

**DESCRIPTION OF TRANSACTION,
PUBLIC INTEREST SHOWING
AND RELATED DEMONSTRATIONS**

EXECUTIVE SUMMARY

These Applications seek Commission consent to transfer to AT&T Inc. (“AT&T”) control of wireless licenses — principally AWS, PCS, and associated microwave licenses and international Section 214 authorizations — held by Leap Wireless International, Inc. (“Leap”) and its subsidiaries. The transaction will bring significant transaction-specific benefits and will not cause competitive harm.

Combining AT&T’s nationwide network with Leap’s prepaid/no-contract business will benefit consumers seeking a high-quality, competitively-priced prepaid wireless experience. Leap has years of experience marketing prepaid/no-contract service and an established retail distribution system, and its Cricket brand is well recognized in its service areas. AT&T has a fast and reliable nationwide 4G LTE/HSPA+ network that provides its customers a level and variety of services that Leap does not and cannot offer. Combining Leap’s established Cricket brand, spectrum, customer base, distribution network, and experience selling prepaid/no-contract service with AT&T’s nationwide 4G LTE/HSPA+ network, suite of advanced devices and services, and financial resources, will bring consumers a compelling, nationwide, facilities-based alternative for a full range of prepaid/no-contract services. This will include low-cost, value-priced products as well as higher-end, data-oriented products.

Consumer demand for prepaid/no-contract service is growing, and wireless carriers with strong prepaid/no-contract offerings recently have become even stronger competitors. At the same time, customer demand for robust high-speed data services is also growing, as customers increasingly demand higher data throughput speeds to support mobile applications and mobile broadband use. The combined company will be able to address that demand more effectively than either company could on its own.

Leap's limited network footprint allows it to offer facilities-based services to less than one-third of the U.S. population, and Leap relies on other wireless carriers for roaming and MVNO services outside of its network footprint. Leap's financial resources and limited spectrum depth make it uneconomic to upgrade its current 3G CDMA platform to LTE throughout its network; to date it has deployed LTE technology in only 11 metropolitan areas covering approximately 21 million people and has little prospect today of financing significant further upgrades to cover the remainder of its network footprint. Leap has experienced a 22 percent drop in the number of Leap customers between March 31, 2012 and June 30, 2013, meaning that its fixed costs are spread over a smaller customer base. Leap's variable costs per customer have also been increasing, resulting in increasing pressure on its operating margins.

For its part, AT&T's recent efforts to expand its prepaid/no-contract offerings are just getting underway and face significant challenges in establishing a competitive presence in the market. The combination will benefit both companies' customers, enhance the combined company's ability to compete against the many other wireless service providers with strong prepaid offerings, and can be expected to stimulate a further competitive response by other wireless carriers, further benefiting consumers.

The transaction also will result in an improved network experience for customers of both companies. AT&T can make use of Leap's PCS and AWS spectrum more efficiently to enhance AT&T's LTE deployment, which will promote the policies of the Commission's National Broadband Plan. Leap's current network uses less than half of its spectrum in the areas where it provides facilities-based service, and Leap holds additional spectrum, covering 41 million people, that is outside Leap's network footprint and is not currently in use. Leap's spectrum is particularly well suited for use by AT&T because AT&T's 4G LTE network includes AWS

spectrum and will soon include PCS spectrum as well. Because Leap's spectrum holdings are complementary to AT&T's 4G LTE deployments, AT&T will be able to deploy Leap's unused spectrum within a year in many cases, and within 60-90 days in certain areas. AT&T's 4G deployments are far more efficient and offer customers higher throughput speeds than Leap's 3G EVDO and limited narrow-bandwidth LTE deployments. By migrating Leap customers to AT&T's network, the combined company will be able to provide customers with a better network experience. Moreover, by integrating a few thousand of Leap's cell sites into the AT&T network, AT&T will be able to improve network capacity and performance in metropolitan areas through site densification.

In addition, the transaction will result in substantial operating synergies from, among other things: reducing interconnection and backhaul expenses; shrinking customer acquisition and customer care costs and certain other scale-based costs; and reducing general and administrative costs. There also will be substantial savings in roaming and resale expenses because the combined company will offer a significantly greater on-net footprint and expanded coverage compared to Leap's current network, obviating the need to obtain MVNO services from other providers.

These benefits will be achieved without harm to competition. Leap today does not compete as a facilities-based provider at the national level and plays only a modest role in most of its operating markets at the local level. Indeed, both the Commission and the Department of Justice have concluded that regional carriers such as Leap do not affect the pricing or other key competitive decisions of the four nationwide wireless carriers. Because this transaction does not reduce the number of national wireless carriers, it will not have an adverse impact on competition nationally. The four nationwide carriers offer service in nearly all local areas where

Leap operates, and other regional competitors offer service in a number of these areas as well, ensuring competition will remain strong in these areas. Moreover, in every CMA involved in this transaction, the four national carriers already hold spectrum, and there are other spectrum holders that can deploy their spectrum or make it available for use by other carriers. The modest increase in AT&T's spectrum holdings from the transaction, thus, does not raise competitive concerns.

This transaction clearly is in the public interest, and these Applications should be granted expeditiously and unconditionally.

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ATTACHMENTS:

Declaration of Rick L. Moore

Declaration of William Hogg

Declaration of S. Douglas Hutcheson

Declaration of Dr. Mark Israel

Appendix A: Spectrum Aggregation Chart

Appendix B: Competitor Chart

I. INTRODUCTION

AT&T Inc. (“AT&T”) and Leap Wireless International, Inc. (“Leap”) have agreed to transfer to AT&T control of Leap’s wireless telecommunications business, including AWS, PCS, and microwave licenses and international Section 214 authorizations held by Leap and certain of its subsidiaries. For the reasons demonstrated below, the Commission should grant these transfer Applications expeditiously.

II. DESCRIPTION OF THE APPLICANTS AND THE TRANSACTION

A. The Applicants

AT&T is a leading provider of wireless, Wi-Fi, high-speed Internet, local and long distance voice, mobile broadband, and advanced TV services, as well as worldwide wireless coverage and IP-based business communications services.¹

Leap is a wireless carrier that offers services under the “Cricket®” brand. Cricket service offerings provide customers with prepaid/no-contract wireless services for a flat rate without requiring a fixed-term contract (“prepaid/no-contract” services).² As of June 30, 2013, Leap had approximately 4.8 million customers and owns wireless licenses covering approximately 137 million people, of whom approximately 96 million are covered by Leap’s network footprint.³ Leap provides coverage outside of its network footprint through resale and roaming relationships with other wireless carriers.⁴

¹ AT&T Inc., Annual Report (Form 10-K), at 1-2 (Feb. 22, 2013).

² Leap Wireless Int’l, Inc., Annual Report (Form 10-K), at 2 (Feb. 25, 2013) (“*Leap 2012 10-K*”).

³ Declaration of S. Douglas Hutcheson, CEO, Leap Wireless Int’l, Inc. ¶ 2 (Aug. 1, 2013) (“Hutcheson Decl.”) (attached).

⁴ Leap Wireless Int’l, Inc. Quarterly Report (Form 10-Q), at 27 (May 2, 2013) (“*Leap Q1 2013 10-Q*”).

B. Qualifications

The Commission has concluded repeatedly that AT&T has the qualifications required by the Communications Act to control Commission authorizations,⁵ and nothing has changed to disturb this conclusion. Nor can there be any question about Leap's character or qualifications to hold Commission authorizations.⁶

C. Description of the Transaction

AT&T has agreed to acquire Leap in an all-cash transaction.⁷ The total cash consideration is \$15.00 per share and expected to be approximately \$1.3 billion, and AT&T will acquire all of Leap's outstanding indebtedness. Leap had approximately \$3.6 billion of outstanding indebtedness (net debt of approximately \$2.7 billion) as of June 30, 2013.⁸ Mariner Acquisition Sub Inc., a newly formed, wholly-owned subsidiary of AT&T, will be merged with and into Leap, leaving Leap as the surviving entity. As a result, Leap will become a wholly-owned subsidiary of AT&T.

⁵ See, e.g., *Application of AT&T Inc. & Qualcomm Inc. for Consent to Assign Licenses & Authorizations*, Order, 26 FCC Rcd 17,589, 17,601 ¶ 28 (2011) ("AT&T/Qualcomm Order"); *Applications of AT&T Inc. & Cellco P'ship d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses & Authorizations & Modify a Spectrum Leasing Arrangement*, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8720 ¶ 29 (2010) ("AT&T/Verizon Order"); *Applications of AT&T Inc. & Centennial Commc'ns Corp. for Consent to Transfer Control of Licenses, Authorizations & Spectrum Leasing Arrangements*, Memorandum Opinion and Order, 24 FCC Rcd 13,915, 13,931 ¶ 33 (2009) ("AT&T/Centennial Order").

⁶ See, e.g., *Applications of Cellco P'ship d/b/a Verizon Wireless & SpectrumCo LLC & Cox TMI, LLC for Consent to Assign AWS-1 Licenses*, Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd 10,698, 10,712 ¶ 35 (2012) ("Verizon/SpectrumCo Order"); *Applications of Leap Wireless Int'l, Inc., & Its Subsidiaries for Consent to the Assignment of Licenses*, Memorandum Opinion and Order, 19 FCC Rcd 14,909, 14,916 ¶ 11 (2004).

⁷ As a condition to AT&T's obligation to consummate the merger, Leap is required to dispose of its ownership interests in PR Wireless, LLC and Flat Wireless, LLC, in which case such interests would not be acquired by AT&T.

⁸ Hutcheson Decl. ¶ 12. Net debt is calculated as total indebtedness *minus* unrestricted cash, cash equivalents and short-term investments.

In addition to cash, Leap's shareholders will each receive a contingent value right ("CVR"), which will entitle them to net proceeds received from the sale of Leap's Lower 700 MHz A Block license in Chicago (the "Chicago License"). The licensee for the Chicago License will become a subsidiary of AT&T, but Leap's designated stockholders' representative will exercise *de facto* control over the Chicago License. The stockholders' representative will have the power to make all decisions and to act on behalf of and as agent for the CVR holders. Leap has formed an indirect, wholly-owned subsidiary, Laser, Inc. ("Laser"), a Delaware corporation, to serve as the stockholders' representative.

The stockholders' representative will have the responsibility for maintaining the Chicago License, including entering into a consensual arrangement to address the technical issues relating to the digital television protection criteria applicable to the Channel 51 broadcast station signal adjacent to the Chicago License,⁹ and to conduct a sale process with respect to the Chicago License for the benefit of the former Leap shareholders. If the stockholders' representative fails to enter into an agreement to sell the Chicago License within two years after the closing of the AT&T/Leap transaction (or if an agreement has been entered into, but the Chicago License has not been sold by the third anniversary of the closing of the AT&T/Leap transaction), then AT&T will have the right to sell the license, and the net proceeds will go to the former Leap shareholders. This arrangement serves the public interest with regard to the Chicago License, maximizing its utility for subscribers, while ensuring its orderly disposition to an independent third party.

⁹ See *Cricket License Co., LLC Request for Waiver or Limited Extension of Time to Construct Lower 700 MHz A Block*, Request of Cricket License Co., LLC for Extension of Time, WT Dkt No. 12-332 (filed June 3, 2013).

III. THE STANDARD OF REVIEW

Under Sections 310(d) and 214(a) of the Communications Act of 1934, as amended,¹⁰ the Commission first must assess whether a transaction complies with the Communications Act, other applicable statutes, the Commission's rules, and federal communications policy. The Commission then weighs any potential public interest harms of the proposed transaction against the potential public interest benefits. The applicants must prove that the proposed transaction, on balance, serves the public interest.¹¹ Under the Commission's sliding scale approach, where potential public interest harms appear unlikely, the Commission does not require a detailed showing of transaction-specific benefits.¹² Further, the Commission "may not consider whether the public interest, convenience, and necessity might be served by" a transaction involving an entity "other than the proposed transferee."¹³ The Commission repeatedly has found that an assignment or transfer proceeding is not the proper forum for addressing general industry issues that are not specific to the transaction.¹⁴

These Applications demonstrate that the transaction will serve the public interest, will not result in harms to competition and will not violate any law or rule, require a waiver of a rule, or

¹⁰ 47 U.S.C. §§ 214(a), 310(d).

¹¹ See *AT&T/Verizon Order*, 25 FCC Rcd at 8716 ¶ 22; *AT&T/Centennial Order*, 24 FCC Rcd at 13,927 ¶ 27.

¹² *Applications of SOFTBANK CORP., Starburst II, Inc., Sprint Nextel Corp., & Clearwire Corp. for Consent to Transfer Control of Licenses & Authorizations*, IB Dkt No. 12-343, Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, FCC 13-92 ¶ 102 (rel. July 5, 2013) ("*Sprint/SoftBank Order*") ("[U]nder the Commission's sliding scale approach, where potential public interest harms appear unlikely . . . we will accept a lesser showing of public interest benefits.").

¹³ 47 U.S.C. § 310(d).

¹⁴ See, e.g., *Sprint/SoftBank Order* ¶ 74; *Verizon/SpectrumCo Order*, 27 FCC Rcd at 10,698, 10,733-34 ¶ 94; *AT&T/Qualcomm Order*, 26 FCC Rcd at 17,622 ¶ 79; *AT&T/Centennial Order*, 24 FCC Rcd at 13,972 ¶ 141; *AT&T Inc. & BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5692 ¶ 56 n.154 (2007) ("*AT&T/BellSouth Order*").

result in any unjust enrichment concerns. Nor will the transaction otherwise frustrate or undermine the Commission's policies and enforcement of the Communications Act.

IV. THE TRANSACTION WILL SERVE THE PUBLIC INTEREST

This transaction will yield strong and diverse public interest benefits:

- First, the transaction will lead to expanded and improved choices for consumers and increased competition, including nationwide availability of Cricket-branded value offerings over advanced 4G broadband networks.
- Second, the transaction will further the Administration's and Commission's goals, as well as benefit the public interest, by putting Leap's spectrum, much of which is currently unused, to more efficient use in AT&T's 4G LTE network, supplying AT&T with additional network capacity, and providing customers of both companies with an improved network experience.
- Third, the transaction will result in significant cost savings and other synergies.

The Commission has repeatedly credited near-term, verifiable transaction-specific public interest benefits like those that will be generated in this transaction, and it should do so here.¹⁵

A. The Transaction Will Expand and Improve Choices for Consumers and Will Increase Competition

As the Commission has recognized, vigorous competition to attract value-conscious customers to prepaid/no-contract services is intensifying. In recent years, providers have

¹⁵ See *Applications of Deutsche Telekom AG, T-Mobile USA, Inc., & MetroPCS Commc'ns for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 2322, 2349, ¶ 74 (IB WTB 2013) (“*T-Mobile/MetroPCS Order*”); *Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corp., Horizon Wi-Com, LLC, NextWave Wireless, Inc., & San Diego Gas & Elec. Co. for Consent to Assign & Transfer Licenses*, Memorandum Opinion and Order, 27 FCC Rcd 16,459, 16,474-75 ¶¶ 40-45 (2012) (“*AT&T/WCS Order*”); *AT&T/Centennial Order*, 24 FCC Rcd at 13,959 ¶ 106; *Applications of Cellco P'ship d/b/a Verizon Wireless & Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, & Spectrum Manager & De Facto Transfer Leasing Arrangements*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17,444, 17,512-15 ¶¶ 147-56 (2008) (“*Verizon/ALLTEL Order*”); *Applications of AT&T Inc. & Dobson Commc'ns Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd 20,295, 20,334-35 ¶¶ 82-83 (2007) (“*AT&T/Dobson Order*”) (crediting cost synergies in roaming, network, advertising, and overhead costs).

“[taken] actions to compete aggressively for customers of smartphones and other data services,” offering unlimited prepaid/no-contract plans, data service packages, and an increasingly diverse array of devices.¹⁶ T-Mobile USA (“T-Mobile”), which has acquired additional spectrum from Verizon Wireless, AT&T, and its acquisition of MetroPCS, is aggressively rolling out 4G service¹⁷ and has heightened its business focus on lower-cost, no-contract service.¹⁸ Among other things, it is expanding the MetroPCS brand nationwide utilizing T-Mobile’s 4G LTE network.¹⁹ In addition, Sprint now has bolstered its financial and operational position from its

¹⁶ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report & Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Servs.*, Sixteenth Report, 28 FCC Rcd 3700, 3810, 3811-12 ¶¶ 159, 161-64 (2013) (“*Sixteenth Report*”).

¹⁷ See Press Release, T-Mobile, T-Mobile USA Reports First Quarter 2013 Results (May 8, 2013), available at <http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle&ID=1816790&highlight=> (“T-Mobile USA’s capital expenditures for the first quarter of 2013 were \$1.1 billion, in support of an accelerating network modernization program on pace to achieve 200 million covered pops with 4G LTE by the end of 2013.”); Press Release, T-Mobile, T-Mobile and MetroPCS Combination Complete - Wireless Revolution Just Beginning (May 1, 2013), available at <http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle&ID=1813495&highlight=> (“[E]nhanced spectrum position [from T-Mobile-MetroPCS merger] . . . provides a path to at least 20+20 MHz of 4G LTE in approximately 90% of the top 25 metro areas in 2014.”); see also Declaration of Dr. Mark Israel, Executive Vice President, Compass Lexecon, ¶¶ 35-37 (Aug. 1, 2013) (“Israel Decl.”) (attached).

¹⁸ See Press Release, T-Mobile, T-Mobile Makes Bold “Un-carrier” Moves (Mar. 26, 2013), available at <http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle&ID=1802239&highlight=> (stating that T-Mobile’s “Un-carrier” approach, and Simple Choice Plans, “eliminate[] restrictive annual contracts,” giving customers “far more flexibility with how they buy and use wireless devices.” Customers “can purchase great devices, pay for them in affordable, interest-free monthly installments, and upgrade anytime they like.”).

¹⁹ See Phil Goldstein, *T-Mobile to expand MetroPCS footprint by 100M POPs*, FierceWireless (May 15, 2013), available at <http://www.fiercewireless.com/story/t-mobile-expand-metropcs-footprint-100m-pops/2013-05-15> (quoting T-Mobile CTO Neville Ray that “with the combined company ‘we’re in this very strong spectrum position,’” and explaining that T-Mobile “plans to significantly expand the footprint where its MetroPCS brand offers service—by around 100 million POPs over the next six quarters” and “will be ‘expanding to 15 additional major metropolitan areas very quickly’”). See also *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2348 ¶ 74; Israel Decl. ¶ 36; Press Release, T-Mobile, MetroPCS Takes on New Markets: Doubles Reach in Less than Three Months (July 25, 2013), available at <http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle&ID=1841246&highlight=>.

recent acquisition by SoftBank.²⁰ Its acquisition of nationwide spectrum depth for 4G from its recent transaction with Clearwire²¹ will also enable it to expand its successful Boost and Virgin Mobile brands.²²

Leap has been part of this competitive mix, but faces significant challenges in competing effectively against the LTE service offerings of the nationwide wireless carriers.²³ The proposed transaction will expand and improve the service offerings available under the Cricket brand using AT&T's fast and reliable 4G network and will enable the combined company to offer high-quality nationwide, facilities-based prepaid/no-contract services more effectively. This, in turn, will put added competitive pressure on T-Mobile, Sprint, and other providers to respond with improved offerings of their own, thereby stimulating greater competition and benefiting all wireless customers.

²⁰ According to Sprint, SoftBank's acquisition will allow Sprint "to strengthen its balance sheet and invest in its network and its broadband wireless service." *Sprint/SoftBank Order* ¶ 14. Sprint also has acquired spectrum and nearly 420,000 customers in the Midwest from US Cellular. Press Release, Sprint Nextel Corp., Sprint Closes Transaction to Acquire U.S. Cellular Spectrum and Customers in the Midwest (May 17, 2013), *available at* <http://newsroom.sprint.com/news-releases/sprint-closes-transaction-to-acquire-us-cellular-spectrum-and-customers-in-the-midwest.htm>. See Israel Decl. ¶ 34.

²¹ Deutsche Bank Markets Research, "*Sprint Nextel Corp.: The New Spectrum Powerhouse; Reinstating Coverage at Buy*," (July 11, 2013) at 2 (stating that the Clearwire transaction resulted in "extensive spectrum holdings, which we believe position it to deploy the highest capacity (and potentially highest speed) LTE network in the US ... Sprint has the largest total spectrum portfolio in the US, and ... more spectrum that is free-and-clear to support LTE than all of its national competitors combined."). See also Israel Decl. ¶ 34.

²² Press Release, Sprint Nextel Corp., Boost Mobile and Virgin Mobile USA Each Strengthen Their 4G LTE Lineups With Award-Winning Samsung Galaxy S III in June (May 21, 2013), *available at* <http://newsroom.sprint.com/news-releases/boost-mobile-and-virgin-mobile-usa-each-strengthen-their-4g-lte-lineups-with-award-winning-samsung-galaxy-s-iii-in-june.htm>; see also Israel Decl. ¶¶ 33-34.

²³ As Leap has noted in public filings, the Sprint/SoftBank, Sprint/Clearwire, and T-Mobile/MetroPCS transactions "could further intensify the competitive pressures we face. In particular, the combination of T-Mobile and MetroPCS may result in the new, combined company having a new or significantly increased sales presence in our markets and offering prepaid and other wireless services" *Leap Q1 2013 10-Q* at 46-47.

1. The transaction will improve the combined company's services and offer benefits to customers of both companies

AT&T and Leap have a complementary set of assets that will strengthen the Cricket brand and enable the combined company's nationwide offering to compete more effectively with other providers. As explained in the attached Declaration of Rick L. Moore, AT&T Senior Vice President, Corporate Development, AT&T intends to use the Cricket brand and expand the availability of the Cricket service offerings nationwide.²⁴ The Cricket brand has widespread customer recognition and retail distribution through Leap stores and dealerships in Leap's current network footprint, which provide a backbone for an expedited national rollout of the brand. In addition, Leap's experience in marketing and selling prepaid/no-contract service, its distribution network located in close proximity to target customers, and its existing customer base provide a solid platform to launch this nationwide offering.

For its part, AT&T has been investing heavily in constructing a robust nationwide 4G network using the most advanced 4G mobile broadband technologies available — LTE and HSPA+. Today, AT&T's LTE network reaches over 225 million people²⁵ and is acclaimed for its speed and reliability.²⁶ AT&T's nationwide 4G LTE/HSPA+ network, its superior range of devices and broader array of services, and its greater financial resources make it possible to

²⁴ Declaration of Rick L. Moore, Senior Vice President, Corporate Development, AT&T Inc., ¶ 5 (Aug. 1, 2013) ("Moore Decl."); *see also* Israel Decl. ¶¶ 59-63.

²⁵ Press Release, AT&T Inc., AT&T's Fastest 4G LTE Network Now Also Nation's Most Reliable (July 18, 2013), *available at* <http://www.att.com/gen/press-room?pid=24543&cdvn=news&newsarticleid=36751>.

²⁶ Leah Yamshon and Mark Sullivan, *AT&T Clocks Best Overall Speeds with 3G/4G Combo*, PCWorld/TechHive (May 23, 2013), *available at* <http://www.techhive.com/article/2039571/atandt-clocks-best-overall-speeds-with-3g-4g-combo.html>; Sascha Segan, *Fastest Mobile Networks 2013*, PC Magazine (June 17, 2013), *available at* <http://www.pcmag.com/fastest-mobile-networks>; Patrick Linder, *Tale of the Tally: 125 Markets and Hundreds of RootScore Awards*, RootMetrics (July 22, 2013), *available at* <http://rootmetrics.com/blog/trends-were-seeing/tale-of-the-tally-125-markets-and-hundreds-of-rootscore-awards/>.

create stronger and more competitive offerings that can compete more effectively against the LTE service offerings of combined T-Mobile/MetroPCS, Sprint (including its Boost Mobile and Virgin Mobile USA brands), Verizon Wireless, and TracFone/Straight Talk, among others.

Existing Leap customers will benefit from access to a more robust national network and a broader array of services.²⁷ AT&T's nationwide 4G LTE/HSPA+ network provides its wireless customers a level and variety of services that Leap does not and cannot offer. The combined company will offer Leap customers access to AT&T's nationwide network footprint, superior choice in handsets, more robust data services, and Wi-Fi hotspots across the country.²⁸ At the same time, AT&T will honor the rate plans of existing Leap customers. For new customers, the combined company will continue to offer competitive rate plans that appeal to value-conscious customers, including the option of choosing low-cost devices and low-cost services.

The Commission has long recognized that increasing the diversity and range of features and services available to customers is in the public interest, and should do so here.²⁹ As the Wireless Telecommunications and International Bureaus recently stated, with respect to the combination of T-Mobile and MetroPCS, "[e]xisting MetroPCS customers [gain] access to a

²⁷ See *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2348 ¶ 74.

²⁸ Moore Decl. ¶ 18.

²⁹ See, e.g., *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2348 ¶ 74; *AT&T/Verizon Order*, 25 FCC Rcd at 8738-41 ¶¶ 79-86; *AT&T/Dobson Order*, 22 FCC Rcd at 20,330-34 ¶¶ 73-82; *Midwest Wireless Holdings, L.L.C. & Alltel Commc'ns, Inc. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 21 FCC Rcd 11,526, 11,564-66 ¶¶ 105-09, 111-12 (2006) ("*Midwest Wireless Order*"); *Applications of W. Wireless Corp. & Alltel Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13,053, 13,101-04 ¶¶ 135-36, 138-40 (2005) ("*Western Wireless Order*"); *Applications of Nextel Commc'ns, Inc. & Sprint Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13,967, 14,013-14 ¶¶ 129-130 (2005) ("*Sprint/Nextel Order*"); *Applications of AT&T Wireless Servs., Inc. & Cingular Wireless Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21,522, 21,604-05 ¶¶ 216-20 (2004) ("*Cingular/AT&T Wireless Order*").

more robust, national network and a broader array of service and handset options”³⁰ and “[c]onsumers outside of MetroPCS’s current limited service area will have the benefit of the MetroPCS service plans becoming available as an additional option.”³¹ Similar benefits will accrue to consumers here, as Leap customers will retain the benefit of low-cost prepaid/no-contract service, with the added advantages of a nationwide 4G LTE/HSPA+ network and improved handset and service options, and customers outside of Leap’s limited footprint will benefit from an attractive national competitive offering. Indeed, the AT&T/Leap and T-Mobile/MetroPCS transactions together transform two small, regional providers that rarely competed head-to-head into enhanced, well-financed national offerings that will compete with each other and other providers across the country.³²

2. Absent this transaction Leap could not become a national, facilities-based carrier

Since its inception, Leap has focused on providing facilities-based service in selected metropolitan areas only.³³ Leap’s network footprint covers less than one-third of the U.S. population.³⁴ As such, Leap is not a nationwide facilities-based provider and has no current

³⁰ *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2348 ¶ 74. See also, e.g., *AT&T/Dobson Order*, 22 FCC Rcd at 20,333-34 ¶¶ 79-81 (recognizing the public interest benefits that accrue to customers of a regional wireless carrier from increasing the diversity and range of features and services available to them); *AT&T/Verizon Order*, 25 FCC Rcd at 8739 ¶ 80; *AT&T/Centennial Order*, 24 FCC Rcd at 13,956-57 ¶ 99.

³¹ *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2348 ¶ 74.

³² See Scott Moritz, *T-Mobile Adds 15 MetroPCS Cities to Vie With AT&T, Leap*, Bloomberg News (July 25, 2013) (“T-Mobile US Inc., the fourth-largest U.S. wireless carrier, is expanding its MetroPCS service to 15 new cities, including 13 in rival Leap Wireless International Inc.’s territory. . . . ‘This gets us into those Leap markets now, arriving months in advance of AT&T,’ said MetroPCS Chief Operating Officer Tom Keys.”).

³³ Hutcheson Decl. ¶ 2.

³⁴ *Id.*

plans to become one.³⁵ Leap has attempted to expand its retail footprint through an MVNO arrangement, but that strategy has fallen short of expectations, and Leap has significantly reduced the number of retailer locations selling Cricket service outside of its network footprint.³⁶ Leap's 3G MVNO offering has attracted a relatively small number of customers, and Leap is not yet offering 4G services on an MVNO basis.³⁷

Within its facilities-based footprint, Leap has trailed behind the nationwide providers in upgrading to 4G technology. Leap has deployed LTE technology in only 11 metropolitan areas covering approximately 21 million people and offers only slower, less spectrally efficient 3G CDMA EVDO elsewhere to 65 percent of its subscribers.³⁸ Moreover, even where Leap has deployed LTE, it has done so in less spectrally efficient narrow-bandwidth deployments — with the majority being 3x3 MHz, and none larger than 5x5 MHz — that provide substantially slower throughput speeds than its LTE competitors.³⁹ The high cost of LTE deployment, coupled with Leap's limited spectrum depth, have constrained both Leap's ability to deploy LTE services across its network footprint and to provide the data throughput speeds required to remain competitive.⁴⁰ As discussed in further detail below, Leap's decline in performance since early 2012 further diminishes Leap's ability to gain the scale and scope of a national facilities-based provider absent this transaction.⁴¹ Meanwhile, intensifying competition in the wireless industry,

³⁵ *Id.*

³⁶ *Id.* ¶¶ 8, 13.

³⁷ *Id.* ¶ 13.

³⁸ *Id.* ¶ 9.

³⁹ *Id.* ¶ 11; *see also* Declaration of William Hogg, Senior Vice President, Network Planning and Engineering, AT&T Services Inc., ¶¶ 5, 11 (Aug. 1, 2013) ("Hogg Decl.") (attached).

⁴⁰ Hutcheson Decl. ¶¶ 11-12.

⁴¹ *See* Section V.B.3, *infra*; *see also* Israel Decl. ¶¶ 39-42.

particularly from carriers with nationwide LTE networks, is likely to negatively impact Leap's ability to attract and retain customers in the future.⁴²

3. AT&T's efforts in competing for prepaid customers

While AT&T has been marketing prepaid services under the "AT&T GoPhone" brand for many years, it has done so primarily as a complement to its postpaid service. AT&T generally has not aimed to match the offerings of prepaid/no-contract companies such as Cricket and others, particularly in recent years.⁴³ GoPhone is aimed primarily at capturing incremental customers who do not qualify for, or whose wireless needs are not a good match for, AT&T's postpaid plans.⁴⁴ AT&T GoPhone has not achieved nearly the same level of customer appeal as AT&T postpaid service.⁴⁵ In an attempt to increase its appeal to a broader set of customers, AT&T recently launched a new standalone prepaid brand called "Aio Wireless" ("Aio"). Aio was conceived as a start-up, completely separate and apart from the AT&T brand, with an entirely separate retail distribution network (which still needs to be built). It is available today in 7 metropolitan areas in Florida and Texas.⁴⁶ Aio still faces significant challenges to establish nationwide retail distribution, build brand recognition, and develop a significant customer base.⁴⁷

* * *

By combining Leap's established Cricket brand, customer base, distribution network, and experience in selling prepaid service with AT&T's nationwide 4G LTE/HSPA+ network, advanced devices and services, and financial resources, the combined company more quickly

⁴² Hutcheson Decl. ¶ 5.

⁴³ Moore Decl. ¶ 9.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* ¶ 10 n.4.

⁴⁷ *Id.* ¶ 10.

will bring consumers nationwide a higher-quality, more robust, and competitive prepaid offering.⁴⁸ That offering will be strengthened further by the spectral, network-related, and cost saving efficiencies discussed below. Accordingly, the transaction will serve the public interest by expanding and improving wireless choices for consumers and increasing competition and innovation for wireless services nationwide.

B. The Combination of AT&T's and Leap's Network Assets Will Result in an Improved Network Experience for Customers of Both Companies

The complementary network assets of AT&T and Leap will deliver an improved network experience for customers of both companies. As explained in the attached Declaration of William Hogg, AT&T Senior Vice President of Network Planning and Engineering, AT&T will deploy Leap's spectrum holdings for 4G LTE services,⁴⁹ fulfilling the statutory and stated Commission goal of putting spectrum to "efficient and intensive use."⁵⁰ This and other network-related efficiencies, including the integration of Leap cell sites to create a more dense network grid, will enhance AT&T's network and provide an improved 4G network experience for its customers.

1. AT&T will utilize Leap's spectrum more efficiently

The Administration and the Commission have recognized repeatedly that the demand for wireless broadband services is exploding and that the wireless industry needs additional spectrum to meet this demand.⁵¹ As President Obama stated, "[e]xpanded wireless broadband access will trigger the creation of innovative new businesses, provide cost-effective connections

⁴⁸ *Id.* ¶¶ 4, 8, 11, 14.

⁴⁹ Hogg Decl. ¶ 7.

⁵⁰ *See* 47 U.S.C. § 309(j)(3)(D).

⁵¹ *See, e.g., Policies Regarding Mobile Spectrum Holdings*, Notice of Proposed Rulemaking, 27 FCC Rcd 11,710, 11,716-17 ¶ 12 (2012).

in rural areas, increase productivity, improve public safety, and allow for the development of mobile telemedicine, telework, distance learning, and other new applications that will transform Americans' lives," but that can "only happen if there is adequate spectrum available."⁵² In light of this burgeoning demand, the National Broadband Plan calls for spectrum to be put to its most efficient use.⁵³

This transaction will do just that. Leap currently is using only about 42 percent of its spectrum in the markets in which it offers facilities-based service, an area covering 96 million people.⁵⁴ In areas outside of its network footprint, Leap holds unused AWS and PCS spectrum covering about 41 million people.⁵⁵

In contrast, AT&T will use this spectrum, incorporating it into, and increasing the capacity of, its state-of-the-art LTE network,⁵⁶ thereby providing the very types of benefits that President Obama envisioned.⁵⁷ AT&T already is deploying AWS spectrum in its LTE network

⁵² See President Barack Obama, "Unleashing the Wireless Broadband Revolution" (June 28, 2010), available at <http://www.whitehouse.gov/the-press-office/presidential-memorandum-unleashing-wireless-broadband-revolution>; see also *FCC Commissioner Jessica Rosenworcel on Presidential Memorandum Promoting Efficient Use of Spectrum by Federal Agencies*, Press Release (June 14, 2013) ("President Obama has recognized the importance of finding new spectrum to ensure America's leadership in mobile broadband. We are on a hunt for new opportunities for commercial spectrum to reach the 500 megahertz benchmark for new wireless broadband use in the Executive Order from the President nearly three years ago.").

⁵³ See *Connecting America: The National Broadband Plan* at 77-83 (2010) ("NBP"), available at <http://download.broadband.gov/plan/national-broadband-plan.pdf>.

⁵⁴ Hutcheson Decl. ¶ 10; LEAP - Q3 2012 Leap Wireless International Earnings Conference Call at 13 (Nov. 7, 2012) ("In terms of what percentage is not used, we have got spectrum covering 137 million PoPs, we operate covering about 95 million PoPs, we said out of those 95 million about 40% of the spectrum is utilized . . . across those 95 million PoPs.").

⁵⁵ Hutcheson Decl. ¶ 10.

⁵⁶ Because AT&T also uses PCS spectrum for AT&T's HSPA+ technology, AT&T will have the flexibility to use a portion of Leap's PCS spectrum on AT&T's HSPA+ network as required to support transitioning customers.

⁵⁷ AT&T currently covers more than 225 million people. See Press Release, AT&T Inc., AT&T's Fastest 4G LTE Network Now Also Nation's Most Reliable (July 18, 2013), available at <http://www.att.com/gen/press-room?pid=24543&cdvn=news&newsarticleid=36751>. AT&T

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and will begin deploying LTE service over PCS spectrum by the end of this year.⁵⁸ Therefore, the AWS and PCS spectrum to be transferred here can be readily integrated into AT&T's LTE network to enhance the network and provide customers an improved wireless experience.⁵⁹

Specifically, in the areas where AT&T currently anticipates it will already be utilizing AWS spectrum for LTE service at the time of closing, AT&T preliminarily has determined that it will be able to deploy Leap's unused, contiguous AWS spectrum in as little as 60 to 90 days.⁶⁰ This includes approximately 50 CMAs, covering metropolitan areas such as Denver, Colo.; Greenville, S.C.; and Baton Rouge, La., as well as less populated areas such as Bryan-College Station, Tex.; Lincoln, Ill.; and Clinton, Okla.⁶¹ More broadly, based on AT&T's current post-transaction plans for deploying additional spectrum to expand LTE capacity in certain markets, AT&T preliminarily estimates that it will be able to deploy the unused, contiguous Leap spectrum in many additional areas within 12 months after the close of this transaction.⁶² This would include over 160 CMAs, encompassing large metropolitan areas such as Chicago, Ill.; Washington, D.C.; San Diego, Cal.; and Milwaukee, Wis., as well as less populated areas such as Chase, Neb.; Piute, Utah; and Hudspeth, Tex.⁶³ These projected deployments will further the Commission's goal of increased LTE deployment outside the largest urban areas.⁶⁴

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expects to cover nearly 270 million people in 400 markets by the end of 2013, and its LTE deployment is expected to be substantially complete by the summer of 2014. Hogg Decl. ¶ 6.

⁵⁸ Hogg Decl. ¶ 6.

⁵⁹ *Id.* ¶¶ 7-9; Israel Decl. ¶¶ 54-56.

⁶⁰ Hogg Decl. ¶ 8.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *See, e.g., Sprint/SoftBank Order* ¶ 102 ("In particular, Softbank's provision of greater resources for transitioning the existing networks of Sprint and Clearwire to LTE technology could accelerate Sprint's rollout of advanced mobile broadband services, thereby supporting our
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The transaction also will allow more efficient use of the Leap spectrum than was possible on the Leap network. Leap primarily has deployed its spectrum to support CDMA EVDO technology,⁶⁵ which is far less spectrally efficient than AT&T's 4G network. To the limited extent that Leap has deployed LTE, it has done so in 3x3 MHz and 5x5 MHz block configurations.⁶⁶ In contrast, AT&T is typically deploying spectrum to support LTE in 10x10 MHz blocks, with 5x5 MHz configuration as a minimum.⁶⁷

AT&T will be able to refarm Leap spectrum into AT&T's LTE network even before the full customer migration and network integration is completed, as Leap customers are transitioned to AT&T's network, reducing traffic on that spectrum so that it can be repurposed for LTE deployment.⁶⁸ The remaining Leap spectrum will be available for redeployment on AT&T's LTE network shortly after AT&T completes the migration of Leap customers to AT&T's networks, which is expected within 18 months of closing.⁶⁹

In many areas, the addition of Leap spectrum will allow AT&T to deploy LTE services in larger, more robust, contiguous 10x10 MHz (or greater) blocks of spectrum. For example, in many areas the transaction will give AT&T a contiguous 10x10 MHz block of AWS where AT&T currently has none (*e.g.*, Philadelphia, Pa.; Washington, D.C.; San Diego, Cal.;

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goal of expanding mobile broadband deployment throughout the country.”); Julius Genachowski, Chairman, FCC, Winning the Global Bandwidth Race: Opportunities and Challenges for Mobile Broadband, Remarks at the University Of Pennsylvania (Oct. 4, 2012), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-316661A1.pdf (“Smart public investment in wireless infrastructure is necessary too. We created a new Mobility Fund to support 3G and 4G networks in unserved rural areas.”); *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663, 17,781 ¶ 322 (2011).

⁶⁵ Hutcheson Decl. ¶ 9.

⁶⁶ *Id.* ¶ 11.

⁶⁷ Hogg Decl. ¶ 5 and n.4.

⁶⁸ *Id.* ¶ 9.

⁶⁹ *Id.*

Plaquemines, La.; Alton-Granite City, Ill.; Oconee, S.C.; and Pine Bluff, Ark.).⁷⁰ In other license areas, the transaction will permit a move from a 5x5 MHz deployment to a contiguous 10x10 MHz or greater AWS deployment (*e.g.*, Lafayette, La.; Racine, Wis.; and Las Cruces, N.M.).⁷¹

2. AT&T will integrate Leap cell sites

In addition, AT&T's preliminary analysis of Leap cell sites indicates that AT&T will be able to productively integrate a few thousand complementary Leap cell sites into its network.⁷² The integration of these cell sites will create a denser network grid that will increase network capacity and improve network performance and allow AT&T to more efficiently utilize its spectrum holdings.⁷³

3. Customers of both companies will benefit from the improved network performance

In the *T-Mobile/MetroPCS Order*, the Wireless Telecommunications and International Bureaus found that customers "would experience improved service quality, particularly in major metropolitan markets in which the existing T-Mobile USA and MetroPCS networks would be combined."⁷⁴ Here, too, customers of both companies will benefit from an enhanced and expanded network. In particular, Leap customers will have access to a superior, nationwide 4G network that offers significant performance improvements, including better coverage, data throughput speeds, and service quality.⁷⁵ Moreover, Leap customers will enjoy access to

⁷⁰ *Id.* ¶ 7.

⁷¹ *Id.*

⁷² *Id.* ¶ 10.

⁷³ *Id.* ¶¶ 10, 12; *see also* Israel Decl. ¶¶ 71-72.

⁷⁴ *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2348 ¶ 74.

⁷⁵ Hogg Decl. ¶ 11.

AT&T's nationwide network post-transaction, rather than relying on third-party networks outside of Leap's limited network footprint, further expanding the benefits of more seamless service and a better customer experience.⁷⁶

As described above, Leap customers also will gain access to a broader and more robust LTE network.⁷⁷ The increased capacity resulting from the integration of Leap's spectrum into AT&T's LTE network will result in greater spectral efficiencies, including improvements in throughput speeds, peak data rates, and latency.⁷⁸ As a result of AT&T's generally more spectrally efficient HSPA+ and LTE technologies, customers of both companies, in particular Leap customers who only have access to CDMA EVDO services today, will see improvements in throughput speeds and latency.⁷⁹ These improvements will result in a more enjoyable customer experience, including faster streaming of video, faster uploading of image and video files, and a more responsive and robust web browsing experience.⁸⁰ The greater cell site density resulting from the incorporation of Leap cell sites will enable faster data speeds and improved coverage by reducing places where customers experience dropped connections, dead spots, and coverage gaps.⁸¹ The Commission consistently has found that improving services and network quality are important public interest benefits and should do so here as well.⁸²

⁷⁶ *Id.* ¶ 12.

⁷⁷ *Id.* ¶ 11.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* ¶ 12.

⁸² See, e.g., *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2344, 2348 ¶¶ 63, 74; *AT&T/Centennial Order*, 24 FCC Rcd at 13,958 ¶ 103; *Midwest Wireless Order*, 21 FCC Rcd at 11,568 ¶ 116; *Western Wireless Order*, 20 FCC Rcd at 13,104-05 ¶ 141.

C. The Transaction Will Result in Significant Cost Savings

The transaction will result in significant savings in network and operating costs, as described in greater detail in the attached Declaration of Mr. Moore.⁸³

For example, as Leap's cell sites are integrated into AT&T's network, and other sites decommissioned without affecting network performance, AT&T can eliminate lease, utility, maintenance, and other site-related expenses.⁸⁴ In addition, AT&T expects to reduce interconnection and backhaul expenses by switching to existing AT&T facilities where possible and by utilizing its increased scale, as compared to Leap's, to negotiate improved rates.⁸⁵

Additional savings will result from optimization of the distribution network of the combined company, resulting in enhanced retail coverage and customer service, along with significant cost savings.⁸⁶ Likewise, the combined company will be able to achieve efficiencies in advertising and marketing,⁸⁷ as well as substantial savings in the area of customer support, equipment, and general and administrative costs.⁸⁸ These latter savings include savings from combining and optimizing customer support functions (such as call center and billing operations), while maintaining a high level of support.⁸⁹ There will be additional cost savings from removing redundancy in corporate and overhead functions.⁹⁰ Also, the roaming and resale expenses that Leap would have paid as a standalone company will be substantially reduced

⁸³ Moore Decl. ¶¶ 20-23.

⁸⁴ *Id.* ¶ 21; *see also* Israel Decl. ¶ 76.

⁸⁵ Moore Decl. ¶ 21.

⁸⁶ Moore Decl. ¶ 22.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*; *see also* Israel Decl. ¶ 75.

⁹⁰ Moore Decl. ¶ 22.

because the combined company will offer a significantly greater on-net footprint than Leap could possibly hope to obtain and will no longer need to obtain MVNO services from other providers.⁹¹

Consumers will benefit from these cost reductions. As Dr. Israel explains, among these “cost synergies identified are several that, as a matter of economics, are properly understood to be marginal cost savings and thus they will lead to lower prices for consumers than would prevail absent such cost savings.”⁹² For example, the reduction of roaming expenses, the combining and optimizing of customer support functions, and the reduction in backhaul costs are among the sources of marginal cost savings that will result from the transaction.⁹³ As Dr. Israel also explains, network integration efficiencies create direct consumer benefits in “the form of improved network quality (due to reduced congestion), as well as lower marginal costs; thus quality-adjusted prices will be lower and output higher than they would be absent the transaction.”⁹⁴

As in past transactions, the Commission should credit these synergies.⁹⁵ AT&T has a strong track record of realizing synergies from prior transactions, and AT&T is well-positioned to achieve these synergies in a timely fashion.⁹⁶

⁹¹ *Id.*; *see also* Israel Decl. ¶ 74.

⁹² Israel Decl. ¶ 73.

⁹³ *Id.* ¶¶ 74-76.

⁹⁴ *Id.* ¶ 69.

⁹⁵ *See, e.g., AT&T/Centennial Order*, 24 FCC Rcd at 13,959 ¶ 106; *Verizon/ALLTEL Order*, 23 FCC Rcd at 17,512-15 ¶¶ 147-56; *AT&T/Dobson Order*, 22 FCC Rcd at 20,334-35 ¶¶ 82-83 (crediting cost synergies in roaming, network, advertising, and overhead costs).

⁹⁶ Moore Decl. ¶¶ 25-29.

V. THE TRANSACTION WILL NOT HARM COMPETITION IN THE MARKET FOR MOBILE WIRELESS SERVICES

As described above,⁹⁷ providers of mobile wireless services compete aggressively across many dimensions, and are increasingly seeking to attract customers with a wide array of rate plans, including unlimited postpaid and prepaid/no-contract plans, data service packages, and increasingly diverse devices.⁹⁸ This competition is only intensifying with the recent strengthening of T-Mobile through spectrum acquisitions and its combination with MetroPCS and the strengthening of Sprint via the significant capital infusion from SoftBank.⁹⁹ This transaction will enable the combined company to add to that competitive fray a nationwide, facilities-based, prepaid/no-contract offering using AT&T's 4G LTE/HSPA+ network, which, in turn, can be expected to stimulate a further competitive response by other carriers for the benefit of value-oriented customers.

At the same time, the transaction will not harm competition in any relevant market.

- First, the Commission's staff and the Department of Justice have concluded previously that Leap does not materially affect the pricing or other key competitive decisions of the nationwide wireless carriers such as AT&T.¹⁰⁰ This transaction does not reduce the number of national wireless carriers, and it will have no adverse impact on competition at the national level.
- Second, there will not be an adverse impact on competition at the local level. The local areas in which Leap operates, which tend to be metropolitan areas, are, and will remain,

⁹⁷ See Section IV.A, *supra*.

⁹⁸ See *Sixteenth Report*, 28 FCC Rcd at 3810, 3811-12 ¶¶ 159, 161-64.

⁹⁹ See Section IV.A., *supra*.

¹⁰⁰ See *Applications of AT&T Inc. & Deutsche Telekom AG, for Consent to Assign or Transfer Control of Licenses and Authorizations*, Staff Analysis and Findings, 26 FCC Rcd 16,184, 16,223 ¶ 65 (2011) ("FCC Staff Report") (finding that regional providers, including Leap, "would likely need to substantially alter their existing business models and services to significantly constrain the nationwide providers"); *Verizon/SpectrumCo Order*, 27 FCC Rcd at 10,718-19 ¶ 57; *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2333 ¶ 32; *Sprint/SoftBank Order* ¶ 38.

competitive in light of Leap's generally modest presence in those areas and competition from the national carriers as well as other providers.

- Third, spectrum aggregation is not an issue. The areas where the screen would be hit had a total population (as of the 2010 census) of only about 7 million, and in all of those areas robust competition from many competitors with significant spectrum holdings will remain. By contrast, the screen would not be hit in Leap's remaining CMAs, which had a total population of about 130 million.

A. Market Definition

1. Relevant Product Market

The Commission consistently has defined the relevant product market for transactions such as this as “mobile telephony/broadband services,” which is “comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).”¹⁰¹ This product market includes a wide array of mobile data services, such as mobile Internet access services for laptop users, and mobile voice and data services provided over advanced wireless broadband, such as 3G and 4G networks.¹⁰² The Commission's approach was most recently confirmed when the Wireless Telecommunications and International Bureaus relied upon this definition in approving the T-Mobile/MetroPCS merger.¹⁰³ As Dr. Israel describes in his declaration, examination of the

¹⁰¹ *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2332 ¶ 28; *see also AT&T/WCS Order*, 27 FCC Rcd at 16,468 ¶ 24; *Verizon/SpectrumCo Order*, 27 FCC Rcd at 10,717 ¶ 53; *Verizon/ALLTEL Order*, 23 FCC Rcd at 17,473 ¶ 53; *AT&T/Qualcomm Order*, 26 FCC Rcd at 17,603 ¶ 33; *AT&T/Centennial Order*, 24 FCC Rcd at 13,932 ¶ 37.

¹⁰² *Verizon/ALLTEL Order*, 23 FCC Rcd at 17,470 ¶¶ 46-47.

¹⁰³ *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2332 ¶ 28. In doing so, the Bureaus declined to analyze a separate, narrower product market for “value wireless services.” *Id.* (“[W]e find that T-Mobile USA and MetroPCS provide services in the combined mobile telephony/broadband services product market and therefore use the product market definition that the Commission has applied in recent transactions.”); *see also Sprint/SoftBank Order* ¶ 37 (“We continue to use the product market definition that the Commission has applied in recent transactions: a combined ‘mobile telephony/broadband services’ product market . . .”).

offerings of various wireless providers makes clear that all such products are correctly viewed as a single product market.¹⁰⁴

2. Relevant Geographic Market

The Commission and Department of Justice traditionally have analyzed the potential competitive effects of wireless transactions such as this one at the level of local geographic markets approximated by individual CMAs.¹⁰⁵ In reviewing recent wireless transactions, however, both agencies have emphasized the importance of national competition and, specifically, concluded that key decisions of national carriers are made at the national level and are driven by competition from other national providers.¹⁰⁶ The Commission repeatedly has found that prices and service plan offerings of AT&T and the other nationwide wireless carriers do not vary by location, and that the vast majority of their advertising is also national.¹⁰⁷ As the Commission explained in its decision approving the AT&T/Qualcomm transaction:

¹⁰⁴ Israel Decl. ¶ 13.

¹⁰⁵ See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17,470 ¶ 49; *Application of Celco P'ship d/b/a Verizon Wireless & Rural Cellular Corp. for Consent to Transfer Control of Licenses, Authorizations, & Spectrum Manager Leases & Petition for Declaratory Ruling*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 12,463, 12,485 ¶ 41 (2008) (“*Verizon/RCC Order*”); *AT&T/Dobson Order*, 22 FCC Rcd at 20,310 ¶ 25.

¹⁰⁶ In its report on the proposed AT&T/T-Mobile transaction, the Commission staff found that “two key competitive variables - prices and service plan offerings - do not vary for most providers across most geographic markets where they sell services. In particular, the four nationwide facilities-based providers of retail wireless services . . . set the same rates for a given plan wherever they sell service and do not alter the plans they offer depending on the location.” *FCC Staff Report*, 26 FCC Rcd at 16,206 ¶ 34. Similarly, in its complaint challenging the proposed AT&T/T-Mobile transaction, DOJ alleged that, “[b]ecause competitive decisions affecting technology, plans, prices, and device offerings are typically made at a national, rather than a local, level, the rivals that affect those decisions generally are those with sufficient national scale and scope, i.e., the Big Four.” *United States v. AT&T Inc.*, No. 11-01560, Second Amended Compl. ¶ 19 (D.D.C. filed Sept. 30, 2011), available at <http://www.justice.gov/atr/cases/f275700/275756.pdf> (“*Am. Compl.*”).

¹⁰⁷ See, e.g., *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2333 ¶ 32; *Verizon/SpectrumCo Order*, 27 FCC Rcd at 10,718 ¶ 57; *Sprint/SoftBank Order* ¶ 38.

The four nationwide providers of retail wireless services (AT&T, Verizon Wireless, Sprint, and T-Mobile) as well as some other providers set the same rates for a given plan everywhere and do not alter the plans they offer depending on the location. The vast amount of provider advertising is national, and nationwide retail stores such as Wal-Mart, Best Buy, and RadioShack, which sell plans at the same rates in every store, play an important role marketing retail wireless services. In addition, under the current market structure certain key elements, such as the development and the deployment of mobile broadband equipment and devices, are largely developed and deployed on a national scale. Because of the important national characteristics, competition that occurs at a local level is unlikely to affect, for example, the pricing and plans that the nationwide providers offer unless there is enough competition in enough local markets to make a nationwide pricing or plan change economically rational.¹⁰⁸

The Commission has reaffirmed these conclusions in several recent orders, including Verizon/SpectrumCo,¹⁰⁹ T-Mobile/MetroPCS,¹¹⁰ and Sprint/SoftBank.¹¹¹

As explained below, this reasoning leads inescapably to the conclusion that Leap does not affect AT&T's competitive decisions. Whether the relevant market is viewed as national or local, this transaction will not harm competition.

B. The Transaction Will Not Harm Competition at the National Level

Because Leap is not a nationwide facilities-based competitor, this transaction does not reduce the number of national competitors, and therefore does not harm competition at the national level. Moreover, Leap's subscribers account for less than two percent of all mobile

¹⁰⁸ *AT&T/Qualcomm Order*, 26 FCC Rcd at 17,604-05 ¶ 35 (footnotes omitted).

¹⁰⁹ *Verizon/SpectrumCo Order*, 27 FCC Rcd at 10,718-19 ¶ 57.

¹¹⁰ *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2333 ¶ 32.

¹¹¹ *Sprint/SoftBank Order* ¶ 38 (“[T]he Commission also has evaluated a transaction’s competitive effects at the national level where a transaction exhibits certain national characteristics that provide potential cause for concern. For purposes of evaluating the competitive effects of the proposed transactions, we use local markets as well as national markets, given the national characteristics of the proposed transactions.”); *see also FCC Staff Report*, 26 FCC Rcd at 16,206 ¶ 34 n. 106 (concluding that there was no “evidence in the record that local competition affects national pricing and service plan decisions in any meaningful way”).

wireless services subscribers.¹¹² In 2011, when Leap was near its competitive zenith and had embarked on a nationwide MVNO-based retail strategy, the Commission staff and the Department of Justice concluded that Leap had minimal influence on the competitive decision-making of AT&T and other national carriers.¹¹³ Given Leap's business decline since the first quarter of 2012, as described below, there is no basis for a contrary conclusion today.¹¹⁴ Thus, as to the key dimensions of competition that the Commission and the Department of Justice have found to be driven primarily by national carriers, this transaction will have no effect.

1. Leap and AT&T are not close competitors

Even a brief survey of the products offered by AT&T, Leap, and other wireless providers demonstrates that AT&T and Leap are not close competitors.¹¹⁵ Leap is a provider of prepaid/no-contract service offerings that compete primarily with those from T-Mobile/MetroPCS, Sprint, and TracFone.¹¹⁶ In contrast, AT&T's principal focus is its postpaid business. Its AT&T branded prepaid offering, AT&T GoPhone, is positioned as a complement to postpaid offerings.¹¹⁷

¹¹² Israel Decl. ¶ 18.

¹¹³ See, e.g., *FCC Staff Report*, 26 FCC Rcd at 16,222-23 ¶ 65 ("The services offered by providers such as MetroPCS and Leap tend to attract a subset of customers who are more price sensitive, not too concerned by their more limited geographic scope, who have lower data usage rates than average, and who seem to have a lower willingness to pay for the latest handsets. These customers are unlikely to prefer the nationwide providers generally and, of particular relevance to analyzing unilateral effects, are unlikely to include those AT&T customers who have T-Mobile as their second choice (or vice versa)."); *Am. Compl.* ¶ 35 ("[B]ecause each of the four nationwide firms typically offers prices, plans, and devices on a national basis, the regional and local providers . . . exert little influence on these aspects of competition.").

¹¹⁴ See Israel Decl. ¶¶ 39-42.

¹¹⁵ See *id.* ¶¶ 29-30, 32-38.

¹¹⁶ See Hutcheson Decl. ¶ 16.

¹¹⁷ See Moore Decl. ¶ 9.

Analysis to date of porting data points to the same conclusion. Recent porting data shows less than half the subscriber diversion from Leap to AT&T and from AT&T to Leap than would be predicted by AT&T's overall share in Leap's footprint.¹¹⁸ Diversion from AT&T to Leap places Leap significantly behind Verizon, Sprint, and T-Mobile/MetroPCS among AT&T's competitors.¹¹⁹

2. Other competitors' offerings compete more closely with Leap's offerings

Wireless carriers and brands other than AT&T are much closer and more significant competitors to Leap.¹²⁰ Leap perceives Sprint and T-Mobile, in particular, as more significant competitors than AT&T,¹²¹ and Leap customers port their numbers to Sprint and T-Mobile far more often than they do to AT&T.¹²² Indeed, these companies have been increasingly focused on prepaid/no-contract value offerings, which has placed considerable competitive pressure on Leap.¹²³ T-Mobile now offers prepaid service under three brands: its traditional T-Mobile brand;¹²⁴ its GoSmart flanker brand launched in February;¹²⁵ and, following the recent merger, the retained MetroPCS brand, which is being rolled out nationwide supported by a stronger 4G

¹¹⁸ See Israel Decl. ¶¶ 27-28.

¹¹⁹ See *id.* ¶ 28.

¹²⁰ See *id.* ¶¶ 32-38.

¹²¹ See Hutcheson Decl. ¶ 16.

¹²² See Israel Decl. ¶ 27. While prepaid customers port their numbers less often than postpaid customers, these data are probative and are consistent with other data points including the obvious differences in business models. See *id.* ¶¶ 26-27.

¹²³ See Hutcheson Decl. ¶ 16.

¹²⁴ Zach Epstein, *T-Mobile's Contract-Free Unlimited Data Plan Launches Today*, BGR (Jan. 9, 2013), available at <http://bgr.com/2013/01/09/t-mobile-unlimited-data-no-contract-286450/> (announcing T-Mobile's launch of no-contract unlimited data plans earlier this year).

¹²⁵ See Press Release, T-Mobile, GoSmart Mobile Launches Nationwide No-Contract Wireless Service for Budget-Conscious Consumers (Feb. 19, 2013), available at <http://support.t-mobile.com/thread/39160?start=0&tstart=0>.

network.¹²⁶ Leap expects increased head-to-head competition from MetroPCS as it has begun to expand aggressively into Leap territories since its merger with T-Mobile.¹²⁷ In fact, in July 2013, T-Mobile announced a roll-out of MetroPCS into 15 new areas, specifically targeting Leap customers: “We plan to arrive months in advance of AT&T and go right into the places where those Leap customers are who are hungry for something new and offer them something superior.”¹²⁸ And T-Mobile’s LTE rollout will strengthen the competitive position of these brands further.¹²⁹

Sprint (with its Virgin Mobile and Boost prepaid brands) is present in most local areas with a national network and extensive spectrum holdings.¹³⁰ It continues to innovate with aggressive pricing: “One of the most aggressive actions,” explains RCR Wireless, “in the second quarter [of 2013] was Virgin Mobile USA’s new iPhone pricing.”¹³¹ According to Sprint’s CEO, it has been “developing the critical pieces of [the company’s] multi-brand strategy” and its

¹²⁶ See Mike Dano, *T-Mobile Reiterates Support for GoSmart Mobile, Despite MetroPCS Merger*, FierceWireless (Apr. 26, 2013), available at <http://www.fiercewireless.com/story/t-mobile-reiterates-support-gosmart-mobile-despite-metropcs-merger/2013-04-26> (describing plans to take MetroPCS brand nationwide post-merger).

¹²⁷ See Hutcheson Decl. ¶ 16.

¹²⁸ Sinead Carew, *MetroPCS Doubles Operating Markets to Compete with Leap*, Reuters (July 25, 2013), available at <http://www.reuters.com/article/2013/07/25/us-tmobile-metropcs-idUSBRE96O16620130725>; see also Scott Moritz, *T-Mobile Adds 15 MetroPCS Cities to Vie With AT&T, Leap*, Bloomberg News (July 25, 2013), available at <http://www.bloomberg.com/news/2013-07-25/t-mobile-adds-15-metropcs-cities-to-vie-with-at-t-leap.html>.

¹²⁹ See Israel Decl. ¶ 36.

¹³⁰ See *id.* ¶ 34.

¹³¹ Jim Patterson, *Reality Check: Wireless Earnings Drivers for the Second Quarter*, RCR Wireless (June 25, 2013), available at <http://www.rcrwireless.com/article/20130625/opinion/reality-check-wireless-earnings-drivers-second-quarter/>.

“approach to the prepaid market can truly set [Sprint] apart from the competition with tailored offers that will address specific needs in this growing market.”¹³²

These firms, along with MetroPCS where it competed with Leap, have positioned themselves as the closest competition to Leap. But other firms compete with Leap as well. Verizon Wireless has recently refocused on the prepaid segment, reducing prepaid rate plan prices in an effort to gain customers.¹³³

MVNOs, most notably TracFone/Straight Talk, offer an additional source of competitive constraint on Leap and other providers that specialize in prepaid/no-contract offerings.¹³⁴ As the

¹³² Press Release, Sprint Nextel Corp., Sprint’s Prepaid Multi-Brand Strategy Focuses on Distinct Consumer Segments (May 6, 2010), *available at* <http://newsroom.sprint.com/news-releases/sprints-prepaid-multi-brand-strategy-focuses-on-distinct-customer-segments.htm>; *see also* Roger Cheng, *Sprint Will Reportedly Enter Prepaid Business Itself*, CNET (Jan. 3, 2013), *available at* http://news.cnet.com/8301-1035_3-57561768-94/sprint-will-reportedly-enter-prepaid-business-itself/ (noting that Sprint’s new entry into the prepaid market itself, in addition to its Virgin Mobile and Boost Mobile brands, “mark[s] an expansion of Sprint’s already significant push into the prepaid business”).

¹³³ *See* Brian Malina, *Smartphone Options for the Budget-Minded*, Verizon Wireless News Center (May 15, 2013), *available at* <http://news.verizonwireless.com/news/2013/02/new-prepaid-smartphone-plans.html>.

¹³⁴ *See* Hutcheson Decl. ¶ 16; *see also* *Sixteenth Report*, 28 FCC Rcd at 3741 ¶ 35 (“Some facilities-based providers, especially those that specialize in pre-paid plans, state that they compete with MVNOs, including TracFone.”) (citing Leap Wireless Int’l, Inc., Annual Report (Form 10-K), at 9 (Feb. 21, 2012) (“*Leap 2011 10-K*”) and MetroPCS Commc’ns, Inc., Annual Report (Form 10-K), at 11 (Feb. 29, 2012) (“*MetroPCS 2011 10-K*”)); *see also* *Leap 2011 10-K* at 9 (“[A] number of MVNOs offer competitively-priced service offerings. For example, Trac[F]one Wireless sells wireless offerings in Wal-Mart under its ‘Straight Talk’ brand using a number of other carriers’ wireless networks. We also face additional competition in the prepaid segment from lifeline service offerings by competitors including Trac[F]one (through its SafeLink offerings) and Sprint Nextel (through its Assurance Wireless offerings).”); *MetroPCS 2011 10-K* at 11 (“In addition to facilities-based wireless broadband mobile carriers, the wireless broadband mobile industry also includes carriers such as Trac[F]one and PagePlus that are solely non-facility based mobile virtual network operators, or MVNOs, and some, such as Cricket Communications, which is a combination of facilities based and non-facilities based carrier, that contract with wireless network operators to provide a separately branded wireless service. In some cases these MVNOs have business arrangements with one of the other major nationwide carriers, which may give them access to a more extensive network than ours and we believe at lower prices than we pay for roaming for access to service out of our service areas. These MVNOs offer increasingly competitive service plans similar to the service plans we provide in addition to offering more traditional prepaid plans that charge by the minute.”).

Commission previously has concluded, MVNOs can increase competition and consumer welfare in the wireless industry.¹³⁵ TracFone/Straight Talk takes advantage of a highly competitive wholesale wireless market to assure that it is able to compete effectively and aggressively with facilities-based carriers, particularly for prepaid/no-contract service.¹³⁶

3. Leap's challenges to competing effectively are increasing

Since 2011, Leap has become a much less effective competitive force, while some of its most significant competitors have become stronger. Leap has not earned a net annual profit in any of the past seven years, and its only profitable quarter in recent years was due primarily to recognizing a gain on the sale of some AWS and PCS spectrum, rather than operating profits.¹³⁷ Indeed, Leap has experienced over a billion dollars in net losses over the last several years.¹³⁸

Leap's performance has declined significantly since the first quarter of 2012, with end-of-period customer numbers falling from a peak of nearly 6.2 million as of March 31, 2012 to about 4.8 million as of June 30, 2013, a decline of approximately 22 percent over five quarters.¹³⁹ As customer numbers fall, Leap's fixed (and semi-fixed) costs are spread over a

¹³⁵ See *Sixteenth Report*, 28 FCC Rcd at 3741 ¶ 35 ("The strategic partnerships between MVNOs and facilities-based providers increase competition and consumer welfare by providing service to various market segments using the capacity of the hosting facilities-based provider and the marketing strategy and distribution network of the MVNO.").

¹³⁶ See Mike Dano, *F.J. Pollak's TracFone: The Most Successful Wireless Provider You've Never Heard of*, FierceWireless (Oct. 4, 2012), available at <http://www.fiercewireless.com/story/fj-pollaks-tracfone-most-successful-wireless-provider-youve-never-heard/2012-10-03> ("Part of TracFone's secret sauce is that the company can play the nation's top wireless carriers against each other. Since TracFone has MVNO deals with Sprint Nextel, AT&T Mobility, T-Mobile USA, Verizon Wireless and others, the company can sell services through whichever carrier is currently offering the best rates."); see also *Sixteenth Report*, 28 FCC Rcd at 3741 ¶ 36 ("[W]hile MVNOs compete for retail customers with some facilities-based providers, facilities-based providers compete with each other for wholesale customers.").

¹³⁷ Hutcheson Decl. ¶ 6.

¹³⁸ *Id.*

¹³⁹ *Id.* ¶ 5; Leap Wireless Int'l, Inc., Quarterly Report (Form 10-Q), at 32 (Apr. 27, 2012).

smaller customer base at a time when Leap's variable costs per customer have also been rising, which has resulted in increasing pressure on operating margins.¹⁴⁰ For example, Leap's costs per gross customer addition rose 31%, from \$296 in the second quarter of 2012 to \$387 in the second quarter of 2013, and Leap's cash costs per user rose 21% over the same period from \$22.91 to \$27.79.¹⁴¹ Cost-reduction initiatives introduced as a result of Leap's declining customer base and associated decline in revenues may further negatively impact customer acquisition and retention in the future.¹⁴²

Leap is also heavily leveraged, with \$3.6 billion in outstanding indebtedness as of June 30, 2013.¹⁴³ In addition to debt servicing costs, Leap's significant indebtedness constrains its ability to raise additional debt to finance capital expenditures (including for LTE deployment), purchase additional spectrum, and make other business investments that Leap may need to meet customer demands and remain competitive.¹⁴⁴

As a result of a declining customer base and associated decline in service revenues, Leap has undertaken various cost-reduction initiatives, including reductions in its planned capital expenditures (such as for LTE network deployment) and in other investments to improve the business.¹⁴⁵ Most of Leap's network offers 3G CDMA EVDO technology, but Leap is facing increasing pressure to provide LTE services to its customers in order to meet expanding

¹⁴⁰ Hutcheson Decl. ¶ 6.

¹⁴¹ *Id.*

¹⁴² *See id.*

¹⁴³ *See id.* ¶ 12; *see also Leap Q1 2013 10-Q* at 36-37 (\$3.3 billion of outstanding debt as of March 31, 2013); *Leap 2012 10-K* at 19 (\$3.3 billion of outstanding debt as of December 31, 2012).

¹⁴⁴ Hutcheson Decl. ¶ 12.

¹⁴⁵ *Id.* ¶¶ 6-8.

consumer demand for 4G wireless services.¹⁴⁶ However, Leap's limited spectrum holdings and current debt load restrict its ability to both support the 3G network relied upon by the majority of Leap's customers and invest in a robust LTE network.¹⁴⁷ To date, Leap has deployed LTE technology in only 11 metropolitan areas, covering approximately 21 million people.¹⁴⁸ As wireless data traffic continues to climb, the constraints on Leap's LTE deployment will likely increasingly hamper Leap's ability to compete with national carriers.¹⁴⁹ Leap has also contracted its distribution footprint, with a significant number of company- and dealer-owned retail outlets closing in the first part of 2013.¹⁵⁰

By contrast, while Leap's competitive position has declined, other carriers are stronger today.¹⁵¹ T-Mobile (with MetroPCS) has deployed LTE "in 116 markets nationwide, covering 157 million POPs," about half of which use "a 10x10 MHz spectrum configuration,"¹⁵² and Sprint (with Boost and Virgin Mobile) has deployed LTE in 88 cities (with more than 170 to launch in the coming months), and will be adding 800 MHz spectrum to its LTE deployment by the fourth quarter of this year.¹⁵³ And Verizon Wireless has announced that its LTE network covers 89 percent of the U.S. population.¹⁵⁴

¹⁴⁶ *Id.* ¶ 9.

¹⁴⁷ *See id.* ¶¶ 7, 9, 12.

¹⁴⁸ *Id.* ¶ 9.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* ¶ 8.

¹⁵¹ *See Leap Q1 2013 10-Q* at 27-28, 46-47; *Leap 2012 10-K* at 6-7, 15-16. *See* Section IV.A, *supra*.

¹⁵² Sue Marek, *T-Mobile Exceeds Mid-Year LTE Deployment Goal, Hits 116 Markets*, FierceWireless (July 10, 2013), available at <http://www.fiercebroadbandwireless.com/story/t-mobile-exceeds-mid-year-lte-deployment-goal-hits-116-markets/2013-07-10#ixzz2ZzpcJ5EV>.

¹⁵³ Sprint - Q1 2013 Earnings Conference Call at 13-14 (Apr. 24, 2013).

¹⁵⁴ Verizon Communications Inc., Annual Report (Form 10-K), at 2 (Feb. 26, 2013).

C. The Transaction Will Not Harm Competition at the Local Level

Nor are there any competitive concerns at the local level. First, for many of the CMAs affected by the transaction, Leap today has spectrum, but no wireless operations and no present plans to expand its commercial network into those areas.¹⁵⁵ Thus, with respect to those areas this transaction is a spectrum-only acquisition, which, as the Commission has repeatedly recognized, raises no horizontal competitive concerns.¹⁵⁶ To the contrary, in those local areas (and others throughout the country where Leap does not, and has no plans to, operate a network), AT&T's utilization of Leap spectrum and expansion of the Cricket brand will only promote competition and innovation.¹⁵⁷

Second, even in the CMAs where Leap does offer service today, competition will remain vigorous. Leap generally has only a modest presence even in the areas where it does offer facilities-based service.¹⁵⁸ As explained above, AT&T and Leap are not close competitors, and Leap is not one of the carriers that the Commission has recognized as influencing the key competitive decisions of AT&T, which are made at the national level.¹⁵⁹ Moreover, the transaction does not reduce the number, or in any way impair the competitiveness, of the national carriers in the local areas served by Leap. With only a handful of exceptions, each of the four

¹⁵⁵ See Hutcheson Decl. ¶¶ 10, 12.

¹⁵⁶ See, e.g., *AT&T/WCS Order*, 27 FCC Rcd at 16,467-68 ¶ 22 & n.64 (“Because the instant transactions do not result in the acquisition of wireless business units and customers or change the number of firms in any market, we do not apply an initial screen based on the size of the post-transaction Herfindahl-Hirschman Index (‘HHI’) of market concentration and the change in the HHI.”); *AT&T/Qualcomm Order*, 26 FCC Rcd at 17,601 ¶ 29 (“This transaction does not result in the acquisition of wireless business units and customers or change the number of firms in any market, so our competitive analysis considers only the competitive effects associated with the increases in spectrum that would be held by AT&T post-transaction.”).

¹⁵⁷ See Section IV.A.1, *supra*.

¹⁵⁸ See Israel Decl. ¶¶ 20-21. Leap has more than five percent of subscribers in only 43 CMAs and more than ten percent of subscribers in just 14 CMAs. *Id.* ¶ 21.

¹⁵⁹ See Section V.B.1 & nn.105, 112, *supra*.

national competitors will continue to compete in the CMAs where Leap operates, and in some CMAs there is additional competition from regional providers.¹⁶⁰ The four national carriers also hold spectrum in all such CMAs.¹⁶¹ This competition will ensure that consumers are not harmed by the combination of AT&T and Leap.

Finally, if a firm's current market position overstates its future competitive significance, analysis of a transaction must be based on the firm's future ability to compete.¹⁶² Here, even Leap's modest share in the local areas in which it currently operates may well overstate its future competitive significance, given the network, spectral, financial, and other challenges described above.¹⁶³ It is well-settled that "where a firm's market share has been steadily declining, it may be appropriate to take a lower projected share as a measure rather than the last actual share."¹⁶⁴ Moreover, where there are "recent or ongoing changes in market conditions," such as "if a new technology that is important to long-term competitive viability is available to other firms in the market, but is not available to a particular firm," the "reasonably predictable effects" should be

¹⁶⁰ See Israel Decl. ¶ 21.

¹⁶¹ See Appendix A.

¹⁶² See, e.g., U.S. Dep't of Justice and Fed. Trade Comm'n, Horizontal Merger Guidelines § 5.2 (2010) ("*Horizontal Merger Guidelines*") ("Market concentration and market share data are normally based on historical evidence. However, recent or ongoing changes in market conditions may indicate that the current market share of a particular firm either understates or overstates the firm's future competitive significance. . . . The Agencies measure market shares based on the best available indicator of firms' future competitive significance in the relevant market."); *United States v. Gen. Dynamics Corp.*, 415 U.S. 486, 503-04 (1974) (finding that the District Court properly assessed coal producer's "weakness as a competitor" when it analyzed its "probable future ability to compete" rather than its past production, and concluded that the firm was a "far less significant factor in the coal market than . . . the production statistics seemed to indicate").

¹⁶³ See Sections IV.A.2, V.B.3, *supra*; Israel Decl. ¶¶ 39-42.

¹⁶⁴ 4A Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law* § 960 (4th ed. 2013); see also *id.* § 962 ("A firm's current market share may exaggerate its future market potential because the firm either lacks sufficient inputs to maintain sales at the existing level or would incur significantly higher costs in doing so. . . . In such a case, to look at today's sales certainly exaggerates the competitive significance of the firm.").

considered in interpreting market share data.¹⁶⁵ In the present case, Leap's current lack of 4G services in most of the local areas it serves and the challenges it faces to deploying a competitive LTE service across its footprint described above (while other providers of prepaid/no-contract service are expanding their 4G coverage) will further diminish Leap's competitive presence in the future absent the proposed transaction.¹⁶⁶ In contrast, through the proposed transaction, competition will be enhanced in many local areas as AT&T plans to maintain and promote the Cricket brand in the markets where it is currently offered — and in many more across the nation — on a superior and expanded network that will enable subscribers to enjoy significant performance improvements.¹⁶⁷

D. The Transaction Raises No Spectrum Aggregation Concerns

The spectrum screen identifies local markets where an entity would possess, after a transaction, more than approximately one third of the total spectrum suitable and available for the provision of mobile telephony/broadband services.¹⁶⁸ Where the initial screen is hit, a further

¹⁶⁵ *Horizontal Merger Guidelines* § 5.2; see also *Application of Gen. Elec. Co., GE Subsidiary, Inc. 21, & MCI Commc'ns Corp. for Authority to Transfer Control of RCA Global Commc'ns, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 2803, 2808 ¶ 37 (1988) (“Even in a highly concentrated market, a horizontal acquisition may not necessarily lessen competition where the merged companies lack market power to control prices or exclude competition because of other pertinent factors such as . . . changing market conditions.”) (citing *United States v. Gen. Dynamics Corp.*, 415 U.S. at 497-98).

¹⁶⁶ See Hutcheson Decl. ¶ 11; Israel Decl. ¶¶ 40, 42.

¹⁶⁷ See Section IV.A, *supra*.

¹⁶⁸ *Verizon/SpectrumCo Order*, 27 FCC Rcd at 10,719 ¶ 59. The Commission's current screen is triggered where applicants would have “102 megahertz or more of cellular, PCS, SMR, 700 MHz, and WCS spectrum, where neither BRS nor AWS-1 spectrum is available; 121 megahertz or more of spectrum, where BRS spectrum is available, but AWS-1 spectrum is not available; 132 megahertz or more of spectrum, where AWS-1 spectrum is available, but BRS spectrum is not available; or 151 megahertz or more of spectrum where both AWS-1 and BRS spectrum are available.” *AT&T/WCS Order*, 27 FCC Rcd at 16,472 ¶ 33 n.94.

case-by-case review is conducted to determine whether the combination would be likely to cause anticompetitive effects.¹⁶⁹

As the attached Appendix A demonstrates, this transaction would trigger the Commission's current spectrum screen in only 38 CMAs out of a total of 356 CMAs where AT&T will be acquiring spectrum from Leap.¹⁷⁰ In most of those, the screen would be exceeded by only a small amount: the combined spectrum holdings will exceed the current screen by more than 5 MHz in only 17 of the 356 CMAs where AT&T will be acquiring spectrum from Leap. The areas where the screen is hit have a total population (as of the 2010 census) of only about 7 million people out of approximately 137 million in Leap's licensed service area. Of course, if all "suitable" and "available" spectrum were included in the screen, including the BRS/EBS spectrum bands that Sprint/Clearwire are using today to provide mobile broadband services, the screen would not be triggered in any of the affected CMAs.

In any event, an aggregation that hits the spectrum screen does not establish a local spectrum aggregation problem that needs to be remedied.¹⁷¹ It merely indicates the need for a more detailed analysis of spectrum availability and competition in the pertinent area.¹⁷² Here, further examination of the 38 CMAs where the screen would be triggered by this transaction confirms that the transaction raises no competitive issues. As Dr. Israel explains, there are no

¹⁶⁹ *AT&T/WCS Order*, 27 FCC Rcd at 16,472 ¶¶ 33-34.

¹⁷⁰ See Appendix A. Leap's 700 MHz A Block license in the Chicago area should not be attributable to AT&T because, as described above, the parties intend to divest this license in accordance with the terms of the agreement with the CVR holders. Thus, this license is not included in the spectrum aggregation analysis in Appendix A. Also, because AT&T will not be acquiring Leap's interests in PR Wireless and Flat Wireless, these interests have not been included in the spectrum aggregation analysis set forth in Appendix A.

¹⁷¹ *Verizon/ALLTEL Order*, 23 FCC Rcd at 17,481-82 ¶ 75.

¹⁷² *Id.*

spectrum aggregation concerns in such areas where there can be no serious claim that entry and expansion are limited by spectrum scarcity.¹⁷³

In each CMA involved in this transaction, all four national carriers already hold spectrum, and there are other spectrum holders that can deploy their spectrum or make it available for use by other carriers. Therefore, the modest increase in AT&T's spectrum holdings through this transaction does not raise competitive concerns.

VI. RELATED GOVERNMENTAL FILINGS

The Department of Justice will conduct its own review of the competitive aspects of this transaction pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976¹⁷⁴ and the rules promulgated thereunder. The Applicants have submitted a notification form and an associated documentary appendix to the Department and the Federal Trade Commission, and they fully expect that this review will confirm that the transaction does not raise any competitive issues.

There will be regulatory or informational filings in Arizona, California, Hawaii, Louisiana, and West Virginia.

VII. MISCELLANEOUS REGULATORY ISSUES

A. After-Acquired Authorizations

The list of call signs included in each application is intended to include all of the licenses, authorizations, and spectrum leases held by the respective licensees or lessees that are subject to the transaction. However, Leap's licensees or lessees may now have on file, and may hereafter file, additional requests for authorizations for new or modified facilities that

¹⁷³ See Israel Decl. ¶ 46.

¹⁷⁴ 15 U.S.C. § 18a.

may be granted, or it may enter into new spectrum leases before the Commission takes action on these Applications. Accordingly, the Applicants request that any Commission approval of the Applications filed for this transaction include authority for AT&T to acquire control of: (1) any authorization issued to Leap or its subsidiaries while this transaction is pending before the Commission and the period required for consummation of the transaction; (2) any construction permits held by Leap or its subsidiaries that mature into licenses after closing; (3) any applications or lease notifications that are pending at the time of consummation; and (4) any leases of spectrum into which Leap or its subsidiaries enter as lessees while this transaction is pending before the Commission and the period required for consummation of the transaction. Such action would be consistent with prior decisions of the Commission.¹⁷⁵ Moreover, because AT&T is acquiring Leap and all of its FCC authorizations, AT&T requests that Commission approval include any authorizations that may have been inadvertently omitted.

B. Blanket Exemption to Cut-Off Rules

The public notice announcing this transaction will provide adequate notice to the public with respect to the licenses involved, including any for which license modifications are now pending. Therefore, no waiver needs to be sought from Sections 1.927(h), 1.929(a)(2) and

¹⁷⁵ See, e.g., *Sprint/SoftBank Order* ¶ 157; *AT&T/Verizon Order*, 25 FCC Rcd at 8773 ¶ 165; *AT&T/Centennial Order*, 24 FCC Rcd at 13,981 ¶ 170; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21,626 ¶ 275; *Applications for Consent to the Transfer of Control of Licenses & Section 214 Authorizations from S. New Eng. Telecoms. Corp. to SBC Commc'ns, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 21,292, 21,317 ¶ 49 (1998); *Applications of NYNEX Corp. & Bell Atl. Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 19,985, 20,097 ¶ 247 (1997) (“*NYNEX/Bell Atlantic Order*”); *Applications of Pac. Telesis Group & SBC Commc'ns, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 2624, 2665 ¶ 93 (1997); *Applications of Craig O. McCaw & Am. Tel. & Tel. Co.*, Memorandum Opinion and Order, 9 FCC Rcd 5836, 5909 ¶ 137 n.300 (1994) (“*McCaw/AT&T Order*”), *aff'd sub nom. SBC Commc'ns Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995), *recons. in part*, 10 FCC Rcd 11,786 (1995).

1.933(b) of the Commission's rules¹⁷⁶ to provide a blanket exemption from any applicable cut-off rules in cases where the Applicants file amendments to pending applications to reflect the consummation of the proposed transfers of control.¹⁷⁷

C. Trafficking

To the extent any authorizations for unconstructed microwave systems are covered by this transaction, these authorizations are merely incidental, with no separate payment being made for any individual authorization or facility. Accordingly, there is no reason to review the transaction from a trafficking perspective.¹⁷⁸

D. Environmental Impact

As required by Section 1.923(e) of the Commission's rules,¹⁷⁹ the Applicants state that the transfer of control of licenses and leases involved in this transaction will not have a significant environmental effect, as defined by Section 1.1307 of the Commission's rules.¹⁸⁰ A transfer of control of licenses and leases does not involve any engineering changes and, therefore, cannot have a significant environmental impact.

¹⁷⁶ 47 C.F.R. §§ 1.927(h), 1.929(a)(2), 1.933(b).

¹⁷⁷ See, e.g., *Applications of PacifiCorp Holdings, Inc., & Century Tel. Enters., Inc. for Consent to Transfer Control of Pac. Telecom, Inc., a Subsidiary of PacifiCorp Holdings, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 8891, 8915-16, ¶ 45 (1997); *NYNEX/Bell Atlantic Order*, 12 FCC Rcd at 20,091-92 ¶ 234; *McCaw/AT&T Order*, 9 FCC Rcd at 5909 ¶ 137 n.300.

¹⁷⁸ See 47 C.F.R. § 1.948(i) (noting that the Commission may request additional information regarding trafficking if it appears that a transaction involves unconstructed authorizations that were obtained for the principal purpose of speculation); *id.* § 101.55(c)-(d) (permitting transfers of unconstructed microwave facilities that are "incidental to a sale of other facilities or merger of interests").

¹⁷⁹ *Id.* § 1.923(e)(2).

¹⁸⁰ *Id.* § 1.1307.

VIII. CONCLUSION

For the foregoing reasons, the Commission should conclude that the proposed transaction serves the public interest, convenience and necessity, and should expeditiously, and unconditionally, grant these Applications.