

## **CITY OF SAN DIEGO**

### **CONSENT TO ARTICLES OF MERGER OF PACIFIC BELL WIRELESS, LLC AND PACIFIC BELL MOBILE SERVICES**

The City of San Diego ("City") consents to the Articles of Merger of Pacific Bell Wireless, LLC ("PB Wireless") and Pacific Bell Mobile Services ("PB Mobile") dated July 31, 1999 ("Articles of Merger"), attached as Exhibit "A".

### **RECITALS**

This Consent to Articles of Merger is made with regard to the following facts:

- A. City and PB Mobile have entered into the following Right of Entry Permits ("Permits"):
  - i. City/Pacific Bell Mobile Services for City-owned property at Spring Canyon Road and Reisling, APN 319-211-35, dated October 1, 1996. [PB Mobile Site SD-210]
  - ii. City/Pacific Bell Mobile Services for City-owned property at 3020 Coronado Avenue, San Diego, CA, dated November 23, 1998. [PB Mobile Site SD-294]
  - iii. City/Pacific Bell Mobile Services for City-owned property at 1521 Statton Court, San Diego, CA, dated November 23, 1998. [PB Mobile Site SD-326-01]
  - iv. City/Pacific Bell Mobile Services for City-owned property San Ysidro View Park, San Diego, CA, dated December 11, 1998. [PB Mobile Site SD-361-01]
  - v. City/Pacific Bell Mobile Services for City-owned property at 10056, Scripps Poway Parkway, San Diego, CA, dated December 1, 1999. [PB Mobile Site SD-345-01]
- B. City has consented to Sublease Agreements ("Consent to Sublease") with PB Mobile as a sub-tenant of the master lessee in the following leases and operating agreements ("Master Lease"):
  - i. Master Lease - City/Wave House Belmont Park LLC, dated June 1, 1988, filed as Document RR-266064 in the Office of the City Clerk of City. Consent to Sublease a portion of City property at 3146 Mission Blvd., dated February 10, 1997. [PB Mobile Site SD 162-03]
  - ii. Master Lease - City/Arena Group 2000 L.P., dated March 29, 1993, filed as Document RR-281708-3 in the Office of the City Clerk of City. Consent to Sublease a portion of City property at 3500 Sports Arena Boulevard dated November 11, 1998. [PB Mobile Site SD-320-02]

- iii. Master Lease - City/Zoological Society of San Diego, dated July 23, 1979, filed as Document 767195 in the Office of the City Clerk of City. Consent to Sublease a portion of City property at San Diego Zoo, dated August 24, 2000. [PB Mobile Sites SD-002-27 and SD-198-02]

- C. PB Wireless desires to obtain City's consent to the Articles of Merger and City is willing to consent to the Articles of Merger on the following terms and conditions.

NOW THEREFORE, in consideration of the mutual covenants contained in this Consent to Articles of Merger, and for valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. Assumption. PB Wireless expressly assumes and agrees for the benefit of the City to be bound by, and to conform and comply with, every obligation of PB Mobile under the Permits, Sublease Agreements, and Consent to Subleases.
2. Subsequent Assignments. This Consent to Articles of Merger does not constitute a consent to any PB Wireless subletting or assignment and does not relieve PB Wireless or any person claiming under or through PB Wireless of the obligation to obtain the consent of the City to any assignment of Permits and Sublease Agreements.
3. Holdover. PB Wireless acknowledges that for those Permits that are currently on holdover this Consent to Articles of Merger does not, in any way, grant PB Wireless any extension of the term of the Permits.
4. Default Under the Permits, Sublease Agreements, and Consent to Subleases. In the event of breach by PB Wireless of any terms of any Permit or Consent to Sublease, such Permit or Consent to Sublease shall be subject to immediate termination by City. In event of breach by PB Wireless of any terms of any Sublease Agreements under the Master Leases or any inconsistency between Master Leases and Sublease Agreements, the terms of Consent to Subleases and Master Leases shall prevail. City may proceed directly against PB Wireless, any guarantors, or anyone else liable under the Permits or Consent to Subleases without first exhausting City's remedies against any other person or entity liable under the Permits or Consent to Subleases.
5. Hold Harmless. PB Wireless shall assume the defense of, indemnify, and hold harmless City, its elected officials, officers, representatives, agents, and employees from all claims, expenses, and liability of every nature, directly or indirectly arising from or alleged to have arisen from the operations conducted on the premises leased under the Master Lease and subleased under Sublease Agreements, or pursuant to a Right of Entry Permit, the condition of the

premises or from any act or omission of PB Wireless, its agents, and invitees; provided, however, PB Wireless's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence or sole willful misconduct of the City, its agents, officers or employees.

6. Insurance. PB Wireless shall be insured by an insurance carrier acceptable to the City against loss from public liability arising from the use or condition of or operation conducted on or from the lease premises under the Master Lease and subleased premises under the Sublease Agreements or the premises pursuant to Permits. Minimum coverage shall be Two Million Dollars (\$2,000,000) COMBINED SINGLE LIMIT LIABILITY. PB Wireless shall name "The City of San Diego, its elected officials, officers, representatives, agents, and employees" as additional insureds and PB Wireless shall provide City with a certificate of insurance confirming such and showing the policy limits. The certificate of insurance shall specify that the above-coverage may not be terminated, altered or canceled without thirty (30) days prior written notice by PB Wireless to the City.
7. General Provisions.
  - i. Controlling Law. The terms and provisions of this Consent to Articles of Merger will be construed in accordance with and will be governed by the laws of the State of California.
  - ii. Captions. Captions to the sections in this Consent to Articles of Merger are included for convenience only and do not modify any of the terms of this Consent to Articles of Merger.
  - iii. Capitalized Terms. All terms spelled with initial capital letters in this Consent to Articles of Merger that are not expressly defined in this Consent to Articles of Merger will have the same respective meaning given such terms in the Permit and Consent to Subleases.
  - iv. Entire Agreement; Waiver. This Consent to Articles of Merger constitutes the final, complete, and exclusive statement between the parties to this Consent to Articles of Merger pertaining to the terms of the City's consent to the merger of PB Wireless and PB Mobile pursuant to Articles of Merger, supercedes all prior and contemporaneous understandings or agreements of the parties, and is binding on and inures to the benefit of their respective heirs, representatives, successors or assigns. No party has been induced to enter into this Consent to Articles of Merger by, nor is any party relying on, any representation or warranty outside those expressly set

forth in this Consent to Articles of Merger. Any agreement made after the date of this Consent to Articles of Merger is ineffective to modify, waive or terminate this Consent to Articles of Merger, in whole or in part, unless that agreement is in writing, is signed by the parties to this Consent, and specifically states that agreement modifies this Consent to Articles of Merger.

- v. Attorney Fees. If any party commences litigation against any other party for the specific performance, for damages for the breach or for the enforcement of any remedy pursuant to this Consent to Articles of Merger, the prevailing party shall be entitled to recover from the applicable party such costs and reasonable attorney fees as have been incurred.
- vi. Waiver. Nothing contained in this Consent to Articles of Merger will be deemed or construed to modify, waive, impair, or affect any of the covenants, agreements, terms, provisions, or conditions contained in the Permits, Sublease Agreements, and Consent to Subleases. In the event of any conflict or inconsistency between the covenants, agreement, terms, provisions, or conditions contained in this Consent to Articles of Merger and those contained in the Permits, Sublease Agreements, and Consent to Subleases, then the covenants, agreement, terms, provisions, or conditions contained in the Consent to Articles of Merger will govern and control.
- vii. Notice. Any notice that may or must be given by any party under this Consent to Articles of Merger will be delivered (i) personally, (ii) by certified mail, return receipt requested, or (iii) by a nationally recognized overnight courier, addressed to the party to whom it is intended. Any notice given to City or PB Wireless shall be sent to the respective address set forth on the signature page below, or such other address as that party may designate for service of notice by a notice given in accordance with the provisions of this Section 7.vii. A notice sent pursuant to the terms of this Section 7.vii shall be deemed delivered (A) when delivery is attempted, if delivered personally, (B) three (3) business days after deposit into the United States mail, or (C) the day following deposit with a nationally recognized overnight courier.
- viii. Numbers. All words in the singular number shall include the plural, when the tense requires.

City and PB Wireless have executed this Consent to Articles of Merger as of the date shown.

PACIFIC BELL WIRELESS, LLC

Date 8/16/05, 2005

By: [Signature]  
Name: Dave Miller

Title: General Counsel

Address of PB Wireless: 12920 SE 38<sup>th</sup> Street, Bellevue, WA, 98006

CITY OF SAN DIEGO

Date 8/23, 2005

By: [Signature]  
City Manager

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

Date 9/1, 2005

By: [Signature]  
Deputy City Attorney

VEB/cb

8/05/05

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W7 04-254

|                           |                                                                                                                                         |                                                                                                                                                                     |
|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>FCC 603</b>            | <b>FCC Wireless Telecommunications Bureau</b><br><b>Application for Assignments of Authorization</b><br><b>and Transfers of Control</b> | Approved by OMB<br>3060 - 0800<br>See instructions for<br>public burden estimate<br><br>Submitted 06/16/2004<br>at 04:58PM<br><br>File Number:<br><b>0001771442</b> |
| DOCKET FILE COPY ORIGINAL |                                                                                                                                         |                                                                                                                                                                     |

|                                                                                                                                         |              |
|-----------------------------------------------------------------------------------------------------------------------------------------|--------------|
| 1) Application Purpose: <b>Assignment of Authorization</b>                                                                              |              |
| 2a) If this request is for an Amendment or Withdrawal, enter the File Number of the pending application currently on file with the FCC. | File Number: |
| 2b) File numbers of related pending applications currently on file with the FCC:                                                        |              |

**Type of Transaction**

|                                                                                                                                                                                                                                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3a) Is this a <i>pro forma</i> assignment of authorization or transfer of control? No                                                                                                                                                                                                                                                                        |
| 3b) If the answer to Item 3a is 'Yes', is this a notification of a <i>pro forma</i> transaction being filed under the Commission's forbearance procedures for telecommunications licenses?                                                                                                                                                                   |
| 4) For assignment of authorization only, is this a partition and/or disaggregation? Yes                                                                                                                                                                                                                                                                      |
| 5a) Does this filing request a waiver of the Commission rules?<br>If 'Yes', attach an exhibit providing the rule numbers and explaining circumstances. No                                                                                                                                                                                                    |
| 5b) If a feeable waiver request is attached, multiply the number of stations (call signs) times the number of rule sections and enter the result.                                                                                                                                                                                                            |
| 6) Are attachments being filed with this application? Yes                                                                                                                                                                                                                                                                                                    |
| 7a) Does the transaction that is the subject of this application also involve transfer or assignment of other wireless licenses held by the assignor/transferor or affiliates of the assignor/transferor (e.g., parents, subsidiaries, or commonly controlled entities) that are not included on this form and for which Commission approval is required? No |
| 7b) Does the transaction that is the subject of this application also involve transfer or assignment of non-wireless licenses that are not included on this form and for which Commission approval is required? No                                                                                                                                           |

**Transaction Information**

|                                                                                                                                                                                                                                                                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8) How will assignment of authorization or transfer of control be accomplished? <b>Sale or other assignment or transfer of stock</b><br>If required by applicable rule, attach as an exhibit a statement on how control is to be assigned or transferred, along with copies of any pertinent contracts, agreements, instruments, certified copies of Court Orders, etc. |
| 9) The assignment of authorization or transfer of control of license is: <b>Voluntary</b>                                                                                                                                                                                                                                                                               |

**Licensee/Assignor Information**

|                                                                                     |                      |                                                           |         |
|-------------------------------------------------------------------------------------|----------------------|-----------------------------------------------------------|---------|
| 10) FCC Registration Number (FRN): <b>0004249702</b>                                |                      |                                                           |         |
| 11) First Name (if individual):                                                     | MI:                  | Last Name:                                                | Suffix: |
| 12) Entity Name (if not an individual): <b>Pacific Telesis Mobile Services, LLC</b> |                      |                                                           |         |
| 13) Attention To: <b>Kelley Abernathy</b>                                           |                      |                                                           |         |
| 14) P.O. Box:                                                                       | And / Or             | 15) Street Address: <b>17330 Preston Road, Suite 100A</b> |         |
| 16) City: <b>Dallas</b>                                                             | 17) State: <b>TX</b> | 18) Zip Code: <b>75252</b>                                |         |
| 19) Telephone Number: <b>(972)733-2092</b>                                          |                      | 20) FAX Number: <b>(972)733-8141</b>                      |         |
| 21) E-Mail Address:                                                                 |                      |                                                           |         |

**22) Race, Ethnicity, Gender of Assignor/Licensee (Optional)**

|                   |                                   |                         |                            |                                            |        |
|-------------------|-----------------------------------|-------------------------|----------------------------|--------------------------------------------|--------|
| <b>Race:</b>      | American Indian or Alaska Native: | Asian:                  | Black or African-American: | Native Hawaiian or Other Pacific Islander: | White: |
| <b>Ethnicity:</b> | Hispanic or Latino:               | Not Hispanic or Latino: |                            |                                            |        |
| <b>Gender:</b>    | Female:                           | Male:                   |                            |                                            |        |

**Transferor Information (for transfers of control only)**

|                                         |            |                     |         |
|-----------------------------------------|------------|---------------------|---------|
| 23) FCC Registration Number (FRN):      |            |                     |         |
| 24) First Name (if individual):         | MI:        | Last Name:          | Suffix: |
| 25) Entity Name (if not an individual): |            |                     |         |
| 26) P.O. Box:                           | And / Or   | 27) Street Address: |         |
| 28) City:                               | 29) State: | 30) Zip Code:       |         |
| 31) Telephone Number:                   |            | 32) FAX Number:     |         |
| 33) E-Mail Address:                     |            |                     |         |

**Name of Transferor Contact Representative (if other than Transferor) (for transfers of control only)**

|                       |            |                     |         |
|-----------------------|------------|---------------------|---------|
| 34) First Name:       | MI:        | Last Name:          | Suffix: |
| 35) Company Name:     |            |                     |         |
| 36) P.O. Box:         | And / Or   | 37) Street Address: |         |
| 38) City:             | 39) State: | 40) Zip Code:       |         |
| 41) Telephone Number: |            | 42) FAX Number:     |         |
| 43) E-Mail Address:   |            |                     |         |

**Assignee/Transferee Information**

|                                                                                    |               |                                          |          |
|------------------------------------------------------------------------------------|---------------|------------------------------------------|----------|
| 44) The Assignee is a(n): Corporation                                              |               |                                          |          |
| 45) FCC Registration Number (FRN): 0001567783                                      |               |                                          |          |
| 46) First Name (if individual):                                                    | MI:           | Last Name:                               | Suffix:  |
| 47) Entity Name (if other than individual): VoiceStream PCS II License Corporation |               |                                          |          |
| 48) Name of Real Party in Interest:                                                |               |                                          | 49) TIN: |
| 50) Attention To: Dan Menser                                                       |               |                                          |          |
| 51) P.O. Box:                                                                      | And / Or      | 52) Street Address: 12920 SE 38th Street |          |
| 53) City: Bellevue                                                                 | 54) State: WA | 55) Zip Code: 98006                      |          |
| 56) Telephone Number: (425)378-4000                                                |               | 57) FAX Number: (425)378-4040            |          |
| 58) E-Mail Address: dan.menser@t-mobile.com                                        |               |                                          |          |

**Name of Assignee/Transferee Contact Representative (if other than Assignee/Transferee)**

|                                           |               |                                                              |         |
|-------------------------------------------|---------------|--------------------------------------------------------------|---------|
| 59) First Name: Doane                     | MI: F         | Last Name: Klechel                                           | Suffix: |
| 60) Company Name: Morrison & Foerster LLP |               |                                                              |         |
| 61) P.O. Box:                             | And / Or      | 62) Street Address: 2000 Pennsylvania Avenue, NW, Suite 5500 |         |
| 63) City: Washington                      | 64) State: DC | 65) Zip Code: 20006                                          |         |
| 66) Telephone Number: (202)887-8728       |               | 67) FAX Number: (202)887-0763                                |         |
| 68) E-Mail Address: dklechel@mfo.com      |               |                                                              |         |

**Allen Ownership Questions**

|                                                                                                                                                                                                                                                                                                                                                                                                                                          |     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| 69) Is the Assignee or Transferee a foreign government or the representative of any foreign government?                                                                                                                                                                                                                                                                                                                                  | No  |
| 70) Is the Assignee or Transferee an alien or the representative of an alien?                                                                                                                                                                                                                                                                                                                                                            | No  |
| 71) Is the Assignee or Transferee a corporation organized under the laws of any foreign government?                                                                                                                                                                                                                                                                                                                                      | No  |
| 72) Is the Assignee or Transferee a corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?                                                                                                                                               | No  |
| 73) Is the Assignee or Transferee directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country? If 'Yes', attach exhibit explaining nature and extent of alien or foreign ownership or control. | Yes |

**Basic Qualification Questions**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 74) Has the Assignee or Transferee or any party to this application had any FCC station authorization, license or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license, construction permit denied by the Commission? If 'Yes', attach exhibit explaining circumstances.                                                                                                              | No |
| 75) Has the Assignee or Transferee or any party to this application, or any party directly or indirectly controlling the Assignee or Transferee, or any party to this application ever been convicted of a felony by any state or federal court? If 'Yes', attach exhibit explaining circumstances.                                                                                                                                                               | No |
| 76) Has any court finally adjudged the Assignee or Transferee, or any party directly or indirectly controlling the Assignee or Transferee guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition? If 'Yes', attach exhibit explaining circumstances. | No |
| 77) Is the Assignee or Transferee, or any party directly or indirectly controlling the Assignee or Transferee currently a party in any pending matter referred to in the preceding two items? If 'Yes', attach exhibit explaining circumstances.                                                                                                                                                                                                                  | No |

**78) Race, Ethnicity, Gender of Assignee/Transferee (Optional)**

|                   |                                   |                         |                            |                                            |        |
|-------------------|-----------------------------------|-------------------------|----------------------------|--------------------------------------------|--------|
| <b>Race:</b>      | American Indian or Alaska Native: | Asian:                  | Black or African-American: | Native Hawaiian or Other Pacific Islander: | White: |
| <b>Ethnicity:</b> | Hispanic or Latino:               | Not Hispanic or Latino: |                            |                                            |        |
| <b>Gender:</b>    | Female:                           | Male:                   |                            |                                            |        |

**Assignor/Transferor Certification Statements**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |       |                    |         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|--------------------|---------|
| 1) The Assignor or Transferor certifies either (1) that the authorization will not be assigned or that control of the license will not be transferred until the consent of the Federal Communications Commission has been given, or (2) that prior Commission consent is not required because the transaction is subject to streamlined notification procedures for <i>pro forma</i> assignments and transfers by telecommunications carriers. See <i>Memorandum Opinion and Order</i> , 13 FCC Rod. 6293(1998). |       |                    |         |
| 2) The Assignor or Transferor certifies that all statements made in this application and in the exhibits, attachments, or in documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.                                                                                                                                                                                                                                            |       |                    |         |
| 79) Typed or Printed Name of Party Authorized to Sign                                                                                                                                                                                                                                                                                                                                                                                                                                                            |       |                    |         |
| First Name: Carol                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | MI: L | Last Name: Tacker  | Suffix: |
| 80) Title: VP-Ass't. Gen. Counsel & Corp. Secretary                                                                                                                                                                                                                                                                                                                                                                                                                                                              |       |                    |         |
| Signature: Carol L Tacker                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |       | 81) Date: 06/16/04 |         |

**Assignee/Transferee Certification Statements**

- 1) The Assignee or Transferee certifies either (1) that the authorization will not be assigned or that control of the license will not be transferred until the consent of the Federal Communications Commission has been given, or (2) that prior Commission consent is not required because the transaction is subject to streamlined notification procedures for *pro forma* assignments and transfers by telecommunications carriers. See *Memorandum Opinion and Order*, 13 FCC Rcd. 6293 (1998).
- 2) The Assignee or Transferee waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application.
- 3) The Assignee or Transferee certifies that grant of this application would not cause the Assignee or Transferee to be in violation of any pertinent cross-ownership, attribution, or spectrum cap rule.  
\*If the applicant has sought a waiver of any such rule in connection with this application, it may make this certification subject to the outcome of the waiver request.
- 4) The Assignee or Transferee agrees to assume all obligations and abide by all conditions imposed on the Assignor or Transferor under the subject authorization(s), unless the Federal Communications Commission pursuant to a request made herein otherwise allows, except for liability for any act done by, or any right accrued by, or any suit or proceeding had or commenced against the Assignor or Transferor prior to this assignment.
- 5) The Assignee or Transferee certifies that all statements made in this application and in the exhibits, attachments, or in documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.
- 6) The Assignee or Transferee certifies that neither it nor any other party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998, 21 U.S.C § 882, because of a conviction for possession or distribution of a controlled substance. See Section 1.2002(b) of the rules, 47 CFR § 1.2002(b), for the definition of "party to the application" as used in this certification.
- 7) The applicant certifies that it either (1) has an updated Form 602 on file with the Commission, (2) is filing an updated Form 602 simultaneously with this application, or (3) is not required to file Form 602 under the Commission's rules.

**82) Typed or Printed Name of Party Authorized to Sign**

|                                                                                                                                                                                                                                                                                                              |     |                    |         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|--------------------|---------|
| First Name: Dan                                                                                                                                                                                                                                                                                              | MI: | Last Name: Menser  | Suffix: |
| 83) Title: Senior Corporate Counsel                                                                                                                                                                                                                                                                          |     |                    |         |
| Signature: Dan Menser                                                                                                                                                                                                                                                                                        |     | 84) Date: 06/16/04 |         |
| WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503). |     |                    |         |

**Authorizations To Be Assigned or Transferred**

| 85) Call Sign | 86) Radio Service | 87) Location Number | 88) Path Number (Microwave only) | 89) Frequency Number | 90) Lower or Center Frequency (MHz) | 91) Upper Frequency (MHz) | 92) Constructed Yes / No | 93) Assignment Indicator |
|---------------|-------------------|---------------------|----------------------------------|----------------------|-------------------------------------|---------------------------|--------------------------|--------------------------|
| KNLF205       | CW                |                     |                                  |                      |                                     |                           |                          |                          |
| KNLF209       | CW                |                     |                                  |                      |                                     |                           |                          |                          |

|                                    |                                                                                                     |                                                                                  |
|------------------------------------|-----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| <b>FCC Form 603<br/>Schedule A</b> | <b>Schedule for Assignments of Authorization<br/>and Transfers of Control in Auctioned Services</b> | Approved by OMB<br>3060 - 0800<br>See Instructions for public<br>burden estimate |
|------------------------------------|-----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|

**Assignments of Authorization****1) Assignee Eligibility for Installment Payments (for assignments of authorization only)**

Is the Assignee claiming the same category or a smaller category of eligibility for installment payments as the Assignor (as determined by the applicable rules governing the licenses issued to the Assignor)?

If 'Yes', is the Assignee applying for installment payments?

**2) Gross Revenues and Total Assets Information (if required) (for assignments of authorization only)**

Refer to applicable auction rules for method to determine required gross revenues and total assets information

|                                    |                       |                       |               |
|------------------------------------|-----------------------|-----------------------|---------------|
| Year 1 Gross Revenues<br>(current) | Year 2 Gross Revenues | Year 3 Gross Revenues | Total Assets: |
|------------------------------------|-----------------------|-----------------------|---------------|

**3) Certification Statements****For Assignees Claiming Eligibility as an Entrepreneur Under the General Rule**

Assignee certifies that they are eligible to obtain the licenses for which they apply.

**For Assignees Claiming Eligibility as a Publicly Traded Corporation**

Assignee certifies that they are eligible to obtain the licenses for which they apply and that they comply with the definition of a Publicly Traded Corporation, as set out in the applicable FCC rules.

**For Assignees Claiming Eligibility Using a Control Group Structure**

Assignee certifies that they are eligible to obtain the licenses for which they apply.

Assignee certifies that the applicant's sole control group member is a pre-existing entity, if applicable.

**For Assignees Claiming Eligibility as a Very Small Business, Very Small Business Consortium, Small Business, or as a Small Business Consortium**

Assignee certifies that they are eligible to obtain the licenses for which they apply.

Assignee certifies that the applicant's sole control group member is a pre-existing entity, if applicable.

**For Assignees Claiming Eligibility as a Rural Telephone Company**

Assignee certifies that they meet the definition of a Rural Telephone Company as set out in the applicable FCC rules, and must disclose all parties to agreement(s) to partition licenses won in this auction. See applicable FCC rules.

**Transfers of Control****4) Licensee Eligibility (for transfers of control only)**

As a result of transfer of control, must the licensee now claim a larger or higher category of eligibility than was originally declared?

If 'Yes', the new category of eligibility of the licensee is:

**Certification Statement for Transferees**

Transferee certifies that the answers provided in Item 4 are true and correct.

|                                    |                                              |                                                                                  |
|------------------------------------|----------------------------------------------|----------------------------------------------------------------------------------|
| <b>FCC Form 603<br/>Schedule B</b> | <b>Partition and Disaggregation Schedule</b> | Approved by OMB<br>3060 - 0800<br>See instructions for public burden<br>estimate |
|------------------------------------|----------------------------------------------|----------------------------------------------------------------------------------|

1) Partitioner/Disaggregator Call Sign: KNLF205

**Geographic Area Partitioned**

|                                   |                                                                                     |                                   |
|-----------------------------------|-------------------------------------------------------------------------------------|-----------------------------------|
| 2) Defined Area to be Partitioned | 3) Undefined Area to be Partitioned (Complete undefined geographic area attachment) | 4) Population of Partitioned Area |
| BTA245                            | Schedule C # Attached:                                                              | 1568418                           |

**5) Spectrum Disaggregated (in MHz)**

| Spectrum Disaggregated |                 |
|------------------------|-----------------|
| Lower Frequency        | Upper Frequency |
| 01875.00000            | 01880.00000     |
| 01955.00000            | 01960.00000     |

**6) Coverage Requirements - Partitioning**

|                   |                                                                                                                                                                                                                                                                                                                                                     |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (No)<br>Option 1  | Partitioner and Partitionee each certify that they will be subject to the same coverage requirements for their respective partitioned areas.                                                                                                                                                                                                        |
| (Yes)<br>Option 2 | Partitioner certifies that the 5 year coverage requirements have been or will be met and that the 10 year coverage requirements must be met for the entire license area.<br>Partitionee certifies that only the substantial service requirement for renewal expectancy for the partitioned area must be met by the end of the 10 year license term. |

**7) Coverage Requirements - Disaggregation**

|                   |                                                                                                                                                                               |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Yes)<br>Option 1 | Disaggregator and Disaggragees each certify that the Disaggregator will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 2  | Disaggregator and Disaggragees each certify that the Disaggragees will maintain responsibility for meeting the applicable coverage requirements for the entire license area.  |
| (No)<br>Option 3  | Disaggregator and Disaggragees each certify that they will share responsibility for meeting the applicable coverage requirements for the entire license area.                 |

|                            |                                       |                                                                               |
|----------------------------|---------------------------------------|-------------------------------------------------------------------------------|
| FCC Form 603<br>Schedule B | Partition and Disaggregation Schedule | Approved by OMB<br>3080 - 0800<br>See instructions for public burden estimate |
|----------------------------|---------------------------------------|-------------------------------------------------------------------------------|

1) Partitioner/Disaggregator Call Sign: KNLF209

**Geographic Area Partitioned**

|                                   |                                                                                     |                                   |
|-----------------------------------|-------------------------------------------------------------------------------------|-----------------------------------|
| 2) Defined Area to be Partitioned | 3) Undefined Area to be Partitioned (Complete undefined geographic area attachment) | 4) Population of Partitioned Area |
| BTA389                            | Schedule C # Attached:                                                              | 2001001                           |

**5) Spectrum Disaggregated (in MHz)**

| Spectrum Disaggregated |                 |
|------------------------|-----------------|
| Lower Frequency        | Upper Frequency |
| 01880.00000            | 01885.00000     |
| 01960.00000            | 01965.00000     |

**6) Coverage Requirements - Partitioning**

|                   |                                                                                                                                                                                                                                                                                                                                                     |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (No)<br>Option 1  | Partitioner and Partitionee each certify that they will be subject to the same coverage requirements for their respective partitioned areas.                                                                                                                                                                                                        |
| (Yes)<br>Option 2 | Partitioner certifies that the 5 year coverage requirements have been or will be met and that the 10 year coverage requirements must be met for the entire license area.<br>Partitionee certifies that only the substantial service requirement for renewal expectancy for the partitioned area must be met by the end of the 10 year license term. |

### 7) Coverage Requirements - Disaggregation

|                   |                                                                                                                                                                               |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Yes)<br>Option 1 | Disaggregator and Disaggrantee each certify that the Disaggregator will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 2  | Disaggregator and Disaggrantee each certify that the Disaggrantee will maintain responsibility for meeting the applicable coverage requirements for the entire license area.  |
| (No)<br>Option 3  | Disaggregator and Disaggrantee each certify that they will share responsibility for meeting the applicable coverage requirements for the entire license area.                 |

|                                    |                                              |                                                                               |
|------------------------------------|----------------------------------------------|-------------------------------------------------------------------------------|
| <b>FCC Form 603<br/>Schedule B</b> | <b>Partition and Disaggregation Schedule</b> | Approved by OMB<br>3060 - 0800<br>See instructions for public burden estimate |
|------------------------------------|----------------------------------------------|-------------------------------------------------------------------------------|

|                                                |
|------------------------------------------------|
| 1) Partitioner/Disaggregator Call Sign: KNL209 |
|------------------------------------------------|

### Geographic Area Partitioned

|                                   |                                                                                     |                                   |
|-----------------------------------|-------------------------------------------------------------------------------------|-----------------------------------|
| 2) Defined Area to be Partitioned | 3) Undefined Area to be Partitioned (Complete undefined geographic area attachment) | 4) Population of Partitioned Area |
| Alameda, CA                       | Schedule C # Attached:                                                              | 1443741                           |

### 5) Spectrum Disaggregated (in MHz)

| Spectrum Disaggregated |                 |
|------------------------|-----------------|
| Lower Frequency        | Upper Frequency |
| 01880.00000            | 01885.00000     |
| 01960.00000            | 01965.00000     |

### 6) Coverage Requirements - Partitioning

|                   |                                                                                                                                                                                                                                                                                                                                                     |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (No)<br>Option 1  | Partitioner and Partitionee each certify that they will be subject to the same coverage requirements for their respective partitioned areas.                                                                                                                                                                                                        |
| (Yes)<br>Option 2 | Partitioner certifies that the 5 year coverage requirements have been or will be met and that the 10 year coverage requirements must be met for the entire license area.<br>Partitionee certifies that only the substantial service requirement for renewal expectancy for the partitioned area must be met by the end of the 10 year license term. |

### 7) Coverage Requirements - Disaggregation

|                   |                                                                                                                                                                               |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Yes)<br>Option 1 | Disaggregator and Disaggrantee each certify that the Disaggregator will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 2  | Disaggregator and Disaggrantee each certify that the Disaggrantee will maintain responsibility for meeting the applicable coverage requirements for the entire license area.  |
| (No)<br>Option 3  | Disaggregator and Disaggrantee each certify that they will share responsibility for meeting the applicable coverage requirements for the entire license area.                 |

|                                    |                                              |                                                                                  |
|------------------------------------|----------------------------------------------|----------------------------------------------------------------------------------|
| <b>FCC Form 603<br/>Schedule B</b> | <b>Partition and Disaggregation Schedule</b> | Approved by OMB<br>3060 - 0800<br>See instructions for public burden<br>estimate |
|------------------------------------|----------------------------------------------|----------------------------------------------------------------------------------|

1) Partitioner/Disaggregator Call Sign: KNLF209

#### Geographic Area Partitioned

|                                   |                                                                                     |                                   |
|-----------------------------------|-------------------------------------------------------------------------------------|-----------------------------------|
| 2) Defined Area to be Partitioned | 3) Undefined Area to be Partitioned (Complete undefined geographic area attachment) | 4) Population of Partitioned Area |
| Contra Costa, CA                  | Schedule C # Attached:                                                              | 948816                            |

#### 5) Spectrum Disaggregated (in MHz)

| Spectrum Disaggregated |                 |
|------------------------|-----------------|
| Lower Frequency        | Upper Frequency |
| 01880.00000            | 01885.00000     |
| 01960.00000            | 01965.00000     |

#### 6) Coverage Requirements - Partitioning

|                   |                                                                                                                                                                                                                                                                                                                                                     |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (No)<br>Option 1  | Partitioner and Partitionee each certify that they will be subject to the same coverage requirements for their respective partitioned areas.                                                                                                                                                                                                        |
| (Yes)<br>Option 2 | Partitioner certifies that the 5 year coverage requirements have been or will be met and that the 10 year coverage requirements must be met for the entire license area.<br>Partitionee certifies that only the substantial service requirement for renewal expectancy for the partitioned area must be met by the end of the 10 year license term. |

#### 7) Coverage Requirements - Disaggregation

|                   |                                                                                                                                                                               |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Yes)<br>Option 1 | Disaggregator and Disaggrantee each certify that the Disaggregator will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 2  | Disaggregator and Disaggrantee each certify that the Disaggrantee will maintain responsibility for meeting the applicable coverage requirements for the entire license area.  |
| (No)<br>Option 3  | Disaggregator and Disaggrantee each certify that they will share responsibility for meeting the applicable coverage requirements for the entire license area.                 |

|                                    |                                              |                                                                                  |
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| <b>FCC Form 603<br/>Schedule B</b> | <b>Partition and Disaggregation Schedule</b> | Approved by OMB<br>3060 - 0800<br>See instructions for public burden<br>estimate |
|------------------------------------|----------------------------------------------|----------------------------------------------------------------------------------|

1) Partitioner/Disaggregator Call Sign: KNLF209

#### Geographic Area Partitioned

|                                   |                                                                                     |                                   |
|-----------------------------------|-------------------------------------------------------------------------------------|-----------------------------------|
| 2) Defined Area to be Partitioned | 3) Undefined Area to be Partitioned (Complete undefined geographic area attachment) | 4) Population of Partitioned Area |
| Lake, CA                          | Schedule C # Attached:                                                              | 58309                             |

#### 5) Spectrum Disaggregated (in MHz)

| Spectrum Disaggregated |                 |
|------------------------|-----------------|
| Lower Frequency        | Upper Frequency |
| 01880.00000            | 01885.00000     |
| 01960.00000            | 01965.00000     |

**6) Coverage Requirements - Partitioning**

|                   |                                                                                                                                                                                                                                                                                                                                                     |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (No)<br>Option 1  | Partitioner and Partitionee each certify that they will be subject to the same coverage requirements for their respective partitioned areas.                                                                                                                                                                                                        |
| (Yes)<br>Option 2 | Partitioner certifies that the 5 year coverage requirements have been or will be met and that the 10 year coverage requirements must be met for the entire license area.<br>Partitionee certifies that only the substantial service requirement for renewal expectancy for the partitioned area must be met by the end of the 10 year license term. |

**7) Coverage Requirements - Disaggregation**

|                   |                                                                                                                                                                                |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Yes)<br>Option 1 | Disaggregator and Disaggragatee each certify that the Disaggregator will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 2  | Disaggregator and Disaggragatee each certify that the Disaggragatee will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 3  | Disaggregator and Disaggragatee each certify that they will share responsibility for meeting the applicable coverage requirements for the entire license area.                 |

|                                    |                                              |                                                                               |
|------------------------------------|----------------------------------------------|-------------------------------------------------------------------------------|
| <b>FCC Form 603<br/>Schedule B</b> | <b>Partition and Disaggregation Schedule</b> | Approved by OMB<br>3060 - 0800<br>See instructions for public burden estimate |
|------------------------------------|----------------------------------------------|-------------------------------------------------------------------------------|

1) Partitioner/Disaggregator Call Sign: KNLF209

**Geographic Area Partitioned**

|                                   |                                                                                     |                                   |
|-----------------------------------|-------------------------------------------------------------------------------------|-----------------------------------|
| 2) Defined Area to be Partitioned | 3) Undefined Area to be Partitioned (Complete undefined geographic area attachment) | 4) Population of Partitioned Area |
| Marin, CA                         | Schedule C # Attached:                                                              | 247289                            |

**5) Spectrum Disaggregated (in MHz)**

| Spectrum Disaggregated |                 |
|------------------------|-----------------|
| Lower Frequency        | Upper Frequency |
| 01880.00000            | 01885.00000     |
| 01960.00000            | 01965.00000     |

**6) Coverage Requirements - Partitioning**

|                   |                                                                                                                                                                                                                                                                                                                                                     |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (No)<br>Option 1  | Partitioner and Partitionee each certify that they will be subject to the same coverage requirements for their respective partitioned areas.                                                                                                                                                                                                        |
| (Yes)<br>Option 2 | Partitioner certifies that the 5 year coverage requirements have been or will be met and that the 10 year coverage requirements must be met for the entire license area.<br>Partitionee certifies that only the substantial service requirement for renewal expectancy for the partitioned area must be met by the end of the 10 year license term. |

**7) Coverage Requirements - Disaggregation**

|                   |                                                                                                                                                                                |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Yes)<br>Option 1 | Disaggregator and Disaggragatee each certify that the Disaggregator will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 2  | Disaggregator and Disaggragatee each certify that the Disaggragatee will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 3  | Disaggregator and Disaggragatee each certify that they will share responsibility for meeting the applicable coverage requirements for the entire license area.                 |

|                                    |                                              |                                                                               |
|------------------------------------|----------------------------------------------|-------------------------------------------------------------------------------|
| <b>FCC Form 603<br/>Schedule B</b> | <b>Partition and Disaggregation Schedule</b> | Approved by OMB<br>3060 - 0800<br>See instructions for public burden estimate |
|------------------------------------|----------------------------------------------|-------------------------------------------------------------------------------|

1) Partitioner/Disaggregator Call Sign: KNLF209

#### Geographic Area Partitioned

|                                   |                                                                                     |                                   |
|-----------------------------------|-------------------------------------------------------------------------------------|-----------------------------------|
| 2) Defined Area to be Partitioned | 3) Undefined Area to be Partitioned (Complete undefined geographic area attachment) | 4) Population of Partitioned Area |
| Mendocino, CA                     | Schedule C # Attached:                                                              | 66265                             |

#### 5) Spectrum Disaggregated (In MHz)

| Spectrum Disaggregated |                 |
|------------------------|-----------------|
| Lower Frequency        | Upper Frequency |
| 01880.00000            | 01885.00000     |
| 01960.00000            | 01965.00000     |

#### 6) Coverage Requirements - Partitioning

|                   |                                                                                                                                                                                                                                                                                                                                                     |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (No)<br>Option 1  | Partitioner and Partitionee each certify that they will be subject to the same coverage requirements for their respective partitioned areas.                                                                                                                                                                                                        |
| (Yes)<br>Option 2 | Partitioner certifies that the 5 year coverage requirements have been or will be met and that the 10 year coverage requirements must be met for the entire license area.<br>Partitionee certifies that only the substantial service requirement for renewal expectancy for the partitioned area must be met by the end of the 10 year license term. |

#### 7) Coverage Requirements - Disaggregation

|                   |                                                                                                                                                                                |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Yes)<br>Option 1 | Disaggregator and Disaggragatee each certify that the Disaggregator will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 2  | Disaggregator and Disaggragatee each certify that the Disaggragatee will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 3  | Disaggregator and Disaggragatee each certify that they will share responsibility for meeting the applicable coverage requirements for the entire license area.                 |

|                                    |                                              |                                                                               |
|------------------------------------|----------------------------------------------|-------------------------------------------------------------------------------|
| <b>FCC Form 603<br/>Schedule B</b> | <b>Partition and Disaggregation Schedule</b> | Approved by OMB<br>3060 - 0800<br>See instructions for public burden estimate |
|------------------------------------|----------------------------------------------|-------------------------------------------------------------------------------|

1) Partitioner/Disaggregator Call Sign: KNLF209

#### Geographic Area Partitioned

|                                   |                                                                                     |                                   |
|-----------------------------------|-------------------------------------------------------------------------------------|-----------------------------------|
| 2) Defined Area to be Partitioned | 3) Undefined Area to be Partitioned (Complete undefined geographic area attachment) | 4) Population of Partitioned Area |
| Napa,CA                           | Schedule C # Attached:                                                              | 124279                            |

## 5) Spectrum Disaggregated (in MHz)

| Spectrum Disaggregated |                 |
|------------------------|-----------------|
| Lower Frequency        | Upper Frequency |
| 01880.00000            | 01885.00000     |
| 01960.00000            | 01965.00000     |

## 6) Coverage Requirements - Partitioning

|                   |                                                                                                                                                                                                                                                                                                                                                     |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (No)<br>Option 1  | Partitioner and Partitionee each certify that they will be subject to the same coverage requirements for their respective partitioned areas.                                                                                                                                                                                                        |
| (Yes)<br>Option 2 | Partitioner certifies that the 5 year coverage requirements have been or will be met and that the 10 year coverage requirements must be met for the entire license area.<br>Partitionee certifies that only the substantial service requirement for renewal expectancy for the partitioned area must be met by the end of the 10 year license term. |

## 7) Coverage Requirements - Disaggregation

|                   |                                                                                                                                                                                |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Yes)<br>Option 1 | Disaggregator and Disaggragatee each certify that the Disaggregator will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 2  | Disaggregator and Disaggragatee each certify that the Disaggragatee will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 3  | Disaggregator and Disaggragatee each certify that they will share responsibility for meeting the applicable coverage requirements for the entire license area.                 |

|                            |                                       |                                                                                  |
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| FCC Form 603<br>Schedule B | Partition and Disaggregation Schedule | Approved by OMB<br>3080 - 0800<br>See instructions for public burden<br>estimate |
|----------------------------|---------------------------------------|----------------------------------------------------------------------------------|

|                                                 |
|-------------------------------------------------|
| 1) Partitioner/Disaggregator Call Sign: KNLF209 |
|-------------------------------------------------|

## Geographic Area Partitioned

|                                   |                                                                                     |                                   |
|-----------------------------------|-------------------------------------------------------------------------------------|-----------------------------------|
| 2) Defined Area to be Partitioned | 3) Undefined Area to be Partitioned (Complete undefined geographic area attachment) | 4) Population of Partitioned Area |
| San Benito,CA                     | Schedule C # Attached:                                                              | 53234                             |

## 5) Spectrum Disaggregated (in MHz)

| Spectrum Disaggregated |                 |
|------------------------|-----------------|
| Lower Frequency        | Upper Frequency |
| 01880.00000            | 01885.00000     |
| 01960.00000            | 01965.00000     |

## 6) Coverage Requirements - Partitioning

|                   |                                                                                                                                                                                                                                                                                                                                                     |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (No)<br>Option 1  | Partitioner and Partitionee each certify that they will be subject to the same coverage requirements for their respective partitioned areas.                                                                                                                                                                                                        |
| (Yes)<br>Option 2 | Partitioner certifies that the 5 year coverage requirements have been or will be met and that the 10 year coverage requirements must be met for the entire license area.<br>Partitionee certifies that only the substantial service requirement for renewal expectancy for the partitioned area must be met by the end of the 10 year license term. |

**7) Coverage Requirements - Disaggregation**

|                   |                                                                                                                                                                               |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Yes)<br>Option 1 | Disaggregator and Disaggrantee each certify that the Disaggregator will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 2  | Disaggregator and Disaggrantee each certify that the Disaggrantee will maintain responsibility for meeting the applicable coverage requirements for the entire license area.  |
| (No)<br>Option 3  | Disaggregator and Disaggrantee each certify that they will share responsibility for meeting the applicable coverage requirements for the entire license area.                 |

|                                    |                                              |                                                                                  |
|------------------------------------|----------------------------------------------|----------------------------------------------------------------------------------|
| <b>FCC Form 603<br/>Schedule B</b> | <b>Partition and Disaggregation Schedule</b> | Approved by OMB<br>3060 - 0800<br>See instructions for public burden<br>estimate |
|------------------------------------|----------------------------------------------|----------------------------------------------------------------------------------|

1) Partitioner/Disaggregator Call Sign: KNLF209

**Geographic Area Partitioned**

|                                   |                                                                                     |                                   |
|-----------------------------------|-------------------------------------------------------------------------------------|-----------------------------------|
| 2) Defined Area to be Partitioned | 3) Undefined Area to be Partitioned (Complete undefined geographic area attachment) | 4) Population of Partitioned Area |
| San Francisco, CA                 | Schedule C # Attached:                                                              | 776733                            |

**5) Spectrum Disaggregated (in MHz)**

| Spectrum Disaggregated |                 |
|------------------------|-----------------|
| Lower Frequency        | Upper Frequency |
| 01880.00000            | 01885.00000     |
| 01960.00000            | 01965.00000     |

**6) Coverage Requirements - Partitioning**

|                   |                                                                                                                                                                                                                                                                                                                                                     |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (No)<br>Option 1  | Partitioner and Partitionee each certify that they will be subject to the same coverage requirements for their respective partitioned areas.                                                                                                                                                                                                        |
| (Yes)<br>Option 2 | Partitioner certifies that the 5 year coverage requirements have been or will be met and that the 10 year coverage requirements must be met for the entire license area.<br>Partitionee certifies that only the substantial service requirement for renewal expectancy for the partitioned area must be met by the end of the 10 year license term. |

**7) Coverage Requirements - Disaggregation**

|                   |                                                                                                                                                                               |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Yes)<br>Option 1 | Disaggregator and Disaggrantee each certify that the Disaggregator will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 2  | Disaggregator and Disaggrantee each certify that the Disaggrantee will maintain responsibility for meeting the applicable coverage requirements for the entire license area.  |
| (No)<br>Option 3  | Disaggregator and Disaggrantee each certify that they will share responsibility for meeting the applicable coverage requirements for the entire license area.                 |

|                                    |                                              |                                                                                  |
|------------------------------------|----------------------------------------------|----------------------------------------------------------------------------------|
| <b>FCC Form 603<br/>Schedule B</b> | <b>Partition and Disaggregation Schedule</b> | Approved by OMB<br>3060 - 0800<br>See instructions for public burden<br>estimate |
|------------------------------------|----------------------------------------------|----------------------------------------------------------------------------------|

|                                                        |
|--------------------------------------------------------|
| 1) Partitioner/Disaggregator Call Sign: <b>KNLF209</b> |
|--------------------------------------------------------|

**Geographic Area Partitioned**

|                                                           |                                                                                                                      |                                                    |
|-----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| 2) Defined Area to be Partitioned<br><b>San Mateo, CA</b> | 3) Undefined Area to be Partitioned (Complete undefined geographic area attachment)<br><b>Schedule C # Attached:</b> | 4) Population of Partitioned Area<br><b>707161</b> |
|-----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|

**5) Spectrum Disaggregated (in MHz)**

| Spectrum Disaggregated |                    |
|------------------------|--------------------|
| Lower Frequency        | Upper Frequency    |
| <b>01880.00000</b>     | <b>01885.00000</b> |
| <b>01960.00000</b>     | <b>01965.00000</b> |

**6) Coverage Requirements - Partitioning**

|                   |                                                                                                                                                                                                                                                                                                                                                     |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (No)<br>Option 1  | Partitioner and Partitionee each certify that they will be subject to the same coverage requirements for their respective partitioned areas.                                                                                                                                                                                                        |
| (Yes)<br>Option 2 | Partitioner certifies that the 5 year coverage requirements have been or will be met and that the 10 year coverage requirements must be met for the entire license area.<br>Partitionee certifies that only the substantial service requirement for renewal expectancy for the partitioned area must be met by the end of the 10 year license term. |

**7) Coverage Requirements - Disaggregation**

|                   |                                                                                                                                                                                |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Yes)<br>Option 1 | Disaggregator and Disaggragatee each certify that the Disaggregator will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 2  | Disaggregator and Disaggragatee each certify that the Disaggragatee will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 3  | Disaggregator and Disaggragatee each certify that they will share responsibility for meeting the applicable coverage requirements for the entire license area.                 |

|                                    |                                              |                                                                                  |
|------------------------------------|----------------------------------------------|----------------------------------------------------------------------------------|
| <b>FCC Form 603<br/>Schedule B</b> | <b>Partition and Disaggregation Schedule</b> | Approved by OMB<br>3060 - 0800<br>See instructions for public burden<br>estimate |
|------------------------------------|----------------------------------------------|----------------------------------------------------------------------------------|

|                                                        |
|--------------------------------------------------------|
| 1) Partitioner/Disaggregator Call Sign: <b>KNLF209</b> |
|--------------------------------------------------------|

**Geographic Area Partitioned**

|                                                             |                                                                                                                      |                                                     |
|-------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|
| 2) Defined Area to be Partitioned<br><b>Santa Clara, CA</b> | 3) Undefined Area to be Partitioned (Complete undefined geographic area attachment)<br><b>Schedule C # Attached:</b> | 4) Population of Partitioned Area<br><b>1882585</b> |
|-------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|

**5) Spectrum Disaggregated (in MHz)**

| Spectrum Disaggregated |                 |
|------------------------|-----------------|
| Lower Frequency        | Upper Frequency |
| 01880.00000            | 01885.00000     |
| 01960.00000            | 01965.00000     |

#### 6) Coverage Requirements - Partitioning

|                   |                                                                                                                                                                                                                                                                                                                                                     |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (No)<br>Option 1  | Partitioner and Partitionee each certify that they will be subject to the same coverage requirements for their respective partitioned areas.                                                                                                                                                                                                        |
| (Yes)<br>Option 2 | Partitioner certifies that the 5 year coverage requirements have been or will be met and that the 10 year coverage requirements must be met for the entire license area.<br>Partitionee certifies that only the substantial service requirement for renewal expectancy for the partitioned area must be met by the end of the 10 year license term. |

#### 7) Coverage Requirements - Disaggregation

|                   |                                                                                                                                                                               |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Yes)<br>Option 1 | Disaggregator and Disaggrantee each certify that the Disaggregator will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 2  | Disaggregator and Disaggrantee each certify that the Disaggrantee will maintain responsibility for meeting the applicable coverage requirements for the entire license area.  |
| (No)<br>Option 3  | Disaggregator and Disaggrantee each certify that they will share responsibility for meeting the applicable coverage requirements for the entire license area.                 |

|                                    |                                              |                                                                               |
|------------------------------------|----------------------------------------------|-------------------------------------------------------------------------------|
| <b>FCC Form 603<br/>Schedule B</b> | <b>Partition and Disaggregation Schedule</b> | Approved by OMB<br>3080 - 0800<br>See instructions for public burden estimate |
|------------------------------------|----------------------------------------------|-------------------------------------------------------------------------------|

|                                                 |
|-------------------------------------------------|
| 1) Partitioner/Disaggregator Call Sign: KNLF209 |
|-------------------------------------------------|

#### Geographic Area Partitioned

|                                   |                                                                                     |                                   |
|-----------------------------------|-------------------------------------------------------------------------------------|-----------------------------------|
| 2) Defined Area to be Partitioned | 3) Undefined Area to be Partitioned (Complete undefined geographic area attachment) | 4) Population of Partitioned Area |
| Santa Cruz, CA                    | Schedule C # Attached:                                                              | 255602                            |

#### 5) Spectrum Disaggregated (in MHz)

| Spectrum Disaggregated |                 |
|------------------------|-----------------|
| Lower Frequency        | Upper Frequency |
| 01880.00000            | 01885.00000     |
| 01960.00000            | 01965.00000     |

#### 6) Coverage Requirements - Partitioning

|                   |                                                                                                                                                                                                                                                                                                                                                     |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (No)<br>Option 1  | Partitioner and Partitionee each certify that they will be subject to the same coverage requirements for their respective partitioned areas.                                                                                                                                                                                                        |
| (Yes)<br>Option 2 | Partitioner certifies that the 5 year coverage requirements have been or will be met and that the 10 year coverage requirements must be met for the entire license area.<br>Partitionee certifies that only the substantial service requirement for renewal expectancy for the partitioned area must be met by the end of the 10 year license term. |

#### 7) Coverage Requirements - Disaggregation

|                   |                                                                                                                                                                                |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Yes)<br>Option 1 | Disaggregator and Disaggregates each certify that the Disaggregator will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 2  | Disaggregator and Disaggregates each certify that the Disaggregates will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 3  | Disaggregator and Disaggregates each certify that they will share responsibility for meeting the applicable coverage requirements for the entire license area.                 |

|                                    |                                              |                                                                                  |
|------------------------------------|----------------------------------------------|----------------------------------------------------------------------------------|
| <b>FCC Form 603<br/>Schedule B</b> | <b>Partition and Disaggregation Schedule</b> | Approved by OMB<br>3060 - 0800<br>See instructions for public burden<br>estimate |
|------------------------------------|----------------------------------------------|----------------------------------------------------------------------------------|

|                                                 |
|-------------------------------------------------|
| 1) Partitioner/Disaggregator Call Sign: KNLF209 |
|-------------------------------------------------|

**Geographic Area Partitioned**

|                                   |                                                                                     |                                   |
|-----------------------------------|-------------------------------------------------------------------------------------|-----------------------------------|
| 2) Defined Area to be Partitioned | 3) Undefined Area to be Partitioned (Complete undefined geographic area attachment) | 4) Population of Partitioned Area |
| Solano, CA                        | Schedule C # Attached:                                                              | 394542                            |

**5) Spectrum Disaggregated (in MHz)**

| Spectrum Disaggregated |                 |
|------------------------|-----------------|
| Lower Frequency        | Upper Frequency |
| 01880.00000            | 01885.00000     |
| 01960.00000            | 01965.00000     |

**6) Coverage Requirements - Partitioning**

|                   |                                                                                                                                                                                                                                                                                                                                                     |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (No)<br>Option 1  | Partitioner and Partitionee each certify that they will be subject to the same coverage requirements for their respective partitioned areas.                                                                                                                                                                                                        |
| (Yes)<br>Option 2 | Partitioner certifies that the 5 year coverage requirements have been or will be met and that the 10 year coverage requirements must be met for the entire license area.<br>Partitionee certifies that only the substantial service requirement for renewal expectancy for the partitioned area must be met by the end of the 10 year license term. |

**7) Coverage Requirements - Disaggregation**

|                   |                                                                                                                                                                                |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Yes)<br>Option 1 | Disaggregator and Disaggregates each certify that the Disaggregator will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 2  | Disaggregator and Disaggregates each certify that the Disaggregates will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 3  | Disaggregator and Disaggregates each certify that they will share responsibility for meeting the applicable coverage requirements for the entire license area.                 |

|                                    |                                              |                                                                                  |
|------------------------------------|----------------------------------------------|----------------------------------------------------------------------------------|
| <b>FCC Form 603<br/>Schedule B</b> | <b>Partition and Disaggregation Schedule</b> | Approved by OMB<br>3060 - 0800<br>See instructions for public burden<br>estimate |
|------------------------------------|----------------------------------------------|----------------------------------------------------------------------------------|

|                                                 |
|-------------------------------------------------|
| 1) Partitioner/Disaggregator Call Sign: KNLF209 |
|-------------------------------------------------|

**Geographic Area Partitioned**

|                                   |                                                                                     |                                   |
|-----------------------------------|-------------------------------------------------------------------------------------|-----------------------------------|
| 2) Defined Area to be Partitioned | 3) Undefined Area to be Partitioned (Complete undefined geographic area attachment) | 4) Population of Partitioned Area |
| Sonoma, CA                        | Schedule C # Attached:                                                              | 458614                            |

**5) Spectrum Disaggregated (in MHz)**

| Spectrum Disaggregated |                 |
|------------------------|-----------------|
| Lower Frequency        | Upper Frequency |
| 01880.00000            | 01885.00000     |
| 01960.00000            | 01965.00000     |

**6) Coverage Requirements - Partitioning**

|                   |                                                                                                                                                                                                                                                                                                                                                     |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (No)<br>Option 1  | Partitioner and Partitionee each certify that they will be subject to the same coverage requirements for their respective partitioned areas.                                                                                                                                                                                                        |
| (Yes)<br>Option 2 | Partitioner certifies that the 5 year coverage requirements have been or will be met and that the 10 year coverage requirements must be met for the entire license area.<br>Partitionee certifies that only the substantial service requirement for renewal expectancy for the partitioned area must be met by the end of the 10 year license term. |

**7) Coverage Requirements - Disaggregation**

|                   |                                                                                                                                                                                |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Yes)<br>Option 1 | Disaggregator and Disaggragatee each certify that the Disaggregator will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 2  | Disaggregator and Disaggragatee each certify that the Disaggragatee will maintain responsibility for meeting the applicable coverage requirements for the entire license area. |
| (No)<br>Option 3  | Disaggregator and Disaggragatee each certify that they will share responsibility for meeting the applicable coverage requirements for the entire license area.                 |

The copy resulting from Print Preview is intended to be used as a reference copy only and MAY NOT be submitted to the FCC as an application for manual filing.

**Attachment List**

| Attachment Type | Date     | Description                                              | Contents                      |
|-----------------|----------|----------------------------------------------------------|-------------------------------|
| Other           | 06/16/04 | Description of Transaction and Public Interest Statement | 0179399973621977207605250.pdf |

## DESCRIPTION OF THE TRANSACTION AND PUBLIC INTEREST STATEMENT

VoiceStream PCS II License Corporation ("VoiceStream PCS") and Pacific Telesis Mobile Services, LLC ("PacTel") (collectively, the "Applicants") submit this application ("Application") seeking Federal Communications Commission ("FCC" or "Commission") consent to the assignment to VoiceStream PCS of 10 MHz broadband personal communications service ("PCS") licenses for three Basic Trading Areas ("BTAs") in California, as follows: (i) a partitioned and disaggregated portion of PacTel's 20 MHz B block broadband PCS license for the San Francisco-San Jose-Oakland ("San Francisco") Major Trading Area ("MTA"), Call Sign KNLF209, consisting of 10 MHz (at 1880-85 and 1960-65 MHz) in the San Francisco BTA (BTA404);<sup>1</sup> (ii) a partitioned and disaggregated portion of PacTel's 20 MHz B block broadband PCS license for the San Francisco MTA, Call Sign KNLF209, consisting of 10 MHz (at 1880-85 and 1960-65 MHz) in the Sacramento, CA BTA (BTA 389); and (iii) a partitioned and disaggregated portion of PacTel's 20 MHz B block broadband PCS license for the Los Angeles-San Diego ("Los Angeles") MTA, Call Sign KNLF205, consisting of 10 MHz (at 1875-80 and 1955-60 MHz) in the Las Vegas, NV BTA (BTA 245) (such partitioned and disaggregated portions, collectively, the "PacTel Licenses"). As discussed below, consummation of the proposed license assignments (for three separate licenses pursuant to a single assignment application) is conditioned upon Commission approval and consummation of the proposed merger between Cingular Wireless Corporation (individually or together with its affiliates, "Cingular") and AT&T Wireless Services, Inc. ("AWS") (the "Cingular-AWS Merger").<sup>2</sup>

### I. THE APPLICANTS

VoiceStream PCS, the proposed assignee, is a Delaware corporation and an indirect, wholly owned subsidiary of T-Mobile USA, Inc. (individually or together with its affiliates, "T-Mobile"). T-Mobile is a Delaware corporation and an indirect, wholly owned subsidiary of Deutsche Telekom AG, a corporation organized under the laws of the Federal Republic of Germany ("DT"). Through its subsidiaries and affiliates, T-Mobile constructs and operates broadband PCS systems throughout the United States.

As one of six nationwide wireless carriers, T-Mobile operates a fully digital GSM network, offering service in the 1900 MHz band to 46 of the top 50 U.S. markets. T-Mobile serves 225 million pops through its facilities-based networks,<sup>3</sup> as well as an additional 29 million

<sup>1</sup> Due to technical issue with the FCC's Universal Licensing System, the foregoing Form 603 includes a separate Schedule B entry for each of the 13 counties comprising BTA404.

<sup>2</sup> See FCC Public Notice, *AT&T Wireless Services, Inc. and Cingular Wireless Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations*, DA 04-932 (Apr. 2, 2004).

<sup>3</sup> This figure includes 55 million pops in the markets served through the network infrastructure sharing joint venture with Cingular.

pops through roaming arrangements. In all, T-Mobile's service reaches a total of 254 million pops.

PacTel, the proposed assignor, is a Delaware limited liability company and an indirect, wholly owned subsidiary of Cingular. Through various subsidiaries and affiliates, Cingular constructs, operates, and holds interests in numerous wireless telecommunications systems throughout much of the United States.

## II. DESCRIPTION OF THE TRANSACTION

Pursuant to an FCC License Purchase Agreement, dated as of May 24, 2004, T-Mobile will purchase the PacTel Licenses for \$180 million, subject to prior Commission approval of the Application. The transaction also is subject to other closing conditions, including those related to the consummation of the Cingular-AWS Merger. Under this agreement, T-Mobile also has a future option to purchase 10 MHz of spectrum in the Los Angeles and San Diego, CA BTAs from PacTel.

The FCC License Purchase Agreement is part of a larger transaction that will allow T-Mobile and Cingular to unwind their network infrastructure sharing joint venture ("Joint Venture") and operate separate networks. Consummation of the unwind transaction is conditioned upon consummation of the proposed Cingular-AWS Merger, as well as applicable Hart-Scott-Rodino clearance and certain FCC approvals as described below.

Under the existing network sharing arrangement, T-Mobile and Cingular jointly own and control PCS networks in the Los Angeles and San Francisco MTAs, as well as the New York, NY BTA. Following consummation of the Cingular-AWS Merger, several interrelated transactions will occur as part of the transaction to unwind the Joint Venture:

- Pursuant to an Interest Purchase Agreement, T-Mobile will acquire Cingular's interest in the Joint Venture for a net purchase price of \$2.3 billion,<sup>4</sup> thereby gaining 100 percent ownership of the Joint Venture networks in the Los Angeles and San Francisco MTAs and the New York, NY BTA (the "Joint Venture Networks");
- Pursuant to a Long Term *De Facto* Transfer Lease Agreement, Cingular and T-Mobile have entered into a long-term (up to four year) spectrum leasing arrangement in the Los Angeles and San Francisco MTAs, as well as the New York, NY BTA. This arrangement, which has been submitted for Commission approval,<sup>5</sup> will facilitate an orderly transition of Cingular's customers off the Joint Venture Networks and will ensure efficient use of the Joint Venture Networks by T-Mobile's growing customer

<sup>4</sup> The nominal purchase price of \$2.5 billion will be offset by \$200 million related to the unwinding of the Joint Venture, resulting in a net purchase price of \$2.3 billion.

<sup>5</sup> See FCC File Nos. 0001757186 and 0001757204 (filed June 1, 2004).

base. The amount of spectrum subject to the lease will be reduced (1) when T-Mobile completes its acquisition of the PacTel Licenses (which is planned to occur at or near the time of consummation of the Interest Purchase Agreement) and other licenses which T-Mobile may acquire from Cingular in the future, and (2) when Cingular exchanges certain spectrum with T-Mobile pursuant to a separate agreement (described below) and subject to FCC approval.

- Pursuant to a Wholesale Agreement, T-Mobile will use its own licensed spectrum and the spectrum to be leased from Cingular to provide voice and data services to Cingular in the Los Angeles and San Francisco MTAs and the New York, NY BTA. By this means, Cingular will provide services to its customers in these markets until it transitions these customers from the Joint Venture Networks to the networks Cingular will acquire through the proposed Cingular-AWS Merger.
- Pursuant to the FCC License Purchase Agreement referenced above, the PacTel Licenses will be assigned to VoiceStream PCS as proposed herein;
- Following consummation of the Interest Purchase Agreement and subject to Commission approval, Cingular and T-Mobile will exchange certain additional spectrum licenses pursuant to the terms of an Exchange Agreement to be signed by them.

### III. PUBLIC INTEREST STATEMENT

Section 310(d) of the Communications Act of 1934, as amended ("the Act"), requires that the Commission determine whether the transaction presented herein is consistent with the public interest, convenience and necessity.<sup>6</sup> To make that assessment, the Commission generally considers four factors: "(1) whether the transaction would result in the violation of the Act or any other applicable statutory provision; (2) whether the transaction would result in a violation of Commission rules; (3) whether the transaction would substantially frustrate or impair the Commission's implementation or enforcement of the Act or interfere with the objectives of that and other statutes; and (4) whether the transaction promises to yield affirmative public interest benefits."<sup>7</sup> As part of its public interest analysis, the Commission reviews whether the

<sup>6</sup> Section 310(d) provides that "no construction permit, or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any matter . . . to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby." 47 U.S.C. § 310(d).

<sup>7</sup> *Applications of SBC Communications Inc. and BellSouth Corp.*, 15 FCC Rcd 25459, 25463-64 (WTB/IB 2000) (citation omitted); *Applications of Ameritech Corp. and SBC Communications Inc.*, 14 FCC Rcd 14712, 14737-38 (1999) ("Ameritech-SBC Order"); see also *EchoStar Communications Corp. (a Nevada Corp.), Gen. Motors Corp., and Hughes Electronics Corp. (Delaware Corp.) (Transferors) and EchoStar Communications Corp. (a Delaware Corp.) (Transferee)*, 17 FCC Rcd 20559, 20574 (2002); *Application of WorldCom, Inc. and MCI Communications Corp.*, 13 FCC Rcd 18025, 18030-32 (1998); *Merger of MCI Communications Corporation and British Telecommunications plc*, 12 FCC Rcd 15351, 15367-68 (1997).

transaction will have anti-competitive effects and, if so, whether there are overriding public interest benefits that would support a grant.

The Commission has determined that transfer and assignment applications which demonstrate on their face that a transaction will yield affirmative public interest benefits and will neither violate the Act or Commission's rules nor frustrate or undermine policies and enforcement of the Act, do not require extensive review and expenditures of considerable resources by the Commission.<sup>8</sup> The instant application meets this standard.<sup>9</sup>

The proposed transaction serves the public interest. Specifically, the transaction fully complies with all FCC rules, requires no waivers, and will not frustrate or impair the objectives, or the Commission's implementation, of the Communications Act of 1934, as amended (the "Act"), or other statutes.<sup>10</sup> The PacTel Licenses are freely assignable,<sup>11</sup> and all FCC construction requirements associated with the underlying licenses have been satisfied.<sup>12</sup> The transaction creates no unresolved overlaps in ownership interests in any wireless markets and raises no competitive concerns.

T-Mobile is financially qualified to acquire the PacTel Licenses and operate the associated networks. It has adequate resources to undertake and consummate the transaction. T-Mobile is led by a management team that has decades of collective experience in the telecommunications industry and that manages many other telecommunications licenses in the United States.

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<sup>8</sup> See *Applications of Tele-Communications, Inc. and AT&T Corp.*, 14 FCC Rcd 3160, 3170 (1999); *Ameritech-SBC Order*, 14 FCC Rcd at 14740-41.

<sup>9</sup> The Commission has emphasized that a detailed showing of benefits is not required for transactions where there are no anti-competitive effects. The Commission stated in *Applications of Southern New England Telecomm. Corp. and SBC Communications Inc.*, 13 FCC Rcd 21292, 21315 (1998), that, in the absence of anti-competitive effects, a detailed showing of benefits is not necessary in seeking approval of a merger. Similarly, as the Commission stated in its approval of the SBC/Pacific Telesis merger, where it found that the merger would not reduce competition and that SBC possessed the requisite qualifications to control the licenses in question, "[a] demonstration that benefits will arise from the transfer is not . . . a prerequisite to our approval, provided that no foreseeable adverse consequences will result from the transfer." *Applications of Pacific Telesis Group and SBC Communications Inc.*, 12 FCC Rcd 2624, 2626-27 (1997); see also *Comcast Cellular Holdings, Inc. and SBC Communications, Inc.*, 14 FCC Rcd 10604, 10608-09 (WTB 1999).

<sup>10</sup> See *Consent to the Transfer of Control of Licenses and Section 214 Authorization from Tele-Communications, Inc. to AT&T Corp.*, 14 FCC Rcd 3160, 3170 (1999); *Ameritech-SBC Order*, 14 FCC Rcd at 14740-41.

<sup>11</sup> 47 C.F.R. § 24.714(a).

<sup>12</sup> Both the 5- and 10-year construction benchmarks have already been satisfied for Stations KNLF205 and KNLF209 and no further construction obligations are applicable. See ULS File Nos. 0000124522 and 0000123444 (Station KNLF205); ULS File Nos. 0000123418 and 0001419680 (Station KNLF209). Accordingly, in connection with the partitioning and disaggregation contemplated herein, the parties have chosen Option 2 in response to Question 6 and Option 1 in response to Question 7 in the Schedule Bs to represent these circumstances.

The proposed transaction will enhance competition in the markets. Both Cingular and T-Mobile will continue to provide facilities-based service in these markets upon consummation.<sup>13</sup> Indeed, following consummation of this transaction, numerous facilities-based competitors will remain in the markets.<sup>14</sup> These competitors include well-established national and regional operators whose presence will ensure a high degree of competition.<sup>15</sup>

The Joint Venture has allowed T-Mobile to enter the California and Nevada markets as a facilities-based provider, thereby enhancing its ability to compete against other national wireless carriers that control larger spectrum holdings and network assets. In a short period of time, T-Mobile has built a customer base of nearly 1.7 million customers in these markets.<sup>16</sup> T-Mobile's acquisition of additional spectrum in the San Francisco, Sacramento and Las Vegas BTAs will allow it to further enhance its ability to compete and to serve its growing customer base in California and Nevada. Moreover, the added efficiencies associated with supplementing T-Mobile's national footprint through the proposed license assignments will promote competition and allow T-Mobile to continue offering competitively priced, innovative, high-quality services on a national basis.<sup>17</sup>

#### IV. FOREIGN OWNERSHIP OF ASSIGNEE

Under Section 310(b)(4) of the Act, the Commission must determine whether the public interest would be served by allowing a common carrier licensee to have indirect foreign ownership that exceeds 25 percent.<sup>18</sup> Through T-Mobile, foreign entities and persons indirectly hold 100 percent of the attributable ownership interest in VoiceStream PCS. On April 27, 2001, the Commission issued an order granting the applications of T-Mobile (then named VoiceStream Wireless Corporation ("VWC")) for authority to transfer control of its licensee subsidiaries to a

<sup>13</sup> Cingular's subscribers will not be transferred to T-Mobile and instead will be transitioned to the AWS network to be acquired by Cingular.

<sup>14</sup> See chart *infra*.

<sup>15</sup> See *id.*; see *Applications of Northcoast Communications, LLC and Cellco Partnership d/b/a Verizon Wireless*, 18 FCC Rcd 6490, 6493-94 (WTB 2003) (finding that, with six competitors operating in an area, a transaction will result in no harm to rates and/or service); FCC Public Notice, *Wireless Telecommunications Bureau Grants Consent for the Assignment of Licenses to AT&T Wireless Services, Inc., Cingular Wireless LLC, Meriwether Communications LLC, and Skagit Wireless, LLC*, 18 FCC Rcd 9975 (WTB 2003) (approving transaction that resulted in the elimination of an actual competitor where five actual competitors remained in the market).

<sup>16</sup> T-Mobile expects that 20 percent of all its new customers will come from these markets.

<sup>17</sup> See *VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, to Transfer Control of Licenses and Authorizations*, 16 FCC Rcd 9779, 9844-45 (2001) ("VoiceStream-DT Order"); *Southern New England Telecommunications Corp.*, 13 FCC Rcd 21292, 21314-15 (1998); *SBC Inc.*, 14 FCC Rcd 10604 (WTB, 1999); *Vanguard Cellular Systems, Inc.*, 14 FCC Rcd 3844, 3853 (WTB, 1999); 360 *Communications Co.*, 14 FCC Rcd 2005, 2025-26 (WTB, 1998); *Bell Atlantic Mobile Systems, Inc.*, 10 FCC Rcd 13368, 13384-85 (WTB, 1995), *aff'd*, 12 FCC Rcd 22280 (1997).

<sup>18</sup> See 47 U.S.C. § 310(b)(4).

wholly owned U.S. subsidiary of DT to effect a merger between VWC and DT.<sup>19</sup> The Commission found that DT's indirect investment in VWC and its licensee subsidiaries in excess of the 25 percent benchmark set forth in Section 310(b)(4) is consistent with the public interest.<sup>20</sup> Specifically, the Commission authorized up to 100 percent indirect foreign investment in T-Mobile and certain licensee subsidiaries, including VoiceStream PCS, by DT and its German shareholders, and by the German government through its investment in DT (up to and including 43 percent).<sup>21</sup> The Commission subsequently approved 100 percent indirect foreign investment in several other T-Mobile licensee subsidiaries.<sup>22</sup> Because the Commission previously approved the ownership structure of VoiceStream PCS, the assignment of additional licenses to VoiceStream PCS is in the public interest.

## V. COMPLIANCE WITH DOJ/FBI AGREEMENT

VoiceStream PCS requests that the FCC condition the grant of the approval of the proposed license assignments on compliance with the provisions of the January 12, 2001, Agreement with the Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI") ("DOJ/FBI Agreement")<sup>23</sup> upon which approval of the merger between T-Mobile and DT was based.<sup>24</sup> The requirements of the DOJ/FBI Agreement are binding on DT and DT's subsidiaries, including T-Mobile and VoiceStream PCS. Section 7.2 of the DOJ/FBI Agreement provides:

<sup>19</sup> See *VoiceStream-DT Order*. The transfer of control of T-Mobile to DT was consummated on May 31, 2001.

<sup>20</sup> See *id.* at 9845. Since the consummation of the transfer of control of T-Mobile to DT on May 31, 2001, there has been no increase in the Federal Republic of Germany's ownership interest in DT or, indirectly, in T-Mobile. DT continues to hold 100 percent of the ownership interests in T-Mobile (through DT's wholly owned subsidiary, T-Mobile International Holding GmbH, which in turn holds all of the interests in T-Mobile International AG & Co. KG, which in turn holds all of the interests in T-Mobile Global Holding GmbH, which in turn holds all of the interests in T-Mobile) and, indirectly, a 100 percent interest in VoiceStream PCS.

<sup>21</sup> Specifically, the *VoiceStream DT Order* provided that "the applications filed by VoiceStream and Powertel for authority to transfer control of licenses and authorizations to DT, and the petitions for declaratory ruling filed by VoiceStream and Powertel in the above-captioned proceeding ARE GRANTED." *VoiceStream DT Order*, 16 FCC Rcd at 9850. The transfer of control application filed by VoiceStream PCS (ULS File No. 0000212726) was among 31 electronic applications granted by the *VoiceStream DT Order* and referenced the Lead Application for the merger (ULS File No. 0000211827). The VoiceStream PCS application was consummated on May 31, 2001, by ULS File No. 0000478196. Accordingly, VoiceStream PCS has received a declaratory ruling authorizing the current level of indirect foreign investment by DT and its German shareholders.

<sup>22</sup> See, e.g., *International Authorizations Granted*, 18 FCC Rcd 5014 (IB 2003) (granting indirect foreign ownership in Cook Inlet/VS GSM VI PCS, LLC in excess of the twenty-five percent benchmark of Section 310(b)(4)).

<sup>23</sup> See Agreement between Deutsche Telekom AG, VoiceStream Wireless Corporation, VoiceStream Wireless Holding Corporation, the Department of Justice and the Federal Bureau of Investigation (Jan. 12, 2001), which was appended by the Commission to the *VoiceStream-DT Order*.

<sup>24</sup> See *supra* *VoiceStream-DT Order*.

DT agrees that in its applications or petitions to the FCC for licensing or other authority filed with the FCC after the Effective Date, except with respect to pro forma assignments or pro forma transfers of control, it shall request that the FCC condition the grant of such licensing or other authority on DT's compliance with the terms of this Agreement . . . .<sup>25</sup>

The DOJ/FBI Agreement prescribes specific language for the conditional grant of interests in FCC licenses at Exhibit A to the DOJ/FBI Agreement:

It is further ordered, that the authorizations and the licenses related thereto are subject to compliance with the provisions of the Agreement attached hereto between Deutsche Telekom AG, VoiceStream Wireless Corporation, VoiceStream Wireless Holding Corporation on the one hand, and the Department of Justice (the "DOJ") and the Federal Bureau of Investigation (the "FBI") on the other, dated January 12, 2001, which Agreement is designed to address national security, law enforcement, and public safety issues of the FBI and the DOJ regarding the authority granted herein. Nothing in the Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to, 47 U.S.C. § 222(a) and (c)(1) and the FCC's implementing regulations.<sup>26</sup>

## VI. SPECTRUM AGGREGATION ANALYSIS

Consistent with informal guidance from Commission staff in other recent transactions, described below are T-Mobile's spectrum holdings in the San Francisco, CA, Sacramento, CA, and Las Vegas, NV BTAs both before and after the proposed assignments. The assignments will result in T-Mobile's holding or controlling no more than 45 MHz of spectrum in the San Francisco, Sacramento, and Las Vegas markets.

Specifically, T-Mobile, through affiliates in which it holds a 10 percent or greater ownership interest, currently holds licenses for a total of (i) 20 MHz of broadband PCS spectrum in the San Francisco BTA; (ii) 10 MHz of broadband PCS spectrum in the Sacramento BTA; and (iii) 25 MHz of broadband PCS spectrum in the Las Vegas BTA. Following the proposed assignment, T-Mobile, through affiliates in which it holds a 10 percent or greater ownership interest, will hold licenses for a total of (i) 30 MHz of broadband PCS spectrum in the San Francisco BTA; (ii) 20 MHz of broadband PCS spectrum in the Sacramento BTA; and (iii) 35 MHz of broadband PCS spectrum in the Las Vegas BTA.

<sup>25</sup> DOJ/FBI Agreement at § 7.2. The Commission has included compliance with the FBI/DOJ Agreement as a condition to the Commission's consent in the context of every application for assignment or transfer of control of licenses to T-Mobile's subsidiaries that has postdated the FBI/DOJ Agreement.

<sup>26</sup> DOJ/FBI Agreement at Exhibit A.

Furthermore, subject to Commission approval and for a period of up to four years, T-Mobile will exercise, through a spectrum leasing arrangement with PacTel, *de facto* control over a maximum of an additional 20 MHz of broadband PCS spectrum in the San Francisco, Sacramento, and Las Vegas BTAs. As noted in Section II above, the amount of spectrum that T-Mobile will lease from PacTel would be reduced by the amount that T-Mobile will acquire from PacTel under the transaction proposed herein. Thus, following the proposed assignment, T-Mobile, through affiliates in which it holds a 10 percent or greater ownership interest, will control, through FCC license holdings and spectrum leasing, a total of: (i) 40 MHz of broadband PCS spectrum in the San Francisco BTA; (ii) 30 MHz of broadband PCS spectrum in the Sacramento BTA; and (iii) 45 MHz of broadband PCS spectrum in the Las Vegas BTA. Neither T-Mobile nor its affiliates control any other PCS, cellular, or Specialized Mobile Radio ("SMR") spectrum in the San Francisco, Sacramento, and Las Vegas BTAs.

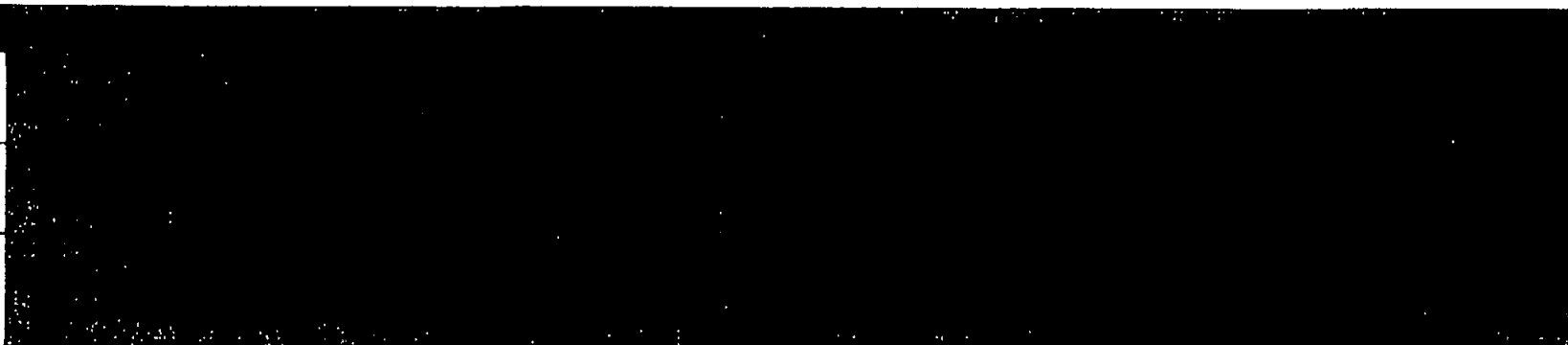
The proposed assignment will promote and preserve competition in the relevant markets. Following consummation of the underlying transaction, numerous terrestrial-based wireless competitors in addition to T-Mobile will operate in the San Francisco, Sacramento, and Las Vegas BTAs, as indicated in the chart below. Therefore, a high degree of competition will remain in the market following the transaction.

[Remainder of this page intentionally left blank – see next page for chart.]



## WIRELESS COMPETITORS IN SUBJECT MARKET AREAS<sup>27</sup>

### Constructed Facilities<sup>28</sup>

|                                                    |                                                                                    |
|----------------------------------------------------|------------------------------------------------------------------------------------|
| Las Vegas, NV<br>(BTA245)                          |  |
| Sacramento, CA<br>(BTA389)                         |                                                                                    |
| San Francisco-Oakland-<br>San Jose, CA<br>(BTA404) |                                                                                    |

<sup>27</sup> MTAs (used for assigning PCS A & B licenses), as well as Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs") (used for assigning Cellular A & B licenses) do not coincide exactly with BTAs. Therefore, licenses assigned via MTA, MSA, or RSA may be noted in multiple BTAs. As a result, multiple licensees listed under cellular blocks A or B do not necessarily compete against other cellular licensees in their block within the BTA. Rather, each is generally licensed to serve a separate geographic region of the pertinent BTA and competes against other licensees operating in the BTA.

<sup>28</sup> Denotes active cellular licenses granted more than 18 months ago, active PCS licenses for which a construction notification has been filed, and other sources of publicly available information. In instances where there are multiple carriers within a license block in a particular BTA, the block is shaded if any of the carriers satisfy the criteria in the preceding sentence. Carriers that have completed construction may not be operating, and carriers that are operating may not have filed construction notices. This chart lists licensed, facilities-based terrestrial carriers only, and does not include resellers or satellite service providers.

## **VII. CONCLUSION**

For the foregoing reasons, a grant of the instant application for consent to assignment of the PacTel Licenses will serve the public interest, convenience, and necessity.

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

|                                                   |   |                      |
|---------------------------------------------------|---|----------------------|
| In the matter of                                  | ) |                      |
|                                                   | ) |                      |
| Applications of AT&T Wireless Services, Inc. and  | ) |                      |
| Cingular Wireless Corporation                     | ) |                      |
|                                                   | ) |                      |
| For Consent to Transfer Control of Licenses and   | ) | WT Docket No. 04-70  |
| Authorizations                                    | ) |                      |
|                                                   | ) |                      |
| File Nos. 0001656065, <i>et al.</i>               | ) |                      |
|                                                   | ) |                      |
| and                                               | ) |                      |
|                                                   | ) |                      |
| Applications of Subsidiaries of T-Mobile USA,     | ) |                      |
| Inc. and Subsidiaries of Cingular Wireless        | ) |                      |
| Corporation                                       | ) |                      |
|                                                   | ) |                      |
| For Consent to Assignment and Long-Term <i>De</i> | ) | WT Docket No. 04-254 |
| <i>Facto</i> Lease of Licenses                    | ) |                      |
|                                                   | ) |                      |
| File Nos. 0001771442, 0001757186, and             | ) |                      |
| 0001757204                                        | ) |                      |
|                                                   | ) |                      |
| and                                               | ) |                      |
|                                                   | ) |                      |
| Applications of Triton PCS License Company,       | ) |                      |
| LLC, AT&T Wireless PCS, LLC, and Lafayette        | ) |                      |
| Communications Company, LLC                       | ) |                      |
|                                                   | ) |                      |
| For Consent to Assignment of Licenses             | ) | WT Docket No. 04-323 |
|                                                   | ) |                      |
| File Nos. 0001808915, 0001810164, 0001810683,     | ) |                      |
| and 50013CWAA04                                   | ) |                      |
|                                                   | ) |                      |

**MEMORANDUM OPINION & ORDER**

**Adopted: October 22, 2004**

**Released: October 26, 2004**

By the Commission: Chairman Powell and Commissioners Abernathy and Martin issuing separate statements; Commissioners Copps and Adelstein approving in part, dissenting in part, and issuing separate statements.

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## I. INTRODUCTION

1. In this Order, we consider a set of applications filed by AT&T Wireless Services, Inc. ("AT&T Wireless") and Cingular Wireless Corporation ("Cingular") (collectively, the "Applicants") for consent to transfer control of all licenses and authorizations held by AT&T Wireless and its subsidiaries to Cingular. These licenses and authorizations include, most notably, many enabling the provision of mobile telephone service. This transfer of control would take place as a result of a proposed merger whereby AT&T Wireless would become an indirect, wholly-owned subsidiary of Cingular. The Applicants contemplate that the operations of AT&T Wireless and Cingular would be merged and that the merged entity would continue to provide mobile telephony under the Cingular brand name. The proposed merged entity would be jointly owned, as Cingular is today, by SBC Communications Inc. ("SBC") and

BellSouth Corporation ("BellSouth"). Additionally, various entities in which AT&T Wireless holds non-controlling interests have filed applications for *pro forma* transfers of control.<sup>1</sup>

2. In addition, we consider two related sets of applications. Consummation of these proposed transactions is contingent upon the consummation of the proposed transfer of control of AT&T Wireless to Cingular. First, we consider applications filed by T-Mobile USA, Inc. ("T-Mobile") and Cingular as part of a larger transaction in which Cingular and T-Mobile propose to unwind a network infrastructure joint venture ("Joint Venture Unwind") in portions of California, Nevada, and New York. These applications seek approval for (1) the assignment of broadband Personal Communications Services ("PCS") spectrum from a subsidiary of Cingular to a subsidiary of T-Mobile, and (2) a long-term *de facto* transfer leasing arrangement between various subsidiaries of Cingular and a subsidiary of T-Mobile. Second, we consider applications filed by Triton PCS, Inc. ("Triton PCS") and AT&T Wireless to exchange spectrum in portions of North Carolina and Georgia.<sup>2</sup> As part of this transaction, AT&T Wireless "will relinquish all of its equity in Triton [PCS]" and will no longer have the right to appoint a director to Triton PCS's board of directors.<sup>3</sup>

3. In two ways, the proposed AT&T Wireless-Cingular transaction marks a watershed for the Federal Communications Commission ("Commission"). It presents the Commission for the first time with the challenge of examining the potential consequences of a proposed merger between two large national wireless carriers that is largely horizontal in nature. Many earlier combinations in this sector were aimed at creating competing national systems, while what the Applicants propose is to combine the largely, but not entirely, overlapping second and third largest systems nationwide. Cingular has determined to spend \$41 billion in cash to acquire AT&T Wireless. The Applicants assert that this merger will fill gaps in their footprints and provide necessary resources to enable the merged entity to compete effectively in the current marketplace with a speed that is both essential and unobtainable by alternative means. The Applicants further argue that the merger will combine two less effective competitors into a much more vigorous competitor while leaving ample alternatives and opportunities to sustain competitive pressures in the marketplace, thus benefiting consumers.

4. Second, the proposed transaction marks a turning point because it is the first large license-transfer proceeding since the removal of prophylactic thresholds, including a Commercial Mobile Radio Services ("CMRS") spectrum aggregation limit, which the Commission had employed to encourage new entry and prevent undue concentration of limited resources in the developing mobile telephony sector. Thus, for the first time in this sector, we articulate and apply our public interest standard by undertaking a case-by-case analysis of a large transaction without the presence of a bright-line rule related to spectrum aggregation.

5. Pursuant to sections 214(a) and 310(d) of the Communications Act, we must determine whether the Applicants have demonstrated that the proposed acquisition of AT&T Wireless will serve the public interest, convenience, and necessity. Based on the record before us, we find that the Applicants

<sup>1</sup> As part of this transaction, Cingular will receive from AT&T Wireless additional, non-controlling ownership interests in entities in which AT&T Wireless holds less than 50 percent of the total ownership interests. The transfer of these interests to Cingular may not require the submission of an application or notification to the Commission. See 47 C.F.R. § 1.948. For the full list of interests to be transferred from AT&T Wireless to Cingular, compare AT&T Wireless Services, Inc., FCC Ownership Disclosure Form 602 (filed Mar. 16, 2004) ("AT&T Wireless Form 602") with Cingular Wireless Corporation, FCC Ownership Disclosure Form 602 (filed Mar. 30, 2004) ("Post-Transaction Form 602").

<sup>2</sup> As part of this transaction, Triton PCS will acquire spectrum from Lafayette Communications Company LLC. Triton PCS will then include the Lafayette spectrum as part of the spectrum exchange with AT&T Wireless.

<sup>3</sup> Application, ULS File No. 0001810683, Exhibit 1, at 1 (filed July 21, 2004).

have generally met that burden. Competitive harm is unlikely in most mobile telephony markets, primarily because of the presence of multiple other carriers who have the capacity to add subscribers and the ability to supplement their current capacity, as well. Thus, despite concentration that appears high in many markets when measured based on firms' current shares of subscribers, other operators will nonetheless be an effective competitive constraint on the behavior of the merged entity.

6. With regard to 22 local areas, however, our case-by-case analysis shows that likely competitive harms exceed likely benefits of the transaction. In these areas, we are imposing remedy conditions that will effectively ameliorate the expected harm. Thus, in no area of the country will harm to users of mobile telephony services result from this acquisition.

7. Because these applications result in the acquisition of an independent mobile provider by a joint venture controlled by two large wireline telephone companies, issues of intermodal competition arise as well. We find that this transaction raises novel competitive issues surrounding the differing incentives that wireless providers may have to engage in robust competition against the wireline operations of incumbent local exchange carriers. We consider whether this transaction diminishes intermodal competition for mass market voice telecommunications services, and conclude that any potential public interest harm arising from the loss of AT&T Wireless as an independent competitor is mitigated by the limited level of wireless-wireline competition at this point in time, and by the continued existence of a number of independent national and regional wireless carriers in the markets relevant to this transaction.<sup>4</sup> We also find that any potential harm is outweighed by the potential benefits that the merged entity could bring to the majority of mass market consumers.

## II. BACKGROUND

### A. Description of the Applicants

#### 1. AT&T Wireless Services, Inc.

8. AT&T Wireless is a publicly-traded Delaware corporation, headquartered in Redmond, Washington. AT&T Wireless and its subsidiaries construct and operate wireless telecommunications systems throughout much of the United States.<sup>5</sup> It primarily provides analog and digital wireless voice and data services on 850 MHz band cellular licenses and on 1900 MHz band PCS licenses.<sup>6</sup> AT&T Wireless subsidiaries are also authorized to operate Wireless Communications Service, Local Multipoint

<sup>4</sup> Our conclusion is based on compliance with any conditions necessary to address horizontal concentration in individual wireless markets, as discussed elsewhere in this Order.

<sup>5</sup> Application, ULS File No. 0001656065, Exhibit 1, at 7 (filed Mar. 19, 2004) ("Application"). This Application has been designated the lead Application for this transaction. See AT&T Wireless Services, Inc. and Cingular Wireless Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 04-70, *Public Notice*, 19 FCC Rcd. 6185, 6186 n.8 (2004) ("Comment Public Notice").

<sup>6</sup> See A&T Wireless Services, Inc., Annual Report 2003, at 4-5 ("AT&T Wireless Annual Report"), available at [https://www.attwireless.com/press/annual\\_2003/](https://www.attwireless.com/press/annual_2003/) (visited July 22, 2004); AT&T Wireless Services, Inc., Form 10-K, at 5, 6, 11 (Mar. 3, 2004) ("AT&T Wireless 10-K"), available at <http://www.sec.gov/Archives/edgar/data/1138234/000095012404000701/0000950124-04-000701-index.htm>. AT&T Wireless's cellular and PCS licenses, including licenses held by entities in which AT&T Wireless holds a greater than 50% voting interest, cover 279 million POPs, or 96 percent of the United States population. See Letter from Douglas I. Brandon, Vice President, Federal Affairs, AT&T Wireless, Inc., and Brian F. Fontes, Vice President - Federal Relations, Cingular Wireless Corporation, to Erin McGrath, Assistant Division Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, at 2, Attachment A (Oct. 5, 2004) ("October 5, Letter"); see also AT&T Wireless 10-K at 11.

Distribution Service, Industrial/Business Pool Service, and Point-to-Point Microwave Service licenses in various markets throughout the United States.<sup>7</sup> AT&T Wireless also owns and operates a Wi-Fi network.<sup>8</sup> Additionally, AT&T Wireless holds interests in other wireless telecommunications providers throughout the United States<sup>9</sup> and internationally.<sup>10</sup>

9. AT&T Wireless was formed on July 9, 2001, when AT&T Corp. spun off AT&T Wireless to its shareholders to create an independent, publicly-traded company.<sup>11</sup> AT&T Wireless's largest investor, NTT DoCoMo, Inc. ("DoCoMo"),<sup>12</sup> acquired its interest in AT&T Wireless during this spin off from AT&T Corp.<sup>13</sup> DoCoMo, a Japanese wireless communications company, holds a 16 percent indirect ownership interest in AT&T Wireless.<sup>14</sup> No other investor holds more than a 10 percent ownership interest in AT&T Wireless.<sup>15</sup>

10. Today, AT&T Wireless is the second largest provider of wireless communications services in the United States based on revenues.<sup>16</sup> AT&T Wireless had 22 million customers as of December 31, 2003, and reported \$16.7 billion in revenues for 2003.<sup>17</sup> AT&T Wireless provides its customers wireless voice and data services over two separate networks utilizing time division multiple access ("TDMA")<sup>18</sup> and global system for mobile communications ("GSM") technologies.<sup>19</sup> In 2001,

<sup>7</sup> See Comment Public Notice at 6185.

<sup>8</sup> AT&T Wireless 10-K at 5, 6; AT&T Wireless Annual Report at 4-5.

<sup>9</sup> These entities include Alaska Native Wireless, LLC, Cascade Wireless, LLC, Cincinnati Bell Wireless, LLC, GSM Corridor, LLC, and Triton PCS Holdings, Inc. See AT&T Wireless Annual Report at 67.

<sup>10</sup> See AT&T Wireless Annual Report at 16-17, 67; AT&T Wireless 10-K at 7-8 (stating that AT&T Wireless has investments in companies in Canada, Caribbean, Asia, and Europe).

<sup>11</sup> See AT&T Wireless Annual Report at 48; AT&T Wireless 10-K, at 18, 21; see also Application, ULS File No. 0000545809, Exhibit 1 (filed Aug. 1, 2001). To effectuate this split, AT&T Corp. created AT&T Wireless Group tracking stock, which was a class of AT&T Corp. common stock intended to provide financial returns based "on the financial performance and economic value of AT&T Corp.'s wireless services businesses." AT&T Wireless Annual Report at 48. The spinoff of AT&T Wireless from AT&T Corp., which occurred in July 2001, was effectuated by AT&T Corp.'s conversion of all shares of AT&T Wireless Group tracking stock into shares of AT&T Wireless common stock on a one-for-one basis and AT&T Corp.'s distribution of AT&T Wireless common stock to AT&T Corp. shareholders in the form of a stock dividend. See *id.*

<sup>12</sup> See AT&T Wireless Form 602. Nippon Telephone and Telegraph owns approximately 61% of DoCoMo. See AT&T Wireless Form 602, Exhibit A.

<sup>13</sup> AT&T Wireless Annual Report at 62. See also AT&T Wireless 10-K at 20.

<sup>14</sup> See AT&T Wireless Form 602. DoCoMo held an AT&T Corp. security that tracked the performance and value of the AT&T Wireless Group. See AT&T Wireless Annual Report at 62; see also AT&T Wireless 10-K at 20. In July 2001, DoCoMo's investment was converted into 16 percent of AT&T Wireless's common stock. See AT&T Wireless Annual Report at 62; AT&T Wireless 10-K at 20. As part of this investment, DoCoMo sits on AT&T Wireless's board of directors, and AT&T Wireless and DoCoMo have executed a technology agreement, creating "a strategic alliance to develop the next generation of mobile multimedia services on a global-standard, high-speed wireless network." AT&T Wireless 10-K at 20.

<sup>15</sup> See AT&T Wireless Form 602.

<sup>16</sup> AT&T Wireless 10-K at 2; AT&T Wireless Annual Report at 4.

<sup>17</sup> AT&T Wireless 10-K at 2; AT&T Wireless Annual Report at 4.

<sup>18</sup> AT&T Wireless's TDMA network covers an aggregate population ("POPs") of 207 million, or 71 percent of the population. AT&T Wireless 10-K at 2; AT&T Wireless Annual Report at 4.

AT&T Wireless started overlaying a GSM network on top of its TDMA network, so that it would be able to offer enhanced wireless voice and data capabilities.<sup>20</sup> AT&T Wireless continued this upgrade in 2003 by overlaying GSM throughout its 850 MHz TDMA network.<sup>21</sup> On its GSM network, AT&T Wireless provides voice services, along with enhanced data services using general packet radio services ("GPRS")<sup>22</sup> and enhanced data rates for global evolution ("EDGE") technologies.<sup>23</sup> AT&T Wireless also provides voice services on an analog network and data services over a network utilizing packet switched data technology ("CDPD").<sup>24</sup> In the aggregate, the AT&T Wireless networks cover approximately 226 million POPs, or 78 percent of the population, and operate in 87 of the top 100 metropolitan areas.<sup>25</sup> AT&T Wireless increases its coverage area by entering into roaming agreements both within the United States and internationally.<sup>26</sup>

## 2. Cingular Wireless Corporation

11. Cingular is incorporated under the laws of the state of Delaware and headquartered in Atlanta, Georgia.<sup>27</sup> Through various subsidiaries and affiliates, Cingular constructs, operates, and holds interests in numerous wireless telecommunications systems throughout much of the United States.<sup>28</sup> Cingular provides analog and digital cellular services on 850 MHz band licenses and digital PCS services on 1900 MHz band licenses.<sup>29</sup> Although Cingular primarily provides wireless voice and data services

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<sup>19</sup> AT&T Wireless 10-K at 2; AT&T Wireless Annual Report at 4. The AT&T Wireless GSM network covers approximately 220 million POPs, or 76 percent of the population. AT&T Wireless 10-K at 2-3; AT&T Wireless Annual Report at 4.

<sup>20</sup> AT&T Wireless 10-K at 4, 9.

<sup>21</sup> *Id.* at 4, 9 (stating that AT&T Wireless will continue to upgrade this system throughout 2004).

<sup>22</sup> AT&T Wireless offers its wireless data service, mMode™, to subscribers on its GSM/GPRS network. mMode provides subscribers information and entertainment services, such as games, ringtones, messaging services, and access to Internet sites.

<sup>23</sup> AT&T Wireless 10-K at 2; AT&T Wireless Annual Report at 4. AT&T Wireless launched EDGE, a high-speed data network, in 2003. EDGE has been certified as 3G technology by the International Telecommunications Union (ITU). AT&T Wireless 10-K at 5.

<sup>24</sup> AT&T Wireless 10-K at 2; AT&T Wireless Annual Report at 4. The CDPD network is being phased out as the data capabilities are increased on the GSM/GPRS/EDGE network. *See id.*

<sup>25</sup> AT&T Wireless Annual Report at 4. *See also* October 5 Letter at Attachment A.

<sup>26</sup> AT&T Wireless Annual Report at 4; AT&T Wireless 10-K at 2, 4. Roaming agreements allow AT&T Wireless to provide TDMA coverage throughout the United States and provide GSM coverage to 255 million POPs, or approximately 88 percent of the population. *See* AT&T Wireless Annual Report at 4; AT&T Wireless 10-K at 2, 4; *see also* October 5 Letter at Attachment A. Furthermore, through roaming agreements, AT&T Wireless can provide GPRS on its GSM network to over 241 million POPs, or 83 percent, of the population. *See* AT&T Wireless Annual Report at 4; AT&T Wireless 10-K at 2, 4. AT&T Wireless has also entered into international roaming agreements allowing its customers to obtain voice services in 130 countries and access to data services in more than 45 countries. *See* AT&T Wireless Annual Report at 4; AT&T Wireless 10-K at 4.

<sup>27</sup> Cingular Wireless LLC, Form 10-K, at 3 (filed Apr. 22, 2004) ("Cingular 10-K"), available at <http://www.sec.gov/Archives/edgar/data/1138234/000095012404000701/0000950124-04-000701-index.htm>.

<sup>28</sup> Application, Exhibit 1, at 7.

<sup>29</sup> Cingular 10-K at 6. Cingular has "access to licenses, either through owned licenses or licenses owned by joint ventures and affiliates, to provide cellular or PCS wireless communications services covering an aggregate of 236 million [POPs], or approximately 81 [percent] of the U.S. population, including 45 of the 50 largest U.S. metropolitan areas." Cingular 10-K at 2, 6. *See also* October 5 Letter at Attachment A.

using its cellular and PCS licenses, it also offers corporate messaging services on its Mobitex Data Network operating on 900 MHz SMR licenses using packet-switched technology.<sup>30</sup> Cingular subsidiaries and affiliates also have authority to operate systems using other licenses, including Wireless Communications Service, Paging and Radiotelephone, Multipoint Distribution System, Industrial/Business Pool Service, and Point-to-Point Microwave licenses, in various markets in the United States. Additionally, Cingular provides wholesale services to resellers.<sup>31</sup>

12. Cingular was formed in 2000 as a joint venture between SBC and BellSouth.<sup>32</sup> Cingular remains jointly owned and controlled by SBC and BellSouth, each of which holds a 50 percent economic and voting interest in Cingular.<sup>33</sup> Cingular, which serves solely as a holding company, controls Commission licenses and authorizations directly and indirectly through Cingular Wireless LLC, a Delaware limited liability company.<sup>34</sup>

13. Currently, Cingular is the second largest provider of wireless voice and data services in the United States in terms of subscribership.<sup>35</sup> Cingular had 24 million customers as of December 31, 2003 and reported \$15.5 billion in revenues for 2003.<sup>36</sup> Cingular provides a wide range of digital wireless voice and data communication services over TDMA and GSM networks.<sup>37</sup> In October 2001, Cingular started overlaying a GSM network on top of its TDMA network to upgrade its wireless voice and data capabilities.<sup>38</sup> On its GSM network, Cingular provides enhanced voice and high-speed data communications using GPRS and EDGE technologies.<sup>39</sup> In the aggregate, Cingular's TDMA and GSM

<sup>30</sup> Cingular 10-K at 5-6, 9. Cingular's Mobitex data network covers over 90 percent of the U.S. metropolitan population, and provides coverage in 99 of the 100 largest metropolitan areas. *Id.* at 5, 6.

<sup>31</sup> *Id.* at 4. Resellers represented approximately 5 percent of Cingular's total customers as of December 31, 2003. *See id.*

<sup>32</sup> *See* Cingular 10-K at 2; *see also* Applications of SBC Communications Inc. and BellSouth Corporation, WT Docket No. 00-81, *Memorandum Opinion and Order*, 15 FCC Rcd. 25,459 (WTB, IB 2000) ("*SBC-BellSouth Order*"). In October 2000, SBC and BellSouth contributed substantially all of their U.S. wireless businesses to Cingular. *See* Cingular 10-K at 2.

<sup>33</sup> *See* Cingular Wireless LLC, FCC Ownership Disclosure Form 602, Exhibit 1 (filed Mar. 12, 2004) ("Cingular Wireless LLC Form 602"); Cingular 10-K at 3.

<sup>34</sup> *See* Cingular Wireless Corporation, FCC Ownership Disclosure Form 602, Exhibit 1 (filed Mar. 30, 2004) ("Post-Transaction Form 602"); Cingular Wireless LLC Form 602, Exhibit 1; *see also* Cingular 10-K at 2. Cingular holds less than one percent of the membership units of Cingular Wireless LLC. *See* Cingular 10-K at 3 (stating that Cingular holds a 0.0000001% economic interest in Cingular Wireless LLC); *see also* Post-Transaction Form 602, Exhibit 1; Cingular Wireless LLC Form 602, Exhibit 1. Despite Cingular's *de minimis* ownership interest in Cingular Wireless LLC, Cingular is the manager of Cingular Wireless LLC and controls its management and operations. SBC and BellSouth indirectly hold 60 percent and 40 percent, respectively, of the economic ownership interests of Cingular Wireless LLC; however, both SBC and BellSouth exercise *de facto* control of Cingular Wireless LLC through Cingular, the manager. *See* Cingular 10-K at 3 (noting that Cingular Wireless LLC's officers are appointed by the board of directors of Cingular). Post-Transaction Form 602, Exhibit 1; *see also* Cingular Wireless LLC Form 602, Exhibit 1.

<sup>35</sup> Cingular 10-K at 2.

<sup>36</sup> *Id.* at 2.

<sup>37</sup> *Id.* at 2, 7. Cingular also maintains an analog network in those areas where it holds cellular licenses, pursuant to the Commission's rules. *See id.* at 6.

<sup>38</sup> *Id.* at 7.

networks directly provide service in 43 of the 50 largest metropolitan areas.<sup>40</sup> Cingular increases its coverage area by entering into roaming agreements within the United States.<sup>41</sup>

### 3. SBC Communications Inc.

14. SBC is a publicly-traded Delaware corporation, headquartered in San Antonio, Texas.<sup>42</sup> SBC provides communications services and products to businesses and consumers in the United States.<sup>43</sup> SBC's products and services vary by market, and include local exchange services, wireless communications, long-distance services, internet services, telecommunications equipment, network access, and directory advertising and publishing.<sup>44</sup> SBC also offers satellite television services through an arrangement with EchoStar Communications Corp.<sup>45</sup> Additionally, SBC has investments in communications companies in more than 25 countries, including Denmark, Switzerland, Lithuania, Poland, Austria, Germany, the Czech Republic, Hungary, Finland, Norway, Sweden, Belgium, South Africa, and Mexico.<sup>46</sup>

15. SBC was created as one of several regional holding companies created to hold AT&T Corp's local telephone companies.<sup>47</sup> Originally, SBC operated in five southwestern states, but it expanded its operation to 13 states through mergers with Pacific Telesis Group, Southern New England Telecommunications Corporation, and Ameritech Corporation in 1997, 1998, and 1999, respectively.<sup>48</sup> Currently, SBC provides telecommunications services in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin,<sup>49</sup> and serves a total of 54.7 million access lines within its region.<sup>50</sup>

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<sup>39</sup> *Id.* at 5, 7. As of December 31, 2003, 93 percent of Cingular's POPs with cellular or PCS service had access to the GSM network, and Cingular plans to complete the overlay of its GSM network throughout its coverage area in 2004. *See id.* at 7.

<sup>40</sup> *Id.* at 2, 6.

<sup>41</sup> *Id.* at 6. These roaming agreements allow Cingular's customers to receive wireless services "in virtually all areas in the United States where cellular/PCS wireless service is available." *Id.*

<sup>42</sup> SBC Communications Inc., Form 10-K, at 1 (filed Mar. 11, 2004) ("SBC 10-K"), available at <http://www.sec.gov/Archives/edgar/data/732717/000073271704000205/0000732717-04-000205-index.htm>.

<sup>43</sup> *Id.* at 1.

<sup>44</sup> *Id.* SBC publishes Yellow and White Pages directories and electronic directories. *See id.* at 6.

<sup>45</sup> *Id.* at 1, 5.

<sup>46</sup> *Id.* at 1, 6-7. The international investments include companies that provide local and long-distance telephone services, wireless communications, voice messaging, data services, internet access, telecommunications equipment, and directory publishing. *See id.* at 6.

<sup>47</sup> *Id.* at 1. On January 1, 1984, SBC was spun off from AT&T Corp. as a result of a 1982 antitrust consent decree. *See id.*

<sup>48</sup> *Id.* at 3.

<sup>49</sup> *Id.* at 1.

<sup>50</sup> *Id.*

<sup>50</sup> *Id.* at 4. SBC serves 28.8 million retail consumer, 18.3 million retail business, 7.1 million wholesale, and 0.5 million other access lines. *See id.*

16. SBC provides landline telecommunications services, including local and long-distance voice, data, and messaging services, on a retail and wholesale basis.<sup>51</sup> SBC offers interLATA (long distance calls) and intraLATA (local toll calls) long-distance voice services to its consumers.<sup>52</sup> Although SBC is authorized to offer long-distance services nationwide,<sup>53</sup> it provides long-distance services primarily to customers in its region and to customers in selected areas outside of its wireline subsidiaries' operating areas.<sup>54</sup> SBC also provides various data services, such as switched and dedicated transport, internet access and network integration, and data equipment sales.<sup>55</sup> SBC's internet offerings include basic dial-up access service, dedicated access, web hosting, e-mail, and high-speed access, such as broadband digital subscriber line ("DSL"), services.<sup>56</sup> SBC markets many of its services, including local and long distance, DSL, and satellite television, along with Cingular wireless service, as a bundled offering.<sup>57</sup>

#### 4. BellSouth Corporation

17. BellSouth is a publicly-traded Georgia corporation, headquartered in Atlanta. BellSouth offers local, long distance, Internet, and wireless services to 45 million customers in the United States and thirteen other countries.<sup>58</sup> BellSouth's products and services vary by market, and include advanced voice features, DSL high-speed Internet access and broadband data services, e-commerce solutions, network access, switching and interconnection, and online and directory advertising and publishing services.<sup>59</sup> BellSouth also plans to add video entertainment services to its product offerings in 2004.<sup>60</sup> Additionally, BellSouth has investments in international telecommunications companies,<sup>61</sup> including investments in wireless service providers operating in Argentina, Chile, Nicaragua, Peru, and Venezuela.<sup>62</sup>

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 5. SBC has a total of 14.4 million long distance lines and is capable of offering long distance service in fifty states. See SBC Communications Inc., 2003 Annual Report, at 2 ("SBC Annual Report"), available at [http://www.sbc.com/investor\\_relations/company\\_reports\\_and\\_sec\\_filings/2003\\_AR.pdf](http://www.sbc.com/investor_relations/company_reports_and_sec_filings/2003_AR.pdf) (visited July 22, 2004).

<sup>53</sup> SBC Annual Report at 2.

<sup>54</sup> SBC 10-K at 2.

<sup>55</sup> *Id.* at 4. Network integration services include installation of business data systems, local area networking, and other data networking offerings. See *id.*

<sup>56</sup> *Id.* at 4. SBC had approximately 3.5 million digital subscriber lines ("DSL") at the end of 2003 and is in the process of upgrading its network to make broadband DSL services available to approximately 80% of its wireline customers by early 2004. SBC 10-K at 2; SBC Annual Report at 2. SBC has formed an alliance with Yahoo! to create SBC Yahoo! DSL. SBC, through SBC Yahoo! DSL, is also in the process of rolling out a Wi-Fi network. See SBC 10-K at 1, 5; SBC Annual Report at 2.

<sup>57</sup> SBC Annual Report at 2.

<sup>58</sup> BellSouth Corporation, Form 10-K, at 3 (Feb. 24, 2004) ("BellSouth 10-K"), available at <http://www.sec.gov/Archives/edgar/data/732713/000095014404001649/0000950144-04-001649-index.htm>.

<sup>59</sup> *Id.* at 3-5. BellSouth owns companies that publish, print, sell advertising, and perform related services concerning alphabetical and classified telephone directories in paper and electronic formats, including white and yellow pages on CD-ROM format and on the Internet. See BellSouth 10-K at 15-16.

<sup>60</sup> BellSouth Corporation, 2003 Annual Report, at 6 ("BellSouth Annual Report"), available at <http://www.bellsouth.com/investor/pdf/annualrpt03.pdf> (visited July 22, 2004).

<sup>61</sup> BellSouth 10-K at 3.

<sup>62</sup> *Id.* at 13; BellSouth Annual Report at 16-17, 36 (stating that BellSouth holds investments in wireless providers in ten Latin American countries). In March 2004, BellSouth agreed to sell its interests in its Latin American (continued....)

18. BellSouth was created as one of several regional holding companies created to hold AT&T Corp's local telephone companies.<sup>63</sup> Today, BellSouth provides wireline communications service in the southeastern United States, serving substantial portions of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.<sup>64</sup>

19. BellSouth offers local and long-distance voice, data, and Internet services to consumers within its nine state region.<sup>65</sup> BellSouth has a variety of data offerings, including DSL, ISDN, and transport products. BellSouth's DSL offerings include a full range of Internet access products, from dial-up access to high-speed data services.<sup>66</sup> BellSouth also markets many of its services, including local and long distance, and DSL, along with Cingular wireless service, as a bundled offering.<sup>67</sup>

#### 5. T-Mobile USA, Inc.

20. T-Mobile is incorporated under the laws of the State of Delaware and headquartered in Bellevue, Washington.<sup>68</sup> T-Mobile, through its subsidiaries and affiliates, constructs and operates broadband PCS systems throughout the United States.<sup>69</sup> It provides digital PCS voice and data services on 1900 MHz band licenses over a GSM/GPRS network.<sup>70</sup> T-Mobile also owns and operates a Wi-Fi network.<sup>71</sup>

21. T-Mobile was created in May 2001 when Deutsche Telekom acquired VoiceStream Wireless Corporation and Powertel, Inc.<sup>72</sup> T-Mobile is a wholly-owned, indirect subsidiary of Deutsche

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Operations to Telefonica Moviles. See BellSouth Signs Definitive Agreement to Sell Its Latin America Operations to Telefonica Moviles, News Release, at 1 (Mar. 8, 2004), available at <http://bellsouthcorp.policy.net/proactive/newsroom/release.vtml?id=45087>. BellSouth and Telefonica Moviles completed the transfer of BellSouth's ownership interests in wireless operations in Ecuador, Guatemala, and Panama on October 14, 2002. See BellSouth and Telefonica Moviles Close on BellSouth Operation in 3 Latin American Countries, News Release, at 1, available at <http://bellsouthcorp.com/proactive/newsroom/release.vtml?id=47809>.

<sup>63</sup> BellSouth 10-K at 3. BellSouth was incorporated and became a publicly traded company in December 1983 when it was spun off from AT&T Corp. as a result of a 1982 antitrust consent decree. See *id.*

<sup>64</sup> *Id.* at 4.

<sup>65</sup> *Id.* at 3, 5. As of December 31, 2003, BellSouth had long distance penetration of 28 percent among its residential customers and 39 percent among its mass market business customers. See *id.*

<sup>66</sup> *Id.* at 6. As of December 31, 2003, BellSouth had over 1.46 million DSL subscribers, and 70% of the households in BellSouth's franchise area were qualified to receive DSL. See *id.* at 5.

<sup>67</sup> BellSouth Annual Report at 10, 14, 15.

<sup>68</sup> See Application, ULS File No. 0001771442, Exhibit 1, at 1 (filed June 16, 2004) ("T-Mobile-Cingular Application"); T-Mobile-Cingular Application, Exhibit 1, at 1; T-Mobile International Reports First Quarter 2004 Results of U.S. Operations, Financial Releases, at 7 ("T-Mobile First Quarter 2004 Financial Release"), available at [http://www.t-mobile.com/company/investors/financial\\_releases/2003\\_Q4\\_sub.asp](http://www.t-mobile.com/company/investors/financial_releases/2003_Q4_sub.asp) (visited Aug. 31, 2004).

<sup>69</sup> T-Mobile-Cingular Application, Exhibit 1, at 1.

<sup>70</sup> T-Mobile First Quarter 2004 Financial Release at 1; T-Mobile USA Adds More Than 1 Million Net New Customers in Q4, Financial Releases, at 2 (Jan. 27, 2004) ("T-Mobile 2003 Financial Release"), available at [http://www.t-mobile.com/company/investors/financial\\_releases/2003\\_Q4\\_sub.asp](http://www.t-mobile.com/company/investors/financial_releases/2003_Q4_sub.asp).

<sup>71</sup> T-Mobile 2003 Financial Release at 2.

<sup>72</sup> See Deutsche Telekom 20-F at 38 (Mar. 30, 2004) ("Deutsche Telekom 2003 20-F"), available at <http://www.sec.gov/Archives/edgar/data/946770/000095013604000944/file001.htm>; see also Transferors, and (continued....)

Telekom AG ("Deutsche Telekom"), a corporation organized under the laws of the Federal Republic of Germany.<sup>73</sup> Deutsche Telekom offers fixed-line voice telephony products and services, mobile communications, Internet, and other services, primarily in Europe.<sup>74</sup> Deutsche Telekom holds its interest in T-Mobile USA through T-Mobile International AG & Co. KG ("T-Mobile International"), which is the mobile communications subsidiary of Deutsche Telekom.<sup>75</sup> T-Mobile International serves a total of 61 million mobile customers in Europe and the United States.<sup>76</sup>

22. As of December 31, 2003, T-Mobile had a total of 13.1 million U.S. subscribers.<sup>77</sup> T-Mobile's facilities-based networks cover 225 million POPs, and it operates in 46 of the top 50 metropolitan areas.<sup>78</sup> T-Mobile increases its coverage area by entering into roaming agreements within the United States.<sup>79</sup>

#### 6. Triton PCS, Inc.

23. Triton PCS is a publicly-traded Delaware corporation, headquartered in Berwyn, Pennsylvania.<sup>80</sup> Triton PCS provides wireless communications services in the southeastern United States.<sup>81</sup> Specifically, Triton PCS provides service "in a contiguous geographic area encompassing portions of Virginia, North Carolina, South Carolina, Tennessee, Georgia and Kentucky."<sup>82</sup> Triton PCS reported total revenues of approximately \$810 million in 2003.<sup>83</sup> Triton PCS provides wireless digital voice and data services on 1900 MHz band PCS licenses over TDMA and GSM/GPRS networks.<sup>84</sup>

24. In February 1998, Triton PCS entered into a joint venture with AT&T Wireless's predecessor AT&T Corp. As part of the joint venture, AT&T Wireless contributed licenses to Triton PCS in exchange for an equity position in Triton PCS Holdings, Inc., which wholly owns Triton PCS.<sup>85</sup> Triton PCS is also AT&T Wireless's exclusive provider of wireless mobility services within Triton PCS's region and is the preferred provider of wireless services to AT&T Wireless's digital wireless customers who

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Deutsche Telekom AG, Transferee, IB Docket No. 00-187, *Memorandum Opinion and Order*, 16 FCC Rcd. 9779, 9789 ¶ 17 (2001) ("*Deutsche Telekom-VoiceStream Order*").

<sup>73</sup> T-Mobile-Cingular Application, Exhibit 1, at 1.

<sup>74</sup> Deutsche Telekom-VoiceStream Press Release (May 31, 2001).

<sup>75</sup> T-Mobile 2003 Financial Release at 2.

<sup>76</sup> *Id.*

<sup>77</sup> Deutsche Telekom 2003 20-F at 38; T-Mobile 2003 Financial Release at 1.

<sup>78</sup> T-Mobile-Cingular Application, Exhibit 1, at 1-2.

<sup>79</sup> *Id.* Roaming agreements allow T-Mobile to provide coverage to an additional 29 million people, for a total coverage area of 254 million POPs. *See id.*

<sup>80</sup> Triton PCS, Inc, Form 10-K, at 4 (Mar. 19, 2004) ("Triton PCS 10-K"), available at <http://www.sec.gov/Archives/edgar/data/1064735/000119312504045442/d10k.htm>.

<sup>81</sup> *Id.* at 4.

<sup>82</sup> *Id.* Triton PCS's licenses cover approximately 13.6 million POPs and include 10 of the top 100 markets in the country. *See id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* AT&T Wireless holds Triton PCS Series A preferred stock. *See id.* at 5.

roam in Triton PCS's region.<sup>86</sup> Triton PCS markets service within its region under the SunCom brand name and logo and under AT&T Wireless's brand name and logo. Triton PCS provides nationwide coverage through its relationship with AT&T Wireless and through roaming agreements.<sup>87</sup>

## B. Description of Transactions

### 1. Cingular – AT&T Wireless

25. On February 17, 2004, Cingular and AT&T Wireless entered into a merger agreement ("Merger Agreement").<sup>88</sup> According to the terms and conditions of the Merger Agreement, a wholly-owned subsidiary of Cingular, Links I Corporation, created for the sole purpose of the merger, will be merged into AT&T Wireless.<sup>89</sup> Post-Transaction, AT&T Wireless will survive and continue to exist as a wholly-owned subsidiary of Cingular.<sup>90</sup> Pursuant to the Merger Agreement, each share of AT&T Wireless stock will be converted into a right to receive cash and then canceled.<sup>91</sup> AT&T Wireless's common shareholders will receive \$15 cash per share, and the preferred shareholders will receive the applicable liquidation preference of their preferred shares, for a total value of approximately \$41 billion in cash.<sup>92</sup> SBC and BellSouth have committed funding to Cingular for the all-cash deal.<sup>93</sup> SBC and BellSouth have agreed to guarantee 60 percent and 40 percent of the funding, or \$25 billion and \$16 billion, respectively, that Cingular needs to acquire AT&T Wireless.<sup>94</sup>

26. Upon consummation of the proposed transaction, SBC and BellSouth will acquire additional non-voting preferred stock in Cingular.<sup>95</sup> As a result, SBC and BellSouth will hold 60 percent and 40 percent, respectively, of post-merger Cingular's economic ownership interests, but each will continue to have negative control of and continue to exercise *de facto* control over Cingular by virtue of holding 50 percent of Cingular's voting interests. Post-transaction, AT&T Wireless and its licensing

<sup>86</sup> *Id.* at 4-5.

<sup>87</sup> *Id.* at 5 (stating that this coverage allows Triton PCS the ability to offer competitive national rate plans).

<sup>88</sup> See Cingular 10-K at 2, 11; AT&T Wireless Annual Report at 6, 83; see also Cingular To Acquire AT&T Wireless, Create Nation's Premier Carrier, News Release, at [http://www.attwireless.com/press/releases/2004\\_releases/021704.jhtml](http://www.attwireless.com/press/releases/2004_releases/021704.jhtml) (Feb. 17, 2004) ("February 12, 2004 News Release").

<sup>89</sup> AT&T Wireless Services, Inc., Schedule 14A, at 3, 7, 24 (Mar. 22, 2004) ("AT&T Wireless Proxy Statement"), available at <http://www.sec.gov/Archives/edgar/data/1138234/000095012304003552/0000950123-04-003552-index.htm>.

<sup>90</sup> AT&T Wireless Proxy Statement at 24.

<sup>91</sup> Application, Exhibit 1, at 8. The Applicants state that, as a result of this conversion, DoCoMo's ownership interests in AT&T Wireless will be extinguished. *Id.* at 8 n.9.

<sup>92</sup> AT&T Wireless Proxy Statement at 1-2, 7, 24; Cingular 10-K at 2, 11; AT&T Wireless Annual Report at 6, 83; February 12, 2004 News Release, at 1. The amount of the Series C and Series E preferred stock liquidation preference is \$286,010,148 and \$9,825,134, respectively, as of March 31, 2004. AT&T Wireless Proxy Statement at 24.

<sup>93</sup> See Cingular 10-K at 11, SBC 10-K at 9, BellSouth 10-K at 43; Bell South Annual Report at 88; see also February 12, 2004 News Release, at 1.

<sup>94</sup> See SBC 10-K at 9; BellSouth 10-K at 43; Bell South Annual Report at 88; AT&T Wireless Proxy Statement at 33; see also February 12, 2004 News Release, at 1.

<sup>95</sup> See Application, File No. 0001874690, Exhibit 1, at 1 (filed Sept. 21, 2004).

subsidiaries will become indirect, wholly-owned subsidiaries of Cingular.<sup>96</sup> This proposed transaction would create spectrum and service overlaps in many geographic areas,<sup>97</sup> including overlaps in the Los Angeles and Indianapolis Major Trading Areas ("MTAs"). Cingular was required to divest spectrum in these two markets in 2000, as a condition of the approval of the transaction creating Cingular,<sup>98</sup> in order to come into compliance with the Commission's spectrum aggregation rule.<sup>99</sup>

27. The Applicants' current spectrum holdings are set out in detail in the Application.<sup>100</sup> AT&T Wireless currently holds spectrum in all but 26 of the 493 BTAs, and its spectrum aggregation ranges up to 80 MHz. Cingular currently holds spectrum in all but 132 of the 493 BTAs, and its spectrum aggregation ranges up to 55 MHz. Notable among the areas in which Cingular does not currently hold spectrum are Denver (BTA110), Minneapolis (BTA298), and Phoenix (BTA347), which are among the 20 most populous BTAs.<sup>101</sup> As a result of this transaction, Cingular will hold spectrum in 475 of the 493 BTAs,<sup>102</sup> including the Denver, Minneapolis, and Phoenix BTAs. The combination of the two companies' spectrum holdings would result in overlaps between their current holdings in 352 BTAs, and it would also result in Cingular expanding its licensed footprint into 114 other BTAs in which it does not currently hold spectrum. Post-transaction, Cingular would have spectrum holdings ranging up to 80 MHz,<sup>103</sup> with 80 MHz in 58 counties in 18 BTAs, 75 MHz in 28 counties in 8 BTAs, 70 MHz in 181 counties in 28 BTAs, 65 MHz in 373 counties in 70 BTAs, and 60 MHz in 125 counties in 34 BTAs.<sup>104</sup>

<sup>96</sup> See Post-Transaction Form 602, Exhibit 1 and Ownership Chart. The Applicants state that, since AT&T Wireless will continue to exist post-transaction, the relationship between AT&T Wireless and its subscribers will continue unchanged and that there is no need to transition these customers to Cingular. Application, Exhibit 1, at 8.

<sup>97</sup> Application, Exhibit 1, at Attachment 8, Attachment 9.

<sup>98</sup> See *SBC-BellSouth Order*, 15 FCC Rcd. at 25,468-70 ¶¶ 20-26; see also Wireless Telecommunications Bureau Grants Consent to SBC Communications Inc., Ameritech Wireless Communications, Inc., AT&T Wireless PCS, LLC, and Indiana Acquisition, L.L.C. to Transfer Control of or to Assign Wireless Licenses, WT Docket No. 00-81, *Public Notice*, 15 FCC Rcd. 18,128 (2000).

<sup>99</sup> See 47 C.F.R. § 20.6, repealed January 1, 2003.

<sup>100</sup> See Application, Appendix 8, as amended August 10, 2004. For the purpose of characterizing the effect of this transaction on spectrum aggregation, we do not include in AT&T Wireless's spectrum holdings the licenses of Triton PCS in which AT&T Wireless currently holds a 10% or greater equity interest in Triton PCS, because AT&T Wireless and Triton have reached a separate agreement, described in Section II.B.3., below, whereby AT&T Wireless will relinquish that interest. For present purposes, we include in the carriers' current spectrum holdings any BTA in which they hold spectrum in any part of the BTA.

<sup>101</sup> The Phoenix, Arizona BTA is ranked 13<sup>th</sup>, with a population of 3.5 million; the Minneapolis, Minnesota BTA is ranked 14<sup>th</sup>, with a population of 3.3 million; and the Denver, Colorado BTA is ranked 19<sup>th</sup>, with a population of 2.7 million. Population figures are based on the 2000 US Census.

<sup>102</sup> Post-merger, Cingular will not hold spectrum in BTA037 (Bemidji, MN), BTA053 (Bozeman, MT), BTA054 (Brainerd, MN), BTA069 (Casper-Gillette, WY), BTA119 (Duluth, MN), BTA138 (Fargo, ND), BTA166 (Grand Forks, ND), BTA207 (Ironwood, MI), BTA231 (Klamath Falls, OR), BTA301 (Mitchell, SD), BTA375 (Riverton, WY), BTA376 (Roanoke, VA), BTA381 (Rock Springs, WY), BTA477 (Willmar-Marshall, MN), BTA481 (Worthington, MN), BTA490 (Guam), BTA492 (American Samoa), and BTA493 (Northern Mariana Islands).

<sup>103</sup> See Application, Appendix 8, as amended August 10, 2004. In some areas, where Cingular would have held more than 80 MHz as a result of this transaction, Cingular has committed to divesting down to 80 MHz in each case. Cingular Opposition at 9; see also Application at 19 n.82. (The highest such aggregation would have been 120 MHz, in Sabine County, Texas.) We are conditioning grant of this transaction on fulfillment of this commitment, as described in Section V.A.3.d., below.

<sup>104</sup> Prior to its elimination, the Commission's spectrum aggregation limit, 47 C.F.R. § 20.6, permitted aggregation of up to 55 MHz of applicable spectrum.

28. Upon consummation of the proposed transaction, the merged company will be internally reorganized.<sup>105</sup> This reorganization will be effectuated by post-merger Cingular transferring control of AT&T Wireless, along with its subsidiaries and interests, to Cingular Wireless LLC.<sup>106</sup> A new subsidiary ("Newco"), which will be directly owned by AT&T Wireless and Cingular Wireless LLC, will be created. AT&T Wireless's and Cingular Wireless LLC's operating subsidiaries will be directly held by Newco.<sup>107</sup> The controlling and non-controlling interests that AT&T Wireless holds in other Commission-regulated businesses will remain with AT&T Wireless and will not be contributed to Newco.<sup>108</sup> During this reorganization, Cingular will redeem the non-voting preferred stock given to SBC and BellSouth at the consummation of the transfer of control of AT&T Wireless to Cingular.<sup>109</sup> As a result, post-reorganization, SBC and BellSouth will each hold a 50 percent voting and equity interest in Cingular.<sup>110</sup>

29. The Applicants assert that approval of the proposed transaction is in the public interest, stating that the increased network and spectrum capacity in areas where Cingular and AT&T Wireless are already providing service will greatly improve service quality and coverage<sup>111</sup> and allow for the rapid deployment of advanced wireless services, including in rural areas.<sup>112</sup> Specifically, the Applicants claim that post-transaction Cingular will require 80 MHz of spectrum to provide a full menu of competitive voice and data services.<sup>113</sup> They also state that the transaction will allow Cingular to expand its facilities-based footprint to 49 of the top 50 markets and 97 of the top 100 metropolitan areas (excluding only Richmond, Norfolk, and Newport News, VA).<sup>114</sup> Further, the Applicants estimate that the combined entity's licenses will cover 284 million POPs,<sup>115</sup> and its GSM network will cover 250 million POPs.<sup>116</sup>

<sup>105</sup> See, e.g., Application, File No. 0001874690, Exhibit 1, at 1 (filed Sept. 21, 2004).

<sup>106</sup> See *id.*

<sup>107</sup> See *id.*

<sup>108</sup> See *id.*

<sup>109</sup> See *id.*; see also *supra* note 95 and accompanying text.

<sup>110</sup> See, e.g., Application, File No. 0001874690, Exhibit 1, at 2.

<sup>111</sup> Application, Exhibit 1, at 9, 10-15. The Applicants state that this increased capacity is needed in order to ensure service quality (*i.e.*, a reduction in blocked and dropped calls), because both Cingular and AT&T Wireless divide their spectrum in order to operate separate analog, TDMA, and GSM networks. See Application, Exhibit 1, at 11, 12.

<sup>112</sup> *Id.* at 9, 15-19. The Applicants claim that the combined spectrum of Cingular and AT&T Wireless is necessary in order to upgrade their systems to permit high-speed data transmissions, because they will have to set aside a minimum of 10 MHz of spectrum, separate from the analog, TDMA, and GSM spectrum, to introduce Universal Mobile Telecommunications Systems ("UMTS") service. See *id.* at 18.

<sup>113</sup> *Id.* at 19. The Applicants further state that in areas where, upon consummation of the proposed transaction, Cingular "would hold an attributable interest in more than 80 MHz throughout a BTA," Cingular will reduce the amount of spectrum it holds "to no more than 80 MHz." *Id.* at 19 n.82; see also Cingular Opposition at 9.

<sup>114</sup> Application, Exhibit 1, at 9, 20-22; Cingular 10-K at 2; February 17, 2004 News Release at 1.

<sup>115</sup> See October 5 Letter at Attachment A. The Applicants state that "[t]his figure may not accurately reflect the actual total licensed population coverage after consummation of the merger, as this figure is not adjusted for transactions that may occur closely after or may be required as conditions to such consummation, and may not reconcile back to pre-combination numbers due to difference in methods of calculating licensed population coverage between [AT&T Wireless] and [Cingular]." See *id.* at 2-3. The Applicants explain that "[l]icense coverage figures of a carrier vary, depending on (i) the data sources of and methods used to calculate U.S. population, (ii) the estimated propagation characteristics of its network transmitters and the related measurement methodologies and (iii) the counting of proportionate license interests." See *id.* at 1-2.

Additionally, the Applicants allege that the merger will create economies of scale and scope that will allow Cingular to be a more effective competitor,<sup>117</sup> and that the transaction will improve homeland security and public safety.<sup>118</sup> The Applicants allege that these consumer benefits cannot be realized quickly by acquiring spectrum in a piecemeal fashion.<sup>119</sup> They state that Cingular must acquire both spectrum and infrastructure to make improvements in coverage, capacity, and quality without substantial delays.<sup>120</sup>

30. The Applicants further state that the proposed transaction would not harm competition.<sup>121</sup> The Applicants argue that the competitive effects of this transaction should be evaluated based on its impact on a nationwide mobile voice and data market.<sup>122</sup> The Applicants conclude that the proposed transaction would strengthen competition in the mobile voice and data product market, and that there would be no adverse effects on competition between wireless and wireline telecommunications services or on the provision of bundled services.<sup>123</sup>

## 2. T-Mobile USA – Cingular Joint Venture Unwind

31. VoiceStream PCS II License Corporation, a wholly-owned subsidiary of T-Mobile, and Pacific Telesis Mobile Services, LLC (“PacTel”), a wholly-owned subsidiary of Cingular, have entered into a series of agreements to unwind a network infrastructure sharing joint venture.<sup>124</sup> In November 2001, Cingular and T-Mobile USA entered into a joint venture agreement to share the ownership and operation of certain GSM network infrastructures (“Joint Venture Networks”).<sup>125</sup> T-Mobile contributed its network assets in a partitioned portion of the New York Metropolitan Trading Area (“MTA”) consisting of the New York Basic Trading Area (“BTA”), and Cingular contributed its network assets in the Los Angeles and San Francisco MTAs, which cover most of California and parts of Nevada.<sup>126</sup> Currently, T-Mobile and Cingular state that they jointly own and control the PCS networks in the Los

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<sup>116</sup> See *id.* at 3, Attachment A. The Applicants state that this figure “may not be reconcilable back to pre-merger numbers provided by either company,” because “network coverage estimates can vary depending on the population statistics relied on at a point in time and on an estimate of the network propagation characteristics and measurement tools.” *Id.* at 3. As an example, the Applicants state that Cingular uses a -98 dBm field strength and AT&T Wireless uses a -95 dBm field strength in their propagation estimates. See *id.*

<sup>117</sup> Application, Exhibit 1, at 9, 22-23; Cingular 10-K at 2. The Applicants allege that economies of scale and scope that will be achieved include trunking efficiency, greater purchasing and billing system efficiencies, and reductions in common expenses, such as network expansion, maintenance, operating, and administrative costs. See *id.* at 22.

<sup>118</sup> *Id.* at 5, 9, 23-24. The Applicants claim that the proposed transaction will allow for more widespread deployment of Wireless Priority Service (“WPS”), and provide for diversified routing, greater redundancy, and increased reliability in signaling and data networks, which will improve network functionality during an emergency. See Application, Exhibit 1, at 24.

<sup>119</sup> *Id.* at 5.

<sup>120</sup> *Id.* at 6, 21.

<sup>121</sup> *Id.* at 25-41.

<sup>122</sup> *Id.* at 28-34.

<sup>123</sup> *Id.* at 25-28, 41-43.

<sup>124</sup> T-Mobile-Cingular Application, Exhibit 1, at 2.

<sup>125</sup> Deutsche Telekom 2003 20-F at 39.

<sup>126</sup> *Id.* The Applicants state that they retained ownership and control of their spectrum licenses. See *id.*

Angeles and San Francisco MTAs and the New York BTA.<sup>127</sup> After the Joint Venture Unwind, T-Mobile and Cingular will operate separate networks.<sup>128</sup> This transaction "is conditioned upon consummation of the proposed merger between Cingular Wireless Corporation . . . and AT&T Wireless Services, Inc."<sup>129</sup>

32. As part of the Joint Venture Unwind, T-Mobile will purchase from PacTel 10 MHz of PCS spectrum in the San Francisco BTA, Sacramento BTA, and Las Vegas BTA for \$180 million.<sup>130</sup> Additionally, T-Mobile will acquire 100 percent ownership in the Joint Venture by purchasing Cingular's interest in the Joint Venture for \$2.3 billion.<sup>131</sup> T-Mobile and Cingular have also entered into a long-term *de facto* spectrum leasing arrangement whereby Cingular will lease spectrum to T-Mobile in the Los Angeles and San Francisco MTAs and New York BTA to allow for the transition of Cingular's customers off the Joint Venture Networks.<sup>132</sup> Further, pursuant to a Wholesale Agreement, T-Mobile will use its spectrum, along with the spectrum leased from Cingular, to provide voice and data services to Cingular in the Los Angeles and San Francisco MTAs and New York BTA until Cingular's customers are transitioned from the Joint Venture Networks to the networks Cingular is acquiring as part of the proposed Cingular-AT&T Wireless transaction.<sup>133</sup>

### 3. Triton PCS – AT&T Wireless

33. Triton PCS and AT&T Wireless have entered into agreements to exchange PCS spectrum in various markets located primarily in Georgia and North Carolina.<sup>134</sup> As a result of the proposed spectrum exchange, Triton PCS will assign 20 MHz of PCS spectrum in the Augusta, GA BTA to AT&T Wireless PCS, and AT&T Wireless PCS will assign 10 MHz of PCS spectrum in the Asheville, NC, Jacksonville, NC, and Wilmington, NC BTAs to Triton PCS. In the Savannah, GA BTA, AT&T Wireless PCS will assign its 10 MHz A-block PCS license to Triton PCS. In return, Triton PCS will assign its 15 MHz C-block license, which covers nine of the nineteen counties in the Savannah, GA BTA, to AT&T Wireless PCS. Triton PCS will also acquire a 15 MHz C-block license from Lafayette Communications Company L.L.C. ("Lafayette") that covers the remaining ten counties in the Savannah, GA BTA and assign it to AT&T Wireless PCS. Thus, AT&T Wireless PCS will have a net gain of 5 MHz of spectrum throughout the Savannah, GA BTA. Additionally, pursuant to a separate agreement between AT&T Wireless and Triton PCS, AT&T Wireless "will relinquish all of its equity in Triton [PCS]" and will no longer have the right to appoint a director to Triton PCS's board of directors.<sup>135</sup> Consummation of the proposed spectrum exchange and AT&T Wireless's relinquishment of Triton PCS

<sup>127</sup> T-Mobile-Cingular Application, Exhibit 1, at 2.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 1.

<sup>130</sup> *Id.* at 1-3. This spectrum will be partitioned and disaggregated from PacTel's 20 MHz B-Block PCS license for the San Francisco-San Jose-Oakland MTA and its 20 MHz B-Block PCS license for the Los Angeles-San Diego MTA. *See id.* at 1. Additionally, T-Mobile has a future option to purchase 10 MHz of spectrum in the Los Angeles and San Diego BTAs from PacTel, *see id.* at 2, 3, and the parties plan to exchange certain additional spectrum licenses pursuant to a separate Exchange Agreement. *See id.* at 3.

<sup>131</sup> *Id.* at 2.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 3.

<sup>134</sup> Application, File No. 0001810683, Exhibit 1, at 1 (filed July, 21, 2004) ("Triton-AT&T Wireless Application").

<sup>135</sup> *Id.*

equity is contingent upon the closing of the proposed transfer of control of AT&T Wireless to Cingular.<sup>136</sup>

### C. Applications and Review Process

#### 1. Commission Review

34. *Cingular – AT&T Wireless.* On March 18, 2004, pursuant to section 310(d) of the Communications Act of 1934, as amended (“Communications Act”),<sup>137</sup> Cingular and AT&T Wireless filed 92 applications seeking consent to the proposed transfer of control of licenses held by AT&T Wireless and its subsidiaries to Cingular,<sup>138</sup> and 21 applications seeking consent to the *pro forma* transfer of control of minority interests held by AT&T Wireless to Cingular.<sup>139</sup> Cingular and AT&T Wireless also filed an application seeking Commission approval to transfer to Cingular control of an international section 214 authorization held by AT&T Wireless,<sup>140</sup> pursuant to section 214 of the Communications

<sup>136</sup> See *id.*

<sup>137</sup> 47 U.S.C. § 310(d).

<sup>138</sup> See AT&T Wireless Services, Inc. and Cingular Wireless Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 04-70, *Public Notice*, 19 FCC Rcd. 6185, 6186-6188 (2004) (“Comment Public Notice”). Two applications seeking consent to the transfer of control of licenses held by Longview Cellular, Inc. (“Longview”) (file no. 0001656377) and Medford Cellular Telephone Co., Inc. (“Medford”) (file no. 0001656384) from AT&T Wireless to Cingular were dismissed on April 6, 2004 for procedural reasons. See Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications Action, *Public Notice*, Report No. 1804 (rel. Apr. 14, 2004). New applications were filed on behalf of Longview (file no. 0001689252) and Medford (file no. 0001689338) on April 8, 2004. See Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and De Facto Transfer Lease Applications Accepted for Filing, *Public Notice*, Report No. 1803 (rel. Apr. 14, 2004). Further, during the pendency on this transaction, AT&T Wireless submitted notifications, pursuant to the Commission’s *pro forma* forbearance procedures, reporting an internal tax reorganization. See File No. 0001845233, Exhibit 1, at 2 (filed Aug. 18, 2004); see also File No. 0001845158 (filed Aug. 18, 2004); File No. 0001845426 (filed Aug. 18, 2004). As part of this tax reorganization, AT&T Wireless converted Vanguard Cellular Pennsylvania, LLC to a limited partnership. See File No. 0001845233. The Applicants amended the application transferring control of Vanguard Cellular Pennsylvania, LLC from AT&T Wireless to Cingular to reflect that the entity is now Vanguard Cellular Pennsylvania, L.P. See File No. 0001656573 (amended Sept. 3, 2004). AT&T Wireless also assigned the license held by Eclipse PCS of Indianapolis, LLC, WPQP644, to AT&T Wireless PCS. See File No. 0001845158. The Applicants amended the application transferring control of AT&T Wireless PCS, LLC from AT&T Wireless to Cingular to include WPQP644, see File No. 0001656065 (amended Sept. 3, 2004), and withdrew the Eclipse PCS of Indianapolis, LLC application. See File No. 0001656356 (withdrawn Sept. 22, 2004). Lastly, AT&T Wireless reported the transfer of control of AT&T Wireless PCS of Philadelphia, LLC from Vanguard Cellular Pennsylvania, LLC to Vanguard Cellular Pennsylvania, L.P. See File No. 0001845426.

<sup>139</sup> Comment Public Notice, 19 FCC Rcd. at 6189 (listing, in Part III.B of the Comment Public Notice, the applications seeking consent to the “*pro forma* transfer of control of non-controlling interests held by AT&T Wireless to Cingular”). As control of these licensees is unaffected by the proposed transaction, it is unnecessary to reevaluate the qualifications of these licensees at this time. We do consider these interests, to the extent that they are relevant, in the competitive analysis of the proposed transaction.

<sup>140</sup> AT&T Wireless Services, Inc., Transferor, and Cingular Wireless Corporation, Transferee, Application for Transfer of Control of Section 214-Authorized International Carrier, File No. ITC-T/C-20040318-00126, at 1 (filed Mar. 18, 2004). The Applicants seek Commission consent to transfer control of AT&T Wireless’s international Section 214 authorization “only as to (1) [AT&T Wireless’s] global resale service authority and (2) limited global facilities-based authority, excluding the U.S.-South Africa route. . . . [AT&T Wireless] will relinquish the residual authority (*i.e.*, facilities-based authority not transferred to Cingular) as of consummation of the transaction.” AT&T Wireless Services, Inc., Transferor, and Cingular Wireless Corporation, Transferee, Application for Transfer of

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Act.<sup>141</sup> Additionally, the Applicants filed three applications seeking consent to the proposed transfer of control to Cingular of experimental authorizations held by AT&T Wireless and its subsidiaries.<sup>142</sup>

35. Prior to the filing of the applications, the Wireless Telecommunications Bureau ("Bureau") adopted a protective order, dated March 17, 2004, under which third parties would be allowed to review confidential or proprietary documents submitted by the Applicants.<sup>143</sup> On April 2, 2004, the Commission released a Public Notice seeking public comment on the proposed transaction.<sup>144</sup> In response to the Comment Public Notice, twenty petitions to deny the applications or comments supporting or opposing grant of the applications during the pleading cycle.<sup>145</sup> On June 30, 2004, Bureau staff requested additional information from the Applicants ("Information Request").<sup>146</sup> The Applicants' responses to the Information Request, along with their responses to additional Commission requests, are included in the record.<sup>147</sup> On July 16, 2004, Commission staff requested information ("Third-Party Information Requests") from ALLTEL Corporation, Nextel Communications Inc. ("Nextel"), Sprint Corporation ("Sprint"), T-Mobile, United States Cellular Corporation, and Verizon Wireless (collectively, "Third Parties").<sup>148</sup> The responses to the Third-Party Information Requests, along with their responses to

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Control of Section 214-Authorized International Carrier, File No. ITC-T/C-20040318-00126, at 1 (amended Sept. 8, 2004) at 1-2.

<sup>141</sup> 47 C.F.R. § 214.

<sup>142</sup> Comment Public Notice, 19 FCC Rcd. at 6189.

<sup>143</sup> Applications for the Transfer of Control of Licenses and Authorizations from AT&T Wireless Services, Inc. and Its Subsidiaries to Cingular Wireless Corporation; Order Adopting Protective Order, WT Docket No. 04-70, *Order*, 19 FCC Rcd. 4793 (2004).

<sup>144</sup> See Comment Public Notice, 19 FCC Rcd. at 6185. The Comment Public Notice set due dates of May 3, 2004 for Petitions to Deny, May 13, 2004 for Oppositions, and May 20, 2004 for Replies. See *id.* at 6185, 6190.

<sup>145</sup> The parties that filed formal pleadings in this proceeding are noted in Appendix A. In addition to those formal pleadings, we have received informal comments through *ex parte* submissions. See Appendix A. All pleadings and comments are available on the Commission's Electronic Comment Filing System ("ECFS") website at [www.fcc.gov/cgb/ecfs/](http://www.fcc.gov/cgb/ecfs/).

<sup>146</sup> See Letter from John B. Muleta, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to David C. Jatlow, AT&T Wireless Services, Inc., and David G. Richards, Cingular Wireless Corporation (June 30, 2004).

<sup>147</sup> See list of AT&T Wireless and Cingular responses in Appendix B.

<sup>148</sup> See Letter from John B. Muleta, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, and Martin K. Perry, Chief Economist, Federal Communications Commission, to William P. Barr, Executive Vice-President and General Counsel, Verizon Corporation (July 16, 2004); Letter from John B. Muleta, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, and Martin K. Perry, Chief Economist, Federal Communications Commission, to Francis X. Frantz, Executive Vice President - External Affairs, General Counsel and Secretary, ALLTEL Corporation (July 16, 2004); Letter from John B. Muleta, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, and Martin K. Perry, Chief Economist, Federal Communications Commission, to Tom Gerke, Executive Vice-President and General Counsel, Sprint Corp. (July 16, 2004); Letter from John B. Muleta, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, and Martin K. Perry, Chief Economist, Federal Communications Commission, to James R. Jenkins, Vice President - Legal and External Affairs, U.S. Cellular Corporation (July 16, 2004); Letter from John B. Muleta, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, and Martin K. Perry, Chief Economist, Federal Communications Commission, to Leonard Kennedy, Senior Vice President and General Counsel, Nextel Corp., Inc. (July 16, 2004); Letter from John B. Muleta, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, and Martin K. Perry, Chief Economist, Federal

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