

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

In the Matter of)
)
Application of SprintCom, Inc. and Alaska DigiTel,) File No. 0003253513
L.L.C. for Long-Term *De Facto* Transfer Spectrum)
Leasing Arrangement)

MEMORANDUM OPINION AND ORDER

Adopted: January 16, 2009

Released: January 16, 2009

By the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we consider an application filed by SprintCom, Inc. (“SprintCom”) and Alaska DigiTel, L.L.C. (“Alaska DigiTel”) for approval of a long-term *de facto* transfer spectrum leasing arrangement between SprintCom and Alaska DigiTel involving three 10 megahertz broadband Personal Communications Service (“PCS”) licenses held by SprintCom.¹ Pursuant to section 310(d) of the Communications Act of 1934, as amended (“Communications Act”),² and section 1.9030 of the Commission rules,³ we must determine whether SprintCom and Alaska DigiTel (the “Applicants”) have demonstrated that grant of the application would serve the public interest, convenience, and necessity. Based on the record before us, and as explained below, we find that the Applicants have met that burden and grant their application, and we deny the petition to deny filed by ACS Wireless, Inc. (“ACS Wireless”).

II. BACKGROUND

2. *Description of Applicants.* Alaska DigiTel is a limited liability company organized under the laws of the state of Alaska.⁴ The company holds the following licenses: two 15 megahertz Part 24 broadband PCS licenses, each with a coverage area over the entire State of Alaska; a 20 megahertz Part 22 Cellular Radiotelephone Service (“cellular”) license that only covers St. Paul Island, Alaska (which is located in cellular market area (“CMA”) 316 Alaska 2-Bethel); and nine Part 101 microwave licenses.⁵ Alaska DigiTel provides wireless services to more than 32,000 subscribers in and around Anchorage,

¹ Application of SprintCom, Inc. and Alaska DigiTel, L.L.C. for Long-Term *De Facto* Transfer Spectrum Leasing Arrangement, File No. 0003253513 (filed Dec. 10, 2007, amended Jan. 7, 2008) (“Application”).

² 47 U.S.C. § 310(d).

³ 47 C.F.R. § 1.9030.

⁴ Application of AKD Holdings, LLC, Alaska DigiTel, LLC, and GCI, Inc. For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 08-10, *Memorandum Opinion and Order*, DA 08-1882, at ¶ 4 (WTB rel. Aug. 8, 2008) (“*GCI-Alaska DigiTel II Order*”); see also Applications for the Assignment of License from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communication, Inc., WT Docket No. 06-114, *Memorandum Opinion and Order*, 21 FCC Rcd 14863, 14865 ¶ 2 (2006) (“*GCI-Alaska DigiTel I Order*”).

⁵ *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 4. The call signs for these licenses are KNLF297, WPVZ815, WPON879, WQAP303, WQAP304, WQAP305, WQEN574, WQEN575, WQFQ763, WQFQ764, WQFQ765, and WQFQ766.

Mat-Su, Girdwood, Homer, Seward, Soldotna, Fairbanks, and Juneau,⁶ using its all-digital Code Division Multiple Access (“CDMA”) network.⁷ It has roaming relationships with “the major U.S. CDMA wireless carriers.”⁸ Alaska DigiTel also offers a data services bundle to its wireless telephone subscribers, which includes web browsing and access to downloadable content.⁹

3. Alaska DigiTel is a wholly-owned subsidiary of GCI, Inc., which in turn is a wholly-owned subsidiary of General Communications, Inc. (“GCI”), a publicly-traded corporation incorporated under the laws of the state of Alaska and headquartered in Anchorage.¹⁰ On August 8, 2008, the Commission approved the transfer of control of Alaska DigiTel, including 100 percent ownership, to GCI, Inc., subject to conditions.¹¹ On August 18, 2008, GCI, Inc. and Alaska DigiTel consummated that transfer of control.¹² In addition to its interest in Alaska DigiTel, GCI, Inc., directly or through subsidiaries, holds the following spectrum licenses: a 30 megahertz broadband PCS license covering the entire State of Alaska;¹³ twelve 25 megahertz cellular licenses covering a total of 21 communities in different parts of CMA315 Alaska 1-Wade Hampton and CMA316 Alaska 2-Bethel;¹⁴ a Local Multipoint Distribution System (“LMDS”) license that covers Anchorage;¹⁵ as well as a number of other licenses used in support of its operations. In addition, through various subsidiaries, GCI provides local and long distance wireline telephone service, as well as Internet and data communication services, in Alaska.¹⁶ It also owns and operates cable systems throughout Alaska,¹⁷ and has ownership interests in submarine cables used for

⁶ See General Communication, Inc. News Release, “GCI Closes \$29.5 Million Investment in Alaska DigiTel, LLC” (Jan. 4, 2007) (“GCI-Alaska DigiTel News Release”), available at <http://www.gci.com/about/akdclosingpressreleasefinal1.pdf> (last visited Jan. 14, 2009).

⁷ See *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 4; see also http://www.akdigi.com/catalog/extra_info_pages.php?pages_id=4 (last visited Jan. 14, 2009) (“Alaska DigiTel Website”).

⁸ GCI, Inc. Form 8-K at Exhibit 99.1 (filed Mar. 14, 2008) available at <http://idea.sec.gov/Archives/edgar/data/75679/000007567908000004/inc8k030708exhibit991.htm> (last visited Jan. 14, 2009).

⁹ See <http://www.akdigi.com/catalog/wireless-plans-p-73.html?osCsid=eebdae1d4411c4f92906b4e9ca6c310> (last visited Jan. 14, 2009).

¹⁰ *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 2.

¹¹ *Id.* at ¶¶ 2, 23. The *GCI-Alaska DigiTel I Order* had approved GCI, Inc.’s acquisition of a 78 percent non-controlling equity interest in Alaska DigiTel. *GCI-Alaska DigiTel I Order*, 21 FCC Rcd at 14866 ¶ 5. GCI, Inc.’s non-controlling equity interest was subsequently increased to an approximately 82 percent non-controlling equity interest in Alaska DigiTel. *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 3 n.13.

¹² File No. 0003564301 (filed Aug. 29, 2008) (consummation notification).

¹³ Call Sign KNLF298.

¹⁴ One of these licenses, covering four communities on the Aleutian Islands in CMA316 Alaska 2-Bethel, was recently acquired as a result of GCI Communication Corp.’s, a wholly owned subsidiary of GCI, acquisition of Alaska Wireless Communications, LLC. The other 11 licenses, covering nine communities in CMA315 Alaska 1-Wade Hampton and eight communities in CMA316, were recently acquired from the United Companies, Inc.. The Call Signs for the 12 licenses are WPWF379, KNKR275, WPOJ688, WPOJ693, WPOJ694, WPOJ849, WPOJ850, WPOJ851, WPOJ853, WPOJ865, WPOJ867, and WPOL233.

¹⁵ Call Sign WPLM396.

¹⁶ *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 3.

¹⁷ *Id.*

wholesale transport of communications to the Lower 48 States.¹⁸

4. SprintCom is a wholly-owned subsidiary of Sprint Nextel Corporation (hereinafter referred to as “Sprint”).¹⁹ Sprint, a Kansas Corporation, is a publicly-traded holding company organized for the purpose of providing a wide range of wireless and wireline communications services and related businesses through its subsidiaries.²⁰ SprintCom holds the three Part 24 PCS licenses that are the subject of the application. The three 10-megahertz licenses authorize operation, respectively, in the Anchorage Basic Trading Area (“BTA”), Fairbanks BTA, and Juneau-Ketchikan BTA, which in combination cover the entire State of Alaska.²¹

5. *Commission Filings.* The Applicants filed the application on December 10, 2007, and amended it on January 7, 2008. Alaska DigiTel seeks to lease all 10 megahertz of spectrum associated with each of the three subject PCS licenses held by SprintCom. The application was placed on public notice on December 19, 2007.²² Petitions to deny were due on January 2, 2008. ACS Wireless filed a Petition To Deny and Objections on January 2, 2008, urging the Commission to examine closely the underlying lease agreement to evaluate whether GCI seeks to use the proposed spectrum leasing arrangement, and the lease agreement associated with this arrangement, to support anticompetitive conduct.²³ Alaska DigiTel and SprintCom filed a joint opposition to the ACS Wireless Petition,²⁴ and GCI filed a separate pleading in opposition.²⁵ ACS Wireless replied to the oppositions.²⁶

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

6. Pursuant to section 310(d) of the Communications Act²⁷ and the Commission’s secondary markets policies,²⁸ we must determine whether the Applicants have demonstrated that the proposed *de*

¹⁸ *Id.*

¹⁹ Sprint Nextel Corporation Form 602, File No. 0003437010 (May 14, 2008).

²⁰ See Sprint Nextel Corporation Form 10-K, at 1 (filed Feb. 29, 2008) available at <http://idea.sec.gov/Archives/edgar/data/101830/000119312508043559/d10k.htm> (last visited Jan. 14, 2009).

²¹ Call signs KNLH465, KNLH518, and KNLH545.

²² Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and *De Facto* Transfer Lease Applications, and Designated Entity Reportable Eligibility Event Applications Accepted for Filing, *Public Notice*, Rpt. No. 3678 (rel. Dec. 19, 2007).

²³ Petition to Deny and Objections of ACS Wireless, Inc., File No. 0003253513 (filed Jan. 2, 2008) (“ACS Wireless Petition”). In addition, on January 3, 2008, ACS Wireless filed a supplemental exhibit that ACS claims shows that SprintCom is now holding Alaska DigiTel out as the former’s presence in Alaska. Supplemental Exhibit to Petition To Deny and Objections of ACS Wireless, Inc., File No. 0003253513 (filed Jan. 3, 2008).

²⁴ Joint Opposition to Petition To Deny and Objections of ACS Wireless, Inc., File No. 0003253513 (filed Jan. 16, 2008) (“Alaska DigiTel/SprintCom Joint Opposition”).

²⁵ Limited Opposition of General Communication, Inc. to the Petition To Deny and Objections of ACS Wireless, Inc., File No. 0003253513 (filed Jan. 15, 2008) (“GCI Opposition”).

²⁶ ACS Wireless’s Reply to the Joint Opposition of Sprint/DigiTel and Limited Opposition of GCI, File No. 0003253513 (filed Jan. 23, 2008) (“ACS Wireless Reply”).

²⁷ 47 U.S.C. § 310(d).

²⁸ See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604 (2003) (“*Secondary Markets First Report and Order*”); Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets WT Docket 00-230, *Second Report and Order*, (continued....)

facto transfer spectrum leasing arrangement would serve the public interest, convenience, and necessity. The Commission applies to proposed long-term *de facto* transfer spectrum leasing applications the same standard of review that it uses generally in license assignment or transfer of control proceedings.²⁹ In applying our public interest test, we must assess whether the proposed *de facto* transfer spectrum leasing arrangement complies with the specific provisions of the Communications Act,³⁰ other applicable statutes, and the Commission's applicable rules and policies.³¹ If a proposed *de facto* transfer spectrum leasing arrangement does not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.³² The Commission then employs a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.³³ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed

(Continued from previous page)

Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 17503 (2004) ("*Secondary Markets Second Report and Order*").

²⁹ See *Secondary Markets First Report and Order*, 18 FCC Rcd at 20656-20657 ¶¶ 116-119, 20660 ¶ 126, 20667 ¶ 147; *Secondary Markets Second Report and Order*, 19 FCC Rcd at 17516-17519 ¶¶ 25-27; see also Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. For Consent to Transfer Control of Licenses and Authorizations, Applications of Subsidiaries of T-Mobile USA, Inc. and Subsidiaries of Cingular Wireless Corp. For Consent to Assignment and Long-Term De Facto Lease of Licenses, 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 Nos. 04-70, 04-254, 04-323, *Memorandum Opinion & Order*, 19 FCC Rcd 21522, 21542 n.156 (2004) ("*Cingular-AT&T Wireless Order*").

³⁰ Section 310(d), 47 U.S.C. § 310(d), requires that we consider applications for transfer of control as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. See, e.g., Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Memorandum Opinion and Order & Declaratory Ruling*, (rel. Nov. 10, 2008), FCC 08-258, at ¶ 26 & n.136 ("*Verizon-ALLTEL Order*"); Applications of Sprint Nextel Corporation and Clearwire Corporation For Consent to Transfer Control of Licenses, Leases and Authorizations, WT Docket No. 08-94, *Memorandum Opinion and Order and Declaratory Ruling*, (rel. Nov. 7, 2008), FCC 08-259 at ¶ 19 n.69 ("*Sprint Nextel-Clearwire Order*"); *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 12; Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent To Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases, WT Docket No. 07-208, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 12463, 12476-77 ¶ 26 (2008) ("*Verizon-RCC Order*"); Applications of AT&T Inc. and Dobson Communications Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-153, *Memorandum Opinion and Order*, 22 FCC Rcd 20295, 20301 ¶ 10 (2007) ("*AT&T-Dobson Order*").

³¹ See, e.g., *Verizon-ALLTEL Order*, FCC 08-258, at ¶ 26 & n.136; *Sprint Nextel-Clearwire Order*, FCC 08-259 at ¶ 19 n.69; *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 12; *Verizon-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20301 ¶ 10.

³² See, e.g., *Verizon-ALLTEL Order*, FCC 08-258, at ¶ 26 & n.136; *Sprint Nextel-Clearwire Order*, FCC 08-259 at ¶ 19 n.69; *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 12; *Verizon-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20301 ¶ 10.

³³ See, e.g., *Verizon-ALLTEL Order*, FCC 08-258, at ¶ 26 & n.136; *Sprint Nextel-Clearwire Order*, FCC 08-259 at ¶ 19 n.69; *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 12; *Verizon-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20301 ¶ 10.

transaction, on balance, will serve the public interest.³⁴ If the record presents a substantial and material question of fact whether the application would serve the public interest, convenience and necessity, then we must designate the application for hearing under section 309(e) of the Communications Act.³⁵

IV. DISCUSSION

A. Competitive Analysis

7. Background. Consistent with the Commission's practice when reviewing proposed wireless transactions affecting the mobile telephony/broadband market,³⁶ we consider the potential competitive effects associated with this proposed long-term *de facto* transfer spectrum leasing arrangement.³⁷ We begin by defining the relevant product and geographic markets.

8. *Product Market*. In reviewing this proposed spectrum leasing application, we apply the same product market definition for mobile telephony/broadband services as applied by the Commission in recent transactions.³⁸ Although the Commission has determined that there are separate relevant product markets for interconnected mobile voice services and mobile data services, and also for residential services and enterprise services,³⁹ it nevertheless analyzes all of these product markets under the combined market for mobile telephony/broadband service.⁴⁰ Based on consideration of various factors, including the nature of these services and their relationship with each other, the Commission has determined that this approach provides a reasonable assessment of any potential competitive harm resulting from transactions.⁴¹

9. *Geographic Market*. The Commission applies the "hypothetical monopolist test" to relevant geographic markets that are local, are larger than counties, may encompass multiple counties, and,

³⁴ See, e.g., *Verizon-ALLTEL Order*, FCC 08-258, at ¶ 26 & n.136; *Sprint Nextel-Clearwire Order*, FCC 08-259 at ¶ 19 n.69; *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 12; *Verizon-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20301 ¶ 10.

³⁵ 47 U.S.C. § 309(e). See also *Verizon-ALLTEL Order*, FCC 08-258, at ¶ 26 n.136; *Sprint Nextel-Clearwire Order*, FCC 08-259 at ¶ 19 n.69; *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 14; *Verizon-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20301 ¶ 10.

³⁶ See, e.g., *Verizon-ALLTEL Order*, FCC 08-258, at ¶ 40; *Sprint Nextel-Clearwire Order*, FCC 08-259 at ¶¶ 26, 38-40; *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 14; *Verizon-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 31; *AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 15.

³⁷ See *Secondary Markets First Report and Order*, 18 FCC Rcd at 20656-20657 ¶¶ 116-119, 20667 ¶ 147.

³⁸ *Verizon-ALLTEL Order*, FCC 08-258, at ¶¶ 45-47; *Sprint Nextel-Clearwire Order*, FCC 08-259 at ¶¶ 38-45; *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 12; *Verizon-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 26; *AT&T-Dobson Order*, 22 FCC Rcd at 20308 ¶ 10.

³⁹ See *Verizon-ALLTEL Order*, FCC 08-258, at ¶ 45 n. 198; *Sprint Nextel-Clearwire Order*, FCC 08-259 at ¶ 38 n.106; *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 12; *Verizon-RCC Order*, 23 FCC Rcd at 12483-84 ¶ 37; *AT&T-Dobson Order*, 22 FCC Rcd at 20308 ¶ 21.

⁴⁰ See *Verizon-ALLTEL Order*, FCC 08-258, at ¶¶ 45-47; *Sprint Nextel-Clearwire Order*, FCC 08-259 at ¶ 19 n.69; *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 12; *Verizon-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 37; *AT&T-Dobson Order*, 22 FCC Rcd at 20308 ¶ 21.

⁴¹ See *Verizon-ALLTEL Order*, FCC 08-258, at ¶¶ 45-47; *Sprint Nextel-Clearwire Order*, FCC 08-259 at ¶ 19 n.69; *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 12; *Verizon-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 37; *AT&T-Dobson Order*, 22 FCC Rcd at 20308 ¶ 21.

depending on the consumer's location, may even include parts of more than one state.⁴² The Commission uses two sets of geographic areas that effectively may be used to define local markets – Component Economic Areas (“CEAs”) and CMAs.⁴³ Because these two sets of geographic areas come from different sides of the equation – demand in the case of CEAs, supply in the case of CMAs – the Commission finds them to be useful cross-checks on each other and, together, they help ensure that the Commission's analysis does not overlook local areas that require more detailed analysis.⁴⁴

10. *Input Market for Spectrum.* Consistent with the Commission's recent wireless transaction orders, we also examine this transaction in light of the input market for spectrum associated with the provision of mobile telephony/broadband services in the affected markets. In the *Verizon-ALLTEL Order* adopted in November 2008, the Commission determined that the input market would vary depending on the “suitable” spectrum available in the particular market affected by the transaction. Specifically, the Commission found that spectrum suitable for the provision of mobile telephony/broadband services includes approximately 280 megahertz of cellular, broadband PCS, Specialized Mobile Radio (“SMR”), and 700 MHz band spectrum that is available for the provision of mobile telephony services on a nationwide basis,⁴⁵ as well as the 90 megahertz of Advanced Wireless Service spectrum in the 1.7/2.1 GHz band (“AWS-1”) and the 55.5 megahertz of contiguous Broadband Radio Service (“BRS”) in the 2.5 GHz band to the extent such spectrum also is available for the provision of mobile telephony/broadband services.⁴⁶

11. Discussion. When examining the effect of proposed transactions, the Commission applies a two-part initial “screen,” followed by a further case-by-case review of the markets identified by that screen. As discussed in previous wireless transaction orders, the purpose of this initial screen is to eliminate from further review those markets in which there is clearly no competitive harm in today's generally competitive marketplace.⁴⁷ For those markets that are identified by the initial screen, we then

⁴² See *Verizon-ALLTEL Order*, FCC 08-258, at ¶ 49; *Sprint Nextel-Clearwire Order*, FCC 08-259 at ¶ 19 n.69; *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 12; *Verizon-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 38; *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23.

⁴³ The Commission has chosen CEAs and CMAs for its data analysis because both are consistent in order of magnitude with its local market definition and because each brings a different consideration to the analysis. CEAs are designed to represent consumers' patterns of normal travel for personal and employment reasons and may therefore capture areas within which groups of consumers would be expected to shop for wireless service. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURVEY OF CURRENT BUSINESS, February 1995, at 75. In addition, CEAs should be areas within which any service providers present would have an incentive to market – and actually provide – service relatively ubiquitously. Conversely, CMAs are the areas in which the Commission initially granted licenses for the cellular service. Although partitioning has altered this structure in many license areas, CMAs represent the fact that the Commission's licensing programs have to a certain degree shaped the mobile telephony market by defining the initial areas in which wireless providers had spectrum on which to base service offerings, and they may therefore serve as a reasonable proxy for where consumers face the same competitors. See *Verizon-RCC Order*, 23 FCC Rcd at 12484 n.151; *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23; *GCI-Alaska DigiTel I Order*, 21 FCC Rcd at 14876-77 ¶ 27.

⁴⁴ See, e.g., *Verizon-ALLTEL Order*, FCC 08-258, at ¶ 49; *Sprint Nextel-Clearwire Order*, FCC 08-259 at ¶ 19 n.69; *Verizon-RCC Order*, 23 FCC Rcd at 12476-77 ¶ 39; *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23.

⁴⁵ *Verizon-ALLTEL Order*, FCC 08-258, at ¶ 53.

⁴⁶ *Verizon-ALLTEL Order*, FCC 08-258, at ¶¶ 53-55; *Sprint Nextel-Clearwire Order*, FCC 08-259 at ¶¶ 53-55.

⁴⁷ See, e.g., *Verizon ALLTEL Order*, FCC 08-258 at ¶ 75; *Verizon Wireless-RCC Order*, 22 FC Rcd at 12489 ¶ 51; *AT&T-Dobson Order*, 22 FCC Rcd at 20317 ¶ 39; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11547 n.151; *Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 62; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073-74 ¶ 48; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69 ¶¶ 106-109.

conduct, on a market-by-market basis, an analysis of other market factors that pertain to competitive effects, including the incentive and ability of other existing firms to react and of new firms to enter the market, in response to attempted exercises of market power by the merged entity. Ultimately, we must assess whether the combined firm could likely exercise market power in any particular market.⁴⁸

12. The first part of this screen examines changes in the measures of the Herfindahl-Hirschman Index (“HHI”) of market concentration in each affected market, which is calculated based on providers’ subscriber market shares.⁴⁹ This proposed spectrum leasing arrangement did not trigger this HHI-based screen in any market.

13. The second part of this screen examines the input market for spectrum available for the provision of mobile telephony/broadband services in each of the affected markets.⁵⁰ This spectrum aggregation screen varies depending on whether, in addition to the 280 megahertz of cellular, broadband PCS, SMR, and 700 MHz spectrum, there also is AWS-1 and/or BRS spectrum available *locally* in the affected market.⁵¹ In markets in which neither AWS-1 nor BRS spectrum is available, the spectrum screen identifies for further competitive review each market in which the proposed spectrum aggregation would amount to 95 megahertz or more of spectrum.⁵² In other markets, where AWS-1 and/or BRS is in fact available, the Commission applies a higher spectrum screen.⁵³

14. In our spectrum aggregation analysis, we focus on the amount of spectrum within the relevant services and frequency bands that would be attributed post-transaction to GCI as the indirect parent company of Alaska DigiTel. Specifically, we attribute to GCI all of the spectrum licensed to Alaska DigiTel and to GCI’s other direct or indirect subsidiaries. Therefore, throughout the State of Alaska, at least 70 megahertz of spectrum is attributed to GCI.⁵⁴ In addition, with respect to St. Paul Island, we attribute an additional 20 megahertz of spectrum, for a total of 90 megahertz.⁵⁵ Finally, with regard to 21 particular communities that are located in two different CMAs (CMAs 315 and 316), we attribute an

⁴⁸ *Verizon-ALLTEL Order*, FCC 08-258 at ¶ 41; *Verizon Wireless-RCC Order*, 23 FCC Rcd at 12482 ¶ 32; *AT&T-Dobson Order*, 22 FCC Rcd at 20307 ¶ 16.

⁴⁹ *Verizon-ALLTEL Order*, FCC 08-258, at ¶ 41; *Sprint Nextel-Clearwire Order*, FCC 08-259 at ¶ 76; *GCI-Alaska DigiTel II Order*, DA 08-1882, at ¶ 14; *Verizon-RCC Order*, 23 FCC Rcd at 12476-77 ¶¶ 32, 52; *AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 15.

⁵⁰ *Verizon-ALLTEL Order*, FCC 08-258, at ¶ 41; *Sprint Nextel-Clearwire Order*, FCC 08-259 at ¶¶ 53-55, 77.

⁵¹ See *Verizon-ALLTEL Order*, FCC 08-258, at ¶ 41; *Sprint Nextel-Clearwire Order*, FCC 08-259 at ¶ 53. For markets in which only cellular, PCS, SMR, and 700 MHz spectrum is available, and neither AWS-1 nor BRS spectrum is available, the Commission applies a 95 megahertz spectrum screen. For markets in which AWS-1 and BRS spectrum is available, the applicable screen is 145 megahertz. For markets in which AWS-1 is available but BRS is not available, the Commission applies a spectrum screen of 125 megahertz. Finally, for markets in which BRS is available but AWS-1 is not available, the Commission applies a spectrum screen of 115 megahertz. *Verizon-ALLTEL Order*, FCC 08-258 at ¶ 64; *Sprint Nextel-Clearwire Order*, FCC 08-259, at ¶ 74.

⁵² *Verizon-ALLTEL Order*, FCC 08-258 at ¶ 64; *Sprint Nextel-Clearwire Order*, FCC 08-259, at ¶ 74.

⁵³ As noted above, in markets in which only cellular, PCS, SMR, and 700 MHz spectrum is available, and neither AWS-1 nor BRS spectrum is available, the Commission applies a 95 megahertz spectrum screen.

⁵⁴ This 70 megahertz consists of the 30 megahertz of PCS spectrum licensed to Alaska DigiTel throughout the state of Alaska, the 30 megahertz of PCS spectrum throughout the State of Alaska that is indirectly held by GCI through other subsidiaries, and the 10 megahertz of PCS spectrum (in the three different BTAs that, when taken together, cover the State of Alaska) subject to the pending spectrum leasing application.

⁵⁵ The additional 20 megahertz of spectrum attributed for St. Paul Island reflects the 20 megahertz cellular license held by Alaska DigiTel in that area.

additional 25 megahertz of spectrum, for a total of 95 megahertz, to GCI.⁵⁶

15. We next evaluate the availability of AWS-1 and BRS spectrum in each of the markets affected by this proposed transaction to determine the appropriate spectrum screen. We find that there is only one CMA in Alaska – CMA 315 Alaska 1-Wade Hampton – where neither AWS-1 nor BRS spectrum is available for mobile telephony/broadband services.⁵⁷ Accordingly, this is the only CMA subject to a 95 megahertz screen.⁵⁸ Given GCI’s attributed spectrum holdings, we examine the nine communities within CMA315 Alaska 1-Wade Hampton in which we attribute 95 megahertz to GCI.⁵⁹ Following our case-by-case review, we find that the aggregation of 95 megahertz of spectrum in these nine communities in CMA315 Alaska 1-Wade Hampton would not result in competitive harm. Post-lease, there still would be a substantial amount of spectrum – 185 megahertz of cellular, PCS, SMR, and 700 MHz spectrum that is not controlled by GCI – that would be available for the provision of mobile telephony service in the nine communities located in CMA315 Alaska 1-Wade Hampton. Therefore, there is sufficient spectrum available for current as well as potential service providers in these communities. We conclude that spectrum aggregation as a result of this lease is unlikely to result in competitive harms in any of the nine communities in this CMA.

B. ACS Wireless’s Petition to Deny

16. Background. In its petition to deny, ACS Wireless contends that, before determining whether to grant the spectrum leasing application, the Commission should order an evidentiary hearing to investigate whether the Lease Agreement between Alaska DigiTel and SprintCom is directly or indirectly

⁵⁶ Seventeen communities are associated with eleven 25 megahertz cellular licenses that GCI acquired from the United Companies: Alakanuk, Aniak, Bethel, Chevak, Chuathbaluk, Emmonak, Gambell, Hooper Bay, Kipnuk, Kotlik, Mountain Village, Quinhagak, St. Mary’s, Savoonga, Togiak, Toksook Bay, and Tuununak. Applications of General Communications, Inc., and United Companies, Inc., for Transfer of Control Licenses, File No. 0003194143, Exhibit 1 (Public Interest Statement) at 1. Four additional communities in the Aleutian Islands are associated with a 25 megahertz cellular license that GCI acquired from Alaska Wireless Communications: Akutan, Dutch Harbor, Sand Point, and Unalaska. Applications of General Communications, Inc., and Alaska Wireless Communications for Transfer of Control Licenses, File No. 0003258273, Exhibit 1 (Public Interest Statement) at 4.

⁵⁷ With regard to AWS-1 spectrum in CMA 315, it appears that there is required relocation of transmitters or receivers by government users in the CMA. Such relocation is expected to take from six to 46 months. See <http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm> (providing information on AWS relocation, including a relocation schedule and cost summary for AWS-1 relocation). As a result, AWS-1 spectrum in this CMA is not available for deployment by commercial licensees within two years and, accordingly, is not included in the analysis of the competitive effects. AWS-1 spectrum is considered available if the relocation schedule provided by the National Telecommunications and Information Administration (“NTIA”) is 24 months or less. See *Verizon-ALLTEL Order*, FCC 08-258 at ¶ 62; *AT&T-Dobson Order*, 22 FCC Rcd at 20314-15 ¶ 33; see also *id.* at 20313 n.117 (citing Section 3.2 of the DOJ/FTC Merger Guidelines, which states that “a significant market impact from entry must result within two years for the entry to be considered ‘timely,’ and thus potentially a factor ameliorating the enhancement of market power or hindering its exercise.”). With regard to BRS spectrum in this CMA, a transition plan and a completion notification have been filed for only one of the two BTAs that coincide with this CMA. The population of the boroughs that comprise the BTA in which a transition plan and a completion notification have been filed reflects approximately 24 percent of the CMA population; therefore, BRS spectrum is not included in the analysis of the competitive effects for this CMA.

⁵⁸ The respective spectrum screen applicable to each of the other affected CMAs – CMA187 Anchorage, AK, CMA 316Alaska 2-Bethel, and CMA317 Alaska 3-Haines – is higher than 95 megahertz because AWS-1 spectrum and/or BRS spectrum is available for the provision of mobile/telephony services in each of those CMAs. Accordingly, in none of these markets does the applicable spectrum screen indicate the need for further review.

⁵⁹ These nine communities are Alakanuk, Chevak, Emmonak, Gambell, Hooper Bay, Mountain Village, Savoonga, Kotlick, and St. Mary’s.

part of an arrangement whereby GCI, through its relationship with Alaska DigiTel, is anticompetitively tying its wholesale cable transport services, which connect Alaska with the Lower 48 States, to roaming agreements with Sprint.⁶⁰ As part of its argument, ACS Wireless notes that GCI owns two of the three undersea fiber optic cables that connect Alaska to the Lower 48, and states that Lower 48 carriers like Sprint generally rely on existing undersea cable facilities to transport their traffic to and from Alaska rather than constructing their own facilities. Then, asserting arguments similar to those that ACS Wireless made in 2006 in the *GCI-Alaska DigiTel I* proceeding,⁶¹ ACS Wireless expresses concern that GCI could leverage its market power in the transport market to harm competition. It states, for example, that “GCI could offer carriers a ‘sweetheart’ deal on roaming if they also used GCI for wholesale transport.”⁶² Furthermore, ACS Wireless asserts, GCI “could anti-competitively tie wholesale transport through coercion, below-cost pricing of either transport or roaming services, in contract negotiations[,] and through deals offered to integrated wireline and wireless carriers.”⁶³

17. ACS Wireless argues that the following actions are evidence of coordinated conduct between GCI and Alaska DigiTel in their transport and roaming arrangements with Sprint.⁶⁴ First, ACS Wireless states that the proposed spectrum leasing arrangement would give Alaska DigiTel control over Sprint’s spectrum, and that Alaska DigiTel could use that spectrum to carry Sprint’s roaming traffic.⁶⁵ Second, ACS Wireless notes that GCI and Sprint have extended their arrangement under which GCI provides wholesale transport services for Sprint to allow the latter to terminate traffic from the Lower 48 States in Alaska.⁶⁶ ACS Wireless argues that “GCI could have coordinated negotiations on Sprint’s wholesale transport contract directly or indirectly with negotiations on Sprint’s roaming and backhaul agreements in a manner that restricted competition in the major Alaska roaming markets.”⁶⁷ ACS Wireless further contends that the spectrum lease agreement “may be a key part of the overall arrangement, since [Alaska DigiTel] can use the leased spectrum to enhance its capacity to carry Sprint’s roaming traffic.”⁶⁸ ACS Wireless requests that the Commission conduct an investigation of its claims, including a review of

⁶⁰ ACS Wireless Petition at 2-3, 5-6.

⁶¹ *GCI-Alaska DigiTel I Order*, 21 FCC Rcd at 14902-06 ¶¶ 95-103. In the *GCI-Alaska DigiTel I* proceeding, ACS Wireless argued that GCI’s control over Alaska DigiTel could enable GCI to tie its wholesale transport services agreement with Sprint to Alaska DigiTel’s roaming arrangement with Sprint. ACS Wireless specifically requested that the Commission condition approval of the transaction on a bar against GCI’s ability to tie wholesale transport service and roaming services. The Commission rejected that request. It noted that, under certain circumstances, the bundling or tying of two products or services may result in economic efficiencies and consumer benefits. The Commission found that ACS Wireless had failed to present any specific allegations as to GCI’s conduct. The Commission also found that adequate alternative capacity existed in the wholesale transport market to enable companies to purchase such capacity separate from roaming services. *Id.* at 14906-07 ¶¶ 104-106.

⁶² ACS Wireless Petition at 6-7.

⁶³ *Id.* at 7.

⁶⁴ *Id.*

⁶⁵ *Id.* at 7-8.

⁶⁶ *Id.* at 8. In support of its petition, ACS Wireless attaches the declaration of its Director of Corporate Strategy, Robert Doucette, who attests to the truth of the facts alleged in ACS Wireless’s petition. *Id.*, Exhibit A.

⁶⁷ *Id.* at 8-9.

⁶⁸ *Id.* at 9.

Sprint's lease agreement and roaming agreements with Alaska DigiTel, and any other agreements related to the Sprint/Alaska DigiTel arrangement that might reveal possible anticompetitive practices.⁶⁹

18. In their Joint Opposition to the ACS Wireless Petition, Alaska DigiTel and SprintCom argue that the Commission should summarily dismiss ACS Wireless's petition to deny as procedurally defective because it fails to present specific allegations of anticompetitive conduct, as required by Section 309(d) of the Communications Act of 1934, as amended (the "Act"), and section 1.939 of the Commission's rules.⁷⁰ GCI, in its Limited Opposition, similarly contends that the ACS Wireless Petition should be dismissed on procedural grounds for failing to meet the pleading standards as set forth in these provisions.⁷¹ These parties assert that ACS Wireless's contentions are speculative, involve no specific allegations of anticompetitive conduct, and rely on the same line of argument that the Commission previously found to be unsupported speculation in the *GCI-Alaska DigiTel I Order*.⁷² The parties further contend that GCI "has not tied its provision of wholesale transport services to Sprint to the roaming arrangement between Sprint and [Alaska DigiTel]," and there is "no truth to the [ACS Wireless] speculation that GCI is offering Sprint 'below-cost transport prices' in order to 'coerce' Sprint 'away from competitors' roaming services."⁷³ The Applicants attach declarations from the Director of Roaming Services of Sprint, Mr. Wes Coffindaffer, and the President of Alaska DigiTel, Mr. Stephen M. Roberts, to support their contentions.⁷⁴ GCI similarly submits a declaration from William C. Behnke, its Senior Vice President for Strategic Initiatives, who attests that these "factual averments made by GCI pertaining to the (a) competitive situation in Alaska; and (b) the nature of the business arrangements between GCI and Sprint, on the one hand, and between GCI and [Alaska DigiTel] on the other, are true and correct based on ... personal knowledge."⁷⁵

19. The Applicants assert that, when considering petitions to deny, the Commission employs a two-step analysis.⁷⁶ In the first step, they contend, the petitioner must allege specific facts that, if true, would establish that a grant of the application would be *prima facie* inconsistent with the public interest.⁷⁷ According to the Applicants, the Commission can move to the second step "[o]nly if the Commission determines that the petitioner has satisfied the first."⁷⁸ They add that the second part of the test requires

⁶⁹ *Id.* at 9-10.

⁷⁰ Alaska DigiTel/SprintCom Joint Opposition at 1-5, 7 (citing 47 U.S.C. § 309(d) and 47 C.F.R. § 1.939).

⁷¹ GCI Opposition at 7-10.

⁷² Alaska DigiTel/SprintCom Joint Opposition at 2-3; GCI Opposition at 4-5, 8-10. See *GCI-Alaska DigiTel I Order*, 21 FCC Rcd at 14902-06 ¶¶ 95-104. Hence, the Applicants argue that the petition amounts, in effect, to an untimely petition for reconsideration of the *GCI-Alaska DigiTel I Order*. Alaska DigiTel/SprintCom Joint Opposition at 6.

⁷³ Alaska DigiTel/SprintCom Joint Opposition at 11; GCI Opposition at 10-11 (using identical language).

⁷⁴ Alaska DigiTel/SprintCom Joint Opposition, Declarations of Stephen M. Roberts, President and a Director of Alaska DigiTel, LLC, and Wes Coffindaffer, Director of Roaming Services, Sprint Nextel Corporation ("Roberts Declaration" and "Coffindaffer Declaration," respectively).

⁷⁵ GCI Opposition, Attachment 2, Declaration of William C. Behnke, Senior Vice President, Strategic Initiatives, General Communication, Inc. ("Behnke Declaration").

⁷⁶ Alaska DigiTel/SprintCom Joint Opposition at 4-5 (citing *Gencom v. FCC*, 832 F.2d 171 (D.C. Cir. 1987); *Citizens for Jazz on WRVR v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988)).

⁷⁷ Alaska DigiTel/SprintCom Joint Opposition at 4-5.

⁷⁸ *Id.* at 5.

the Commission to determine if, after considering the record, the petition “presents a substantial and material question of fact that requires an evidentiary hearing for resolution.”⁷⁹

20. In its Reply, ACS Wireless argues that its petition presents a reasonable request that the Commission carry out its public interest duties to promote competition in the Alaska marketplace by carefully reviewing a transaction that may be evidence of coordinated anticompetitive conduct.⁸⁰ ACS Wireless further asserts that GCI’s Limited Opposition raises additional concerns, including the need for more complete attestations that would provide additional clarification to establish that GCI has not tied its provision of wholesale transport services to Sprint to the Alaska DigiTel-Sprint roaming arrangement.⁸¹ Finally, ACS Wireless takes the position that the Applicants have made only a “cursory” claim of public interest benefits that would result from the proposed spectrum leasing arrangement, and that the Commission indicated in the *GCI-Alaska DigiTel I Order* that it would examine any evidence of anticompetitive conduct in the Alaskan market in the future to promote a competitive marketplace.⁸²

21. Discussion. We deny the ACS Wireless Petition for the following two reasons: (1) it fails to establish a *prima facie* case that grant of the application would be inconsistent with the public interest; and (2) when considered together with other relevant record material, the petition does not present a substantial and material question of fact whether the grant of the spectrum leasing application would serve the public interest.

22. Section 309(d) and (e) of the Act and section 1.939 of the rules set forth the applicable requirements for a petition to deny and the standards the Commission must employ when reviewing such a petition.⁸³ Section 309(d)(1) states, in pertinent part, that the “petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with [the public interest, convenience, and necessity].”⁸⁴ Section 309(d)(2) provides that, “[i]f the Commission finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact and that a grant of the application would be consistent with [the public interest, convenience, and necessity] ... it shall make the grant, deny the petition, and issue a concise statement of the reasons for denying the petition, which statement shall dispose of all substantial issues raised by the petition.”⁸⁵ Section 1.939 of the Commission’s rules provides that a petition to deny must contain specific allegations of fact sufficient to make a *prima facie* showing that grant of the application would be inconsistent with the public interest.⁸⁶ Section 309(e) of the Act states, *inter alia*, that if “a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding specified in [section 309(a)], it shall formally designate the application for hearing.”⁸⁷

⁷⁹ *Id.*

⁸⁰ ACS Wireless Reply at 1-2.

⁸¹ *Id.* at 3-5.

⁸² *Id.* at 5-7 (citing the concurring statements of Commissioner Cops and Commissioner Adelstein in the *GCI-Alaska DigiTel I Order*).

⁸³ 47 U.S.C. § 309(d), (e); 47 C.F.R. § 1.939.

⁸⁴ 47 U.S.C. § 309(d)(1).

⁸⁵ 47 U.S.C. § 309(d)(2).

⁸⁶ 47 C.F.R. § 1.939.

⁸⁷ 47 U.S.C. § 309(e) (citing 47 U.S.C. § 309(a)).

23. First, the ACS Wireless Petition does not satisfy the requirements of section 309(d)(1) because it does not contain specific allegations of fact that would establish that grant of this spectrum leasing application would be *prima facie* inconsistent with the public interest. We agree with the Applicants and GCI that ACS Wireless's petition amounts to speculation that the long-term *de facto* transfer leasing arrangement between SprintCom and Alaska DigiTel is anticompetitive. ACS Wireless in its petition merely states that the lease agreement "may be a product of [GCI and Alaska DigiTel's] anticompetitive practices,"⁸⁸ and that "GCI could have coordinated negotiations on Sprint's wholesale transport contract directly or indirectly with negotiations on Sprint's roaming and backhaul agreements in a manner that restricted competition in the major Alaska roaming markets."⁸⁹ In its petition, ACS Wireless makes no specific allegations of fact about GCI's wholesale transport services or Sprint's and Alaska DigiTel's provision of roaming services that show that these entities are currently engaged in tying these services. It offers up only unsupported speculation as to possible anticompetitive interpretations of the actions of GCI, Sprint, and Alaska DigiTel. ACS Wireless's failure to support its claims with specific allegations of fact falls far short of its obligations under section 309(d)(1) of the Act and renders its petition to deny defective.

24. Second, even if ACS Wireless had established a *prima facie* case that grant of the subject spectrum leasing application would be inconsistent with the public interest, we also find the ACS Wireless Petition must fail because, after considering the petition and ACS Wireless's other pleadings as well as the other relevant record documents, there is no substantial and material question of fact as to whether the grant of the spectrum leasing application would serve the public interest. In contrast to ACS Wireless's unsupported speculation that GCI will tie its provision of wholesale transport services to Sprint with the roaming arrangements involving Sprint and Alaska DigiTel in order to harm competition in roaming services, GCI, Alaska DigiTel, and SprintCom have made specific statements to rebut ACS Wireless's claims. As noted above, in its Limited Opposition, GCI states it "has not tied its provision of wholesale transport services to Sprint to the roaming arrangement between Sprint and [Alaska DigiTel]."⁹⁰ GCI further states there is "no truth to the [ACS Wireless] speculation that GCI is offering Sprint 'below-cost transport prices' in order to 'coerce' Sprint 'away from competitors' roaming services."⁹¹ In support of these statements about the nature of the arrangements involving Alaska DigiTel, GCI, and Sprint, these entities attached declarations from managers who attest that these statements about the companies' business arrangements are true.⁹² In light of these declarations and considering that ACS Wireless has offered no specific facts that challenge the accuracy of these statements of fact in the GCI Limited Opposition and the Alaska DigiTel/SprintCom Joint Opposition, we reject ACS Wireless's claims.

25. In its reply, ACS Wireless faults the Behnke Declaration for attesting to only the competitive situation in Alaska and the business relationships between GCI and Sprint and between GCI and Alaska

⁸⁸ ACS Wireless Petition at 7 (emphasis added).

⁸⁹ *Id.* at 8-9 (emphasis added).

⁹⁰ GCI Opposition at 10; *see also* Alaska DigiTel/SprintCom Joint Opposition at 11.

⁹¹ GCI Opposition at 11; *see also* Alaska DigiTel/SprintCom Joint Opposition at 11. We note that the Commission considered a similar claim of predatory pricing by ACS Wireless in the *GCI-Alaska DigiTel I Order*. In rejecting the claim, the Commission reasoned that it is unlikely that such a strategy would succeed "since Dobson and ACS Wireless both have extensive network coverage and have more subscribers than GCI and Alaska DigiTel combined," and it is "highly unlikely that either carrier could maintain an artificially low price for a sufficient period of time to drive out either Dobson or ACS Wireless." *GCI-Alaska DigiTel I Order*, 21 FCC Rcd at 14908 ¶ 108.

⁹² GCI Opposition, Attachment 2, Behnke Declaration; Alaska DigiTel/SprintCom Joint Opposition, Roberts Declaration and Coffindaffer Declaration.

DigiTel.⁹³ According to ACS Wireless, Mr. Behnke's failure to state specifically that GCI has not tied its provision of wholesale transport services to Sprint to the roaming arrangements between Sprint and Alaska DigiTel requires further inquiry from the Commission. As Mr. Behnke's Declaration is attached to GCI's Limited Opposition, it is apparent that he is attesting to the truth of the statements made in that document, which include the statement that "GCI has not tied its provision of wholesale transport services to Sprint to the roaming arrangement between Sprint and [Alaska DigiTel]."⁹⁴ Therefore, we do not find any merit to ACS Wireless's challenge to Mr. Behnke's Declaration.

26. If, in the future, there are specific allegations of facts that would show Sprint, Alaska DigiTel, or GCI are indeed engaging in unlawful practices in the provision of roaming services, ACS Wireless can file a complaint, under Section 208 of the Communications Act, with the Commission. In August 2007, the Commission adopted an order in which it clarified that automatic roaming is a common carrier obligation for Commercial Mobile Radio Service (CMRS) carriers.⁹⁵ Therefore, CMRS carriers must provide roaming services to other carriers upon reasonable request and on a just, reasonable, and non-discriminatory basis pursuant to sections 201 and 202 of the Communications Act.⁹⁶

C. Public Interest Benefits

27. In addition to assessing the potential competitive harms associated with the proposed Alaska DigiTel-SprintCom spectrum leasing arrangement, we also consider whether the proposed lease is likely to generate verifiable, transaction-specific public interest benefits.⁹⁷ In doing so, we ask whether the proposed spectrum leasing arrangement would result in demonstrable and verifiable benefits to consumers that would not be pursued but for the proposed arrangement.⁹⁸

28. The Applicants contend that the proposed *de facto* transfer spectrum leasing arrangement "will serve the public interest by allowing Alaska DigiTel to expand the robustness of its wireless telecommunications network to provide high quality, advanced telecommunications services that achieve good coverage throughout the area."⁹⁹ ACS Wireless does not challenge the contention that the proposed leasing arrangement will result in these public interest benefits.

29. We find that the proposed transaction may result in the transaction-specific public interest benefits that the Applicants claim and could result in Alaska DigiTel being a more effective competitor. Although the Applicants did not provide sufficient details and documentation of claimed benefits to enable us to conclude with certainty that public interest benefits will occur, we accept a lesser showing to approve a long-term *de facto* transfer leasing arrangement as consistent with the public interest when, as in this case, potential harms appear unlikely and insubstantial.

⁹³ ACS Wireless Reply at 4.

⁹⁴ GCI Opposition at 10.

⁹⁵ In the Matter of Roaming Obligations of Commercial Mobile Radio Service Providers, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817, 15818-19 ¶ 2 (2007), petitions for recon. pending.

⁹⁶ 47 U.S.C. §§ 201, 202.

⁹⁷ See, e.g., *Verizon-ALLTEL Order*, FCC 08-258, at ¶ 114; *Sprint Nextel-Clearwire Order*, FCC 08-259 at ¶ 113; *Verizon-RCC Order*, 23 FCC Rcd at 12504 ¶ 91; *AT&T-Dobson Order*, 22 FCC Rcd at 20330 ¶ 73.

⁹⁸ See, e.g., *Verizon-ALLTEL Order*, FCC 08-258, at ¶ 114; *Sprint Nextel-Clearwire Order*, FCC 08-259 at ¶ 113; *Verizon-RCC Order*, 23 FCC Rcd at 12504 ¶ 91; *AT&T-Dobson Order*, 22 FCC Rcd at 20330 ¶ 73..

⁹⁹ Application, Exhibit 1 at 1-2.

V. CONCLUSION

30. In conclusion, based on the record before us, we find that the Applicants have demonstrated that the proposed long-term *de facto* transfer spectrum leasing arrangement would serve the public interest, convenience, and necessity. Accordingly, the Wireless Telecommunications Bureau grants the application to enter into the spectrum leasing arrangement.

VI. ORDERING CLAUSES

31. Accordingly, having reviewed the application, the petition, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the application for the long-term *de facto* transfer spectrum leasing arrangement between SprintCom and Alaska DigiTel, L.L.C., is GRANTED.

32. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petition to Deny the application for the long-term *de facto* transfer spectrum leasing arrangement between SprintCom and Alaska DigiTel, L.L.C filed by ACS Wireless, Inc. is DENIED for the reasons stated herein.

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

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

FEDERAL COMMUNICATIONS COMMISSION

James D. Schlichting, Acting Chief
Wireless Telecommunications Bureau