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OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION
2010 APR 23 A 10: 39
CHIEF CLERK'S OFFICE

April 21, 2010

Illinois Commerce Commission
Office of the Chief Clerk
527 East Capitol Avenue
Springfield, IL 62701

Re: Allied Wireless Communications Corporation d/b/a Alltel Application for a Certificate of Service Authority to Operate as a Wireless Telecommunications Carrier in the State of Illinois, Docket No. 10-0251

Dear Sir or Madam,

Allied Wireless Communications Corporation ("AWCC"), through its undersigned counsel, hereby supplements its application filed on March 31, 2010 and advises the Commission that the Federal Communications Commission ("FCC") yesterday issued a Memorandum Opinion and Order approving the transfer of certain wireless licenses and authorizations to AWCC in six states, including Illinois.[1] *See In the Matter of 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*, DA 10-661 (rel. Apr. 20, 2010) (the "Order"). Paragraph 2 of the FCC's Order, which is attached to this letter, states in relevant part:

> Specifically, we grant the applications of Atlantic Tele-Network, Inc. ("ATN") and Cellco Partnership d/b/a Verizon Wireless and certain of its subsidiaries . . . to assign or transfer control of certain licenses and authorizations held by Verizon Wireless in a two-step process ultimately to Allied Wireless Communications Corporation ("AWCC"), a wholly-owned subsidiary of ATN.

Pursuant to Section 13-401(a) of the Illinois Public Utilities Act, the Commission "shall approve a cellular radio application for a Certificate of Service Authority without a hearing upon a showing by the cellular applicant that the Federal Communications Commission has issued to it a construction permit or an operating license to construct or operate a cellular radio system . . ."

[1] For a full description of the transaction giving rise to the transfer of these licenses and authorizations, see AWCC's response to Question #9 in its March 31st application for a Certificate of Service Authority.

220 ILCS 5/13-401(a). As a result of the FCC's Order and as discussed in AWCC's pending application before the Commission, at closing, Verizon Wireless will contribute Adams Divestiture Company LLC ("Adams Divestiture") and the FCC licenses and ownership interests it holds in FCC licensees to AWCC. Immediately thereafter, Adams Divestiture will be merged into AWCC with AWCC being the surviving entity. Accordingly, upon consummation of these transaction steps, AWCC will hold cellular radio licenses issued by the FCC for the provision of wireless services in the State of Illinois. The parties anticipate for the closing and the subsequent merger of Adams Divestiture into AWCC to occur on Monday, April 26, 2010. AWCC thus respectfully requests that the Commission grant its application for a Certificate of Service Authority to Become a Wireless Telecommunications Carrier without a hearing pursuant to Section 13-401(a).

Please do not hesitate to contact me if you have any questions regarding this filing.

Sincerely yours,

WILKINSON BARKER KNAUER, LLP

By: _____
Adam M. Peters

Cc: Administrative Law Judge Douglas E. Kimbrel
Qin Lu, Case Manager

VERIFICATION

This application shall be verified under oath.

OATH

State of Colorado)

County of Denver)

Adam M. Peters makes oath and states that he is an attorney representing Allied Wireless Communications Corporation d/b/a Alltel, that he has examined the foregoing amendment to the application and that to the best of his knowledge, information, and belief, all statements of fact contained in the said amendment to the application are true, and the said amendment to the application is a correct statement of the business and affairs of the above-named applicant in respect to each and every matter set forth therein.

(Signature of Affiant)

Subscribed and sworn to before me, a Notary Public in the State and County above named, this 21st day of April, 2010.

elizabeth a. dindinger
(Signature of person authorized to administer oath)

ELIZABETH A. DINDINGER
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 08/31/2013

REDACTED

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

In the Matter of	)	
	)	
Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless	)	WT Docket No. 09-119
	)	
For Consent To Assign or Transfer Control of Licenses and Authorizations	)	

MEMORANDUM OPINION AND ORDER

Adopted: April 20, 2010 **Released: April 20, 2010**

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

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I. INTRODUCTION

1. Today, we take action to promote mobile wireless competition by approving the divestiture by Verizon Wireless of business units in a number of markets that the Commission required to be divested in connection with Verizon Wireless's acquisition of ALLTEL Corporation.[1] We authorize a new operator in the U.S. – Atlantic Tele-Network, Inc. – to take control of wireless systems in 26 markets in six states.

2. Specifically, we grant the applications[2] of Atlantic Tele-Network, Inc. ("ATN") and Cellco Partnership d/b/a Verizon Wireless and certain of its subsidiaries ("Verizon Wireless," and together with ATN, the "Applicants") to assign or transfer control of certain licenses and authorizations[3] held by Verizon Wireless subsidiaries in a two-step process ultimately to Allied Wireless Communications Corporation ("AWCC"),[4] a wholly-owned subsidiary of ATN. Our consent is given pursuant to sections 214(a) and 310(d) of the Communications Act of 1934, as amended (the "Communications Act"),[5] under which we must determine whether approval of the Applicants' proposed transaction would serve the public interest, convenience, and necessity. In addition, our action to grant the subject applications partially effectuates the condition imposed by the Commission in the *Verizon Wireless-ALLTEL Order* requiring that Verizon Wireless divest certain business units in 105 markets as a condition of Commission consent for it to acquire licenses and authorizations held by ALLTEL Corporation ("ALLTEL").

II. BACKGROUND

A. Description of Applicants

1. Atlantic Tele-Network, Inc.

3. ATN, a telecommunications company headquartered in Salem, Massachusetts,[6] operates advanced wireless, wireline, and both terrestrial and submarine fiber optic networks in North America and the Caribbean.[7] Through its five operating subsidiaries, Commnet Wireless, LLC ("Commnet"),[8]

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[1] 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 (2008) ("*Verizon Wireless-ALLTEL Order*").

[2] File No. 0003858521 has been designated the lead application ("Application") for the wireless radio services. The other applications contain an exhibit referring to the exhibits attached to File No. 0003858521. Thus, for convenience, when referring to these applications, we only cite to the lead Application.

[3] The authorizations involve radio service licenses under Parts 22, 24, 27, and 101 of the Commission's rules as well as international section 214 authorizations. *See infra* para. 10.

[4] At the time the applications were filed, the Applicants stated that Verizon Wireless's interest in Adams Divestiture Company LLC ("ADC") would be transferred to Atlantic Wireless Communications, LLC, a wholly-owned subsidiary of ATN. That entity has been transformed into Allied Wireless Communications Corporation, still a wholly-owned subsidiary of ATN. *See* File No. 0003858521, Exhibit, Minor Amendment (second), filed Apr. 13, 2010. This amendment is considered minor under Commission rules.

[5] 47 U.S.C. §§ 214, 310(d).

[6] Application, Exhibit 1 – Description of the Transaction at 1 ("Application, Public Interest Statement").

[7] ATN, About Us, Overview, http://www.atni.com/about.html (last visited Apr. 14, 2010) ("ATN Overview").

Bermuda Digital Communications Ltd. ("Bermuda Digital"),[9] Choice Communications, LLC ("Choice"),[10] Guyana Telephone and Telegraph Limited ("GT&T"),[11] and Sovernet, Inc. ("Sovernet").[12] ATN provides wireless, local exchange and data, internet, and long distance services in the United States, Guyana, Bermuda, the U.S. Virgin Islands, and the Turks and Caicos.[13] ATN represents that it has expertise in providing services in underserved and niche markets.[14]

4. In particular, in rural markets located principally in six states in the Southwest and Midwest U.S., ATN provides wholesale wireless voice and data roaming services to national, regional, and local wireless carriers, utilizing Global System for Mobile Communications ("GSM") and Code Division Multiple Access ("CDMA") technologies in both the 850 MHz and 1900 MHz bands.[15] Throughout Bermuda, ATN utilizes 3G GSM and CDMA technologies, operating primarily in the 850 MHz frequency band.[16] In Guyana, ATN operates a GSM network using approximately 12 megahertz of spectrum in the 900 MHz band and 36 megahertz of spectrum in the 1800 MHz band.[17]

5. ATN provides local telephone and data services in Guyana, the mainland United States, and the U.S. Virgin Islands.[18] Through its subsidiary GT&T, it is the exclusive provider of international long distance voice and data communications into and out of Guyana.[19]

6. For the fiscal year 2009, ATN's wireless operations generated approximately $147 million, and its total revenues were $241.7 million.[20]

(Continued from previous page)

[8] Commnet provides voice and data wireless roaming services in the United States. *See* Application, Public Interest Statement at 1; Letter from Jonathan V. Cohen, Wilkinson Barker Knauer, LLP, Counsel for ATN, to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 18, 2009), Attach. at 5-6 ("ATN Sept. 18, 2009 Presentation").

[9] Bermuda Digital provides wireless voice and data services in Bermuda. *See* Application, Public Interest Statement at 1; ATN Sept. 18, 2009 Presentation at 5-6. In September 2008, Bermuda Digital began providing wireless services in the Turks and Caicos through Islandcom Telecommunications, Ltd. *See* Atlantic Tele-Network, Inc., SEC Form 10-K at 3 (for the fiscal year ended Dec. 31, 2009) ("ATN 10-K"), *available at* http://www.sec.gov/Archives/edgar/data/879585/000104746910002307/a2197266z10-k.htm.

[10] Choice provides fixed wireless broadband data services and dial-up internet services in the United States Virgin Islands. *See* ATN 10-K at 4; Application, Public Interest Statement at 2; ATN Sept. 18, 2009 Presentation at 5.

[11] GT&T provides local exchange, long distance, and international voice and data telecommunications and retail wireless services in Guyana. *See* ATN 10-K at 3; Application, Public Interest Statement at 1; ATN Sept. 18, 2009 Presentation at 5-6.

[12] Sovernet provides facilities-based integrated voice and broadband data communications services in New England, primarily in Vermont. *See* ATN 10-K at 3; Application, Public Interest Statement at 2; ATN Sept. 18, 2009 Presentation at 5. In August 2008, it also began providing wholesale high capacity transport services in New York State through its subsidiary ION Holdco, LLC. *See* ATN 10-K at 3; Application, Public Interest Statement at 2.

[13] *See* ATN 10-K at 4; ATN, About Us, Corporate Structure, http://www.atni.com/structure.html (last visited Apr. 14, 2010).

[14] *See* ATN Overview; ATN Sept. 18, 2009 Presentation at 4, 8.

[15] *See* ATN 10-K at 4. ATN also operates smaller networks in eight other states. *Id.*

[16] *See* ATN 10-K at 5.

[17] *See id.* at 6.

[18] *See id.* at 7.

[19] *See id.* at 10.

2. Cellco Partnership d/b/a Verizon Wireless

7. Verizon Wireless is a joint venture between Verizon Communications Inc. ("Verizon") and Vodafone Group Plc. ("Vodafone").[21] Verizon owns a controlling 55 percent ownership interest in the joint venture, and thus has majority control of Verizon Wireless and its subsidiaries.[22] Verizon Wireless is a general partnership headquartered in Basking Ridge, New Jersey.[23] It is the industry-leading wireless company in the United States based on operating income,[24] and the largest wireless service provider in the U.S. based on the number of retail customers and revenues.[25] Verizon Wireless provides wireless voice and data products and other value-added services and equipment sales across the United States.[26] The company utilizes CDMA technology.[27] Verizon states that its wireless network covers a population of approximately 290 million and provides service to nearly 91.2 million customers, as of December 31, 2009.[28] For 2009, Verizon states that its domestic wireless revenues were $62 billion.[29]

8. Verizon is headquartered in New York and incorporated in Delaware.[30] It provides wireline, wireless, and broadband services to mass market, business, government, and wholesale

(Continued from previous page)

[20] *See id.* at 45.

[21] *See* Verizon Communications Inc., SEC Form 10-K, at 3 (for the fiscal year ended Dec. 31, 2009) ("Verizon 10-K"), *available at* http://www.sec.gov/Archives/edgar/data/732712/000119312510041685/d10k.htm; Verizon Communications, 2009 Annual Report, at 21 ("Verizon Annual Report"), *available at* http://investor.verizon.com/financial/quarterly/pdf/09_annual_report.pdf. While Verizon Wireless is not a reporting company under the Securities Exchange Act of 1934 and does not make Securities Exchange Commission ("SEC") filings, information about Verizon Wireless is included in earnings announcements and SEC filings by Verizon Communication, Inc. *See* Verizon Wireless, Investors, http://news.vzw.com/investor/index.html (last visited Apr. 14, 2010).

[22] *See* Verizon 10-K at 3; Verizon Annual Report at 21.

[23] Verizon Wireless, About Us, Facts-at-a-Glance, http://aboutus.vzw.com/ataglance.html ("Verizon Wireless Facts") (last visited Apr. 14, 2010); Application, Public Interest Statement at 2.

[24] *See* Verizon 10-K at 4.

[25] *See id.*; Verizon Wireless, About Us Overview, http://aboutus.vzw.com/aboutusoverview.html (last visited Apr. 14, 2010).

[26] *See* Verizon Wireless, Investor Relations, Business Units, Domestic Wireless, http://investor.verizon.com/business/wireless.aspx (last visited Apr. 14, 2010); Application, Public Interest Statement at 2.

[27] Verizon 10-K at 5. Verizon Wireless states that it has deployed CDMA-1xRTT technology in virtually all of its cell sites nationwide and that it had deployed Evolution-Data Optimized ("EV-DO") technology in approximately 94 percent of its cell sites in its CDMA network as of December 31, 2009, with additional deployment ongoing. *Id.* As a result of Verizon Wireless's acquisition of ALLTEL and Rural Cellular Corporation, Verizon Wireless also provides GSM service and fulfills GSM roaming obligations in certain markets. *Id.*

[28] Verizon 10-K at 5. This figure includes the 105 markets that were required by the Commission to be divested in the *Verizon Wireless-ALLTEL Order.*

[29] Verizon 10-K at 3.

[30] *Id*; Verizon, Investor Relations, Company Profile, Corporate History, Current Statistics, http://investor.verizon.com/profile/history/index.aspx?tabId=1 ("Verizon Current Statistics") (last visited Apr. 14, 2010).

customers.[31] Verizon operates two reportable business segments – Domestic Wireless and Wireline.[32] For 2009, Verizon states that its wireline revenues were $46 billion,[33] and Verizon, which is traded on the New York Stock Exchange,[34] generated consolidated revenues of approximately $107.8 billion.[35]

9. Vodafone, a public limited company incorporated in England with a registered office in Newbury, England,[36] holds a non-controlling 45 percent interest in Verizon Wireless.[37] Vodafone provides mobile voice and data, paging, and internet services in 31 countries in Europe, Asia, the Middle East, and the United States through subsidiaries, joint ventures, and other investments.[38] Its ordinary shares are listed on the London Stock Exchange and its American Depositary Shares are listed on the NASDAQ Stock Market.[39] Its revenue for the year ending March 31, 2009 was £41 billion.[40]

B. Description of Transaction

10. The Applicants state that this transaction will aid Verizon Wireless in fulfilling its obligations under the Commission's order approving Verizon Wireless's acquisition of ALLTEL Corporation to divest business units and associated licenses and authorizations in 105 markets (collectively, the "Divestiture Markets").[41] The assignment and transfer of control applications involve licenses for the Part 22 Cellular Radiotelephone Service, the Part 24 Personal Communications Service, the Part 27 Advanced Wireless Service, and the Part 101 Common Carrier Fixed Point-to-Point Microwave Service,[42] as well as international section 214 authorizations.[43] In these applications, the

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[31] Verizon, Investor Relations, Company Profile, Overview, http://investor.verizon.com/profile/overview.aspx (last visited Apr. 14, 2010).

[32] *See* Verizon Annual Report at 21; Verizon, Investor Relations, Business Units, http://investor.verizon.com/business/index.aspx (last visited Apr. 14, 2010).

[33] Verizon 10-K at 10.

[34] Verizon, Corporate History, History of Verizon Communications, http://investor.verizon.com/profile/history/index.aspx (last visited Apr. 14, 2010).

[35] Verizon Annual Report at 17; Verizon, Investor Relations, Company Profile, Corporate History, Verizon Recent History, http://investor.verizon.com/profile/history/index.aspx (last visited Apr. 14, 2010).

[36] Vodafone, About Vodafone, http://www.vodafone.com/start/investor_relations/vodafone_at_a_glance0.html (last visited Apr. 14, 2010) ("About Vodafone").

[37] Verizon 10-K at 3.

[38] *See* About Vodafone; Vodafone, Fact Sheet, http://www.vodafone.com/start/investor_relations/vodafone_at_a_glance0/fact_sheet.html (last visited Apr. 14, 2010); About Vodafone.

[39] *See* About Vodafone.

[40] Vodafone Group Plc, Annual Report For the year ended March 31, 2009, Performance, Operating Results, *available at* http://www.vodafone.com/static/annual_report09/performance/operating_results/2009_comp_2008/index.html (last visited Apr. 14, 2010).

[41] Application, Public Interest Statement at 1; *see Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17515-16 ¶¶ 157, 159.

[42] A complete list of the applications involved in this transaction is attached as Appendix A hereto. *See also* Atlantic Tele-Network, Inc. and Verizon Wireless Seek FCC Consent To Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 09-119, *Public Notice*, 24 FCC Rcd 9035 (WTB 2009) (*"Public Notice"*).

Applicants seek Commission approval of the assignment or transfer of control of certain wireless licenses and related authorizations located in 26 markets in six states held by Verizon Wireless and its subsidiaries from Verizon Wireless to ATN (the "ATN Divestiture Markets").[44]

11. To accomplish this transaction, Verizon Wireless and its subsidiaries that hold the licenses and authorizations that are the subject of these Applications will assign the relevant licenses and authorizations, or transfer interests in partnerships holding such licenses, to a newly-formed wholly-owned indirect subsidiary of Verizon Wireless, Adams Divestiture Company LLC ("ADC").[45] Immediately thereafter, Verizon Wireless will transfer its interest in ADC to AWCC,[46] a wholly-owned subsidiary of ATN, thereby causing control of ADC, and all of its FCC licenses and authorizations and interests therein, to be transferred to ATN.[47]

C. Transaction Review Process

1. Commission Review

12. On June 16, 2009, the Applicants filed a series of applications seeking Commission approval of the proposed assignment and transfer of control of certain licenses and related authorizations held by Verizon Wireless and its subsidiaries from Verizon Wireless to ATN. The Applicants also filed applications, pursuant to section 214 of the Communications Act,[48] seeking consent to the partial assignment of international section 214 authority to ATN.[49] On July 9, 2009, the Commission released a Public Notice seeking comment on the proposed transaction.[50] The *Public Notice* established a pleading cycle for the applications, with petitions to deny due August 10, 2009, oppositions due August 20, 2009, and replies due August 27, 2009.[51]

13. In response to the *Public Notice*, the Commission received four Petitions to Deny, filed by Bulloch Cellular, Inc., Pineland Cellular, Inc., Planters Rural Cellular, Inc., and Plant Cellular RSA 8, Inc. (collectively, "Georgia Partners"), Chatham Avalon Park Community Council ("CAPCC"), the

(Continued from previous page)

[43] *See* IBFS File Nos. ITC-ASG-20090616-00286, ITC-ASG-20090616-00287.

[44] Application, Public Interest Statement at 1. The wireless licenses and related authorizations concern operations in Georgia, Idaho, Illinois, Ohio, North Carolina, and South Carolina.

[45] *Id.* at 2.

[46] At the time the applications were filed, the Applicants stated that Verizon Wireless's interest in ADC would be transferred to Atlantic Wireless Communications, LLC, a wholly-owned subsidiary of ATN. That entity has been transformed into Allied Wireless Communications Corporation, still a wholly-owned subsidiary of ATN. *See* File No. 0003858521, Exhibit, Minor Amendment (second), filed Apr. 13, 2010. This amendment is considered minor under Commission rules.

[47] Application, Public Interest Statement at 2.

[48] 47 U.S.C. § 214.

[49] IBFS File Nos. ITC-ASG-20090616-00286 (partial assignment from Alltel Communications, LLC to Adams Divestiture Company LLC) and ITC-ASG-20090616-00287 (partial assignment from Western Wireless, LLC to Adams Divestiture Company LLC). ADC will provide international service pursuant to international section 214 authorization File No. ITC-214-20090616-00560. Alltel will continue to provide international service to its remaining customers pursuant to its existing international section 214 authorization, ITC-214-19960404-00138. Western Wireless LLC will continue to provide international service to its remaining customers pursuant to its existing international section 214 authorization, ITC-214-20010427-00254.

[50] *Public Notice,* 24 FCC Rcd at 9035.

[51] *Id.*

National Association of Black Owned Broadcasters, Inc. ("NABOB"), and Telephone USA Investments, Inc. ("Telephone USA").[52] The Applicants filed a Joint Opposition to the Petitions to Deny on August 20, 2009.[53] The Commission received replies to the Joint Opposition from Georgia Partners, CAPCC, NABOB, and Telephone USA.[54] On March 31, 2010, Georgia Partners filed a request to withdraw their Petition to Deny.[55]

14. *Confidential Materials.* On November 19, 2009, the Wireless Telecommunications Bureau ("Bureau") issued a Protective Order to ensure that any confidential or proprietary documents

[52] Petition to Deny of Bulloch Cellular, Inc., Pineland Cellular, Inc., Planters Rural Cellular, Inc., and Plant Cellular RSA 8, Inc., filed Aug. 10, 2009 ("Georgia Partners Petition"); Petition to Deny of Chatham Avalon Park Community Council, filed Aug. 10, 2009 ("CAPCC Petition"); Petition to Deny of the National Association of Black Owned Broadcasters, Inc., filed Aug. 10, 2009 ("NABOB Petition"); Petition of Telephone USA Investments, Inc., filed Aug. 10, 2009 ("Telephone USA Petition").

Since the commencement of this proceeding, Telephone USA has filed more than 20 *ex parte* communications with the Commission, reiterating and elaborating on the arguments raised in the Telephone USA Petition that during the bidding process for the Divestiture Markets in which Telephone USA participated, Verizon Wireless failed to assist minority and socially disadvantaged businesses, and, therefore, the application should be designated for a hearing to determine whether the transaction would serve the public interest. *See, e.g.*, Letter from Vicki Iseman, Alcalde & Fay, Government and Public Affairs Consultants to Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 14, 2010); Letter from Vicki Iseman, Alcalde & Fay, Government and Public Affairs Consultants to Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 3, 2010); Letter from Vicki Iseman, Alcalde & Fay, Government and Public Affairs Consultants to Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 16, 2010); Letter from Vicki Iseman, Alcalde & Fay, Government and Public Affairs Consultants to Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 18, 2010); Letter from Vicki Iseman, Alcalde & Fay, Government and Public Affairs Consultants to Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 26, 2010); Letter from Vicki Iseman, Alcalde & Fay, Government and Public Affairs Consultants to Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 26, 2010); Letter from Vicki Iseman, Alcalde & Fay, Government and Public Affairs Consultants to Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 31, 2010); Letter from Vicki Iseman, Alcalde & Fay, Government and Public Affairs Consultants to Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Apr. 2, 2010); Letter from John R. Feore, Jr., counsel for Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Apr. 15, 2010). Subsequent references to *ex parte* notices on behalf of Telephone USA are referred to as "Telephone USA <date> *Ex Parte*."

[53] Joint Opposition of Atlantic Tele-Network, Inc. and Verizon Wireless to Petitions to Deny, filed Aug. 20, 2009 ("Joint Opposition").

[54] Reply of Bulloch Cellular, Inc., Pineland Cellular, Inc., Planters Rural Cellular, Inc., and Plant Cellular RSA 8, Inc. to Joint Opposition to Petition to Deny, filed Aug. 27, 2009 ("Georgia Partners Reply"); Reply of Chatham Avalon Park Community Council to Joint Opposition of Atlantic Tele-Network and Verizon Wireless, filed Aug. 27, 2009 ("CAPCC Reply"); Reply of the National Association of Black Owned Broadcasters, Inc., filed Aug. 27, 2009 ("NABOB Reply"); Reply of Telephone USA Investments, Inc., filed Aug. 27, 2009 ("Telephone USA Reply"). On September 14, 2009, the Applicants filed with the Commission a written *ex parte* communication seeking to correct allegedly misleading and incorrect statements contained in the CAPCC Reply and the Georgia Partners Reply. Letter from Jonathan V. Cohen, Wilkinson Barker Knauer, LLP, Counsel for ATN, and Nancy J. Victory, Wiley Rein LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 14, 2009).

[55] Letter from Caressa D. Bennet, Bennet & Bennet, PLLC, counsel for Bulloch Cellular, Inc., Pineland Cellular, Inc., Planters Rural Cellular, Inc., and Plant Cellular RSA 8, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 31, 2010).

submitted to the Commission would be adequately protected from public disclosure and announcing the process by which interested parties could gain access to confidential information filed in the record.[56] On December 16, 2009, the Bureau released a second protective order, as requested by the Applicants,[57] to provide additional protection to those documents and information contained in ATN's and Verizon Wireless's responses to the Bureau's information request considered to be highly confidential and competitively sensitive.[58] The Bureau received acknowledgements pursuant to the *Protective Order* and *Second Protective Order* from fourteen individuals.[59]

15. On January 5, 2010, the Bureau released a public notice announcing that Numbering Resource Utilization and Forecast ("NRUF") reports and local number portability ("LNP") data would be placed into the record and adopted a protective order pursuant to which the Applicants and third parties would be allowed to review the specific NRUF reports and LNP data placed into the record.[60] The Bureau received acknowledgements pursuant to the *NRUF Protective Order* from three individuals seeking to review the NRUF and LNP data that is in the record.[61]

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[56] 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, *Protective Order*, 24 FCC Rcd 13862 (WTB 2009) ("*Protective Order*").

[57] Letter from Jonathan V. Cohen, Wilkinson Barker Knauer, LLP, Counsel for ATN, and Nancy J. Victory, Wiley Rein LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 1, 2009).

[58] 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, *Second Protective Order*, 24 FCC Rcd 14559 (WTB 2009) ("*Second Protective Order*").

[59] Letter from John R. Feore, Jr., Dow Lohnes, PLLC, Counsel for Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 18, 2009) (acknowledgements of confidentiality for John R. Feore, Jr., J.G. Harrington, John S. Logan, Joshua N. Pila, and Vicki Lynne Lyttle); Letter from John R. Feore, Jr., Dow Lohnes, PLLC, Counsel for Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 29, 2009) (acknowledgements of confidentiality for Verdette Coltrane); Letter from Caressa D. Bennet, Bennet & Bennet, PLLC, counsel for Bulloch Cellular, Inc., Pineland Cellular, Inc., Planters Rural Cellular, Inc., and Plant Cellular RSA 8, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 23, 2009) (acknowledgements of confidentiality for Caressa D. Bennet, Michael R. Bennet, Gregory W. Whitaker, Howard S. Shapiro, and Daryl A. Zakov); Letter from James L. Winston, Rubin, Winson, Diercks, Harris & Cooke, LLP, Counsel for the National Association of Black Owned Broadcasters, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 25, 2010) (acknowledgements of confidentiality for James L. Winston); Letter from Catherine M. Hilke, Wiley Rein LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 4, 2010) (acknowledgements of confidentiality for Nancy J. Victory, and Catherine M. Hilke).

[60] 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 – Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports Placed Into the Record, Subject to Protective Order, WT Docket No. 09-119, CC Docket No. 99-200, *Public Notice*, 25 FCC Rcd 56 (WTB 2010); Applications of Atlantic Tele-Network, Inc. Cellco Partnership d/b/a Verizon Wireless For Consent To Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 09-119, CC Docket No. 99-200, *Protective Order*, 25 FCC Rcd 50 (WTB 2010) ("*NRUF Protective Order*").

[61] Letter from Catherine M. Hilke, Wiley Rein LLP, counsel for Cellco Partnership d/b/a Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 6, 2010) (acknowledgements of confidentiality for Nancy J. Victory, Catherine M. Hilke, and M. Ethan Lucarelli).

16. *Bureau Request for Documents and Information.* On November 19, 2009, pursuant to section 308(b) of the Communications Act,[62] the Bureau requested a number of documents and additional information from the Applicants by December 3, 2009.[63] Among other things, the Bureau asked the Applicants to provide further information regarding ATN's plans concerning the CDMA network in the ATN Divestiture Markets, ATN's transition plans and capabilities, and ATN's service, rate plans and handsets.[64] It also asked Verizon Wireless and Morgan Stanley & Co. Incorporated ("Morgan Stanley") to provide additional information regarding the bidding process for the Divestiture Markets.[65] On December 3, 2009, Verizon Wireless and ATN requested an extension of time to provide their written responses to the information request to one business day following the Commission's grant of the Applicants' request for the *Second Protective Order*.[66] Following the Commission's grant of the extension of time request and the issuance of the *Second Protective Order* on December 16, 2009, the Applicants provided responsive documents and information on December 17 and 18, 2009, and March 3, 23, 30 and 31, 2010,[67] some of which was provided subject to the provisions of the *Protective Order* and the *Second Protective Order*.

17. On March 12, 2010, pursuant to section 308(b) of the Communications Act,[68] the Bureau requested documents and additional information from Telephone USA by March 22, 2010.[69] The Bureau

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[62] 47 U.S.C. § 308(b).

[63] Letter from Ruth Milkman, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Michael Samsock, Verizon Wireless, and Douglas J. Minster, Atlantic Tele-Network, Inc. (Nov. 19, 2009) ("Information Request").

[64] *See id.* at Attachment.

[65] *See id.* at Attachment.

[66] Letter from Jonathan V. Cohen, Wilkinson Barker Knauer, LLP, Counsel for ATN, and Nancy J. Victory, Wiley Rein LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 3, 2009).

[67] Letter from Nancy J. Victory, Wiley Rein LLP, counsel for Cellco Partnership d/b/a Verizon Wireless to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 18, 2009) ("Verizon Wireless Information Request Response"); Letter from Nancy J. Victory, Wiley Rein LLP, counsel for Cellco Partnership d/b/a Verizon Wireless to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 3, 2010) ("Supplement to Verizon Wireless Information Request Response"); Letter from Catherine M. Hilke, Wiley Rein LLP, counsel for Cellco Partnership d/b/a Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 23, 2010) ("Further Supplement to Verizon Wireless Information Request Response"); Letter from Catherine M. Hilke, Wiley Rein LLP, counsel for Cellco Partnership d/b/a Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 31, 2010) ("Second Further Supplement to Verizon Wireless Information Request Response"); Letter from Jonathan V. Cohen, Wilkinson Barker Knauer LLP, counsel for Atlantic Tele-Network, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 17, 2009) ("ATN Information Request Response"); Letter from Jonathan V. Cohen, Wilkinson Barker Knauer LLP, counsel for Atlantic Tele-Network, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 30, 2010) ("Supplement to ATN Information Request Response").

On January 25, 2010, Telephone USA filed a written *ex parte* communication with the Commission responding to and commenting on the Verizon Wireless Information Request Response. Letter from John R. Feore, Jr., Dow Lohnes, PLLC, Counsel for Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 25, 2010). Telephone USA reiterated the arguments raised in the Telephone USA Petition and its previous *ex parte* communications. *See id.*

[68] 47 U.S.C. § 308(b).

asked Telephone USA to provide information concerning its participation in the bidding process for the Divestiture Markets, including copies of its bidding-related correspondence with Verizon Wireless, final bid documents, and other documents evidencing Telephone USA's committed funding of the purchase price.[70] Telephone USA provided responsive documents and information on March 22 and 25, 2010,[71] some of which were provided subject to the provisions of the *Protective Order*.

2. Department of Justice Review

18. On October 30, 2008, the Antitrust Division of the United States Department of Justice ("DOJ") filed a series of documents, including complaints and preservation of assets stipulations and orders, with the United States District Court for the District of Columbia ("DC District Court") and United States District Court for the District of Minnesota ("Minnesota District Court," and together with the DC District Court, the "District Courts") reflecting the settlement between the DOJ and Verizon Wireless and ALLTEL Corporation designed to eliminate the anticompetitive affects of the Verizon-ALLTEL merger in certain markets,[72] and the parties jointly filed proposed Final Judgments with the District Courts.[73] The Applicants state that this transaction will aid Verizon Wireless in fulfilling its divestiture obligations under this settlement agreement.[74]

(Continued from previous page)

[69] Letter from Ruth Milkman, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Joseph A. Stroud, Chairman, Telephone USA Investments, Inc. (Mar. 12, 2010) ("Telephone USA Information Request").

[70] *See id.* at Attachment.

[71] Letter from John R. Feore, Jr., Dow Lohnes PLLC, counsel for Telephone USA Investments, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 22, 2010) ("Telephone USA Information Request Response"); Letter from John R. Feore, Jr., Dow Lohnes PLLC, counsel for Telephone USA Investments, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 25, 2010) ("Supplement to Telephone USA Information Request Response").

[72] *See generally* Complaint, Proposed Final Judgment, Competitive Impact Statement, Plaintiff United States's Explanation of Consent Decree Procedures, Statement of Plaintiff United States in Support of the Appointment of W. Stephen Cannon as Management Trustee, Preservation of Assets Stipulation and Order, United States of America et al. v. Verizon Communications Inc., and ALLTEL Corporation, No.1:08-cv-01878 (D.D.C. Oct. 30, 2008) ("DOJ Verizon-ALLTEL Stipulation and Order"); Joint Motion to Modify Final Judgment, United States of America v. Bell Atlantic Corporation, GTE Corporation, and Vodafone AirTouch PLC, No. 1:99-cv-01119 (D.D.C. Oct. 30, 2008) ("DOJ Bell Atlantic-GTE Modified Stipulation and Order"); Modified Preservation of Assets Stipulation, Certificate of Service of Motion Documents, Proposed Order Granting Motion To Modify Final Judgment, Proposed Modified Final Judgment, and Proposed Modified Preservation of Assets Order, United States of America and State of Minnesota v. ALLTEL Corporation and Midwest Wireless Holdings L.L.C., No. 06-3631 (D.Minn. Oct. 30, 2008) ("DOJ ALLTEL-Midwest Stipulation and DOJ ALLTEL-Midwest Order").

[73] *See* Proposed Final Judgment, United States of America et al. v. Verizon Communications Inc., and ALLTEL Corporation, No. 1:08-cv-01878 (D.D.C. Oct. 30, 2008) ("DOJ Verizon-ALLTEL Proposed Final Judgment"); Proposed Modified Final Judgment, United States of America v. Bell Atlantic Corporation, GTE Corporation, and Vodafone AirTouch PLC, No. 1:99-cv-01119 (D.D.C. Oct. 30, 2008) ("DOJ Bell Atlantic-GTE Proposed Modified Final Judgment"); Proposed Modified Final Judgment, United States of America and State of Minnesota v. ALLTEL Corporation and Midwest Wireless Holdings L.L.C., No. 06-3631 (D.Minn. Oct. 30, 2008) ("DOJ ALLTEL-Midwest Proposed Modified Final Judgment").

[74] Application, Public Interest Statement at 1.

19. Under the Final Judgment issued by the DC District Court,[75] the DOJ must be satisfied that the divestiture of assets will be accomplished such that "these assets can and will be used by the Acquirer(s) as part of a viable, ongoing business engaged in the provision of mobile wireless telecommunications services."[76] In addition, the divestiture of assets "shall be made to an Acquirer or Acquirers that, in plaintiff United States's sole judgment, upon consultation with the relevant plaintiff State, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of mobile wireless telecommunications services."[77] The Final Judgment directed that the majority of the markets be divested in clusters, each cluster to be sold to a single purchaser unless DOJ approval was obtained to break up a cluster to multiple acquirers.[78] Also, the Final Judgment provided for the provision of transition services by Verizon Wireless for a period of up to one year.[79] The DOJ conducted its review of the proposed transaction in light of these requirements and its governing statutory authority, and on April 7, 2010, the DOJ approved the proposed divestiture of 26 markets to ATN.[80]

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

20. Pursuant to sections 214(a) and 310(d) of the Communications Act, the Commission must determine whether the Applicants have demonstrated that the proposed assignment and transfer of control of licenses and authorizations will serve the public interest, convenience, and necessity.[81] In making this assessment, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act,[82] other applicable statutes, and the Commission's rules.[83] If the transaction does not violate a statute or rule, we next consider whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications

[75] *United States of America et al. v. Verizon Communications, Inc., and ALLTEL Corp.*, 607 F.Supp.2d 1 (D.D.C. 2009).

[76] *Id.* at 6-7.

[77] *Id.* at 7.

[78] *Id.* at 7-9.

[79] *Id.* at 9.

[80] Atlantic Tele-Network, Inc. Announces Department of Justice Approval for Acquisition of Former Alltel Assets, AWCC Press Release (Apr. 8, 2010), *available at* http://www.awcc.com/news.html#040810 .

[81] 47 U.S.C. §§ 214(a), 310(d).

[82] Section 310(d), 47 U.S.C. § 310(d), requires that we consider the applications as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. *See, e.g.*, Applications of 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 (2009) ("*AT&T-Centennial Order*"); *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17460 ¶ 26; Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, WT Docket No. 08-94, *Memorandum Opinion and Order*, 23 FCC Rcd 17570, 17578 ¶ 19 (2008) ("*Sprint Nextel-Clearwire Order*"); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21542 ¶ 40 (2004) ("*Cingular-AT&T Wireless Order*").

[83] *See, e.g.*, *AT&T-Centennial Order*, 24 FCC Rcd at 13927 ¶ 27; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17460 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17578-79 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21542-43 ¶ 40.

Act or related statutes.[84] We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.[85] The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.[86] If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we must designate the application for hearing under section 309(e) of the Communications Act.[87]

21. Our public interest evaluation also necessarily encompasses the "broad aims of the Communications Act," which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest.[88] Our public interest analysis may also entail assessing whether the proposed transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.[89] In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.[90]

22. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.[91] Like the DOJ, the Commission considers how a transaction will affect competition. Under the Commission's review, the Applicants must show that the transaction will serve the public interest; otherwise the application is set for hearing.

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[84] *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13927 ¶ 27; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17460 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17578-79 ¶ 19.

[85] *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13927 ¶ 27; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17460 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17579 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

[86] *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13927 ¶ 27; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17579 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

[87] 47 U.S.C. § 309(e). *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13927 ¶ 27; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 26; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543-44 ¶ 40. Section 309(e)'s requirement applies only to those applications to which Title III of the Act applies, *i.e.*, applications involving radio station licenses. We are not required to designate for hearing applications for the transfer or assignment of Title II authorizations when we are unable to find that the public interest would be served by granting the applications, *see ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979), but of course may do so if we find that a hearing would be in the public interest.

[88] *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 28; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

[89] *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 28; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

[90] *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 28; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

[91] *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 29; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 28; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42.

The DOJ's review is limited solely to an examination of the competitive effects of the acquisition.[92] The Commission's competitive analysis under the public interest standard is somewhat broader, for example, considering whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant market.[93]

23. Our analysis recognizes that a proposed transaction may lead to both beneficial and harmful consequences.[94] Our public interest authority enables us to rely upon our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits.[95] Despite this broad authority, generally the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes.[96] Thus, we generally will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.[97]

IV. QUALIFICATIONS OF APPLICANTS

24. As noted previously, when evaluating applications for consent to assign or transfer control of licenses and authorizations, sections 214(a) and 310(d) of the Communications Act require the Commission to determine whether the proposed transaction will serve "the public interest, convenience and necessity."[98] 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."[99] Therefore, as a threshold matter, the Commission must determine whether the

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[92] *See, e.g., AT&T-Centennial Order,* 24 FCC Rcd at 13928 ¶ 29; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 28; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 21.

[93] *See, e.g., AT&T-Centennial Order,* 24 FCC Rcd at 13929 ¶ 29; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 28; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

[94] *See, e.g., AT&T-Centennial Order,* 24 FCC Rcd at 13929 ¶ 30; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 29; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17581 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

[95] *See, e.g., 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 17581-82 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43. Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act. 47 U.S.C. § 303(r). Similarly, section 214(c) of the Act authorizes the Commission to attach to the certificate "such terms and conditions as in its judgment the public convenience and necessity may require." 47 U.S.C. § 214(c). *See also Schurz Communications, Inc. v. FCC*, 982 F.2d 1043, 1049 (7th Cir. 1992) (discussing Commission's authority to trade off reduction in competition for increase in diversity in enforcing public interest standard).

[96] *See, e.g., 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.

[97] *See, e.g., 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.

[98] 47 U.S.C. § 310(d).

[99] *Id.* §§ 308, 310(d). *See also, e.g., AT&T-Centennial Order,* 24 FCC Rcd at 13930 ¶ 31; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 31; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

applicants to the proposed transaction meet the requisite qualifications requirements to hold and transfer licenses under sections 214(a) and 310(d) of the Communications Act and the Commission's rules.[100]

25. In determining whether applicants have the requisite character to be Commission licensees, we look to the Commission's character policy initially developed in the broadcast area as guidance in resolving similar questions in common carrier license transfer proceedings.[101] Under this policy, the Commission previously has stated that it will review allegations of misconduct directly before it,[102] as well as conduct that takes place outside of the Commission.[103] With respect to Commission-related conduct, the Commission has stated that all violations of provisions of the Act, or of the Commission's rules or polices, are predictive of an applicant's future truthfulness and reliability, and thus have a bearing on an applicant's character qualifications.[104] The Commission previously has determined that in its review of character issues, it will consider forms of adjudicated, non-Commission related misconduct that include: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition.[105]

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

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[100] *See* 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; *see also, e.g., AT&T-Centennial Order,* 24 FCC Rcd at 13930 ¶ 31; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 31; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

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

[102] *See, e.g., AT&T-Centennial Order,* 24 FCC Rcd at 13930 ¶ 32; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 32; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582-83 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

[103] *See, e.g., AT&T-Centennial Order,* 24 FCC Rcd at 13930 ¶ 32; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 32; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

[104] *See, e.g., AT&T-Centennial Order,* 24 FCC Rcd at 13930 ¶ 32; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 32; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47; *1986 Character Policy Statement,* 102 F.C.C. 2d at 1209-10 ¶ 57.

[105] *See, e.g., AT&T-Centennial Order,* 24 FCC Rcd at 13930 ¶ 32; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464-65 ¶ 32; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

sufficiently raised in petitions to warrant the designation of a hearing.[106] There has been no designation for hearing of Verizon Wireless's basic qualifications nor have any issues been raised here that warrant such a hearing designation. CAPCC asserts that "neither the Commission nor Verizon Wireless has provided any reasonable basis to conclude that Verizon Wireless has complied with the foreign ownership requirements of section 310(b) of the Communications Act," and therefore "a significant question concerning the basic qualifications of Verizon Wireless to hold radio licenses remains unresolved" and "the Commission cannot grant the applications."[107] The Commission, however, has previously considered and rejected CAPCC's arguments with respect to foreign ownership of Verizon Wireless in the *Verizon Wireless-ALLTEL Order*.[108] Based on information Verizon Wireless submitted for the record in that proceeding, the Commission concluded specifically that there was "no substantial or material question of fact as to whether Verizon Wireless's foreign ownership complies with the limitations of the *Vodafone-Bell Atlantic Order*."[109] There is nothing new in the current record, and we therefore see no reason to re-evaluate Verizon Wireless's qualifications in considering the transaction before us.

27. Conversely, section 310(d) obligates the Commission to consider whether the proposed transferee is qualified to hold Commission licenses.[110] No issues have been raised with respect to the basic qualifications of the transferee, ATN, which has previously been found qualified, through its subsidiaries, to hold Commission licenses. We therefore find that there is no reason to re-evaluate the basic qualifications of ATN.

V. COMPETITIVE ANALYSIS

28. In the context of reviewing potential competitive effects of proposed wireless transactions affecting the mobile telephony/broadband services market, the Commission's practice is first to define the relevant product and geographic markets, then to apply its standard two-part initial screen, and then to conduct a market-by-market analysis of the markets captured by the initial screen.[111] In evaluating this proposed transaction, we use a combined "mobile telephony/broadband services" product

[106] *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13931 ¶ 33; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17466 ¶ 33; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44. *See also* Stephen F. Sewell, Assignment and Transfers of Control of FCC Authorizations under Section 310(d) of the Communications Act of 1934, 43 FED. COMM. L.J. 277, 339-40 (1991). The policy of not approving assignments or transfers when issues regarding the licensee's basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. *See id.* The hearing designation is required under section 309(e) of the Communications Act, 47 U.S.C. § 309(e), only if the record presents a "substantial and material question of fact" whether grant of the application would serve the public interest, convenience, and necessity.

[107] CAPCC Petition, App. 1 at ii. *See also id.*, App. 1 at 12, 13.

[108] *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17543-45 ¶¶ 227-229. *See also* Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases, WT Docket No. 07-208, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 12463, 12524-26 ¶¶ 147-49 (2008), recon. pending.

[109] *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17545 ¶ 229 (footnote omitted); *see also* 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*, 15 FCC Rcd 16507 (WTB/IB 2000) ("*Vodafone-Bell Atlantic Order*").

[110] *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13931 ¶ 33; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17466 ¶ 33; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

[111] *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13931 ¶ 34; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468 ¶ 40; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17583 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68.

market, which is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).[112] In defining the geographic market, we apply the "hypothetical monopolist test" and find that the relevant geographic markets are local, are larger than counties, may encompass multiple counties, and, depending on the consumer's location, may even include parts of more than one state.[113] We identify two sets of geographic areas that effectively may be used to define local markets – Component Economic Areas ("CEAs") and Cellular Market Areas ("CMAs").[114] No party in the proceeding challenged the mobile telephony/broadband definition set out above or the local geographic market definition, and we will apply these definitions in our analysis of this transaction.

29. When examining the effect of proposed transactions, as noted above, we generally apply a two-part initial screen to identify any local markets in which competitive harm may arise from the transaction. One part of the screen utilizes the post-transaction Herfindahl Hirschman Index ("HHI") of market concentration in conjunction with the change in the HHI, which is calculated based on providers' subscriber market shares.[115] The second part of this screen examines post-transaction aggregation of spectrum available for the provision of mobile telephony/broadband services.[116] ATN currently does not hold spectrum or provide facilities-based mobile telephony/broadband services in any of the markets that are the subject of this transaction.[117] Therefore, neither screen would be triggered, and we need not conduct a case-by-case competitive review of any of the markets.

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[112] *See AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 37; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17469-70 ¶¶ 45-48; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17585-86 ¶¶ 33-38.

[113] *See AT&T-Centennial Order*, 24 FCC Rcd at 13933-35 ¶¶ 41-42 ; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17470-73 ¶¶ 49-52; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17590-91¶¶ 50-52; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 89.

[114] The analysis of this transaction would include 28 CEAs and 26 CMAs in six states. *See supra* note 44. The Commission has chosen CEAs and CMAs for its data analysis because both are consistent in order of magnitude with its local market definition and because each brings a different consideration to the analysis. CEAs are designed to represent consumers' patterns of normal travel for personal and employment reasons and may therefore capture areas within which groups of consumers would be expected to shop for wireless service. *See* Kenneth P. Johnson, Redefinition of the BEA Economic Areas, SURVEY OF CURRENT BUSINESS, February 1995, at 75. In addition, CEAs should be areas within which any service providers present would have an incentive to market – and actually provide – service relatively ubiquitously. Conversely, CMAs are the areas in which the Commission initially granted licenses for the cellular service. Although partitioning has altered this structure in many license areas, CMAs represent the fact that the Commission's licensing programs have to a certain degree shaped the mobile telephony market by defining the initial areas in which wireless providers held spectrum on which to base service offerings, and they may therefore serve as a reasonable proxy for where consumers face the same competitors. *See AT&T-Centennial Order*, 24 FCC Rcd at 13933 n.151; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17470-71 ¶ 49; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591 ¶ 51; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105.

[115] *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13936 ¶ 46; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17480-81 ¶ 71; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17600 ¶ 75.

[116] *See, e.g., ATT-Centennial Order*, 24 FCC Rcd at 13936 ¶ 46; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17480-81 ¶ 71; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17600 ¶ 75.

[117] Application, Public Interest Statement at 3; Joint Opposition at 3.

30. *ATN as a Competitor*. Telephone USA asserts that ATN is a foreign-based company with no experience providing retail wireless service in the United States[118] and that ATN thus cannot claim that it will improve service to customers in the ATN Divestiture Markets.[119] Telephone USA specifically questions ATN's domestic retail-focused mobile network experience.[120] Telephone USA alleges that ATN's overseas experience has been characterized by declining market share in Guyana.[121] Telephone USA also states that ATN has not demonstrated both the intent and the "necessary managerial, operational, technical and financial capability" needed to operate in the United States.[122]

31. ATN responds that it is a U.S.-based, publicly-traded holding company with corporate headquarters located in Salem, Massachusetts,[123] with a strong history of network and retail investment in competitive markets.[124] ATN points to a steady and consistent growth profile with consecutive growth for over five years,[125] and asserts that one of the operational strengths of the company is in underserved or niche markets.[126] ATN states that market share estimates for Guyana are inaccurate because the services offered in Guyana are pre-paid, rather than post-paid, and because it is not unusual for customers in that market to have service from more than one wireless provider. Thus, according to ATN, market shares are not a reliable indicator of market conditions.[127] In response to claims that it lacks the incentive to invest in the ATN Divestiture Markets, ATN points to its significant financial investment in Guyana[128] and Bermuda[129] despite an economic recession.

32. The Applicants state that ATN's acquisition of the proposed markets is pro-competitive because ATN would be a new wireless services competitor in these CMAs.[130] ATN has hired and intends to hire additional employees with experience in running a mobile telephony/broadband retail business in

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[118] Telephone USA Mar. 3, 2010 *Ex Parte*, Attach. 1 at 1; Telephone USA Mar. 4, 2010 *Ex Parte*, Attach. 1 at 1; Telephone USA Mar. 16, 2010 *Ex Parte*, Attach. 1 at 1; Telephone USA Mar. 16, 2010 *Ex Parte*, Attach. 2 at 1; Telephone USA Mar. 17, 2010 *Ex Parte*, Attach. 2 at 1; Telephone USA Mar. 18, 2010 *Ex Parte* at 1; Telephone USA Mar. 19, 2010 *Ex Parte*, Attach. 1 at 1; Telephone USA Mar. 31, 2010 *Ex Parte*, Attach. 3 at 3.

[119] Telephone USA Petition at 6; Telephone USA Reply at 2-3.

[120] *See, e.g.*, Telephone USA Mar. 18, 2010 *Ex Parte* at 1.

[121] Telephone USA Mar. 31, 2010 *Ex Parte*, Attach. 3 at 3.

[122] *Id.*

[123] Letter from Jonathan V. Cohen, Wilkinson Barker Knauer, LLP, Counsel for ATN, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (Mar. 9, 2010) (stating that ATN holds investment interests in companies that operate telecommunications systems outside the U.S but there is no significant foreign ownership in the company).

[124] ATN Sept. 18, 2009 Presentation at 6.

[125] ATN Sept. 18, 2009 Presentation at 7.

[126] ATN Sept. 18, 2009 Presentation at 8.

[127] Joint Opposition at 8 n.19.

[128] Application, Public Interest Statement at 4. ATN has invested approximately $300 million in the past 20 years in its Guyana telecommunications network. Joint Opposition at 6.

[129] Application, Public Interest Statement at 4; ATN Sept. 18, 2009 Presentation at 5-6. In 2008, ATN made network investments of $47 million, including the installation of a 3G wireless network to serve customers in Bermuda. Joint Opposition at 6.

[130] Application, Public Interest Statement at 3; Joint Opposition at ii, 3; ATN Sept. 18, 2009 Presentation at 11.

the U.S. ATN hired executive personnel with experience in the ATN Divestiture Markets,[131] including a former executive Vice President of ALLTEL to serve as the Chief Executive Officer of ATN's newly formed subsidiary, AWCC, which would operate the retail wireless business in the ATN Divestiture Markets. Additionally, AWCC's Chief Administrative Officer is the former President of Business Solutions at ALLTEL and has twelve years of experience working in the ATN Divestiture Markets.[132] Former ALLTEL executives are already in place and preparing for ATN's transition in the markets that are part of this proposed transaction.[133] In addition to the executive positions, ATN states that the company expects to hire approximately 450 former ALLTEL employees,[134] and [REDACTED].[135]

33. ATN has specific plans to differentiate its offerings and to compete vigorously in the ATN Divestiture Markets. ATN states that it will continue to provide excellent service offerings as an attractive alternative to national carriers, with a focus on customer support and flexible service plans,[136] and that it plans to [REDACTED].[137] ATN also plans to differentiate its service from national competitors by enhancing its focus on customer satisfaction,[138] and the development of customer service personnel to assist with pricing and presentation of products and services.[139] ATN anticipates a seamless transition for existing customers [REDACTED].[140] [REDACTED] to compete with other mobile telephony/broadband service providers[141] ATN expects to provide customers with the same service levels and functionality they currently enjoy, [REDACTED].[142]

34. We find that the claims by Telephone USA questioning ATN's ability to compete in the retail ATN Divestiture Markets to be unsubstantiated. ATN has demonstrated its willingness to operate

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[131] ATN Information Request Response at 8-9; Joint Opposition at 7.

[132] ATN Information Response at 8-9. ATN states that the company hired three other executives from ALLTEL to serve in executive positions of AWCC, filling the positions of Chief Information Officer, Director of Human Resources, and the Director of Financial Planning. ATN Information Response at 9.

[133] Allied Wireless Communications Corp. to Locate Corporate Headquarters in Little Rock: Wireless Company Will Invest More than $200 Million; Create More Than 200 Jobs, AWCC Press Release (Dec. 15, 2009), *available at* http://www.awcc.com/news.html#121509.

[134] *See* Atlantic Tele-Network, Inc. Announces Update Regarding Alltel Divestiture Acquisition, AWCC Press Release (June 30, 2009), *available at* http://www.awcc.com/news.html#063009 ("AWCC June 30, 2009 Press Release").

[135] ATN Information Response at 9.

[136] *See* AWCC June 30, 2009 Press Release (stating that local knowledge is essential to attract and retain customers).

[137] ATN Information Response at 6. *See also* Letter from Jonathan V. Cohen, Wilkinson Barker Knauer, LLP, Counsel for ATN, to Marlene H. Dortch, Secretary, Federal Communications Commission (Feb. 22, 2010) *and* AWCC *Ex parte* Presentation for the DOJ and FCC of February 19, 2010 at 2 ("AWCC Feb. 19, 2010 *Ex Parte* Presentation") [REDACTED]).

[138] *See* AWCC June 30, 2009 Press Release (stating that "[w]e believe that consumers want a choice, and we will ensure the resources, support and network quality to offer compelling alternatives").

[139] *See id.* ("ATN has a decidedly different perspective from that of a national carrier. We believe that to win in these rural markets we need the full capability of a motivated and well-supported local employee base").

[140] ATN Information Response at 6.

[141] ATN Information Response at 11; AWCC Feb. 19, 2010 *Ex Parte* Presentation at 12 ([REDACTED]).

[142] ATN Information Response at 6. *See also* AWCC Feb. 19, 2010 *Ex Parte* Presentation at 27-28.

and invest in retail operations in its foreign markets as well as in the ATN Divestiture Markets.[143] We find no evidence in the record that ATN lacks the ability to compete effectively in the U.S. mobile telephony/broadband market. To the contrary, ATN's experience providing domestic wireless roaming services and retail wireline operations have demonstrated the company's knowledge of the U.S. market and the regulatory process as well as the company's commitment to providing competitive service offerings to consumers. ATN has hired experienced senior management with knowledge of the retail ATN Divestiture Markets, and has provided its transition service plans as part of this transaction.[144] Telephone USA's reference to ATN's mobile telephony/broadband retail experience in Guyana ignores the very different legal and competitive situations of these markets. Rather, ATN has demonstrated its commitment to invest and compete in the markets where it operates.[145]

35. Further, ATN's financial model[146] submitted pursuant to the Request for Information illustrates knowledge of retail operations in the United States, and an indication of the viability of ATN as a competitor in the ATN Divestiture Markets of interest to it. ATN has submitted a detailed analysis of the customers[147] and competition[148] within the ATN Divestiture Markets, and has developed a balanced and thorough approach to competition within these markets.[149] Based upon our review of ATN's financial model, market approach scenarios, and operations overview, we find no support for the claim that ATN lacks the ability to compete effectively in the ATN Divestiture Markets. Thus, we do not find the claims by Telephone USA to be persuasive.

VI. POTENTIAL PUBLIC INTEREST BENEFITS

36. In addition to assessing the potential competitive harms of the proposed ATN-Verizon Wireless transaction, we also consider whether the assignment and transfer of control of the subject wireless licenses and related authorizations held by Verizon Wireless is likely to generate verifiable, transaction-specific public interest benefits.[150] In doing so, we ask whether the acquiring entity would be able, and would be likely, to pursue business strategies resulting in demonstrable and verifiable benefits to consumers that would not be pursued but for the transaction.[151]

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[143] ATN operates advanced wireless, wireline and both terrestrial and submarine fiber optic networks in North America and the Caribbean. *See supra* paras. 3-6.

[144] ATN Information Request Response at 8.

[145] For example, ATN has invested $15 million to $20 million in a new submarine fiber optic cable in Guyana. *See* Atlantic Tele-Network, Inc., SEC Form 10-Q at 19 (for period ending June 30, 2009), *available at* http://www.sec.gov/Archives/edgar/data/879585/000110465909048564/a09-18636_110q.htm. *See also* Joint Opposition at 6.

[146] ATN Information Request Response at Attachment III(3).

[147] AWCC Feb. 19, 2010 *Ex Parte* Presentation at 4-5.

[148] *Id.* at 12.

[149] *Id.* at 2, 19.

[150] *See, e.g., AT&T-Centennial Order,* 24 FCC Rcd at 13953 ¶ 87; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 114; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17614 ¶ 113; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

[151] *See, e.g., AT&T-Centennial Order,* 24 FCC Rcd at 13953 ¶ 87; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 114; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17614 ¶ 113; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

37. As discussed below, we find that the proposed transaction is likely to result in certain transaction-specific public interest benefits. We reach this conclusion, however, recognizing that it is difficult for us to quantify precisely either the magnitude of or the time period in which these benefits will be realized.[152]

A. Analytical Framework

38. 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."[153] This same analysis applies to an acquisition of assets like that contemplated by the proposed transaction 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.[154]

39. 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 magnitude.[155] In addition, "the magnitude of benefits must be calculated net of the cost of achieving them."[156] 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."[157] Third, the Commission has stated that it "will more likely find marginal cost reductions to

[152] *See, e.g., AT&T-Centennial Order,* 24 FCC Rcd at 13953 ¶ 88; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 115; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12504 ¶ 92; *AT&T-Dobson Order*, 22 FCC Rcd at 20330 ¶ 74.

[153] *E.g., AT&T-Centennial Order,* 24 FCC Rcd at 13953 ¶ 89; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 116; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17614 ¶ 115; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204; *see also* Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, at § 4 (Apr. 2, 1992, revised Apr. 8, 1997) ("*DOJ/FTC Merger Guidelines*").

[154] *See, e.g., AT&T-Centennial Order,* 24 FCC Rcd at 13953 ¶ 89; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 116; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 115; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204.

[155] *See, e.g., AT&T-Centennial Order,* 24 FCC Rcd at 13953 ¶ 90; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

[156] *E.g., AT&T-Centennial Order,* 24 FCC Rcd at 13954 ¶ 90; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

[157] *E.g., AT&T-Centennial Order,* 24 FCC Rcd at 13954 ¶ 90; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

be cognizable than reductions in fixed cost."[158] 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.[159]

40. Finally, the Commission applies a "sliding scale approach" to evaluating benefit claims.[160] Under this sliding scale approach, where potential harms appear "both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand."[161] On the other hand, where potential harms appear less likely and less substantial, as is the case here, we will accept a lesser showing to approve the transaction.[162]

B. Discussion

41. The Applicants assert that the proposed transaction will serve the public interest as it will enable ATN to replace ALLTEL as a strong competitor, thus maintaining the same number of competitors in the markets that are the subject of this proposed transaction.[163] The Applicants state that "ATN is well-equipped to maintain and potentially improve the competitive position of the divested properties."[164] The Applicants contend that ATN's experience with operating wireless systems in rural areas will be especially valuable in building upon ALLTEL's success in these markets.[165] As a result of this transaction, ATN will control 25 to 47 megahertz of spectrum suitable for the provision of mobile telephony/broadband services in 26 CMAs primarily in rural areas, gaining sufficient spectrum capacity to provide high-quality service to new customers.[166] It has a strong record of enhancing and expanding its network and distribution, and improving services to customers in response to marketplace demands.[167] Specifically, ATN's Bermuda subsidiary was among the first wireless telecommunication companies to deploy EV-DO in 2008, EV-DO Revision A in 2009, and Universal Mobile Telecommunications System

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[158] *E.g., AT&T-Centennial Order,* 24 FCC Rcd at 13954 ¶ 90; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17615-16 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205. *See also DOJ/FTC Merger Guidelines* § 4.

[159] *See, e.g., AT&T-Centennial Order,* 24 FCC Rcd at 13954 ¶ 91; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 117; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 116; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206; *see also DOJ/FTC Merger Guidelines* § 4.

[160] *See, e.g., AT&T-Centennial Order,* 24 FCC Rcd at 13954 ¶ 91; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 118; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206.

[161] *E.g., AT&T-Centennial Order,* 24 FCC Rcd at 13954 ¶ 91; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17496 ¶ 118; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206. *Cf. DOJ/FTC Merger Guidelines* § 4 ("The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.").

[162] *See, e.g., AT&T-Centennial Order,* 24 FCC Rcd at 13954 ¶ 91; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17497 ¶ 118; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 117.

[163] Application, Public Interest Statement at 3; Joint Opposition at 3.

[164] Application, Public Interest Statement at 3.

[165] *Id.* at 4.

[166] *Id.*.

[167] *Id.*

in 2008-2009.[168] ATN plans to maintain up-to-date technology in its operation of the acquired CDMA systems in the ATN Divestiture Markets to remain highly competitive with existing operators.[169] ATN has no plans to build a GSM network in these markets.[170] It will maintain those ATN Divestiture Markets that include a GSM network and will continue to provide voice and data roaming services over the existing GSM networks.[171]

42. In order to ensure a smooth customer transition, ATN will have access to Verizon Wireless's interconnection, customer support, and business system services.[172] It also will be permitted to operate under the ALLTEL brand for [REDACTED].[173] [REDACTED].[174] Moreover, ATN has negotiated a roaming agreement with Verizon Wireless [REDACTED][175] with terms that will allow ATN to offer competitive regional and national rate plans to its subscribers.[176] [REDACTED].[177] [REDACTED].[178]

C. Conclusion

43. As noted above, the proposed transaction does not present any competitive or other harms. As a result, we require a lesser showing of public interest benefits by the Applicants. In the end, we conclude, based on the record before us and as discussed above, that this transaction is likely to result in meaningful transaction-specific public interest benefits that support grant of the Commission's approval to the proposed transaction.

VII. OTHER ISSUES

A. Divestiture Bidding Process

44. *Introduction.* Verizon Wireless, advised by Morgan Stanley, conducted a bidding process in order to identify the buyers of the business units and authorizations that the Commission and the DOJ required be divested as a condition of approval of the proposed merger with ALLTEL.[179] That process led to Verizon Wireless announcing an agreement with AT&T Inc. on May 8, 2009, regarding the sale of 79 markets and with ATN on June 9, 2009, regarding the sale of the remaining 26 markets. CAPCC, NABOB, and Telephone USA challenge the bidding process, asserting that the process did not comply with the Commission's mandates regarding divestiture set forth in the *Verizon Wireless-ALLTEL*

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[168] *Id.*

[169] ATN Information Request Response at 4.

[170] *Id.*

[171] *Id.*

[172] Application, Public Interest Statement at 5; Joint Opposition at 4 n.8.

[173] ATN Information Request Response at 6; Supplement to ATN Information Request Response, Trademark License Agreement; *see also* ATN Information Request Response at 6-7.

[174] ATN Information Request Response at 11-12.

[175] *Id.* at 8; Supplement to ATN Information Request Response, Roaming Agreement.

[176] Application, Public Interest Statement at 5.

[177] ATN Information Request Response at 8; Supplement to ATN Information Request Response, Roaming Agreement.

[178] ATN Information Request Response at 8.

[179] *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17516 ¶ 159; *Verizon Communications*, 607 F.Supp.2d 1.

Order. These petitioners further claim that the bidding process was not fair and open, that the process did not provide adequate opportunities for businesses owned by minorities and socially disadvantaged groups to acquire any of the Divestiture Markets, and that decisions made and actions taken by Verizon Wireless and Morgan Stanley thwarted effective participation in the bidding process by minorities and socially disadvantaged groups.

45. The Applicants dispute these challenges to the bidding process. Verizon Wireless asserts that the bidding process complied with the requirements of the *Verizon Wireless-ALLTEL Order*. Verizon Wireless further states that it took steps to ensure active participation by minorities and socially disadvantaged groups, consistent with limitations imposed by the Final Judgment. In the light of these competing characterizations, we review the extensive record compiled regarding the conduct of the bidding process Verizon Wireless employed to identify proposed purchasers of the Divestiture Markets to determine whether the process complied with the requirements and language set out by the Commission in the *Verizon Wireless-ALLTEL Order*, and whether the process and the outcome thwarts achievement of the goals underlying the decisions of the Commission and the DOJ to require divestiture in 105 markets.

46. *Verizon Wireless-ALLTEL Order*. In the *Verizon Wireless-ALLTEL Order*, the Commission conditioned its approval of the proposed merger of Verizon Wireless and ALLTEL on the divestiture of operating units in five markets and upon the completion of divestitures in 100 markets that Verizon Wireless voluntarily committed to divest.[180] Rejecting requests by some petitioners, the Commission declined to impose specific conditions on the 105 Divestiture Markets regarding how and to whom the assets should be divested, but made clear that the entire operating unit of either Verizon Wireless or ALLTEL must be divested in those markets.[181] The Commission expressly observed that, "to provide greater assurance that the buyer will be an effective competitor, the DOJ is requiring that certain groups of CMAs be divested to a single purchaser."[182] Finally, in language that is significant to the petitioners' concerns about the efficacy of the bidding process, the Commission declined requests for a right of first negotiation for select groups[183] and stated that, "[a]lthough we decline [requests by certain parties] to impose specific conditions regarding the potential acquirers of and methods for selling the Divestiture Assets, we encourage Verizon Wireless to consider and implement mechanisms to assist regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups in acquiring the Divestiture Assets and/or accessing spectrum, to the extent possible."[184]

47. CAPCC, NABOB, and Telephone USA contend that the bidding process was not consistent with the Commission's intentions in the *Verizon Wireless-ALLTEL Order*.[185] In particular, CAPCC and Telephone USA state that the Commission included the language quoted above regarding minority-owned businesses in light of the agency's well-understood concerns about diversity and a desire to encourage Verizon Wireless to act in ways that would increase the likelihood of divestiture to minority-owned entities.[186] Telephone USA states Verizon Wireless tried to make it appear that it was helping minority bidders, but did not in fact improve the chances that a small, minority-owned business would be

[180] *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17516 ¶ 159.

[181] *Verizon Wireless-ALLTEL Order, id.* at 17518 ¶ 162.

[182] *Verizon Wireless-ALLTEL Order, id.* at 17518 ¶ 162 (footnote omitted).

[183] *Verizon Wireless-ALLTEL Order, id.* at 17517 ¶ 160.

[184] *Verizon Wireless-ALLTEL Order, id.* at 17518 ¶ 162.

[185] CAPCC Petition, App. 1 at 3-4; NABOB Petition at 7; Telephone USA Petition at 5.

[186] CAPCC Petition, App. 1 at 7; Telephone USA Petition at 5.

successful.[187] CAPCC and Telephone USA assert that Verizon Wireless did not reach out to minority buyers and did not take the appropriate steps to encourage minority-owned businesses or members of socially disadvantaged groups that were interested in the markets to be divested.[188] NABOB argues that Morgan Stanley conducted a bidding process that erected barriers to minority participation and that minority bidders were not given serious consideration as potential purchasers.[189] NABOB and Telephone USA assert that instead of an open and fair process, the bidding process was merely for "show," and the winners were predetermined.[190] NABOB and Telephone USA also have alleged that Verizon Wireless and Morgan Stanley stated a preference that one entity bid and win divestiture asset packages that could have been worth billions of dollars.[191] According to these parties, such a statement undermines the credibility of the efforts that Verizon Wireless and Morgan Stanley made to seek and encourage small entities to participate in the bidding process and acquire such assets.[192]

48. Verizon Wireless responds that it conducted an open and inclusive process that provided opportunities to minority and socially disadvantaged firms.[193] For example, early in the process, Verizon Wireless asked the Minority Media Telecommunications Council ("MMTC") to identify minority-owned businesses that would be in a position to participate in the divestiture sale process.[194] According to Verizon Wireless, Morgan Stanley made every effort to treat all bidders equally in the sale process.[195] Verizon Wireless further contends that it specifically involved and encouraged minority and socially disadvantaged businesses to participate in the bidding process, and made efforts to include such entities at each stage of the process.[196] Regarding the claims that it and Morgan Stanley indicated they preferred to sell all the markets to a single bidder, Verizon Wireless states that neither it nor Morgan Stanley "told bidders that Verizon Wireless favored bids that offered to purchase all of the Divested Assets."[197] Rather, according to Verizon Wireless, one of the letters sent to potential bidders regarding the bidding procedures indicated that "Verizon Wireless was open to proposals for the divestiture

[187] Telephone USA Petition at 6; Telephone USA Information Request Response at 2.

[188] CAPCC Petition, App. 1 at 7; Telephone USA Petition at 6.

[189] NABOB Petition at 7.

[190] NABOB Petition at 7-8; Telephone USA Petition at 8; Telephone USA Information Request Response at 5, 7. NABOB and Telephone USA also argue that there was a "swap" of assets between AT&T and Verizon Wireless that the petitioners allege suggests that the bidding process was for show and the winners were predetermined. NABOB Petition at 7-9; Telephone USA Petition at 7-8; Telephone USA Mar. 16, 2010 (re meeting with David Goldman of Chairman Julius Genachowski's office) *Ex parte,* Attach. 1 at 1; *see also* CAPCC Petition, App. 1 at 4-5.

[191] NABOB Petition at 7; Telephone USA Petition to Deny at 5.

[192] *Id.*

[193] Joint Opposition at 14-15. *See, e.g.*, Verizon Wireless Information Request Response at 00001168, 00001299.

[194] Joint Opposition at 14-15.

[195] Verizon Wireless Information Request Response at 14. Verizon Wireless further defends the divestiture auction process by stating that there was not a "swap" of properties between it and AT&T and that each of the transactions were separate transactions with neither transaction contingent upon the completion of the other transaction. Joint Opposition at 19 n.57.

[196] Joint Opposition at 14-15.

[197] Verizon Wireless Information Request at 13.

properties in their entirety, on a multistate basis, or for individual clusters so long as they satisfied the three objectives" identified by Verizon Wireless.[198]

49. For the reasons set forth in greater detail below, we find that Verizon Wireless conducted its bidding process in accordance with the guidance set forth in the *Verizon Wireless-ALLTEL Order*. In the *Verizon Wireless-ALLTEL Order*, the Commission expressly declined "to place any conditions on the sale of the Divestiture Assets based on (1) the size, ownership structure, or business plan of the acquirer, or (2) the size of the geographic areas that the Divestiture Areas can be sold to an acquirer."[199] Instead of imposing such conditions, the Commission chose "to encourage Verizon Wireless to consider and implement mechanisms to assist regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups in acquiring the Divestiture Assets and/or accessing spectrum, to the extent possible."[200] This language includes no directive regarding the specific ways in which Verizon Wireless should assist regional, local, and rural wireless providers, new entrants, small businesses and businesses owned by minorities or socially disadvantaged groups in seeking to acquire Divestiture Markets. The record before us indicates that Verizon Wireless did implement mechanisms to assist the groups listed above during the bidding process. Verizon Wireless took several steps to reach out to small businesses, and businesses owned by minorities or socially disadvantaged groups. Indeed, in some instances, Verizon Wireless and Morgan Stanley waived certain procedures at the request of Telephone USA, which was interested in becoming a new entrant in the wireless services market.[201]

50. While it is possible that Verizon Wireless could have taken more steps to aid minority-owned entities seeking to participate in the bidding, we must evaluate these applications in accordance with the relevant language in the Commission's *Verizon Wireless-ALLTEL Order*. We find that Verizon Wireless's conduct and interactions with potential and actual bidders were in keeping with that language. In future transactions, the Commission may consider providing more detailed guidance about those specific steps, such as flexibility in divestiture goals and in financing commitment requirements, that divesting entities can take to encourage new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups to acquire Commission-ordered divestiture assets.

51. *Financing*. Petitioners allege that the bidding process does not meet the public interest standard because Verizon Wireless imposed strict financing rules that disadvantaged minority firms. Specifically, Verizon Wireless found it "essential that a prospective buyer demonstrate that it had adequate financing to complete the transaction at the time final bids were submitted."[202] CAPCC,

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[198] *Id.*. These objectives were (i) to realize the highest possible value, (ii) to maximize certainty of closing given the deadlines and process requirements imposed by the Department of Justice, and (iii) to consummate any such transactions expeditiously.

[199] *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17518 ¶ 162.

[200] *Id.*

[201] Letter from Nancy J. Victory, Wiley Rein LLP, counsel for Cellco Partnership d/b/a Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2 (Apr. 8, 2010) ("Verizon Wireless Apr. 8 *Ex Parte*") ("[A]lthough Telephone USA had joined the process much later than other bidders, Verizon Wireless waived the requirement that it have a Nondisclosure Agreement in place prior to gaining access to confidential data on the properties so that it could participate in an initial bidding round and not be disadvantaged by any time delay required to execute a Nondisclosure Agreement. No other bidder received this waiver.").

[202] Joint Opposition at 19. *See also id.* at 20 (discussing the "financial resources necessary to ensure that the proposed transaction would be timely consummated"); Verizon Wireless Information Request Response at 00001590, 00001438-1440. NABOB and Telephone USA assert that Morgan Stanley permitted ATN to have a financing contingency even though Morgan Stanley informed bidders that bids had to have no financing (continued....)

NABOB, and Telephone USA contend that Verizon Wireless did not address the specific concerns that affect minority-owned businesses, such as the disadvantages that minority-owned entities face in the financing marketplace.[203] CAPCC, NABOB, and Telephone USA assert that the requirements imposed on bidders regarding financing served to discourage effective participation by minority and socially disadvantaged groups. According to CAPCC and Telephone USA, for minority-owned entities one of the most significant barriers to entry is the ability to obtain financing.[204] CAPCC and Telephone USA state that Verizon Wireless did not provide a period of exclusive negotiation for socially disadvantaged groups, which would be an important tool for such entities potentially to obtain financing.[205] By accepting bids only from entities that had financing firmly in place, Telephone USA argues that Verizon Wireless limited the pool of potentially successful bidders to established companies with easy access to capital.[206]

52. The Applicants state that it was essential that a prospective buyer demonstrate it had adequate financing to complete the transaction at the time final bids were submitted.[207] The Applicants note that the FCC and the DOJ required Verizon Wireless to dispose of the Divestiture Markets rapidly and by a firm deadline in one of the most adverse economic climates in decades.[208] The Applicants allege that Verizon Wireless therefore needed a high degree of confidence that a buyer would be deemed acceptable to both the FCC and the DOJ, and furthermore needed certainty that the divestitures would be consummated should the necessary approvals be obtained.[209] According to the Applicants, by the end of the bidding process, Verizon Wireless chose two entities with the financial resources necessary to ensure that the proposed transactions would be timely consummated.[210] The Applicants state that ATN

(Continued from previous page) ——————————
contingencies. NABOB Petition at 11; Telephone USA Reply at 5 n.14. NABOB notes that, in its June 8, 2009 press release, ATN announced that some of the funds it intended to use for the purchase were "subject to lender consent, under its term credit facility." NABOB Petition at 11; Telephone USA Jan. 14, 2010 *Ex Parte*, Attach. at 1; Telephone USA Mar. 16, 2010 *Ex Parte*, Attach. 4 (June 9, 2009 ATN Press Release announcing agreement); *see also* Telephone USA Reply at 5 n.14.

[203] CAPCC Reply at 5; NABOB Reply at 5; Telephone USA Reply at 6. *See also* Telephone USA Information Request Response at 4; *id.* at 0000742-743 (Apr. 9, 2009 letter from Joseph Stroud, Telephone USA, to Ivan Seidenberg, Verizon Wireless, [REDACTED]).

[204] CAPCC Petition, App. 1 at 6-7; CAPCC Reply at 4-6; Telephone USA Reply at 6.

[205] CAPCC Reply at 5; Telephone USA Information Request Response at 4 and 4 n.5 (such exclusive negotiating periods are often used to provide small independent businesses with an opportunity to obtain financing for large-scale acquisitions).

[206] CAPCC Petition, App. 1 at 6-7; Letter from John R. Feore, Jr., Dow Lohnes, PLLC, Counsel for Telephone USA, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 3 (Jan. 25, 2010). NABOB states that Verizon Wireless's preference to sell to a single purchaser also limited the pool of companies with easy access to capital because it made it very unlikely that a minority purchaser, or new entrant, could finance such an acquisition. NABOB Petition at 7; *see also* Telephone USA Petition at 5-6; Telephone USA Reply at 5 n.13.

[207] Joint Opposition at 19; *see, e.g.*, Verizon Wireless Information Request Response at 00001438, 00001451.

[208] Joint Opposition at 19; *see also* Verizon Wireless Information Request Response at 13.

[209] Joint Opposition at 19; *see also* Verizon Wireless Information Request Response at 13.

[210] Joint Opposition at 20. [REDACTED] ATN's funding commitment was from existing cash and an existing credit facility. [REDACTED] Verizon Wireless Information Request Response at 12; Verizon Wireless Apr. 8 *Ex Parte* at 4; *see also* Second Further Supplement to Verizon Wireless Information Request Response at 00002745-2746 (June 8, 2009 letter from ATN to Morgan Stanley submitting an offer [REDACTED]); Supplement to Verizon Wireless Information Request Response at 00002298-2300 ([REDACTED]).

demonstrated financing consistent with the requirements of the bidding process, and that Telephone USA's bid was not chosen because it did not produce evidence of committed financing.[211]

53. We have reviewed the claims made by the petitioners concerned with the conduct of the bidding process in light of the extensive documentation produced by Verizon Wireless and Telephone USA in response to the Bureau's Information Requests. The record discloses that Verizon Wireless received a total of three bids that included a showing of firm financing – from AT&T, ATN, and [REDACTED].[212] While Telephone USA did offer a significantly higher price for the Divestiture Markets, the record demonstrates that Telephone USA never provided to Verizon Wireless or Morgan Stanley evidence of committed funding, of a credible path to obtain funding, or of cash on hand sufficient to support the purchase price, despite multiple requests by Verizon Wireless and Morgan Stanley for such documentation.[213] Indeed, Telephone USA's final bid instead requested a 30-day exclusivity period for negotiating with Verizon Wireless and potential financing sources.[214] By contrast, ATN provided a firm funding commitment from existing cash and an existing credit facility.[215] We find that the language "subject to lender consent" in reference to ATN's existing credit facility did not mean that ATN's financing was contingent or not firm. The "lender consent" cited with respect to the ATN bid is a very limited type of consent, and was associated only with its term credit facility. Moreover, ATN has indicated that it had received assurances prior to submitting its bid that the $50 million under the term credit facility was available to support its showing of full funding.[216]

54. We recognize the requirement of a firm financing demonstration made participation more difficult for certain parties, but we conclude that it was within the bounds of reasonableness for Verizon Wireless to impose this condition, as well as to decline to enter into an exclusivity arrangement with any potential bidder in order to permit such bidder to negotiate financing, in order for it to meet the timing and buyer acceptability requirements of the Final Judgment. The Final Judgment directed that the divestiture "shall be made to an Acquirer or Acquirers that, in plaintiff United States's sole judgment, upon consultation with the relevant plaintiff State, has the intent and capability (including the necessary managerial, operational, technical, and *financial capability*) of competing effectively in the provision of mobile wireless telecommunications services."[217] It was reasonable for Verizon Wireless to impose reasonable conditions that would help to ensure that it could identify, within the time constraints imposed by the DOJ and the Commission, a buyer or buyers that would be acceptable to both the DOJ and this

[211] *See, e.g.*, Verizon Wireless Apr. 8 *Ex Parte* at 2, 4; *see also* Verizon Wireless Information Request Response at 13-14.

[212] *See supra* note 211.

[213] *See, e.g.*, Verizon Wireless Apr. 8 *Ex Parte* at 2-4; Verizon Wireless Information Request Response at 00001419, 00001433, 00001438, 00001451, 00001586. *See also id.* at 00001436-1437 ([REDACTED]); *id.* at 1438-1440 ([REDACTED]); *id.* at 00001441-1443 ([REDACTED]); Telephone USA Information Request Response at 0000845-850 ([REDACTED]); *id.* at 0000782-0000783 ([REDACTED]); *id.* at 0000795-797 ([REDACTED]); *id.* at 0000810 ([REDACTED]); *id.* at 5-6 ([REDACTED]).

[214] *See, e.g.*, Verizon Wireless Apr. 8 *Ex Parte* at 3-4; Telephone USA Information Request Response at 0000795-797 ([REDACTED]).

[215] *See, e.g.*, Verizon Wireless Apr. 8 *Ex Parte* at 4; Atlantic Tele-Network to Acquire Divestiture Properties from Verizon Wireless, AWCC Press Release (June 9, 2009), *available at* http://www.awcc.com/news.html#060909; Verizon Wireless Information Request Response at 12.

[216] Letter from Jonathan V. Cohen, Wilkinson Barker Knauer LLP, Counsel for ATN, to Kathy Harris, Deputy Chief, Mobility Division (Apr. 14, 2010), Attach. at 1 ([REDACTED]).

[217] *Verizon Communications*, 607 F.Supp.2d at 7 (emphasis added).

Commission and that could close the transaction upon receipt of necessary approvals from the DOJ and the Commission.

55. *Transition Services Agreement.* Another alleged barrier to effective participation by minorities and socially disadvantaged groups stems from Verizon Wireless's stated preference for a transition services agreement (TSA) with a maximum term of one year.[218] Verizon Wireless stated that some small, non-operator bidders expressed a need for a multi-year operating services agreement (OSA)[219] or a multi-year TSA.[220] Verizon Wireless asserted that this expression of need was contrary to the Final Judgment, which provided that Verizon Wireless may provide transition or other support services for a period up to twelve months.[221]

56. There are tradeoffs in determining the appropriate length of transition services agreements – the term needs to be long enough to enable the acquiring entity to establish its operations and be a successful standalone competitor, but a term that is too long could potentially thwart the very purposes of requiring the divestiture. Adoption of a one-year term is required by the Final Judgment, which states that, "[a]t the option of the Acquirer(s) of the Divestiture Assets, defendants shall enter into a contract for transition services customarily provided in connection with the sale of a business providing mobile wireless telecommunications services or intellectual property licensing sufficient to meet all or part of the needs of the Acquirer(s) for a period of *up to one year*."[222] In recent transactions involving transition services agreements, the Commission and the DOJ have frequently authorized one-year transition services agreements. We thus conclude that it was not unreasonable for Verizon Wireless to state a preference for limiting the term of any necessary transition services agreement to one year.

57. *Conduct of the Bidding Process.* CAPCC, NABOB, and Telephone USA contend that Verizon Wireless and Morgan Stanley conducted the bidding process in a way that erected barriers to successful participation by minority-owned entities. As noted above, CAPCC and Telephone USA assert that Verizon Wireless did not reach out to minority buyers and did not take appropriate steps to encourage minority-owned businesses or members of socially disadvantaged groups that were interested in the markets to be divested.[223] [REDACTED].[224] Petitioners also contend that Verizon Wireless did not consistently follow its own announced bidding procedures.[225] Specifically, NABOB states that the dates set for submission of bids changed without warning, and no information was provided to minority bidders explaining these changes.[226] CAPCC, NABOB, and Telephone USA conclude that the Commission, in

[218] Joint Opposition at 4 n.8; *see also* Joint Opposition at 20 n.58. [REDACTED] *See, e.g.*, Verizon Wireless Information Request Response at 00001525, 00001379; Telephone USA Information Request Response at 0000495 ([REDACTED]).

[219] Joint Opposition at 20-21. *See also* Verizon Wireless Information Request Response at 00001591.

[220] Opposition at 20-21. *See also* Verizon Wireless Information Request Response at 00002030; *see also id.* at 10-11.

[221] Joint Opposition at 20-21. *See also* Verizon Wireless Information Request Response at 00001646; *see also id.* at 00002042, 00001642.

[222] *Verizon Communications*, 607 F.Supp.2d at 9 (emphasis added).

[223] *See* CAPCC Petition, App. 1 at 6-7; Telephone USA Petition at 6.

[224] Telephone USA Information Request Response at 2, 4, 0000804; *see also* CAPCC Petition, App. 1 at 6 (Verizon Wireless did not seriously consider minority bidders because it had determined that it would sell to its main competitor).

[225] NABOB Petition at 8; Telephone USA Petition at 3.

[226] NABOB Petition at 8.

light of the facts surrounding the bidding process, should initiate an investigation,[227] direct Verizon Wireless to conduct a "true bidding process,"[228] or designate the applications for hearing.[229]

58. Verizon Wireless and Morgan Stanley initiated the process of selling the properties by providing a preliminary overview of the markets and a non-disclosure agreement in August and September 2008 to approximately 70 prospective buyers, including national, regional, and small wireless carriers, wireline telecommunications companies, entrepreneurs, financial buyers, industry veterans, and businesses owned by minorities and socially disadvantaged groups.[230] A Confidential Information Memorandum providing more detailed business and operational data was distributed to over 70 parties in November 2008.[231] Letters of preliminary indications of interest were submitted to Morgan Stanley in mid-November 2008.[232] Morgan Stanley, at the direction of Verizon Wireless, invited 21 parties to participate in more detailed due diligence (including but not limited to data room access and access to company management), and of these potential bidders, four were minority-owned entities and one was a regional consortium that included a financial sponsor that typically has sought to partner with minority-owned entities.[233] The first round final bid deadline was originally scheduled for February 13, 2009, but was changed to March 30, 2009,[234] and interested parties were informed of this fact.[235] Verizon Wireless received final bids from 14 entities,[236] three of which were minority-owned entities.[237] On May 8, 2009, AT&T announced that it would acquire 79 of the 105 Divestiture Markets.[238] [REDACTED].[239] On June 9, 2009, the Purchase Agreement between ATN and Verizon Wireless for the 26 CMAs was finalized.[240]

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[227] CAPCC Petition, App. 1 at 8-11; CAPCC Reply at 7-8; NABOB Reply at 10 n. 29; Telephone USA Reply at 7-8; Telephone USA *Ex Parte* Letter to Marlene Dortch at Attach. 2, p. 2 (Mar. 16, 2010).

[228] NABOB Petition at 11; NABOB Reply at 8.

[229] Telephone USA Petition at 8-10; Telephone USA Information Request Response at 7.

[230] Joint Opposition, Christopher Bartlett Declaration at ¶ 4. [REDACTED] Verizon Wireless Information Request Response at 00000846-847; *see also id.* at 00000848-850 (list of potential bidders organized by type of bidder).

[231] Joint Opposition, Christopher Bartlett Declaration at ¶ 5; *see also* Verizon Wireless Information Request Response at 0000013-219 (Confidential Information Memorandum).

[232] Joint Opposition, Christopher Bartlett Declaration at ¶ 7. [REDACTED] Verizon Wireless Information Request Response at 00002057-2061.

[233] Joint Opposition at 16; *id.*, Christopher Bartlett Declaration at ¶ 8. [REDACTED] Verizon Wireless Information Request Information at 8-9.

[234] Joint Opposition, Christopher Bartlett Declaration at ¶ 12 (stating that the reason for the change in the final bid date was because the work being done on the audited financial statements was taking longer than had initially been communicated to prospective bidders).

[235] Verizon Wireless Information Request Response at 00000222-228.

[236] [REDACTED] Verizon Wireless Information Request Response at 00002062-2064.

[237] Joint Opposition, Christopher Bartlett Declaration at ¶ 13. [REDACTED] Verizon Wireless Information Request Response at 00001589.

[238] AT&T To Acquire Divestiture Properties from Verizon Wireless, Enhance Network Coverage and Customer Service, AT&T Press Release (May 8, 2009). *See* Verizon Communications Inc., SEC Form 10-Q, at 7 (for the period ending Mar. 31, 2009) ("Verizon 10-Q"), *available at* http://www.sec.gov/Archives/edgar/data/732712/000119312509107317/d10q.htm.

59. Thus, we find that Verizon Wireless took a number of steps throughout the course of the bidding process to promote participation by minority-owned businesses and socially disadvantaged groups, so long as that participation met the generally applicable ground rules (*e.g.*, the firm financing requirement, the one-year term for a transition services agreement, and sale of the majority of the Divestiture Markets in clusters as defined in the Final Judgment). The documents and other aspects of the record show that Verizon Wireless and Morgan Stanley reached out for assistance in identifying potential minority-owned bidders[241] and also took affirmative steps to encourage entities that had shown an interest in acquiring various Divestiture Markets to continue to participate in the bidding process.[242] Documents submitted by Verizon Wireless show repeated contacts between Verizon Wireless and Morgan Stanley, on the one hand, and those negotiating on behalf of minority-owned entities, on the other hand.[243] With respect to the first round final bid date being changed, the Applicants assert that Verizon Wireless sent a letter on January 29, 2009, to all prospective bidders still participating at that stage of the process and the letter indicated that the final bid date was being changed from February 13, 2009 to March 30, 2009[244] in light of the fact that the work being done on the audited financial statements was taking longer than initially had been communicated.[245]

60. *Allegations Concerning Acceptance of ATN's Winning Bid Amount.* NABOB and Telephone USA allege that further evidence of Verizon Wireless's poor treatment of minority-owned businesses in the course of the bidding process is found in the amount of ATN's winning bid of $200 million[246] for the 26 markets,[247] which, NABOB asserts, was substantially below the current market price

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[239] Second Further Supplement to Verizon Wireless Information Request Response at 00002745-2746; Supplement to Verizon Wireless Information Request Response at 00002298-2300; Telephone USA Information Request Response at 0000799-801.

[240] *See* Verizon 10-Q at 7. *See also* Verizon Wireless Information Request Response at 00002207-2252.

[241] For example, the Applicants describe that Verizon Wireless asked the Minority Media Telecommunications Council (MMTC) to identify minority-owned businesses that would be in a position to participate in the divestiture sale process and one of which submitted a bid. Joint Opposition at 15. [REDACTED] Verizon Wireless Information Response at 6-7. [REDACTED] [REDACTED] *Id.* at 8.

[242] Morgan Stanley, at Verizon Wireless's direction, proactively reached out to one minority-owned entity and encouraged it to reconsider its decision to not remain in the divestiture auction process. Joint Opposition at 18; Verizon Wireless Information Request Response at 00001172. Morgan Stanley and senior Verizon Wireless staff also had a meeting with this particular bidder and provided guidance as to the geographic areas in which it could be competitive in the sale process. Joint Opposition at 18; Verizon Wireless Information Request Response at 00001172.

[243] *See, e.g.*, Verizon Wireless Information Request Response at 00001299, 00001320-1323, 00001334-1335, 00001348, 00001369, 00001381, 00001403, 00001438, 00001441, 00001458, 00001476, 00001586, 00001524, 00001547.

[244] Joint Opposition at 17 n.47; Joint Opposition, Christopher Bartlett Declaration at ¶ 12; Verizon Wireless Information Request Response at 00000226-229 (January 29, 2009 bid procedures letter changing the final bid deadline from February 13, 2009 to March 30, 2009).

[245] Joint Opposition at 17 n.47; Joint Opposition, Christopher Bartlett Declaration at ¶ 12. [REDACTED] Verizon Wireless Information Request Response at 00000226-229.

[246] NABOB states that this would result in ATN paying Verizon Wireless $250 per subscriber, which is significantly lower than what Verizon Wireless paid in the Verizon Wireless-ALLTEL transaction ($2,145 per subscriber) and what AT&T proposes to pay in the AT&T-Verizon Wireless transaction ($1,566 per subscriber); *see also* CAPCC Petition App. 1 at 6 (ATN proposes to pay $250 per subscriber); Telephone USA Petition at 3 (ATN proposes to pay (continued....)

for such assets.[248] Telephone USA points out that ATN's bid is considerably lower than its own timely bid for the remaining properties – a bid of approximately $1 billion.[249] According to Verizon Wireless, [REDACTED].[250] As described above, we find that the ground rules established for the bidding process were reasonable under the terms of the Final Judgment and the *Verizon Wireless-ALLTEL Order*.[251] Under these circumstances, we cannot overturn Verizon Wireless's selection of ATN to acquire the 26 Divestiture Markets not subject to Verizon Wireless's agreement with AT&T.

61. *Allegations Concerning Morgan Stanley Conflict of Interest.* NABOB and Telephone USA assert that the reason that ATN's bid proposal was chosen at a substantially below market price was due in part to the fact that Morgan Stanley had an ownership interest in ATN during the conduct of the bidding process.[252] Both NABOB and Telephone USA raise concerns regarding the timing of when Morgan Stanley acquired and sold ATN shares.[253] NABOB notes that Morgan Stanley began acquiring ATN shares in May of 2007.[254] NABOB states that in May of 2008, just before Morgan Stanley began representing Verizon Wireless in the sale of the Divestiture Markets, Morgan Stanley tripled its holdings in ATN with a substantial purchase made during the bidding process.[255] Telephone USA states that Morgan Stanley's interest in ATN more than doubled during the period ending March 31, 2009.[256] Although Morgan Stanley sold some of its ATN shares, NABOB states, it still retained a significant ownership interest in ATN at the time of Verizon Wireless's announcement of the sale of the remaining Divestiture Markets to ATN.[257] NABOB and Telephone USA conclude that the facts surrounding Morgan Stanley's ownership holdings in ATN and the below market price offered by ATN give the appearance that Morgan Stanley had a conflict of interest and that the bidding process was therefore tainted.[258]

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approximately one-sixth of the price per subscriber that AT&T proposes to pay in the AT&T-Verizon Wireless transaction); Telephone USA Information Request Response at 7.

[247] Telephone USA Petition at 3; *see also* Telephone USA Petition at 7.

[248] NABOB Petition at 9.

[249] Telephone USA Petition at 3; Telephone USA Information Request Response at 4.

[250] Verizon Wireless Information Request Response at 13-14; *see also* Joint Opposition at 20 n. 58 (stating that price per POP was not the sole factor that Verizon Wireless considered in selecting buyers as it was essential that the entity selected could demonstrate financing).

[251] *See, e.g.*, Verizon Wireless Request Response at 13 ([REDACTED]). *See also id.* at 00000226-229 ([REDACTED]).

[252] NABOB Petition at 9-11; Telephone USA Petition at 7-8; *see also* Telephone USA Information Request Response at 4-5, 7. NABOB also contends, as evidence of a conflict of interest, that Morgan Stanley permitted ATN to have a financing contingency even though Morgan Stanley informed bidders that bids had to have no financing contingencies. NABOB Petition at 11.

[253] NABOB Petition at 10-11; Telephone USA Petition at 7; Telephone USA Information Request Response at 4-5.

[254] NABOB Petition at 10.

[255] *Id.* at 10-11.

[256] Telephone USA Petition at 7; Telephone USA Mar. 16, 2010 *Ex Parte,* Attach. 2 at 1.

[257] NABOB Petition at 11.

[258] Telephone USA Petition at 7-8; Telephone USA Information Request Response at 4-5.

62. The Applicants respond that the bidding process was not tainted by an improper conflict of interest.[259] The Applicants state, and they add that Morgan Stanley confirmed, that during the entire bidding process, no member of the MS Verizon Wireless Team[260] had any knowledge that Morgan Stanley separately had an ownership holding in ATN.[261] Verizon Wireless points to Morgan Stanley's established policies and procedures that, according to Verizon Wireless, are designed to avoid and/or minimize actual and apparent conflicts that may arise from the divergent activities in which Morgan Stanley is engaged.[262] Verizon Wireless states that such policies and procedures include protecting any confidential information received in the course of its business activities and maintaining separation of personnel through the use of internal information barriers.[263]

63. We have reviewed NABOB's and Telephone USA's allegations, the Applicants' response thereto, and the record regarding the alleged conflict of interest on the part of Morgan Stanley. We find nothing that indicates that Verizon Wireless's decision to accept the ATN bid was somehow determined by Morgan Stanley's ownership interest in ATN. As discussed above, Morgan Stanley has in place a significant firewall to separate its investment banking operations from its investment operations. We also note the affidavit placed in the record indicating that, during the entire bidding process, no member of the MS Verizon Wireless Team had any knowledge that Morgan Stanley separately had an ownership holding in ATN.[264] We conclude that the bidding process was not tainted by any improper conflict of interest that resulted in ATN being offered the Divestiture Markets at a below market price.

64. *Designation for Hearing.* Telephone USA and NABOB contend that the Commission should designate these applications for a hearing, citing their concerns about the conduct of the bidding process and the price that ATN is paying for these properties.[265] In light of the extensive record we have collected about the bidding process and the language in the *Verizon Wireless-ALLTEL Order,* we do not find that these allegations have presented a substantial and material question of fact that would warrant designating this transaction for a hearing.[266]

65. *Conclusion.* To implement the divestitures ordered by the Commission and the DOJ with respect to its merger with ALLTEL, Verizon Wireless chose to solicit bids for the Divestiture Markets. The conduct of this bidding process has been challenged as not including sufficient opportunities for businesses owned by minorities or socially disadvantaged groups to obtain any of the markets subject to divestiture and the parties request that the Commission investigate, direct Verizon Wireless to conduct a

[259] Joint Opposition at 21.

[260] MS Verizon Wireless Team is the title given to the Morgan Stanley personnel engaged in advising Verizon Wireless on the sale of the Divestiture Markets. Joint Opposition at 22.

[261] Joint Opposition at 22; Joint Opposition, Christopher Bartlett Declaration at ¶ 18.

[262] Verizon Wireless Information Request Response at 15.

[263] *Id.* The Applicants state that at the time the bidding was conducted, according to the most recently filed SEC report, Morgan Stanley's stake in ATN was 16,000 shares, with an estimated value of approximately $650,000. The Applicants point out that Morgan Stanley's current market capitalization is approximately $40 billion. Joint Opposition at 23. Moreover, the Applicants contend that the increase in the value of ATN stock was relatively modest as it is a mere fraction of Morgan Stanley's reported net revenues, and the Applicants conclude it therefore would not have been worth the risk of tainting the institution's reputation. Joint Opposition at 23 and 23 n.68; *see also* Joint Opposition, Christopher Bartlett Declaration at ¶ 19.

[264] Joint Opposition at 22; Joint Opposition, Christopher Bartlett Declaration at ¶ 18.

[265] NABOB Petition at 3, 7, 11; NABOB Reply at 7-8; Telephone USA Petition at 8-10.

[266] *See* 47 U.S.C. § 309(d)(2).

"true bidding process," or designate the applications for hearing. While the bidding process clearly was not a perfect tool, we find that it complied with the Commission's requirements imposed in the *Verizon Wireless-ALLTEL Order* and does not otherwise undercut the competitive objectives the Commission sought to implement by requiring divestitures in 105 markets.

B. Customer Transition Issues

66. In evaluating this transaction, we examine claims that the transfer to ATN is not in the public interest because it would result in harm to existing customers in the ATN Divestiture Markets. Telephone USA alleges that there would be harm to customers during the transition from Verizon Wireless to ATN. Specifically, Telephone USA questions the level of transition services that ATN would receive as part of the transaction.[267]

67. In response to this argument, ATN states that the company is focused on transition planning to ensure that it will be able to successfully manage and operate the divestiture networks from day one and provide a smooth transition for existing customers.[268] ATN states that the divestiture properties it seeks to acquire employ 3G CDMA technology, and ATN will continue to operate and invest in the CDMA network.[269] Also, Verizon Wireless will provide services to ATN under a one-year TSA called for in the Final Judgment after the proposed transaction is consummated.[270] The Applicants assert that ATN's strong financial position will enable it to maintain and improve on the services currently being offered to subscribers in these markets and to continue to operate and invest in the properties it seeks to acquire in the subject applications.[271]

68. We seek to ensure that the transition is as successful as possible with minimal disruption to customers and that the operation of and investment in the markets associated with the proposed transaction is maintained. ATN provided a copy of its TSA with Verizon Wireless and its transition plans pursuant to the Information Request.[272] The TSA specifies that Verizon Wireless will provide transition services for a period of 12 months from the date of closing.[273] ATN states that it expects to [REDACTED].[274] ATN and Verizon Wireless have agreed to [REDACTED].[275] On March 30, 2010, the Applicants executed a Trademark Licensing Agreement that allows for [REDACTED].[276] At closing, [REDACTED].[277] Additionally, [REDACTED].[278]

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[267] Telephone USA Petition at 6-7 (stating that the transition services to be made available to ATN "are not a benefit because all they will do is prevent customers from receiving worse service than they receive already").

[268] Joint Opposition at 4.

[269] ATN Information Request Response at 4.

[270] Joint Opposition at 4 n.8. The TSA includes [REDACTED].

[271] Joint Opposition at 4-5.

[272] Supplement to ATN Information Request Response; *see also* ATN Information Request Response at 6-7.

[273] Supplement to ATN Information Request Response, Transition Services Agreement at 4.

[274] ATN Information Request Response at 6.

[275] *Id.*

[276] Supplement to ATN Information Request Response, Trademark License Agreement at 8.

[277] ATN Information Request Response at 6.

[278] *Id.*

69. ATN's TSA with Verizon Wireless addresses a wide range of functions, [REDACTED].[279] Under the TSA, [REDACTED].[280] In addition, the TSA states that Verizon Wireless and ATN may negotiate for additional or modified services that are not covered in the existing agreement.[281] Finally, ATN and Verizon Wireless executed [REDACTED].[282] [REDACTED].[283]

70. Further, ATN has identified its senior management team, which includes personnel from ALLTEL who are familiar with the markets, business operations, and customers that are the subject of the pending applications.[284] As noted previously, ATN has stated that it will hire approximately 450 former ALLTEL employees, [REDACTED].[285] ATN has indicated that [REDACTED].[286] ATN [REDACTED].[287]

71. Based upon the record before us, we conclude that ATN has entered into appropriate transition arrangements. The record does not support the arguments of Telephone USA that customers would be harmed by a decline in service quality. We believe that ATN has the senior management personnel, plans to retain former ALLTEL employees in the markets it proposes to acquire, and executed agreements, financing, and resources to ensure a smooth transition. Nonetheless, we will monitor the situation in the service areas associated with this transaction to ensure that the transition is in fact smooth and in the public interest.

C. International Dominant Carrier Safeguards

72. The Applicants seek consent to the partial assignment of international section 214 authority held by Verizon Wireless and its subsidiaries to ADC.[288] As part of our public interest analysis under section 214(a) of the Communications Act, we consider whether, upon consummation of the proposed transaction, ADC will become affiliated with a foreign carrier that has market power on the foreign end of a U.S. international route that it will have authority to serve pursuant to the international section 214 authority that will be assigned.[289] Under rules adopted in the *Foreign Participation Order*,

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[279] Supplement to ATN Information Request Response, Transition Services Agreement.

[280] Supplement to ATN Information Request Response, Transition Services Agreement at 4.

[281] Supplement to ATN Information Request Response, Transition Services Agreement at 3.

[282] Supplement to ATN Information Request Response, Roaming Agreement.

[283] Supplement to ATN Information Request Response, Roaming Agreement.

[284] ATN Information Request Response at 8-9.

[285] *See supra* para. 32.

[286] ATN Information Request Response at 9.

[287] AWCC Feb. 19, 2010 *Ex parte* Presentation at 7.

[288] *See* 214 Applications, File Nos. ITC-ASG-20090616-00286 (partial assignment from Alltel Communications, LLC to Adams Divestiture Company LLC) and ITC-ASG-20090616-00287 (partial assignment from Western Wireless, LLC to Adams Divestiture Company LLC). ADC will provide international service pursuant to international Section 214 authorization File No. ITC-214-20090616-00560. Alltel will continue to provide international service to its remaining customers pursuant to its existing international Section 214 authorization, ITC-214-19960404-00138. Western Wireless LLC will continue to provide international service to its remaining customers pursuant to its existing international Section 214 authorization, ITC-214-20010427-00254.

[289] 47 U.S.C. § 214(a).

the Commission classifies a U.S. carrier as "dominant" on a particular route if it is, or is affiliated with, a foreign carrier that has market power on the foreign end of that route.[290]

73. Following consummation of the proposed transaction, ADC will become affiliated, within the meaning of section 63.09 of the Commission's rules,[291] with ATN and the foreign carriers with which ATN is affiliated – Bermuda Digital and GT&T.[292] Pursuant to section 63.10 of the Commission's rules, ADC requests "non-dominant" status upon consummation of the transaction on the U.S.-Bermuda and U.S.-Turks and Caicos routes.[293] We find that ADC has demonstrated that Bermuda Digital does not have market power on the foreign end of the U.S.-Bermuda or U.S.-Turks and Caicos routes. We therefore will classify ADC as non-dominant on those routes.

74. With respect to the U.S.-Guyana route, ADC agrees to be classified as dominant and comply with the dominant carrier safeguards set forth in section 63.10 of the Commission's rules.[294] Accordingly, pursuant to section 214(a) of the Communications Act and section 63.10 of the Commission's rules, we condition our grant of the international section 214 assignment applications on the classification of ADC as a dominant carrier on the U.S.-Guyana route.

D. Approval of Georgia Partners' Request To Withdraw Petition To Deny and Related Pleadings

75. As indicated above, the Georgia Partners filed a petition to deny the subject applications and otherwise actively participated in this proceeding. On March 31, 2010, the Georgia Partners filed a request to withdraw their petition to deny and all filings related thereto.[295] The Georgia Partners specifically requested that "the Commission not consider any concerns or objections raised in the [Georgia Partners'] Petition to Deny and that the FCC grant the above-referenced applications."[296] In accordance with the provisions of section 1.935 of the Commission's rules,[297] the Georgia Partners submitted declarations from an officer of each of the Georgia Partners certifying under penalty of perjury that none of the Georgia Partners and none of their principals have received or will receive any money or other consideration in exchange for the withdrawal of the Georgia Partners petition to deny.[298] Verizon

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[290] Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order and Order on Reconsideration*, 12 FCC Rcd 23891, 23991-99 ¶¶ 215, 221-39 (1997) ("*Foreign Participation Order*"), *Order on Reconsideration*, 15 FCC Rcd 18158 (2000). A carrier classified as dominant on a particular U.S. international route due to an affiliation with a foreign carrier that has market power on the foreign end of the route is subject to specific international dominant carrier safeguards set forth in section 63.10 of the rules. 47 C.F.R. § 63.10(c), (e).

[291] 47 C.F.R. § 63.09.

[292] *See* 214 Applications, Attachment 1 at 6.

[293] *See id.*, citing 47 C.F.R. § 63.10.

[294] *Id.*

[295] Letter from Caressa D. Bennet, Counsel for Georgia Partners, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 31, 2010) ("Georgia Partners Withdrawal of Pleadings").

[296] Georgia Partners Withdrawal of Pleadings at 1.

[297] 47 C.F.R. § 1.935.

[298] *See* Georgia Partners Withdrawal of Pleadings, attached Declarations of Dennis D. Lewis, General Manager/Chief Operating Officer, Bulloch Cellular, Inc. (Mar. 29, 2010), Stephen Milner, General Manager, Planters Rural Cellular, Inc. (Mar. 29, 2010), and Richard Price, Executive Vice President, Pineland Cellular, Inc. and Plant Cellular RSA 8, Inc. (Mar. 29, 2010).

Wireless submitted a declaration that neither it nor any of its principals has paid or will pay money or other consideration in exchange for the Georgia Partners' withdrawal of their petition to deny and related pleadings.[299]

76. The Georgia Partners also submitted, pursuant to the *Protective Order*, a copy of the settlement agreement related to the requested withdrawal of pleadings.[300] The Settlement Agreement, dated March 26, 2010, is among the Georgia Partners, Georgia R.S.A. #8 Partnership ("GA8 Partnership," which is the licensee partnership in which the Georgia Partners and Alltel Communications, LLC ("Alltel," which is indirectly owned and controlled by Verizon Wireless) are partners), and Verizon Wireless ("Settlement Agreement").[301] In addition, Alltel provides management services to the GA8 Partnership.[302] The Settlement Agreement provides that [REDACTED].[303] Also, [REDACTED], and the Georgia Partners and GA8 Partnership consent to the assignment of the management agreement to ATN.[304] The various parties to the Settlement Agreement [REDACTED].[305] The parties to the Settlement Agreement also [REDACTED].[306]

77. Although the Settlement Agreement provides [REDACTED]. [REDACTED] [REDACTED] We conclude that withdrawal of the Georgia Partners' pleadings in this proceeding will further the public interest in numerous respects while not running afoul of the green mail policies set forth in section 1.935, and we thus approve the withdrawal of the Georgia Partners' petition to deny and associated pleadings.

VIII. CONCLUSION

78. We find that the proposed transaction does not raise any competitive issues and that it is likely to result in transaction-specific public interest benefits. The applicants are fully qualified to undertake the proposed assignment and transfer of licenses. As discussed above, the bidding process employed by Verizon Wireless was not inconsistent with the requirements of the Commission's *Verizon Wireless-ALLTEL Order*, and, in fact, the proposed transaction will partially satisfy the divestitures required by that order. Accordingly, we conclude that the grant of the subject assignment and transfer of control application will serve the public interest.

IX. ORDERING CLAUSES

79. Accordingly, having reviewed the applications, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), the applications for

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[299] Letter from Catherine M. Hilke, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Apr. 7, 2010), attached Declaration of John T. Scott, III, Vice President and Deputy General Counsel – Regulatory Law, Cellco Partnership d/b/a Verizon Wireless (Apr. 6, 2010).

[300] *See* Georgia Partners Withdrawal of Pleadings at 1-2; Letter from Caressa D. Bennet, Counsel for Georgia Partners, to Marlene H. Dortch, Secretary, Federal Communications Commission (Apr. 12, 2010) (clarifying that the settlement agreement is being submitted pursuant to the *Protective Order* and not the *Second Protective Order*)

[301] Georgia Partners Withdrawal of Pleadings, attached Settlement Agreement at 1.

[302] *Id.* at 1.

[303] *Id.* at 3, 5.

[304] *Id.* at 3, 5.

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

[306] *Id.* at 6.

the assignment or transfer of control of licenses and partial assignment of international section 214 authorizations from Cellco Partnership d/b/a Verizon Wireless and certain of its subsidiaries to Adams Divestiture Company LLC as owned indirectly and controlled by Atlantic Tele-Network, Inc. set forth in Appendix A are GRANTED.

80. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.18 of the Commission's rules, 47 C.F.R. § 63.18, Adams Divestiture Company LLC is authorized to provide facilities-based international service in accordance with section 63.18(e)(1) of the Commission's rules and resale international service in accordance with section 63.18(e)(2) of the Commission's rules, 47 C.F.R. § 63.18(e)(1), (2), pursuant to international Section 214 authorization File No. ITC-214-20090616-00560.

81. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.10 of the Commission's rules, 47 C.F.R. § 63.10, Adams Divestiture Company LLC SHALL BE CLASSIFIED as a dominant international carrier in its provision of service on the U.S.-Guyana route effective upon consummation of the partial assignments international section 214 authority specified in this Memorandum Opinion and Order.

82. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), the Petitions to Deny the assignment or transfer of control of licenses and partial assignment of international section 214 authorizations from Verizon Wireless to ATN are DENIED for the reasons stated herein.

83. IT IS FURTHER ORDERED that the above grant shall include authority for ATN to acquire control of: (a) any license or authorization issued to Verizon Wireless and its subsidiaries that is related to the properties to be acquired by ATN during the Commission's consideration of the assignment and transfer of control applications or the period required for consummation of the transaction following approval; (b) any construction permits that are related to the properties to be acquired by ATN that mature into licenses after closing; and (c) applications that are related to the properties to be acquired by ATN that are pending at the time of consummation of the proposed transaction.

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

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

FEDERAL COMMUNICATIONS COMMISSION

Ruth Milkman
Chief
Wireless Telecommunications Bureau

Mindel De La Torre
Chief, International Bureau

APPENDIX A

Applications Granted

SECTION 310(d) APPLICATIONS

File No.	Licensee	Lead Call Sign
0003858519	ALLTEL Communications, LLC	KNLF884
0003858521	ALLTEL Communications, LLC	KNKA436
0003859085	ID Holding, LLC	KNKR322
0003859164	Southern Illinois RSA Partnership d/b/a ALLTEL	KNKN506
0003859173	WWC Holding Co., Inc.	KNKN441
0003859183	WWC Holding Co., Inc.	WPZA513
0003860121	Alltel New License Sub, LLC	WQIF518
0003865503	Ohio RSA #3 Limited Partnership d/b/a ALLTEL	KNKQ312
0003865511	Ohio RSA 2 Limited Partnership dba ALLTEL	KNKN993
0003865513	Ohio RSA 5 Limited Partnership d/b/a ALLTEL	KNKN942
0003865517	Ohio RSA 6 Limited Partnership d/b/a ALLTEL	KNKN955
0003865570	Georgia RSA # 8 Partnership d/b/a ALLTEL	KNKN899

SECTION 214 AUTHORIZATIONS

File No.	Authorization Holder	Authorization Number
ITC-ASG-20090616-00286	Alltel Communications, LLC	ITC-214-19960404-00138
ITC-ASG-20090616-00287	Western Wireless, LLC	ITC-214-20010427-00254

APPENDIX B

Petitioners and Related Filings

Petitions:

Bulloch Cellular, Inc., Pineland Cellular, Inc., Planters Rural Cellular, Inc., and Plant Cellular RSA 8, Inc. (Withdrawn)
Chatham Avalon Park Community Council
National Association of Black Owned Broadcasters, Inc.
Telephone USA Investments, Inc.

Opposition:

Atlantic Tele-Network, Inc. and Verizon Wireless

Replies:

Bulloch Cellular, Inc., Pineland Cellular, Inc., Planters Rural Cellular, Inc., and Plant Cellular RSA 8, Inc. (Withdrawn)
Chatham Avalon Park Community Council
National Association of Black Owned Broadcasters, Inc.
Telephone USA Investments, Inc.