

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

In the Matter of )  
 )  
 Application of AT&T Mobility Spectrum LLC and ) ULS File No. 0004777216  
 BTA Ventures II, Inc. )  
 )  
 For Consent To Assign Lower 700 MHz )  
 B Block Authorization Call Sign WQJQ779 )

**ORDER**

**Adopted: February 16, 2012**

**Released: February 16, 2012**

By the Chief, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In this Order, we grant the application of AT&T Mobility Spectrum LLC (“AT&T Mobility”), a wholly-owned subsidiary of AT&T Inc. (“AT&T”), and BTA Ventures II, Inc. (“BTA” and together with AT&T Mobility, the “Applicants”) for Commission consent to the assignment of BTA’s Lower 700 MHz B Block license in the Ocean County, New Jersey CMA<sup>1</sup> to AT&T Mobility<sup>2</sup> (the “Application”). In so doing, we deny the Petition to Deny filed by the RCA – The Competitive Carriers Association (“RCA”) against the Application. For the reasons discussed below, we find that AT&T’s proposed acquisition of BTA’s Lower 700 MHz B Block license is unlikely to cause competitive or other public interest harms and that it is in the public interest to grant this application.

**II. BACKGROUND**

2. AT&T is the ultimate parent of AT&T Mobility and is incorporated in Delaware and headquartered in Dallas, Texas. AT&T is a communications holding company.<sup>3</sup> BTA, a closely held company incorporated in the state of Delaware,<sup>4</sup> acquired the subject license from Verizon Wireless following a divestiture commitment made by Verizon Wireless when the Commission approved its Auction 73 license application.<sup>5</sup>

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<sup>1</sup> Cellular Market Areas (“CMAs”) are the areas in which the Commission initially granted licenses for the cellular service. See 47 C.F.R. § 22.90.

<sup>2</sup> Application of AT&T Mobility Spectrum LLC and BTA Ventures II, Inc. for Assignment of Authorization, File No. 0004777216 (filed June 24, 2011).

<sup>3</sup> See AT&T Inc., SEC Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 2010, at 1 (filed Mar. 1, 2011).

<sup>4</sup> File No. 0003838549, Description of Swap Transaction and Public Interest Statement at 2 (filed May 22, 2009) (“Description of Swap Transaction and Public Interest Statement”).

<sup>5</sup> See In the Matter of Union Telephone Company and Cellco Partnership d/b/a Verizon Wireless Applications for 700 MHz Band Licenses, Auction No. 73, *Memorandum Opinion and Order*, 23 FCC Rcd 16787, 16791 ¶ 8 (2008); Description of Swap Transaction and Public Interest Statement at 1-2.

3. On June, 27, 2011, the Applicants filed the Application, pursuant to section 310(d) of the Communications Act of 1934, as amended (the “Communications Act”),<sup>6</sup> seeking Commission consent to the assignment of BTA’s Lower 700 MHz B Block license in the New Jersey 2 – Ocean CMA (CMA 551) to AT&T Mobility. On August 5, 2011, the Commission released a public notice seeking comment on the proposed transaction.<sup>7</sup> In response to the *Comment Public Notice*, RCA filed its petition to deny.<sup>8</sup> The Applicants filed separate oppositions on August 29, 2011.<sup>9</sup> RCA filed reply comments on September 6, 2011.<sup>10</sup>

4. Pursuant to section 310(d) of the Communications Act, we must determine whether the Applicants have demonstrated that the proposed assignment of license will serve the public interest, convenience, and necessity.<sup>11</sup> We use here the standard of review and public interest framework that the Commission has applied in evaluating wireless transactions, which was most recently articulated in the Commission’s order approving the assignment of licenses from Qualcomm Incorporated to AT&T Inc.<sup>12</sup>

5. Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite “citizenship, character, financial, technical, and other qualifications.”<sup>13</sup> Section 310(d) of the Communications Act obligates the Commission to consider whether the proposed assignee is qualified to hold Commission licenses.<sup>14</sup> No issues have been raised in this proceeding with respect to the basic qualifications of the proposed assignee, AT&T, which has previously and repeatedly been found qualified, through its subsidiaries, to hold Commission licenses. We therefore find that there is no reason to re-evaluate the basic qualifications of AT&T.

### III. DISCUSSION

6. In its petition to deny, RCA objects generally to AT&T’s continued acquisition of spectrum<sup>15</sup> but fails to raise any substantive issues, or discuss any specific competitive harm, that would result from

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<sup>6</sup> 47 U.S.C. § 310(d).

<sup>7</sup> AT&T Mobility Spectrum LLC and BTA Ventures II Inc. Seek FCC Consent to the Assignment of Lower 700 MHz Band B Block License, ULS File No. 0004777216, *Public Notice*, DA 11-1358 (rel. Aug. 5, 2011) (“*Comment Public Notice*”). The *Comment Public Notice* established a pleading cycle for the application, with petitions to deny due August 19, 2011, oppositions due August 29, 2011, and replies due September 6, 2011.

<sup>8</sup> Petition to Deny of RCA – The Competitive Carriers Association, filed August 19, 2011 (“RCA Petition to Deny”).

<sup>9</sup> Opposition of AT&T Mobility Spectrum LLC to Petition to Deny, filed August 29, 2011 (“AT&T Opposition”); and Opposition of BTA Ventures II Inc. to Petition to Deny filed August 29, 2011 (“BTA Opposition”) (collectively, “Oppositions”).

<sup>10</sup> Reply Comments of RCA – The Competitive Carriers Association, filed September 6, 2011 (“RCA Reply Comments”).

<sup>11</sup> 47 U.S.C. § 310(d).

<sup>12</sup> Application of AT&T Inc. and Qualcomm Incorporated For Consent To Assign Licenses and Authorizations, WT Docket No. 11-18, *Order*, FCC 11-18, ¶¶ 23-26 (rel. Dec. 22, 2011) (“*AT&T-Qualcomm Order*”).

<sup>13</sup> 47 U.S.C. §§ 308, 310(d). *See also, e.g., AT&T-Qualcomm Order* at ¶ 27.

<sup>14</sup> *See, e.g., AT&T-Qualcomm Order* at ¶ 28.

<sup>15</sup> *See* RCA Petition to Deny at 1-2 (citing industry-wide harms such as foreclosing actual or potential competitors, impairing device interoperability, and limiting roaming). For instance, RCA incorporates by reference general arguments that it had advanced in opposition to previous assignment applications involving AT&T. *Id.* at 1 & n.2 (citing the Petition to Deny of RCA in the Matter of Application of AT&T Inc. and Qualcomm Incorporated For Consent To Assign Licenses and Authorizations, WT Docket No. 11-18, filed March 11, 2011).

our approval of the particular transaction before us. With respect to the New Jersey 2 - Ocean CMA, RCA only objects generally that “the transaction would cause a further increase in concentration,” which it alleges would enable AT&T to wield its market power to the detriment of consumers and competition.<sup>16</sup> There are not present specific facts or evidence in the record to support a finding that the approval of AT&T’s proposed acquisition of BTA’s Lower 700 MHz B Block license in this particular CMA is likely to cause competitive or other public interest harms. Nor does RCA present specific facts that would support a finding that it or any of its members would suffer a direct harm from the consummation of the proposed transaction in the affected market.<sup>17</sup>

7. Under section 1.939(d) of the Commission’s rules, a petition to deny must contain specific allegations of fact sufficient to make a prima facie showing that a grant of the application would be inconsistent with the public interest, convenience and necessity.<sup>18</sup> We deny RCA’s petition because RCA failed to offer any specific allegations of fact with respect to the particular transaction in question..

8. We note that Applicants state the proposed transaction would enable AT&T to achieve greater operational efficiencies and offer improved, more robust and advanced services to meet the needs of new and existing subscribers.<sup>19</sup> Further, AT&T states that the acquisition of this spectrum will facilitate deployment of its 4G network using LTE technology, and will increase network capacity to the benefit of all its subscribers.<sup>20</sup> In the absence of any showing of harm specific to this transaction, we find that the transaction would serve the public interest, convenience, and necessity and hereby grant it.

#### IV. ORDERING CLAUSES

9. Accordingly, having reviewed the application, the petition to deny, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the application for the assignment of one Lower 700 MHz B Block license covering the New Jersey 2 – Ocean CMA, CMA551, from BTA to AT&T is GRANTED.

10. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the petition to deny the application for the assignment of the Lower 700 MHz B Block license covering the New Jersey 2 – Ocean CMA, CMA551, from BTA to AT&T is DENIED for the reasons stated herein.

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

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<sup>16</sup> See RCA Petition to Deny at 2. We note that, while RCA raises a concern about an “increase in concentration” in this market, this transaction is a spectrum-only transaction and does not change the number of facilities-based service providers in the market.

<sup>17</sup> AT&T and BTA both challenge RCA’s standing to file its petition to deny, pointing out that in its Petition to Deny, RCA does not identify which, if any, of its members competes in this CMA. AT&T Opposition at 9; BTA Opposition at 2-4. In response, RCA points out that its member Sprint holds licenses and competes in the provision of wireless services in Ocean County, New Jersey. RCA Reply Comments at 2.

<sup>18</sup> 47 C.F.R. 1.939(d).

<sup>19</sup> See File No. 0004777216, Description of Transaction and Public Interest Statement at 2.

<sup>20</sup> *Id.* at 3.

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

FEDERAL COMMUNICATIONS COMMISSION

Rick Kaplan  
Chief, Wireless Telecommunications Bureau