2021 WL 950627 (Del.Ch.) (Trial Motion, Memorandum and Affidavit)

Chancery Court of Delaware.

In re CELLULAR TELEPHONE PARTNERSHIP LITIGATION.

No. 6885-VCL.

March 9, 2021.

**Defendants' Opening Post-trial Brief on the Asset Sale Transactions**

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THIS FILING APPLIES TO ALL COORDINATED ACTIONS

Dated: March 9, 2021

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PRELIMINARY STATEMENT

The Court tried this action over five days, heard testimony from seven live witnesses, and admitted over 3,000 exhibits and 41 deposition transcripts. The evidence shows that when the AT&T Mobility LLC (“Mobility”) affiliated Defendants exercised contractual rights to bring about asset sale transactions that resulted in the dissolution of 13 partnerships (the “Partnerships”), they did so for a proper purpose, thoughtfully, fairly, and after taking reasonable steps to ensure a fair price was paid.

Mobility took this action to simplify its structure and improve operational efficiency. It retained a valuation expert with deep wireless experience from a preeminent firm, PricewaterhouseCoopers (“PwC”), to assess fair value of each Partnership. It then fully cooperated in PwC's valuation process-providing PwC all available information needed to value the businesses. PwC independently determined a fair value of each Partnership, values that Mobility did not influence or attempt to change. Mobility took PwC's valuations “as is” and embarked on a process, marked by full disclosure and permitted by the Partnership Agreements, to purchase all of the assets and liabilities of the Partnerships at fair value (the “Transactions”).

As the Court previously explained, “[a]ction taken by a fiduciary is ‘twice-tested’ ” and viewed through two lenses: a legal lens (whether the action was permitted by governing statutes and agreements) and an equitable lens (whether the action complies with fiduciary duties). Trans.ID,51303817, ¶1. The Court has already found that the Partnership Agreements permitted the Transactions. *Id.,¶¶7-* 9; Trans.ID,64221315; *see also* Trans.ID,66085878 (“PTO”),pp.6-8. The remaining issue is whether “AT&T breached its duty of loyalty as a partner and as the party controlling the Partnerships by engaging in the equivalent of a freeze-out transaction on unfair terms.” Trans.ID,66105679,¶4(d) (defining “Freeze-out Issue”).

Mobility satisfied its fiduciary duties regarding the Transactions under the governing “entire fairness” standard. To prove the Transactions were the product of both fair dealing and fair price, Mobility presented reliable testimony and concrete expert analyses firmly grounded in real-world industry experience. PwC's valuations were corroborated at trial by leading wireless industry valuation expert Carlyn Taylor of FTI Consulting. Taylor combined a discounted cash flow (“DCF”) analysis and two market approaches, rooted in management's projections and her own wireless expertise, in determining a range of fair values for each Partnership. The Plaintiffs' trial evidence was nothing of the kind. Their experts lacked industry experience and their bloated valuations collapsed upon first contact with real-world events, testimony, and data.

Mobility met its burden to prove entire fairness. Plaintiffs received a fair price following a fair process, and their challenge to the Transactions should be rejected.

**FACTUAL BACKGROUND**[**1**](#co_tablefootnoteblock_1_1)

**I. Origin and Nature of the Partnerships.**

The Partnerships were formed in the 1980s to operate cellular telephone networks in small, non-contiguous geographic markets. PTO,¶7; JX2664 (Partnerships' geographic markets highlighted in green); Wages.Trial.Test., 19:7-10. Except for Reno, the Partnership areas are “basically smaller communities around larger cities.” Taylor.Trial.Test.,699: 16-700:1.

Minority partners, including Plaintiffs, obtained an interest in the Partnerships through Federal Communications Commission (“FCC”) “license” lotteries. PTO,¶4. In 2009, the 13 Partnerships represented 1.29% of Mobility subscribers, JX2161, and at the time of the Transactions, Plaintiffs owned approximately 2.4% of the Partnerships, calculated on a weighted average based on the Partnerships' Transaction values. JX2419,p.50,n.135; PTO,¶¶9-10 (Plaintiffs' and AT&T Mobility Wireless Operations Holdings LLC's (“Holdings”) ownership interest in Partnerships).

From inception, each Partnership had a majority partner. Wages.Trial.Test.,119:11-15. Majority ownership shifted through the years. *See* JX2634. By 2009, Mobility affiliates were majority partners of 12 of the 13 Partnerships. *Id.;* Wages.Trial.Test.,119:16-19. In 2010, a Mobility affiliate acquired the majority interest in Las Cruces from Verizon. JX2634; Wages.Trial.Test.,122:2-16.

**2. Partnership Management and Operations.**

Each Partnership was “a mini wireless business within the larger AT&T Mobility business.” Teske.Trial.Test.,526:22-527:1. Each was governed by a Partnership Agreement that provided for an executive committee comprised of two majority partner representatives and one minority partner representative. PTO,¶24; Wages.Trial.Test.,125:15-22. The Partnership Agreements permitted the executive committees to delegate all or any portion of their responsibilities to affiliates of a partner. PTO,¶¶24-31; Wages.Trial.Test.,126:2-15. Years before the Transactions, the executive committees delegated management of the Partnerships to the majority partner or its affiliates. *See, e.g.,* JX0119.

The Partnerships were managed “the same way the rest of Mobility was managed,”[2](#co_tablefootnoteblock_2_1) and treated consistently with Mobility's wireless business as a whole. Teske.Trial.Test.,527:2-14. The Partnerships thus benefitted from unique opportunities like exclusivity to the Apple iPhone when it launched in 2007 and “leverage in ... negotiations with network equipment providers, handset manufacturers, tower companies, retail distribution agreements.” Id.,527:15-528:3; *see also* Stephens.Trial.Test.,16:12-19:3 (describing buying power arising from AT&T's national footprint; interconnection agreements; iPhone exclusivity; and AT&T management and personnel that performed services, such as tax and network engineering, for Partnerships). These opportunities-which the Partnerships did not pay for-enabled the Partnerships to compete against other national providers at the same level as Mobility.

**3. Partnership Accounting.**

One responsibility the executive committees delegated to Mobility's affiliates was accounting for the Partnerships' operations. Mobility's Partnership Accounting group provided those services, with support from other accounting departments. Stephens.Trial.Test.,19:10-22.[3](#co_tablefootnoteblock_3_1)

The Partnership Accounting group consisted of experienced personnel whose philosophy was that all revenues and expenses from each market had to be attributed or allocated to market-level entities, including the Partnerships. JX2419,pp.56-57. As Teske explained:

Greg Hall [Mobility's controller] was always very, very emphatic in spreading the religion among his teams and his counterparts that we had partnerships within AT&T Mobility and that they needed to remember that, and that decisions that they might make, you know, could in some way, shape, or form impact our accounting at a partnership level.

Teske.Trial.Test.,533:12-19; *see also* JX2419,p.133; Stephens.Trial.Test.,15:20-24 (noting goal was to treat Partnerships fairly); Hall.Trial.Test.,1015:7-10 (“I made sure everyone knew, that reported to me, that allocations and particular-the impact on partnerships was very important.”).

Partnership Accounting accomplished these goals by treating the Partnerships as “independent entities” from an accounting perspective, Stephens.Trial.Test.,22:1-10, establishing a general ledger for each Partnership, Teske.Trial.Test.,528:16-529:3, and then attributing and allocating revenues and expenses to the Partnerships' ledgers. JX2419,p.59. To ensure accuracy, Mobility created systems and procedures for determining which revenues and expenses should be attributed and allocated to market-level companies, including the Partnerships. *Id.,p.57.* Most revenue was attributed directly to a particular market because each subscriber is tied to a specific market in Mobility's accounting and billing systems such that when subscribers pay for services, the revenue is recorded in that market's general ledger. Hall.Trial.Test.,1021:11-1022:2; Taylor.Trial.Test.,735:11-24. Costs, in comparison, were typically allocated because they could not be connected to a particular market. Hall.Trial.Test.,1022:3-16. The attribution and allocation processes and the financial statements arising from that process complied with Generally Accepted Accounting Principles (“GAAP”). JX2419,pp.56-57; Teske.Trial.Test.528:10-15.

Mobility's accounting practices were subject to external and internal review. Externally, the accounting practices of the overall wireless business were reviewed by AT&T's independent auditor, the FCC, state-level regulators, and via tax filings and tax reporting. Stephens.Trial.Test.,16:2-11,22:11-19,23:18-25:4. Because some of the Partnerships had independent audit requirements, external auditors reviewed Mobility's attribution and allocation methodologies. *Id.,23:18-24:3.* Any changes arising from an individual Partnership audit were applied to all Partnerships. Id.,24:9-19.

Mobility's accounting and finance teams performed internal oversight of partnership accounting practices. *See* JX2419,p.56 (“[O]ther checks and balances were at work within the organization that would ensure revenues were allocated appropriately.”); Hall.Trial.Test.,1024:11-1025:23 (describing groups within Mobility that reviewed partnership allocations and financial results). For example, the accounting teams held semi-annual meetings to review allocation methodologies for accuracy and fairness. JX2419,pp.60-61; Teske.Trial.Test.,531:11-23; Hall.Trial.Test.,1030:11-1031:8. Representatives from each functional accounting team attended these meetings to walk through how allocations functioned and written meeting minutes were provided to Mobility's outside auditor. JX2419,p.61; Teske.Trial.Test.,531:11-532:3; Hall.Trial.Test.,1030:24-1033:17 (describing allocation review meetings); JX1296 (exemplar allocation review meeting minutes); Hall.Trial.Test.,1033:21-1048:23 (explaining allocations spreadsheet included with minutes).

In addition, each year Mobility created reports regarding unallocated revenues and expenses held at headquarter-level companies. The objective was to determine if any unallocated amounts needed to be allocated. JX2419,p.68,n.186. The Court-appointed Special Master found there was “relatively little” unallocated revenue and contra-expense and that often unallocated expenses exceeded unallocated revenues and contra-expenses. *Id.,p.69.*

Many individuals throughout Mobility had an interest in ensuring the accuracy of partnership accounting. The Partnerships were part of larger business regions with leaders who were highly motivated to ensure revenues were credited properly because it affected their targets and compensation. Id.,pp.61-62; Hall.Trial.Test.,1013:23-1024:10.

If any anomalies were discovered, the Partnership Accounting group would investigate and make all necessary changes to ensure Partnership financial statements were accurate. Teske.Trial.Test.,688:2-16; Hall.Trial.Test.,1014:22-1015:17,1071:20-1072:19. Whenever there was uncertainty regarding treatment of revenue or expense, Mobility's philosophy was to adopt the approach that favored the Partnerships. Hall.Trial.Test.,1057:4-14 (“If there was any doubt ... our general rule was to bias in favor of the partnership.”); Wages.Trial.Test.,513:9-19 (“[T]ie goes to the minority partner if we didn't have a ... better, clearer, way to differentiate between the decision.”).

The Special Master took a deep dive into Partnership Accounting and determined Mobility had in place processes, procedures, and outside auditors to ensure completeness and accuracy. These safeguards ensured that revenues and expenses were attributed or allocated appropriately to hundreds of market-level entities, including the Partnerships, in accordance with good management practices and GAAP. JX2419,pp.55-56. The Special Master's report was adopted as a “decision of the Court.” Trans.ID,62522243; PTO,p.7.

**4. Partnerships Financials.**

Partnership financial statements were distributed to minority partners on an annual basis and included metrics like revenues earned and expenses incurred. Teske.Trial.Test.,528:16-529:7; JX2419,pp.60,137.

**a. Revenue.**

**(i) Subscriber Revenue.**

As reflected in Partnership financial statements, most Partnership revenue was “subscriber revenue,” fees earned from four types of subscribers: postpaid, prepaid, reseller, and connected device subscribers. Taylor.Trial.Test.,714:2-22. Because average revenue per user (“ARPU”) varies by subscriber type,[4](#co_tablefootnoteblock_4_1) a Partnership's subscriber mix impacted that Partnership's overall ARPU. Id.,736:10-18.

Partnership subscribers were tracked by “NPA-NXX,” which is the first six digits of a phone number (commonly, “area code” and “local exchange”). Wages.Trial.Test.,348:22-349:20; JX0643,Bremerton\_Consol\_00048282 (“Customers are associated with the Partnership based on assigned mobile phone numbers.”). Each Partnership was assigned unique NPA-NXX number blocks and a Partnership's subscriber received an NPA-NXX within those blocks. Wages.Trial.Test.,350:1-351:24. The NPA-NXX was then used to record network usage, bill the subscriber, and determine roaming activity. *E.g.* JX0118,CTPL-00036111 (Partnership responsible for roaming charges arising “from use of cellular telephones containing any number within any of [Partnership's] NPA-NXX ranges.”).

Becoming and remaining a Partnership subscriber was driven by subscriber decisions. In this regard, “the customer chooses the market in which he wishes to sign up.” JX2681,CTPL-00036361. In the early years of the wireless business, Partnership stores could only activate subscribers using an NPA-NXX assigned to the Partnership. Wages.June.19.2019.Dep.Tr.,167:2-17.[5](#co_tablefootnoteblock_5_1) As the wireless business advanced, new subscribers were asked to supply their place of primary use (“PPU”) and were assigned an NPA-NXX associated with the market they identified. Wages.Apr.30.2014.Dep.Tr.,87:17-88:19. Once someone became a subscriber of a particular market, that person remained a subscriber of that market unless she changed her NPA-NXX. Wages.July. 11.2019.Dep.Tr.,259:6-20. For example, if a Bremerton subscriber moved to Melbourne and decided to keep her phone number, the subscriber remained a Bremerton subscriber. *Id.*

Tracking subscribers by NPA-NXX is the standard wireless industry practice, including within the Partnerships. Taylor.Trial.Test.,710:10-15; Musey.Trial.Test.,1248:8-1250:4.[6](#co_tablefootnoteblock_6_1) It is an objective method that is commercially reasonable and fair to all relevant markets. Using the example of the Bremerton subscriber who moved to Melbourne, Bremerton would have incurred the “big expense” of up-front activation costs (e.g., phone subsidies, activation commissions), and was entitled to recoup those costs and earn future profit through the future net revenue stream from monthly recurring revenue/expenses. Musey.Trial.Test.,1262:1-10. But even after the subscriber's move, this would not deprive other markets of their fair share of revenue. To the extent the subscriber used her phone on any other market's network, the other market would be compensated for the use by receiving roaming revenue from Bremerton. Taylor.Trial.Test.,711:12-18. So, Melbourne, the subscriber's new residence, would be compensated for the Bremerton subscriber's use of its network, while recurring costs, which are typically allocated, would be allocated to Bremerton, not Melbourne. There is no evidence suggesting that subscriber metrics would be meaningfully different or that Partnership financials would be substantially altered if subscribers were tracked by a different metric. Taylor.Trial.Test.,710:16-713:3,715:2-7.

Because of the nature of NPA-NXX block assignments and the fact that Mobility was unable to assign a block to more than one market, individual subscribers could not be moved from one market to another. *See* Hall.Trial.Test., 1109:14-1110:2; JX3606,p.1. Moving individual subscribers across markets also would deprive activating markets of the ongoing subscriber revenue described above. Hall.Trial.Test.,1128:7-11. On the few occasions when issues arose with NPA-NXX mapping, Mobility's accounting group took steps to remedy the issue by moving entire NPA-NXX blocks to benefit the Partnerships. *See* id.,1113:23-1114:6 (describing such an occasion).

**(ii) Roaming Revenue.**

Another substantial Partnership revenue source was roaming revenue (i.e., outcollect), generated when non-Partnership subscribers used the Partnership's network. Taylor.Trial.Test.,750:13-751:4; JX2463,p.46. There are two types of roaming revenue-intercarrier and intracarrier. *Id.* Intercarrier roaming revenue was generated when subscribers from other carriers (e.g., T-Mobile) used a Partnership's network. *Id.,750:20-24.* Intracarrier roaming revenue arose when an AT&T-branded subscriber who was not a Partnership subscriber used a Partnership's network. Id.,750:17-20.[7](#co_tablefootnoteblock_7_1) Intracarrier roaming constituted the vast majority of the Partnerships' roaming revenue. Id.,751:5-13.

**(iii) Other Revenue.**

The Partnerships' remaining revenues were minor. *See, e.g.,* JX2463,p.142 (exemplar Partnership P&L). Equipment revenue included new subscriber and existing subscriber purchases of phones or accessories. Taylor.Trial.Test.,758:9-19. “Other Revenue” included items such as advertising, handset insurance commissions, warranty revenue and repairs, and regulatory revenue. *Id.,757:18-* 758:1.

**(iv) Non-Traditional Revenue.**

In the relevant time period, both before and after the Transactions, non-traditional revenue-revenue that did not flow from traditional phone services-was insignificant.

For example, Connected Device revenue was small. JX2419,p.76. What revenue existed was properly allocated to the Partnerships, *id.,p.66,* and was “included in the financial results and financial forecasts provided to PwC for the purpose of preparing the valuations of the Partnerships.” *Id.,p.73.* Specifically, “revenues from Connected Devices were incorporated into AT&T's 10-year plan projections that were shared with and relied upon by PwC,” *id.,* and as a result, “PwC included revenues from Connected Devices in the appraisals of the Partnerships and [did] not seem to have significantly discounted the economic effect of them.” *Id.,p.75.*

Revenue from the sale or use of data was virtually non-existent. Data was used internally to improve the network and enhance the customer experience. JX2419,pp. 108-116. “Big Data” had not yet launched; the few commercial projects while the Partnerships were in existence were small and unsuccessful. Id.,pp.84-88.

**b. Expenses.**

Partnership expenses included network, roaming (arising when Partnership subscribers roam outside the Partnership network), and general and administrative expenses. *See, e.g.,* JX2463,p.142 (exemplar Partnership P&L). To the extent an expense could be directly attributed (e.g., phone subsidies for Partnership subscribers), it would be directly charged to the appropriate Partnership. JX2419,p.59; Taylor.Trial.Test.,758:19-24. However, most network and overhead expenses were allocated. *See id.,764:8-765:7,* 708:2-14.

**5. Streamlining Efforts/Project LESS.**

Accounting for the Partnerships as independent entities was challenging. Teske.Trial.Test.,528:16-533:5. The time and effort involved did not add value to the business or enhance the customer experience. Stephens.Dep.Tr.,67:11-22; Stephens.Trial.Test.,26:8-16.

Because Mobility did not wholly own the Partnerships, Mobility personnel spent considerable time and effort tracking discrete items to ensure the Partnerships received their fair share of revenue and expenses. Hall.Trial.Test.,1011:7-21; Stephens.Trial.Test.,25:16-24. This was cumbersome. Stephens.Trial.Test.,25:16-26:7; Teske.Trial.Test.,532:15-533:5; Hall.Trial.Test.,1013:1014:21.

Partnership-specific audit and tax reporting requirements created additional burdens. Partnership audits were particularly time-consuming because of the Partnerships' low materiality threshold. Stephens.Trial.Test.,23:18-25:4; Hall.Dep.Tr.,71:19-72:20; Teske.Trial.Test.,529:8-530:13; *see also* JX0616,CTPL-00143935-6 (November 2009 presentation describing audit and tax costs associated with accounting for partnerships). Because the Partnerships were geographically diverse, Mobility had to file multiple state tax returns and comply with multiple local sales tax laws, in addition to complying with K-l reporting requirements. Stephens.Trial.Test.,22:20-23:17.

Mobility, along with AT&T as a whole, consistently searched for ways to simplify and streamline its structure:

[I]n general terms, the more complicated your organizational structure is, the more inefficient your processes are. So, as a result of many, many acquisitions and significant organic growth, we had become a very complex, more complex, company. And so we were always looking for ways to streamline and become more efficient ... -- in our business.

Hall.Dep.Tr.,68: 1-69:17. As early as 2000, AT&T implemented business simplification efforts through Project LESS (Legal Entity Structure Simplification). Stephens.Trial.Test.,27:7-10; Stephens.Dep.Tr.,66:7-21. Project LESS was designed to address inefficiencies and administrative burdens, eliminate unnecessary costs and entities, and simplify AT&T's accounting, tax, and organizational structure. Hall.Trial.Test., 1073:1-11; Stephens.Dep.Tr., 153:4-154:24. Given the burdens associated with managing the Partnerships, they were logical candidates for Project LESS. Stephens.Trial.Test.,26:17-23; Teske.Trial.Test.,533:6-534:7.

**a. Initial Partnership Streamlining Discussions.**

Discussions about reducing partnership inefficiencies began in 2006, but gained more attention in 2009. Stephens.Dep.Tr.,67:4-22; Stephens.Trial.Test.,26:17-23,32:23-33:22.

In 2007/2008, members of AT&T's corporate development team considered a streamlining effort that contemplated buying out the minority interests in certain Partnerships and other entities. Teske.Trial.Test.,534:8-535:2. They prepared a presentation regarding buyout opportunities for then-CFO Pete Ritcher in February 2008. *Id.,535:11-21.* The presentation identified various buyout rationales, including eliminating partnership management and accounting burdens as well as value leakage from Mobility's “tie goes to the partner” philosophy. JX0347,CTPL-00188706. The presentation also included simple EBITDA-multiple estimates regarding the value of 18 entities (including 9 of the 13 Partnerships)[8](#co_tablefootnoteblock_8_1) and high-level estimates of distributions to minority owners in those 18 entities (again, a list not aligned with the Partnerships). Id.,CTPL-00188709; Teske.Trial.Test.,535:3-9.

The February 2008 initiative did not garner management support. Teske.Trial.Test.,535:18-536:3. No further notable activity took place to simplify AT&T's partnership structure until Fall 2009. *Id.,536:7-11.*

**b. Late 2009 Streamlining Efforts.**

In late 2009, as a part of a company-wide initiative, Mobility revisited simplification efforts related to the Partnerships. *Id.,536:12-23.* The 2009 effort was led by individuals affiliated with Project LESS, with Project LESS manager Debbie Dial reporting to AT&T's then-new-CFO, John Stephens. Stephens.Trial.Test.,34:9-14; Teske.Trial.Test.,536:24-537:15; Wages.Trial.Test.,191:18-192:1.

At Dial's direction, Teske, Wages, and others collected information about partnership governance and administrative costs, and created a detailed spreadsheet identifying and analyzing the administrative savings of at least ten streamlining options. *See* Teske.Trial.Test.,536:18-23,537:19-538:4; Wages.Trial.Test.,190:8-191:7,193:22-195:3; JX0587,Cols.C-D (identifying contributors and evaluation items), Cols.F-X (identifying “Options for Mobility Partnership Restructuring”).

The Project LESS team used the compiled information to create a presentation for Stephens in November 2009. This presentation identified the administrative challenges caused by Mobility's partnerships and the costs, including accounting, audit, and tax expenses, that could be reduced under multiple transaction scenarios. JX0616,CTPL-00143935-8; *see also* Teske.Trial.Test.,538:5-541:3 (purpose of analysis was to “present alternatives to John Stephens”). A decision was made to continue exploring buyout transactions, and Stephens authorized Hall and Teske to engage a third party valuation firm to determine the fair value of the entities being considered for buyouts. Teske.Trial.Test.,544:23-545:7.

**6. PwC Valuation Process.**

After obtaining Stephens's authorization, Mobility contacted several respected valuation firms. Hall.Trial.Test.,1075:21-1076:1,1077:4-9; Stephens.Trial.Test.,51:15-17. When evaluating the firms:

Independence was certainly key. Expertise. Understanding the valuation theory, valuation methodologies. And it was also important to us to have somebody who understood the wireless business, the industry as a whole, and also our business specifically. Teske.Trial.Test.,546:11-16. Ultimately, Mobility chose PwC. Id.,545:10-14. Mobility was confident in PwC's ability to provide a quality independent valuation. *See* Stephens.Trial.Test.,48:14-49:1,49:16-50:4; Teske.Trial.Test., 545:10-23, 546:21-547:24; Hall.Trial.Test.,1074:15-1075:20. Mobility had experience with project leader Aaron Gilcreast from past transactions, Hall.Trial.Test.,1077:18-1079:3, and that experience confirmed Gilcreast's independence, as Hall explained when asked whether Gilcreast's independence was a concern:

No, because I saw him in action, where he got challenged by some of our senior executives on part of his valuation work on AT&T Wireless that they weren't happy with. And I saw him stand up to that and, you know, handle it very professionally. He just said, okay, if I'm missing information, please provide it. I'll take a look at it. And he was told to go back and talk to marketing and somebody else. He came back and said there's no change. This is -- this is the value.

And, of course, ... we supported him in that too. So I had evidence that he would do an independent and he would do a fair valuation of what he and his firm, based on their expertise in procedures, would develop.

Hall.Trial.Test.,1079:15-1080:9; *see also* Gilcreast.Dep.Tr.,156:6-25 (stating AT&T wanted objectivity).

**a. Mobility Provided PwC with Ready Access to Information.**

Once engaged, PwC sent Mobility an information request list. JX0729. Teske and his team either provided PwC with the requested information or put PwC in contact with individuals who could provide it. Teske.Trial.Test.,549:3-12; Wages.Trial.Test.,197:14-198:9.[9](#co_tablefootnoteblock_9_1)

Mobility provided PwC with extensive data regarding the Partnerships and Mobility's business. *See* JX1013,CTPL-00059562-65 (exemplar valuation report summarizing information PwC reviewed);[10](#co_tablefootnoteblock_10_1) Teske.Trial.Test.,550:1-551:6. PwC also arranged numerous meetings, including with management of Mobility and its affiliates, AT&T corporate development professionals, and business operations directors (“BODs”). *Id.;* JX1013,CTPL-00059564-65 (exemplar valuation report describing PwC meetings). The meetings covered a wide range of topics, including industry trends, business risks, historical and projected financial performance, and allocations to the Partnerships' financial statements, among other issues. Teske.Trial.Test.,555:1-558:3; *see also* JX1013,CTPL-00059564-65 (describing topics discussed in PwC's meetings with management).[11](#co_tablefootnoteblock_11_1) The BODs provided details regarding each Partnership's market, including subscriber metrics and ARPU, churn, and growth expectations. Gilcreast.Dep.Tr.,107:11-108:1,154:14-23; Teske.Trial.Test.,556:12-18; Wages.Trial.Test.,197:24-198:9.

Mobility also provided PwC with three-year and ten-year plans for 2009 as well as drafts of the following year's plans. JX2419,p.73n.198; Teske.Trial.Test.,551:12-17. These planning documents were prepared as a matter of course (not for a valuation exercise) and were used by AT&T's Board. JX2419,p.73n. 198; Stephens.Trial.Test.,39:8-41:14,47:15-24.[12](#co_tablefootnoteblock_12_1) They included information for all known revenue sources, business units, and business opportunities. JX2419,p.73; Stephens.Trial.Test.,41:24-42:17. PwC also spoke with the individuals who prepared these plans to better understand their underlying assumptions. JX2419,p.74; Teske.Trial.Test.,577:3-10; Kobos.Dep.Tr.,135:10-136:1.

PwC never expressed concern regarding lack of access to information. *See* Hall.Trial.Test.,1083:16-1084:5 (“[A]nything they needed, they would go to Phil for. If they didn't get it, they wouldn't have been shy about contacting me.”); JX0727 (financials provided were sufficient for valuation); Teske.Trial.Test.,628:4-9. In the end, PwC had what it needed to accurately value each Partnership. Gilcreast.Dep.Tr.,300:25-301:5; Hall.Trial.Test., 1081:21-1083:3.[13](#co_tablefootnoteblock_13_1)

**b. Mobility Did Not Influence the Valuations.**

PwC's valuations were not improperly influenced by Mobility. Mobility personnel only reviewed draft and final valuation reports to ensure factual accuracy and confirm there were no misunderstandings about the business or the Partnerships. Hall.Trial.Test.,1084:6-23; Teske.Trial.Test.,560:13-19,563:6-18. These reviews did not result in any substantive changes. Stephens.Trial.Test.,55:11-15; Hall.Trial.Test.,1088:2-13; Teske.Trial.Test.,572:16-573:19. Gilcreast described the dynamic:

I don't have any recall at all of feeling in the environment with Phil [Teske] or anyone else at AT&T that there was subtle pressure or otherwise to pick one outcome or another as it relates to inputs. That's not the way I work nor is it the way my experience with Phil and Greg [Hall] and others would suggest they work.

Gilcreast.Dep.Tr.,190:12-193:25; *see also id.* 156:6-25 (AT&T wanted objectivity and did not dictate valuation inputs or outcome).

Furthermore, no AT&T employee's compensation was tied to the valuation results and there were no limitations imposed on the valuations or budget for the Transactions. Stephens.Trial.Test.,54:24-55:10,105:5-12; Hall.Trial.Test.,1088:14-1089:4; Teske.Trial.Test.,578:6-9; Stephens.Dep.Tr.,161:5-162:24. Mobility's representatives had no personal incentive to influence the valuations.

**c. PwC Was Given Time to Complete the Valuations.**

PwC had sufficient time to complete the valuations, and worked on the project for over five months before issuing the first valuation reports. When PwC needed additional time beyond the timeline originally contemplated by the Project LESS team, Mobility extended these deadlines. Teske.Trial.Test.,562:20-563:5. Gilcreast confirmed there was no pressure to meet a particular timeline. Gilcreast.Dep.Tr.,300:10-18.

**7. The Transactions.**

PwC valued the 13 Partnerships collectively at $2,344,700,000. PTO,¶52. Mobility representatives reviewed PwC's reports, concluded PwC had done a thorough and professional job, and accepted them “as is.” Teske.Trial.Test.,573:6-19,574:23-575:6; Hall.Trial.Test.,1084:6-1088:13.

Thereafter, Stephens met with Randall Stephenson, AT&T's then-chairman and CEO, to seek approval to pursue the Transactions. Teske.Trial.Test.,575:10-14; Stephens.Trial.Test.,34:23-35:9. On June 3, 2010, Stephenson approved spending the funds to pursue the Transactions. JX3514. Company counsel then worked with outside counsel to prepare the Transaction documents and related communications with the partners, in a process similar to that used in the *J&J Celcom* transactions.[14](#co_tablefootnoteblock_14_1) *See* JX1422; JX1539; JX1506; Wages.April. 17.2014.Depo.Tr. 171:20-172:4.

Between July 2010 and March 2011, Holdings sent letters to the minority partners offering to purchase their interests at the *pro rata* value derived from PwC's valuation plus a 5% premium (“Offer Letters”).[15](#co_tablefootnoteblock_15_1) PTO,¶59; Stephens.Trial.Test.,54:2-15. The premium was designed to “move things up in the priority list of the partners' consideration and to encourage everyone to move the process along.” *Id.,54:16-23.* The Offer Letters attached the PwC valuation report and Partnership financial statements for the applicable Partnership. PTO,¶60. The Offer Letters also explained that if all the minority partners did not accept the offer, (1) Holdings would call a Partnership meeting for the purpose of considering an asset sale at the PwC values to an AT&T affiliated entity, (2) Holdings intended to vote in favor of the asset sale, (3) the sale would cause the Partnership to dissolve, and (4) the purchase price would be distributed *pro rata* to all partners. *Id.;* JX1306 (exemplar offer letter for Visalia).

While many minority partners accepted Holdings' offer, Plaintiffs did not. PTO,¶61; JX2635 (identifying minority partners that accepted offer); Wages.Trial.Test.,200:16-21. Accordingly, as disclosed in the Offer Letters, between October 2010 and June 2011, special meetings were held for each Partnership to consider and vote on the sale of all Partnership assets and liabilities to wholly-owned subsidiaries of Mobility. PTO,¶65. Minority partners were invited to participate in each meeting, and a vote was taken. Holdings, which held an over 95% interest in each Partnership, voted in favor of the Transactions.[16](#co_tablefootnoteblock_16_1)

After the special meetings, the assets and liabilities of each Partnership were sold, the Partnerships were dissolved, and the partners received their *pro rata* share of the purchase price based on the fair value as determined by PwC. PTO,¶¶41-42, 65-69.

**ARGUMENT**

The Transactions were entirely fair and permitted by the Partnership Agreements. Defendants' diligent and thorough efforts leading up to the transactions resulted in an accurate valuation and a fair price.

**I. Defendants Proved Entire Fairness.**

The Freeze-out Issue[17](#co_tablefootnoteblock_17_1) is analyzed under the entire fairness standard. *See* [*Kahn v. Lynch Commc'n Sys., Inc.,* 638 A.2d 1110, 1115 (Del. 1994)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1994079320&pubNum=0000162&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_162_1115&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_1115).[18](#co_tablefootnoteblock_18_1) Entire fairness has two components: “fair dealing and fair price.” [*Weinberger v. UOP, Inc.,* 457 A.2d 701, 711 (Del. 1983)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983112756&pubNum=0000162&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_162_711&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_711). Fair dealing “embraces questions of when the transaction was timed, how it was initiated, structured, negotiated, disclosed to the directors, and how the approvals of the directors and the stockholders were obtained.” *Id.* Fair price “relates to the economic and financial considerations.” *Id.* “However, the test for fairness is not a bifurcated one as between fair dealing and price. All aspects of the issue must be examined as a whole since the question is one of entire fairness.” [*Id.* at 711](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983112756&pubNum=0000162&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_162_711&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_711); *see also* [*Cinerama, Inc. v. Technicolor, Inc.,* 663 A.2d 1156, 1179 (Del. 1995)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1995153866&pubNum=0000162&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_162_1179&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_1179) (standard of entire fairness is “not in the nature of a litmus test that lends itself to bright line precision or rigid doctrine”). Under this framework, the entire fairness standard is flexible, “requiring an examination of all aspects of the transaction to gain a sense of whether the deal in its entirety is fair.” [*Kahn v. Lynch Commc'n Sys. Inc.,* 669 A.2d 79, 84 (Del. 1995)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1995238230&pubNum=0000162&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_162_84&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_84).

Because the entire fairness test is not bifurcated, a Court must consider the factual circumstances surrounding both process and price before it can determine that the transaction was entirely fair. *See* [*Cinerama, Inc. v. Technicolor, Inc.,* 663 A.2d 1134, 1140 (Del. Ch. 1994)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1995171522&pubNum=0000162&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_162_1140&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_1140), *aff'd,* [663 A.2d 1156 (Del. 1995)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1995153866&pubNum=0000162&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)). The test considers entire fairness as a whole, so a fair price can be sufficient to establish entire fairness even if aspects of the process were unfair. *See* [*ACP Master, Ltd. v. Sprint Corp.,* 2017 WL 3421142, \*29 (Del. Ch. July 21, 2017)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2042330733&pubNum=0000999&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)), *aff'd,* [184 A.3d 1291 (Del. 2018)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2044383560&pubNum=0007691&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)) (holding entire fairness standard was met despite multiple acts of unfair dealing because price was ultimately fair and unfair dealing did not sufficiently undermine fairness of merger); [*Weinberger,* 457 A.2d at 711](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983112756&pubNum=0000162&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_162_711&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_711) (“[I]n a non-fraudulent transaction we recognize that price may be the preponderant consideration.”); [*In re Trados Inc. S'holder Litig.,* 73 A.3d 17, 79 (Del. Ch. 2013)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2031358297&pubNum=0007691&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_7691_79&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_7691_79) (finding transaction fair due to pricing despite absence of fair process).

**II. The Process Was Entirely Fair.**

A transaction can be entirely fair when there are proper protections for the minority in the process, such as the involvement of an independent appraiser who has full and fair access to relevant information, so the minority interests are fully considered and a fair exit price is obtained. *See Del.* [*Open MRI Radiology Assocs., P.A. v. Kessler,* 898 A.2d 290, 312 (Del. Ch. 2006)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2009118667&pubNum=0000162&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_162_312&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_312). The entire fairness test does not require a controller to bargain with the minority or give them “veto power” to meet its burden. *Id.*

Mobility was contractually entitled to pursue the Transactions and did so fairly and thoughtfully by seeking independent expertise on valuation. No improper purpose drove the Transactions, which were implemented to simplify and improve operational efficiencies. Mobility engaged a reputable and non-conflicted valuation firm to assess fair value of the Partnerships. Consistent with its duties, PwC valued the Partnerships following a deliberate process that was not improperly influenced by Mobility. The transaction structure and process followed precedent (*J&J Celcom*) set by a Mobility predecessor, AT&T Wireless, regarding similar partnerships. *See supra* n. 14. Pursuant to that *J&J Celcom* structure, Mobility engaged in a contractually-permitted sales process to cash-out the minority interests in the Partnerships at fair value.

**A. Mobility Initiated the Transactions to Improve Efficiencies.**

The evidence pertinent to initiation of the Transactions demonstrates Mobility had fair and legitimate business reasons for pursuing the Transactions. Specifically, the motivating factor was to further company-wide efforts to simplify its structure and improve operational efficiencies of the wireless business, including in Partnership markets. *See* Facts(5).

Contemporaneous documents memorialize why Mobility pursued the Transactions. As reflected in the presentation prepared for then-CFO Stephens, AT&T was focused on addressing “Current Challenges,” including costs and inefficiencies of accounting for partnership markets separately. JX0616,CTPL-00143935; Teske.Trial.Test.,540:8-16. Specifically, the “administrative costs or the incremental costs associated with having 54 partnerships” were placing a burden on Mobility and adding nothing to the value of the business or the customer experience. JX0616,CTPL-00143936 (“Status Quo Data Points/Metrics”); Teske.Trial.Test.,540:19-541:3. After considering various options, the “Execution Path” involved obtaining leadership consensus with an aim to “[r]educe operational/accounting complexity and align structure with current management philosophy.” JX0616,CTPL-00143937-9; Wages.Apr.30,2014.Dep.Tr.,176:2-16 (discussing alternatives considered in presentation shown to Stephens in November 2009).[19](#co_tablefootnoteblock_19_1)

Plaintiffs contend Mobility “timed the transaction” to disadvantage the minority owners. Yet there is no evidence that when Defendants decided as part of Project LESS to move forward with the asset sales in late 2009 and 2010, they believed the Transactions allowed them to seize minority interests at a low price due to timing or any other factor. On the contrary, the evidence is clear that-consistent with the goal of Project LESS more generally-the Transactions were pursued to reduce costs and improve efficiencies. *See* Facts(5)(b). The documentary evidence that Plaintiffs have previously relied upon concerns the distinct streamlining effort in 2007/2008, led by a corporate development team outside of Project LESS, which management did not approve, and thus has no bearing on the Transactions that occurred two years later. *See* Facts(5)(a); *see also* [*ACP Master,* 2017 WL 3421142](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2042330733&pubNum=0000999&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)) (merger transaction was entirely fair where acquiring corporation engaged in unfair dealing early in process but shareholders rejected those efforts, which “freshened the atmosphere”).

Nor were the Transactions “timed” to deprive the minority partners of some impending “game changer” in the wireless business during the 2009/2010 time frame. To the contrary, the Transactions were planned and executed at a time of increasing cost in a maturing industry.

In the three years leading up to and including the Transactions, the wireless industry and Mobility experienced dramatic growth in data demand, causing it to spend considerably on network upgrades. Stephens.Trial.Test.,35:21-36:16.[20](#co_tablefootnoteblock_20_1) Revenue was not increasing with these increasing costs, in part because subscribers were switching to nationwide unlimited plans, which increased data usage without necessarily increasing data revenues. Taylor.Trial.Test.,721:7-10; Stephens.Trial.Test.,36:16-22. In addition, revenue in other areas was falling, as there was a substantial increase in lower ARPU subscribers/devices, including prepaid subscribers and WiFi hotspots. Taylor.Trial.Test.,716:2-7. Growth was also lower given the maturity of the wireless industry, which was reaching 100% penetration, *Id.,715:19-716:2,* and the impending loss of iPhone exclusivity, after which Mobility expected churn to increase as competitors began selling the iPhone. Stephens.Trial.Test.,36:23-37:8.

**B. PwC Performed an Independent Valuation.**

Mobility engaged an independent, third party valuation firm with a strong reputation to uphold to value the Partnerships. *See* Facts(6). Mobility gave PwC access to all information it needed to obtain a full understanding of Mobility and the Partnerships' businesses, including financial documentation and projections and access to Mobility personnel to provide further color about the state of the business and future expectations. *Id.*

PwC understood Mobility's projections for the wireless business, as they were given the most-current drafts of Mobility's three-year and ten-year plans, and had access to the financial planning groups to ask questions about assumptions and underlying data. *Id.* These plans were not specially created for the valuation process; rather, they were created in the ordinary course of business, subject to a rigorous review process, and considered by the Board when it made strategic, budget, and compensation decisions. JX2419,p.73n.198; Stephens.Trial.Test.,39:8-41:14,47:13-24. Although not dispositive, it is an illustrative and telling data point that the ten-year plan turned out to be a highly accurate prediction of the actual operating income for the ten years forecasted. JX2633; Stephens.Trial.Test.,46:14-47:12.

Mobility did not push PwC to reach some pre-determined acceptable price, as there was no budget for the partnership buyouts, nor was compensation tied to the outcome of valuations. Facts(6).

**C. Minority Partners Were Provided Full Information and the Transactions Followed Contractually and Legally Established Path.**

When the decision was made to proceed with the Transactions, Holdings provided the minority partners with the relevant reports and financial information, kept them fully informed, and followed a carefully considered and established path, allowed for by the Partnership Agreements, to proceed with the Transactions. Facts(7).

**III. The Price Was Fair.**

Even if the Court were to find the process flawed in some respect, Plaintiffs' challenge to the Transactions would still fail because the price was fair. [*ACP Master,* 2017 WL 3421142 at \*29](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2042330733&pubNum=0000999&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)) (holding entire fairness standard was met despite multiple acts of unfair dealing because price was ultimately fair and unfair dealing did not sufficiently undermine fairness of merger).

The value of a business “is not a point on a line, but a range of reasonable values....” [*Reis v. Hazelett Strip-Casting Corp.,* 28 A.3d 442, 466 (Del. Ch. 2011)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026169302&pubNum=0007691&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_7691_466&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_7691_466) (ellipsis in original) (citation omitted). “When conducting a fair price inquiry as part of the entire fairness standard of review, the court asks whether the transaction was one ‘that a reasonable seller, under all of the circumstances, would regard as within a range of fair value; one that such a seller could reasonably accept.’ ” [*Id.* at 466](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026169302&pubNum=0007691&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_7691_466&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_7691_466) (quoting [*Cinerama,* 663 A.2d at 1143](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1995171522&pubNum=0000162&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_162_1143&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_1143)). Fair price in the entire fairness context is less exacting than in an appraisal case. Thus, “[a] court readily could conclude that a price fell within the range of fairness and would not support fiduciary liability, and yet the point calculation demanded by the appraisal statute could yield an award in excess of the merger price.” *Id.* (citations omitted).

In determining this range of fair value, courts give more weight to experts using multiple methods. [*S. Muoio & Co. LLC v. Hallmark Entm't Invs. Co.,* 2011 WL 863007, \*20 (Del. Ch. Mar. 9, 2011)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2024779391&pubNum=0000999&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)), *aff'd,* [35 A.3d 419 (Del. 2011)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026720534&pubNum=0007691&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)). When multiple methods give rise to comparable valuations, confidence in the valuation is heightened. [*In re Hanover Direct, Inc. S'holder Litig.,* 2010 WL 3959399, \*2 (Del. Ch. Sept. 24, 2010)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2023286087&pubNum=0000999&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)).

Defendants' expert Carlyn Taylor is a wireless expert who has worked in the industry for 27 years. Taylor.Trial.Test.,697:16-18. She is also a valuation expert whose practice consists primarily of valuing companies for the purpose of transactions, not litigation. *Id.,* 695:9-696:2.[21](#co_tablefootnoteblock_21_1)

Taylor determined a range of fair value for the Partnerships and found that PwC's valuations fell within that range.[22](#co_tablefootnoteblock_22_1)

|  | **Equity Value** |  | **PwC Fair** |
| **($000s)** | **Low** | **High** | **Value** |
| Alton | 4,904 | 6,914 | 5,700 |
| Bellingham | 56,647 | 73,519 | 66,000 |
| Bloomington | 120,351 | 145,414 | 123,000 |
| Bradenton | 124,542 | 162,681 | 133,000 |
| Bremerton | 74,767 | 93,048 | 76,000 |
| Galveston | 269,074 | 379,794 | 293,000 |
| Las Cruces | 19,918 | 27,098 | 25,000 |
| Melbourne | 312,685 | 382,164 | 313,000 |
| Prow | 168,084 | 219,717 | 221,000 |
| Reno | 344,970 | 452,984 | 384,000 |
| Salem | 169,354 | 222,119 | 219,000 |
| Sarasota | 146,148 | 178,029 | 164,000 |
| Visalia | 299,406 | 398,829 | 322,000 |

JX2463,p. 123,Ex.50

In determining her ranges, Taylor used multiple approaches: an income approach and two market approaches. Taylor.Trial.Test.,698:16-22. These analyses were supported by management projections prepared in the ordinary course and Taylor's deep industry experience. Because the PwC valuations fell within her ranges, Taylor concluded that the purchase price in the Transactions was fair. *Id.,698:6-15.* Accordingly, Plaintiffs' $54.549 million pro rata share of that purchase price was also fair.

In contrast, Plaintiffs' valuation expert, Lorraine Barrick, used a single valuation method. In her income approach, she relied on speculative data, including the unrealistic projections of Armand Musey, Plaintiffs' other expert. Further, neither Musey nor Barrick is a wireless industry expert.

Musey's experience is in the satellite-not wireless-industry.[23](#co_tablefootnoteblock_23_1) He admitted he has never been a wireless analyst or followed the industry; yet, he offers numerous opinions on how the Partnerships should have been operated.[24](#co_tablefootnoteblock_24_1) Musey's lack of understanding of the wireless business led him to adopt absurd hypotheticals (e.g., that the Partnerships should have tracked subscribers using a method other than the industry standard) and to issue a report at odds with the operative reality of the Partnerships.

Musey was forced to admit at trial that when individual wireless markets were sold in the past, the acquired subscribers were identified by NPA-NXX. Musey.Trial.Test.,1248:14-21. This operative reality is confirmed by transactions involving Alton and Las Cruces. Id.,1248:23-1259:1. Musey himself seeks to avoid this operative reality by proposing a new and untested methodology in this case for valuing such businesses, divorced from industry practice. *Id.,1248:14-21.*

Barrick, on the other hand, readily conceded her lack of industry knowledge or experience. Barrick.Dep.Tr.,171:6-17. After witnessing Musey's deposition, she admitted her incollect expense analysis was divorced from reality and asked Musey to redo it. Barrick.Dep.Tr.,55:7-56:5,60:18-61:5.

Acknowledging errors in their analyses, Musey and Barrick revised Barrick's initial $11.222 billion valuation downward to $8.941 billion in their supplemental reports. JX2501; JX2500. These revised reports reduced Plaintiffs' damages claim by over 24% (41% on an individual Partnership basis).[25](#co_tablefootnoteblock_25_1) However, Barrick's conclusion-that these Partnerships should be valued at $8.9 billion-remains out of touch with reality. She does not use the market approach, not even as a “sanity check” to validate her valuations, because her opinions cannot survive comparison to the wireless industry she knows so little about. Her analysis is a mathematical exercise, deriving outlandish outputs from uninformed inputs. While she attempts to reframe the inquiry by characterizing her work as a damages calculation, Musey recognizes Barrick's work as valuations, counsel that hired Barrick represented her to be performing a valuation, and Barrick acknowledges they are valuations in her report. JX2461,p.4; JX2452; JX2462,p.11.

The absurdity of Barrick's conclusions is best evidenced by comparing them to a contemporaneous, arms-length transaction: AT&T's never-completed acquisition of T-Mobile. Relying on the projections of a satellite expert, Barrick valued the Partnerships at nearly a quarter of the synergistic price AT&T offered to purchase T-Mobile, which had roughly 35.7 times more subscribers and 22.7 times more annual revenue than the Partnerships. JX2467,p.13. Barrick's valuations are unhelpful in determining fair value.

As could be expected given the wide gulf in applicable expertise, Taylor and Barrick's analyses differ in many respects. While Taylor's calculations are based on deep industry expertise and the operative reality of the Partnerships, Barrick's are based on the flights of fancy necessary to support her overblown valuations. The major drivers of the differences in concluded values include: (1) projected subscriber revenues, (2) projected roaming revenue and expense, (3) discount rate, (4) tax rate (or lack thereof), and (5) terminal growth rate. JX2636,p.1 1. Taylor also blended her DCF-derived value ranges with a market approach, providing a sanity check on valuation. Barrick had no checks.

**A. Taylor's Income Approach Is More Reliable.**

Taylor and Barrick both used an income-based, DCF approach to value the Partnerships. Nevertheless, Barrick's analysis is fundamentally flawed because, among other issues, she relies on inflated revenue projections, uses incorrect incollect and capital expenditure projections, fails to tax affect her projected cash flows, and applies an unreasonably low discount rate and unreasonably high terminal growth rate.

**1. Revenue.**

The first step of the income approach is projecting revenue, including subscriber revenue, roaming revenue, and equipment revenue.

**a. Subscriber Revenue.**

Subscriber revenue is the monthly service fees paid by Partnership subscribers. It is a function of ARPU and the number of each type of subscriber. Taylor.Trial.Test.,735:11-24. Taylor projected both ARPU and subscriber counts to derive her subscriber revenues. *Id.*

**i. ARPU.**

ARPU varies based on the type of subscriber: postpaid, prepaid, reseller, or connected devices. *Id.,736:10-18.* The mix of the different types of subscribers for a particular Partnership determined that Partnership's ARPU. ARPU therefore varied by Partnership, and a Partnership's ARPU did not necessarily match Mobility's nationwide ARPU.

Taylor and PwC projected each Partnership's future ARPU based on the ARPU trends in the 10-year plan for each subscriber type. Taylor.Trial.Test.,737:1-5. Taylor checked her work using the same analysis in historical periods, confirming accuracy. *Id.,737:14-23.*

**ii. Subscriber Count and Flowshare Model.**

To project subscribers, Taylor projected how many new customers each Partnership would gain (gross adds) and the percentage of subscribers who disconnect each month (churn). To project gross adds, Taylor and PwC used the industry standard approach, a flowshare model. *Id.,737:24-738:8.* A flowshare model calculates the total available subscribers in a market each month or year by calculating market growth from increased penetration and population growth and then adding the number of subscribers who disconnect from all competitors in the market. *Id.,738:4-739:5.* To determine some of the inputs to its flowshare model, including wireless penetration in the market and competitor churn rates, PwC interviewed the Partnership BODs. *Id.,739:18-23.* Taylor reviewed those interviews and found PwC's work was thorough and credible. *Id.,739:23-740:2.* For instance, she found that while PwC made some adjustments based on those interviews, the adjustments were balanced-some in the Partnerships' favor and some not. *Id.,740:3-7.* Furthermore, Taylor found that both PwC's and her flowshare models resulted in reasonable projections of gross adds. *Id.,740:21-* 741:8.

Taylor projected churn using two years of actual data for each Partnership. *Id.,743:2-7.* The Partnerships had higher churn than Mobility due to several factors. First, when a Partnership subscriber moves away from the Partnership and changes her phone number, it is churn to the Partnership but not to Mobility. Id.,741:16-742:7. Second, smaller cities had fewer corporate accounts, which have very low churn. *Id.,742:8-16.* Third, the Partnerships had a higher percentage of reseller customers, which churned at materially higher rates than postpaid subscribers. Id.,742:17-743:1.

**iii. Subscriber Tracking.**

Musey challenges Taylor's reliance on Partnership metrics such as subscriber mix and churn, contending such metrics are based on the improper tracking of subscribers by NPA-NXX. This challenge is meritless. First, tracking subscribers by NPA-NXX has always been the industry standard practice, it is objective, and it is commercially reasonable and fair. Id.,710:10-15; Musey.Trial.Test.,1248:8-1250:4; Wages.Trial.Test.,176:8-177:19. Second, there is no viable alternative method. Taylor.Trial.Test.,713:4-714:1. For example, while Musey suggested billing addresses could be used, he conceded Mobility did not have billing addresses for many prepaid subscribers and lacked any address information about reseller customers. Musey.Trial.Test.,1244:11-1248:7. Third, there is no evidence suggesting more subscribers were moving into or out of Partnerships' areas, or vice versa, such that subscriber metrics would be meaningfully different if tracked by a different metric. Taylor.Trial.Test.,715:2-7. Finally, a Partnership's overall financial performance was not materially affected by not owning subscribers moving into their markets. Roaming revenue received from non-market subscribers was equal to or slightly greater than the net profit (subscriber revenue minus expense associated with subscribers) earned on market subscribers. *Id.,708:15-22.* In other words, if one were to reassign subscribers based on another metric, the financial performance and resulting value of the Partnerships would not change. Id.,710:16-713:3.

By ignoring the subscriber metrics of the Partnerships, Musey disregards the operative reality of the Partnerships. Therefore, his subscriber revenue projections are unreliable.

**b. Roaming Revenue.**

Both PwC and Taylor used intracarrier roaming rates based on historical trends. Roaming rates have steadily declined over the past few decades as roaming expenses per minute have decreased. Id.,752:1-6. Therefore, Taylor found it was reasonable for Mobility to forecast a rate of 4.5 cents a minute for the end of PwC's projection period. *Id.,752:7: 13.*

Increased roaming volume had historically compensated carriers for decreasing roaming rates. *Id.,753:13-21.* Around the time of the Transactions, however, roaming volume began to plateau due to increasing penetration. *Id.,754:3-9;* JX2463,p. 11. Decreasing roaming volume expectations, coupled with a decrease in roaming rates, left wireless experts including Taylor to project roaming revenues as a percentage of total revenue to decrease in the years following the valuations. Taylor.Trial.Test.,754:3-9. In fact, in the industry, roaming revenue as a percentage of total revenue had decreased from approximately 10% in the late 1990s to less than 2% at the time of the valuations. *Id.,753:13-754:2.* Despite these historical trends, Musey projects an increase in roaming revenue as a percentage of total revenue. Id.,754:10-12.

In 2011, the FCC mandated that data roaming agreements be established. *Id.,754:16-18.* In anticipation of that mandate, AT&T began to establish data roaming agreements, and started calculating intracarrier data roaming revenues for the Partnerships in July of 2010. Id.,754:18-20. The wireless industry expected data roaming to follow a similar trend as voice roaming, with volumes increasing and rates steadily decreasing, resulting in “high single digit, low double digit” growth. *Id.,755:6-18.* Taylor's valuation is consistent with expectations of data roaming at the time of the valuations.

Musey and Barrick took an entirely different approach in projecting roaming revenues. Plaintiffs' experts projected roaming revenue as a percentage of subscriber revenue. *Id.,755:19-756:7;* JX2467,p.13. And because Musey projects inflated subscriber revenue growth, roaming revenue growth in his model grows at a similarly inflated rate, despite historical trends showing roaming revenue decreasing as a percentage of total revenue. Taylor.Trial.Test.,756:8-12. Indeed, given that roaming revenue is generated by non-Partnership subscribers, it is not logical to correlate it to subscriber revenue. JX2467,pp.32-33. Furthermore, in rejecting the Partnerships' subscriber metrics, Musey postulates there must be a large number of subscribers that should be attributed to the Partnerships (based on address or PPU) but are not. If that were the case, the historical roaming revenue of the Partnership would be elevated. Yet Musey both rejects the subscriber metrics based on NPA-NXX and *increases* roaming revenue. This is contradictory and remains incorrect in his supplemental report.

**c. Equipment Revenue.**

Taylor and PwC projected equipment revenue on a per-gross-add basis. Taylor.Trial.Test.,758:24-759:4. Upgrade revenues were projected by estimating the number of upgrading subscribers, generally assumed to be every three years, and then applying the actual historical cost per upgrade. *Id.,759:5-10.*

**d. Musey's Projections Are Inflated.**

Musey's revenue projections are grossly higher than PwC's and Taylor's, and grossly higher than Mobility's projections for its *entire business. Id.,760:6-20.* They are not grounded in the actual performance of the Partnerships and are therefore unreliable. *Id.*

Taylor noted that Musey projects a dramatic jump in performance compared to the historical growth of the Partnerships and compared to Mobility's growth projections for its own business:

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*Id.,*760:13-23; JX2636,p.3. Meanwhile, Taylor/FTI projected revenues to grow reasonably in line with historical performance and slightly faster than Mobility's own projected revenue growth. Taylor.Trial.Test.,760:10-17.

Because Musey did not use the 2010 actual data that was available to him (and available at the time of the Transactions), one can judge his methods against that performance. Id.,761:4-9. This natural experiment demonstrates his service revenue projections are unreliable:

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JX2636,p.4. Because Musey rejected the ARPU of the Partnerships (which is premised on actual subscriber mix) and instead applied Mobility's national ARPU, his service revenue forecasts for Galveston and Provo-Partnerships with higher ARPU than Mobility-were lower than actual performance.

Taylor.Trial.Test.,761:23-24. His revenue forecasts for the other Partnerships are 6% to 168% higher, with eight of his forecasts between 15% and 29% higher than actual performance. *Id.,761:16-22.* This disparity in the opening year of his projections is magnified in later years because Musey applies inflated growth rates based on outdated 1990 to 2000 census data. *Id.,762:13-763:4.*

Finally, when Musey learned that Defendants had produced Partnership financial and subscriber data through the dates of the Transactions, he chose to update his analysis only for Galveston. Musey.Trial.Test.,1206:4-6; Taylor.Trial.Test.,732:12-733:11. This update caused Barrick's valuation of Galveston to increase. Musey.Trial.Test.,1206:24-1207:4. Had Musey updated his analyses for all of the Partnerships, Barrick's valuations would have decreased in the aggregate. Taylor.Trial.Test.,734:4-12. Given that Musey's analysis is inconsistent with the historical performance of the Partnerships, the Court should reject his revenue projections.

**2. Expense.**

The next step of the income approach is projecting expense.

**a. Cost of Services.**

Cost of services-including both fixed and variable cost of services-relate to the costs of the network. *Id.,764:8-12.* Network costs were charged directly to Partnerships when they could be directly linked to a particular geography (e.g., equipment in the market). Id.,764:8-765:7. Otherwise, such costs were allocated. *Id.,764:23-765:1.* Fixed cost of services-items that are not volume dependent such as switches, network systems costs, and property taxes-were allocated to Partnerships based on minutes of use. Taylor projected these costs based on the rates in the ten-year plan. *Id.,765:2-5.* Taylor forecasted variable cost of services-which are usage costs-on a per-subscriber basis grown at the rate in the ten-year plan and then applied that rate to her forecasted number of subscribers. *Id.,765:5-7.*

**b. Incollect.**

Incollect expense is the opposite of outcollect revenue; it is the expense of paying another market or carrier for carrying the data or voice traffic of roaming Partnership subscribers. *Id.,765:8-15.* Taylor forecasted incollect expense using the same method as outcollect revenue, except on a per-subscriber basis rather than in the aggregate. *Id.,765:16-23.*

Barrick and Musey erred in their incollect projections. Originally, Barrick projected roaming expense the same as PwC and Taylor. *Id.,756:13-18.* However, because Musey was projecting roaming revenue as a percentage of total revenue, there was an enormous disconnect between Musey's projected roaming revenues and Barrick's projected roaming expenses. Id.,730:15-731:12. Roaming rates are reciprocal so the two should be correlated. *Id.,761:10-15.* This disconnect inflated Barrick's valuation by several billion dollars. *Id.,756:19-23.* Barrick admitted she erred and attributed her error to her inexperience in the wireless industry. Barrick.Trial.Test.,1337:3-1338:8.

Musey and Barrick issued supplemental reports revising their roaming analysis. In Musey's supplemental report, he projects roaming expenses as a percentage of overall subscriber revenue. Taylor.Trial.Test.,756:13-18. While this corrects the disconnect between roaming revenue and expense, it results in an incorrect calculation of *both* roaming revenue and expense.[26](#co_tablefootnoteblock_26_1)

**c. Equipment Cost.**

Equipment cost is the cost of phones and accessories for new subscribers. Taylor calculated equipment cost on a per-gross-add basis and then increased or reduced that cost at the relevant ten-year plan rate. *Id.,766:15-22.* These projections were then applied to projected gross adds for each Partnership. *Id.*

**d. Sales and Marketing.**

Sales and marketing is the expense associated with obtaining new subscribers. *Jd.,766:23-767:4.* These costs are both fixed costs and costs that vary based on gross adds. *Id.,767:5-9.* Fixed costs were grown at the rate in the ten-year plan and the variable costs were modeled on a per-gross-add basis. *Id.,767:10-13.*

**e. Existing Customer Expense.**

Existing customer expense includes fixed costs (e.g., customer service, billing) and upgrade costs, including commissions to salespeople and subsidies of new phones. *Id.,767:22-768:8.* Taylor grew fixed costs at the growth rate in the ten-year plan and modeled upgrade costs on a per-upgrade basis, assuming an approximate three-year upgrade cycle for existing customers. Id.,768:9-22.

**f. G&A Expense.**

General and administrative expenses are overhead costs such as management, finance and accounting, IT, and human resources. *Id.,768:23-769:7.* Taylor grew each Partnership's G&A expenses at the growth rate for those costs in the ten-year plan. Id.,769:6-7.

**g. Barrick's Expenses.**

As noted, Barrick's incollect expense projections were incorrect in her original report. Additionally, although not categorized as expense, Barrick did not increase her capital expenditure projections for the materially higher usage Musey projected for the Partnerships. Taylor.Trial.Test.,769:20-770:5. Larger volumes of usage require additional investment in network equipment, for which Musey and Barrick fail to account. *Id.* While Musey projected total service revenue from 2010 to 2013 to be 27% higher than PwC's projected service revenue, Barrick used capex projections identical to PwC's. JX2467,p.40. As a result Barrick's capex is almost 20% less than what it should be. Taylor.Trial.Test.,769:20-770:5. Because Barrick's incollect and capital expenditure projections are incorrect, the Court should disregard her expense and capex projections.

**3. Taxes.**

Cash flows must be taxed in a valuation. *See* [*Open MRI,* 898 A.2d at 328](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2009118667&pubNum=0000162&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_162_328&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_328) (discussing tax implications of an S corporation). Even in the case of a pass-through entity, “[t]o ignore personal taxes would overestimate the value ... and would lead to a value that no rational investor would be willing to pay to acquire control.” [*Id.* at 329](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2009118667&pubNum=0000162&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_162_329&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_329). Therefore, Barrick's failure to apply a tax rate is inappropriate.

Barrick attempts to avoid taxes by claiming she is calculating “damages,” as opposed to performing a “valuation,” but the record reflects otherwise. Musey understood Barrick to be performing a valuation, Plaintiffs' counsel disclosed to Defendants that Barrick was performing a valuation, and Barrick's own report described her analysis as a valuation. Musey.Dep.Tr.,106:20-107:7; JX2461,p.4; JX2452; JX2462,p. 11. When questioned under oath, Barrick was unable to affirmatively deny that her counsel instructed her to change the characterization of her work at the eleventh hour, confirming that this is a lawyer-driven attempt to inflate her valuations, not a principled expert opinion. Barrick.Dep.Tr.,151:7-152:16; Barrick.Trial.Test.,1386:15-1387:3.

The relevant question then is not whether to apply tax rates in the valuation, but what tax rate to apply. The predominant method for calculating the appropriate tax rate to apply to a pass-through entity-the *Open MRI* model-is subjective and does not fit this case. Taylor.Trial.Test.,773:21-774:3. The derived tax rate in *Open MRI* varies depending on the investor-level marginal tax rate. For a plaintiff with a marginal tax rate of 40%, the tax rate that will fully compensate him for any lost post-tax future distribution is 29.4%. For a plaintiff with a higher marginal rate, the tax rate would be lower. And vice versa.

Because of *Open MRI's* subjectivity, it is not a good measure of “fair value” in this case. The derived tax rate in the model (and therefore fair value) would change from year to year, not according to performance of the entity, but according to varying income or tax circumstances of its investors. Moreover, in an entity where investors do not share the same marginal tax rate, the application of a single tax rate would overcompensate some and undercompensate others for lost future distributions. Instead, there should be a single fair value independent of the circumstances of its investors. *Id.,774:10-11.*

The *Open MRI* model worked in that particular case because the “investors” were similarly situated: the business was their livelihood and they shared equally in its performance. [*Open MRI,* 898 A.2d at 300-01](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2009118667&pubNum=0000162&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_162_300&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_300). Because they had the same income and lived in the same state, they had the same tax circumstances. Taylor.Trial.Test.,774:10-13. Moreover, any willing buyer for the radiology practice in *Open MRI* would necessarily be a radiologist in similar circumstances that would similarly value its pass-through status. [*Open MRI,* 898 A.2d at 302](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2009118667&pubNum=0000162&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_162_302&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_302) (noting that purpose of entity in *Open MRI* was to provide “MRI diagnostic radiology services”).

In contrast to the radiologists in *Open MRI,* the Partnerships' owners were a diverse group of both individuals and entities, and Partnership operations were not the sole factor in determining investors' tax circumstances. The partners included individuals, trusts, corporations, and other pass-through entities located in numerous states and with vastly different tax circumstances.

Taylor.Trial.Test.,774:13-16. Many lived in high tax states such as California, JX2463,p.90, and most were required to pay self-employment taxes in addition to income taxes on their Partnership earnings. Meanwhile, the Partnerships' majority owner-with 95+% ownership-was a corporate-owned entity and received no benefit from the Partnerships' pass-through status. In other words, the value of having organized as a pass-through entity to each partner would be different under the *Open MRI* model.

Taylor used a market-based approach in selecting a tax rate, noting that the only potential buyers of the Partnerships are C-corporations, which would not get any benefit from their pass-through status. Taylor.Trial.Test.,772:5-773:20. Indeed, the operative reality of the Partnerships supports such an approach; over 95% of Partnership distributions did not receive any preferable tax treatment because they went to a corporation. Taylor chose a 34% rate, which is 0.1% lower than AT&T's normalized tax rate in 2010, 3.7% lower than AT&T's effective rate in 2011, and 1.5% lower than AT&T's projected effective tax rate for 2013. JX2463,pp.91-92. This rate falls between the *Open MRI* rate of 29.4% and the blended tax rate PwC applied. Had Taylor used the *Open MRI* rate, PwC's values would have still fallen within her ranges for all but three of the Partnerships. Taylor.Trial.Test.,775:15-776:7.

**4. WACC.**

Weighted Average Cost of Capital (“WACC”), commonly referred to as a “discount rate,” is “an ‘opportunity cost,’ that is, the expected rate of return (or yield) that an investor would have to give up by investing in the subject investment-instead of available alternative investments that are comparable in terms of risk and other investment characteristics.” Shannon Pratt et al., *Valuing a Business: The Analysis and Appraisal of Closely Held Companies* 159 (4th ed. 2000). A higher discount rate results in a lower present value, and a lower discount rate results in a higher present value. [*Taylor v. Am. Specialty Retailing Grp., Inc.,* 2003 WL 21753752, \*5 (Del. Ch. July 25, 2003)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2003527981&pubNum=0000999&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)).

Development of a discount rate is a judgmental exercise, notwithstanding the mathematical components to the analysis. [*Crescent/Mach I P'ship, L.P. v. Turner,* 2007 WL 1342263, \*12 (Del. Ch. May 2, 2007)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012203440&pubNum=0000999&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)) (WACC is not “merely [about] ‘running the numbers' ”); [*Del. Open MRI,* 898 A.2d at 338](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2009118667&pubNum=0000162&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_162_338&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_338) (noting “testimonial feuds that have the quality of debate about the relative merits of competing alchemists” have been fought between experts regarding WACC). PwC and Taylor exercised reasonable judgment in deriving rates that reflect the wireless industry. Their judgment calls are not the same on each element. Instead, each made calls on subsidiary elements, which had the effect of both raising and lowering the overall discount rate, thereby resulting in an overall reasonable rate. Meanwhile, Barrick applied AT&T Inc.'s WACC, which reflects the diversity of AT&T's business lines and the stability of the wireline industry, and thus is not applicable to the Partnerships.

Using the methods outlined in the table below, Taylor calculated rates of 8.5% or 9.0% for most of the Transactions and 10.0% for the two Transactions that took place in 2011. JX2636,p.7. PwC applied a discount rate of 9.5% for the majority of the Transactions, and used a rate of 9.0% for Las Cruces and 10.0% for Galveston. *Id.* Mobility used WACCs of 8.5% and 9.0% in the time leading up to the Transactions in valuation processes unrelated to the Partnerships. JX0800. Thus, Taylor's and PwC's WACC's reasonably reflect the wireless industry and the small size of the markets.

Barrick applied unreasonably low discount rates ranging from 6.3% to 7.4%, depending on the transaction date. JX2636,p.7. These rates are lower than the 7.75% rate AT&T Inc. typically applied in valuation processes. JX0800.

WACC Valuation Assumptions

|  | **PwC** | **FTI** | **Barrick** |
| Beta | Assessed AT&T's 2-year weekly beta and adjusted to 1 to reflect wireless higher betas | 5-year weekly median beta for the full set of GPC, relevered at AT&T cap structure | AT&Ts 5-year weekly levered beta |
| Equity Risk Premium (ERP) | Based on assessment of various studies and PwC's informed judgement | Supply-side long horizon expected equity risk premium as outlined in the Ibbotson valuation studies | No change from FTI, however, only 2011 Ibbotson ERP utilized |
| Risk-Free Rate | 20-year Treasury bond rate | No change from PwC | No change from PwC |
| Size Premium | None selected | Micro-cap size premium using the Ibbotson valuation studies - decile 9-10 less 1% | None selected |
| Capital Structure | Current Partnership's capital structure (100% equity) | AT&T's capital structure as proxy for target wireless cap structure | 5-year average of AT&T's debt-equity ratios |
| Pre-Tax Cost of Debt | Moody's Bond Yield Avg for A Rated Corp orates | Moody's average bond yield for Bal-rated Corp orates (highest non investment grade) | AT&T's cost of debt based on a simple average from AT&T's 2009 & 2010 10Ks |
| Tax Rate to tax effect cost of debt | AT&T's marginal tax rate 33.5% | AT&T's normalized effective tax rate assumed for hypothetical buyer in 2010 or 2011 | No change from PwC |

The primary disagreements between the experts on WACC are (a) beta and (b) size premium.

**a. Beta.**

Beta is a measure of relative risk associated with an investment in a particular company as compared to the risk associated with an investment in a diversified portfolio of common stocks such as the S&P 500. For example, investing in a company with a beta of 1.10 means the investment is 10% riskier than an investment in a diversified portfolio. PwC used a beta of 1.0, which it arrived at by adjusting AT&T Inc.'s two-year average unlevered beta of 0.8 upward to account for the increased risk by the Partnerships' less diverse operations (e.g., lack of a wireline business). JX2463,p.95. Taylor used the median 5-year weekly beta for the full set of guideline companies, calculating levered betas of 0.78-0.88. *Id.,pp.95-96.*

Barrick used AT&T Inc.'s beta without adjustment, applying levered betas of 0.65-0.78. JX2636,p.7. But that is wrong because AT&T Inc. has a more diversified portfolio than the wireless-business-only Partnerships. Taylor.Trial.Test.,781:10-18.

**b. Size Premium.**

The differential between Taylor's and Barrick's discount rates is most impacted by Taylor's application of a size premium. Smaller companies are riskier than larger companies. Pratt et al., *supra,* at 170. This Court has recognized that “returns to the firm are influenced by size and that size premium is therefore appropriate to take into account in calculating the discount rate.” [*In re Orchard Enters., Inc.,* 2012 WL 2923305, \*17 (Del. Ch. July 18, 2012)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2028232882&pubNum=0000999&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)). Indeed, this Court applied a size premium in a prior case involving a wireless partnership similar to those at issue here. [*B&L Cellular v. USCOC of Greater Iowa, LLC,* 2014 WL 6882207 (Del. Ch. Dec. 8, 2014)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2034953277&pubNum=0000999&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)) (adopting Taylor's size premium because her explanation that partnership had greater risk given its small territory was persuasive).

Because each Partnership operated only in one or two counties, it could be significantly impacted by events such as a low-cost carrier newly launching, a severe weather event, or departure of a major employer. JX2463,pp.96-97; Taylor.Trial.Test.,784:10-787:15; JX2636,p.6. That said, “Partnerships would be viewed as less risky than other independent companies of similar size given a stabilizing factor from their relationship as part of AT&T.” JX2463,p.97. Taylor therefore subtracted 1% from the Ibbotson decile 9-10 micro-cap size premium, adopting a size premium of 2.99% for the 2010 transactions and 3.07% for the 2011 transactions. *Id.* By not applying any size premium, Barrick completely fails to account for the increased risk of the Partnerships' smaller footprints. Taylor.Trial.Test.,784:10-19.

**5. Terminal Growth Rate.**

Taylor's and PwC's growth rates are consistent with industry growth expectations at the time. Barrick's is not. Taylor began with a baseline of 1.5% growth rate, which was reasonable given the growth expectations of the industry at the time of the valuations. *Id.,790:1-791:12.* Taylor adjusted that baseline for each Partnership based on their individual market shares and population expectations, resulting in growth rates of 1-2%. *Id.,791:13-792:9.*

Taylor's growth rates-which are similar to those used by PwC-are consistent with the growth in the final years of Mobility's ten-year plan and accounted for moderate growth in population and inflation after the first 10 years. Id.,791:8-12. As Taylor testified, free cash flow is the variable that is being projected when producing a discounted cash flow analysis. *Id.,792:24-793:7.* When analyzing Mobility's ten-year plan, the free cash flow is only slightly over 1% by year ten and steadily decreases in four out of the last six years of the plan. *Id.,792:19-793:7.*

Plaintiffs' main criticism of Taylor's terminal growth rate is that it is “lower than inflation.” JX2469,pp.18-19. This ignores the fact that wireless “inflation” was *deflation* in all eight years leading up to 2010, with 2010 showing the largest amount of deflation. Taylor.Trial.Test.,793:8-794:13; JX2467,p.47,Ex.27. Musey's and Barrick's failure to consider industry-specific inflation shows their lack of wireless industry expertise. In fact, Barrick conceded that she did not know a wireless industry-specific inflation index even existed when she issued her opening report. Barrick.Trial.Test.,1343:4-23; Barrick.Dep.Tr.,208:7-19. Barrick also admitted that sources she relied upon in creating her trial demonstratives show wireless prices falling every year except for 2009, along with wireless growth rates falling year-over-year. Barrick.Trial.Test.,1365:18-1367:16.

Barrick's terminal growth rate of 3% is devoid of reality. It is based off core inflation, rather than industry-specific insight, and it is significantly higher than the growth rate in the final years of Mobility's long-term projections for its own business. Mobility's ten-year plan reasonably accounted for the rising penetration and maturity of the market at the time of the valuations, while also capturing the growth potential of data. Taylor.Trial.Test.,794:16-796:10. As Taylor testified, Mobility's ten-year plan projected data revenues to dramatically grow over time, despite total ARPU remaining flat. *Id.,795:1-17.*

In support of their 3% perpetuity rate, Plaintiffs point to two documents: one from 2008 that calculates the present value of future distributions (JX3515, “DCF Summary” Tab) and one from 2010 that calculated both earnings per share changes and distributions (JX3516, “EPS” and “actualDist” Tabs). However, these same documents apply a discount rate of 9.5% and 10%, respectively, which offsets the higher growth rate. JX3515; JX3516; Taylor.Trial.Test.,799:14-16. In contrast, Barrick seeks to apply a significantly lower discount rate of 6.3% to 7.4% with her 3% growth rate. Further, in both documents, Mobility valued the Partnerships at *less* than PwC. Taylor.Trial.Test.,799:14-19.

Coupled with Barrick's low WACC and discrete projection period, Barrick's model is extremely sensitive to her inflated terminal growth rate and her methodology should therefore be discarded. Id.,798:13-799:6.

**B. Market Approach Provides Reasonableness Check.**

The market approach provides a useful reality check on a DCF valuation. [*Hallmark,* 2011 WL 863007 at \*20](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2024779391&pubNum=0000999&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)) (“[It is] preferable” to use multiple methods “such as a DCF analysis, a comparable transactions analysis ..., and a comparable companies analysis ... to triangulate a value range, as all three methodologies individually have their own limitations.”). As a result, courts give more weight to experts using multiple methods. [*Gentile v. Single Point Fin. Inc.,* 2003 WL 1240504, \*2 (Del. Ch. Mar. 5, 2003)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2003231571&pubNum=0000999&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)); [*In re Hanover,* 2010 WL 3959399 at \*2](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2023286087&pubNum=0000999&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)). While Taylor's valuation performed both comparable companies and comparable transactions analyses, Barrick did not use any market-based reality check. As a result, her analysis fails to survive a reasonableness check.

**1. Guideline Public Companies.**

In her guideline public companies approach, Taylor examined eight companies in the wireless sector: AT&T, Sprint, Leap, MetroPCS, US Cellular, Shenandoah, NTELOS, and Verizon. Taylor.Trial.Test.,805:14-806:1; JX2463,p.106. Taylor selected these companies because they were either entirely or substantially wireless businesses. Taylor.Trial.Test.,806:2-807:11. For companies that were not pure wireless, Taylor adjusted EBITA upwards by reducing depreciation expense to reflect the typical capital expenditure of a wireless company. *Id.,809:2-810:4.*

For each guideline company, Taylor calculated trailing and forward revenue and EBITA (actual and adjusted) multiples. *Id.,809:2-813:3.* She excluded Sprint and Leap because their EBITA was de minimis compared to their size. *Id.* Taylor applied a 15% control premium (the same PwC used). Id.,814:15-19. She developed a valuation range using revenue, EBITA, and adjusted EBITA multiples for each Partnership based off the median of the peers. Id.,816:19-24. She weighted the revenue multiple 50% and the EBITA and adjusted EBITA multiples 50%, with the low and high of her range generated by any difference in the pure and adjusted EBITA. Id.,817:1-2. Taylor replicated her work as of each transaction date and applied the appropriate revenue and EBITA multiples to each Partnership as of its transaction date. Id.,813:4-13; JX2463,p. 112.

**2. Guideline Transactions.**

In her guideline transactions analysis, Taylor looked at similar transactions within the five years preceding the Transactions. Taylor.Trial.Test.,813:14-20. After excluding transactions with low multiples that were not necessarily reflective of market value, Taylor was left with four comparable transactions. *Id.,813:22-* 814:14; JX2463,p. 114,Ex.43. From each announced deal price, she subtracted the value of synergies, as Delaware law requires. Taylor.Trial.Test.,814:20-815:1; [*Fir Tree Value Master Fund, LP v. Jarden Corp.,* 236 A.3d 313, 328 (Del. 2020)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2051433522&pubNum=0007691&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_7691_328&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_7691_328) (“[T]he court should exclude any synergies or other value expected from the merger....”) (citation omitted)).

One of the four transactions-AT&T's announced purchase of T-Mobile-took place after the 2010 Partnership transactions but before the 2011 transactions. Taylor.Trial.Test.,816:3-8. Taylor therefore only applied her T-Mobile multiples in valuing Galveston and Las Cruces. Id.,816:9-16.

After determining the revenue and EBITA multiples for the transactions, Taylor applied them to the Partnerships' trailing revenues and EBITA to derive a reasonable range of valuations under the transaction method. Taylor.Trial.Test.,816:21-24; JX2463,p.121,Ex.48.

**C. Concluded Values.**

To reconcile her various approaches, Taylor weighted her DCF at 50% and each of her market approaches at 25%. Taylor.Trial.Test.,817:3-11. She relied only on the income approach for Alton and Las Cruces, which had negative EBITA. Id.,817:12-18. She then added the net cash on the balance of each Partnership and subtracted the value of any leased spectrum.[27](#co_tablefootnoteblock_27_1) With these calculations, she derived her concluded ranges of fair value (the blue bars in the chart below) and found that PwC's values (the blue diamonds) fell within them. Id.,819:12-820:3. Barrick's original and revised concluded values of the Partnerships were dramatically higher, in many cases by several orders of magnitude.

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JX2636,p.12.

Barrick's values are significantly higher than any rational purchaser would pay to acquire the Partnerships. To put her values in context, at the time of the Transactions, AT&T Inc. was trading at a forward revenue multiple between 2.2x and 2.3x. JX2609,p.5. In contrast, Barrick implied forward revenue multiples for the Partnerships of between 3.6x and 15.4x, as shown below:

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JX2636,p.13.

AT&T was trading at an adjusted EBITA multiple between 8.9x and 10x forward EBITA and the wireless industry as a whole was trading between 11.7x and 12.5x EBITA. JX2609,p.6. Barrick implies multiples of 17x to 133x for the Partnerships:

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JX2636,p.14.

The incongruity of Barrick's concluded values is perhaps most strikingly revealed in comparison to the T-Mobile transaction that AT&T announced in early 2011, in the midst of the Transactions. AT&T agreed to pay $39 billion for T-Mobile, and calculated T-Mobile's value without synergies at $21.8 billion. JX1893,CTPL-00224939-40.[28](#co_tablefootnoteblock_28_1) The Partnerships had 2.8% of T-Mobile's subscribers, 4.4% of T-Mobile's revenue, and 10.9% of T-Mobile's EBITDA (excluding synergies). Under the income approach, entities operating wireless networks that generate 10.9% of T-Mobile's earnings should have a DCF value equal to 10.9% of T-Mobile; yet, Barrick somehow concludes that the Partnerships should be valued at 41% of the price AT&T agreed to pay in this arms-length transaction. In comparison, the PwC and Taylor valuations align with how an informed buyer and seller valued telecommunication assets. Specifically, PwC and Taylor value the Partnerships at 10.8% and 11% of T-Mobile, values that match their percentage of T-Mobile's earnings, as reflected in the chart below. The market-based, real-world valuation the T-Mobile transaction provides is strong evidence of fair value. [*Fir Tree Value Master Fund, LP,* 236 A.3d at 324](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2051433522&pubNum=0007691&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_7691_324&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_7691_324) (restating finding in *DFC Global Corp.* that acknowledged the “economic reality that the sale value resulting from a robust market check will often be the most reliable evidence of fair value” and that “second-guessing the value arrived upon by the collective views of many sophisticated parties with a real stake in the matter is hazardous”) (quoting [*DFC Glob. Corp. v. Muirfield Value P ‘rs, L.P.,* 172 A.3d 346, 366 (Del. 2017)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2042285926&pubNum=0007691&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_7691_366&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_7691_366)). Barrick's values are entirely out of step with the market and the operative realities in which the Partnerships operated, and must be rejected.

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JX2636,p. 15; *see* Taylor.Trial.Test.823:8-824:7,829:15-833: 1.

**D. Plaintiffs' Criticisms of Taylor's Valuations Lack Merit.**

Plaintiffs have three main criticisms of Taylor's and PwC's valuations. They argue that the Partnerships must be valued too low because (1) the projected EBITDA margins are lower than those projected for Mobility, and (2) previous Partnership distributions justify higher projected cash flows. They also argue that PwC-and by extension Taylor-did not consider certain revenues, including connected device and Big Data revenues. These arguments lack merit.

**3. EBITDA Margin Theory.**

Plaintiffs' EBITDA margin argument ignores two significant accounting differences between the Partnerships and Mobility. First, the Partnerships' financials reflect intracarrier roaming revenues and expenses. JX2463,p.142; Taylor.Trial.Test.,750:13-751:4,765:8-15. Second, Mobility owned certain network equipment the Partnerships used. Mobility's capital expenditure for that equipment was passed through to the Partnerships as expense allocations.[29](#co_tablefootnoteblock_29_1) By subtracting capital expenditures from EBITDA to compare free cash flow margins, Taylor demonstrated that her projections for the Partnerships are nearly identical to Mobility's. Taylor.Trial.Test.,837:14-838:13; JX2636,p.17.

**4. Distribution Theory.**

Plaintiffs' distribution argument similarly lacks merit. Partnership distributions in the years leading up to the transactions exceeded both EBITDA and free cash flow.[30](#co_tablefootnoteblock_30_1) Barrick extrapolates these excessive distributions in perpetuity, which is impossible. Taylor.Trial.Test.,833:8-20. Taylor, in contrast, by projecting cash flows using prior year cash flows (rather than distributions) in her DCF analysis, projects the maximum possible distributions.

Taylor.Trial.Test.,833:23-836:3.

As discussed above, these hypothetical future distributions must be taxed or Plaintiffs would receive a windfall. While actual distributions are taxed as income, any damages award based on the transaction price would be taxed at a lower capital gains rate. Thus, Barrick's distributions analysis is unhelpful.

**5. PwC Did Not Miss Any Revenues.**

As discussed above, the Special Master determined that Big Data and other information-based revenues were small and/or allocated to the Partnerships. He also determined that connected device revenues were allocated to the Partnerships, included in the Partnership financials provided to PwC, and included in the three-year and ten-year projections. *See supra* Facts(4).

The two items that the Special Master determined were not allocated to the Partnerships-handset insurance and Paragraph 16 income (described *infra)-were* immaterial to the Partnerships and therefore do not impact the valuations.

**a. Handset Insurance.**

The Partnerships received commissions when their subscribers signed up for handset insurance.[31](#co_tablefootnoteblock_31_1) Because the Partnerships were not insurance companies, they did not otherwise share in the profits of the handset insurance program. The AT&T-affiliate insurance company that earned the profits also bore the risk of loss. Handset insurance profits for all AT&T-branded wireless subscribers ranged from $126.3 to $148.8 million from 2008 through 2010. JX2419,p.71. During that same time, the Partnerships had between 1.19% and 1.33% of AT&T's wireless subscribers. JX2161. If handset insurance income had been allocated to the Partnerships on a per-subscriber basis, the 13 Partnerships would have earned a total of $5.1 million from 2008 through 2010.[32](#co_tablefootnoteblock_32_1) JX2567,Ex.A. To put this in perspective, the amounts the Partnerships would have been allocated in 2009 would have amounted to 0.14% to 0.26% of each Partnership's income. *Id.,Ex.G.* Indeed, Plaintiffs themselves characterized handset insurance revenues as *“de minimis.”* Trans.ID,60391164,p.9 (referring to *“de minimis* hand-set insurance revenue”).

**b. Paragraph 16.**

First, Plaintiffs have “disclaim[ed] and relinquish[ed] any portion of any current or future claim or cause of action premised upon Defendants' use of any Partnership's Partnership Information in the provision of any assistance, including but not limited to any alleged disclosure of and/or use of any Partnership's Partnership Information, to any element of the Intelligence Community” and agreed that “any such portion of such claims... released and/or dismissed with prejudice.” JX2471-2485. However, Paragraph 16 income during the relevant time ($280.5 million total from 2005 to 2010) was also immaterial to the Partnerships. JX2567,Ex.F.

Paragraph 16 of the Court's July 27, 2016 Order Granting Plaintiffs' Supplemental Motion to Compel required AT&T to identify “on a year-by-year basis ... the gross consideration that AT&T received from monetizing Partnership Information to government entities” including “consideration derived from contracts or legal processes that may be subject to national security protections.” Suppl. Order Trans.ID,59333543,¶16. As the Special Master stated, “Paragraph 16 revenues were intended to be overly large because they were the so-called over-inclusive numbers requested by the Court,” and accordingly, the numbers included “revenues ... for equipment and services unrelated to the Partnerships.” JX2419,p. 136,n.411. Although Defendants previously disclosed similar numbers as to information that may have been obtained from the wireless network,[33](#co_tablefootnoteblock_33_1) the Supplemental Order required Defendants to disclose information as to the wireline network.

The Special Master found, “Had the Paragraph 16 revenues been allocated to the Partnerships based on each Partnership's percentage of AT&T's overall wireless and wireline subscribers, the total revenues allocated would range from four-figures to the low six-figures annually, depending on the Partnership.” *Id.,p.106;* JX2567,Ex.F (calculating a total impact of $2.2 million to Partnerships). Plaintiffs' total share of that amount would have been $52,585. *See* JX2419,p.50,n.135.

Given the minimal effect on the Partnerships of any allocation of handset insurance and Paragraph 16 income, any change to the Partnership valuations would be immaterial.

Because Taylor's valuations are grounded in the operative reality of the Partnerships and informed by vast industry expertise and Plaintiffs' valuations are neither, the Court should adopt Taylor's conclusion that the prices in the Transactions were fair.[34](#co_tablefootnoteblock_34_1)

**CONCLUSION**

For the foregoing reasons, Defendants respectfully request that the Court enter a judgment in their favor.

Dated: March 9, 2021

*/s/ Todd C. Schiltz*

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| **Footnotes** |  |
| [1](#co_tablefootnote_1_1) | Additional factual background is stipulated to in the PTO. |
| [2](#co_tablefootnote_2_1) | Mobility was organized into market areas, each with its own general manager and business operations director. Teske.Trial.Test.,527:2-8. |
| [3](#co_tablefootnote_3_1) | At the time of the Transactions, Eric Wages was head of partnership relations. Wages.Trial.Tr. 118:6-12. He reported to Phil Teske, the senior-level manager responsible for all partnership accounting activity. Stephens.Trial.Test.,19:10-20:15. Teske reported to Greg Hall, the wireless division controller and individual responsible for all accounting activity in the wireless division. Id.,20:23-21:10. Hall reported to John Stephens, CFO of AT&T Inc. *Id.,*21:11-18. |
| [4](#co_tablefootnote_4_1) | Postpaid subscribers (who pay after receiving services), have the highest ARPU. *See* Taylor.Trial.Test.,762:3-9. Prepaid subscribers (who pay in advance) and reseller subscribers (who purchase service from another company that contracts with AT&T for network services) typically have lower ARPU and higher churn. *Id.,736:19-23.* Connected devices, such as e-readers, have extremely low ARPU (under $3/month). *Id.,749:23-750:4.* |
| [5](#co_tablefootnote_5_1) | A compendium of deposition testimony cited in this brief is being submitted to the Court. |
| [6](#co_tablefootnote_6_1) | *See also, e.g.,* JX0118,CTPL-00036111 (1995 Bremerton Switch Sharing Agreement stating Bremerton is responsible for roaming charges “from use of cellular telephones containing any number within any of [Bremerton's] NPA-NXX ranges”). When Mobility acquired the majority interest in Las Cruces from Verizon, Mobility entered into a Transition Services Agreement with Verizon that specified subscribers would be ported to Mobility based on NPA-NXX ranges. JX1251,CTPL-00210062 (“Providing Party will submit a letter of relinquishment for the candidate block transfers (NPA-NXX-Xs) to the pooling administrators and Receiving Party needs to receive a copy.”). |
| [7](#co_tablefootnote_7_1) | Partnership roaming revenue was based on usage on a per-minute basis for voice and a per-megabit basis for data, multiplied by the effective roaming rate. Taylor.Trial.Test.,751:1-4. Intracarrier rates for voice were based on the weighted average of third-party (intercarrier) roaming rates. *Id.,752:14-* 753:1 |
| [8](#co_tablefootnote_8_1) | Only Bremerton, Bellingham, Bradenton, Provo, Salem, Sarasota, Melbourne, Reno, and Visalia were addressed in this presentation. |
| [9](#co_tablefootnote_9_1) | *See also* JX0833 (meeting with AT&T's corporate development team); JX7081 (Teske arranging meeting); JX0749 (forwarding three-year plan and updates to budget); JX0727 (PwC email attaching preliminary information request and confirming 2006 financials are unnecessary); JX0734 (arranging meetings between PwC and various AT&T personnel); JX0840 (Teske's responses to PwC's questions). |
| [10](#co_tablefootnote_10_1) | *See* JX1013; JX1014; JX1010; JX1015; JX1411; JX1044; JX1268; JX1118; JX1028; JX1023; JX1024; JX1025; JX1026. |
| [11](#co_tablefootnote_11_1) | *See also supra* n.10. |
| [12](#co_tablefootnote_12_1) | The three-year plan was used for various purposes including short-term compensation and target-setting for upcoming years; the first year of the plan was approved by the Board as the next year's budget. Stephens.Trial.Test.,39:24-40:14. The ten-year plan was used by the Board and others for long-term planning and strategy. Id.,40:18-41:14. |
| [13](#co_tablefootnote_13_1) | Some information PwC requested was not available or applicable. For example, while PwC's initially requested management board presentations, JX0729, only AT&T Inc. (not AT&T Mobility) had a board. Gilcreast clarified that PwC did not ask for AT&T Inc.'s presentations. Gilcreast.Dep.Tr.,287:10-18 (request for “management board presentations [was] likely asking for AT&T Mobility presentations. Whether or not they didn't do Mobility presentations and they did AT&T presentations as a whole, which we wouldn't have been asking for cause we weren't doing anything with the wire line business, whether or not they didn't have any to share, ... I don't specifically recall.”). Regardless, the presentations were unnecessary for PwC's valuation process. *Id.,285:18-288:9.* |
| [14](#co_tablefootnote_14_1) | The process mirrored a litigated partnership buyout process conducted by AT&T Wireless (when it was a competitor of Mobility) where the court found no violation of the duty of loyalty. [*J&J Celcom v. AT&T Wireless Servs., Inc.,* 2005 WL 1126924 (W.D. Wash. May 10, 2005)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2006594456&pubNum=0000999&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)), amended (May 27, 2005), *aff'd in part,* [215 F. App'x 616 (9th Cir. 2006)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2011082300&pubNum=0006538&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)); JX0682 (December 2009 spreadsheet noting Partnerships would be bought out using *J&J Celcom* transaction structure). Like here, AT&T Wireless had sought to address administrative costs by buying out minority partnership interests in eight partnerships. To eliminate these expenses, AT&T Wireless obtained an independent third party to conduct an appraisal, made an offer to minority partners at a price slightly above the valuations, held partner meetings to vote on the transaction, exercised its rights to sell all partnership assets to an affiliate, and provided the minority partners their *pro rata* share of the purchase price based on the valuations. [2005 WL 1126924 at \*2-3](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2006594456&pubNum=0000999&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)). |
| [15](#co_tablefootnote_15_1) | JX1306; JX1901; JX1522; JX1304; JX1314; JX1315; JX1316; JX1362; JX1510; JX1521; JX1509; JX1523; JX1596. |
| [16](#co_tablefootnote_16_1) | JX1511; JX1515; JX1516; JX1529; JX1556; JX1583; JX1678; JX1677; JX1679; JX1680; JX1963; JX1766 ; JX1996. |
| [17](#co_tablefootnote_17_1) | The Court defined the Freeze-out Issue as relating to equitable considerations of fairness and fiduciary duties with respect to the Transactions. Trans.ID,66105679,p.3. |
| [18](#co_tablefootnote_18_1) | Seven Partnerships (Bloomington, Bremerton, Melbourne, Provo, Salem, Sarasota, Visalia) are governed by Delaware law. PTO,¶7. The others are governed by the laws of D.C. (Alton and Reno), Maryland (Bellingham), Florida (Bradenton), Texas (Galveston), and New Mexico (Las Cruces). *Id.* It is undisputed that the laws of those six states follow or substantially follow Delaware law with respect to a breach of loyalty claim, as they all consider the Transactions through a lens of fairness. *See* Trans.ID,661 15786,4n. 11; *see also* [*Mayflower Hotel Stockholders Protective Comm. v. Mayflower Hotel Corp.,* 193 F.2d 666, 671 (D.C. Cir. 1951)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1951118403&pubNum=0000350&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_350_671&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_350_671); [*Bender v. Schwartz,* 917 A.2d 142, 154 (Md. Ct. Spec. App. 2007)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2011567848&pubNum=0000162&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_162_154&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_154); [*Williams v Stanford,* 977 So.2d 722, 728-30 (Fla. App. Dist. 4. 2008)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2015553610&pubNum=0000735&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_735_728&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_735_728); [*Gearhart Indus., Inc. v. Smith Intern., Inc.,* 741 F.2d 707, 720 (5th Cir. 1984)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1984141335&pubNum=0000350&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_350_720&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_350_720); [*Peters Corp. v. N.M. Banquest Inv'rs Corp.,* 188 P.3d 1185, 1193 (N.M. 2008)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2016580957&pubNum=0004645&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_4645_1193&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_4645_1193). |
| [19](#co_tablefootnote_19_1) | This analysis is consistent with Wages' testimony in *In re AMWOH Appraisal Litig.,* Consolidated Civil Action No. 5736-VCL, his testimony in this trial, Wages.Trial.Test.,260:1-269:11, contemporaneously created documents, JX0587, JX0616, and the testimony of other witnesses. *E.g.* Stephens.Trial.Test.,23:18-25:4; Teske.Trial.Test.,529:8-530:13. |
| [20](#co_tablefootnote_20_1) | The wireless industry sees technology improvements every eight to ten years when carriers improve their systems (e.g., 3G to 4G). Taylor.Trial.Test.,721:16-20. These technology upgrades result in massive network costs and increased usage, without corresponding price increases. Id.,722:17-723:10. |
| [21](#co_tablefootnote_21_1) | Since 2016, Taylor has served as Global Co-Leader of FTI's approximately 1,650-person Corporate Finance and Restructuring group. Taylor.Trial.Test.,692:14-22. She previously served as head of the Telecom, Media, and Technology Industry group. *Id.* |
| [22](#co_tablefootnote_22_1) | [*Kahn,* 669 A.2d at 86-88](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1995238230&pubNum=0000162&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_162_86&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_86) (affirming Chancery Court's finding that merger price was fair when it fell within reasonable range of values provided by respondent's expert). |
| [23](#co_tablefootnote_23_1) | Musey edited his C.V. to replace every instance of the word “satellite” with “mobile” for this engagement, including in his job and publication titles. Musey.Dep.Tr.,72:8-75:17,76:16-77:21,80:8-90:13. After being cross-examined on this during his deposition, Musey submitted a revised C.V. with his revised report. JX2500,pp.16-26. |
| [24](#co_tablefootnote_24_1) | Musey.Dep.Tr.,75:18-22. Musey also did not believe AT&T ever required subscribers to report their PPU because he “asked [his] friends” and none of them recalled having been asked for that information. Id.,162:17-20,287:14-288:5. |
| [25](#co_tablefootnote_25_1) | Trans.ID.66133215,Ex.F. |
| [26](#co_tablefootnote_26_1) | While the inflated roaming revenue is now offset by inflated expense in aggregate, the error impacts certain Partnerships on an individual basis. Taylor.Trial.Test.,757:11-15. |
| [27](#co_tablefootnote_27_1) | Barrick performed these same adjustments. |
| [28](#co_tablefootnote_28_1) | While Plaintiffs' experts criticize Taylor's use of the market approach, AT&T examined precedent transactions in evaluating the proposed acquisition of T-Mobile. JX1893,CTPL-00224950. |
| [29](#co_tablefootnote_29_1) | Taylor.Trial.Test.,836:12-837:11 (comparing Mobility's EBITDA margins to the Partnerships' is comparing apples to oranges because the accounting is different and CapEx for the network at the Mobility level was charged down to the Partnerships as expense). |
| [30](#co_tablefootnote_30_1) | JX2636,p.16 (showing distributions were 111% of EBITDA and 125% of free cash flow). |
| [31](#co_tablefootnote_31_1) | JX2419,pp.69-70; JX2403,p.11 (citing Spreadsheet, Functional Acct. Manual Allocations 2010 July, CTPL-00210295, rows 22-24 (listing Asurion billing administrative fees “allocated to markets based on enrollments by sub-market”)); JX2402. |
| [32](#co_tablefootnote_32_1) | Plaintiffs' share of this amount would have been $122,423. *See* JX2419,p.50,n.135. |
| [33](#co_tablefootnote_33_1) | As the Special Master explained, on September 17, 2015, Defendants voluntarily provided an affidavit that disclosed the “aggregate revenues received by [AT&T Government Solutions (AGS)] for work associated with responding to legal demands that may have included Mobility Information.” JX2419,pp.106-107. These aggregate revenues-which the Special Master confirmed were accurate-were then included in the over-inclusive Paragraph 16 Disclosures provided on January 20, 2017. *Id.* |
| [34](#co_tablefootnote_34_1) | For the foregoing reasons, the Court should reject Plaintiffs' claim for attorneys' fees relating to their claims regarding the Transactions. Indeed, a fee award does not necessarily follow even where unfair process or unfair price has been found. *See, e.g.,* [*Weinberger v. UOP, Inc.,* 517 A.2d 653, 656 (Del. Ch. 1986)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1986156469&pubNum=0000162&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&fi=co_pp_sp_162_656&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_656); [*B&L Cellular,* 2014 WL 6882207 at \*4](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2034953277&pubNum=0000999&originatingDoc=Ib8612290857a11eb9868ac06a4093b45&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)). |

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