Wireless accordingly. We also find that the spectrum acquisitions by Leap and T-Mobile are unlikely to result in competitive or other public interest harms and are likely to result in meaningful transaction-specific public interest benefits that support approval of these proposed transactions.

5. Regarding the Commercial Agreements, the Department of Justice ("DOJ") Antitrust Division, working in close coordination with Commission staff, has negotiated a proposed Consent Decree with Verizon Wireless and the Cable Companies. That Consent Decree requires that the parties to the agreements alter them in multiple, fundamental ways that address the key potential harms to consumers and competition. As a result of Commission staff's work with DOJ and the resulting proposed Consent Decree, we conclude that we do not need to impose further conditions at this time, other than an independent reporting obligation placed on Verizon. Because these agreements are in the early stages of implementation and relate to evolving markets, it is difficult to predict their effects with certainty. Thus, we find it essential to require Verizon to submit regular reports that will shed light on the impact of certain essential elements of the Commercial Agreements.

6. Accordingly, we conclude that approval of the transactions before us, taken together and as conditioned, will serve the public interest. The transactions will result in an expeditious transfer of valuable spectrum into the hands of multiple national service providers that will put it to use in providing the latest generation mobile broadband services well in advance of the Commission's current deadlines. Moreover, taking into account the substantial pending revisions to the Commercial Agreements, the proposed Consent Decree, and Verizon's voluntary reporting commitments, we conclude that nothing about the Commercial Agreements in their substantially modified form alters our ultimate conclusion that the transactions as a whole are consistent with the public interest.

II. BACKGROUND

7. Below we describe all of the Applicants before us, the transactions themselves, and the transaction review process.

A. Description of Applicants

1. Verizon Wireless

8. Cellco Partnership, which does business as Verizon Wireless, is a general partnership formed as part of a joint venture between Verizon Communications Inc. (“Verizon”) and Vodafone Group Plc. (“Vodafone”). Verizon owns a controlling 55 percent ownership interest in the joint venture, and thus has control of Verizon Wireless and its subsidiaries; Vodafone owns the remaining 45 percent.¹ Verizon Wireless states that Vodafone’s interest in the partnership and its qualifications as a foreign corporation to hold indirect ownership interests in common carrier licenses have been previously authorized by the Commission under the Communications Act of 1934, as amended (“Communications Act”).²

9. Verizon Wireless is one of the largest wireless service providers in the United States as measured by total number of customers and revenue.³ It has deployed a fourth-generation (“4G”) Long Term Evolution (“LTE”) network that, as of May 2012, covers more than 200 million people. The company plans to expand its LTE network to 260 million people by the end of 2012 and to its entire EV-DO footprint by the end of 2013.⁴ In 2011, its domestic wireless revenues were \$70.2 billion, representing approximately 63 percent of Verizon’s aggregate revenues.⁵

¹ See Verizon Communications Inc., SEC Form 10-K (for the fiscal year ended Dec. 31, 2011)(“Verizon 10-K”), at 2, available at <http://www.sec.gov/Archives/edgar/data/732712/000119312512077846/d257450d10k.htm> (last visited Aug. 13, 2012). Verizon is a holding company that, acting through its subsidiaries, also provides wireline communications products and services such as voice, Internet access, broadband video and data, Internet protocol network services, network access, long distance, and other services.

² Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo, LLC for Consent to Assign Licenses, WT-Docket 12-4 (filed Dec. 21, 2011), Public Interest Statement (“Verizon Wireless-SpectrumCo Public Interest Statement”) at 3; see also Applications of T-Mobile License LLC and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign Licenses, WT Docket No. 12-175 (filed June 25, 2012), Public Interest Statement (“T-Mobile-Verizon Wireless Public Interest Statement”) at 8 (citing, *inter alia*, *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, 17546 ¶ 232 (2008)(“*Verizon Wireless-ALLTEL Order*”).

³ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services*, WT Docket No. 10-133, Fifteenth Report, 26 FCC Rcd 9664, 9696-97 Tables 3-4 (2011)(“*Fifteenth Annual Competition Report*”).

⁴ Verizon Wireless, *Network Facts*, http://aboutus.vzw.com/bestnetwork/network_facts.html, available at (last visited Aug. 13, 2012); *Fifteenth Annual Competition Report*, 26 FCC Rcd at 9736 ¶ 109. EV-DO, or Evolution-Data Optimized or Evolution-Data Only, is a group of related third-generation (“3G”) wireless technical standards, optimized for data transmission.

⁵ Verizon, *Investor Conferences – 4Q 2011 Quarter Earnings Conference Call Webcast*, available at http://www2.verizon.com/investor/webcast_2011_fourth_quarter_earnings_conference_call_webcast_01242012.htm (last visited Aug. 13, 2012).

10. Verizon is incorporated in Delaware and headquartered in New York.⁶ It provides wireline, wireless, and broadband services to mass market, business, government, and wholesale customers.⁷ Verizon, which is traded on the New York Stock Exchange,⁸ operates two reportable business segments – Domestic Wireless and Wireline.⁹ Vodafone is a public limited company incorporated in England with a registered office in Newbury, England.¹⁰ Vodafone provides mobile voice and data, paging, and internet services in over 30 countries in Europe, Africa, Asia, the Middle East, and the United States through subsidiaries, joint ventures, and other investments.¹¹ Its ordinary shares are listed on the London Stock Exchange, and its American Depositary Shares are listed on the NASDAQ Stock Market.¹²

2. Leap

11. Leap Wireless International Inc. is a wireless communications carrier offering low-cost, unlimited digital services under the “Cricket” brand at flat monthly rates without fixed-term contracts.¹³ It wholly owns and controls Cricket Communications, Inc. and Cricket License Company, LLC (“Cricket”),¹⁴ and holds a non-controlling, majority economic interest in Savary Island Wireless LLC (collectively, “Leap”).¹⁵ For 2011, Leap reported \$3.0 billion in revenues,¹⁶ principally arising from the sale of wireless services, devices, and accessories.¹⁷ As of December 31, 2011, Leap reported 5.9 million

⁶ Verizon 10-K at 5; Verizon, Investor Relations, Company Profile, Corporate History, Current Statistics, *available at* <http://investor.verizon.com/profile/history/index.aspx?tabId=1> (last visited Aug. 13, 2012); Verizon, Investor Relations, Company Profile, Corporate History, The History of Verizon Communications, *available at* <http://www22.verizon.com/investor/corporatehistory.htm> (“Verizon Corporate History”)(last visited Aug. 13, 2012).

⁷ Verizon, Investor Relations, Company Profile, Overview, *available at* <http://www22.verizon.com/investor/companyprofile.htm> (last visited Aug. 13, 2012).

⁸ Verizon Corporate History.

⁹ See Verizon 2011 Annual Report *available at* http://www22.verizon.com/investor/app_resources/interactiveannual/2011/index.html at 21 (last visited Aug. 21, 2012); at 21; Verizon 10-K at 2.

¹⁰ Vodafone, About Vodafone, *available at* <http://www.vodafone.com/content/index/about.html> (last visited Aug. 13, 2012).

¹¹ See *id.*

¹² See Vodafone, Corporate Governance, *available at* http://www.vodafone.com/content/index/investors/about_us/governance.html (last visited Aug. 13, 2012).

¹³ Leap Wireless International, Inc., SEC Form 10-K (filed Feb. 21, 2012)(“Leap 10-K”), at 4, available at <http://www.sec.gov/Archives/edgar/data/1065049/000106504912000003/leap-dec2011q4x10k.htm> (last visited Aug. 16, 2012).

¹⁴ See FCC 602 Ownership Disclosure Information for the Wireless Telecommunications Services, File No. 0004963672 (filed Nov. 21, 2011)(“Leap Form 602”).

¹⁵ Leap offers service in the upper Midwest through its 85 percent non-controlling membership interest in Savary Island Wireless LLC. Leap 10-K at 4. Ring Island Wireless, LCC holds a 15 percent controlling interest in Savary Island Wireless, LLC, which wholly owns and controls Savary Island License A, LLC and Savary Island License B, LLC (collectively, “Savary”). See Leap 10-K at 8; Leap Form 602.

¹⁶ Leap 10-K at 40.

¹⁷ *Id.* at 43.

customers with service offered in 47 states covering approximately 289 million POPs.¹⁸

3. SpectrumCo

12. SpectrumCo LLC (“SpectrumCo”) was created in 2006 as a joint venture among subsidiaries of Comcast Corp. (“Comcast Communications”), Time Warner Cable Inc. (“Time Warner Cable”), Cox Communications, Inc. (“Cox”), Bright House Networks, LLC (“Bright House”), and Sprint Nextel Corporation (“Sprint Nextel”). SpectrumCo was the successful bidder for 137 wireless spectrum licenses in the Commission’s AWS-1 auction, which concluded in September 2006 (Auction 66). In 2007, Sprint Nextel withdrew from SpectrumCo, and the SpectrumCo members purchased Sprint Nextel’s interests for an amount equal to Sprint Nextel’s capital contribution to the joint venture. In 2009, Cox also withdrew from SpectrumCo, taking its share of the AWS-1 spectrum under the SpectrumCo LLC agreement. Today, SpectrumCo is owned by Comcast (63.6 percent), Time Warner Cable (31.2 percent), and Bright House (5.3 percent).¹⁹

4. Cox

13. Cox TMI, LLC (“Cox”) is a subsidiary of Cox, one of the largest cable companies in the U.S. and a long-time provider of high-speed Internet and local telephone services.²⁰ Cox Communications reports that it has more than 6 million customers, including more than 2.6 million local and long distance voice service customers and nearly 4 million high-speed Internet customers, in markets across the country.²¹ Cox Communications, through an affiliated company, Cox Wireless Investments, was an original member of SpectrumCo.²²

5. T-Mobile

14. T-Mobile License LLC (“T-Mobile License”) is a wholly-owned subsidiary of T-Mobile USA, Inc. (“T-Mobile”), which, in turn, is a wholly-owned, indirect subsidiary of Deutsche Telekom AG (“DT”), a publicly-traded German corporation. T-Mobile states that, through DT, foreign entities and persons indirectly hold 100 percent of the attributable ownership interests in T-Mobile.²³ The Commission has previously authorized DT’s interest in T-Mobile and its licensed subsidiaries, including T-Mobile, pursuant to Section 310(b)(4) of the Communications Act.²⁴

15. T-Mobile, headquartered in Bellevue, Washington, is the fourth largest wireless service provider in the United States in terms of network coverage, number of subscribers, and revenues.²⁵ At the end of the first quarter for 2012, T-Mobile reported a total of 33.4 million U.S. subscribers, and service

¹⁸ *Id.* at 4.

¹⁹ Verizon Wireless-SpectrumCo Public Interest Statement at 2.

²⁰ Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Licenses, File No. 0004996680 (filed Dec. 21, 2011), Public Interest Statement (“Verizon Wireless-Cox Public Interest Statement”) at 2.

²¹ *Id.*

²² *Id.* at 3.

²³ T-Mobile-Verizon Wireless Public Interest Statement at 7. File No. 0005272585 is the lead application for this transaction.

²⁴ 47 U.S.C. § 310(b)(4).

²⁵ See *Fifteenth Annual Competition Report*, 26 FCC Rcd at 9695-97, Tables 1-4.

revenues were \$4.4 billion in the first quarter of 2012.²⁶ At the beginning of 2012, T-Mobile announced plans to invest \$4 billion towards network modernization and its 4G evolution effort, including the planned launch of LTE technology in 2013.²⁷

B. Description of Transactions

16. *Verizon Wireless-Leap.* Verizon Wireless and Leap seek Commission consent to assign a Lower 700 MHz Band Block A license for the Chicago Basic Economic Area (“BEA”) from Verizon Wireless to Leap.²⁸ In addition, they seek consent to assign from Cricket to Verizon Wireless 23 PCS licenses and 13 AWS-1 licenses, disaggregated portions of one PCS license and one AWS-1 license, and partitioned portions of three AWS-1 licenses.²⁹ Also, Verizon Wireless and Savary seek to assign partitioned portions of Savary’s AWS-1 licenses to Verizon Wireless.³⁰ If the applications are granted, Leap would hold an additional 12 megahertz of Lower 700 MHz spectrum in 13 Cellular Market Areas (“CMAs”) in the Chicago BEA,³¹ and Verizon Wireless would hold an additional 10-20 megahertz of PCS spectrum and 10-30 megahertz of AWS-1 spectrum in 202 CMAs.³²

17. *Verizon Wireless-SpectrumCo and Verizon Wireless-Cox.* Verizon Wireless, SpectrumCo, and Cox seek Commission consent to assign 122 of SpectrumCo’s AWS-1 licenses and 30 of Cox’s AWS-1 licenses to Verizon Wireless. These licenses include 121 BEA licenses and one Regional Economic Area (“REA”) license (covering Hawaii) from SpectrumCo, and 30 BEA licenses from Cox (covering much of Cox Communication’s wireline territory). If the applications are granted, Verizon Wireless would hold an additional 20-30 megahertz of AWS-1 spectrum in 630 out of 734

²⁶ T-Mobile Financial Release, *T-Mobile USA Reports First Quarter 2012 Results* (May 9, 2012), available at http://www.t-mobile.com/Cms/Files/Published/0000BDF20016F5DD010312E2BDE4AE9B/5657114502E70FF30137A40F8FD A8B84/file/Q1_2012_Press_Release_Final.pdf (last visited Aug. 14, 2012).

²⁷ *Id.* at 7.

²⁸ Application of Cellco Partnership d/b/a Verizon Wireless and Cricket License Company, LLC, File No. 0004952444 (filed Nov. 23, 2011), Public Interest Statement (“Verizon Wireless-Cricket Public Interest Statement”) at 1.

²⁹ Applications of Cellco Partnership d/b/a Verizon Wireless and Cricket License Company, LLC, File Nos. 0004949596 and 0004949598 (filed Nov. 23, 2011); Verizon Wireless-Cricket Public Interest Statement at 1. AWS-1 consists of spectrum in the 1710-1755/2110-2155 MHz bands.

³⁰ Application of Cellco Partnership d/b/a Verizon Wireless and Savary Island License A, LLC, File No. 0004942973 (filed Nov. 23, 2011), Public Interest Statement (“Verizon Wireless-Savary Public Interest Statement”) at 1; Application of Cellco Partnership d/b/a Verizon Wireless and Savary Island License B, LLC, File No. 0004942992 (filed Nov. 23, 2011). Hereinafter citations to documents contained in this transaction record will refer to “File No. 0004942973.” See *supra* note 15 (describing Leap’s ownership interests in Savary Island subsidiaries).

³¹ These 13 CMAs cover approximately 11 million people, or 3.5 percent of the population of the mainland United States, and include two of the Top 100 CMAs.

³² These 202 markets cover approximately 51 million people or approximately 17 percent of the population of the mainland United States, and include 10 of the Top 100 CMAs. The Verizon Wireless-Leap transactions do not include the transfer of customers, facilities, or assets other than spectrum licenses, and the assignment would not create any customer transition issues or any discontinuance, reduction, or impairment of service to customers. Verizon Wireless-Cricket Public Interest Statement at 1-5; Verizon Wireless-Savary Public Interest Statement at 1-3.

CMAAs nationwide.³³

18. In addition to the spectrum transactions, Verizon Wireless and the Cable Companies have entered into the following commercial arrangements: (1) a series of agreements under which Verizon Wireless and the Cable Companies will act as sales agents of one another's services; (2) a series of agreements that, as originally executed, provided each of the Cable Companies with the option, after approximately four years, to become resellers of Verizon Wireless's services; and (3) a joint venture among Verizon Wireless, Comcast, Time Warner Cable, and Bright House ("Joint Operating Entity") to develop ways to integrate wireline and wireless services.³⁴ We note that Verizon Wireless and the Cable Companies have already begun selling each other's services in various markets outside of Verizon's footprint.³⁵ The parties contend that the Commercial Agreements "have no bearing on whether the spectrum sale is in the public interest, do not require Commission approval, and, for several reasons, do not need to be part of the formal record in this proceeding."³⁶ On January 18, 2012, Verizon Wireless and the Cable Companies nevertheless submitted the Commercial Agreements into the record of this

³³ These 630 CMAAs cover approximately 291 million people, or approximately 94 percent of the population of the mainland United States, and include 94 of the Top 100 CMAAs. This transaction does not include the transfer of customers, facilities, or assets other than spectrum licenses, and therefore the assignment will not create any customer transition issues or any discontinuance, reduction, or impairment of service to customers. Verizon Wireless-SpectrumCo Public Interest Statement at 1, 3, 19-20; Verizon Wireless-Cox Public Interest Statement at 1, 4, 18.

³⁴ Joint Opposition at 70-71; *see also* Verizon Wireless-SpectrumCo Public Interest Statement at 23; Verizon Wireless-Cox Public Interest Statement at 20. Specifically, the Commercial Agreements consist of the following fourteen documents: (1) Limited Liability Company Agreement of Joint Operating Entity, LLC, dated 12/2/11; (2) VZW Agent Agreement between Cellco Partnership d/b/a Verizon Wireless and Comcast Cable Communications, dated 12/2/11; (3) Comcast Agent Agreement between Comcast Cable Communications, LLC and Cellco Partnership d/b/a Verizon Wireless, dated 12/2/11; (4) Reseller Agreement for Comcast Cable Communications, LLC between Cellco Partnership d/b/a Verizon Wireless and Comcast Cable Communications, LLC; (5) VZW Agent Agreement between Cellco Partnership d/b/a Verizon Wireless and Time Warner Cable Inc., dated 12/2/11; (6) TWC Agent Agreement between Time Warner Cable Inc. and Cellco Partnership d/b/a Verizon Wireless, dated 12/2/11; (7) Reseller Agreement for Time Warner Cable Inc. between Cellco Partnership d/b/a Verizon Wireless and Time Warner Cable Inc.; (8) VZW Agent Agreement between Cellco Partnership d/b/a Verizon Wireless and Bright House Networks, LLC, dated 12/2/11; (9) BHN Agent Agreement between Bright House Networks, LLC and Cellco Partnership d/b/a Verizon Wireless, dated 12/2/11; (10) Reseller Agreement for Bright House Networks, LLC between Cellco Partnership d/b/a Verizon Wireless and Bright House Networks, LLC; (11) MSO Agreement between C Spectrum Investment, LLC, Time Warner Cable LLC, and BHN Spectrum Investments, dated 12/2/11; (12) VZW Agent Agreement between Cellco Partnership d/b/a Verizon Wireless and Cox Communications, Inc., dated 12/16/11; (13) Cox Agent Agreement between Cox Communications, Inc. and Cellco Partnership d/b/a Verizon Wireless, dated 12/16/11; and (14) Reseller Agreement for Cox Communications, Inc. between Cellco Partnership d/b/a Verizon Wireless and Cox Communications, Inc.

³⁵ *See, e.g.,* Steve Donohue, *Comcast Expands Promotion with Verizon Wireless; Offers Free DVR, Streampix Subscriptions*, FIERCECABLE (June 21, 2012), <http://www.fiercecable.com/story/comcast-expands-promotions-verizon-wireless-offers-free-dvr-streampix-subsc/2012-06-21> (last visited Aug. 16, 2012); *see also supra* note 34 (listing reseller agreements).

³⁶ Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Jan. 18, 2012 at 2 ("Comcast Jan. 18, 2012 *Ex Parte*"); Letter from J.G. Harrington, DowLohnes PLLC, Counsel to Cox TMI Wireless, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Jan. 18, 2012 at 2 ("Cox Jan. 18, 2012 *Ex Parte*").

transaction, subject to the *First* and *Second Protective Orders*.³⁷ The Applicants noted that they were submitting the Commercial Agreements “[w]ithout waiving their position...in order to avoid undue delay in the Commission’s review of the spectrum transaction, and in response to a Commission request.”³⁸ At the Commission’s request,³⁹ the Applicants subsequently resubmitted the Commercial Agreements to include certain portions that previously had been redacted.⁴⁰

19. *T-Mobile-Verizon Wireless*. In response to significant spectrum concentration concerns raised by Commission and DOJ staff regarding the Verizon-SpectrumCo-Cox and Verizon-Leap transactions, Verizon Wireless commenced negotiations to divest certain of the AWS-1 licenses it would acquire as a result of the contemplated transactions. On June 25, 2012, Verizon Wireless and T-Mobile filed five applications seeking Commission consent for the full and partial assignments of AWS-1 licenses by and between T-Mobile and Verizon Wireless (“T-Mobile-Verizon Wireless Applications”).⁴¹ Among other things, Verizon Wireless seeks to assign to T-Mobile 47 licenses (covering all or portions of 98 CMAs) that Verizon Wireless has proposed to acquire from SpectrumCo, Cox, and Leap.⁴² T-Mobile and Verizon Wireless state that the assignments proposed in the T-Mobile-Verizon Wireless Applications “will all occur simultaneously upon closing, contingent upon regulatory approval of the instant transaction and regulatory approval and closing of the SpectrumCo-Cox Assignments and the Leap Assignments.”⁴³ If the applications are granted, T-Mobile would hold an additional 10-20 megahertz of AWS-1 spectrum in 125 CMAs, and Verizon Wireless would hold an additional 10-20 megahertz of AWS-1 spectrum in 17 CMAs.⁴⁴

³⁷ See Comcast Jan. 18, 2012 *Ex Parte*; Cox Jan. 18, 2012 *Ex Parte*. On January 17, 2012, the Wireless Telecommunications Bureau (the “Bureau” or “WTB”) issued two protective orders to ensure that any confidential or proprietary documents submitted to the Commission in connection with Docket No. 12-4 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. *Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses*, WT Docket No. 12-4, Protective Order, DA 12-50 (Jan. 17, 2012)(“*First Protective Order*”); *Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses*, WT Docket No. 12-4, Second Protective Order, DA 12-51 (Jan. 17, 2012)(“*Second Protective Order*”).

³⁸ See Comcast Jan. 18, 2012 *Ex Parte*; Cox Jan. 18, 2012 *Ex Parte*.

³⁹ Letter from Rick Kaplan, Chief, WTB, FCC, to Michael Samssock, Cellco Partnership, WT Docket No. 12-4 (Mar. 8, 2012).

⁴⁰ See Letter from Brien C. Bell, Willkie Farr & Gallagher LLP, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Mar. 9, 2012; Letter from J.G. Harrington, Dow Lohnes PLLC, Counsel to Cox TMI Wireless, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Mar. 9, 2012.

⁴¹ See *supra* note 23.

⁴² See Cellco Partnership d/b/a Verizon Wireless and T-Mobile License LLC Seek FCC Consent to the Assignment of Advanced Wireless Service Licenses, WT Docket No. 12-175, *Public Notice*, DA 12-999 (rel. June 26, 2012) (“T-Mobile Accepted for Filing Public Notice”) at 2 (citing Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC and Cox TMI Wireless, LLC Seek FCC Consent to Assignment of AWS-1 Licenses, WT Dkt. 12-4, *Public Notice*, 27 FCC Rcd 360 (Jan. 19, 2012) (“Verizon Wireless-SpectrumCo-Cox Comment Public Notice”); Verizon Wireless and Leap Wireless Seek FCC Consent to the Exchange of Lower 700 MHz Band A Block, AWS-1, and Personal Communications Service Licenses, *Public Notice*, 26 FCC Rcd 16810 (Dec. 14, 2011) (“Verizon Wireless-Leap Comment Public Notice”).

⁴³ T-Mobile-Verizon Wireless Public Interest Statement at 2.

⁴⁴ *Id.* at 1-2.

C. Transaction Review Process

20. *Applications and Pleadings.* On December 14, 2011, the Bureau released a public notice seeking comment on the Verizon Wireless-Leap transactions.⁴⁵ On January 11, 2012, the Bureau released a public notice establishing WT Docket No. 12-4 for the Verizon Wireless-SpectrumCo and the Verizon Wireless-Cox applications,⁴⁶ and subsequently took steps to protect confidential information in this docket.⁴⁷ On January 19, 2012, the Bureau accepted the applications for filing and sought comment on the proposed transaction.⁴⁸ The Verizon Wireless-SpectrumCo-Cox Comment Public Notice established a pleading cycle for the applications, with petitions to deny due February 21, 2012, oppositions due March 2, 2012, and replies due March 12, 2012.⁴⁹ The Verizon Wireless-SpectrumCo-Cox Comment Public Notice also consolidated the applications for administrative convenience given the common issues raised.⁵⁰ The Bureau also released a public notice on January 19, 2012 establishing an identical pleading cycle for the Leap applications.⁵¹ On March 8, 2012, the Bureau extended the deadline for the SpectrumCo and Cox applications for filing replies and responses or oppositions to March 26, 2012.⁵²

21. In response to the comment public notices, 12 parties filed petitions to deny and 37 parties filed comments regarding the Verizon Wireless-SpectrumCo and the Verizon Wireless-Cox applications, and two parties filed petitions to deny regarding the Verizon-Leap applications.⁵³ Verizon Wireless, SpectrumCo and Cox filed a Joint Opposition to the petitions to deny on March 2, 2012, and Verizon Wireless and Leap also filed a Joint Opposition on March 2, 2012. Twenty-three parties filed replies regarding the Verizon Wireless-SpectrumCo and the Verizon Wireless-Cox applications, and two parties filed replies regarding the Verizon-Leap applications.⁵⁴

⁴⁵ Verizon Wireless-Leap Comment Public Notice.

⁴⁶ Commission Opens Docket for Proposed Assignment of Licenses to Verizon Wireless from SpectrumCo and Cox TMI Wireless, LLC, and Designates these Applications as Permit-But-Disclose under the Commission's *Ex Parte* Rules, WT Docket No. 12-4, *Public Notice*, DA 12-35 (rel. Jan. 11, 2012).

⁴⁷ *See supra* note 37 (describing protective orders).

⁴⁸ Verizon Wireless-SpectrumCo-Cox Comment Public Notice.

⁴⁹ *Id.* at 3.

⁵⁰ *Id.* at 1. In doing so, the Bureau granted in part a motion filed by MetroPCS Communications, Inc. and NTELOS Holdings Corp. ("MetroPCS" and "NTELOS") to consolidate the Commission's consideration of the SpectrumCo, Cox, and Leap applications, and to defer action pending consolidation. MetroPCS and NTELOS Motion to Defer Action Pending Consolidation, ULS File Nos. 0004942973, etc. (filed Dec. 27, 2011) ("Motion"). The Commission subsequently consolidated for review the Verizon Wireless-Leap applications with the Verizon Wireless-SpectrumCo-Cox applications, thus granting the rest of the relief MetroPCS and NTELOS sought. *See infra* note 66.

⁵¹ Verizon Wireless and Leap Wireless Seek FCC Consent to the Exchange of Lower 700 MHz Band A Block, AWS-1, and Personal Communications Service Licenses, ULS File Nos. 0004942973, etc., *Public Notice*, DA 12-69 (rel. Jan. 19, 2012).

⁵² Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses, WT Docket No. 12-4, *Order*, DA 12-367 (rel. Mar. 8, 2012).

⁵³ *See infra* Appendices A and B.

⁵⁴ *See id.*

22. On March 8, 2012, pursuant to Section 308(b) of the Communications Act, the Bureau requested a number of documents and additional information from Verizon Wireless, SpectrumCo, and Cox, as well as from the SpectrumCo interest holders – Comcast Corporation, Time Warner Cable, and Bright House Networks.⁵⁵

23. On June 25, 2012, T-Mobile filed a petition seeking permission to withdraw its petition to deny and subsequent filings pursuant to Section 1.935 of the Commission’s rules.⁵⁶ T-Mobile states that its concerns have been addressed by its agreement with Verizon Wireless, which if approved by the Commission, will result in a net transfer of spectrum to T-Mobile. We do not believe it would serve the public interest to apply Section 1.935 to preclude Verizon Wireless and T-Mobile from entering into a divestiture agreement to address legitimate competitive concerns raised by Commission and DOJ staff regarding the underlying Verizon Wireless-SpectrumCo-Cox transaction. The underlying purpose of that rule is to discourage the filing of pleadings “designed solely to extract money from sincere applicants,” while still “providing some incentive for legitimate petitioners . . . to withdraw from proceedings and thus expedite service to the public.”⁵⁷ Applying it in this instance would undermine those policy objectives, and we therefore waive its application here on our own motion.⁵⁸ Given that other commenters have, in some cases, relied on aspects of T-Mobile’s filings prior to its request for withdrawal, however, in accordance with established Commission practice we will still consider the evidence contained in those filings and the merits of their arguments.⁵⁹

24. On June 26, 2012, the Bureau released a public notice accepting the T-Mobile-Verizon Wireless applications for filing and establishing WT Docket No. 12-175 for them.⁶⁰ The Accepted for Filing Public Notice established a pleading cycle for the applications, with petitions to deny due July 10, 2012, oppositions due July 17, 2012, and replies due July 24, 2012.⁶¹ The Bureau also took steps to

⁵⁵ See letters from Rick Kaplan, Chief, WTB, FCC, to Michael Samsok, Cellco Partnership d/b/a Verizon Wireless et al., WT Docket No. 12-4, Mar. 8, 2012.

⁵⁶ 47 C.F.R. § 1.935. Section 1.935 requires that such a request be supported by certifications that the parties have neither received nor paid “money or other consideration” (beyond legitimate expenses) “in exchange for withdrawing” the petition. The parties have provided such certifications, together with a letter related to the request “to document and confirm certain understandings” and pursuant to which they have agreed to file such certifications concurrently and within five days of the filing of their assignment applications. See Letter from Jean L. Kiddoo, Bingham McCutchen LLP, Counsel for T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed June 25, 2012.

⁵⁷ *Revision of Part 22 of the Commission’s Rules Governing the Public Mobile Services*, CC Docket No. 92-115, Report and Order, 9 FCC Rcd 6513, 6549-50 (1994)(discussing prior codification).

⁵⁸ See 47 C.F.R. § 1.3.

⁵⁹ See *Stockholders of CBS Inc. (Transferor) and Westinghouse Elec. Corp. (Transferee)*, Memorandum Opinion and Order, 11 FCC Rcd 3733, 3739, 3741 ¶¶ 8, 14 (1995)(citing *Application of Booth American Co. for Renewal of License for Stations WJVA and WRBR(FM) South Bend, Indiana*, File Nos. BR-1877 et al., Memorandum Opinion and Order, 58 F.C.C.2d 553, 554 (1976)(“consistent with our precedent, we will consider the merits of [the petitioner’s] allegations against the applications to insure that the public interest will be served by grant of these applications”)); see also, e.g., *KEGG Communications, Inc.*, MB Docket No. 05-95, Order to Show Cause Hearing Designation Order and Notice of Designation for Hearing, 20 FCC Rcd 5768, 5768 n.1 (2005)(“in accordance with longstanding practice . . . we consider these matters to insure that the public interest will be served by grant of those applications . . .”).

⁶⁰ See T-Mobile Accepted for Filing Public Notice.

⁶¹ See *id.* at 3.

protect confidential information in this docket.⁶² In response to this public notice, four parties filed petitions to deny and three parties filed comments. On July 17, 2012, T-Mobile and Verizon Wireless filed a Joint Opposition to the petitions to deny,⁶³ and five parties filed replies.

25. On June 26, 2012, the Commission also released a public notice seeking comment on the impact of the T-Mobile-Verizon Wireless Applications on the transactions in WT Docket No. 12-4.⁶⁴ Comments responding to the T-Mobile Comment Public Notice were due July 10, 2012. Thirteen parties filed comments in response to the T-Mobile Comment Public Notice in WT Docket No. 12-4.⁶⁵

26. On August 3, 2012, the Bureau issued a public notice consolidating the Commission's review of, and the records for, all the applications considered in this Order.⁶⁶

27. The Rural Telecommunications Group, Inc. ("RTG") asserts that the Commission should hold the T-Mobile-Verizon applications in abeyance pending the outcome of the Verizon Wireless-SpectrumCo, Cox, and Leap transactions, largely based on its spectrum aggregation concerns, but also because it claims Verizon has no legal authority to transfer the subject licenses until the other transactions are consummated.⁶⁷ The Commission's rules do not prohibit the filing of sequential or concurrent applications involving the same licenses, nor do they prohibit the filing of applications that are contingent upon grant of another application⁶⁸ then pending before the Commission.⁶⁹ Moreover, we have since

⁶² See *Applications of T-Mobile License LLC and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign Licenses*, WT Docket No. 12-175, Protective Order, DA 12-1128 (rel. July 13, 2012); *Applications of T-Mobile License LLC and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign Licenses*, WT Docket No. 12-175, Second Protective Order, DA 12-1129 (rel. July 13, 2012).

⁶³ Joint Opposition, WT Docket No. 12-175, filed July 17, 2012.

⁶⁴ See Wireless Telecommunications Bureau Seeks Comment on the Impact on the Verizon Wireless-SpectrumCo and Verizon Wireless-Cox Transactions of the Applications of Verizon Wireless and T-Mobile to Assign AWS-1 Licenses, WT Docket No. 12-4, *Public Notice*, DA 12-998 (rel. June 26, 2012) ("T-Mobile Comment Public Notice").

⁶⁵ See *infra* Appendix B.

⁶⁶ See Wireless Telecommunications Bureau Consolidates Review of Verizon Wireless-SpectrumCo-Cox, Verizon Wireless-Leap Wireless, and T-Mobile-Verizon Wireless Transactions, WT Docket Nos. 12-4 and 12-175, ULS File Nos. 0004942973, etc., *Public Notice*, DA 12-1266 (rel. Aug. 3, 2012). The Bureau previously had not formally consolidated Verizon Wireless-Leap Wireless Applications with the Verizon Wireless-SpectrumCo and Verizon Wireless-Cox applications pending review of the record, though it had established an identical pleading cycle for all of those applications. See *Applications of Verizon Wireless and Leap Wireless for Commission Consent to the Exchange of 700 MHz Band A Block, AWS-1, and Personal Communications Service Licenses*, ULS File Nos. 0004942973, etc., Order, 26 FCC Rcd 17152, 17153 ¶¶ 6-7 (2011).

⁶⁷ RTG Petition, WT Docket No. 12-175; RTG Reply, WT Docket No. 12-175, at 1-2. RTG concedes in its Reply that the Commission has authority to review contingent applications but argues against doing so with these applications given the magnitude of spectrum at issue. RTG Reply, WT Docket No. 12-175, at 3.

⁶⁸ In the T-Mobile-Verizon Wireless applications the parties state that the "proposed license assignments will all occur simultaneously upon closing, contingent upon regulatory approval of the instant transaction and regulatory approval and closing of the SpectrumCo-Cox Assignments and the Leap Assignments." T-Mobile-Verizon Wireless Public Interest Statement at 2.

⁶⁹ See, e.g., *Applications of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310 of the Communications Act, and Powertel, Inc., Transferor, and VoiceStream Wireless Corporation, Transferee, for* (continued....)

formally consolidated these matters for consideration in order to analyze whether their combined effect is in the public interest, given that the T-Mobile transaction was entered into in order to address Commission concerns with the initial SpectrumCo-Cox-Leap transactions. We therefore deny RTG's request to hold any of the applications that are the subject of this Order in abeyance or further delay disposition of the applications.

III. STANDARD OF REVIEW, PUBLIC INTEREST FRAMEWORK AND OVERVIEW

28. Pursuant to Section 310(d) of the Communications Act, we must determine whether applicants have demonstrated that a proposed assignment of licenses will serve the public interest, convenience, and necessity.⁷⁰ In making this assessment, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act,⁷¹ other applicable statutes, and the Commission's rules.⁷² If the transaction does not violate a statute or rule, we next consider whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.⁷³ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.⁷⁴ The applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.⁷⁵

29. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.⁷⁶ If the Commission is 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(s) for hearing.⁷⁷

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Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act, IB Docket No. 00-187, Memorandum Opinion and Order, 16 FCC Rcd 9779 (2001) (“*DT-VoiceStream Order*”).

⁷⁰ 47 U.S.C. § 310(d).

⁷¹ Section 310(d) requires that we consider the application as if the proposed assignee was applying for the licenses directly under Section 308 of the Act, 47 U.S.C. § 308. *See, e.g., Application of AT&T Inc. and Qualcomm Incorporated For Consent to Assign Licenses and Authorizations*, WT Docket No. 11-18, Order, 26 FCC Rcd 17589, 17598 ¶ 23 (2011) (“*AT&T-Qualcomm Order*”).

⁷² *See, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 17598 ¶ 23, *Applications of AT&T Inc. and Cellco Partnership d/b/a/ Verizon Wireless*, WT Docket No. 09-104, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8716 ¶ 22 (2010) (“*AT&T-Verizon Wireless Order*”).

⁷³ *See, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 17598-99 ¶ 23; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8716 ¶ 22.

⁷⁴ *See, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 23; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8716 ¶ 22.

⁷⁵ *See, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 23; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8716 ¶ 22.

⁷⁶ *See, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 25; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8717 ¶ 24.

⁷⁷ 47 U.S.C. § 309(e); *see also News Corp. and DIRECTV Group, Inc., Transferors, and Liberty Media Corp. Transferee, for Authority to Transfer Control*, MB Docket No. 07-18, Memorandum Opinion and Order, 23 FCC Rcd 3265, 3277 ¶ 22 (2008) (“*Liberty Media-DIRECTV Order*”); *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp. (Transferors) and EchoStar Communications Corp.* (continued....)

30. Under certain circumstances, the Commission may determine that targeted remedies may alleviate harms identified in its review of a pending transaction. 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 Communications Act.⁷⁸ The Commission has generally imposed conditions to remedy specific harms likely to arise from the transaction or to help ensure the realization of potential benefits promised for the transaction.⁷⁹

31. *Overview of Analysis.* We first address the parties' qualifications. Next, we evaluate claims that SpectrumCo and Cox have failed to put their spectrum licenses to use in violation of the Commission's rules. In Section VI, we describe the potential competitive harms and other public interest harms that are likely to arise as a result of the proposed license acquisitions. We begin with an analysis of the competitive effects resulting from increased spectrum aggregation resulting from: (1) Verizon Wireless's proposed license acquisition from SpectrumCo, Cox, and Leap and the subsequent application for the assignment and exchange of spectrum between Verizon Wireless and T-Mobile in those markets in which Verizon Wireless would receive additional spectrum; (2) Leap's proposed acquisition of spectrum from Verizon Wireless; and (3) T-Mobile's proposed acquisition of spectrum from Verizon Wireless. We find that the spectrum acquisitions by Leap and by T-Mobile are unlikely to result in harms, but that Verizon Wireless's proposed acquisition of spectrum from SpectrumCo, Cox, and Leap, without any mitigating measures, has significant potential to harm competition in the wireless marketplace.

32. In Section VII, we review the potential public interest benefits of the transactions. We find that the spectrum acquisitions by Leap and by T-Mobile offer concrete public benefits, and thus without any associated harm, are in the public interest. We also find that, while there may be some public interest benefits to Verizon Wireless's acquisition of spectrum from SpectrumCo, Cox and Leap, we are unable to credit fully a number of the applicants' assertions as to its benefits. In the remaining sections, we discuss Verizon Wireless's conditional transfer of licenses to T-Mobile and its voluntary commitments to aggressively build out its AWS-1 spectrum and to offer data roaming arrangements to other wireless operators.⁸⁰ Taking these factors into account, we find that the potential spectrum-related benefits of the proposed license assignments to Verizon Wireless will outweigh the potential harms. We then discuss certain other spectrum-related issues raised by parties in connection with the proposed license transfer and explain why we conclude that these issues do not warrant any further remedies. Finally, we examine the substantial competitive concerns arising from the Commercial Agreements between Verizon Wireless and the Cable Companies, and conclude that these concerns are adequately addressed by subsequent changes made by the parties to those agreements through the proposed Consent Decree, as well as Verizon Wireless's agreement to reporting and monitoring requirements. We thus find nothing to change our conclusion that the transactions, as modified, are in the public interest.

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(*Transferee*), CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574 ¶ 25 (2002) (“*EchoStar-DIRECTV HDO*”).

⁷⁸ 47 U.S.C. § 303(r); see also, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17600 ¶ 26; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8717-18 ¶ 25.

⁷⁹ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17600 ¶ 26; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8718 ¶ 25; *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket No. 04-70, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21546 ¶ 43 (2004) (“*Cingular-AT&T Wireless Order*”).

⁸⁰ See Letter from Kathleen Grillo, Senior Vice President, Verizon Wireless, to Rick Kaplan, Senior Counsel for Transactions, FCC, WT Docket Nos. 12-4 and 12-175, File Nos. 0004942973 *et al.*, filed Aug. 15, 2012 (“*Verizon Wireless Letter*”).

IV. QUALIFICATIONS OF APPLICANTS

33. As noted previously, when evaluating applications for consent to assign or transfer control of licenses and authorizations, Section 310(d) of the Communications Act requires the Commission to determine whether the proposed transaction will serve “the public interest, convenience and necessity.”⁸¹ Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite “citizenship, character, financial, technical, and other qualifications.”⁸² Therefore, as a threshold matter, the Commission must determine whether the applicants to the proposed transactions meet the requisite qualifications requirements to hold and transfer licenses under Section 310(d) and the Commission’s rules.⁸³ Section 310(d) also obligates the Commission to consider whether the proposed assignee is qualified to hold Commission licenses.⁸⁴

34. *Qualifications Challenge.* The Diogenes Telecommunications Project (“Diogenes”) filed substantially similar petitions to deny in WT Docket No. 12-4 (“Diogenes Petition”) and WT Docket No. 12-175 (collectively, “Diogenes Petitions”) requesting that the Commission hold an evidentiary hearing to determine whether alleged misrepresentations and misconduct by Verizon Wireless related to a 2010 Enforcement Bureau investigation regarding certain Verizon Wireless data usage charges⁸⁵ warrant denial of its applications and revocation of Verizon Wireless’s licenses.⁸⁶ In the Applicants’ Joint Oppositions filed in each docket, they state that the *EB Data Usage Charges Order* concluded that the investigation raised “no substantial or material questions of fact as to whether Verizon Wireless possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.”⁸⁷

35. *Discussion.* As an initial matter, we note that no parties have raised issues with respect to the basic qualifications of Leap or T-Mobile. We find no evidence that Leap or T-Mobile lacks the requisite citizenship, character, financial, technical, or other basic qualifications under the Communications Act and our rules, regulations, and policies, to be the assignees of the relevant licenses.⁸⁸

⁸¹ 47 U.S.C. § 310(d).

⁸² 47 U.S.C. §§ 308, 310(d); *see also, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 17600 ¶ 27; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8718 ¶ 26; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

⁸³ *See* 47 U.S.C. §§ 214(a), 310(d); 47 C.F.R. § 1.948; *see also, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 175600-01 ¶ 27; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8718 ¶ 26.

⁸⁴ *See, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 175601 ¶ 28; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8720 ¶ 29; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

⁸⁵ *See Verizon Wireless, Data Usage Charges*, File No. EB-09-TC-458, Order, 25 FCC Rcd 15105 (EB 2010) (“*EB Data Usage Charges Order*”); *Verizon Wireless, Data Usage Charges*, File No. EB-09-TC-458, Consent Decree, 25 FCC Rcd 15107 (EB 2010) (“*EB Data Usages Charges Consent Decree*”). The *EB Data Usage Charges Order* adopts the *EB Data Usage Charges Consent Decree*.

⁸⁶ *See* Diogenes Petition at ii-iii, 27-28. Diogenes also requests that the Commission release all available information regarding certain Verizon Wireless data usage charges that were the subject of the *EB Data Usage Charges Order*. *Id.* at 27-28.

⁸⁷ Joint Opposition at 69; Joint Opposition, WT Docket No. 12-175 at 15 (quoting *EB Data Usage Charges Order*, 25 FCC Rcd at 15105 ¶ 4). The Applicants note that under the Commission’s rules, the *EB Data Usage Charges Order* is final. *See id.* (citing 47 C.F.R. §§ 1.106(f), 1.115(d), 1.117(a)).

⁸⁸ We note that the Commission has previously evaluated the qualifications of Leap and T-Mobile. *See, e.g., Leap Wireless International, Inc. and its subsidiaries, Debtors-in-Possession and Leap Wireless International, Inc. and* (continued....)

36. Regarding Diogenes' Petitions, Section 309(d)(1) of the Communications Act requires that a petition to deny must contain specific allegations of fact sufficient to show that the petitioner is a party in interest.⁸⁹ To establish party-in-interest standing, a petitioner must allege facts sufficient to demonstrate that grant of the subject application would cause it to suffer a direct injury.⁹⁰ In addition, a petitioner must demonstrate a causal link between the claimed injury and the challenged action,⁹¹ establishing that the injury can be traced to the challenged action and that the injury would be prevented or redressed by the relief requested.⁹²

37. The Diogenes Petition does not allege that allowing Verizon Wireless to acquire the AWS-1 spectrum will cause competitive harm and makes no effort to demonstrate that Diogenes or any of its members would suffer a direct injury if the Verizon Wireless-SpectrumCo-Cox applications are granted. Diogenes states nothing more than that Diogenes member Antonio Kovar is a customer of Verizon Wireless.⁹³ The Diogenes Petition does not explain how Mr. Kovar, as a Verizon Wireless customer, might be injured by an assignment of spectrum to Verizon Wireless, much less how any such injury would be redressed by delaying or denying the applications as a result of an evidentiary hearing. Moreover, Diogenes's ultimate requested relief, revocation of Verizon Wireless's licenses, would harm Mr. Kovar as a Verizon Wireless customer by terminating his service, not provide him with any relief.

38. Similarly, in its Petition to Deny filed in WT Docket No. 12-175, Diogenes raises no issues specific to the T-Mobile-Verizon Wireless transaction. Diogenes claims that it has standing based on a substantial likelihood that Verizon Wireless, given its alleged past behavior with respect to the data usage charges, will defraud Diogenes member Mr. Kovar and many others at some time in the future unless the Commission holds a hearing on Verizon Wireless's character qualifications and imposes sanctions up to and including revocation of licenses.⁹⁴ We conclude that these additional arguments likewise do not demonstrate standing. Diogenes's assertions of harm are wholly speculative, and its underlying premise, even if it were accepted as true, is founded on past events that have no relation to the transactions at issue here.

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Its subsidiaries Applications for Consent to the Assignment of Licenses Pursuant to Section 3109(d) of the Communications Act, WT Docket No. 03-263, Memorandum Opinion and Order, 19 FCC Rcd 14909, 14916-17 ¶ 11 (2004); *Applications of T-Mobile USA, Inc. and SunCom Wireless Holdings, Inc. For Consent to Transfer Control of Licenses and Authorizations and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 07-237, Memorandum Opinion and Order, 23 FCC Rcd 2515, 2520-21 ¶ 10 (2008) (“*T-Mobile-SunCom Order*”). We review the current foreign ownership of T-Mobile under Section 310(b)(4) of the Communications Act in Section XI, *infra*.

⁸⁹ 47 U.S.C. § 309(d)(1); *see also* 47 C.F.R. § 1.939(d).

⁹⁰ *Application of Wireless Co., L.P. for a License to Provide Broadband PCS Service on Block A in the San Francisco Major Trading Area*, File No. 00005-CW-L-95, Order, 10 FCC Rcd 13233, 13235 ¶ 7 (WTB 1995) (“*Wireless Co.*”) (citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972)).

⁹¹ *Wireless Co.* 10 FCC Rcd at 13235 ¶ 7.

⁹² *Id.* at 13235 ¶ 7. An organization may meet these standards in its own right or may demonstrate that one or more of its members meets them. *See, e.g., Friends of the Earth, Inc. and Forest Conservation Council, Inc. Various Objections and Petitions to Deny against Applications to Register Antenna Structures (FCC Form 854) with Environmental Assessments*, File Nos. A0160814 *et al.*, Memorandum Opinion and Order, 18 FCC Rcd 23622, 23622-23 ¶¶ 2-3 (2003).

⁹³ Diogenes Petition at 1.

⁹⁴ *See* Diogenes Petition, WT Docket No. 12-175, at 4-5.

39. Moreover, and as an independent ground for dismissal, as noted above, the Enforcement Bureau specifically found that the conduct that is the subject of the Diogenes Petitions did not affect Verizon's qualifications to be a Commission licensee. With respect to Diogenes's assertion that Verizon Wireless intentionally misrepresented to the Enforcement Bureau the nature of its actions in connection with the foregoing investigation, it has failed, as further required by Section 309(d)(1) of the Act, to include specific allegations of fact, supported by affidavits of persons with personal knowledge thereof, in support of its claim.⁹⁵ Instead, its petition is purely speculative, and raises no substantial and material question of fact concerning Verizon Wireless's basic qualifications.

40. For the reasons explained above, we dismiss the Diogenes Petitions. Because Verizon Wireless has previously and repeatedly been found qualified to hold Commission licenses,⁹⁶ we therefore find that there is no reason to evaluate its basic qualifications further. We examine the foreign ownership of Verizon Wireless and T-Mobile in Section XI, *infra*.⁹⁷

V. SPECTRUMCO AND COX EFFORTS TO USE THE SPECTRUM

41. Certain petitioners and commenters argue that because SpectrumCo and Cox have not used the AWS-1 spectrum licensed to them, the Commission should deny the SpectrumCo and Cox applications and require both SpectrumCo and Cox to return the AWS-1 licenses to the Commission for dissemination to those who could put the spectrum to immediate use for the public's benefit.⁹⁸

42. Cox maintains that since its acquisition of the licenses at issue in this transaction, it took a number of steps to develop the AWS-1 spectrum, including entering into equipment contracts with various vendors, initiating an actual build of wireless infrastructure and conducting limited network trials in several areas (although it concedes that it never launched commercial facilities-based service).⁹⁹ In May 2011, Cox announced that it would begin decommissioning the facilities it had constructed, a process that remains ongoing.¹⁰⁰

43. SpectrumCo contends that since its successful auction bids in 2006, it took multiple steps to develop its AWS-1 spectrum. For example, SpectrumCo asserts that it invested more than \$20 million to clear microwave links in the geographic area covered by its AWS-1 licenses, and undertook efforts to test different 4G technologies and equipment for use with the AWS-1 spectrum – such as WiMAX, Ultra Mobile Broadband (“UMB”), and LTE.¹⁰¹ Notwithstanding the time, effort, and investment that SpectrumCo put into clearing the AWS-1 spectrum and conducting technology tests, SpectrumCo asserts

⁹⁵ 47 U.S.C. § 309(d)(1). *See, e.g., Providence Community Radio*, Memorandum Opinion and Order, 23 FCC Rcd 4118, 4130 n.76 (2008).

⁹⁶ *See, e.g., Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 09-119, Memorandum Opinion and Order, 25 FCC Rcd 3763, 3777 ¶ 26 & nn.108-09 (2008) (“*ATN-Verizon Wireless Order*”).

⁹⁷ *See infra* Section XI.

⁹⁸ *See, e.g.,* Free Press Petition at 34-36; NJ Division of Rate Counsel Petition at 12-14; MetroPCS Reply at 9-15.

⁹⁹ Declaration of Suzanne Fenwick, Executive Director for Corporate Development for Cox Communications, Inc. (“Fenwick Declaration”), Verizon Wireless-Cox Public Interest Statement, Exhibit 4.

¹⁰⁰ Verizon Wireless-Cox Public Interest Statement at 19.

¹⁰¹ Verizon Wireless-SpectrumCo Public Interest Statement at 20; Joint Opposition, Declaration of David E. Borth, Professor of Electrical and Computer Engineering at the University of Illinois-Chicago at 18-22, Exhibit 3 (“Borth Declaration”).

that it determined as a business matter that constructing and operating a standalone wireless system was not financially feasible.¹⁰² SpectrumCo also states that it explored a variety of other measures to allow its owners to use the spectrum, including additional spectrum acquisitions, joint ventures, and network sharing arrangements with Sprint Nextel and Clearwire.¹⁰³

44. *Discussion.* Pursuant to Section 1.948(i) of the Commission’s rules, applications for transfer or assignment may be reviewed by the Commission to determine if the transaction is for purposes of trafficking in service authorizations. Trafficking consists of obtaining or attempting to obtain an authorization for the principal purpose of speculation or profitable resale rather than for providing service.¹⁰⁴ Congress viewed a system of open competitive bidding wherein winning bidders would have paid market prices for the licenses as a deterrent to trafficking.¹⁰⁵ Additionally, because winning bidders pay market value for their authorizations, it effectively safeguards against speculation.¹⁰⁶ Therefore, the transfer of licenses won pursuant to competitive bidding seldom raises any trafficking concerns.¹⁰⁷

45. We find no basis in the record to conclude that SpectrumCo or Cox obtained the AWS-1 licenses for the principal purpose of trafficking in those authorizations. As discussed above, Cox constructed and tested AWS-1 facilities before deciding not to put them into commercial service.¹⁰⁸ Similarly, SpectrumCo expended considerable sums to prepare for commercial operations, and underwent technological site testing and took other measures to evaluate the use of the spectrum (e.g., evaluated the additional costs – such as roaming, device acquisition, etc. – necessary to launch a commercial wireless service).¹⁰⁹ We also note that neither SpectrumCo nor Cox was under an obligation to build out the spectrum under their 15-year licenses before the license expiration dates.¹¹⁰ Therefore, the fact that they did not fully build out and operate their systems before that date is insufficient evidence of trafficking.

46. However, where existing licensees do “not fully utilize or plan to utilize the entire spectrum assigned to them,” the Commission has encouraged the use of secondary market transactions such as the one before us to transition unused spectrum to more efficient use and allow network providers to obtain access to needed spectrum for broadband deployment.¹¹¹ The decision to move the spectrum into the hands of a willing buyer that has the wherewithal to use the spectrum meets those purposes. This is particularly true given Verizon Wireless’s commitment to immediately utilize the spectrum and the other public interest benefits discussed in this Order. We therefore decline to disapprove these transactions on trafficking grounds and deny petitioners’ requests.

¹⁰² See Declaration of Robert Pick, Chief Executive Officer of SpectrumCo, LLC (“Pick Declaration”), Verizon Wireless-SpectrumCo Public Interest Statement, Exhibit 4.

¹⁰³ Joint Opposition at 33-35.

¹⁰⁴ See 47 C.F.R. § 1.948(i)(2011).

¹⁰⁵ See *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8768-69 ¶ 152.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ See *supra* para. 42.

¹⁰⁹ See *supra* para. 43; see also Joint Opposition, Borth Declaration at 18-22.

¹¹⁰ See 47 C.F.R. § 27.14 (Construction requirements; Criteria for renewal).

¹¹¹ Connecting America: The National Broadband Plan at 83, Recommendation 5.7 (rel. Mar. 16, 2010)

VI. POTENTIAL PUBLIC INTEREST HARMS

A. Competitive Analysis

1. Overview

47. Spectrum is an essential input in the provision of mobile wireless services, and ensuring that sufficient spectrum is available for incumbent licensees as well as potential entrants is critical to promoting effective competition and innovation in the marketplace.¹¹² The Communications Act requires the Commission to examine closely the impact of spectrum aggregation on competition, innovation, and the efficient use of spectrum in order to ensure that any transfer of control serves the public interest, convenience, and necessity.¹¹³ Our public interest analysis must consider not only the near-term, but also the long-term, impacts of the proposed transactions on the implementation of Congress's pro-competitive, deregulatory policies aimed at developing and encouraging competitive markets.¹¹⁴

48. In 2003, the Commission moved from a spectrum "cap" to a case-by-case review of the competitive effects on the marketplace of spectrum aggregation, as well as the acquisition of business units.¹¹⁵ In previous transactions, the Commission has used an initial screen to help identify markets where the acquisition of spectrum provides particular reason for further competitive analysis.¹¹⁶ The Commission is not, however, limited in its consideration of potential competitive harms in proposed transactions solely to markets identified by its initial screen.¹¹⁷

¹¹² See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17601-02 ¶ 30; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17481-82 ¶ 75; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21569 ¶ 109; see also *Fifteenth Annual Competition Report*, 26 FCC Rcd at 9820 ¶ 266.

¹¹³ 47 U.S.C. §§ 214(a), 310(d). See, e.g., *2000 Regulatory Review, Spectrum Aggregation Limits For Commercial Mobile Radio Services*, WT Docket No. 01-14, Report and Order, 16 FCC Rcd 22668, 22695 ¶ 54 ("Biennial Review of CMRS Spectrum Aggregation Limits"), which sunset the Commission's spectrum cap. As the Commission stated, "[w]e find that, under the statutory regime set out by Congress, the Commission has an obligation, distinct from that of DOJ, to consider as part of the Commission's public interest review the anticompetitive effects of acquisitions of CMRS spectrum, including those that occur in the secondary market." *Biennial Review of CMRS Spectrum Aggregation Limits*, 16 FCC Rcd at 22699 ¶ 62. Our goals relating to spectrum concentration include discouraging anticompetitive conduct and ensuring that incentives are maintained for innovation and efficiency in the mobile services marketplace. See, e.g., *Biennial Review of CMRS Spectrum Aggregation Limits*, 16 FCC Rcd at 22695 ¶ 54.

¹¹⁴ See *AT&T-Qualcomm Order*, 26 FCC Rcd at 17601-02 ¶ 30; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20586 ¶ 56 (discussing the Commission's general spectrum management policies).

¹¹⁵ See *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31; *Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, WT Docket No. 08-246, Memorandum Opinion and Order, 24 FCC Rcd 13915, 13938 ¶ 50 (2009) ("*AT&T-Centennial Order*"); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21525 ¶ 4; *Biennial Review of CMRS Spectrum Aggregation Limits*, 16 FCC Rcd at 22668, 22693-94 ¶ 50 (stating that case-by-case review gives the Commission flexibility to reach the appropriate decision in each case on the basis of the particular circumstances of that case).

¹¹⁶ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 872021 ¶ 32; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21552 ¶ 58.

¹¹⁷ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17609-10 ¶¶ 49-50; *AT&T-Centennial Order*, 24 FCC Rcd at 13946-48 ¶¶ 71-74, ¶ 85; *Applications for the Assignment of License from Denali PCS, L.L.C. to Alaska Digitel, L.L.C. and the Transfer of Control of Interests in Alaska Digitel, L.L.C. to General Communication, Inc.*, WT Docket 06-114, Memorandum Opinion and Order, 21 FCC Rcd 14863, 14898 ¶ 85 (2006).

49. In considering the applications before us, we first evaluate the potential effects on competition resulting from Verizon Wireless's proposed spectrum acquisition from SpectrumCo, Cox, and Leap. We also analyze the competitive effects of the subsequent application for the assignment and exchange of spectrum between Verizon Wireless and T-Mobile in those markets in which Verizon Wireless would receive additional spectrum. Second, we consider the potential effects on competition resulting from Leap's proposed acquisition of spectrum from Verizon Wireless. Third, we consider the potential effect on competition resulting from T-Mobile's proposed acquisition of spectrum from Verizon Wireless.

50. Specifically, we evaluate the competitive effects of Verizon Wireless's post-transaction spectrum holdings on a local and national level, and through the lenses of the company's overall spectrum aggregation as well as within the AWS-1 spectrum band. As detailed below, we conclude that Verizon Wireless's proposed acquisition of spectrum from SpectrumCo, Cox, and Leap, without any mitigating measures, has a significant potential to harm competition in the wireless marketplace. By contrast, we find that the spectrum acquisitions by Leap and by T-Mobile are unlikely to result in competitive or other public interest harms.

51. In addition to spectrum holdings, roaming and interoperability are competitively significant for mobile wireless providers. We therefore also consider the competitive effect of the transactions on roaming and interoperability.

2. Market Definition

52. We establish at the outset the appropriate market definitions to aid our evaluation of the proposed acquisition of spectrum by Verizon Wireless from SpectrumCo, Cox, and Leap, as well as the spectrum it would acquire from T-Mobile, and Leap's and T-Mobile's acquisition of spectrum from Verizon Wireless. These market definitions include the product and geographic market definitions¹¹⁸ that we will apply, as well as the relevant input market for spectrum. We consider arguments made in relation to each transaction in establishing the appropriate definitions, and apply these market definitions to each of these transactions.

a. Product Market

53. In this Order, as in the Commission's most recent transaction reviews, we evaluate the proposed transactions using a combined "mobile telephony/broadband services" product market¹¹⁹ that is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).¹²⁰ We find that Verizon Wireless, Leap, and T-Mobile provide services in this product market and note that no party in any of the proceedings before us has challenged the mobile telephony/broadband definition.

¹¹⁸ See, e.g., Horizontal Merger Guidelines, U.S. Department of Justice and the Federal Trade Commission, August 19, 2010, at § 4, p. 7 ("2010 DOJ/FTC Horizontal Merger Guidelines").

¹¹⁹ See *AT&T-Qualcomm Order*, 26 FCC Rcd at 17603 ¶ 33; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8721 ¶ 35; *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 37. The Commission has previously determined that there are separate relevant product markets for interconnected mobile voice and data services, and also for residential and enterprise services, but found it reasonable to analyze all of these services under a combined mobile telephony/broadband services product market. See *AT&T-Qualcomm Order*, 26 FCC Rcd at 17603 ¶ 33; *AT&T-Verizon Wireless Order* 25 FCC Rcd at 8721 at ¶ 35; *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 37.

¹²⁰ See *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602-03 ¶¶ 32-33; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8721 ¶ 35; *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 37.

b. Geographic Markets

54. The Commission has found that the relevant geographic markets for certain wireless transactions are “local”¹²¹ and also has evaluated a transaction’s competitive effects at the national level where a transaction exhibits certain national characteristics that provide cause for concern.¹²²

55. The Applicants’ analysis of the competitive effects of the Verizon Wireless-SpectrumCo transaction uses a local market definition.¹²³ Some parties argue that the Commission should consider the impact of the proposed Verizon Wireless-SpectrumCo transaction at both a local and national level,¹²⁴ and some of these parties contend that the AWS-1 at issue forms a near nationwide block, thus affecting spectrum concentration and competition in the national wireless market.¹²⁵

56. Because most consumers use their mobile telephony/broadband services at or close to where they live and work, they purchase mobile telephony/broadband services from providers that offer and market services where they live, work, and shop.¹²⁶ Service sold in distant locations is generally not a good substitute for service near a consumer’s home or work.¹²⁷ In addition, service providers compete at the local level in terms of coverage, service quality, and localized promotions.¹²⁸ Consistent with past transactions, we will primarily use CMAs as the local geographic markets in which we analyze the potential competitive harms arising from spectrum aggregation as a result of these transactions.¹²⁹

57. As the Commission has previously recognized, however, two key competitive variables – prices and service plan offerings – do not vary for most providers across most geographic markets.¹³⁰ Verizon Wireless states that its advertising and pricing strategies are predominantly set at a national level.¹³¹ The four nationwide mobile telephony/broadband service providers (Verizon Wireless, AT&T, Sprint Nextel, and T-Mobile), as well as other providers, set the same rates for a given plan everywhere

¹²¹ See *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604 ¶ 34; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8722 ¶ 36; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562-63 ¶¶ 89-90.

¹²² See *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604-05 ¶¶ 34-37.

¹²³ Verizon Wireless-SpectrumCo Public Interest Statement at 24-29, Exhibit 7; Verizon Wireless-SpectrumCo Joint Opposition at 45-47. Verizon Wireless’s competitive analysis is for 15 EAs that include 18 CMAs. See Verizon Wireless-SpectrumCo Public Interest Statement at 27, Exhibit 7.

¹²⁴ RCA Petition at 41-53; Free Press Petition at 13, 19, 33-34; Greenlining Institute Comments at 7-8.

¹²⁵ RCA Petition at 44-53; RCA Reply at 14-15; Free Press Petition at 13, 19, 33-34.

¹²⁶ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13934 ¶ 41; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17472 ¶; see also *Fifteenth Annual Competition Report*, 26 FCC Rcd at 9693 ¶¶ 23-24.

¹²⁷ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13934 ¶ 41; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17472 ¶ 52.

¹²⁸ See, e.g., *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8728 ¶ 50.

¹²⁹ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604 ¶ 34. CMAs are the areas in which the Commission initially granted licenses for cellular service. See 47 C.F.R. § 22.909.

¹³⁰ See *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604-05 ¶¶ 34-37.

¹³¹ Joint Opposition at 49-50.

and advertise nationally.¹³² In addition, certain key elements, such as development and deployment of mobile broadband equipment and devices, are done largely on a national scale.

58. For purposes of evaluating the competitive effects of Verizon Wireless's acquisition of spectrum from SpectrumCo, Cox, and Leap, as well as from T-Mobile, we use both local and national markets. In addition to the more traditional local market analysis, a national market evaluation of these proposed transactions is appropriate because the proposed acquisition of spectrum by Verizon Wireless would be in the majority of local markets across the country and harms that may occur at the local level collectively could have nationwide competitive effects on the mobile telephony/broadband services market.¹³³ Further, in evaluating T-Mobile's proposed spectrum transaction with Verizon Wireless, we also will analyze the competitive effects on both local and national markets. Although T-Mobile's proposed acquisitions will not cover as much of the nation as Verizon Wireless's, it does span 125 CMAs that are geographically dispersed throughout the United States, including several large urban markets, and T-Mobile is one of the four nationwide mobile telephony/broadband service providers. As a result, T-Mobile will gain spectrum in markets covering approximately 60 million people, expanding the geographical scope of its AWS-1 holdings in order to deploy and expand LTE services. Therefore, we also find it appropriate to consider any potential national effects that may result from this transaction. Finally, we will evaluate Leap's acquisition of spectrum from Verizon Wireless only on a local geographic market level as its acquisition of spectrum in a single BEA is unlikely to implicate similar national elements.

c. Input Market for Spectrum

59. When assessing spectrum aggregation in its review of wireless transactions, the Commission evaluates the current spectrum holdings of the acquiring firm that are "suitable" and "available" in the near term for the provision of mobile telephony/broadband services.¹³⁴ The Commission has previously determined cellular, PCS, Specialized Mobile Radio ("SMR"), and 700 MHz band spectrum, as well as AWS-1 and Broadband Radio Service ("BRS") spectrum where available, meet this definition.¹³⁵ The Commission has traditionally applied an initial screen to help identify local markets where a proposed transaction might raise particular concerns of spectrum concentration.¹³⁶ The current screen identifies local markets where an entity would acquire more than approximately one-third of the total spectrum suitable and available for the provision of mobile telephony/broadband services.¹³⁷ For our analysis of the proposed transactions before us, we continue to apply the spectrum screen that the Commission has used in recent mobile wireless transactions.

¹³² See *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604-05 ¶¶ 34-37. See, e.g., *Fifteenth Annual Competition Report*, 26 FCC Rcd at 9748-50 ¶¶ 129-136. See also VZW-TPK-FCC-041689 at VZW-TPK-FCC-041697 to VZW-TPK-FCC-041699 [REDACTED] Feb. 15, 2012.

¹³³ See, e.g., VZW-TPK-FCC-527547 at VZW-TPK-FCC-527549 to VZW-TPK-FCC-527550 [REDACTED] Oct. 13, 2011.

¹³⁴ See *AT&T-Qualcomm Order*, 26 FCC Rcd at 17605-06 ¶ 38; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8722 ¶ 37; *AT&T-Centennial Order*, 24 FCC Rcd at 13933 ¶ 39.

¹³⁵ See, e.g., *Sprint Nextel Corp. and Clearwire Corp. Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, WT Docket No. 08-94, Memorandum Opinion and Order, 23 FCC Rcd 17570, 17591-92 ¶ 53 (2008) ("*Sprint Nextel-Clearwire Order*").

¹³⁶ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

¹³⁷ See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17473 ¶ 54.

60. The Applicants in the Verizon Wireless-SpectrumCo transaction contend that spectrum that is suitable and would be available within two years, including, in their view, BRS/ Educational Broadband Service (“EBS”), Mobile Satellite Service (“MSS”)/Ancillary Terrestrial Components (“ATC”), Wireless Communications Services, and PCS G Block spectrum, should be included in evaluating the competitive effects of the transaction.¹³⁸ Opponents agree that the screen should be adjusted, but have different views about how that should be accomplished.¹³⁹ Free Press contends that the MSS/ATC spectrum cannot be considered available because no services are planned for the spectrum and because the most likely candidate, the S-Band, is the subject of a pending proceeding.¹⁴⁰ Free Press also argues against the inclusion of additional BRS and EBS spectrum because the Applicants have not established that circumstances have changed warranting inclusion.¹⁴¹ RCA urges the Commission to revise the spectrum screen downward, due to the change in the *2010 DOJ/FTC Horizontal Merger Guidelines* that removed the two-year period for timeliness of availability of spectrum.¹⁴² RCA recommends that the Commission remove spectrum from the screen that it argues will not be usable for mobile voice or broadband services in the near term: (1) 12.5 megahertz of SMR spectrum, as the Commission noted it would in its recent order reviewing AT&T’s acquisition of 700 MHz spectrum from Qualcomm,¹⁴³ and (2) the 10 megahertz 700 MHz D Block spectrum.¹⁴⁴ Further, RTG argues that the trigger level for the spectrum screen should be reduced to approximately one quarter of available spectrum and should only include spectrum ready for “prime time.”¹⁴⁵

61. More broadly, some opponents and commenters argue that not all spectrum is created equal, and advocate for a screen that assigns values or “weights” to different spectrum bands based on, among other things, their propagation characteristics.¹⁴⁶ Specifically, they argue that adopting a value-based screen, particularly with respect to propagation characteristics, would provide a more accurate

¹³⁸ Verizon Wireless-SpectrumCo Public Interest Statement at 29-33.

¹³⁹ Public Knowledge also argues that the Commission should resolve the pending Petition for Reconsideration in the Verizon/Alltel transaction (WT Docket 08-95). It states that a grant of the pending petition would return the spectrum screen to 95 megahertz by eliminating BRS and AWS-1 spectrum from consideration in the screen. *See* Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed June 18, 2012 at 2 (“Public Knowledge June 18, 2012 *Ex Parte*”).

¹⁴⁰ Free Press Reply at 21.

¹⁴¹ *Id.*

¹⁴² RCA Petition at 50, Letter from Rebecca Murphy Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Jan. 19, 2012 at 2 (“RCA Jan. 19, 2012 *Ex Parte*”).

¹⁴³ *See AT&T-Qualcomm Order*, 26 FCC Rcd at 17607 ¶ 42.

¹⁴⁴ RCA Petition at 50-52.

¹⁴⁵ *See* RTG Reply at 6-7. RTG Petition, File No. 0004942973, etc., at 18-19, filed Feb. 21, 2012. In addition, in WT Docket 12-175, RTG argues that if the Commission conditioned the Verizon Wireless transactions in WT Docket 12-4 on a lowered spectrum screen or re-instituted a hard spectrum cap, then it may not be opposed to the Verizon/T-Mobile spectrum swap. *See* RTG Petition at 3.

¹⁴⁶ RTG Petition, File No. 0004942973, etc., at 18-19, filed Feb. 21, 2012. Free Press Petition at 10-19; Free Press Reply at 23-25; Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Apr. 30, 2012 at 3 (“Public Knowledge Apr. 30, 2012 *Ex Parte*”); RCA Petition at 41-53; Sprint Nextel Reply at 7-10.

picture of the competitive advantage of each firm's spectrum holdings.¹⁴⁷ Public Knowledge asserts that: (1) spectrum should be weighted by its suitability for mobile data use; (2) spectrum held by dominant providers or providers with substantial spectrum holdings should be weighted more heavily; and (3) spectrum that has not yet been built out or that uses inefficient technologies should also be weighted more heavily.¹⁴⁸

62. Verizon Wireless, SpectrumCo, and Cox jointly contend that adopting a spectrum weighting approach would be "fundamentally unworkable" as different spectrum bands have different characteristics that are valued differently by service providers at different times.¹⁴⁹ They further argue that no party has demonstrated specific harm that would support the adoption of a screen that would weigh the value of spectrum.¹⁵⁰

63. *Discussion.* We decline at this time to make any formal changes to the current spectrum screen.¹⁵¹ We find that it is unnecessary for purposes of reviewing the transactions before us to determine what bands should or should not be included in the initial screen, because any such proposed adjustments would not affect either our conclusion about markets in which competitive concerns exist or our conclusion that those concerns are remedied as a result of Verizon Wireless's transaction with T-Mobile and its voluntary commitments concerning build-out and roaming.¹⁵² We intend to initiate a proceeding soon to review our policies governing mobile wireless spectrum holdings in order to ensure that they fulfill statutory objectives, given changes in technology, spectrum availability, and the marketplace since the last comprehensive review. We seek to ensure that we have rules of the road that are clear and predictable, and permit parties to incorporate any significant shifts in policy into their pre-transaction planning.

3. Competitive Effects of Transactions on Mobile Telephony/Broadband Services: Spectrum Concentration

64. Given that spectrum is a critical and necessary input for the provision of facilities-based mobile telephony/broadband services, the Commission has analyzed whether and to what extent proposed acquisitions of wireless spectrum would affect competition in the mobile telephony/broadband services market.¹⁵³ First, we analyze the potential competitive effects of total spectrum concentration for both

¹⁴⁷ Free Press Petition at 10-19; Free Press Reply at 23-25; Public Knowledge Apr. 30, 2012 *Ex Parte* at 3; RCA Petition at 41-53; Sprint Nextel Reply at 7-10; Letter from Michael Lazarus, Counsel to RCA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Apr. 12, 2012.

¹⁴⁸ Public Knowledge Apr. 30, 2012 *Ex Parte* at 3.

¹⁴⁹ Joint Opposition at 59-61.

¹⁵⁰ *Id.* at 58-61.

¹⁵¹ In response to Applicant's arguments regarding the PCS G Block, we note that the Commission has included in the screen, as part of the PCS spectrum band, the 10 megahertz of spectrum that Sprint acquired as a result of the 800 MHz Rebanding Order. See Joint Opposition at 56; Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels, ET Docket No. 00-258, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969 (2004).

¹⁵² See *AT&T-Qualcomm Order*, 26 FCC Rcd at 17607, n.126 (noting that when conducting competitive analysis in the future, the Commission may decide to include only the 14 megahertz of SMR spectrum suitable and available for mobile broadband services).

¹⁵³ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17601-03 ¶¶ 30-33.

local and national geographic markets of Verizon Wireless's acquisition of spectrum from SpectrumCo, Cox, and Leap, as well as for the spectrum Verizon Wireless is acquiring from T-Mobile. We also examine Verizon Wireless's concentration of AWS-1 spectrum, as it is acquiring a near nationwide footprint of 20 megahertz or more (and post-transaction would hold as much as 60 megahertz in some markets), which is currently the only large block of greenfield spectrum immediately available for mobile telephony/broadband services.

65. Second, we evaluate any potential competitive effects of spectrum concentration for a local geographic market resulting from the proposed assignment of a single 700 MHz spectrum license from Verizon Wireless to Leap. Third, we consider the potential competitive effects of total spectrum concentration for both local and national geographic markets resulting from the proposed assignment of AWS-1 spectrum from Verizon Wireless to T-Mobile. As with the Verizon Wireless transactions, we also consider the effects of T-Mobile's acquisition of AWS-1 spectrum. Consistent with prior transactions,¹⁵⁴ we consider facilities-based entities providing mobile telephony/broadband services using cellular, broadband PCS, SMR, 700 MHz, AWS-1, and BRS spectrum as market participants for the purposes of our competitive analysis of the Verizon Wireless spectrum purchases from SpectrumCo, Cox, Leap, as well as T-Mobile and for the Leap-Verizon Wireless, and the T-Mobile-Verizon Wireless transactions.

a. Verizon Wireless-Acquisition of Spectrum From SpectrumCo-Cox-Leap and-T-Mobile

66. The Applicants argue in the *Verizon Wireless-SpectrumCo-Cox* and the *Verizon Wireless-Leap* transaction that the transactions will not give rise to competitive concerns in any applicable market area.¹⁵⁵ They also state that for each of the proposed transactions there is no transfer of customers, and therefore there is no loss of an actual competitor.¹⁵⁶ For each transaction, the Applicants applied the Commission's current spectrum screen and conclude that no harms would result from the transactions.¹⁵⁷

67. Opponents respond that, although there is not a loss of actual competition, there would be a loss of potential competition.¹⁵⁸ They contend that these transactions may result in an increased likelihood of anticompetitive unilateral effects.¹⁵⁹ In their view, approving the proposed transactions

¹⁵⁴ See, e.g., *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17600-01 ¶ 75.

¹⁵⁵ See, e.g., Verizon-SpectrumCo Public Interest Statement at 19; Verizon-Cox Public Interest Statement at 18; Verizon Wireless-Leap-Savary Island Public Interest Statements at 11.

¹⁵⁶ Verizon Wireless-Leap-Savary Island Public Interest Statement at 12; Verizon Wireless-Cricket Public Interest Statement at 15; Verizon Wireless SpectrumCo Public Interest Statement at 24; Cox Public Interest Statement at 18; Verizon Wireless-T-Mobile Public Interest Statement at 4. In three CMAs, Leap will retain spectrum and operations where it is assigning spectrum to Verizon Wireless. See Verizon Wireless-Cricket Public Interest Statement at 15.

¹⁵⁷ The Applicants asserted that the current screen was not triggered for the *Verizon Wireless-Leap* transaction, see Verizon Wireless-Leap-Savary Island Public Interest Statement at 12; Verizon Wireless-Cricket Public Interest Statement at 15, and was triggered in 15 EAs (which include 18 CMAs) in the *Verizon Wireless-SpectrumCo* markets. See Verizon-SpectrumCo Public Interest Statement at 26-27, Exhibit 7.

¹⁵⁸ Free Press Petition at 23-24; RTG Petition at 11-12; RCA Petition at 25-30; RCA Reply at 4, 11-15. According to RCA, this potential competition would also extend to roaming services. See RCA Reply at 11-12.

¹⁵⁹ See, e.g., Consumers Union Reply at 2; Greenlining Institute Comments at 8-10; Level 3 Communications Reply at 2-3; NTCA Reply at 3-4; NJ Division of Rate Counsel Petition at 19-21, 24-27; NTCH Reply at 2-5; Public Knowledge Petition at 29-34; Rural Broadband Policy Group Petition at 2-4; RCA Petition at 8-15; RCA Reply at (continued....)

would increase consolidation in an already consolidated industry, increasing Verizon Wireless's market power and hindering the ability of smaller rival firms to acquire additional spectrum and compete.¹⁶⁰ Specifically, some parties contend that the aggregation of spectrum resulting from the proposed *Verizon Wireless-SpectrumCo-Cox* transaction would increase wireless prices.¹⁶¹ In response, Verizon Wireless generally contends that: the transactions do not raise the issue of coordinated or unilateral effects;¹⁶² robust national competition limits any potential for coordinated effects;¹⁶³ and commenters have failed to demonstrate any competitive harm at the local or national level.¹⁶⁴

68. Commenters also express concern about the possibility that Verizon Wireless's acquisition of spectrum in all of the proposed transactions would result in spectrum warehousing, foreclosing competitor access to spectrum, or raising rivals' costs.¹⁶⁵ They note that Verizon Wireless already has AWS-1 spectrum that it has not deployed.¹⁶⁶ They argue that approving the proposed transaction would allow Verizon Wireless to warehouse additional AWS-1 spectrum, preventing other service providers from obtaining access to it in the secondary market.¹⁶⁷ In particular, some commenters argue that smaller and rural carriers, without access to useable spectrum, are at a competitive disadvantage in competing against the larger wireless companies.¹⁶⁸ RCA asserts that the Commission (Continued from previous page) _____
17-19; RTG Petition at 14-16; Sprint Nextel Comments at 16-18; T-Mobile Petition at 4-5; Computer and Communications Industry Reply at 9-12.

¹⁶⁰ Public Knowledge Petition at 29-30. *See also* NTCH Petition, WT Docket 12-4 and File Nos 0004942973, etc., at 1, filed Feb. 21, 2012. Free Press Petition, WT Docket 12-175, at 2-4; ITTA Comments at 3.

¹⁶¹ New Jersey Division of Rate Counsel Petition at 24; AAI Apr 16, 2012 *Ex Parte*, at Attach., AAI White Paper at 4; Public Knowledge Petition at 25. The New Jersey Division of Rate Counsel also claims that service quality would degrade as a result of spectrum concentration from the proposed transactions. *See* New Jersey Division of Rate Counsel Petition at 24. AAI also contends that the aggregation of spectrum also can lead to lower output. *See* Letter from Richard M. Brunell, Director of Legal Advocacy, American Antitrust Institute, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Apr. 16, 2012, Attachment White Paper at 4 ("AAI Apr. 16, 2012 *Ex Parte*").

¹⁶² Joint Opposition at 46.

¹⁶³ *Id.* at 49-50, Joint Opposition, WT Docket 12-175, at 2-8.

¹⁶⁴ Joint Opposition at 41-52, Joint Opposition, WT Docket 12-175, at 2-8.

¹⁶⁵ The Greenlining Institute Comments at 8-10; Public Knowledge Petition at 29-30; Rural Broadband Policy Group Petition at 2-4; RCA Petition at 8-15; RCA Reply at 17-19; RTG Petition at 9-11; Sprint Nextel Comments at 16-18; Computer and Communications Industry Reply at 9-11; NTCH Petition at 2; Free Press Petition at 5; Free Press Comments, WT Docket 12-175, at 8; ATN Comments, filed July 10, 2012, at 5. *See also* NJ Division of Rate Counsel Petition at 20; RTG Petition, WT Docket No. 12-175, at 4; RTG Reply, WT Docket No. 12-175, at 5-6.

¹⁶⁶ Level 3 Communications Reply at 3; RCA Reply at 25-26; T-Mobile Petition at 35; Ray Declaration at 7; T-Mobile Reply at 14; Free Press Petition at 34-35; RCA Petition at 20-22; MetroPCS Reply at 2; CCIA Reply at 11-12; Letter from Carl W. Northrop, Telecommunications Law Professionals, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Jan. 27, 2012 at 2 ("MetroPCS Jan. 27, 2012 *Ex Parte Ex Parte*"); Letter from Carl W. Northrop, Telecommunications Law Professionals, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Apr. 26, 2012 at 1 ("MetroPCS Apr. 26, 2012 *Ex Parte*"); ATN Comments, filed July 10, 2012, at 7; MetroPCS Comments, filed July 10, 2012, at 2.

¹⁶⁷ Level 3 Communications Reply at 3; NTCA Reply at 5-6.

¹⁶⁸ ATN Comments, filed July 10, 2012, at 5; RTG Petition at i, 9-11. *See also* RTG Petition, File Nos. 0004942973 etc., at 12-13. Rural Broadband Policy Group Petition at 3-4; RTG Petition, WT Docket 12-175, at 5-8; Hawaiian Telcom Petition at 19; NJ Division of Rate Counsel Petition at 20.

must recognize that Verizon Wireless and AT&T constitute a duopoly that have control over most of the prime broadband spectrum, which makes it increasingly difficult for new entrants or other smaller providers to offer effective competition in the industry.¹⁶⁹ Finally, Free Press contends that Verizon Wireless would continue to have a significant spectrum advantage that would incentivize anticompetitive behavior such as raising rivals' costs.¹⁷⁰

69. In response, Verizon Wireless argues that there are competing wireless providers in each market and there is nothing preventing other competitors from acquiring spectrum on the secondary market.¹⁷¹ Verizon Wireless disputes warehousing claims, asserting that it plans to deploy its AWS-1 spectrum beginning in 2013 in order to address its capacity needs,¹⁷² thereby putting the spectrum to use promptly rather than deferring buildout.¹⁷³

70. *Discussion.* These transactions raise competitive issues both with respect to Verizon Wireless's total aggregation of spectrum and its substantial aggregation within the AWS-1 band. To evaluate the effects of these aggregations, we first apply the spectrum screen to all the transactions before us, and then examine the effects of the transactions through the lens of the AWS-1 band, and the resulting impact of Verizon Wireless's aggregation on both a local and national level. The Commission has recognized that the total amount of spectrum held by a service provider is not the only factor necessary to remain a viable competitor in the provision of mobile broadband/telephony services.¹⁷⁴ A rigorous competitive analysis requires full consideration of various factors, including the suitability and availability of spectrum that would allow rival service providers to provide an effective competitive constraint in the marketplace.¹⁷⁵ In particular, we recognize that the AWS-1 spectrum at issue in these transactions is the lone large block of currently unencumbered near-nationwide spectrum with a well-

¹⁶⁹ RCA Petition at 8. *See also* NTCH Petition, WT Docket 12-4 and File Nos. 0004942973, etc., at 2-3; AAI Apr. 16, 2012 *Ex Parte* at Attachment.

¹⁷⁰ Free Press Petition at 5; Free Press Comments, WT Docket 12-175, at 8.

¹⁷¹ Joint Opposition at 8-12, 46.

¹⁷² Letter from Adam D. Krinsky, Wilkinson Barker Knauer, LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed June 20, 2012 at 10 ("Verizon Wireless-Krinsky June 20 *Ex Parte*"); Katz Declaration at ¶ 37; Stone Supplemental Declaration at ¶¶ 27-29 (detailing steps); *see also* Letter from Tamara Preiss, Vice President Federal Regulatory Affairs, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed June 1, 2012, Bill Stone Presentation at 2 ("Verizon Wireless June 1, 2012 Stone Presentation *Ex Parte*"); Letter from Tamara Preiss, Vice President Federal Regulatory Affairs, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed May 31, 2012, Bill Stone Presentation at 2 ("Verizon Wireless May 31, 2012 *Ex Parte*"); Letter from Tamara Preiss, Vice President Federal Regulatory Affairs, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed May 17, 2012 at 3 ("Verizon Wireless-Preiss May 17, 2012 *Ex Parte*").

¹⁷³ Joint Opposition, WT Docket 12-175, at 14.

¹⁷⁴ *See AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

¹⁷⁵ *See* Letter from Richard M. Brunell, Director of Legal Advocacy, American Antitrust Institute, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Apr. 16, 2012 at 6-8 (contending that despite the fact that Verizon Wireless might exceed the spectrum screen in only a few local areas, the Commission should consider the quality of the spectrum held and the distribution of the remaining spectrum because other wireless providers face capacity constraints). *See also* Public Knowledge Petition at 34-35 (stating that "[w]hile the Commission may be guided by the spectrum screen in evaluating the proposed transactions, the screen is not a dispositive test of whether the transactions would adversely impact competition").

developed ecosystem immediately available for the provision of mobile broadband service.¹⁷⁶

71. We apply the current spectrum screen to identify local markets where total spectrum aggregation may raise concerns.¹⁷⁷ Our current spectrum screen triggers 18 local markets.¹⁷⁸ Applying the screen to take into account the spectrum Verizon Wireless is acquiring from T-Mobile does not result in any additional markets being identified by the spectrum screen.¹⁷⁹

72. We have looked closely at the markets identified by the current spectrum screen and evaluated various characteristics of these markets¹⁸⁰ that would allow rival service providers to provide an effective competitive constraint in the marketplace. Specifically, we looked at the likelihood that some competitors or potential entrants would be foreclosed from expanding capacity, deploying 4G technologies, or entering the market. We also considered the likelihood that these transactions may result in a potentially significant increase in rivals' costs to increase capacity in order to remain competitive. We conclude that there is a potential for foreclosure or increased rivals' costs in some of the local markets that were identified by the screen from the Verizon Wireless-SpectrumCo, Cox, and Leap transactions. If providers are unable to expand capacity or deploy 4G technologies, this may reduce quality and consumer choice in these local markets. These localized competitive harms are limited to a few, small areas and are not numerous enough or include a large enough percentage of the population such that they are likely to

¹⁷⁶ See, e.g., Free Press Petition at 1, 12; Letter from S. Derek Turner, Research Director, Free Press, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed June 4, 2012 at 1-5 ("Free Press June 4, 2012 *Ex Parte*") (arguing that Verizon Wireless has a competitive advantage in nationwide LTE deployment for the foreseeable future and the carrier does not need the all of the AWS-1 spectrum in the instant proceeding). See also VZW-TPK-FCC-013485 [REDACTED] Mar. 9, 2011 and VZW-TPK-FCC012289 [REDACTED] June 2011 and VZW-TPK-FCC-527547 [REDACTED] Oct. 13, 2011 and VZW-TPK-FCC-026543 at VZW-TPK-FCC-026546 [REDACTED] Oct. 17, 2011.

¹⁷⁷ See, e.g., *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8720-21 ¶ 32; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568 ¶ 108. Our current spectrum screen is where 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.

¹⁷⁸ The CMAs identified by the initial spectrum screen are: CMA15: Minneapolis-St. Paul, MN-WI, CMA48: Toledo, OH-MI, CMA64: Grand Rapids, MI, CMA71: Raleigh-Durham, NC, CMA78: Lansing-East Lansing, MI, CMA94: Saginaw-Bay City-Midland, MI, CMA264: Florence, SC, CMA310: Alabama 4 – Bibb, CMA314: Alabama 8 – Lee, CMA334: Arkansas 11 – Hempstead, CMA455: Louisiana 2 – Morehouse, CMA486: Minnesota 5 – Wilkin, CMA489: Minnesota 8 - Lac qui Parle, CMA490: Minnesota 9 – Pipestone, CMA492: Minnesota 11 – Goodhue, CMA496: Mississippi 4 – Yalobusha, CMA512: Missouri 9 – Bates, CMA658: Texas 7 – Fannin. These 18 markets exceeded the current spectrum screen by two to 19 megahertz. The screen was exceeded by two megahertz in four CMAs and by 19 megahertz in one CMA. In 14 of the 18 CMAs, the screen was exceeded by less than 10 megahertz.

¹⁷⁹ With respect to the 125 markets in which Verizon Wireless would be incurring a net loss of spectrum to T-Mobile, we note that in one of those markets -- Minnesota 8-Lac qui Parle (CMA 489) -- Verizon Wireless would continue to hold a maximum of 149 megahertz of spectrum post-transaction, which would exceed the screen by 4 megahertz. However, the likelihood of competitive harm in this market is low.

¹⁸⁰ These factors include but are not limited to demographics, market shares, coverage, and availability of spectrum within the market to provide mobile telephony/broadband services.

result in a higher nationwide price.¹⁸¹

73. We also analyze, given the current marketplace, potential local and national effects of Verizon Wireless's total post-transaction spectrum holdings of AWS-1 spectrum. We find that following the acquisition of AWS-1 spectrum from SpectrumCo, Cox, Leap, and T-Mobile, Verizon Wireless would hold a substantial proportion of the currently available greenfield AWS-1 spectrum. Combined, these acquisitions would give it at least 20 megahertz of near-nationwide greenfield spectrum in conjunction with its Upper 700 MHz C block spectrum,¹⁸² allowing Verizon Wireless to deploy two 10x10 LTE carriers on a near nationwide basis.¹⁸³

74. Verizon Wireless would hold more than 40 megahertz of AWS-1 spectrum (in at least one county) in 101 CMAs.¹⁸⁴ Forty megahertz of AWS-1 spectrum represents almost half of the total AWS-1 spectrum. In these local markets, rival service providers would likely be foreclosed from acquiring AWS-1 spectrum, which is crucial for certain rivals' LTE deployment and broadband growth. In many local markets, there is little or no other greenfield spectrum with a developed ecosystem that is currently available. Therefore, incumbent service providers likely would have to use more expensive methods either to deploy a 4G network (such as customer migration),¹⁸⁵ increase 4G capacity,¹⁸⁶ and/or

¹⁸¹ The 18 markets identified by the screen reflect a population of approximately 8.9 million, approximately 3 percent of the U.S. population.

¹⁸² See *infra* para. 74. See also VWZ-TPK-FCC-013745 at VZW-TPK-FCC-013760 [REDACTED] Oct. 31, 2011; VZW-TPK-FCC-016151 at VZW-TPK-FCC-016158 to VZW-TPK-FCC-016159 [REDACTED]; and at VZW-TPK-FCC-016168 to VZW-TPK-FCC-016183; and at VZW-TPK-FCC-016204 Oct. 2010.

¹⁸³ Clearwire is the only other mobile telephony/broadband service provider with sufficient spectrum to deploy two 10x10 LTE carriers, or the TDD equivalent of four 10 MHz TDD carriers, using greenfield spectrum in a significant number of markets. See Verizon Wireless-SpectrumCo Application, Exhibit 6; Verizon Wireless-Cox Application, Exhibit 6; Verizon Wireless-Savary Island Application, Exhibit 4; Verizon Wireless-Leap Application, Exhibit 5; T-Mobile-Verizon Wireless Application, Exhibit 3. *Fifteenth Annual Competition Report*, 26 FCC Rcd at 9672, 9698, 9719-20, 9739-40; Clearwire, "TDD-LTE Network to Service 4G 'Hot Zones' in New York, San Francisco, Los Angeles, Chicago, Seattle and More," Apr. 26, 2012, available at http://files.shareholder.com/downloads/CLWR/1540782937x0x563588/c277b3f6-de1b-4098-bdc7-f9f2ce32b758/CLWR_News_2012_4_26_General_Releases.pdf (last visited Aug. 14, 2012)(stating that Deployment of Clearwire's TDD-LTE network is targeting high demand "hot zones" in major urban centers where demand for 4G mobile broadband access is high and the need for deep 4G capacity resources is most acute).

¹⁸⁴ These 101 CMAs where Verizon Wireless would hold more than 40 megahertz of AWS-1 spectrum result only from the Verizon Wireless-SpectrumCo-Cox-Leap transactions. The result is unchanged if one includes the AWS-1 spectrum Verizon Wireless is acquiring from T-Mobile.

¹⁸⁵ See, e.g., Letter from Douglas Minster, Vice President, ATN, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed June 8, 2012 at Attachment (arguing that smaller providers will be unable to offer 4G service because of the lack of acceptable 4G spectrum today). See also Letter from Tamara Preiss, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed June 8, 2012 at 15 (stating that the ability to rely on cell splits, migration, and other techniques is difficult and costly).

¹⁸⁶ Rival service providers that have deployed or are deploying a 4G network in certain local markets may need access to additional spectrum, such as the spectrum in these transactions, to improve the quality of their current or future service offerings. Through these proposed transactions, consumers would be harmed in some instances by the inability of these rival service providers to offer a higher quality service or by higher prices that reflect higher costs of alternative capacity expansion methods. In addition, this could potentially provide Verizon Wireless an incentive to delay its own improvements in service quality or delay expansion of coverage in local markets.

serve new customers.¹⁸⁷ In addition, smaller service providers that do not currently hold spectrum licenses in a relevant local market would be foreclosed from an opportunity to expand their networks into additional geographic markets.

75. In markets where Verizon Wireless, post-SpectrumCo, Cox, Leap, and T-Mobile transactions, would hold 20-40 megahertz of AWS-1 spectrum, there is concern that in some of these markets Verizon Wireless may not quickly deploy all the spectrum it would acquire, foreclosing competitors' access and resulting in a lessening of competition. Verizon Wireless would hold, post-transactions, precisely 40 megahertz of AWS-1 spectrum in 362 of the 671 CMAs that are the subject of the proposed transactions with SpectrumCo, Cox, Leap, and T-Mobile. Providers in some of these local markets may be foreclosed from acquiring AWS-1 spectrum to either deploy 4G networks or increase capacity on their 4G networks.

76. We also find that Verizon Wireless's acquisition of this AWS-1 spectrum may have nationwide price effects as a result of potential foreclosure in numerous local markets. If other service providers find it significantly more difficult or expensive to enter or expand, in many of these markets then mobile telephony/broadband prices may increase nationwide. Further, if competitors are unable to compete vigorously with Verizon Wireless in a sufficiently large number of markets, then Verizon Wireless may have an incentive and ability to unilaterally increase price at the national level.¹⁸⁸

77. It is also relevant that Verizon Wireless currently has the most substantial total spectrum holdings of any mobile telephony/broadband provider at the national level. In considering providers' current nationwide average total spectrum holdings on a megahertz basis, in approximate terms, Verizon Wireless holds 90 megahertz, AT&T holds 88 megahertz, Sprint Nextel (excluding Clearwire)¹⁸⁹ holds 53 megahertz, T-Mobile holds 56 megahertz, Leap holds 11 megahertz, and MetroPCS and US Cellular each hold 9 megahertz. If Verizon Wireless were to complete its proposed acquisitions of spectrum from SpectrumCo, Cox, Leap, and T-Mobile, Verizon Wireless would hold an average of 107.5 megahertz of total nationwide spectrum.

78. For the foregoing reasons, we find that Verizon Wireless's acquisition of a substantial amount of AWS-1 spectrum from SpectrumCo, Cox, and Leap in numerous local markets causes significant competitive concerns.

b. Leap's Acquisition of Spectrum From Verizon Wireless

79. We now consider the potential effects on competition resulting from Leap's proposed

¹⁸⁷ Although alternative methods to increase capacity to serve additional customers are available, such as adding towers, splitting cells, or acquiring roaming rights on other networks, these substitute inputs are not equally cost effective. An increase in rivals' costs would lead to an increase in rivals' prices, which would, in turn, provide Verizon Wireless with an incentive to raise its own prices, if a sufficiently large number of local markets are implicated, without fear of loss of customers.

¹⁸⁸ If Verizon Wireless were to unilaterally increase its prices post-transactions, then a fraction of Verizon Wireless's customers would be expected to switch to a substitute service provider. To the extent that Verizon Wireless's rivals may be spectrum-constrained, without access to additional spectrum, then their ability to offer service to these additional customers may be limited. Thus, if Verizon Wireless's rivals are unable to offer a comparable competitive service in a sufficiently large number of local markets, these rivals would be less effective in disciplining any national price increase by Verizon Wireless.

¹⁸⁹ Clearwire's average total spectrum holdings on a megahertz basis is approximately 48 megahertz. Sprint Nextel, through a wholly-owned subsidiary owns the largest interest in Clearwire with an effective voting and economic interest of approximately 48.3%.

acquisition of 12 megahertz of lower 700 MHz A-block spectrum from Verizon Wireless in 13 CMAs (the Chicago BEA) on local geographic markets. The Applicants argue that the assignment of spectrum from Verizon Wireless to Leap would not result in any competitive harms.¹⁹⁰ They also note that this transaction does not involve the transfer of customers or other assets, and that Verizon Wireless will continue to offer mobile wireless services in Chicago.¹⁹¹ Post-transaction, Leap would hold no more than 22 megahertz of spectrum in any county within these 13 CMAs, which does not trigger the spectrum screen¹⁹² and is well below any level of spectrum aggregation that would raise competitive concerns. We also note that no commenter has raised any concerns of spectrum concentration with respect to this assignment to Leap. Based on our assessment of competitive conditions in these 13 local markets, we find that this transaction is unlikely to result in competitive harms.

c. T-Mobile's Acquisition of Spectrum From Verizon Wireless

80. Finally, we also consider the impact of Verizon Wireless's proposed transfer of AWS-1 spectrum to T-Mobile on both local and national markets. The Applicants to this transaction argue that the proposed transaction will not result in competitive harms and there will not be a loss of a competitor.¹⁹³ ATN claims that T-Mobile would hold AWS-1 spectrum in Allied Wireless Communications Corporation's ("AWCC's") service territory that would be disproportionate to its needs and should be carefully evaluated.¹⁹⁴ Although T-Mobile would be receiving a net transfer of spectrum in 125 CMAs, post-transaction, T-Mobile would hold no more than 90 megahertz of spectrum in any county within these 125 CMAs, and does not trigger the current spectrum screen.¹⁹⁵ This amount of total spectrum in these markets does not raise any competitive concerns. Post-transaction, T-Mobile would hold more than 40 megahertz of AWS-1 spectrum in three CMAs and would hold 40 megahertz in at least one county in 87 CMAs. We find that this AWS-1 spectrum concentration is unlikely to result in competitive harms in any local market. Our evaluation of local markets, taking into consideration various factors, finds that competitive harms are unlikely. Further, T-Mobile has already deployed a network on its AWS-1 spectrum,¹⁹⁶ and is planning to deploy a nationwide LTE network using only its AWS-1 spectrum.¹⁹⁷ Since there is unlikely to be competitive harms in any local market subject to this transaction, it is unlikely to result in an increase in prices that are set on a nationwide basis.

¹⁹⁰ See Verizon Wireless-Cricket Public Interest Statement at 14.

¹⁹¹ See *id.* at 15.

¹⁹² The Applicants also state that the assignment of this spectrum to Leap does not trigger the spectrum screen. See *id.* at 1.

¹⁹³ See T-Mobile-Verizon Wireless Public Interest Statement at 6.

¹⁹⁴ ATN Comments, filed July 10, 2012, at 5, 7. ATN also claims Verizon Wireless would hold a disproportionate amount of spectrum in AWCC's territory post transaction. See ATN Comments, filed July 10, 2012, at 5.

¹⁹⁵ Applicants apply the screen to this transaction and conclude the spectrum screen is not triggered in any CMA. See T-Mobile-Verizon Wireless Public Interest Statement at 6.

¹⁹⁶ See Press Release, T-Mobile USA Begins Commercial 3G Network Rollout (May 5, 2008), available at <http://newsroom.t-mobile.com/articles/t-mobile-UMTS-HSDPA> (last visited Aug. 2, 2012); *Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66, Fourteenth Report, 25 FCC Rcd 11407, 11565 n.709 (2010).

¹⁹⁷ Joint Opposition, WT Docket 12-175, at 3-6.

B. Competitive Impact of Transactions on Roaming

81. Roaming occurs when the subscriber of one mobile wireless provider travels beyond the service area of that provider and uses the facilities of another mobile wireless provider to place and receive calls, continue in-progress calls, and transmit and receive data. Several petitioners and commenters argue that Verizon Wireless's acquisition of the Cable Companies' AWS-1 spectrum and the implementation of the Commercial Agreements could adversely affect the market for data roaming services.¹⁹⁸ First, parties such as RCA, RTG, and NTCH contend that the transaction eliminates the Cable Companies as potential AWS-1 band LTE roaming partners and that, as a result, competing carriers will have fewer choices for roaming partners and will be more dependent on Verizon Wireless.¹⁹⁹ They also argue that the transaction increases Verizon Wireless's bargaining power in roaming negotiations and reduces its incentives to enter into reasonable roaming arrangements with competing carriers, in part by reducing Verizon Wireless's need for spectrum and thus reducing the opportunity for other providers to trade their own unused spectrum for a favorable roaming arrangement, which they contend has occurred in the past.²⁰⁰ RCA, Sprint Nextel, and MetroPCS argue that the data roaming rule adopted by the Commission in 2011 does not address these concerns, because Verizon Wireless's court challenge to the rule remains pending and because even under the rule providers have difficulty negotiating reasonable roaming arrangements.²⁰¹ In addition, Public Knowledge, MetroPCS, Free Press, and RCA state that Verizon Wireless's proposed divestiture of AWS-1 spectrum to T-Mobile does not resolve their concerns that the Verizon Wireless-SpectrumCo-Cox transaction will negatively impact the roaming market.²⁰² RCA also asserts that Verizon Wireless has also refused to offer voice roaming agreements to other providers on reasonable terms and conditions.²⁰³

82. With respect to the Verizon Wireless-T-Mobile transaction, Public Knowledge, while acknowledging it will result in some pro-competitive effects, argues that the transaction will reduce the Applicants' incentives to enter into reciprocal roaming arrangements with competing carriers. It asserts that regional carriers would face reduced access at higher costs resulting in fewer competitors entering the

¹⁹⁸ See New Jersey Division of Rate Counsel Petition at 15-16 (asserting that one consequence of license transfer is that "smaller wireless companies could find it more difficult to negotiate favorable roaming arrangements"); MetroPCS Reply at 17-19; Sprint Nextel Reply at 16-17; RTG Petition at i-ii, 11-12; RCA Petition at 31, 34-35; NTCH Petition at 3, 6-7; see also Sprint Nextel Comments at 14, 16 (urging the Commission to "conduct a detailed review of how the Verizon/Cable Company agreements will affect data roaming" and "determine whether the addition of the [Cable Companies'] AWS spectrum will give Verizon even more incentive and ability to disrupt the roaming opportunities of smaller carriers"); Public Knowledge Petition at 6-7, 48.

¹⁹⁹ RCA Petition at 34; MetroPCS Reply at 17-20; RTG Petition at 11-12; NTCH Reply at 4; NTCA Reply at 5.

²⁰⁰ MetroPCS Reply at 15-16, 17-19 (asserting that some carriers have had success in getting "roaming concessions from Verizon Wireless" when the requesting party had spectrum to trade in a particular locale that Verizon Wireless wanted, and arguing that the transaction will reduce this possibility); RCA Petition at 32-34 & n.88. See also Public Knowledge Reply, WT Docket 12-175, at 2-3.

²⁰¹ RCA Petition at 33-34; Sprint Nextel Reply at 16-17; MetroPCS Reply at 20.

²⁰² See Public Knowledge Comments, filed July 10, 2012, at 6; MetroPCS Comments, filed July 10, 2012, at 20; Free Press Comments, filed July 10, 2012, at 7; Letter from Michael Lazarus *et al.* Telecommunications Law Professionals PLLC, Counsel for RCA, WT Docket No. 12-4, to Marlene H. Dortch, Secretary, FCC, filed July 11, 2012, at 4.

²⁰³ RCA Petition at 33.

market to offer consumers more choices and competitive rates.²⁰⁴

83. Applicants respond that the parties have failed to demonstrate how the spectrum acquisition will impact roaming and that the Commission has already addressed data roaming obligations comprehensively.²⁰⁵ Verizon Wireless further asserts that claims relating to voice roaming are not germane to the transactions, that in any case the voice roaming rules have been in place since 2007 and have not been challenged in a judicial proceeding, and that in the five years that those rules have been in place, no party has filed a complaint against Verizon Wireless alleging a failure of compliance.²⁰⁶

84. *Discussion.* We agree that the availability of roaming arrangements, particularly those giving consumers roaming access to mobile broadband data services, is a significant issue. The Commission previously has found that the availability of data roaming arrangements is critical to enabling consumers to have a competitive choice of facilities-based providers offering nationwide access to commercial mobile data services.²⁰⁷ The transfer of AWS-1 spectrum to Verizon Wireless would place it in the hands of a nationwide provider that has little incentive to provide the roaming capability necessary for competitors with less than national footprints. Given the difficulties providers have had obtaining broadband data roaming arrangements and the potential for AWS-1 to provide an important new source of LTE roaming that might help alleviate these difficulties, we find that the transfer of the AWS-1 spectrum to Verizon Wireless as originally proposed would constitute a concrete potential harm to future competition.

C. Competitive Impact of Transactions on Interoperability

85. Several parties argue that the Verizon Wireless-SpectrumCo-Cox transaction increases concerns that Verizon Wireless will utilize devices using AWS-1 spectrum that lack interoperability (*i.e.*, devices that operate only over a portion of the AWS-1 band spectrum).²⁰⁸ They argue that an interoperability condition on the AWS-1 band will prevent Verizon Wireless from restricting the most innovative handsets to its own spectrum bands and will ensure that equipment for these bands remains open and available to competitors at reasonable prices.²⁰⁹ NTCH proposes a condition that Verizon

²⁰⁴ Public Knowledge Reply, WT Docket No. 12-175, at 3.

²⁰⁵ Joint Opposition at 65-66; *see also* Joint Opposition, WT Docket No. 12-175, at 12.

²⁰⁶ *See* Letter from Kathleen Grillo, Verizon, to Marlene H. Dortch, Secretary, FCC, filed Aug. 21, 2012.

²⁰⁷ *See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Second Report and Order, 26 FCC Rcd 5411, 5419 ¶ 15 (2011) (“*Data Roaming Order*”), *appeal filed, Cellco P’ship d/b/a Verizon v. FCC*, Nos. 11-1135 & 11-1136 (D.C. Cir. May 13, 2011) (“the availability of data roaming arrangements can be critical to providers remaining competitive in the mobile services marketplace”).

²⁰⁸ RCA Petition at 57 (“If granted, the Transactions will give Verizon a commanding position with respect to AWS spectrum, and the Commission must ensure that Verizon is prevented from restricting the best and most innovative handsets to its own spectrum bands and technologies.”); Public Knowledge Petition at 53 (“Verizon . . . would have such control over the AWS spectrum that it could control the equipment market”); NTCA Reply at 7-8 (“Small wireless providers . . . will be irreparably harmed if Verizon continues down a path of non-interoperability, restricting the best and most innovate[sic] handsets to its own spectrum bands.”). *See also, e.g.*, Letter from Michael Lazarus, Telecommunications Law Professionals PLLC, Counsel for RCA and ATN, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed June 22, 2012, at 5 (“The Commission must take action to ensure that Verizon does not abuse its near-monopoly power with respect to [the AWS B and F Blocks] to create a chipset that is limited only to the AWS bands used by Verizon”).

²⁰⁹ RCA Petition at 57; RCA Reply at 39; Public Knowledge Petition at 53; NTCA Reply at 7-8.

Wireless's devices have full two-way voice and data functionality across the AWS-1 band in order to permit the use of AWS-1 to expand over the entire competitive landscape and to allow Verizon Wireless's customers to roam on other networks when out of their home markets.²¹⁰ RTG argues that approval of the Verizon Wireless-T-Mobile transaction would provide Verizon Wireless with greater incentive "to create a custom-made LTE band class" to limit LTE roaming and device interoperability.²¹¹

86. Some parties also request interoperability conditions related to the Lower 700 MHz band.²¹² RCA asks the Commission to require Verizon Wireless to commit to deploying mobile wireless services on its Lower 700 MHz A and B block spectrum in the near term to decrease its own warehousing of spectrum and "allow other providers to deploy on their own Lower 700 MHz A and B block spectrum."²¹³

87. In response, Applicants contend that there is no transaction-specific evidence in the record to warrant an interoperability condition on the AWS-1 band.²¹⁴ Applicants claim that there is no basis to impose Lower 700 MHz interoperability conditions because no licenses in that band are involved in any of the transactions and because Verizon Wireless has announced its intent to sell its Lower 700 MHz holdings.²¹⁵ Moreover, the Applicants note that the Commission recently initiated a proceeding to address 700 MHz interoperability issues.²¹⁶

88. *Discussion.* While we agree with commenters that a fragmentation of the AWS-1 spectrum band similar to what has occurred in the 700 MHz band may be a serious concern, there is simply no basis in the current record to conclude that, as a result of this transaction, such fragmentation is likely to occur. The only LTE Band Class defined for AWS-1 (Band 4) covers operations over the entire AWS-1 band.²¹⁷ Therefore, manufacturers and providers building AWS-1 devices to the LTE

²¹⁰ NTCH Petition at 7-8.

²¹¹ RTG Petition, WT Docket No. 12-175, at 6-7.

²¹² See, e.g., NTCH Petition at 7-8 (proposing as a condition that any device operated by Verizon Wireless on paired spectrum in the Lower 700 MHz band must operate on all paired spectrum in the Lower 700 MHz band and to prohibit the design or procurement practices for 700 MHz equipment that impedes competition in that band or excludes access to A block spectrum in LTE wireless devices). See also NTCA Reply at 7-8. NTCH also proposes that at least 50 percent of Verizon Wireless's LTE devices sold over the next two years must be operable across the entire 700 MHz band, including Lower 700 MHz spectrum, Upper 700 MHz spectrum, and the first responder band. NTCH Petition at 8.

²¹³ RCA Petition at 57-58.

²¹⁴ Joint Opposition, WT Docket No. 12-175, at 14.

²¹⁵ Joint Opposition at 66; Letter from Adam D. Krinsky, Wilkinson Barker Knauer, LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed May 2, 2012 at 13 ("Verizon Wireless May 2, 2012 *Ex Parte*").

²¹⁶ Verizon Wireless May 2, 2012 *Ex Parte* at 13; see also Letter from John T. Scott, III, Counsel for Verizon Wireless, *et al.*, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed June 11, 2012 at 1.

²¹⁷ Industry standards for Long-Term Evolution (LTE) wireless broadband technology are developed by the 3rd Generation Partnership Project (3GPP), a consensus-driven international partnership of industry-based telecommunications standards bodies. 3GPP, established in 1998, is an industry-based group and it is not associated with any governmental agency. Its world-wide partners come from Asia, Europe, and North America. 3GPP's many technical specification groups meet in various countries throughout the year to carry out the organization's mission. See 3GPP – ABOUT 3GPP, <http://www.3gpp.org/-About-3GPP>.

specifications necessarily will be producing devices interoperable across the AWS-1 band. Verizon Wireless's current proposal being considered by 3GPP to enable LTE carrier aggregation between AWS-1 and 700 MHz Upper C block also includes the whole AWS-1 band,²¹⁸ and we are not aware of any proposal before 3GPP that would fragment the AWS-1 band. Nor are we aware of any manufacturers or operators seeking such specifications. We note that the AWS-1 band's already mature ecosystem of broadband devices has a history of interoperability in other technologies. Nonetheless, the Commission encourages continued interoperability in the AWS-1 band, and we will continue to closely monitor the development of equipment and standards for services that use the AWS-1 band. The Commission continues to believe that interoperability is an important aspect of future deployment of mobile broadband services, and will closely examine any actions taken that may have the potential to thwart interoperability that currently exists in the AWS-1 band.²¹⁹

89. We also find that any issues of interoperability in the Lower 700 MHz band raised by commenters are not transaction-related. The interoperability issues in the Lower 700 MHz band long predate these transactions. Further, the Commission has already initiated a rulemaking proceeding earlier this year to address these issues on an industry-wide basis.²²⁰

D. Other Public Interest Issues Raised by Petitioners

90. In addition to the competitive concerns addressed above, several commenters raise other issues for consideration by the Commission. These commenters propose that conditions be placed on any assigned AWS-1 licenses or request other relief to address their concerns with regard to the SpectrumCo and Cox transactions.

91. NTCH and Public Knowledge claim that acquiring additional AWS-1 spectrum will increase Verizon Wireless's leverage by making it more dominant and eliminating a source of potential competition.²²¹ Therefore, NTCH asks that the Commission condition its approval of the transactions on Verizon Wireless acquiring handsets and devices in a manner that makes these devices available to other smaller wireless carriers at similar prices and in volumes as low as 1000 devices; prohibit Verizon Wireless from entering into exclusive handset agreements with manufacturers that prevent devices from being made available to others; and require Verizon Wireless to "ratably increase the percent of AWS-compatible devices that it sells to 75% over a three-year period" to significantly accelerate the roll out of AWS-1 spectrum by other carriers.²²² IAE argues that the Commission should require Verizon Wireless to incorporate AWS capability into future LTE devices and make them available to any other

²¹⁸ See, e.g., RP-111678, "Revised WID: LTE Advanced Carrier Aggregation of Band 4 and Band 13", Verizon Wireless, Ericsson, ST Ericsson, *available at* http://www.3gpp.org/ftp/tsg_ran/TSG_RAN/TSGR_54/docs/ (last visited Aug. 16, 2012).

²¹⁹ We note that manufacturers have already begun to offer smartphones with full LTE Band 4 support. See, e.g., <http://www.phonescoop.com/phones/phone.php?p=3801> (Samsung Galaxy S III)(last visited Aug. 16, 2012); <http://www.phonescoop.com/phones/phone.php?p=3339> (LG Nitro HD)(last visited Aug. 16, 2012); <http://www.phonescoop.com/phones/phone.php?p=3824> (Motorola Atrix HD)(last visited Aug. 16, 2012).

²²⁰ *Promoting Interoperability in the 700 MHz Commercial Spectrum*, WT Docket No. 12-69, Notice of Proposed Rulemaking, 27 FCC Rcd 3521 (2012). Comments were due on or before June 1, 2012 and reply comments were due on or before July 16, 2012. 77 Fed. Reg. 19575 (Apr. 2, 2012).

²²¹ NTCH Petition at 1-3, 9-10; Public Knowledge Petition at 53. See also RCA Petition at 31.

²²² NTCH Petition at 9-10; Letter from Donald J. Evans, Counsel to NTCH, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed June 15, 2012 at 2 ("NTCH June 15, 2012 *Ex Parte*").

CDMA/LTE operator and their customers at the same device cost as it incurs in acquiring the devices.²²³ In response, Applicants state that handset exclusivity claims already are the subject of a separate request for rulemaking and the parties failed to provide sufficient basis that the transaction impacts handset exclusivity.²²⁴

92. New Jersey Division of Rate Counsel argues that Verizon Wireless's proposed acquisition of substantial amounts of new spectrum combined with its commercial agreements with cable companies to cross-market services heightens potential threats to net neutrality, and that "[i]f . . . the FCC approves the [applications], it should do so only contingent upon Verizon Wireless agreeing to abide by the third rule in the FCC's Net Neutrality Order."²²⁵ In their Joint Opposition, Applicants respond that "Open Internet issues are matters of industry-wide relevance," that if "parties disagreed with the Commission's rulemaking findings, the proper course of action was to seek reconsideration or judicial review," and that Open Internet conditions "would bear no relationship whatsoever to the license assignment under review."²²⁶

93. New Jersey Division of Rate Counsel also raises concerns regarding interstate special access, arguing that broadband deployment continues to be harmed as a result of high special access rates.²²⁷ New Jersey Division of Rate Counsel asserts that Verizon Wireless and AT&T hold a significant competitive advantage over their competitors because their extensive affiliated wireline distribution facilities allow them to avoid having to purchase special access in most of their service areas.²²⁸ Therefore, New Jersey Division of Rate Counsel requests that the Commission promptly recalibrate the supracompetitive interstate special access rates that stymie wireless broadband deployment.²²⁹ Applicants argue that the question of what rates may be charged for special access by entities not a party to this proceeding is not within the scope of the subject spectrum license assignment applications and are better considered in the context of an industry-wide, comprehensive review.²³⁰

94. *Discussion.* Commenters have not demonstrated, and we find insufficient evidence in the record to conclude, that it is necessary or appropriate to impose any of these conditions in these

²²³ IAE Petition, WT Docket No. 12-175, at 8-9.

²²⁴ Joint Opposition at 68. Handset exclusivity was the subject of a petition for rule making filed, but later withdrawn, by the Rural Cellular Association. See *Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, RM-11497, Public Notice, 23 FCC Rcd 14873 (2008), Order, 12 FCC Rcd 5294 (2012).

²²⁵ New Jersey Division of Rate Counsel Petition at 34-37. In 2010 the Commission adopted an order codifying three Net Neutrality rules, but declined to apply the third rule—non-discrimination—to wireless providers given the nascency of the mobile broadband market. See *Preserving the Open Internet*, GN Docket No. 09-191, *Broadband Industry Practices*, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17905, 17956-58 ¶¶ 93-96 (2010).

²²⁶ Joint Opposition at 67-68.

²²⁷ New Jersey Division of Rate Counsel Petition at 33.

²²⁸ *Id.* at 33-34.

²²⁹ *Id.* at 34. It also argues that the Commission should require the wireless industry to report to the Commission "regular, uniform, and comprehensive data" regarding rates, terms, and conditions and require the top wireless carriers to file detailed cost studies for its voice, data, and broadband services to enable the Commission to monitor whether carriers are charging supracompetitive rates. New Jersey Division of Rate Counsel Petition at 37.

²³⁰ See Letter from Adam D. Krinsky, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-04, filed May 17, 2012 at 2 ("Verizon Wireless-Krinsky May 17, 2012 *Ex Parte*").

transactions. In addition, these requests are not transaction-specific and the Commission generally will not impose conditions to remedy pre-existing harms unrelated to the transaction at issue.²³¹ We therefore decline to adopt these additional conditions or grant these requests for relief.

VII. POTENTIAL PUBLIC INTEREST BENEFITS

95. After assessing the potential competitive harms of the proposed transactions, we next consider whether the proposed assignment of the licenses is likely to generate verifiable, transaction-specific public interest benefits that outweigh any identified competitive harms.²³² In doing so, we ask whether the assignee 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 transaction.²³³ As described above, we have under consideration four transactions involving spectrum transfers to Leap, T-Mobile, and Verizon Wireless. We first examine the benefits of the transfers of spectrum to Leap and T-Mobile, respectively, and conclude that the acquisition of spectrum by Leap and T-Mobile from Verizon Wireless is likely to result in meaningful transaction-specific public interest benefits that support grant of the Commission's approval to these proposed transactions. Next, we consider the transfer of spectrum to Verizon Wireless in all four transactions collectively. We conclude that the asserted public interest benefits from Verizon Wireless's proposed acquisition of spectrum from SpectrumCo, Cox, Leap, and T-Mobile would not outweigh the potential for competitive harms discussed above, absent mitigating measures.

A. Analytical Framework

96. 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.”²³⁴ This same analysis applies to an acquisition of assets like that contemplated by the proposed transactions before us. 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.²³⁵

97. 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. Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a transaction is in the sole possession of the applicants, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and

²³¹ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17622 ¶ 79; *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.

²³² See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17622-23 ¶ 81; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8736 ¶ 73; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

²³³ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623 ¶ 81; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8736 ¶ 73; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

²³⁴ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623 ¶ 83 (internal quotations omitted); see also, e.g., *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8736 ¶ 74; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204.

²³⁵ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623 ¶ 83; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8737 ¶ 74; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204.

magnitude.²³⁶ In addition, “the magnitude of benefits must be calculated net of the cost of achieving them.”²³⁷ Furthermore, as the 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.”²³⁸ Third, the Commission has stated that it “will more likely find marginal cost reductions to be cognizable than reductions in fixed cost.”²³⁹ 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.²⁴⁰

98. Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims.²⁴¹ Under this sliding scale approach, where potential harms appear “both substantial and likely” – as is the case here – “a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”²⁴²

B. Asserted Benefits

99. *Verizon Wireless-Leap*. Verizon Wireless and Leap assert that their proposed transaction would result in underutilized spectrum being put to more efficient use in order to better serve their customers.²⁴³ Leap, which currently holds 10 megahertz of spectrum in the Chicago area, states that the additional 12 megahertz of spectrum would permit it to offer better broadband service and compete better by expanding its service offerings and enabling LTE deployment in a key market.²⁴⁴ Leap also states that,

²³⁶ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623 ¶ 84; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8737 ¶ 75; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

²³⁷ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623-24 ¶ 84 (internal quotations omitted); see also, e.g., *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8737 ¶ 75; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

²³⁸ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 84 (internal quotations omitted); see also, e.g., *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8737 ¶ 75; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

²³⁹ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 84 (internal quotations omitted); see also, e.g., *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8737 ¶ 75; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

²⁴⁰ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 84; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8737 ¶ 75; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206.

²⁴¹ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 85; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8737 ¶ 76; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206.

²⁴² See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 85; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8737 ¶ 76; *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.”).

²⁴³ Verizon Wireless-Leap-Savary Island Public Interest Statement at 1; Verizon Wireless-Cricket Public Interest Statement at 1, 7.

²⁴⁴ Verizon Wireless-Cricket Public Interest Statement at 1, 7; Verizon Wireless, Leap Wireless International Inc, Cricket Communications, Inc., Cricket License Company, LLC, Savary Island A, LLC, and Savary Island B, LLC Joint Opposition to Petition to Deny, File Nos. 0004942973, etc., filed March 2, 2012 (“Verizon Wireless-Leap Joint Opposition”) at 9, 11.

with other providers upgrading to LTE, such deployment is critical to delivering competitive broadband services, and that proceeds from the transaction would help finance advances in all of its markets.²⁴⁵ Verizon Wireless states that the acquisition of spectrum from Leap is necessary to supplement the spectrum on which the company currently offers LTE and EV-DO technology to its subscribers.²⁴⁶

100. *Verizon Wireless-T-Mobile.* Verizon Wireless and T-Mobile assert that the proposed transaction would permit each to better rationalize its AWS-1 spectrum and use it more efficiently for the benefit of customers.²⁴⁷ Specifically, they argue that: (1) in markets in which T-Mobile would receive a net transfer of spectrum, T-Mobile would be able to address capacity constraints it is experiencing from rapidly rising demand for data services; (2) in markets in which Verizon Wireless would receive a net transfer of spectrum, Verizon Wireless would be able to address LTE capacity constraints; and (3) the intra-market spectrum swaps will improve efficiency and enhance capacity by increasing the contiguity of spectrum held by each company and further aligning each company's spectrum blocks in adjacent markets.²⁴⁸

101. IAE states that T-Mobile's acquiring additional spectrum from Verizon Wireless is an efficiency-enhancing spectrum transfer, and that T-Mobile has demonstrated a need for additional spectrum.²⁴⁹ MetroPCS states that the intra-market swaps serve the public interest by enhancing capacity and data throughput, but do not mitigate spectrum concentration and warehousing concerns with respect to the proposed acquisition of spectrum licenses by Verizon Wireless from SpectrumCo, Cox, and Leap.²⁵⁰

102. *Verizon Wireless-SpectrumCo/Cox.* Verizon Wireless, SpectrumCo, and Cox argue that the transactions would move the Cable Companies' currently unused spectrum to a provider that would make efficient use of it, and that the spectrum would provide necessary capacity for Verizon Wireless to meet rapidly growing consumer demand for broadband data services.²⁵¹ Verizon Wireless states that, while it has sufficient spectrum to meet its immediate needs, the proposed transactions would supplement the spectrum it uses to provide 4G LTE service and would alleviate spectrum constraints that otherwise would degrade service – in some areas as early as 2013 and in many others by 2015.²⁵² Verizon Wireless asserts that additional spectrum is needed because techniques to enhance the efficient use of spectrum alone cannot meet the accelerating demand for more network capacity, and it is already achieving most if not all of the benefits it can from these techniques.²⁵³

²⁴⁵ Verizon Wireless Cricket Public Interest Statement at 7; Verizon Wireless-Leap Joint Opposition at 9, 11.

²⁴⁶ Verizon Wireless Cricket Public Interest Statement at 13-14; Verizon Wireless-Leap Joint Opposition at 12-13.

²⁴⁷ T-Mobile Verizon Wireless Public Interest Statement at 4-6.

²⁴⁸ *Id.* at 4-6. *See also* Joint Opposition, WT Docket No. 12-175, at 3-9.

²⁴⁹ IAE Petition, WT Docket No. 12-175, at unnumbered 3-5; *see also* Free Press Petition, WT Docket No. 12-175, at 3-4.

²⁵⁰ MetroPCS Comments, filed July 10, 2012, at 2 & n. 5.

²⁵¹ Verizon-SpectrumCo Public Interest Statement at 6-7, 10; Verizon-Cox Public Interest Statement at 6-7.

²⁵² Joint Opposition at 12-13.

²⁵³ Verizon-SpectrumCo Public Interest Statement at 15; Stone Declaration at ¶ 14; Verizon-Cox Public Interest Statement at 14. Verizon Wireless also asserts that it is an industry leader in efficient spectrum use, claiming that it already serves more customers per megahertz of spectrum than other national providers. Joint Opposition at 24. Opponents claim this analysis is flawed because it was performed on a nationwide basis instead of a market-by-(continued....)

103. Opponents argue that Verizon Wireless has not demonstrated that it needs the spectrum it proposes to acquire, and certainly has not done so for every market,²⁵⁴ and that other providers would put the spectrum to more immediate and efficient use.²⁵⁵ In particular, opponents assert that Verizon Wireless already has substantial holdings of spectrum for 4G LTE deployment,²⁵⁶ and that Verizon Wireless's claims of spectrum need are particularly overstated in markets where it already holds AWS-1 spectrum.²⁵⁷ Free Press contends Verizon Wireless's documents show it has no need for additional spectrum [REDACTED],²⁵⁸ [REDACTED]²⁵⁹ Opponents also contend that Verizon Wireless's claims that it would need 40 megahertz of AWS-1 spectrum in certain markets to meet capacity constraints is undermined by its sale of 10 megahertz of AWS-1 spectrum in these markets.²⁶⁰

104. To support its assertion that it needs additional spectrum to meet demand by 2015 in most markets and by the end of 2013 in some markets,²⁶¹ Verizon Wireless submitted maps it generated using its ordinary-course-of-business network planning tool.²⁶² Verizon Wireless subsequently filed modified

(Continued from previous page) _____

market basis, and does not take into account the different usage profiles of smartphones and feature phones. *See* MetroPCS Reply at 6-7; Letter from Alan Pearce, Ph.D. President and CEO, Information Age Economics, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed May 29, 2012 at 4 (agreeing with T-Mobile's analysis).

²⁵⁴ Free Press Petition at 27-36; Free Press Petition, WT Docket No. 12-175, at 4-6; RCA Petition at 22-24; Greenling Institute Reply at 4; MetroPCS Reply at 3-4, 8-9; RCA Reply at 28-29; MetroPCS Comments, filed July 10, 2012, at 9-14; Free Press Comments, filed July 10, 2012, at 2-6; RTG Petition, WT Docket No. 12-175, at 4-8, Colum McDermott Comment, WT Docket No. 12-175, at 1.

²⁵⁵ *See, e.g.*, Free Press Petition at 27-36; RCA Petition at 15-24, 46; Public Knowledge Petition at 32-33; NJ Division of Rate Counsel Petition at 12-14; ATN Comments, filed July 10, 2012; *see also* T-Mobile Petition at 35-36.

²⁵⁶ *See, e.g.*, Free Press June 4, 2012 *Ex Parte* at 4; RCA Petition at 3, 23; Letter from Jean L. Kiddoo, Bingham McCutchen, Counsel for T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed May 15, 2012 at 5; Ray Declaration at ¶ 3.

²⁵⁷ *See* Letter from Paul Desai, Communications Policy Counsel, Consumers Union, Derek Turner, Research Director, Free Press, Michael Calabrese, Senior Research Fellow, New America Foundation Open Technology Institute, Harold Feld, Senior Vice President, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed June 14, 2012 at 2 ("Public Knowledge June 14, 2012 *Ex Parte*"); Free Press June 4, 2012 *Ex Parte* at 7.

²⁵⁸ Letter from Derek Turner, Research Director, Free Press, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Apr. 26, 2012 ("Free Press Apr. 26, 2012 *Ex Parte*"); Free Press June 4, 2012 *Ex Parte* at 2, 9-12; Letter from Derek Turner, Research Director, Free Press, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed June 18, 2012 at 1-2 ("Free Press June 18, 2012 *Ex Parte*").

²⁵⁹ Free Press Apr. 26, 2012 *Ex Parte*; Free Press June 4, 2012 *Ex Parte* at 2, 12-13.

²⁶⁰ Free Press Comments, filed July 10, 2012, at 5-6; ATN Comments, filed July 10, 2012, at 6-7; Free Press Reply at 4-6. Free Press points out that Verizon Wireless is selling 10 megahertz of spectrum in Philadelphia, Pennsylvania, Washington DC, Milwaukee, Wisconsin, Memphis, Tennessee, and Albany and Rochester, New York—all markets where Verizon Wireless claimed to have significant capacity needs. *See* Free Press Comments, filed July 10, 2012, at 5.

²⁶¹ Stone Supplemental Declaration at ¶ 30.

²⁶² Letter from John T. Scott, Vice President & Deputy General Counsel, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Apr. 30, 2012 at 2 ("Verizon Wireless Apr. 30, 2012 *Ex Parte*"); Letter from Adam D. Krinsky, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, (continued....)

and additional maps that take into consideration the potential for PCS refarming²⁶³ and updated traffic projections using LTE data through April 2012.²⁶⁴ MetroPCS claims that the markets Verizon Wireless selected were not representative,²⁶⁵ and Free Press argues that the data are inconsistent with Verizon Wireless's earlier predictions and designed only to achieve regulatory approval.²⁶⁶ Verizon Wireless contends that its updated traffic forecasts cover a longer timeframe of LTE data usage and are more accurate.²⁶⁷

105. Aside from disputing Verizon Wireless's evidence of need, opponents of the transactions assert that Verizon Wireless is not adequately making use of available alternatives to address its spectrum needs, including cell splitting, refarming spectrum, deployment of small cells, and Wi-Fi offloading.²⁶⁸ Verizon Wireless states that it is investing in new macro sites and will deploy a variety of capacity enhancing techniques including cell splitting, small cells, and refarming PCS spectrum.²⁶⁹ However, it claims that these techniques are not sufficient, and it still needs to acquire additional spectrum to serve the expected demand of its customers.²⁷⁰

C. Discussion

106. *Spectrum Transfers to Leap and T-Mobile.* No party disputes that Leap and T-Mobile – (Continued from previous page) _____ filed May 29, 2012 at 2 (“Verizon Wireless May 29, 2012 *Ex Parte*”). These maps depict capacity constraints in the 99 markets where Verizon Wireless launched LTE by year-end 2011 and is proposing to acquire AWS-1 spectrum. These maps reflect capacity constraints taking into account the Company's Upper 700 MHz C Block spectrum and its existing AWS-1 spectrum and other technology advancements to achieve capacity gains. See Letter from John T. Scott III, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed May 8, 2012 at 2-3 (“Verizon Wireless May 8, 2012 *Ex Parte*”); Verizon Wireless-Preiss May 17, 2012 *Ex Parte* at 2.

²⁶³ Verizon Wireless-Preiss May 17, 2012 *Ex Parte* at 6-12; Letter from Tamara Preiss, Vice President Federal Regulatory Affairs, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed May 31, 2012 at 5-25 (“Verizon Wireless May 31, 2012 *Ex Parte*”); see also Letter from Tamara Preiss, Vice President Federal Regulatory Affairs, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed May 31, 2012 at Attachment “Verizon Wireless: Meeting Customers' Broadband Needs” (“Verizon Wireless May 31, 2012 *Ex Parte* with Attachment”).

²⁶⁴ Letter from Tamara Preiss, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed June 1, 2012 (Verizon Wireless June 1, 2012- LTE Projections *Ex Parte*).

²⁶⁵ MetroPCS Reply at 4; RCA Reply at 28.

²⁶⁶ Free Press June 4, 2012 *Ex Parte* at 1, 13.

²⁶⁷ See Verizon Wireless June 20, 2012 *Ex Parte* at 5; Verizon Wireless May 31, 2012 *Ex Parte* at 2. Verizon Wireless also contends that by year-end 2015 its LTE traffic is projected to be five times higher than the peak data traffic on its 3G EV-DO network. See Verizon Wireless June 20, 2012 *Ex Parte* at 7. See also Joint Opposition, William Stone Supp. Decl. at ¶ 9.

²⁶⁸ See, e.g., Free Press Petition at 32-34; Free Press Reply at 12; Free Press June 4, 2012 *Ex Parte* at 13-18; Public Knowledge at 33; MetroPCS Comments, filed July 10, 2012, at 8-9; Public Knowledge June 14, 2012 *Ex Parte* at 2.

²⁶⁹ Verizon Wireless Apr. 30, 2012 *Ex Parte* at 4; Verizon Wireless May 8, 2012 *Ex Parte* at 1-2, 4-5; Verizon Wireless May 29, 2012 *Ex Parte* at 6.

²⁷⁰ Joint Opposition, William Stone, Supp. Decl. at ¶ 41; See Joint Opposition, William Stone Declaration at 6, WT Docket No. 12-175, July 17, 2012 (other capacity enhancing approaches raised by petitioners including software defined radio, mesh networks, channel bonding, use of unlicensed frequencies deployment of DAS, and next generation standards are also insufficient to address Verizon Wireless's forecasted network congestion); Borth Declaration at ¶¶ 27-33.

as well as their current and potential customers – would benefit from the additional spectrum they seek to acquire. We find that the acquisition of spectrum by Leap and T-Mobile from Verizon Wireless is likely to result in meaningful transaction-specific public interest benefits – rationalization and more efficient use of spectrum – that support grant of the Commission’s approval to these proposed transactions.

107. *Spectrum Transfers to Verizon Wireless.* We find that the proposed transfer of spectrum from SpectrumCo, Cox, Leap, and T-Mobile to Verizon Wireless would have some important public interest benefits. Most importantly, the transfers from SpectrumCo, Cox, and Leap would result in utilization of currently fallow spectrum to meet the rapidly growing public demand for mobile broadband capacity, and help the United States continue to lead the world in 4G deployment and development. Given that the current licensees are not utilizing the spectrum for any purpose and appear unlikely to do so in the future, this will provide significant public interest benefits. In addition, we find that the record supports a public interest benefit in the intra-market transfers of equal amounts of spectrum between Verizon Wireless and T-Mobile, as the rationalization of spectrum holdings would enable more efficient deployment and use of the spectrum.

108. Based on our review of the pleadings, data, and documents, however, we also have concerns that Verizon Wireless has not, in the face of serious objections, sufficiently supported its claim that it will use all of the spectrum it proposes to acquire from SpectrumCo, Cox, Leap, and T-Mobile in the near term to enable its LTE network to support growing consumer demand for mobile broadband, absent more imminent buildout deadlines.

109. The documents indicate that Verizon Wireless may be [REDACTED].²⁷¹ However, these documents do not indicate that Verizon Wireless would need to deploy more than 40 megahertz of AWS-1 spectrum in any of these markets to meet capacity demands.²⁷²

110. While we do find that the transfers to Verizon Wireless would have some public interest benefits, we also recognize the serious concerns raised regarding Verizon Wireless’s ability to use the spectrum it is acquiring and its actual need for the spectrum in the near term. In particular, we recognize the concerns that capacity-enhancing technical solutions such as small cell deployment should be adequately considered, given the limited amount of spectrum currently available for 4G mobile network deployment. If commenters’ concerns are accurate that Verizon Wireless does not need the spectrum it is acquiring, at least in the near term, and the result is that Verizon Wireless does not in fact put the spectrum to use, the Applicants’ asserted benefits would be undermined. As we discuss in the following section, however, in response to these concerns, Verizon Wireless has committed to undertake an aggressive build-out schedule of the spectrum it is acquiring through these transactions. We therefore find that we can substantially credit the public interest benefits claimed by the Applicants, as detailed above.

VIII. REMEDIES

111. The Commission’s review of a proposed transaction entails a thorough examination of

²⁷¹ VZW-TPK-FCC-034481 [REDACTED] Feb. 7, 2011. *See also* VZW-TPK-FCC-013485 [REDACTED] Mar. 9, 2011 at 2, 13-14, 28-29 and VZW-TPK-FCC-016151 [REDACTED] Oct. 2010 at 18.

²⁷² *See, e.g.,* VZW-TPK-FCC-013745 [REDACTED] October 31, 2011 at 4; VZW-TPK-FCC-1044703 [REDACTED] April 20, 2012 (last modified 10/26/2011, created 5/9/2011). For Seattle and Minneapolis, post-transaction Verizon Wireless would hold more than 40 megahertz of AWS-1 spectrum. One document describes for both of these markets that Verizon Wireless would be able [REDACTED]. *See* VZW-TPK-FCC-1045058 [REDACTED] Feb. 14, 2012 at 21.

the potential public interest harms and any verifiable, transaction-specific benefits, including any voluntary commitments made by the Applicants to further the public interest. As part of this process, the Commission may impose additional remedial conditions to address potential harms likely to result from the proposed transaction or to help ensure the realization of any promised potential benefits.²⁷³ If, on balance, after taking into consideration any voluntary commitments and additional remedial conditions, the potential benefits associated with the proposed transaction outweigh any remaining potential harms, the Commission would find that the proposed transaction as serves the public interest.

112. Below, we apply this balancing approach to the spectrum assignments to Verizon Wireless from SpectrumCo, Cox, and Leap, as well as the AWS-1 spectrum assignment from T-Mobile to Verizon Wireless. The balancing approach for these transactions also takes into account the assignment of AWS-1 spectrum in 125 CMAs to T-Mobile as well as Verizon Wireless's voluntary buildout and roaming commitments. We also apply the balancing approach to the proposed assignments from Verizon Wireless to Leap and T-Mobile.

113. *Requested Remedies for Spectrum Concentration.* To address concerns arising from excessive spectrum concentration, several petitioners contend that the Commission, if it approves the proposed transactions, should require that Verizon Wireless divest portions of its spectrum where it has not demonstrated a need.²⁷⁴ Some commenters propose that the Commission require divestitures in any market where Verizon Wireless exceeds a specified cap. For example, RTG contends that the Commission should condition approval of the application on divestiture of any acquired spectrum in excess of 110 megahertz for spectrum below 2.3 GHz²⁷⁵ and Free Press states that Verizon Wireless should be required to divest AWS-1 spectrum such that in any CMA its post-transaction holdings do not exceed 20 megahertz of AWS-1 spectrum.²⁷⁶ Some parties also argue that the Commission should also condition approval of the proposed transactions on Verizon Wireless's proposed auction of its Lower 700 MHz Band A and B frequencies.²⁷⁷

114. In addition, some parties propose roaming-related conditions. Several parties request conditions that would establish new limits on the rates that Verizon Wireless can charge for voice and data roaming²⁷⁸ or require disclosure of rates being charged.²⁷⁹ NTCH also asks the Commission to

²⁷³ See, e.g., *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8718 ¶ 25; *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 30; *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.

²⁷⁴ RCA Petition at 55 (urging divestitures to existing operating carriers in markets where it is clear that Verizon Wireless's spectrum inventory unreasonably exceeds the capacity necessary to meet near-term demand); NTCA Reply at 7 (arguing that the Commission should require "divestiture of any unused or underused spectrum asset"); ATN Comments, filed July 10, 2012, at 8.

²⁷⁵ RTG Petition, WT Docket 12-175, at 4 n.5.

²⁷⁶ See Free Press Comments, filed July 10, 2012, at 6-7 (arguing that Verizon Wireless has failed to make a case why it needs more than 20 megahertz of AWS-1 in any market).

²⁷⁷ See IAE Petition, WT Docket No. 12-175, at 8-9 (arguing that the conditions should apply in WT Docket 12-4 and WT Docket 12-175); see also Public Knowledge Comments, filed July 10, 2012, at 1-2.

²⁷⁸ See, e.g., RCA Petition at 35-39, 56-57 (arguing the Commission require roaming rates to be at least as favorable as reseller rates it is offering to the Cable Companies); MetroPCS Reply at 16, 23 (same); NTCH Petition at 6 (asking for a cap on roaming rates set at "Verizon's retail or facilitated MVNO rates, assuming reasonable monthly usage levels"). RCA also contends that the Commission should require the Applicants to disclose the redacted agreements including the reseller rates being offered to the Cable Companies and to consider the reseller rates (continued....)

require Verizon Wireless to provide seamless “hand-off” of roaming calls between carriers, if technically feasible.²⁸⁰ Some commenters recommend that Commission condition the transactions on Verizon Wireless’s compliance with the roaming obligations imposed by the *Data Roaming Order* or else require Verizon Wireless to withdraw its pending court challenge to that Order.²⁸¹ Other parties also argue for performance requirements on Verizon Wireless’s acquisition of AWS-1 spectrum to ensure that the AWS-1 spectrum is rapidly put to use or sold on the secondary market.²⁸² Public Knowledge argues that roaming and build out conditions should be placed on both T-Mobile and Verizon Wireless.²⁸³

115. Commenters differ as to the extent to which the transaction between T-Mobile and Verizon Wireless addresses the need for these conditions. While some commenters find Verizon Wireless’s proposed exchange of AWS-1 licenses with T-Mobile addresses their requests for AWS-1 divestitures,²⁸⁴ others argue that the amount of AWS-1 spectrum Verizon Wireless will hold post-transaction will still be excessive in some markets and Commission should therefore require further divestitures.²⁸⁵ Several parties also argue that the Commission should still impose roaming and buildout requirements.²⁸⁶

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negotiated between the Cable Companies and Verizon Wireless to be “commercially reasonable,” as long as they were negotiated by parties each having bargaining leverage. RCA Petition at 56-57.

²⁷⁹ See NTCH June 15, 2012 *Ex Parte* at 2.

²⁸⁰ NTCH Petition at 6-7.

²⁸¹ IAE Petition, WT Docket No. 12-175, at 8-9; Public Knowledge Comments, WT Docket No. 12-175, at 3, 4. Public Knowledge contends that a roaming condition will “insulate any rules against legal risk.” *Id.* at 3.

²⁸² See NTCH Petition at 5 (arguing for requirement that acquired spectrum be put in service within 18 months); Public Knowledge Petition at 7, 49 (asserting that the Commission should require Verizon Wireless to meet the significant rural build-out requirements contained in the rules for the 700 MHz A and B blocks); IAE Petition, WT Docket No. 12-175, at 10 (advocating that Verizon Wireless must achieve coverage targets for LTE deployments within two to three years). Public Knowledge also requests that the Commission adopt “use it or share it” conditions. Public Knowledge Petition at 7, 49-52.

²⁸³ See Public Knowledge Comments, WT Docket No. 12-175, at 3-4 (stating that “[a]fter this transaction, both Verizon and T-Mobile will be in the position to build stronger networks, which reduces both of their incentives to cooperate with other carriers on data roaming”), 4 (arguing that “the Commission should take additional steps to ensure that rural Americans actually benefit from the exclusive licenses Verizon and T-Mobile will have to operate in their territory, by adopting accelerated build-out schedules backed up by ‘use it or share it’ measures”).

²⁸⁴ See Public Knowledge Comments, filed July 10, 2012, at 1-2 (stating that the transaction between Verizon Wireless and T-Mobile “does address concerns Public Knowledge has previously expressed with regard to the problem of spectrum concentration created by this transaction” and will “result in an overall enhancement of spectrum efficiency for both Verizon Wireless and T-Mobile”).

²⁸⁵ See ATN Comments, filed July 10, 2012, at 3-6; Free Press Comments, filed July 10, 2012, at 2-8 (asserting that further divestitures are needed because Verizon Wireless would continue to have a “massive spectrum advantage” that would incentivize anticompetitive behavior such as raising rivals’ costs and because the transaction with T-Mobile will still leave Verizon Wireless with more than 20 megahertz of AWS-1 spectrum in many markets); MetroPCS Comments, filed July 10, 2012, at 14 (arguing that Verizon Wireless should be ordered to also divest 20 megahertz of AWS-1 spectrum in every market in which it already holds 20 megahertz of AWS-1 spectrum and is proposing - taking into consideration the T-Mobile transaction - to acquire an additional 20 megahertz of spectrum from SpectrumCo or Cox).

²⁸⁶ See Free Press Comments, filed July 10, 2012, at 7 (roaming); Public Knowledge Comments, filed July 10, 2012, at 2 (roaming and buildout); MetroPCS Comments, filed July 10, 2012, at 20 (roaming).

116. The Applicants argue that there is no transaction-specific evidence to support a roaming or build-out condition and that the licenses are already subject to roaming and buildout obligations.²⁸⁷ In a letter filed August 15, 2012, however, Verizon Wireless has nevertheless made certain voluntary commitments with regard to both roaming arrangements and the buildout of the AWS-1 spectrum it is acquiring in the subject transactions.

117. *Verizon Wireless/SpectrumCo-Cox-Leap-T-Mobile.* We previously concluded that the acquisition by Verizon Wireless of spectrum from SpectrumCo, Cox, Leap, and T-Mobile is substantially likely to result in certain public interest harms and that the associated benefits were insufficient to determine on balance that the transaction as proposed was in the public interest. Specifically, we found that these transactions raise competitive issues both with respect to Verizon Wireless's total aggregation of spectrum and its substantial aggregation within the AWS-1 band. We also determined that the data roaming market may be further constrained as a result of the transaction. We find, however, that these potential competitive harms are mitigated by both the proposed transfer of AWS-1 spectrum from Verizon Wireless to T-Mobile in 125 CMAs and Verizon Wireless's voluntary roaming and buildout commitments.²⁸⁸

118. At the outset, we note that, as a result of this transaction, Verizon Wireless would not hold more than 40 megahertz of AWS-1 spectrum in any market. Verizon Wireless's transfer of spectrum to T-Mobile would thus address concerns raised in the record that Verizon Wireless would warehouse spectrum because it had no plans to utilize more than 40 megahertz of AWS-1 spectrum in any market. We also find that the Verizon Wireless-T-Mobile transaction would significantly reduce the likelihood that the Verizon Wireless-SpectrumCo-Cox-Leap transactions would result in potential foreclosure of rivals and/or raise rivals' costs individually or collectively, such that Verizon Wireless would have the incentive and ability to unilaterally adversely affect national pricing or local quality of service and coverage. The assignment of spectrum from Verizon Wireless to T-Mobile thus mitigates our concerns of harms from spectrum concentration, and further this assignment in itself has significant public interest benefits.

119. As noted above, Verizon Wireless's asserted public interest benefits were called into question in the record, as numerous commenters raised serious concerns regarding Verizon Wireless's ability to use the spectrum it seeks to acquire and its actual need for the spectrum. If commenters' concerns are accurate that Verizon Wireless does not need the spectrum it is acquiring, at least in the near term, and the result is that Verizon Wireless does not in fact put the spectrum to use, the Applicants' asserted benefits would be undermined. We find, however, that Verizon Wireless's voluntary buildout commitments (set forth below) mitigate concerns that some of this spectrum would lie fallow when other providers would otherwise be using the spectrum to deploy mobile broadband networks in the near term. We find that Verizon Wireless's commitment to a buildout schedule for its acquired AWS-1 licenses that is significantly earlier than the current 2021 buildout deadlines will spur rapid use of the spectrum, and benefit consumers by facilitating Verizon Wireless's expansion of capacity on its 4G LTE network consistent with the public interest benefits that Verizon Wireless asserts will result from the proposed transactions.

120. *Roaming.* We also find that the proposed transfer of spectrum to T-Mobile and Verizon Wireless's commitment to offer data roaming in the markets where it is acquiring spectrum will have important benefits by promoting the availability of data roaming arrangements. The Commission has

²⁸⁷ Joint Opposition at 65-67; Joint Opposition, WT Docket No. 12-175, at 14.

²⁸⁸ This transaction involves a net transfer of 10 megahertz of AWS-1 spectrum in 111 CMAs and 20 megahertz of AWS-1 spectrum in 14 CMAs.

noted previously that providers have experienced difficulty in the past negotiating broadband data roaming arrangements with providers offering the broadest coverage,²⁸⁹ and the transfer of AWS-1 spectrum to Verizon Wireless necessarily means that the spectrum will not be developed by other providers that might have greater incentives to provide voluntary roaming arrangements. Verizon Wireless's data roaming commitment, discussed below, also helps to address this concern by ensuring that Verizon Wireless continues to be required to offer data roaming on commercially reasonable terms and conditions in the areas connected with the transferred spectrum regardless of the outcome of the pending judicial review of the *Data Roaming Order*. In addition, the transfer of AWS-1 spectrum to T-Mobile should promote the deployment of T-Mobile's LTE network and thus expand the availability of 4G roaming alternatives to the largest two providers.

121. Accordingly, we find that the assignment of spectrum from Verizon Wireless to T-Mobile combined with Verizon Wireless's buildout and roaming commitments mitigate the public interest harms identified above sufficiently to address our concerns. We therefore disagree with parties arguing that additional conditions, including any voice or additional data roaming conditions, are necessary. Below are the conditions we impose to remedy potential spectrum concentration public interest harms:

- *T-Mobile-Verizon Wireless Applications*: Grant of the Verizon Wireless-Leap (File Nos. 0004952444, 0004949596, 0004949598), Verizon Wireless-SpectrumCo (WT Docket 12-4, File No. 0004993617), and Verizon Wireless-Cox (WT Docket 12-4, File No. 0004996680) applications is conditioned upon Verizon Wireless assigning to T-Mobile the licenses at issue in the T-Mobile-Verizon Wireless Applications (WT Docket 12-175, File Nos. 0005272585, 50000AWAA12, 50001AWAA12) within 45 days of consummating its transactions with Leap, SpectrumCo and Cox.²⁹⁰
- *Performance Requirements*:
 - Within three (3) years of the Commission's Order approving the AWS-1 license assignments, Verizon Wireless will provide signal coverage and offer service to at least 30 percent of the total population in the Economic Areas or the portions of Economic Areas in which it is acquiring AWS-1 license authorizations from SpectrumCo, Cox, T-Mobile or Leap. The total population will be calculated by summing the population for each of these areas; and
 - Within seven (7) years of the Commission's order approving the AWS-1 license assignments, Verizon Wireless will provide signal coverage and offer service to at least 70 percent of the population in each Economic Area in which it is acquiring AWS-1 license authorizations from SpectrumCo, Cox, T-Mobile or Leap, or, where a portion of the Economic Area is acquired, to at least 70 percent of the population of the total acquired portion of the licensed Economic Area.
 - Failure to meet these requirements will result in appropriate enforcement action pursuant to the Commission's statutory authority.²⁹¹

²⁸⁹ See *Data Roaming Order*, 26 FCC Rcd at 5424-5427 ¶¶ 24-27.

²⁹⁰ Verizon Wireless will not have the legal authority to assign to T-Mobile 47 of the licenses at issue in its application until Verizon Wireless has consummated its transactions with Leap, SpectrumCo and Cox acquiring those licenses.

²⁹¹ See 47 U.S.C. §§ 303(r), 312, 316, 503.

- *Roaming:*
 - In the event the current data roaming rule is not available to requesting providers, Verizon Wireless will continue to offer roaming arrangements for commercial mobile data services on any of its spectrum in the areas where it is acquiring AWS-1 spectrum from SpectrumCo, Cox, T-Mobile, or Leap to other commercial mobile data service providers on commercially reasonable terms and conditions, and providers may negotiate the terms of their arrangements on an individualized basis. This is subject to technological compatibility, technical feasibility, and economic reasonableness, and use by the requesting provider of a generation of wireless technology comparable to the technology on which the requesting provider seeks to roam. This commitment will remain in place for five (5) years following the date of the Commission's order approving the AWS-1 license assignments.

122. With respect to T-Mobile's proposed acquisition of AWS-1 spectrum from Verizon Wireless, as noted above, we have found that there are no competitive concerns. We conclude that no conditions are warranted on the proposed transfer of spectrum to T-Mobile. In particular, we find that it is not necessary to apply buildout and roaming conditions to the licenses that T-Mobile is acquiring from Verizon Wireless given T-Mobile's history of deploying its AWS-1 spectrum rapidly and T-Mobile's stronger incentives to enter into data roaming arrangements even absent any obligation to do so.²⁹²

IX. BACKHAUL AND WI-FI

123. Several petitioners and commenters raise concerns regarding potential anticompetitive impacts on the Cable Companies' provision of backhaul services and Wi-Fi access. We note that these arguments are based on the alleged effects of the Commercial Agreements rather than the license transactions. Although we generally discuss arguments regarding the impact of the Commercial Agreements below, because backhaul and Wi-Fi access can potentially reduce mobile wireless providers' need for additional spectrum to meet their subscribers' capacity demands, and because of the extensive public record compiled in this proceeding on these matters, we find that consideration of competitive harm to the availability of these inputs is necessary to properly assess the impact of the proposed license transfers, and the resulting spectrum aggregation, on wireless competition.

124. *Parties' Positions: Backhaul.* Commenters and petitioners argue that the Commercial Agreements may lead the cable companies to engage in anticompetitive conduct in their provision of backhaul services.²⁹³ Backhaul connections are an essential component of a wireless service provider's network, linking a mobile provider's cell sites to the wireline networks, carrying wireless voice and data traffic.²⁹⁴ NTCH and Sprint Nextel state that in many markets, wireless providers' only sources for backhaul capacity are Verizon and the cable company operating in that market.²⁹⁵ Therefore, they argue

²⁹² *Fifteenth Annual Competition Report*, 26 FCC Rcd at 9831 Table 27.

²⁹³ See, e.g., NTCH Petition at 12-13; Letter from Tara S. Emory, Skadden, Arps, Slate, Meagher & Flom LLP, Counsel for Sprint Nextel, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed July 12, 2012 at 3-5 ("Sprint Nextel July 12, 2012 *Ex Parte*").

²⁹⁴ *Fifteenth Annual Competition Report*, 26 FCC Rcd at 9845 ¶ 319.

²⁹⁵ NTCH Petition at 12; NTCH Reply at 5; Letter from David H. Pawlik, Skadden, Arps, Slate, Meagher & Flom LLP, Counsel for Sprint Nextel, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed July 13, 2012 at 2 ("Sprint Nextel July 13, 2012 *Ex Parte*").

that the Commercial Agreements are creating effective monopolies, which could harm competition.²⁹⁶ Commenters also contend that the Commercial Agreements provide the ability and incentive for the Cable Companies to discriminate against Verizon Wireless's competitors for backhaul services, and might result in anticompetitive terms and conditions, excessive prices, or impaired quality.²⁹⁷ RCA asks the Commission to condition its approval on access to the Applicants' backhaul capacity.²⁹⁸ NTCH proposes that the Commission require the cable companies and Verizon Wireless to offer broadband backhaul to competitors at a monthly charge not to exceed \$150 per month per gigabit between a cell site and a local switch with one-time connection fees limited to \$1,000 per cell site.²⁹⁹ Sprint Nextel asks the Commission to require the Applicants to make available their private line, backhaul, and special access services to other carriers on a nondiscriminatory basis with reasonable terms and conditions.³⁰⁰ Sprint Nextel also asks the Commission to provide that Verizon Wireless and the Cable Companies not restrict the use of their Internet access facilities for connection by femtocells and other small cells.³⁰¹ ITTA also argues that certain provisions of the Commercial Agreements will harm the market for backhaul services by ensuring that backhaul providers other than the Cable Companies will no longer receive Verizon Wireless's backhaul business.³⁰² ITTA seeks a condition prohibiting any preferential arrangements between the Applicants.³⁰³ Century Link, Fairpoint, Frontier, Windstream, and ITTA also request a condition requiring Verizon Wireless to submit, on an annual basis for the next three years and subject to confidentiality protections, all new and renewed backhaul contracts it has executed with any backhaul provider in the preceding year. These parties insist that such reports are necessary in order to address concerns that Verizon Wireless has a strong incentive to engage in unreasonable discrimination in favor of the Cable Companies in the awarding of backhaul contracts.³⁰⁴

²⁹⁶ NTCH Petition at 12-13; Letter from David H. Pawlik, Skadden, Arps, Slate, Meagher & Flom LLP, Counsel for Sprint Nextel, to Marlene H. Dortch, FCC, WT Docket No. 12-4, filed July 13, 2012 at 2 ("Sprint Nextel Pawlik July 13, 2012 *Ex Parte*"). See also Level 3 Reply at 7-9 (agreeing with Sprint Nextel, Free Press, and RCA that the joint marketing agreements are anticompetitive and imbalance the market for backhaul services); Letter from David H. Pawlik, Skadden, Arps, Slate, Meagher & Flom LLP, Counsel for Alliance for Broadband Competition, to Marlene H. Dortch, FCC, WT Docket No. 12-4, filed Aug. 2, 2012 at 3 ("Alliance for Broadband Aug. 2, 2012 *Ex Parte*"); RCA Petition at 58.

²⁹⁷ RCA Petition at 58; NTCH Petition at 12-13; NTCH Reply at 5; see also Letter from Genevieve Morelli, President, *et al.*, ITTA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed July 10, 2012 at 4 ("ITTA July 10, 2012 *Ex Parte*"); Sprint Nextel Reply at 14-15; Letter from Tara S. Emory, Counsel to Sprint Nextel, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Aug. 10, 2012 ("Sprint Nextel Aug. 10, 2012 *Ex Parte*") at 5-6; Letter from Eric J. Branfman, Bingham McCutchen LLP, Counsel for RCN, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed July 31, 2012 at 8 ("RCN July 31, 2012 *Ex Parte*").

²⁹⁸ RCA Petition at 58; RCA Reply at 5.

²⁹⁹ NTCH Petition at 13.

³⁰⁰ Sprint Nextel Reply at 15.

³⁰¹ See Letter from Tara S. Emory, Sprint Nextel, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-04, filed July 25, 2012, at 7-8 ("Sprint Nextel July 25, 2012 *Ex Parte*")

³⁰² See ITTA July 10, 2012 *Ex Parte* at 4; see also Letter from Karen Brinkmann *et al.*, Karen Brinkmann PLLC, Counsel for FairPoint, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed July 10, 2012 at 2 ("FairPoint July 10, 2012 *Ex Parte*"); Alliance for Broadband Aug. 2, 2012 *Ex Parte* at 3.

³⁰³ See ITTA July 10, 2012 *Ex Parte* at 6; FairPoint July 10, 2012 *Ex Parte* at 2-3.

³⁰⁴ Letter from Genevieve Morelli, Independent Telephone & Telecommunications Alliance, to Marlene H. Dortch, Secretary, FCC, filed Aug. 21, 2012 ("ITTA Aug. 21, 2012 *Ex Parte*").

125. The Applicants oppose requests for conditions and argue that access to backhaul facilities is not a transaction-specific harm, but instead is an industry-wide issue that should be resolved, if at all, in the context of a rulemaking proceeding.³⁰⁵ The Applicants also refute the assertion that any provision in the Commercial Agreements impede backhaul competition or limit the Cable Companies' ability or incentive to compete for backhaul business.³⁰⁶

126. *Wi-Fi Access.* Some parties raise concerns that Cable Companies may discriminate against Verizon Wireless's rivals in the provision of roaming or offload access to their Wi-Fi networks. Many cable companies have deployed cable-owned Wi-Fi access points or "hotspots" in an increasing number of public locations, allowing their broadband subscribers to access the Internet through the use of a Wi-Fi enabled handset or other device.³⁰⁷ In May 2012, Bright House Networks, Cablevision, Comcast, Cox Communications, and Time Warner Cable announced an agreement under which the companies will provide Wi-Fi access to each other's broadband subscribers.³⁰⁸ They further agreed to create a unified and simplified system of Wi-Fi access called CableWiFi.³⁰⁹

127. Some commenters raise concerns that the Commercial Agreements may provide incentives to the Cable Companies to permit consumers access to their Wi-Fi networks only when such consumers are also Verizon Wireless subscribers. For example, Sprint Nextel argues that "[a]s a result of [the] agreements, the Cable Companies will no longer be independent providers of WiFi who would be willing to partner with all wireless carriers."³¹⁰ It contends that the integrated marketing of cable and Verizon Wireless services instead creates an incentive for the Applicants to restrict or encumber access to WiFi hotspots for customers of wireless providers that compete against Verizon Wireless.³¹¹ Sprint

³⁰⁵ Joint Opposition at 67; Verizon Wireless May 2, 2012 *Ex Parte* at 13-14.

³⁰⁶ Verizon Wireless May 2, 2012 *Ex Parte* at 13; Verizon Wireless-Krinsky May 17, 2012 *Ex Parte* at 1-2 (arguing that the Cable Companies "will continue to have every economic incentive to offer competitive pricing and to market their backhaul services to a range of prospective customers, including not only Verizon Wireless, but also Sprint, AT&T, T-Mobile, and a wide assortment of regional and other mobile providers"); Letter from David Don, Senior Director, Comcast, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed July 2, 2012 at 1-2 ("Comcast July 2, 2012 *Ex Parte*") (stating that "the commercial agreements do not contain any exclusivity provisions for Verizon Wireless related to backhaul; and that the MSOs have incentives to attract as many customers on a backhaul facility as possible"); Letter from Michael H. Hammer, et al., Willkie, Farr & Gallagher LLP, Counsel to SpectrumCo, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Aug. 2, 2012 at 2 ("SpectrumCo Aug. 2, 2012 *Ex Parte*").

³⁰⁷ See, e.g., Comcast July 2, 2012 *Ex Parte* at 2, Attach. at 1; *Q: What is Xfinity WiFi?*, Xfinity.com, <http://www.comcast.com/wifi/faqs.htm?SCRedirect=true> (last visited July 23, 2012). Some of the Cable Companies, such as Comcast and TWC, also offer non-subscribers access for a charge. Comcast July 2, 2012 *Ex Parte*, Attach. at 1; Shalini Ramachandran, *Cable Firms to Share Wi-Fi*, Wall St. J., May 21, 2012, <http://allthingsd.com/20120521/five-cable-firms-to-share-wi-fi-hot-spots/>.

³⁰⁸ Comcast July 2, 2012 *Ex Parte*, Attach. at 1; *Major U.S. Cable Companies Join Forces on WiFi*, Business Wire, May 21, 2012, <http://www.businesswire.com/news/home/20120521005484/en/Major-U.S.-Cable-Companies-Join-Forces-WiFi>.

³⁰⁹ Comcast July 2, 2012 *Ex Parte*, Attach. at 1.

³¹⁰ See Sprint Nextel Reply at 12.

³¹¹ See Sprint Nextel Reply at 12; Sprint Nextel Comments at 5-7; Sprint Nextel July 12, 2012 *Ex Parte* at 2; RCA Petition at 31; Letter from Maura Colleton Corbett, Executive Director, Alliance for Broadband Competition, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed May 30, 2012 at 1-2 ("Broadband Alliance May 30, 2012 *Ex Parte*") (citing Press Release, Major U.S. Cable Companies Join Forces on WiFi (May 21, 2012), available (continued....))

Nextel proposes that the Commission condition the transaction on the Applicants providing reasonable WiFi access on nondiscriminatory terms regardless of the consumer's choice of wireless carrier.³¹²

128. Public Knowledge argues that the Commission should bar Verizon Wireless from asserting any right to prohibit the Cable Companies from entering into Wi-Fi agreements with competitors or potential competitors.³¹³ Alternatively, Public Knowledge asserts that the Commission could achieve a similar result by prohibiting Verizon Wireless from obtaining favorable terms and conditions for Wi-Fi offload from the Cable Companies.³¹⁴ To mitigate its concern that the Cable Companies will offer Verizon Wireless preferential access to their Wi-Fi networks, MetroPCS argues that the Commission should either (1) clarify that the data roaming rule applies to Cable Companies' Wi-Fi networks, or (2) condition the transaction on the Cable Companies offering other wireless providers' Wi-Fi access on commercially reasonable terms and conditions, pursuant to the data roaming rule.³¹⁵

129. Comcast responds that it provides its customers with Wi-Fi access without regard to their wireless provider and "nothing in the commercial agreements will change that[]" or materially affect its incentives to provide Wi-Fi offloading services to other wireless providers.³¹⁶ Comcast also states that "[t]he sale of WiFi service is an exception to the exclusivity provisions in the agreements through which the cable companies act as agents for Verizon Wireless" and that the Cable Companies are therefore "free to sell WiFi offload service to Verizon Wireless' competitors, provided that the service is not offered under a non-Verizon Wireless carrier's brand."³¹⁷

130. *Discussion.* We find that there is insufficient evidence of a transaction-specific harm in the foreseeable future involving either the provision of backhaul services or Wi-Fi access to warrant imposing any conditions in this proceeding. First, the Commercial Agreements do not provide Verizon Wireless with any advantage in these areas. They do not convey Verizon Wireless any rights to either Wi-Fi offload or backhaul services, let alone exclusive rights, nor do the agreements prohibit the Cable

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at <http://finance.yahoo.com/news/major-u-cable-companies-join-100000756.html> (last visited July 24, 2012)); Letter from Carl W. Northrop, Telecommunications Law Professionals PLLC, Counsel for MetroPCS, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed July 13, 2012 at 2-3 ("MetroPCS July 13, 2012 *Ex Parte*"); RCN July 31, 2012 *Ex Parte* at 8.

³¹² Sprint Nextel Reply at 13; *see also* Sprint Nextel Pawlik July 13, 2012 *Ex Parte* at 5; Alliance for Broadband Aug. 2, 2012 *Ex Parte* at 4. Sprint Nextel also argues that the Cable Companies should be prohibited from restricting wireless carriers' access to cable facilities to install microcells. Sprint Nextel July 12, 2012 *Ex Parte* at 4.

³¹³ Public Knowledge June 14, 2012 *Ex Parte* at 3; Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed June 20, 2012 at 3 ("Public Knowledge June 20, 2012 *Ex Parte*"); Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed June 22, 2012 at 2-3 ("Public Knowledge June 22, 2012 *Ex Parte*").

³¹⁴ Public Knowledge June 14, 2012 *Ex Parte* at 3.

³¹⁵ MetroPCS Comments, filed July 10, 2012, at 21-22 (citing 47 C.F.R. §§ 20.3 & 20.12(e)); MetroPCS July 13, 2012 *Ex Parte* at 2-3. *See also* Letter from Rebecca Murphy Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed July 20, 2012 at 2 ("RCA July 20, 2012 *Ex Parte*") (arguing that the Commission should require both Cable Companies and Verizon to provide Wi-Fi roaming on commercially reasonable terms and conditions); Alliance for Broadband Aug. 2, 2012 *Ex Parte* at 4.

³¹⁶ Letter from Brien C. Bell, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed June 4, 2012 at 2 ("Comcast June 4, 2012 *Ex Parte*"); Comcast July 2, 2012 *Ex Parte* at 2.

³¹⁷ Comcast July 2, 2012 *Ex Parte*, Attach. at 2; SpectrumCo Aug. 2, 2012 *Ex Parte* at 8-14.

Companies from developing these services or marketing and selling these services to Verizon Wireless's rivals.³¹⁸ Indeed, as Comcast has stated, the Commercial Agreements include provisions expressly permitting the Cable Companies to market wholesale Wi-Fi services to other providers.³¹⁹

131. Second, we conclude that the record does not support the claim that the Commercial Agreements significantly increase the ability or incentive to harm wireless providers through wholesale provision of these inputs in the short term.³²⁰ With regard to backhaul services, the available evidence does not suggest in any way that the Cable Companies will have the ability in the near term to cause any significant anticompetitive harm in the mobile telephony/broadband services market. Sprint Nextel indicates that backhaul costs account for [REDACTED].³²¹ Thus, even a significant increase in backhaul costs is unlikely to have a material impact on subscriber rates. We acknowledge that backhaul costs could consist of a greater percentage of a wireless provider's costs in the future, particularly if providers increasingly adopt a small cell architecture, but the impact of the Commercial Agreements on this future transition is uncertain and speculative and does not justify remedies to govern the provision of these services in the present. As discussed further below, we believe the modifications to the Commercial Agreements adopted in the proposed Consent Decree, particularly the limitations on the durations of the Agreements, will protect the public interest as the markets evolve.³²²

132. We find that, even if the Cable Companies had the ability to foreclose access to their backhaul service or charge significantly higher prices to Verizon Wireless's competitors (thereby imposing a competitively significant cost on Verizon Wireless's competitors), they would not have an incentive to do so. We find that such an action would reduce their own revenue and carry a very significant cost to the Cable Companies, given the large and growing nature of the backhaul services market and the evidence that Cable Companies are both well-positioned to compete in that market and increasingly successful when they do so.³²³ We conclude that any incentives the Commercial Agreements might create to favor Verizon Wireless or exclude its rivals in the provision of backhaul services are outweighed by the clear incentives against such behavior.

133. With regard to Wi-Fi access, we have considered the possible impact of the Commercial Agreements on two different cable business models discussed in the pleadings: the Cable Companies'

³¹⁸ See, e.g., Comcast July 2, 2012 *Ex Parte*, Attach. at 1; SpectrumCo Aug. 2, 2012 *Ex Parte* at 8-14.

³¹⁹ Comcast July 2, 2012 *Ex Parte* at 2. See also [REDACTED] Similarly, we are not persuaded by ITTA's argument that the provisions of the Commercial Agreements create strong incentives to ensure that competing backhaul providers no longer receive backhaul business. See ITTA July 10, 2012 *Ex Parte* at 4. The provision ITTA points to as "effectively shut[ting] out all competition for backhaul contracts with Verizon Wireless," as further explained by the parties, provides that [REDACTED] We do not find evidence before us that this will alter Verizon Wireless's incentives to seek and obtain the most competitive backhaul offerings available on the market, and find it imposes only minimal restrictions on Verizon Wireless's discretion to choose a backhaul provider.

³²⁰ We address the long term competitive impact of the Commercial Agreements below in Section X.

³²¹ See Sprint Nextel July 13, 2012 *Ex Parte* at 2-3.

³²² See *supra*, Section X.

³²³ See Sharon Armbrust, *Backhaul: The elephant in the HetNet room*, SNL KAGAN, WIRELESS INVESTOR, (Nov. 15, 2011) <http://www.snl.com/InteractiveX/ArticleAbstract.aspx?id=13669076>; Sean Buckley, *Teleco Backhaul Strategies, Wireline Wholesale Carriers Feed Off the Wireless Backhaul Bonanza*, FierceTelecom.com (Nov. 14, 2011), <http://www.fiercetelecom.com/story/service-providers-take-advantage-emerging-wireless-backhaul-opportunity/2011-11-14>; Jeff Baumgartner, *Sprint to Place Big Backhaul Bet*, Light Reading Cable (Sept. 29, 2011) http://www.lightreading.com/document.asp?doc_id=212825&site=lr_cable.

provision of Wi-Fi access to their own subscribers, and the wholesale provision of Wi-Fi access to wireless providers. In the first case, we find it extremely unlikely that Cable Companies would deny Wi-Fi access to a cable subscriber that also subscribes to a Verizon Wireless rival, because it would harm their own ability to attract and retain subscribers to their high-margin retail broadband services.

134. Regarding the possibility that the Cable Companies may discriminate in their wholesale provision of Wi-Fi access to wireless providers by favoring Verizon Wireless, we again find insufficient evidence that in the near term the Commercial Agreements will enhance either the Cable Companies' ability or incentive to raise the cost of wireless competitors sufficiently to warrant a remedial condition. If wholesale access to the Cable Companies' Wi-Fi networks were competitively significant to wireless providers at this time, we would expect to find evidence in the record that there is a significant demand for such access. The record indicates, however, that the demand for such services is at best uncertain. For example, SpectrumCo states that Wi-Fi offload services are not being provided by the Cable Companies directly to any wireless provider, including Verizon Wireless.³²⁴ Further, although Sprint Nextel asserts that "WiFi will be particularly critical to address immediate data demands,"³²⁵ [REDACTED]³²⁶ Further, while Sprint Nextel asserts that "Sprint and the smaller mobile carriers cannot build WiFi networks of their own,"³²⁷ we note that T-Mobile has deployed thousands of its own Wi-Fi hotspots, marketing access with a range of "HotSpot Network subscription" plans.³²⁸ Therefore, there is little basis from which to determine the extent if any to which discrimination in the provision of wholesale access to cable Wi-Fi networks will actually harm wireless competition in the foreseeable future.

135. With regard to the Cable Companies' incentives, we find instructive the fact that the Cable Companies negotiated with Verizon Wireless to ensure that "[t]he sale of WiFi service is an exception to the exclusivity provisions in the agreements through which the cable companies act as agents for Verizon Wireless" and that the Cable Companies are therefore "free to sell WiFi offload service to Verizon Wireless' competitors, provided that the service is not offered under a non-Verizon Wireless carrier's brand."³²⁹ Indeed, it undermines the assertion that the Cable Companies entered into these agreements with the intent of exclusively providing wholesale Wi-Fi service to Verizon Wireless. Further, limiting the wholesale provision of Wi-Fi access to Verizon Wireless would involve a loss of potential revenues for the Cable Companies.

136. Given the nascent state of the wholesale Wi-Fi market, imposing any remedial action such as a non-discrimination wholesale Wi-Fi condition on the Cable Companies would be premature and would carry a high risk of unintended consequences. We find that a better approach is to be vigilant in monitoring marketplace developments for wholesale Wi-Fi, and to take action only when problems appear likely to or actually occur. Moreover, as discussed further below, we believe the modifications to the Commercial Agreements adopted in the proposed Consent Decree will help protect the public interest

³²⁴ See SpectrumCo Aug. 2, 2012 *Ex Parte* at 3.

³²⁵ Sprint Nextel July 13, 2012 *Ex Parte* at 3.

³²⁶ Letter from David H. Pawlik, Counsel to Sprint Nextel, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed July 12, 2012, at 1-2.

³²⁷ See Sprint Nextel July 25, 2012 *Ex Parte* at 3.

³²⁸ See, e.g., T-Mobile HotSpot, US locations, <https://selfcare.hotspot.t-mobile.com/locations/viewLocationMap.do>; T-Mobile HotSpot, Services, https://selfcare.hotspot.t-mobile.com/services_plans.do.

³²⁹ Comcast July 2, 2012 *Ex Parte* Attach at 2.

as the markets evolve.³³⁰

137. We also note that the Applicants have made specific representations on the record regarding the Commercial Agreements and their application to Wi-Fi access, small cells, and backhaul services. Specifically, the Applicants have represented that the Commercial Agreements, including that portion of the Commercial Agreements that creates the Joint Operating Entity (“JOE”), will have no effect on the provision of Wi-Fi services by the Cable Companies.³³¹ We understand this to mean, among other things, that the JOE will not impose restrictions on the Wi-Fi-related activities of its members, including restrictions on Wi-Fi access, or on the offload of commercial mobile traffic by cable subscribers.³³² We further understand that neither Verizon Wireless nor the JOE will require or induce a Cable Company to discriminate in the pricing, terms, or conditions of Wi-Fi access based on a cable subscriber’s choice of wireless provider. This includes login and authentication procedures, capacity, data limits, and transmission speed.

138. The Applicants have also asserted that the Commercial Agreements will not impede backhaul competition because the Cable Companies have strong incentives to continue growing this segment of their businesses and because the Commercial Agreements do not in any way limit or commit the Cable Companies in the provision of backhaul services between the companies.³³³ We understand the Applicants’ representations to mean that neither Verizon Wireless nor the JOE will impose any restrictions on the provision of backhaul services by the Cable Companies and that the JOE will not require or induce its members to discriminate regarding backhaul terms, conditions, or pricing, or regarding the attachment of femtocells by subscribers (regardless of the subscriber’s choice of wireless provider). If, in the future, any parties find that Verizon Wireless and the Cable Companies are taking actions that are inconsistent with these material representations to the Commission, we encourage parties to bring such actions to the attention of the Commission. We will take appropriate action in the public interest in such cases. For all the reasons discussed above, we decline to impose any backhaul or Wi-Fi related conditions in this proceeding.

X. REVIEW OF THE COMMERCIAL AGREEMENTS

139. In addition to the spectrum transactions described above, Verizon Wireless entered into a series of Commercial Agreements with the Cable Companies, which include, as originally executed: (1) a series of agreements pursuant to which Verizon Wireless and the Cable Companies will act as sales agents of one another’s services; (2) a series of agreements providing each of the Cable Companies with the option, after approximately four years, to become resellers of Verizon Wireless’s services; and (3) a

³³⁰ See *supra* Section X.

³³¹ See SpectrumCo Aug. 2, 2012 *Ex Parte* at 8-10.

³³² As noted above, apart from concerns that the JOE might limit its members ability to develop and provide Wi-Fi related services to their subscribers, commenters have also argued that the JOE may discriminate in licensing Wi-Fi related technology that it develops. We address the impact of how the JOE licenses its intellectual property below as part of our separate examination of the Commercial Agreements. *Id.* We do emphasize, however, that while the JOE will be the exclusive vehicle for the development of certain wireless and wireline technology, no provision of the JOE Agreement requires JOE members to develop Wi-Fi technologies through the JOE, nor does the JOE otherwise contain any Wi-Fi exclusivity provisions. [REDACTED] Accordingly, we disagree with Public Knowledge’s assertion that “exclusivity provisions in the agency agreements could prevent TWC from licensing [Wi-Fi roaming] technology to competitors of Verizon or building on this technology in the future....” Public Knowledge June 22, 2012 *Ex Parte* at 3.

³³³ See SpectrumCo Aug. 2, 2012 *Ex Parte* at 4-6.

Joint Operating Entity (“JOE”) agreement pursuant to which Verizon Wireless, Comcast, Time Warner Cable, and Bright House plan to develop ways to integrate wireline and wireless services (“JOE Agreement”).³³⁴ A number of commenters in this proceeding have raised concerns about these agreements.³³⁵

140. In particular, commenters have expressed concern that the Commercial Agreements may reduce competition in the provision of video, voice, wireless voice and data, and broadband services, as well as bundles of such services, including bundles that offer both wireline and wireless services.³³⁶ Commenters further assert that the agreements create commercial relationships that will facilitate collaboration and decrease competition between Verizon Communications Inc. (“Verizon”) — the parent company of Verizon Wireless — and the Cable Companies.³³⁷ In this regard, commenters argue that the Commercial Agreements will reduce Verizon’s incentives to invest in and build out its fiber network, as well as its incentives to market aggressively its services in competition with those of the Cable Companies.³³⁸ Commenters assert that, within its wireline footprint, Verizon is a significant competitor to the Cable Companies in the provision of broadband, video, and voice services, particularly through its FiOS-branded fiber-to-the-home broadband and video services.³³⁹ They argue that competition from FiOS has prompted other cable operators to respond with lower prices, higher speeds, and improved network quality.³⁴⁰

³³⁴ See *supra* para. 18, note 34.

³³⁵ See, e.g., Free Press Petition at 42-52; Hawaiian Telcom Petition at 8-22; NJ Division of Rate Counsel Petition at 21-23, 34-39; NTCH Petition at 10-13; Public Knowledge Petition at 3-7, 10-21, 24-29, 36-46, A1-A9; RCA Petition at 31, 37-40, 58; RTG Petition at 20-30; CWA and IBEW Comments at ii, 6-25; DIRECTV Comments at 2-5; Free State Foundation Comments at 3, 10-11; Hispanic Technology and Telecommunications Partnership Comments at 2-3; IBEW Local 827 Comments at 1-2, 5-14; Information Technology and Innovation Foundation Comments at 5; Scott Wallsten with the Technology Policy Institute at 10-19; Sprint Nextel Comments at 1-13; AFL-CIO Reply at 1-3; City of Boston Reply at 1, 6-7; CCIA Reply at 14-20; Consumers Union Reply at 2-4; CWA and IBEW Reply at 2-30; Free Press Reply at 25-28; Hawaiian Telcom Reply at 4-16; Level 3 Reply at 3-9; Massachusetts Community Leaders Reply at 1-3; NJ Division of Rate Counsel Reply at 3-7; NTCA Reply at 4-8; NTCH Reply at 2-3, 5; Public Knowledge Reply at 2-27, 32-37; RCA Reply at 3, 5, 17; RTG Reply at 13-16; Sprint Nextel Reply at 5-6, 12-15, 17-19, 22-23; TechFreedom and the International Center for Law and Economics Reply at 18-21; Consumer Federation of America *Ex Parte* Comments at 3-9; ITTA July 10, 2012 *Ex Parte* at 3-6; Letter from Kathleen Q. Abernathy, Executive Vice President, External Affairs, Frontier Communications, and Eric N. Einhorn, Senior Vice President of Government Affairs, Windstream Communications, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 filed July 10, 2012 at 1; Letter from Melissa Newman, Vice President, Federal Regulatory Affairs, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed July 13, 2012 at 1-2; Letter from William B. Wilhelm and Frank G. Lamancusa, Counsel for Vonage Holdings Corp., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed July 16, 2012 at 2-4 (“Vonage July 16, 2012 *Ex Parte*”).

³³⁶ See CWA and IBEW Comments at 12-16; RCN July 31, 2012 *Ex Parte* at 7-8.

³³⁷ See NJ Division of Rate Counsel Petition at 21-22; RCA Petition at 37-38; DIRECTV Comments at 2; AFL-CIO Reply at 1-2; City of Boston Reply at 7; NJ Division of Rate Counsel Reply at 21-23.

³³⁸ See CWA and IBEW Comments at 6-8; AFL-CIO Reply at 2; Citizen Action of New York Reply at 6-7; City of Boston Reply at 6-7; CWA and IBEW Reply at 6-10; Don’t Bypass Buffalo Coalition Reply at 4-5; Don’t Bypass Syracuse Coalition Reply at 4-5; Massachusetts Community Leaders Reply at 2.

³³⁹ See NTCH Petition at 10-11; CWA and IBEW Comments at 7; DIRECTV Comments at 2. Verizon also provides wireline voice and DSL broadband services outside of its FiOS footprint.

³⁴⁰ See CWA and IBEW Comments at 6-9.

141. Commenters also argue that providers that are not parties to the agreements will be unable to compete effectively with the service bundles and products that Verizon Wireless and the Cable Companies now will be able to offer.³⁴¹ For example, commenters contend that the parties to the JOE no longer will be free to innovate individually or to partner with third parties.³⁴² Commenters also argue that the JOE members will have the ability and incentive to develop technologies that are not interoperable with other video or wireless providers and that they will restrict access by competitors, or their competitors' customers, to new platforms or technologies that are developed through the venture.³⁴³

142. Verizon Wireless and the Cable Companies respond that the Commission should not review the Commercial Agreements because the agreements are subject to a separate review by the Antitrust Division of the U.S. Department of Justice ("DOJ Antitrust Division"),³⁴⁴ and that the Commission does not have authority to review the agreements.³⁴⁵ They also contend that only Verizon Wireless and the Cable Companies are parties to the agreements, and that Verizon's separate wireline businesses will continue to compete vigorously against the Cable Companies.³⁴⁶ Verizon Wireless and the Cable Companies state that the Commercial Agreements are typical of other such agreements in the industry and will promote greater consumer choice, competition, and innovation.³⁴⁷

143. The Commission has authority to review the Commercial Agreements and to impose conditions to protect the public interest. After thoroughly reviewing the Commercial Agreements, we agree with commenters that, though nascent, the Commercial Agreements as originally drafted had the potential to reduce competition and harm consumers in a manner that would render the transaction as a whole, including the spectrum transfers between SpectrumCo and Cox and Verizon Wireless, inconsistent with the public interest. This is not to assert, however, that there are no potential benefits arising from the Commercial Agreements. Indeed, we note that the transaction has the potential to offer important consumer benefits. Combining the expertise and technical resources of cable and wireless providers presents the potential for new wireless-wireline bundles that may be attractive to consumers. In addition, the JOE Agreement may create incentives for important innovations and integrated offerings — both by the parties to the JOE and by their competitors in response — that might not be developed, or developed as quickly, in the absence of such focused collaboration. On balance, however, we conclude that the Commercial Agreements, as originally drafted, were contrary to the public interest.

³⁴¹ See Hawaiian Telcom Petition at 18-20; Public Knowledge Petition at 37-40; CWA and IBEW Comments at 12-15.

³⁴² See Public Knowledge Petition at 3-4, 20-21, 40-41; Hawaiian Telcom Petition at 18-20.

³⁴³ See Public Knowledge Petition at 3-4, 20-21, 40-41; Hawaiian Telcom Petition at 18-20; CWA and IBEW Reply at 14-17; Public Knowledge Reply at 8-21; ITTA July 10, 2012 *Ex Parte* at 4-5; Public Knowledge July 10, 2012 Comments Attach. at 4-29; Vonage July 16, 2012 *Ex Parte* at 2-3.

³⁴⁴ Joint Opposition at 75-76.

³⁴⁵ *Id.* at 75-79.

³⁴⁶ Letter from John T. Scott, III and Katharine R. Saunders, Verizon, and Michael E. Glover, Of Counsel, Attorneys for Verizon Wireless, Michael H. Hammer, Willkie Farr & Gallagher LLP, Attorney for SpectrumCo, and J.G. Harrington, Christina H. Burrow, and Michael Pryor, Attorneys for Cox Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed June 11, 2012 at 3; Letter from Tamara Preiss, Vice President, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed June 19, 2012, Attach. at 5 ("Verizon Wireless June 19, 2012 *Ex Parte*").

³⁴⁷ Verizon June 19, 2012 *Ex Parte* at 1, Attach. at 5-8.

144. The Commission staff coordinated closely with the DOJ Antitrust Division, which conducted its own independent and comprehensive investigation of these agreements. The DOJ Antitrust Division, working with Commission staff, has negotiated a proposed Consent Decree with Verizon Wireless and the Cable Companies.³⁴⁸ The Consent Decree requires that the parties to the agreements alter them in multiple, fundamental ways that address the key potential harms to consumers and competition. Having reviewed the agreements and worked with the DOJ Antitrust Division to require significant changes that protect competition and consumers, as reflected in the Consent Decree, we conclude that we do not need to impose further conditions at this time, except as discussed below.

145. Because these agreements are in the early stages of implementation and relate to evolving markets, it is inherently difficult to predict their effects. Accordingly, it is important that Verizon has agreed to comply with a number of monitoring and reporting conditions. In addition, we will continue to monitor closely any effects the Commercial Agreements have on the marketplace, and on the development of emerging product markets. To assist in that monitoring, we direct the Wireline Competition Bureau to take all actions necessary to open a docket for the public to file complaints or petitions alleging that the parties are acting in violation of the conditions imposed by this order or engaging in anticompetitive conduct relating to this transaction that implicates the public interest or otherwise violates the Act or Commission rules.³⁴⁹

146. We discuss below the ways in which the proposed Consent Decree alleviates potential competitive concerns with respect to (1) wireline broadband, video, and voice services; (2) wireless home broadband services; (3) wireless/wireline integration services; and (4) mobile wireless services.

147. *Wireline Broadband, Video, and Voice Competition.* Verizon sells wireline video, broadband, and voice services that compete directly with the Cable Companies' products. Verizon's majority ownership of Verizon Wireless raises concerns regarding the impact of the agreements on Verizon's incentive to compete against the Cable Companies. As noted above, Verizon Wireless has entered into agency agreements with each of the Cable Companies, pursuant to which it is permitted to sell the services of the Cable Companies and to receive commission payments for such sales.³⁵⁰ As originally executed, the Cable Agent Agreements would have curtailed Verizon Wireless's ability to

³⁴⁸ Stipulation and Order and Proposed Final Judgment, *United States and State of New York v. Verizon Communications Inc., Cellco Partnership d/b/a Verizon Wireless, Comcast Corp., Time Warner Cable Inc., Cox Communications, Inc. and Bright House Networks, LLC*, No. 1:12-cv-02354 (D.D.C. filed Aug. 16, 2012) ("Consent Decree"). The Consent Decree and other related documents are available at <http://www.justice.gov/atr/cases/verizoncable.html>. We note that the term consent decree, as generally used, refers to both a proposed final judgment agreed to by the parties before it is approved by the court, and a final judgment once it has been approved by the court, as the case may be. Proposed settlements in civil antitrust cases brought by the United States are subject to judicial approval pursuant to the Tunney Act, 15 U.S.C. §16.

³⁴⁹ Aside from Section 310(d), 47 U.S.C. § 310(d), the Commission's authority is provided by several sections of the Communications Act, including, but not limited to, Section 2, providing the Commission with jurisdiction over all interstate communications by wire or radio, 47 U.S.C. §152; Section 201(b), requiring all charges and practices relating to communication services to be just and reasonable, 47 U.S.C. §201(b); Section 316, permitting the Commission to modify a license at any time during its term if doing so "will promote the public interest, convenience, and necessity or the provisions of this Act", 47 U.S.C. §316; and Section 628(b), making it illegal for a cable operator to engage in unfair methods of competition or other unfair practices that hinder significantly or prevent any video operator from providing programming to its subscribers, such as by entering into exclusive arrangements, 47 U.S.C. §458(b).

³⁵⁰ See BHN Agent Agreement; Comcast Agent Agreement; Cox Agent Agreement; TWC Agent Agreement (collectively, "Cable Agent Agreements").

market and sell FiOS services effectively and raised potential concerns regarding Verizon's incentives to compete with the Cable Companies in providing DSL service. These agreements would have had the effect of reducing competition, causing consumer confusion, and potentially undermining incentives for Verizon to resume its FiOS buildout.

148. In particular, the Cable Agent Agreements would have allowed Verizon Wireless to sell the Cable Companies' services through its stores and other sales channels in geographic areas that overlap with Verizon's FiOS-branded offerings, among other places.³⁵¹ Moreover, as executed, the Cable Agent Agreements also stipulated that, if Verizon Wireless elected to sell FiOS services within the FiOS footprint, it would be required to sell both sets of products on "an equivalent basis," effectively remaining neutral between FiOS products owned by its parent company and competing cable services.³⁵²

149. Verizon Wireless has the potential to serve as a marketing and sales outlet for FiOS and for service bundles that include both Verizon Wireless and FiOS video and broadband services. Verizon's prior decision to market FiOS in some Verizon Wireless stores indicates its understanding that there is a market for bundles of wireless services together with video and other services.³⁵³ Moreover, as noted above, under the Cable Agent Agreements as executed, Verizon Wireless was required to sell FiOS and the products of the Cable Companies on "an equivalent basis." We are concerned that these contractual provisions would diminish Verizon Wireless's incentives to sell bundles including FiOS video and broadband services, cause substantial confusion among consumers, dilute the value of the FiOS brand, and ultimately reduce competition in the marketplace. In addition, because of the sales commissions that Verizon Wireless would have received from selling Cable Company services within the FiOS footprint, the Cable Agent Agreements also could reduce Verizon's incentive to aggressively market or continue to build out FiOS.

150. In addition, commenters raised concerns that another aspect of the Cable Agent Agreements would restrict Verizon's ability to market FiOS effectively in areas in which the FiOS network is built out in the future.³⁵⁴ As originally executed, the Cable Agent Agreements prohibited Verizon Wireless from selling FiOS services outside its currently planned FiOS footprint.³⁵⁵ This territory was defined as of the date the agreements were signed and therefore precluded Verizon Wireless from selling FiOS services in any future franchise areas. In evaluating the significance of this provision, we take account of Verizon's repeated public statements, in congressional testimony and elsewhere, that it

³⁵¹ As noted above, Verizon Wireless and the Cable Companies have begun selling each other's services in various markets throughout the country, but have not yet started cross-marketing in FiOS territories. See Steve Donohue, "Comcast Expands Promotion with Verizon Wireless; Offers Free DVR, Streampix Subscriptions," FIERCECABLE (June 21, 2012), <http://www.fiercecable.com/story/comcast-expands-promotions-verizon-wireless-offers-free-dvr-streampix-subsc/2012-06-21>.

³⁵² See BHN Agent Agreement at § 2.6; Comcast Agent Agreement at § 2.6; Cox Agent Agreement at § 2.6; TWC Agent Agreement at § 2.6.

³⁵³ See U.S. Senate Judiciary Committee, Hearing of the Subcommittee on Antitrust, Competition Policy and Consumer Rights, *Verizon Communications' Response to Questions for the Record From Senator Herb Kohl: "The Verizon/Cable Deals: Harmless Collaboration or a Threat to Competition and Consumers?"* (Apr. 19, 2012)(explaining that there are FiOS kiosks in 96 Verizon Wireless Stores).

³⁵⁴ See CWA and IBEW Comments at 6-8; AFL-CIO Reply at 2; Citizen Action of New York Reply at 6-7; City of Boston Reply at 6-7; CWA and IBEW Reply at 6-10; Don't Bypass Buffalo Coalition Reply at 4-5; Don't Bypass Syracuse Coalition Reply at 4-5; Massachusetts Community Leaders Reply at 2.

³⁵⁵ See BHN Agent Agreement at § 2.4.2(a); Comcast Agent Agreement at § 2.4.2(a); Cox Agent Agreement at § 2.4.2(a); TWC Agent Agreement at § 2.4.2(a) [REDACTED]

has no intention to expand FiOS beyond its current buildout commitments at this time.³⁵⁶ Nevertheless, to the extent that Verizon otherwise would reassess that decision at some point in the future, the original Cable Agent Agreements would have reduced Verizon's economic incentives to expand FiOS.

151. The proposed Consent Decree requires Verizon Wireless and the Cable Companies to modify the Cable Agent Agreements in a manner that directly addresses these concerns. The parties have agreed that Verizon Wireless will not sell the Cable Companies' services in any stores that are located in, or to any customers that reside in, geographic areas where FiOS is available, either now or in the future.³⁵⁷ The parties also have agreed that Verizon Wireless will not sell Cable Company services in areas where Verizon is currently, or in the future becomes, obligated or authorized to provide FiOS service.³⁵⁸ We believe that, by eliminating the ability of Verizon Wireless to market the services of the Cable Companies within the current and future FiOS footprint, the proposed Consent Decree protects against the potential harms to competition and consumers described above that otherwise could have resulted from the Commercial Agreements in these areas.

152. Additionally, as a result of the proposed Consent Decree, the Commercial Agreements will allow Verizon Wireless to sell Verizon services, including FiOS services, anywhere without restriction, including areas where FiOS is offered in the future.³⁵⁹ Moreover, the parties have agreed that Verizon Wireless will not sell the Cable Companies' services for any service address, or through a Verizon store, in Verizon's DSL Footprint after December 2, 2016, without first obtaining DOJ

³⁵⁶ For example, in an interview with UBS analyst John Hodulik, Lowell McAdam, Verizon President & CEO, stated, "With FiOS we are about 16 million POPs at this point and we want to get to about 18 million. If we built out the whole footprint, we would be more in the 21 million, maybe a little bit more, range . . . But for now the bottom line is we are going to build out what we said and not any more." See *VZ-Verizon Communications Inc at UBS Media and Communications Conference*, Final Transcript, THOMSON STREETEVENTS, Dec. 7, 2011, http://www22.verizon.com/idc/groups/public/documents/adacct/event_1012_trans.pdf (visited Aug. 3, 2012). See also, e.g., U.S. Senate Judiciary Committee, Hearing of the Subcommittee on Antitrust, Competition Policy and Consumer Rights, *Verizon Communications' Response to Sen. Kohl's Follow-Up Questions for the Record for Hearing On "The Verizon/Cable Deals: Harmless Collaboration or a Threat to Competition and Consumers?"* (Apr. 19, 2012), <http://www.judiciary.senate.gov/resources/transcripts/upload/032112QFRs-Milch.pdf> (visited Aug. 9, 2012)(Verizon Communications' General Counsel Randal Milch, responded "Well before the companies began negotiating the arrangements at issue, Verizon decided to continue building out FiOS only where its franchise agreements require it to do so... Verizon has no plans to expand FiOS into new franchise areas."); U.S. Senate Judiciary Committee, Hearing of the Subcommittee on Antitrust, Competition Policy and Consumer Rights, *Verizon Communications' Response to Questions for the Record From Senator Charles E. Schumer: "The Verizon/Cable Deals: Harmless Collaboration or a Threat to Competition and Consumers?"* (Apr. 19, 2012); Tim Knauss, "Some CNY Communities Won't Get FiOS as Verizon Halts Expansion," *The Post-Standard*, (Apr. 6, 2010), http://www.syracuse.com/news/index.ssf/2010/04/some_cny_communities_wont_get.html (visited Aug. 10, 2012)(Verizon announced the end of its five year project to build a high speed fiber optic network to compete with cable TV companies; will continue to string fiber in communities where it has already signed franchises, but will not expand into new areas).

³⁵⁷ Consent Decree Sec. V.A.

³⁵⁸ The applicable FiOS Footprint for this restriction is defined as any territory in which Verizon now or in the future: "(i) has built out the capability to deliver FiOS Services, (ii) has a legally binding commitment in effect to build out the capability to deliver FiOS Services, (iii) has a non-statewide franchise agreement or similar grant in effect authorizing Verizon to build out the capability to deliver FiOS Services, or (iv) has delivered notice of an intention to build out the capability to deliver FiOS Services pursuant to a statewide franchise agreement." Consent Decree, Sec. II.

³⁵⁹ Consent Decree, Sec. IV. B.

permission to do so.³⁶⁰ Given the extensive lead time that any further buildout of FiOS necessarily would entail, it may not be feasible for Verizon to obtain the necessary approvals, build out its FiOS network, and begin offering service before 2016 – the year of the termination date set forth in the Consent Decree – in significant areas beyond existing franchise areas. Thus, to the extent that Verizon reconsiders its FiOS strategy in the future, the Consent Decree ensures that the Cable Agent Agreements will not provide a substantial disincentive to expand FiOS.

153. The proposed Consent Decree also addresses concerns about potential harm from the original Commercial Agreements to Verizon's offering of DSL services. As compared to FiOS areas, potential harms within the Verizon footprint where Verizon currently offers only DSL services are reduced to the extent that DSL services are less similar than FiOS to the services of the Cable Companies. As currently deployed by Verizon, its DSL service is less similar to Cable Company services due in part to the lack of a Verizon video service in DSL-only territories and the lower broadband speeds available with DSL compared to FiOS.³⁶¹ In any event, because the Consent Decree precludes Verizon Wireless from offering the services of the Cable Companies not only to homes to which Verizon currently offers FiOS, but also those to which it is authorized or obligated to do so in the future, it covers a significant part of the area where DSL, and not FiOS, is currently offered. This change substantially counteracts incentives Verizon might have had to stop or reduce its DSL offerings. Even beyond that, under the Consent Decree, the Commercial Agreements will be modified so that Verizon retains the ability to bundle its services, including DSL services, with Verizon Wireless services,³⁶² and Verizon Wireless may sell Verizon services without restriction, including Verizon's DSL services.³⁶³ We believe these modifications relating to the bundling of Verizon's DSL services may enhance the attractiveness of DSL to some consumers and therefore may create a more level playing field between DSL and cable broadband services than would have existed under the original agreements. Moreover, the Consent Decree limits the duration of the Cable Agent Agreements in the DSL footprint and provides regulators with an opportunity to reassess any effects the Commercial Agreements may have on the broadband marketplace as it continues to evolve.

154. In addition, during the reduced term in which Verizon Wireless will be permitted to sell the Cable Companies' services in Verizon's DSL footprint, Verizon has agreed to provide substantial information to the Commission regarding the effect of the agreements on DSL/cable broadband competition.³⁶⁴ Those reports, which we adopt as a compliance condition for Verizon, are consistent with, and support, the Commission's central goal of advancing broadband to all Americans. They will

³⁶⁰ Consent Decree, Sec. V.B. Specifically, the proposed Consent Decree provides that Verizon may petition DOJ to allow Verizon Wireless to continue selling the Cable Companies' services in some or all of its DSL Footprint, in which case DOJ will expeditiously examine existing market conditions to determine whether such sales will adversely impact competition. *Id.* The Consent Decree defines Verizon's "DSL Footprint" as "any territory that is, as of the date of entry of this Final Judgment, served by a wire center that provides Digital Subscriber Line ('DSL') service to more than a *de minimis* number of customers over copper telephone lines owned and operated by [Verizon], but excluding any territory in the FiOS Footprint." Consent Decree, Sec. II.

³⁶¹ Verizon's maximum advertised DSL speed is 15Mbps whereas FiOS offers up to 300Mbps and the Cable Companies offer maximum speeds up to 105Mbps. We note, however, that DSL technology can be deployed to achieve higher maximum speeds than those currently offered by Verizon.

³⁶² Consent Decree, Sec. IV.C.

³⁶³ Consent Decree, Sec. IV.B.

³⁶⁴ See Letter from Kathleen Grillo, Senior Vice President, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Aug. 15, 2012.

allow us to monitor the impact of the Commercial Agreements — especially the Cable Agent Agreements — on Verizon’s DSL offerings. They will thereby enable the Commission to take any additional remedial actions that prove necessary. Moreover, as noted, we will open a new docket so that members of the public and other stakeholders may file complaints or petitions if they believe the parties are acting in violation of the conditions imposed by this order or engaging in anticompetitive conduct relating to this transaction that implicates the public interest or otherwise violates the Act or Commission rules.

155. As set forth in the Reporting Requirements appendix to this Order, Verizon commits over the next five years to provide the Commission with more than two years of historical data, and on a semi-annual basis going forward, monthly data showing how many households Verizon offers DSL services to and how many DSL subscribers Verizon has, the average revenue per DSL account, how many DSL subscribers Verizon has acquired and lost during each month, the number of DSL lines by speed tier, and the number of sales of FiOS services to former Verizon DSL customers. These data will be reported in a manner that will allow us to distinguish between DSL customers located inside and outside the footprint of the Cable Companies, so that we can assess the impact of the agreements on DSL by comparing trends in the two areas.

156. Commenters also expressed concerns that Verizon and third-party providers will not have access to, and will find it difficult to compete with, the bundles of wireline and wireless services that the Cable Companies will be able to offer pursuant to the agreements.³⁶⁵ The Commercial Agreements, as initially executed, [REDACTED].³⁶⁶ [REDACTED].³⁶⁷ This provision could have been interpreted as limiting Verizon Wireless’s ability to participate in and support a service bundle with providers who are not parties to the agreements, including Verizon and other video programming competitors to the Cable Companies.

157. Pursuant to the terms of the proposed Consent Decree, the parties will amend the Commercial Agreements to ensure that there is no restriction on Verizon Wireless’s sale of any Verizon service.³⁶⁸ The Commercial Agreements also will be modified to ensure there is no restriction on Verizon Wireless’s ability to authorize, permit, or enable Verizon to sell Verizon Wireless services in combination with any broadband, telephony, or video programming distribution service.³⁶⁹ We believe that these modifications will help ensure that consumers have options to receive robust service bundles from multiple competitors. In particular, the ability for Verizon to partner with Verizon Wireless and a third-party video provider in areas where Verizon does not offer a FiOS video service allows Verizon to offer service bundles to consumers that compete with those offered pursuant to the Commercial Agreements. Moreover, the ability for third-party video providers to participate in such bundles allows their customers to have access to the same types of service bundles that are available to customers of the

³⁶⁵ See Public Knowledge Petition at 39-40; CWA and IBEW Comments at 12-16; RCN July 31, 2012 *Ex Parte* at 7-8.

³⁶⁶ See BHN Agent Agreement at § 2.4.1; Comcast Agent Agreement at § 2.4.1; Cox Agent Agreement at § 2.4.1; TWC Agent Agreement at § 2.4.1.

³⁶⁷ See BHN Agent Agreement at §§ 2.4.1, 2.4.2(b); Comcast Agent Agreement at §§ 2.4.1, 2.4.2(b); Cox Agent Agreement at §§ 2.4.1, 2.4.2(b); TWC Agent Agreement at §§ 2.4.1, 2.4.2(b).

³⁶⁸ Consent Decree, Sec. IV.B.

³⁶⁹ Consent Decree, Sec. IV.C. We note that, under the terms of the Consent Decree, the amended Commercial Agreements may prohibit Verizon Wireless from marketing or initiating the sale of a Verizon bundle that includes a third-party broadband, telephony, or video service. *Id.* This restriction, however, in no way limits the ability of Verizon to offer such a bundle or the ability of third-party providers to participate in it.

Cable Companies.

158. Some commenters assert that we should require Verizon, as a condition of the transaction, to continue to provide DSL service on a stand-alone basis.³⁷⁰ Although we recognize the potential value of such an offering to some subscribers, evidence submitted by Verizon convinces us that the decision to stop offering stand-alone DSL to new subscribers was made independently of this transaction.³⁷¹ Therefore, while we do not discount the value of stand-alone DSL service, we do not believe that it is necessary or appropriate to condition our approval on a commitment by Verizon to revive a service offering that it already has stopped making available to new subscribers. Moreover, nothing in the agreements would preclude Verizon from offering unbundled DSL service in the future or allowing DSL service to be offered by competitors to the Cable Companies in their own service bundles. In addition, our reporting requirements will help us ensure that Verizon and Verizon Wireless are not favoring MSO offerings at the expense of its DSL service.

159. *Wireless Home Broadband Services.* We are also persuaded that the modifications set forth in the proposed Consent Decree adequately address concerns regarding potential harms to home broadband competition from wireless technologies. The Commercial Agreements, as originally executed, could have been interpreted to preclude Verizon Wireless from marketing various wireless broadband services that subscribers use mostly in their homes, such as HomeFusion or Home Phone Connect.³⁷² HomeFusion relies on Verizon Wireless's LTE network to provide residential subscribers with a broadband service advertised as capable of providing 5–12 Mbps download and 2–5 Mbps upload speeds.³⁷³ This service, and others like it, could increase broadband competition and expand broadband availability, especially in rural areas and other areas where consumers currently have few choices among broadband providers.³⁷⁴ Under the terms of the Consent Decree, the parties must amend the Commercial Agreements so that they unambiguously do not restrict Verizon Wireless's ability to sell any wireless service provided over any wireless spectrum licensed by the FCC and to clarify that Verizon Wireless retains the ability to sell HomeFusion and Home Phone Connect.³⁷⁵ Accordingly, the Commercial Agreements, as modified, should have no material impact on the ability of Verizon Wireless to market HomeFusion, Home Phone Connect, or similar services.

160. *Wireless/Wireline Integration and the Joint Operating Entity.* We also share commenters' concerns that the JOE agreement, as originally executed, could have provided the parties to the agreement with the ability and incentives to restrict their competitors' access to any new technologies

³⁷⁰ See, e.g., Vonage July 16, 2012 *Ex Parte* at 1-2, 4, Attach. at 1-4.

³⁷¹ See Letter from Ian Dillner, Vice President, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (June 12, 2012).

³⁷² See, e.g., Comcast Agent Agreement with VZW, § 2.4.1. Home Phone Connect enables consumers to use their legacy telephones to make phone calls over Verizon Wireless's mobile wireless network. Because Home Phone Connect is marketed as a replacement for legacy telephone service, it fosters local telephone service competition, particularly outside Verizon's wireline service territory. It does not currently include a data service.

³⁷³ See <http://www.verizonwireless.com/b2c/splash/homefusion.jsp>.

³⁷⁴ Although Verizon Wireless advertises its HomeFusion service as being available nationwide, the price and usage capacity limitations of the service suggest that it likely will be of the greatest value to consumers in rural areas and other underserved areas. See <http://www.verizonwireless.com/b2c/splash/homefusion.jsp> (offering as of August 1, 2012, 10 GB/month plans for \$60 per month; 20 GB/month plans for \$90 per month, and 30 GB/month plans for \$120 per month; all with a 2 year contract and \$199.99 equipment and installation fee).

³⁷⁵ Consent Decree, Sec. IV.A.

that the JOE may develop.³⁷⁶ According to the JOE Agreement, the primary purpose of the JOE is to serve as the exclusive vehicle for its members to develop integrated wireless and wireline products, services, and devices.³⁷⁷ [REDACTED].³⁷⁸ [REDACTED].³⁷⁹ The JOE Agreement precludes members from developing integrated wireless/wireline products and services independently with other non-member wireless, broadband, and video competitors. [REDACTED].³⁸⁰

161. While we share commenters' concerns that the exclusive nature of the JOE potentially creates the opportunity for JOE members to foreclose access to any new integrated wireless/wireline products and services the JOE develops, we also recognize that exclusivity creates incentives for JOE members to invest in the development of new and innovative products and services to the benefit of consumers. Absent exclusivity and the ability to gain a market advantage through innovative new products and services developed through the JOE collaboration, the parties to that agreement may have less incentive to create such products in the first place. Moreover, the existence of the JOE may spur alternative industry collaborations to develop integrated wireless and wireline products. We must balance the potential for innovation against the potential for exclusive or anticompetitive conduct. We are also mindful that the JOE is a recent creation, and any effects it may have on the marketplace are necessarily speculative at this time.³⁸¹ Nonetheless, the JOE Agreement, as originally executed, could have created an ongoing collaboration of competitors with the potential to affect competition adversely over the long term.

162. The modifications to the Commercial Agreements set forth in the proposed Consent Decree alleviate our concerns about preserving the incentives to invest in new integrated products and services, while ensuring that the risk that competitors are foreclosed from such integrated products and services is circumscribed. The Consent Decree provides that the members of the JOE must exit the venture no later than December 2, 2016 absent a successful petition to the DOJ to extend their membership.³⁸² If any member petitions DOJ to extend its membership, DOJ will examine market

³⁷⁶ See Public Knowledge Petition at 3-4, 20-21, 40-41; Hawaiian Telcom Petition at 18-20; CWA and IBEW Reply at 14-17; Public Knowledge Reply at 8-21; ITTA July 10, 2012 *Ex Parte* at 4-5; Public Knowledge July 10, 2012 Comments Attach. at 4-29; Vonage July 16, 2012 *Ex Parte* at 2-3.

³⁷⁷ See Limited Liability Company Agreement of Joint Operating Entity, LLC, at § 10.02. The JOE agreement includes a number of activities that are specifically designated as outside the scope of the exclusive relationship, including, among others, activities related to Wi-Fi, backhaul, and [REDACTED] *Id.*

³⁷⁸ See Limited Liability Company Agreement of Joint Operating Entity, LLC, at § 10.03.

³⁷⁹ [REDACTED]

³⁸⁰ See Limited Liability Company Agreement of Joint Operating Entity, LLC, at § 7.07.

³⁸¹ For example, both what existing technology might be contributed to the JOE and what "new" products it might be uniquely able to produce remain unclear, leaving uncertain both potential harms (potential contribution of existing competing technologies) and benefits (what the venture will add to existing efforts). The uncertainty surrounding the JOE is further compounded by the fact that the field of integrative technologies and products is not a blank slate. See, e.g., Verizon Annual Report 2011 (pre-agreement) at 11 ("Verizon's high-capacity fiber and 4G LTE networks make us a leading player in this multi-screen universe, and we are developing innovative new services to address customers' expectations for anywhere, anytime content. For example, our Flex View video service gives FiOS customers the ability to view their content on-demand on a TV, PC, laptop, tablet or smartphone. They also have access to thousands of on-demand titles, which are stored in the cloud and can move seamlessly between devices.")

³⁸² Consent Decree, Sec. V. F.

conditions to determine, in its sole discretion, whether the continuation of such membership will adversely impact competition.³⁸³ The proposed Consent Decree also requires the parties to provide annual reports regarding the activities of the JOE, which will include, among other information, a description of its technology and product development and a summary of its IP licensing activities.³⁸⁴ In addition, the Consent Decree clarifies that, immediately exiting the JOE, a JOE member may use the technology developed via the venture to partner or collaborate with other parties, including competitors of Verizon Wireless and the Cable Companies.³⁸⁵

163. The limited duration of the JOE, along with the other targeted amendments to the JOE Agreement, collectively will preclude the current members of the JOE from foreclosing access in the future to integrated wireless/wireline technologies and other products or services resulting from the JOE. By limiting the term of this agreement, the Consent Decree increases opportunities for more wireless, broadband, and video providers to have access to the products and services that may be developed by the JOE and, therefore, potentially increases the options consumers will have to access any such technologies. Because the members will have the ability to use JOE products with other providers after exiting the JOE,³⁸⁶ and because each of the members will earn profits if the JOE licenses technology to others, the members of the JOE have an increased incentive to create products and services that other providers will be able to use and provide to consumers. Moreover, by requiring DOJ approval for the continuation of membership in the JOE beyond the date set forth in the Consent Decree, the Consent Decree creates incentives for the parties to avoid engaging in anticompetitive behavior for the duration of the JOE. In addition, the reporting requirement implemented in the proposed Consent Decree will provide regulators with an opportunity to monitor any effects, particularly any anticompetitive effects, of the JOE on the evolving market for integrated wireless/wireline technologies, including availability, prices, terms, and conditions of offers of technology or services to third parties.

164. A number of commenters have argued that the JOE also constitutes a threat to competition in the market for licensing of video programming content and the market for over-the-top Internet video services and have requested conditions to address those alleged threats.³⁸⁷ We note that the JOE is the exclusive vehicle for its members for the research and development of integrated wireline and wireless products. Specifically, the JOE defines “Exclusive Field” to mean [REDACTED].³⁸⁸ Comcast has stated, however, that the “commercial agreements in no way address or affect the MSOs’ licensing of

³⁸³ Consent Decree, Sec. V. F.

³⁸⁴ Consent Decree, Appendix A.

³⁸⁵ Consent Decree, Sec. IV.E. The Consent Decree further provides that if the JOE dissolves, JOE members at the time of the dissolution may receive joint ownership of intellectual property rights owned by the venture at the time of the dissolution, instead of a license. *Id.* The Consent Decree also limits the exclusive nature of the JOE by providing that Time Warner Cable and Bright House are free to develop technology covered by the scope of the JOE if the JOE declines to exercise its right of first refusal to develop that technology itself. Consent Decree, Sec. IV.D.

³⁸⁶ Specifically, Comcast, Bright House, and Time Warner will be able to partner with other wireless providers, and Verizon Wireless will be able to partner with other video and wireline voice and broadband providers.

³⁸⁷ See, e.g., RCN July 31, 2012 *Ex Parte* at 5; ITTA July 10, 2012 *Ex Parte* at 6; Letter from Ellen Stutzman, Director of Research & Public Policy, WGAW, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed July 13, 2012 at 4; Letter from Jodie Griffin, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Aug. 2, 2012 at 2; Letter from Karen Brinkman, Counsel for FairPoint and Frontier, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Aug. 2, 2012 at 5-7.

³⁸⁸ JOE Agreement, Article I.

affiliated programming to any distributor, regardless of whether the distributor is a traditional multichannel video programming distributor (“MVPD”), online video distributor (“OVD”), or wireless provider.”³⁸⁹ In addition, [REDACTED], all parties to the JOE have affirmed that the focus of the JOE is on the “technical capabilities for the delivery of services to consumers, and not on the acquisition, ownership or control of video or other programming content.”³⁹⁰ We accept these representations and have no reason to conclude that they were not made in accordance with the Commission’s candor and truthfulness requirements. We note that our reliance on these representations is consistent with the Commission’s reliance on the representations of parties in prior transactions.³⁹¹

165. In addition, the Consent Decree provides that the members of the JOE cannot amend the JOE Agreement without the prior consent of DOJ.³⁹² Therefore, if the parties to the JOE were to modify the terms of the JOE Agreement to include the licensing of video programming or over-the-top Internet video programming, or in a manner that otherwise would impact the video programming market, DOJ would have authority to prohibit such modification. Moreover, because the members of the JOE are required to provide periodic reports to DOJ and the Commission regarding the activities of the JOE,³⁹³ both the Commission and DOJ will have the ability to monitor any impact that the venture may have on the video programming market and to take any action to the extent that such activity may implicate the Commission’s rules or policies or the antitrust laws. For these reasons, we do not see the need to impose conditions to address these concerns.³⁹⁴

³⁸⁹ See Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Aug. 16, 2012 at 2. Furthermore, as Comcast notes, the Commission’s program access rules prohibit the Cable Companies from discriminating against, or withholding affiliated programming from, other multichannel video programming distributors (“MVPDs”). *Id.* at 4 (citing 47 U.S.C. § 548(c)(5)). In addition, Comcast notes that the *Comcast/NBCUniversal Order* imposed conditions that give MVPDs and online video distributors certain rights to access Comcast-affiliated programming. *Id.* (citing *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion and Order, 26 FCC Rcd 4238, App. A, §§ II, IV.A, and VII (2011)).

³⁹⁰ See Letter from Kathy Grillo, Senior Vice President, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Aug. 17, 2012 at 2 (“Verizon Aug. 17, 2012 *Ex Parte*”) (discussing the responses of the representatives of Verizon, Comcast, and Time Warner); see also Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel for SpectrumCo, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Aug. 20, 2012 (“SpectrumCo Aug. 20, 2012 *Ex Parte*”) (discussing the response of Bright House).

³⁹¹ See, e.g., *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4330, ¶ 224 (2011); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses Adelphia Communications Corporation (and Subsidiaries, Debtors-In-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees, Adelphia Communications Corporation, (and Subsidiaries, Debtors-In-Possession), Assignors and Transferors, to Comcast Corporation (Subsidiaries), Assignees and Transferees*, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8306, 8315, ¶¶ 239, 263 (2006).

³⁹² Consent Decree, Sec. V.G.

³⁹³ Consent Decree, Appendix A.

³⁹⁴ In addition, Public Knowledge argues that the Commercial Agreements violate Section 652 of the Communications Act, or in any event would lead to the harm that section is intended to prevent. Public Knowledge Petition at 41-44; Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, filed Aug. 16, 2012 at 3. See 47 U.S.C. § 572. We disagree that Section 652 applies to the agreements. Sections 652(a) and (b) prohibit a local exchange carrier (LEC) and a cable company that (continued....)

166. *Limit on Mobile Wireless Exclusivity.* We share commenters' concerns that, as originally executed, the Commercial Agreements may have hindered increased wireless competition by prohibiting indefinitely the Cable Companies from marketing mobile wireless services other than those of Verizon Wireless. Allowing the Cable Companies to market Verizon Wireless's service exclusively, without limits and for an indefinite period of time, potentially could reduce competition in the wireless market by preventing the Cable Companies from reaching similar bundling arrangements with other carriers. Some commenters are concerned that other wireless carriers will need to offer a bundle of video, broadband, and wireless services (a "triple play," or, with wireline voice, a "quad play") in order to compete and that Verizon Wireless's exclusivity arrangement with Cable Companies will prevent them from doing so, or from offering a competitive bundle.³⁹⁵ Currently, there appears to be little market demand for bundles of video, broadband, and wireless services, although one of the purposes of the Commercial Agreements is to stimulate that demand, in part by developing JOE products.

167. To address these concerns, the parties agreed in the Consent Decree to limit the period during which the Cable Companies may exclusively market Verizon Wireless's mobile wireless services absent DOJ approval to extend. We find that this condition addresses several potential concerns we had related to possible evolution of this market. In particular, this condition avoids creating a long-term exclusive arrangement between leading providers of the relevant services—arrangements that potentially could diminish competition in their respective service offerings of wireless and fixed broadband, as well as in the increasingly integrated service offerings of the future.

168. The parties also have agreed to remove the waiting period in the Agreements before the Cable Companies can choose to become resellers of Verizon Wireless's services (purchasing wireless wholesale services from Verizon Wireless and reselling these services under their own brand names to consumers). The Cable Companies will be able to make that election at any time, and may begin

(Continued from previous page) _____

overlap from having a 10% ownership or any management interest in one another, either directly or through an affiliate. Although both the Cable Companies and Verizon Wireless, an affiliate of a LEC, have interests in the JOE, neither has any ownership or management interest in the other, nor is the JOE either a cable company or a LEC. Further, while section 652(c) prohibits a cable company and a LEC from entering into a joint venture to provide video programming directly to subscribers or to provide telecommunications services in any overlap area, Section 652(c) does not apply to affiliates of LECs, only to LECs themselves, and the JOE is neither providing video programming directly to subscribers nor providing telecommunications services. *See, e.g.,* Verizon Aug. 17, 2012 *Ex Parte* at 2; SpectrumCo Aug. 20, 2012 *Ex Parte* at 1 ("focus is on technologies" related to the delivery of these services, not the services themselves). Nor has Public Knowledge provided a sufficient basis for us to conclude that any of the other Commercial Agreements constitute a joint venture or partnership prohibited under section 652(c). To the extent that Public Knowledge is concerned about the potential use of the JOE as a vehicle for collusion among competitors, we share that concern, but believe the proposed Consent Decree adequately addresses it. The Decree prohibits all parties to the Decree from participating in, encouraging, or facilitating any agreement or understanding between any Verizon consumer wireline services entity (*e.g.*, FiOS) and a Cable Company relating to the price, terms, availability, expansion, or non-expansion of their services (with certain limited exceptions) or that would violate the antitrust laws. Consent Decree Sec. V.J. We intend to review carefully the detailed reports concerning the activities of the JOE required to be submitted pursuant to the proposed Consent Decree to ensure that the JOE does not engage in the provision of services that would result in a violation of Section 652, our rules, or the provisions of the Consent Decree, and we reserve the right to seek additional information to ensure against any such violation or inconsistency with the parties' representations. As noted herein, we are opening a separate docket to allow the public to file complaints or petitions if they believe the parties are acting in violation of the conditions imposed by this order or engaging in anticompetitive conduct relating to this transaction that implicates the public interest or otherwise violates the Act or Commission rules.

³⁹⁵ *See* NTCH Petition at 11.

providing service six months after making such an election.³⁹⁶ This modification addresses the concerns we had about this provision and maintains the potential competition between Verizon Wireless and the Cable Companies that previously existed in this market. Eliminating this provision will allow the Cable Companies to be able to develop and differentiate their own integrated service offerings from competing Verizon Wireless services at any point that would be advantageous to themselves and their customers.³⁹⁷

169. *Monitoring.* As described above, several of the concerns parties have raised about the impact of the Commercial Agreements are speculative at this point. We believe that the modifications adopted pursuant to the proposed Consent Decree adequately restrict the parties' ability to engage in anticompetitive conduct at this time and with respect to current service offerings. As explained above, however, we cannot know for certain how relevant products and services will develop in the future; nor do we know how the Commercial Agreements will affect such competitive developments. Both the agreements and many of the products and services at issue are nascent, including in particular integrated wireline and wireless broadband services. Nevertheless, we take potential risks to the public interest very seriously and will monitor marketplace developments closely. Further, as stated above, we are opening a separate docket to allow the public to file complaints or petitions if they believe the parties are acting in violation of the conditions imposed by this order or engaging in anticompetitive conduct relating to this transaction that implicates the public interest or otherwise violates the Act or Commission rules. We intend to exercise Commission jurisdiction fully and take corrective action whenever necessary in the public interest.³⁹⁸

XI. FOREIGN OWNERSHIP AND DECLARATORY RULING

170. In this section, we review the applications under the foreign ownership provisions of Section 310(b) of the Communications Act.³⁹⁹ Pursuant to the Section 310(b)(3) forbearance approach for common carrier licensees that we recently adopted in the *First Report and Order* in IB Docket No. 11-133,⁴⁰⁰ we find that Vodafone's general partnership interest in Verizon Wireless is in the public interest.

³⁹⁶ Consent Decree, Sec. IV.F The Consent Decree further notes that the amended Commercial Agreements may condition a particular Cable Company's election to become a reseller of Verizon Wireless services on another Cable Company making such an election first. *Id.*

³⁹⁷ While we have found resellers to be not as effective competitors as facilities-based providers, we have also recognized that they may have an impact in the marketplace, including increasing competition and consumer welfare by serving underserved areas or populations. *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13926 ¶ 45; *Fifteenth Annual Competition Report*, 26 FCC Rcd at 9700-01 ¶ 36 (2011).

³⁹⁸ *See, e.g., 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, 18391-92 ¶¶ 206-07 (2005) (stating that "[T]he Commission retains its historical discretion to monitor the market and take corrective action if necessary in the public interest" and will revisit the merger conditions if it determines that the applicants are acting to exclude competitors); *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18537 ¶¶ 216-17 (2005) (same).

³⁹⁹ 47 U.S.C. § 310(b). In this section, we address the foreign ownership of Verizon Wireless and T-Mobile, two of the three assignees. We find that the application to assign a common carrier license to Leap, the third assignee, does not raise any foreign ownership issues. Leap has certified that it is in compliance with the foreign ownership provisions of Section 310(a)-(b). *See* Application of Cellco Partnership d/b/a Verizon Wireless and Cricket License Company, LLC, ULS File No. 0004952444 (filed Nov. 23, 2011) (FCC Form 603, Questions 95-99).

⁴⁰⁰ *See* Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, IB Docket No. 11-133, *First Report and Order*, FCC 12-93 (rel. Aug. 17, 2012) (*First Report and Order*).

We also find that T-Mobile is qualified under the foreign ownership provisions of Section 310(b)(4) to hold the AWS-1 licenses being assigned to it by Verizon Wireless.

1. Verizon Wireless

171. *Background.* As explained in the *First Report and Order*, Commission precedent applies Section 310(b)(4) of the Communications Act where a foreign government, individual, or entity holds interests in a U.S.-organized entity that itself *controls* broadcast, common carrier or aeronautical radio licensees, and applies Section 310(b)(3) where a foreign government, individual, or entity holds interests in a licensee through a U.S.-organized entity that *does not control* the licensee.⁴⁰¹ In the *First Report and Order*, we forbore from applying Section 310(b)(3)'s strict 20 percent foreign equity and voting limits to the class of common carrier licensees in which foreign interests in the licensee are held through U.S.-organized entities that do not control the licensee, to the extent we determine such foreign ownership is consistent with the public interest under the policies and procedures the Commission has adopted for its public interest review of foreign ownership in a licensee's controlling U.S. parent under Section 310(b)(4).

172. Section 310(b)(4) authorizes the Commission, in its discretion, to allow foreign ownership of a common carrier licensee's controlling U.S. parent to exceed 25 percent of the parent's equity and/or voting interests.⁴⁰² In the *Vodafone-Bell Atlantic Order* issued in 2000, the Wireless Telecommunications Bureau and International Bureau, on delegated authority, authorized Verizon Wireless "to be indirectly owned by Vodafone in an amount up to 65.1 percent" pursuant to Section 310(b)(4) of the Communications Act.⁴⁰³ The *Vodafone-Bell Atlantic Order* stated that Verizon Wireless "would need additional Commission authority under section 310(b)(4) before Vodafone could increase its investment above authorized levels," and that "[a]dditional authority also would be required before any other foreign entity or entities acquire, in the aggregate, a greater-than-25 percent indirect interest" in Verizon Wireless.⁴⁰⁴ For purposes of calculating the additional, aggregate 25 percent amount, the *Vodafone-Bell Atlantic Order* required Verizon Wireless to include foreign ownership of Verizon and foreign ownership of Vodafone, other than ownership of Vodafone from the United States and the United Kingdom.⁴⁰⁵

⁴⁰¹ *First Report and Order* at ¶ 7. We recognize that several commenters in IB Docket No. 11-133 asserted that Section 310(b)(4) applies to all "indirect" foreign interests in a common carrier licensee, whether held through a controlling U.S. parent or a non-controlling intervening U.S.-organized entity. *Id.* at ¶ 6.

⁴⁰² Section 310(b)(4) states that no broadcast, common carrier, aeronautical en route, or aeronautical fixed radio station license shall be granted to or held by "any corporation directly or indirectly *controlled* by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license." 47 U.S.C. § 310(b)(4) (italics added).

⁴⁰³ Applications of Vodafone AirTouch, Plc and Bell Atlantic Corporation for Consent to Transfer of Control or Assignment of Licenses and Authorizations, *Memorandum Opinion and Order*, DA No. 00-721, 15 FCC Rcd 16507, 16514, ¶ 19 (WTB & Int'l Bur., 2000) ("*Vodafone-Bell Atlantic Order*"). At that time, Vodafone, through its intermediate subsidiaries, held 65 percent of the general partnership interests in Verizon Wireless, but planned to reduce its interests to 45 percent. *Id.* at 16510, ¶ 8.

⁴⁰⁴ *Id.* at 16514, ¶ 19. *See also* International Authorizations Granted, File No. ISP-PDR-20060619-00015, Public Notice, DA 06-2366, 21 FCC Rcd 13575 (Int'l Bur., 2006) (extending the ruling in the *Vodafone-Bell Atlantic Order* to cover AWS licenses).

⁴⁰⁵ *See id.* at 16514, ¶ 19 n.34.

173. Verizon Wireless is a Delaware general partnership of which 55 percent is indirectly owned by Verizon, and the remaining 45 percent is indirectly owned by Vodafone, a U.K. entity.⁴⁰⁶ All of the Verizon and Vodafone subsidiaries that hold partnership interests in Verizon Wireless itself are organized in the United States.⁴⁰⁷ Verizon Wireless holds common carrier wireless licenses in its own right, and it has controlling and non-controlling ownership interests in numerous other common carrier wireless licensees.⁴⁰⁸

174. *Discussion and Declaratory Ruling.* As the proposed assignee, Verizon Wireless would itself hold the common carrier licenses to be assigned by SpectrumCo, Cox, Leap, and T-Mobile,⁴⁰⁹ rather than holding the licenses in a subsidiary that Verizon Wireless controls. Under this structure, Vodafone's ownership interest does not fall within Commission precedent under Section 310(b)(4) because Vodafone, through its U.S.-organized subsidiaries, holds its 45 percent non-controlling general partnership interest in Verizon Wireless itself, and not in a U.S.-organized entity that *controls* Verizon Wireless.⁴¹⁰ Verizon Wireless has stated in prior applications that Verizon (a general partner of Verizon Wireless, as is Vodafone) has sole affirmative control of Verizon Wireless through its right to designate four of the seven members of the board of representatives in which control of the partnership is vested.⁴¹¹ Moreover, Vodafone holds its ownership interests in Verizon Wireless through Vodafone's own U.S.-organized subsidiaries, not through Verizon or a U.S.-organized entity that Verizon controls. We note, however, that Verizon Wireless has maintained that its foreign ownership is consistent with our foreign ownership

⁴⁰⁶ See Application at 3; Cellco Partnership, Form 602, ULS File No. 0005022336 (filed Jan. 9, 2012). Verizon and Vodafone hold their partnership interests in Verizon Wireless through numerous intermediate subsidiaries organized under the laws of Luxembourg, the Netherlands, the United Kingdom, and the United States. See *id.*

⁴⁰⁷ See *id.*

⁴⁰⁸ Cellco Partnership, Form 602, ULS File No. 0005022336 (filed Jan. 9, 2012).

⁴⁰⁹ See *supra* Section II.B, Description of Transactions.

⁴¹⁰ Because Vodafone's interests are not held through a U.S.-organized entity that controls Verizon Wireless, those interests do not fall under the express language of Section 310(b)(4), which states that it applies to foreign interests in a U.S.-organized entity that "directly or indirectly controls" a licensee. 47 U.S.C. § 310(b)(4).

⁴¹¹ See, e.g., Cellco Partnership, Form 601, ULS File Nos. 0003382444, 0003382435, Amended Exhibit B at 4 (filed Apr. 14, 2008) ("Control of the partnership is vested in a Board of Representatives, controlled by Verizon. Thus, Verizon is the majority owner and possesses sole affirmative control of Verizon Wireless."); Cellco Partnership, Form 603, ULS File No. 0003286009, Exhibit 2 (filed Jan. 15, 2008) (same); Cellco Partnership, Form 603, ULS File No. 0002962269, Exhibit 4 (filed Mar. 30, 2007) (same); Cellco Partnership, Form 601, ULS File No. 0002773715, Exhibit B at 3 (filed Oct. 4, 2006) (same); see also Cellco Partnership Amended and Restated Partnership Agreement, Section 1.11, Capacity of the Partners ("No Partner shall have any authority to act for, or to assume any obligation or responsibility on behalf of, any other Partner or the Company, except as expressly provided in this Agreement"), Section 3.2, Power and Authority of Representatives ("The Board of Representatives shall have the power on behalf and in the name of the Company to carry out any and all objects and purposes of the Company contemplated by this Partnership Agreement...."), Section 3.3, Composition of Board of Representatives ("The Board of Representatives shall consist of seven (7) Representatives.... [F]or so long as Vodafone holds, directly or through one or more Included Affiliates, a Partnership Interest of at least 20%, the Vodafone Designated Partner shall have the right to designate three (3) Representatives...."), available at <http://www.sec.gov/Archives/edgar/data/1120994/000095010300000976/0000950103-00-000976-0003.txt> (last visited Aug. 2, 2012).

policies for common carrier licensees under Section 310(b)(4).⁴¹²

175. Under the forbearance approach we adopted in the *First Report and Order*, we find Vodafone's current interests in Verizon Wireless to be in the public interest. As discussed above, in the *First Report and Order*, we forbore from applying Section 310(b)(3)'s 20 percent foreign equity and voting limits to the class of common carrier licensees in which the foreign interests in the licensee are held through U.S.-organized entities that do not control the licensee, to the extent we determine such foreign ownership is consistent with the public interest under the policies and procedures we use for assessing foreign ownership under Section 310(b)(4).⁴¹³ On August 3, 2012, Verizon filed a letter stating that Verizon Wireless is not aware of any changes to the aggregate foreign ownership of Verizon and Vodafone that are inconsistent with the requirements set forth in the *Vodafone-Bell Atlantic Order*.⁴¹⁴ No commenters have identified any basis for rebutting the *Vodafone-Bell Atlantic* analysis, which identified no competitive concerns with respect to foreign ownership of Verizon Wireless.

176. We also note that Verizon Wireless is a party to an agreement dated December 14, 1999 ("1999 Agreement"), as amended March 27, 2008, between Verizon (formerly, Bell Atlantic Corporation), Vodafone, and Verizon Wireless, on the one hand, and the U.S. Department of Defense, the U.S. Department of Justice, the Federal Bureau of Investigation, and the U.S. Department of Homeland Security, on the other.⁴¹⁵ We condition the grant of our ruling below on continued compliance by Verizon Wireless with the terms contained in the March 27, 2008 Letter to Stewart Baker, Assistant Secretary of Policy, U.S. Department of Homeland Security (which incorporates by reference the terms of the 1999 Agreement).⁴¹⁶

177. Accordingly, subject to the limitations set forth below, we find that Vodafone's interests in Verizon Wireless are in the public interest under the Section 310(b)(3) forbearance approach adopted in our recent *First Report and Order*. We note that our action today removes any uncertainty as to whether the current foreign ownership of Verizon Wireless, as a common carrier licensee, complies with

⁴¹² See, e.g., Cellco Partnership, Form 603, Exhibit 2, ULS File No. 0004993617 (filed Dec. 16, 2011). See also Letter from Tamara Preiss, Vice President, Federal Regulatory Affairs, Verizon, to Secretary, FCC, WT Docket Nos. 12-4 and 12-175 (filed Aug. 3, 2012) ("Verizon Letter"); Comments of Verizon, IB Docket No. 11-133 (filed Dec. 5, 2011), at 18-19 (asserting that Section 310(b)(3) applies only to "direct" foreign ownership interests in common carrier licensees, and that Section 310(b)(4), not Section 310(b)(3), applies to "indirect" foreign ownership interests).

⁴¹³ See *First Report and Order* at ¶ 10. Section 310(b)(3) states that no broadcast, common carrier, aeronautical en route, or aeronautical fixed radio station license shall be granted to or held by "any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country." 47 U.S.C. § 310(b)(3).

⁴¹⁴ See Verizon Letter at 1. See also *id.* (stating that, in addition, no more than 25 percent of Verizon's outstanding stock is owned by shareholders that the company's records identify as non-U.S. citizens, and attaching a chart depicting the entities through which Vodafone holds its indirect ownership interest in Verizon Wireless).

⁴¹⁵ See Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation, WT Docket No. 07-208, *Memorandum Opinion and Order and Declaratory Ruling*, FCC 08-181, 23 FCC Rcd 12463, 12526-28, ¶¶ 152-154 (2008) ("*Verizon Wireless-RCC Order*"). In assessing the public interest, we take into account the record and accord deference to Executive Branch expertise on national security and law enforcement issues. See *id.* at 12527-28, ¶ 154. See also *First Report and Order* at ¶ 20.

⁴¹⁶ See *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12555, Appendix C, Exhibit 1 ("March 27, 2008 Letter"). The 1999 Agreement is appended to the *Vodafone-Bell Atlantic Order*, 15 FCC Rcd at 16523, Appendix A.

our foreign ownership policies. We find that Verizon Wireless is qualified under the foreign ownership provisions of Section 310(b) of the Communications Act to hold, in its own right, its current common carrier licenses and the common carrier licenses it is being assigned in the applications being approved today.

178. Specifically, we permit Vodafone and its foreign-organized subsidiaries named in the record to hold, through intervening U.S.-organized subsidiaries, a non-controlling, 45 percent general partnership interest in Verizon Wireless.⁴¹⁷ We require, as a condition of this ruling, that Verizon Wireless seek and obtain additional Commission approval before Vodafone increases its investment above this authorized level. We also require that Verizon Wireless seek and obtain additional Commission approval before any other foreign entity or entities acquire, individually or in the aggregate, any greater-than-20 percent interest in Verizon Wireless beyond that authorized in this order, whether the foreign interests are held in Verizon Wireless directly or through U.S.-organized entities that do not control Verizon Wireless (*i.e.*, other than through Verizon).⁴¹⁸ For purposes of calculating the additional, aggregate 20 percent amount, Verizon Wireless is required to include foreign interests held in it directly or through U.S.-organized entities that do not control Verizon Wireless, including foreign ownership of Vodafone other than its ownership from the United States and the United Kingdom.⁴¹⁹ And, as stated above, we require Verizon Wireless to comply with its commitments set forth in the March 27, 2008 Letter to the U.S. Department of Homeland Security.⁴²⁰

2. T-Mobile

179. As discussed in Section II.A.5 above, T-Mobile License is a wholly-owned subsidiary of T-Mobile, which, in turn, is ultimately wholly owned by DT, a publicly-traded German corporation. Pursuant to the discretionary authority in Section 310(b)(4) of the Communications Act, the Commission has previously authorized, in the *DT-VoiceStream Order*, up to 100 percent foreign ownership of T-Mobile and its licensed subsidiaries by DT and its German shareholders, including the interests held by

⁴¹⁷ We take this action on our own motion pursuant to Section 1.2 of the rules, 47 C.F.R. § 1.2.

⁴¹⁸ In authorizing foreign ownership of common carrier licensees' controlling U.S. parents under Section 310(b)(4), the Commission as a general rule will authorize specific foreign ownership interests identified in the record as well as an additional, aggregate 25 percent amount for future changes in foreign ownership of the U.S. parent. *See* Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, IB Docket No. 11-133, *Notice of Proposed Rulemaking*, FCC 11-121, 26 FCC Rcd 11703, 11713-14, ¶¶ 16-17 (2011). Consistent with that general policy, this ruling authorizes Verizon Wireless to accept an additional amount of foreign ownership from investors other than Vodafone and its U.S. and U.K. shareholders beyond that authorized in this order, not to exceed an aggregate 20 percent of the equity and/or voting interests held in Verizon Wireless directly or through U.S.-organized entities that do not control Verizon Wireless. We limit the allowance to 20 percent consistent with the 20 percent amount in Section 310(b)(3).

⁴¹⁹ Under this ruling, foreign interests held in Verizon, the controlling U.S. parent of Verizon Wireless, are calculated separately from, and not added to, the calculation of foreign interests held in Verizon Wireless either directly or through U.S.-organized entities that do not control Verizon Wireless, such as Vodafone. *Cf. Datran II*, Declaratory Ruling, FCC 75-312, 52 F.C.C. 2d 439 (1975). We note that Verizon Wireless would also need Commission approval before foreign ownership of Verizon, as the controlling U.S. parent of Verizon Wireless, exceeds the 25 percent benchmark in Section 310(b)(4) of the Act. We also note that the foreign ownership ruling issued to Verizon Wireless in the *Vodafone-Bell Atlantic Order*, 15 FCC Rcd at 16514, ¶ 19, will continue to apply to licensed subsidiaries of Verizon Wireless in which it holds a controlling interest, pursuant to Section 310(b)(4).

⁴²⁰ *See infra* Section XIII, Ordering Clauses.

the Federal Republic of Germany (“FRG”) through its investment in DT.⁴²¹ T-Mobile is also authorized to accept an additional, aggregate 25 percent equity and/or voting interest from other foreign individuals and entities, provided that no single foreign individual or entity acquires an equity and/or voting interest in excess of 25 percent.

180. DT currently holds its interests in T-Mobile through two wholly owned, direct and indirect subsidiaries that are organized in Germany.⁴²² The FRG has reduced its ownership interest in DT to approximately 31.98 percent. The FRG holds an approximately 14.96 percent interest in DT directly and approximately 17.02 percent indirectly, through the FRG’s ownership interest in Kreditanstalt für Wiederaufbau (“KfW”), a bank organized in Germany and controlled by the FRG.⁴²³

181. On August 2, 2012, T-Mobile submitted a letter supplementing its applications with respect to foreign ownership.⁴²⁴ T-Mobile states that there have been no changes in its foreign ownership inconsistent with the authority the Commission has granted to T-Mobile and its licensed subsidiaries under Section 310(b)(4) of the Communications Act.⁴²⁵ We find, based on the record, that T-Mobile License is qualified under the foreign ownership provisions of Section 310(b)(4) to hold the AWS-1 licenses being assigned to it by Verizon Wireless as part of the proposed transaction. Consistent with its request,⁴²⁶ we condition grant of the assignment applications to T-Mobile License on its compliance with the provisions of the National Security Agreement (“NSA”) entered into on January 12, 2001, as amended, between DT and the U.S. Department of Justice, the Federal Bureau of Investigation and the U.S. Department of Homeland Security, which is appended to the *DT-VoiceStream Order*.⁴²⁷

⁴²¹ *DT-VoiceStream Order*, 16 FCC Rcd 9779. See also T-Mobile-Verizon Wireless Public Interest Statement at 7. The foreign ownership ruling was issued in the *DT-VoiceStream Order* to T-Mobile’s predecessor in interest, VoiceStream Wireless Corporation. The Commission extended that ruling in 2006 to cover licenses in the Advanced Wireless Services. See International Authorizations Granted, File No. ISP-PDR-20060510-00013, *Public Notice*, DA 06-2441, 21 FCC Rcd 14062 (Int’l Bur., 2006). The Commission has also authorized, under Section 310(b)(4), T-Mobile’s acquisition of interests in other common carrier licensees. See, e.g., *T-Mobile-SunCom Order*, 23 FCC Rcd 2515.

⁴²² See T-Mobile USA, Inc., Form 602, ULS File No. 0005279018 (filed June 26, 2012). The Commission approved the current holding company structure of T-Mobile USA and its wholly-owned subsidiaries, including T-Mobile, in 2010. See International Authorizations Granted, File No. ISP-PDR-20081001-00020, *Public Notice*, DA 10-2200, 25 FCC Rcd 16030 (Int’l Bur., 2010).

⁴²³ The FRG directly holds approximately 80 percent of the ownership interests in KfW, which, in turn, holds approximately 17.02 percent of the ownership interests in DT. See T-Mobile USA, Inc., Form 602, ULS File No. 0005279018 (filed June 26, 2012).

⁴²⁴ Letter from Kathleen O’Brien Ham, Vice President, Federal Regulatory Affairs, T-Mobile USA, Inc., to Secretary, FCC, WT Docket No. 12-175 (filed Aug. 2, 2012).

⁴²⁵ *Id.* (noting that the Commission recently approved, in November 2010, DT’s foreign investment in connection with the transfer of control of Cook Inlet GSM IV PCS Holdings, LLC to T-Mobile USA, and stating that, since that time, no changes inconsistent with the authority granted by the Commission have taken place with respect to T-Mobile USA’s foreign ownership).

⁴²⁶ See T-Mobile-Verizon Wireless Public Interest Statement at 8-9.

⁴²⁷ See *infra* Section XIII, Ordering Clauses. The NSA may be viewed in the Commission’s Electronic Comment Filing System at <http://apps.fcc.gov/ecfs/document/view?id=6512567463> (last visited Aug. 2, 2012). See also *T-Mobile-SunCom Order*, 23 FCC Rcd at 2532 (appending the NSA amendment).

XII. CONCLUSION

182. Accordingly, we conclude that approval of these transactions as conditioned will serve the public interest. The transactions will result in an expeditious transfer of valuable spectrum into the hands of service providers that will actively put this spectrum to use in providing the latest generation mobile broadband services well in advance of the Commission's current deadlines. Moreover, taking the Consent Decree and Verizon's reporting requirements into account, we conclude that the Commercial Agreements do not alter our conclusion that the transactions as a whole are consistent with the public interest.

XIII. ORDERING CLAUSES

183. ACCORDINGLY, having reviewed the Applications, the petitions, and the record in these matters, IT IS ORDERED that, pursuant to Sections 4(i) and (j), 303(r), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(b), 310(d), the applications for the assignment of the AWS-1 licenses from SpectrumCo and Cox to Verizon Wireless are GRANTED, to the extent specified in this Memorandum Opinion and Order and Declaratory Ruling and subject to the conditions specified herein.

184. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and (j), 303(r), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(b), 310(d), the applications for the assignment of the Lower 700 MHz Band license to Leap and the AWS-1 and PCS licenses to Verizon Wireless are GRANTED, to the extent specified in this Memorandum Opinion and Order and Declaratory Ruling and subject to the conditions specified herein.

185. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and (j), 303(r), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(b), 310(d), the applications for the assignment of the AWS-1 licenses from T-Mobile License to Verizon Wireless are GRANTED, to the extent specified in this Memorandum Opinion and Order and Declaratory Ruling and subject to the conditions specified herein.

186. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and (j), 303(r), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(b), 310(d), the applications for the assignment of the AWS-1 licenses from Verizon Wireless to T-Mobile License are GRANTED, to the extent specified in this Memorandum Opinion and Order and Declaratory Ruling and subject to the conditions specified herein.

187. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and (j), 303(r), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(b), 310(d), the Petition to Deny the assignment of licenses from SpectrumCo and Cox to Verizon Wireless filed by The Diogenes Telecommunications Project is DISMISSED, OR ALTERNATIVELY DENIED, and the remaining Petitions to Deny such assignment are DENIED, except to the extent and pursuant to the conditions specified herein, for the reasons stated herein.

188. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and (j), 303(r), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(b), 310(d), the Petitions to Deny the assignment of the Lower 700 MHz Band license to Leap and the AWS-1 and PCS licenses to Verizon Wireless are DENIED, except to the extent and pursuant to the conditions specified herein, for the reasons stated herein.

189. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and (j), 303(r), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(b), 310(d), the Petition to Deny the assignment of licenses between T-Mobile License and Verizon Wireless filed by The Diogenes Telecommunications Project is DISMISSED, OR ALTERNATIVELY

DENIED, and the remaining Petitions to Deny such assignment are DENIED, except to the extent and pursuant to the conditions specified herein, for the reasons stated herein.

190. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and (j), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, 310(b), 310(d), the Request for Withdrawal of pleadings filed by T-Mobile in Docket 12-4 is GRANTED for the reasons stated herein.

191. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 4(j), 303(r), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(b), 310(d), grant of the applications to assign licenses to Verizon Wireless and grant of the declaratory ruling set forth in Section XI of this Memorandum Opinion and Order and Declaratory Ruling ARE CONDITIONED UPON compliance by Verizon Wireless with the terms contained in the March 27, 2008 Letter to Stewart Baker, Assistant Secretary of Policy, U.S. Department of Homeland Security.

192. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 4(j), 303(r), 309, 310(b) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(b), 310(d), grant of the applications to assign licenses to T-Mobile License IS CONDITIONED UPON compliance by T-Mobile License with the terms contained in the National Security Agreement entered into on January 12, 2001, as amended as of January 4, 2008, between DT and the U.S. Department of Justice, the Federal Bureau of Investigation, and the U.S. Department of Homeland Security.

193. IT IS FURTHER ORDERED that this Memorandum Opinion and Order and Declaratory Ruling shall be effective upon release. Petitions for reconsideration under Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this Memorandum Opinion and Order and Declaratory Ruling.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Pleadings in ULS File No. 0004942973

Petitions:

NTCH, Inc.
Rural Telecommunications Group, Inc.

Opposition:

Verizon Wireless, Leap Wireless International Inc., Cricket Communications, Inc., Cricket License Company, LLC, Savary Island A, LLC, and Savary Island B, LLC

Replies:

NTCH, Inc.
Rural Telecommunications Group, Inc.

APPENDIX B**Pleadings in WT Docket No. 12-4****Petitions:**

The Diogenes Telecommunications Project
Free Press
Hawaiian Telcom Communications, Inc.
MetroPCS Communications, Inc.
The New Jersey Division of Rate counsel
NTCH, Inc.
Public Knowledge, Media Access Project, New America Foundation Open Technology Initiative, Benton Foundation, Access Humboldt, Center for Rural Strategies, Future of Music Coalition, National Consumer Law Center, on Behalf of Its Low-Income Clients, and Writers Guild of America, West
RCA – The Competitive Carriers Association
Rural Broadband Policy Group
Rural Cellular Association
Rural Telecommunications Group, Inc.
T-Mobile, USA, Inc. (request to withdraw filed June 25, 2012)

Comments:

Atlantic Tele-Network, Inc.
Citizens Action of New York
Communications Workers of America and International Brotherhood of Electrical Workers
Competitive Enterprise Institute
Consumer Federation of America
Consumers Union
Curt Anderson, Maryland House of Delegates
DIRECTV, LLC
Elbridge James, NAACP Maryland State Conference
Frank Stella on behalf of the Maryland/DC Alliance for Retired Americans
The Free State Foundation
The Greenlining Institute
Hawaiian Telcom Communications
The Hispanic Technology and Telecommunications Partnership
Information Technology and Innovation Foundation
International Brotherhood of Electrical Workers, Local 827 and System Council T-6
Joseph Molinero, Teamsters Local Union No. 211
Lane Metro Partnership
Latinos in Information Sciences and Technology Association
Level 3 Communications, LLC
Maneesh Pangasa
Maryland Consumer Rights Coalition
MetroPCS Communications, Inc.
National Association of Manufacturers
National Organization of Black Elected Legislative Women
Progressive Policy Institute

Public Knowledge
Regis Ryan, Steamfitters Local Union #449
Roger Mano, Maryland State Senate
San Mateo County Hispanic Chamber of Commerce
Scott Wallsten with the Technology Policy Institute
Simone Baer, SPB Strategies
Sprint Nextel Corporation
TechFreedom and the International Center for Law and Economics
Telecommunications Industry Association
William H. Cole IV, Baltimore City Council
YaknChat

Opposition:

Verizon Wireless, SpectrumCo, LLC, and Cox TMI Wireless, LLC

Replies:

AFL-CIO
City of Boston, Massachusetts
Comcast Corporation
Communications Workers of America and International Brotherhood of Electrical Workers
The Competitive Enterprise Institute
Computer and Communications Industry Association
Cox TMI Wireless, LLC
The Diogenes Telecommunications Project
Don't Bypass Buffalo Coalition
Don't Bypass Syracuse Coalition
The Greenlining Institute
Hawaiian Telecom Communications, Inc.
International Brotherhood of Electrical Workers
Level 3 Communications, LLC
Massachusetts Community Leaders
MetroPCS Communications, Inc.
Montgomery Country, Maryland
NTCH, Inc.
Public Knowledge, Media Access Project, New America Foundation Open Technology Initiative, Access
Humboldt, Benton Foundation, and National Consumer Law Center, on Behalf of Its Low-Income
Clients
RCA – The Competitive Carriers Association
Sprint-Nextel Corporation
T-Mobile USA, Inc. (request to withdraw filed June 25, 2012)
U.S. Chamber of Commerce

APPENDIX C**Petitioners and Commenters in WT Docket No. 12-175****Petitions:**

The Diogenes Telecommunications Project
Free Press
Information Age Economics
Rural Telecommunications Group, Inc.

Comments:

Colum McDermott
Maneesh Pangasa
Public Knowledge

Opposition:

T-Mobile License LLC and Cellco Partnership d/b/a Verizon Wireless

Replies:

The Diogenes Telecommunications Project
Free Press
Information Age Economics
Public Knowledge
Rural Telecommunications Group, Inc.

APPENDIX D**Reporting Requirements**

Verizon agrees to provide, subject to an appropriate protective order, the following reports retroactively to January 2010 where available, and on a semi-annual basis from the date of this order going forward:

- (1) The number of DSL qualified households, exclusive of households where FiOS is available for sale (to be determined by a method agreed to by Verizon and the Commission), by wire center, by month.
- (2) The number of DSL lines, by wire center, by month.
- (3) The number of gross adds of DSL lines, by wire center, by month.
- (4) The number of disconnects of DSL lines, by wire center, by month.
- (5) The number of DSL lines by speed tier, by state, by month.
- (6) The number of DSL lines identified in Verizon's systems as disconnecting Verizon DSL service and subscribing to a FiOS service, by state, by month.
- (7) Average data revenue, as maintained in the ordinary course, per consumer DSL account by wire center, by month.

**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

Re: Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses, WT Docket No. 12-4; Applications of Verizon Wireless and Leap for Consent To Exchange Lower 700 MHz, AWS-1, and PCS Licenses, ULS File Nos. 0004942973, 0004942992, 0004952444, 0004949596, and 0004949598; and Applications of T-Mobile License LLC and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign Licenses, WT Docket 12-175

After a rigorous review, the Commission has approved with conditions a substantially modified transaction between Verizon Wireless and the cable company owners of SpectrumCo, as well as important spectrum transactions involving T-Mobile and Leap. Together, these actions put valuable wireless spectrum to use while preserving broadband competition, to the benefit of consumers and our economy.

Our review revealed that the Verizon-SpectrumCo deal, as initially proposed, posed serious anticompetitive concerns and would not serve the public interest. In response to objections by FCC and Justice Department staff, the parties made fundamental changes to their agreements and a number of binding pro-competitive commitments. I commend the companies for working with the Commission to resolve concerns.

In particular, Verizon Wireless has committed to offering data roaming to its competitors and consumers. Roaming obligations have helped fuel competition, investment, and consumer choice in America's wireless marketplace since the first cellular voice service in 1981. Consistent with the Commission's 2011 Order extending the basic roaming framework to mobile broadband, Verizon's enhanced roaming commitments will help ensure that consumers, particularly in rural areas, have more choices and are not denied access to affordable mobile broadband services.

In connection with the FCC's review, Verizon Wireless has also undertaken an unprecedented divestiture of spectrum to one of its competitors, T-Mobile, and has committed to significantly accelerate the build-out of its new spectrum.

The companies' commercial agreements were also substantially modified to, among other things, preserve Verizon's incentives to build out FiOS, increase wireless competition, and ensure that the proposed Verizon Wireless-cable company technology joint venture is pro-consumer and that its products cannot be used in anticompetitive ways.

Two of my colleagues disagree with important elements of the Commission's order. Although a large number of businesses and public interest groups raised strong concerns and urged Commission action, my colleagues would not have adopted conditions relating to broadband roaming, they would not have reviewed or worked to revise the commercial agreements, and it is unclear whether they would have sought any spectrum divestitures. But protecting competition and incentives to build out wired and wireless broadband is core to the FCC's statutory responsibilities. Competition is at the heart of our free-market economy, and broadband infrastructure deployment is key to economic growth, job creation, and our global competitiveness. The Commission makes the right choice today in exercising our responsibilities and taking strong action based on a rigorous review.

Approval of the substantially modified transaction will benefit consumers in several ways. By advancing U.S. leadership in 4G LTE deployment, the transaction marks another step in our effort to

promote the U.S. innovation economy and make state-of-the-art broadband available to more people in more places. The transaction will preserve incentives for deployment and spur innovation while guarding against anti-competitive conduct. And vitally, it will put more than 20 megahertz of prime spectrum – spectrum that has gone unused for too long – quickly to work across the country, benefiting consumers and the marketplace.

I commend the FCC staff for their excellent and diligent work throughout this review. I also want to thank our talented and dedicated colleagues at the Justice Department.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL
APPROVING IN PART AND CONCURRING IN PART**

Re: Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses, WT Docket No. 12-4; Applications of Verizon Wireless and Leap for Consent To Exchange Lower 700 MHz, AWS-1, and PCS Licenses, ULS File Nos. 0004942973, 0004942992, 0004952444, 0004949596, and 0004949598; and Applications of T-Mobile License LLC and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign Licenses, WT Docket 12-175

The Verizon Wireless-SpectrumCo transaction is procompetitive and will benefit American consumers. Our action today will pave the way for Verizon Wireless to bring 20 megahertz of fallow spectrum into the mobile broadband marketplace quickly. The arrangement between the companies will also introduce convenient new service offerings and spur innovation due to their ability to jointly develop new technologies, products and services. I am pleased to vote to approve today's order.

On the other hand, there are two issues to which I must concur. First, I disagree with the data roaming obligation undertaken by Verizon Wireless. As an initial matter, I cast a dissenting vote when the mandatory data roaming rule was adopted in 2010, citing primarily the Commission's lack of authority over broadband information services such as data roaming. Moreover, the record in the instant proceeding neither cites nor discusses any concrete examples where Verizon Wireless has failed to offer data roaming. On the other hand, today's order does nothing to disturb the appeal of the 2010 data roaming order, which is currently pending with the D.C. Circuit. For these reasons, I concur to the mandatory data roaming commitment.

Second, I cannot support the assertion that the Commission has jurisdiction over the commercial agreements at issue in this transaction. In this case, review of these documents should have fallen exclusively to the Department of Justice because the tasks pertain solely to antitrust matters. A simple reference to, rather than an exhaustive discussion of, the Department of Justice's conclusions would be more appropriate in the Commission's order. On the other hand, the parties explained in our record and publicly that the spectrum transfer would not go forward without the accompanying commercial agreements, thus linking the Commission's and the DOJ's joint role. Given the circumstances, I concur with the Commission's role in reviewing the commercial transactions.

In that same vein, I have concerns regarding possible attempts to revisit these agreements in the future. Any potential future proceedings related to such agreements may result in unintended consequences, market uncertainty and actions that exceed the Commission's authority.

Finally, I thank the Chairman for his willingness to incorporate edits. And many thanks to the dedicated staff for their hard work on this matter.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses, WT Docket No. 12-4; Applications of Verizon Wireless and Leap for Consent To Exchange Lower 700 MHz, AWS-1, and PCS Licenses, ULS File Nos. 0004942973, 0004942992, 0004952444, 0004949596, and 0004949598; and Applications of T-Mobile License LLC and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign Licenses, WT Docket 12-175

This transaction presented the Commission with one of the most challenging reviews in recent memory. First, Verizon Wireless, with over 94.2 million retail subscribers and \$70.2 billion in annual revenue,¹ and whose network already covers more of the country's population than any other wireless service provider, sought to acquire 152 licenses of valuable AWS-1 licenses covering 94 percent of the U.S. population (for approximately \$4 billion). Second, the parties had negotiated related commercial agreements that, on their face, would have turned former fierce competitors not only into "frenemies", but collaborators, for as long as these companies found it to be in their mutual financial interests. Although DOJ and FTC guidelines state that temporary collaborations between competitors can have public interest benefits, they do not endorse permanent collaborations between entities with the kind of market power these companies possess. Let me be clear: As initially proposed, no FCC could have found the transaction to be in the public interest. However, over the course of several months, Verizon Wireless, the cable company members of SpectrumCo, and Cox worked diligently with the staffs of the Antitrust Division of the U.S. Department of Justice (DOJ) and the FCC. In the end, the parties stipulated to a proposed Final Judgment with DOJ. Together, with the conditions adopted in this Order, this transaction has substantially changed in several critical respects and is now ripe for approval.

For one, the transaction no longer simply involves the transfer of more wireless spectrum to one of the most, if not the most, dominant carriers in the industry. Because of the innovative thinking on the part of the applicant and the flexibility of Commission staff, now the transaction also provides for the transfer of a significant amount of spectrum from Verizon Wireless to one of its competitors, T-Mobile. This will enable T-Mobile to compete more effectively because it will gain spectrum in 125 local markets covering approximately 60 million people, increasing its AWS-1 holdings in order to deploy and expand LTE services. The Order also includes a 700 MHz license transfer to another carrier, Leap Wireless, which offers service though Cricket. The spectrum transfer to Leap will help it to continue offering low-cost, unlimited digital services at flat monthly rates without fixed-term contracts, in 13 CMAs. The Order also forces Verizon Wireless to deploy the AWS-1 licenses on a faster timetable than initially imposed. It must build out its AWS-1 network to 30 percent of the population covered by the licenses within three years from today and to 70 percent of that population within seven years.

Second, with this approval, the Commission is imposing the most robust roaming condition in a transaction in our history. Roaming is essential to competition in the wireless arena, as consumers demand coverage wherever they live, work, or travel. By obligating Verizon Wireless to live by the Commission's data roaming rules regardless of the outcome of its pending litigation to upend those rules,

¹ <http://aboutus.verizonwireless.com/ataglance.html>

we have taken an important stand for competitive carriers across the nation. The specific condition we adopt here should provide a considerable benefit to smaller carriers and their subscribers. It does not simply require that Verizon Wireless offer roaming arrangements for commercial mobile data services on the AWS-1 spectrum it is acquiring in this transaction. It also requires Verizon Wireless to offer data roaming on any of the spectrum licenses it holds in the geographic areas where it is acquiring AWS-1 spectrum as a result of this transaction. That is 671 Cellular Market Areas (CMAs) out of the 716 CMAs in which Verizon holds spectrum. There are a total of 734 CMAs nationwide. This data roaming condition takes effect today and lasts for five years. That duration for a roaming condition is the longest the Commission has ever imposed.

Third, the commercial agreements, which had required Verizon Wireless and the cable companies to collaborate as long as they had desired, have also been modified in important ways. For example, the Joint Operating Entity agreement (JOE), which likely would have prevented non-members of the JOE in perpetuity from having access to the technologies the JOE developed, has been severely limited to a duration of just over four years from now. After that time, it is far more likely that these companies will be free to license to competitors any technologies or services developed under the JOE. It is also significant that the proposed Final Judgment forbids Verizon Wireless from marketing cable products and services where FiOS service exists, as well as where Verizon is authorized and/or obligated to roll out this competitive service. This represents approximately 70 percent of Verizon's broadband footprint. This should help preserve Verizon's incentives to compete vigorously with FiOS against the cable companies, to ensure lower prices and better services for consumers. As far as wireless competition goes, the proposed Final Judgment limits Verizon Wireless's exclusive agreement with the cable companies so that after a little more than four years, the cable companies can choose other wireless partners. And rather than requiring the cable companies to wait four years to elect whether they want to be a reseller of and competitor to Verizon Wireless, the proposed Final Judgment permits them to make that election immediately, should they so choose.

It is also important that the proposed Final Judgment and this Order permit monitoring of the parties' future activities to ensure that those technologies and services are being made available to other parties and on terms and conditions that are not anti-competitive. In addition, Verizon is obligated to periodically report to the Commission about the impact of the commercial agreements on deployment of FiOS and on the market for DSL services. If those reports indicate that this transaction is leading to anticompetitive harm in these markets, the DOJ and the Commission could take steps to remedy any harm in the market for DSL services.

Given the amount of video programming content that Comcast and Time Warner control, I would have preferred a condition that prevented any of the agreements to impact the market for licensed video programming and the market for over-the-top Internet video programming. That is because the definition for a term in the JOE that establishes the purpose of the research and development to be performed under the JOE was broad enough, in my opinion, to include video programming and over-the-top video programming. Therefore, a condition would have been appropriate to ensure that the JOE, or any of the commercial agreements, could not include video programming and over-the-top Internet video programming. But, the parties have said that the commercial agreements do not involve these services. In addition, the DOJ Final Judgment says that DOJ must review and approve any future modifications to the agreements. Therefore, if in the future, the parties switch their position on the proper interpretation of the agreements and try to include video programming, then DOJ would have authority to prevent that from happening. I thank my colleagues for agreeing with my request to include language making this clear in the Order.

I believe that a concern raised by Communications Workers of America deserves special mention. CWA asserted that Verizon's decision not to build FiOS in certain areas within Albany, Baltimore, Boston, Buffalo, and Syracuse, does not serve the public interest. According to CWA, at least twenty percent of the households in these areas where Verizon did not build FiOS were below the poverty line. For these reasons, CWA believes the Commission should adopt a condition requiring some buildout of FiOS in those areas.² While this proceeding may not be the appropriate forum to address CWA's concerns, I believe that the Commission, area governments and private industry must do everything in their power to deploy advanced communications services to low income communities. I pledge to continue to work with CWA and my colleagues to ensure that we are doing all we can to encourage increased competition and build-out in the wireline broadband arena.

It is crystal clear that a very big swath of the American communications landscape—that involving the wireless and wireline data, voice, and video—is rapidly converging. We are moving from silos to blended services, and in our oversight of these tectonic shifts, we must apply careful need to strike the right balance between too much consolidation and just enough in order to provide better and faster services. The hard-working members of the FCC's Wireline, Media, Wireless, and International bureaus, as well as our offices of Strategic Planning and General Counsel and my Wireless Advisor, Louis Peraertz, keep this in the front of their minds each and every day. They are to be commended for their hard work, the long hours, and their ability and openness to collaborate with DOJ.

I vote to approve this transaction.

² CWA/IBEW Reply Comments at 10-14.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses, WT Docket No. 12-4; Applications of Verizon Wireless and Leap for Consent To Exchange Lower 700 MHz, AWS-1, and PCS Licenses, ULS File Nos. 0004942973, 0004942992, 0004952444, 0004949596, and 0004949598; and Applications of T-Mobile License LLC and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign Licenses, WT Docket 12-175

Simply put, this transaction is complex. As filed, it raised serious questions about its power to diminish competition in the wired and wireless broadband and video markets. But through the work of the applicants, the Commission, and the Department of Justice, this is a different transaction than the one that was first delivered to our doorstep at the tail end of last year. Fundamental changes have been made that substantially improve this complicated composite of wireless licenses and commercial agreements. In critical ways, this will create clear benefits for consumers and real possibilities for innovation. In others, however, continued attention is required to make sure that infrastructure investment advances, that competition proceeds, and that consumers can emerge as the beneficiaries of markets with more innovative services at lower cost.

On the spectrum side of the equation, the wireless license transfers that result from this transaction will mean more mobile broadband. It puts a swath of AWS-1 spectrum to use that for too long had sat on the sidelines, untapped and undeveloped. With the extraordinary demand on our airwaves and supply of unencumbered spectrum limited, putting this resource to work is a good thing. Moreover, in order to make sure that the benefits of this transfer flow fast to consumers, the Commission now has this spectrum on track for an accelerated build-out, with key milestones in as little as three years. In addition, the related AWS-1 divestitures and coordinated sale of 700 MHz A and B blocks will better rationalize spectrum holdings. This has real potential to strengthen wireless competition. Finally, the applicants have committed to data roaming, facilitating interconnection among networks and furthering competition as other carriers build out their own facilities. These are clear positives, meaning more infrastructure investment and more next-generation wireless broadband services for consumers across the country.

The series of commercial agreements constructed around this spectrum transfer are arguably the most difficult aspects of this transaction. Our record is crowded with commenters fearful that their collaboration will harm competition, hurting workers, consumers, and communities. At the same time, the applicants point out that the combination of cable and wireless expertise and technical resources can mean new and innovative service bundles with new opportunities for consumers.

It is on this aspect of the transaction that the Department of Justice has taken the lead. Consequently, I appreciate their efforts through the Consent Decree to include geographic and temporal restrictions that limit the applicants from cross-marketing each other's services in order to preserve competition. The Consent Decree also bolsters competition by limiting the duration of the exclusivity provisions in the arrangements. I trust that these commitments secured by the Department of Justice will address harms to competition and consumers that would have arisen had the transaction proceeded without adjustment and review.

Yet none of us has a crystal ball. Today's action is best viewed as a series of predictive judgments that the adjustments made in the Consent Decree, in conjunction with a series of wireless transfers, will lead to a bright broadband future. It is here where we will need to test our clairvoyance.

In the four plus years before these agreements come to an end, the Department of Justice has committed to reviewing any petition for extension. As a result, I believe it is incumbent on the Department of Justice—and the Commission—to honestly assess the state of the wired and wireless broadband and video markets and to ask and answer some fundamental questions before any extension occurs. Have these arrangements spurred the deployment of infrastructure? Do joint activities mean innovation? Or do they harm the incentives to compete? Have they led to more job creation? What are the consequences for consumers? Have they benefited from new services with higher quality at lower rates? Have they meant more competitive opportunities for broadband access for everyone, in rural communities, urban centers, and everything in between? The honest answers to these questions are important. Not just for the future prospects of these agreements, but for the future of the networks that are essential to our ability to compete in a global economy.

Thank you to the Commission staff and the Department of Justice for their extensive review and the commitments they secured that are designed to foster innovation while guarding against anti-competitive conduct.

**STATEMENT OF
COMMISSIONER AJIT PAI
APPROVING IN PART AND CONCURRING IN PART**

Re: Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses, WT Docket No. 12-4; Applications of Verizon Wireless and Leap for Consent To Exchange Lower 700 MHz, AWS-1, and PCS Licenses, ULS File Nos. 0004942973, 0004942992, 0004952444, 0004949596, and 0004949598; and Applications of T-Mobile License LLC and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign Licenses, WT Docket 12-175

As Americans' reliance on data-intensive wireless devices and services is increasing, so too is the need for more spectrum on which to run them. Auctioning additional spectrum for commercial use is, of course, the Commission's best-known tool for dealing with the spectrum crunch. But that's not enough. We also must ensure that the spectrum already available is put to its highest and best use. Approving the transactions before us brings fallow spectrum into mobile broadband service; lets wireless providers better harmonize their spectrum holdings to improve efficiency; and signals to the private sector that facilitating a secondary market for spectrum will be an agency priority. Swift, yet thorough, review and approval of transactions will enable this market to function well, which is why I am pleased to support this order.

The order capably lays out the many benefits of these particular transactions, but let me add one more. We cannot understate the societal benefit of private, voluntary agreements to transfer spectrum for lawful consideration. We should welcome such contracts between and among private parties; after all, mutual consent implies mutual benefit, and it is accordingly in the public interest for freely-negotiated contracts to be allowed and enforced so long as no third parties are harmed (or any such harms can be mitigated with narrowly tailored, legally permissible conditions).

In addition, I wish to highlight a significant achievement of this order: the remedying of concerns about spectrum concentration within the Advanced Wireless Service (AWS-1) band through the voluntary transfer of licenses between T-Mobile and Verizon Wireless. Government-managed divestitures can let valuable spectrum languish for years, whereas the timely approval of this private-sector solution will resolve the Commission's competitive concerns and immediately put the spectrum to good use. I hope this portends a future norm in spectrum transactions.

I would be remiss if I did not mention the aspects of the order with which I only concur. *First*, the order should not and need not assert authority over the Commercial Agreements, which the Antitrust Division of the Department of Justice (DOJ) ably analyzed. It is a shibboleth that the Commission's authority to review mergers or transactions is broad, but we must be mindful that broad is not boundless. For example, Section 310(d) of the Communications Act—the primary authority for today's order—directs the Commission to examine spectrum license transfers.¹ If the parties to such a transfer incorporate other provisions into the same agreement—a land sale, a conveyance of patents, a commercial marketing agreement, and so on—the Commission's authority does not automatically expand to encompass those extraneous provisions. Congress limited the scope of our review to the proposed transfer of spectrum licenses, not to other business agreements that may involve the same parties. And in any case, the assertion is unnecessary. If DOJ “conducted its own independent and comprehensive

¹ 47 U.S.C. § 310(d). Similarly, section 214 directs the Commission to assess a transfer of lines between two wireline operators. 47 U.S.C. § 214.

investigation of these agreements,” and if the Consent Decree it negotiated “address[es] the key potential harms to consumers and competition,”² then any pronouncement about our authority is just dicta.

Second, I respectfully disagree with the imposition of a “voluntary” data roaming commitment upon Verizon. First, such a condition is not voluntary in any meaningful sense of the word, insofar as the parties would not agree to it independently but know that its acceptance is a predicate for regulatory approval of these transactions. Moreover, the Commission’s authority to impose such a condition generally is doubtful. Although the Communications Act affords us broad jurisdiction over telecommunications services, we have extremely limited authority over information services like mobile broadband. This discrepancy will come into even sharper relief should the U.S. Court of Appeals for the D.C. Circuit strike down the Commission’s *Data Roaming Order*³ as exceeding the Commission’s jurisdiction. For then, Verizon Wireless will have been compelled to abide by an otherwise unlawful mandate for *five years*—an eternity in this dynamic industry. Just as we should not impose transactional conditions that are more appropriately considered in the context of an industry-wide rulemaking process, so too should we refrain from extracting commitments that we could not legally enforce otherwise.

Notwithstanding my disagreements, my review of the record suggests that on balance, this item will increase consumer welfare, will mitigate any potential harms to competition, and will signal the speedier resolution of secondary market transactions. For these reasons, I vote to approve in part and concur in part.

In conclusion, I would like to thank the Commission staff whose hard work (including close collaboration with the Department of Justice) yielded such thoughtful consideration of these complex transactions. Led by Rick Kaplan, whom we were fortunate to retain during this process, the superb staff of the Wireless Telecommunications Bureau, International Bureau, Media Bureau, Wireline Competition Bureau, Office of Strategic Planning & Policy Analysis, and Office of General Counsel materially aided our deliberations. This intra-agency collaboration, culminating in the fine product we adopt today, exhibits the Commission at its best. I appreciate all of your efforts and applaud your public service.

² Memorandum Opinion and Order, para. 144.

³ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Second Report and Order, 26 FCC Rcd 5411 (2011).