

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

In the Matter of)	
)	
Applications of AT&T Inc., Cellco Partnership)	WT Docket No. 13-56
d/b/a Verizon Wireless, Grain Spectrum, LLC,)	
and Grain Spectrum II, LLC)	
)	
For Consent To Assign and Lease AWS-1 and)	
Lower 700 MHz Licenses)	

MEMORANDUM OPINION AND ORDER

Adopted: September 3, 2013

Released: September 3, 2013

By the Chief, Wireless Telecommunications Bureau

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I. INTRODUCTION

1. In this Memorandum Opinion and Order, we approve several applications of AT&T, Verizon Wireless, and Grain (together, the “Applicants”) regarding the assignment and lease of various Lower 700 MHz Band B Block licenses and AWS-1 licenses.¹ Verizon Wireless would assign to AT&T 39 full Lower 700 MHz Band B Block licenses and would assign to Grain I three Lower 700 MHz Band B Block licenses, whose spectrum Grain I would then lease to AT&T. For its part, AT&T would assign to Verizon Wireless one full and five partitioned AWS-1 licenses and would assign to Grain II one AWS-1 license, whose spectrum Grain II would lease to Verizon Wireless. In total, the proposed transactions affect spectrum in 72 markets across the country. For the reasons detailed below, we approve the applications, subject to a condition involving the buildout of the AWS-1 licenses and spectrum being acquired by Verizon Wireless that is consistent with a similar condition imposed by the Commission last year.

II. BACKGROUND

A. Description of the Applicants

1. AT&T

2. AT&T Inc. (“AT&T”),² headquartered in Dallas, Texas, is a communications holding company that ranks among the leading providers of telecommunications services in the United States.³ As of December 31, 2012, AT&T reported more than \$127 billion in revenues, of which its wireless services accounted for approximately 52 percent, and had approximately 107 million wireless subscribers.⁴ AT&T’s nationwide wireless network currently covers approximately 308 million people, or approximately 99.8 percent of the population of the mainland United States.⁵ The company is

¹ Applications of AT&T Inc., Cellco Partnership d/b/a Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC for Consent To Assign Licenses and Lease Spectrum, ULS File Nos. 0005627587, 0005627610, 0005630397, 0005630442, 0005630591, 0005630585, 0005630946, 7004WYNL13, and 7005AWN13 (filed Feb. 6, 2013) (collectively, the “Applications”). File No. 0005627587 is designated as the lead application (“Lead Application”).

² AT&T Mobility Spectrum LLC and New Cingular Wireless PCS, LLC, both indirect wholly-owned subsidiaries of AT&T, are applicants here. See Lead Application, Exhibit 1, Description of the Transaction and Public Interest Statement (“Public Interest Statement”), at 1.

³ AT&T Inc., SEC Form 10-K (filed Feb. 22, 2013) (“AT&T 10-K”), at 1, *available at* http://www.sec.gov/Archives/edgar/data/732717/000073271713000017/ye12_10k.htm.

⁴ AT&T Inc., 2012 Annual Report, Ex. 13 (filed Feb. 22, 2013), at 1, 5, *available at* <http://www.sec.gov/Archives/edgar/data/732717/000073271713000017/ex13.htm>.

⁵ Of the 308 million people covered by its wireless network, AT&T covers approximately 301.3 million people with 3G, 294.6 million people with HSPA+, and 221.6 million people with LTE. Mosaik Solutions Data (“Mosaik”), July 2013.

transitioning to a wireless network that uses the fourth generation Long Term Evolution (“LTE”) mobile technology, and the company expects to largely complete this transition by the end of 2014.⁶

2. Verizon Wireless

3. Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) is a general partnership that is ultimately owned by Verizon Communications Inc. (“Verizon”) and Vodafone Group Plc. (“Vodafone”). Applicants state that Vodafone’s interest in the partnership, and its qualifications as a foreign corporation to hold indirect ownership interests in common carrier licenses, have been previously authorized by the Commission under the Communications Act of 1934, as amended (“Communications Act”).⁷

4. Verizon Wireless is one of the largest wireless service providers in the United States as measured by total number of customers and revenue.⁸ In addition, it has deployed an LTE network that, as of August 2013, is available in 500 markets to more than 95 percent of the U.S. population and covers nearly 301 million people.⁹ In 2012, Verizon Wireless’s domestic revenues were \$75.8 billion, representing approximately 65% of Verizon’s aggregate revenues.¹⁰

3. Grain I and Grain II

5. Grain Spectrum, LLC (“Grain I”) and Grain Spectrum II, LLC (“Grain II,” and together with Grain I, “Grain”), each a Delaware limited liability company,¹¹ are wholly owned by Grain Capital II, LLC, which is managed by Grain Management, LLC (“Grain Management”). Grain and Grain Management are indirectly 100 percent owned and controlled by David Grain, an African American businessman with experience in investing in, owning, and managing telecommunications assets. Grain Management manages investments in wireless telecommunications projects in North America. Its private equity funds focus on building, acquiring, and operating communications infrastructure including voice, video and data networks, and wireless communications towers.¹²

B. Description of Transactions

6. On February 6, 2013, AT&T, Verizon Wireless, and Grain filed the Applications pursuant to section 310(d) of the Communications Act of 1934, as amended,¹³ seeking Commission consent to the assignment and lease of a number of Lower 700 MHz Band B Block and full and

⁶ AT&T 10-K at 2.

⁷ Public Interest Statement at 18 (citing Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses, WT Docket No. 12-4, *Memorandum Opinion and Order and Declaratory Ruling*, 27 FCC Rcd 10698, 10764-67 ¶¶ 171-78 (2012) (“*Verizon Wireless-SpectrumCo Order*”).

⁸ See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, WT Docket No. 1-186, *Sixteenth Report*, 28 FCC Rcd 3700, 3753-54, Tables 11-13 (2013) (“*Sixteenth Annual Mobile Wireless Competition Report*”).

⁹ Verizon Wireless, *About Us, Our Technology*, <http://aboutus.verizonwireless.com/technology/network/> (last visited August 28, 2013).

¹⁰ Verizon, 2012 Annual Report 15 25, available at <http://www22.verizon.com/investor/annualreports.htm>.

¹¹ See Ownership Disclosure Filing of Grain I, FCC Form 602, ULS File No. 0005633824, Exhibit 1; Ownership Disclosure Filing of Grain II, FCC Form 602, ULS File No. 0005633842, Exhibit 1.

¹² See Public Interest Statement at 5-6.

¹³ 47 U.S.C. § 310(d).

partitioned Advanced Wireless Services (“AWS-1”) licenses. The proposed transactions would consist of (a) a direct exchange of spectrum licenses between AT&T and Verizon Wireless and (b) assignments of spectrum licenses from AT&T and Verizon Wireless to Grain, which would lease the assigned spectrum to Verizon Wireless and AT&T under long-term *de facto* transfer spectrum leases.¹⁴ Specifically, Verizon Wireless would assign to AT&T 39 full Lower 700 MHz Band B Block licenses and would assign to Grain I three full Lower 700 MHz Band B Block licenses, whose spectrum Grain I would then lease to AT&T. AT&T would assign to Verizon Wireless one full and five partitioned AWS-1 licenses and would assign to Grain II one full AWS-1 license, whose spectrum Grain II would then lease to Verizon Wireless.¹⁵ The Applicants state that the proposed transactions would not include the transfer of any other assets, facilities, or customers.¹⁶

7. The Applicants assert that the proposed transactions would allow AT&T and Verizon Wireless each to further rationalize their spectrum holdings and obtain contiguous spectrum in many markets, enabling more spectrally efficient deployments and assisting AT&T and Verizon Wireless to provide high-quality, high-speed wireless broadband.¹⁷ The Applicants also allege that the proposed transactions would further the Commission’s goal of extending opportunities in the wireless market to small and minority-owned businesses by enabling Grain, a minority-owned business, to purchase AWS-1 and Lower 700 MHz Band B Block licenses, becoming a new licensee.¹⁸ Finally, the Applicants state that the proposed transactions would complete Verizon Wireless’s sale of its Lower 700 MHz Band B Block licenses as part of its efforts to rationalize its spectrum holdings.¹⁹

8. Pursuant to the proposed transactions, AT&T would be assigned or would lease 12 megahertz of Lower 700 MHz Band B Block spectrum in 157 counties in 42 Cellular Market Areas (“CMAs”). As a result, AT&T would hold a maximum of 150 megahertz of spectrum in those CMAs. Verizon Wireless would be assigned or would lease 10 megahertz of AWS-1 spectrum in 115 counties in 36 CMAs. After the completion of the transactions, Verizon Wireless would hold a maximum of 164 megahertz of spectrum in one CMA (CMA 658 – Texas 7 – Fannin).

C. Transaction Review Process

9. On February 6, 2013, the Applicants filed the Applications. On March 5, 2013, the Commission released a public notice announcing acceptance of the Applications for filing and establishing a pleading cycle, with petitions to deny due April 4, 2013, oppositions due April 15, 2013,

¹⁴ The Applicants state that AT&T and Verizon also plan to enter into short-term spectrum manager leases for much of the spectrum to allow each to begin to utilize the spectrum quickly. See Public Interest Statement at 4.

¹⁵ See *id.* at 3.

¹⁶ See *id.* at 4.

¹⁷ See *id.* at 11-13.

¹⁸ See *id.* at 14.

¹⁹ See *id.* at 11. In April, 2012, Verizon Wireless announced a process to sell its Lower 700 MHz Band A and B Block licenses. See *id.*, citing News Release, Verizon Wireless To Conduct Spectrum License Sale (Apr. 18, 2012), <http://news.verizonwireless.com/news/2012/04/pr2012-04-18f.html>.

and replies due April 22, 2013.²⁰ In response to the *Comment Public Notice*, the Commission received three petitions and one comment, a Joint Opposition from the Applicants, and four replies.²¹

10. On June 13, 2013, pursuant to section 308(b) of the Communications Act,²² the Bureau requested additional information and documents from AT&T and Verizon Wireless relating to aspects of the proposed transaction.²³ The Bureau also released protective orders to ensure that any confidential or proprietary documents submitted to the Commission would be adequately protected from public disclosure, and to announce the process by which interested parties could gain access to confidential information filed in the record.²⁴ Also on June 13, 2013, the Bureau released a public notice announcing that Numbering Resource Utilization and Forecast (“NRUF”) reports and local number portability (“LNP”) data would be placed into the record and adopted a protective order pursuant to which the Applicants and third parties would be allowed to review the specific NRUF reports and LNP data placed into the record.²⁵

11. Maneesh Pangasa, in a document submitted in this proceeding and in the proceeding addressing AT&T’s proposed acquisition of certain operations from Atlantic Tele-Network, Inc.,²⁶ after

²⁰ AT&T Inc., Cellco Partnership d/b/a Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC Seek FCC Consent to the Assignment of Advanced Wireless Services and Lower 700 MHz Band B Block Licenses and to Long-Term *De Facto* Transfer Spectrum Leasing Arrangements Involving Advanced Wireless Services and Lower 700 MHz B Block Licenses, WT Docket No. 13-56, *Public Notice*, DA 13-354 (rel. March 5, 2013) (“*Comment Public Notice*”).

²¹ See Appendix A *infra*. Maneesh Pangasa filed a number of comments after the comment period closed.

²² 47 U.S.C. § 308(b).

²³ See Letter from Ruth Milkman, Chief, WTB, FCC, to Michael P. Goggin, AT&T, Inc., WT Docket No. 13-56 (June 13, 2013); Letter from Ruth Milkman, Chief, WTB, FCC, to Sarah Trosch, Verizon Wireless, WT Docket No. 13-56 (June 13, 2013).

²⁴ Applications of AT&T Inc., Cellco Partnership d/b/a Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC For Consent To Assign Licenses and Grant Long-Term *De Facto* Transfer Spectrum Leasing Arrangements, WT Docket No. 13-56, *Protective Order*, 28 FCC Rcd 8417 (WTB 2013); Applications of AT&T Inc., Cellco Partnership d/b/a Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC For Consent To Assign Licenses and Grant Long-Term *De Facto* Transfer Spectrum Leasing Arrangements, WT Docket No. 13-56, *Second Protective Order*, 28 FCC Rcd 8433 (WTB 2013); Applications of AT&T Inc., Cellco Partnership d/b/a Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC for Consent To Assign Licenses and Grant Long-Term *De Facto* Transfer Spectrum Leasing Arrangements, WT Docket No. 13-56, Supplement to Second Protective Order, WT Docket No. 13-56, Appendix A Protective Order, 28 FCC Rcd 9041 (WTB 2013) (together, the “*Protective Orders*”). The unredacted version of this Memorandum Opinion and Order will be available upon request to qualified persons who have executed the signed acknowledgements required by the *Protective Orders*. Qualified persons who have not yet signed the required acknowledgments may do so in order to obtain the confidential version of this Memorandum Opinion and Order.

²⁵ Applications of AT&T Inc., Cellco Partnership d/b/a Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC For Consent To Assign Licenses and Grant Long-Term *De Facto* Transfer Spectrum Leasing Arrangements, Numbering Resource Utilization and Forecast Reports and Local Number Portability Reports to be Placed into the Record, Subject to Protective Order, WT Docket No. 13-56, *Public Notice*, 28 FCC Rcd 8430 (WTB 2013); Applications of AT&T Inc., Cellco Partnership d/b/a Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC For Consent To Assign Licenses and Grant Long-Term *De Facto* Transfer Spectrum Leasing Arrangements, WT Docket No. 13-56, *NRUF/LNP Protective Order*, 28 FCC Rcd 8424 (WTB 2013).

²⁶ See WT Docket No. 13-54, Applications of Allied Wireless Communications Corporation, AWCC Acquisition Company LLC, and AT&T Inc. for Consent To Transfer Control of and Assign Licenses, and Authorizations To Lease Spectrum, ULS File Nos. 0005632405, 0005631527, 0005631556, 0005631562, 0005631563, 0005631565, 0005631586, 0005632708, 0005632710, 0005632713, and 0005632716 (filed Feb. 5, 2013; amended Apr. 3, 2013).

the conclusion of the pleading cycles in both proceedings, urges the Commission to combine its review of both sets of proposed transactions.²⁷ In addition to being late-filed, the statement appears to reflect several procedural defects, including a failure to serve the Applicants.²⁸ Mr. Pangasa supplemented this statement with five other submissions that raise general concerns about spectrum aggregation and various wireless industry practices.

12. We decline to consolidate the proceedings as Mr. Pangasa requests in his late-filed statement. The Commission has broad authority to “conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”²⁹ The Pangasa Statement does not explain why the Commission should consolidate these proceedings. Mr. Pangasa does not identify any substantive issues or competitive harms that would result from approval of the transactions, and he fails as well to provide any evidence specific to these transactions. As such, we see no basis to formally consolidate these proceedings.

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

13. Pursuant to section 310(d) of the Communications Act, we must determine whether the Applicants have demonstrated that the proposed assignment of licenses and approval of new spectrum leasing arrangements will serve the public interest, convenience, and necessity.³⁰ In making this assessment, we first examine whether the proposed transaction complies with the specific provisions of the Communications Act,³¹ other applicable statutes, and the Commission’s rules.³² If the transaction does not violate a statute or rule, we next consider whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.³³ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.³⁴ The Applicants bear the burden

²⁷ Maneesh Pangasa Statement for the Record (filed May 10, 2013) (“Pangasa Statement”).

²⁸ Other apparent defects include failure to provide the filer’s name, street address, telephone number, or signature.

²⁹ 47 U.S.C. § 154(j); *see FCC v. Schreiber*, 381 U.S. 279 (1965).

³⁰ *See* 47 U.S.C. § 310(d).

³¹ Section 310(d) requires that we consider the applications as if each of the proposed assignees were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. *See, e.g., Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710 ¶ 28.

³² *See, e.g., Applications of GCI Communication Corp., ACS Wireless License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. for Consent To Assign Licenses to The Alaska Wireless Network*, WT Docket No. 12-187, *Memorandum Opinion and Order and Declaratory Ruling*, 28 FCC Rcd 10433, 10442 ¶ 23 (2013) (“*Alaska Wireless Order*”); Applications of SOFTBANK CORP., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation, IB Docket No. 12-343, *Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration*, 28 FCC Rcd 9642, 9650 ¶ 23 (2013) (“*SoftBank-Sprint Order*”); Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corporation, Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas & Electric Company For Consent to Assign and Transfer Licenses, WT Docket No. 12-240, *Memorandum Opinion and Order*, 27 FCC Rcd 16459, 16463-64 ¶ 10 (2012) (“*AT&T-WCS Order*”); *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710 ¶ 28.

³³ *See, e.g., Alaska Wireless Order*, 28 FCC Rcd at 10442 ¶ 23; *SoftBank-Sprint Order*, 28 FCC Rcd at 9650-51 ¶ 23; *AT&T-WCS Order*, 27 FCC Rcd at 16463-64 ¶ 10; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710 ¶ 28.

³⁴ *See, e.g., Alaska Wireless Order*, 28 FCC Rcd at 10442 ¶ 23; *SoftBank-Sprint Order*, 28 FCC Rcd at 9651 ¶ 23; *AT&T-WCS Order*, 27 FCC Rcd at 16463-64 ¶ 10; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710 ¶ 28.

of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.³⁵

14. Our public interest evaluation necessarily encompasses the “broad aims of the Communications Act,” which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest.³⁶ Our public interest analysis also can entail assessing whether the proposed transaction will affect the quality of communications services or result in the provision of new or additional services to consumers.³⁷ In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.³⁸

15. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.³⁹ The Commission and the Department of Justice (“DOJ”) each have independent authority to examine the competitive impacts of proposed communications mergers and transactions involving transfers of Commission licenses, but the standards governing the Commission’s competitive review differ somewhat from those applied by the DOJ.⁴⁰ Like the DOJ, the Commission considers how a transaction will affect competition by defining a relevant market, looking at the market power of incumbent competitors, and analyzing barriers to entry, potential competition, and the efficiencies, if any, that may result from the transaction.⁴¹ The DOJ, however, reviews telecommunications mergers pursuant to section 7 of the Clayton Act, and if it sues to block a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.⁴² The DOJ’s review is also limited solely to an examination of the competitive effects of the acquisition, without reference to other public interest considerations.⁴³ The Commission’s competitive analysis under the public interest standard is somewhat broader, considering, for example,

³⁵ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10442 ¶ 23; *SoftBank-Sprint Order*, 28 FCC Rcd at 9651 ¶ 23; *AT&T-WCS Order*, 27 FCC Rcd at 16463-64 ¶ 10; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710 ¶ 28.

³⁶ See, e.g., Application of AT&T Inc. and Qualcomm Incorporated For Consent To Assign Licenses and Authorizations, WT Docket No. 11-18, *Order*, 26 FCC Rcd 17589, 17603 ¶ 23, n.96 (2011) (“*AT&T-Qualcomm Order*”). See also *Alaska Wireless Order*, 28 FCC Rcd at 10442 ¶ 24; *SoftBank-Sprint Order*, 28 FCC Rcd at 9651 ¶ 24; Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements, WT Docket No. 08-246, *Memorandum Opinion and Order*, 24 FCC Rcd 13915, 13928 ¶ 28 (2009) (“*AT&T-Centennial Order*”).

³⁷ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10442 ¶ 24; *SoftBank-Sprint Order*, 28 FCC Rcd at 9651 ¶ 24; *AT&T-WCS Order*, 27 FCC Rcd at 16464 ¶ 11; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10752 ¶ 143.

³⁸ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10442-43 ¶ 24; *SoftBank-Sprint Order*, 28 FCC Rcd at 9651 ¶ 24; *AT&T-WCS Order*, 27 FCC Rcd at 16464 ¶ 11; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 24.

³⁹ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10443 ¶ 25; *SoftBank-Sprint Order*, 28 FCC Rcd at 9651 ¶ 25; *AT&T-WCS Order*, 27 FCC Rcd at 16464-65 ¶ 12; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 25.

⁴⁰ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10443 ¶ 25; *SoftBank-Sprint Order*, 28 FCC Rcd at 9651-52 ¶ 25; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599-17600 ¶ 25; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8717 ¶ 24.

⁴¹ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10443 ¶ 25; *SoftBank-Sprint Order*, 28 FCC Rcd at 9652 ¶ 25; *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 29.

⁴² 15 U.S.C. § 18.

⁴³ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10443 ¶ 25; *SoftBank-Sprint Order*, 28 FCC Rcd at 9652 ¶ 25; *AT&T-Centennial Order*, 24 FCC Rcd at 13929 ¶ 29.

whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant market.⁴⁴ Under the Commission's review, the Applicants must show that the transaction will serve the public interest; otherwise the application is set for hearing.⁴⁵ Finally, the Commission's public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.⁴⁶

IV. QUALIFICATIONS OF APPLICANTS

16. As noted previously, when evaluating applications for consent to assign or transfer control of licenses and authorizations, section 310(d) of the Communications Act requires the Commission to determine whether the proposed transaction will serve "the public interest, convenience and necessity."⁴⁷ 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."⁴⁸ Therefore, as a threshold matter, the Commission must determine whether the applicants to the proposed transaction meet the requisite qualifications requirements to hold and transfer licenses under section 310(d) and the Commission's rules.⁴⁹

17. *Discussion.* As an initial matter, we note that no parties have raised issues with respect to the basic qualifications of AT&T, Verizon Wireless, or Grain. The Commission generally does not reevaluate the qualifications of assignors unless issues related to basic qualifications have been sufficiently raised in petitions to warrant designation for hearing.⁵⁰ Moreover, we previously and repeatedly have found AT&T, through its subsidiaries, and Verizon Wireless qualified to hold Commission licenses.⁵¹ We find that there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Communications Act and our rules, regulations, and policies, of AT&T or Verizon Wireless. We further find Grain I and Grain II qualified to

⁴⁴ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10443 ¶ 25; *SoftBank-Sprint Order*, 28 FCC Rcd at 9652 ¶ 25; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 25.

⁴⁵ 47 U.S.C. § 309(e); see also *AT&T-WCS Order*, 27 FCC Rcd at 16464-65 ¶ 12; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 25; Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, *Memorandum Opinion and Order and Report and Order*, 23 FCC Rcd 12348, 12364 ¶ 30 (2008); News Corp. and DIRECTV Group, Inc. and Liberty Media Corp. for Authority to Transfer Control, *Memorandum Opinion and Order*, 23 FCC Rcd 3265, 3277 ¶ 22 (2008).

⁴⁶ 47 U.S.C. §§ 214(c) (authorizing the Commission to impose "such terms and conditions in its judgment the public convenience may require"), 303(r) (authorizing the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Communications Act); see, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10443 ¶ 26; *SoftBank-Sprint Order*, 28 FCC Rcd at 9652 ¶ 25; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10711 ¶ 30.

⁴⁷ 47 U.S.C. § 310(d).

⁴⁸ 47 U.S.C. §§ 308, 310(d); see also, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10444 ¶ 28; *SoftBank-Sprint Order*, 28 FCC Rcd at 9652 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10712 ¶ 33.

⁴⁹ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see also, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10444-45 ¶ 28; *SoftBank-Sprint Order*, 28 FCC Rcd at 9652-53 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10712 ¶ 33.

⁵⁰ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10445 ¶ 29; *SoftBank-Sprint Order*, 28 FCC Rcd at 9653 ¶ 27; *AT&T-WCS Order*, 27 FCC Rcd at 16466 ¶ 18.

⁵¹ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16466 ¶ 16; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10714 ¶ 17.

hold Commission licenses. The individual controlling owner of Grain and affiliated entities also under his control have experience in the telecommunications field;⁵² Grain I and Grain II have certified in their applications that they comply with applicable Commission rules, including satisfaction of the basic qualifications to hold licenses;⁵³ and, as noted above, no parties have challenged Grain's qualifications.

V. POTENTIAL PUBLIC INTEREST HARMS

18. In reviewing applications involving a proposed transaction, the Commission evaluates the potential public interest harms, including potential competitive harms that may result from the transaction.⁵⁴ The Commission undertakes a case-by-case review of the competitive effects of any increase in market concentration or in spectrum holdings in the relevant markets.⁵⁵ The Commission's competitive analysis of wireless transactions focuses initially on markets where the acquisition of customers and/or spectrum would result in additional concentration of either or both, and thereby could lead to competitive harm.⁵⁶ In its analysis, the Commission has used an initial screen⁵⁷ to help identify those markets that provide particular reason for further competitive analysis.⁵⁸ As set out in various transactions orders, however, the Commission has not limited its consideration of potential competitive harms solely to markets identified by its initial screen, if it encounters other factors that may bear on the public interest inquiry.⁵⁹

A. Competitive Overview

19. Spectrum is an essential input in the provision of mobile wireless services, and ensuring that sufficient spectrum is available for incumbent licensees as well as potential new entrants is critical to

⁵² See Public Interest Statement at 5-6.

⁵³ See Application of Grain Spectrum, LLC, ULS File No. 0005630442 (filed Feb. 6, 2013); Application of Grain Spectrum II, LLC, ULS File No. 0005630585 (filed Feb. 6, 2013).

⁵⁴ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9656 ¶ 34; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶¶ 47-48, 10734 ¶ 95; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17622-23 ¶ 81.

⁵⁵ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31; *AT&T-Centennial Order*, 24 FCC Rcd at 13938 ¶ 50.

⁵⁶ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9656 ¶ 34.

⁵⁷ Because the proposed transactions do not result in the acquisition of wireless business units and customers or change in the number of firms in any market, an initial screen based on the size of the post-transaction Herfindahl-Hirschman Index ("HHI") of market concentration and the change in the HHI would identify no changes in any markets as a result of the proposed transactions. See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16467 ¶ 22 n.64.

⁵⁸ When a proposed transaction would increase the spectrum holdings in any local market post-transaction, the Commission undertakes a review of the competitive effects of the increase in spectrum holdings in those markets. See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

⁵⁹ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9656 ¶ 35; *AT&T-WCS Order*, 27 FCC Rcd at 16467 ¶ 21 (recognizing the proposition that the "Commission is not . . . limited in its consideration of potential competitive harms solely to markets identified by its initial screen" and, in addition to considering 10 local markets identified by the screen, analyzing the national market because the proposed acquisition would be in a substantial majority of local markets across the country); *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17609-10 ¶¶ 49-50 (recognizing that up to three markets could be triggered by the screen, but considering more broadly AT&T's post-transaction holdings under 1 GHz because, *inter alia*, of the record in that proceeding and the substantial holdings that the company would then have under 1 GHz).

promoting effective competition and innovation in the marketplace.⁶⁰ The Communications Act requires the Commission to examine closely the impact of spectrum aggregation on competition, innovation, and the efficient use of spectrum in order to ensure that any transfer of control serves the public interest, convenience, and necessity.⁶¹ Our public interest analysis must consider not only the near-term but also the long-term impacts of the proposed transactions on the implementation of Congress's pro-competitive deregulatory policies aimed at developing and encouraging competitive markets.⁶²

20. When considering potential competitive effects of spectrum aggregation resulting from a transaction, the Commission has considered whether there would be likelihood that rival service providers or potential entrants would be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market, and also whether rivals' costs would be increased to the extent that they would be less likely to be an effective competitive constraint.⁶³ If rival service providers were unable to expand capacity or deploy mobile broadband technologies, this might well reduce quality and consumer choice.⁶⁴

21. As part of our evaluation of the likelihood that spectrum aggregation in a market would result in any competitive harm, we carefully analyze a variety of factors to determine whether competing service providers would continue to serve as a competitive check post-transaction. The Commission has recognized that the total amount of spectrum held by a service provider is not the only factor necessary to remain a viable competitor in the provision of mobile broadband/telephony services.⁶⁵ As a result, its competitive analysis has encompassed consideration of more than the suitability and availability of spectrum that would allow rival service providers to provide an effective competitive constraint in the marketplace.⁶⁶ Other relevant competitive factors have included, but have not been limited to, population density, the total number of rival service providers, rival firms' market shares, population and area coverage, and availability of spectrum within the market for incumbent services providers as well as potential entrants to provide mobile telephony/broadband services.⁶⁷

⁶⁰ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16467 ¶ 20; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 47; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17601-02 ¶ 30.

⁶¹ 47 U.S.C. 310(d). See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 47; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17601-03 ¶¶ 30-33.

⁶² See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 47; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17601-02 ¶ 30; Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp. (Transferors) and EchoStar Communications Corp. (Transferee), CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559, 20586 ¶ 56 (2002) (discussing the Commission's general spectrum management policies).

⁶³ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16472 ¶ 34; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10725 ¶ 72; Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent To Assign Licenses and Transfer Control of Licenses, MB Docket No. 10-56, *Memorandum Opinion and Order*, 26 FCC Rcd 4238, 4252 ¶ 34 (2011).

⁶⁴ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16472 ¶ 34; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10726 ¶ 74 n.186.

⁶⁵ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10724-25 ¶ 70; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

⁶⁶ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10724-25 ¶ 70.

⁶⁷ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16472 ¶ 34. We derive market shares from our analysis of data compiled in our NRUF database. We derive our measures of network coverage from Mosaik and U.S. Census data, and we obtain spectrum holdings from our licensing databases and the various applications.

22. To evaluate these transactions, we define the product and geographic markets, review the input market for spectrum, and identify market participants. We then consider the arguments in the record regarding possible changes to the manner in which the initial spectrum screen is applied. Next, we analyze the competitive effects of AT&T's acquisition of 700 MHz spectrum from Verizon Wireless and the spectrum lease with Grain I. As in recent Commission precedent involving below 1 GHz spectrum,⁶⁸ we examine more closely the below 1 GHz spectrum holdings post-transaction, in particular the effects of AT&T's acquisition of additional Lower 700 MHz Band B Block spectrum from Verizon Wireless as well as through the Grain I lease. We then evaluate the competitive effects of Verizon Wireless's acquisition of additional AWS-1 spectrum from AT&T as well as through the Grain II lease.⁶⁹ Finally, we evaluate Grain I's and Grain II's proposed spectrum acquisitions from Verizon Wireless and AT&T, respectively.

B. Market Definitions

23. We begin our competitive analysis by determining the appropriate market definitions for the proposed transactions,⁷⁰ including a determination of the product market, geographic market, the input market for spectrum suitable and available for the provision of mobile wireless services, and the market participants.

24. *Product Market.* We continue to use the product market definition that the Commission has applied in recent transactions: a combined "mobile telephony/broadband services" product market that is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).⁷¹ We note that no party in the proceeding challenged this mobile telephony/broadband services product market definition.

25. *Geographic Market.* The Commission has found that the relevant geographic markets for certain wireless transactions generally are "local" and also has evaluated a transaction's competitive effects at the national level where a transaction exhibits certain national characteristics that provide cause for concern.⁷² As discussed below, for these transactions, we continue to use CMAs as the local geographic markets, and find no reason to analyze competitive effects at a national level.

26. The Applicants' analysis of the competitive effects of these transactions uses a local market definition. In the Public Interest Statement, the Applicants contend that the Commission has undertaken an analysis of the impact of transactions on national competition only where the transaction involved the acquisition of spectrum in a much larger number of license areas than the number involved in these transactions, and has not undertaken such an analysis in recent transactions involving the assignment of a slightly larger number of licenses than the number of licenses involved in this

⁶⁸ See *AT&T-Qualcomm Order*, 26 FCC Rcd at 17608-11 ¶¶ 46-51.

⁶⁹ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10724-27 ¶¶ 70-78.

⁷⁰ See, e.g., Applications of AT&T Inc. and Cellular South, Inc. For Consent To Assign Licenses Covering Parts of Alabama, Georgia, and Tennessee, ULS File Nos. 0005597386 and 0005597395, *Memorandum Opinion and Order*, DA 13-783, ¶ 7 (WTB rel. Aug. 20, 2013) ("*AT&T-CellSouth Order*"); *Alaska Wireless Order*, 28 FCC Rcd at 10446 ¶ 33; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 36; *AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 23; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 52.

⁷¹ See, e.g., *AT&T-CellSouth Order*, DA 13-1783, at ¶ 8; *Alaska Wireless Order*, 28 FCC Rcd at 10447 ¶ 35; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 37; *AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 24; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10717 ¶ 53.

⁷² See, e.g., *AT&T-CellSouth Order*, DA 13-1783, at ¶ 8; *Alaska Wireless Order*, 28 FCC Rcd at 10447-48 ¶ 36; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 38; *AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 24; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10717 ¶ 54.

proceeding.⁷³ The Applicants further assert that because AT&T and Verizon Wireless are not only gaining but are also transferring spectrum, the transactions would not have a significant impact on either provider's nationwide average total spectrum holdings on a megahertz basis.⁷⁴ No other party to the proceeding addresses whether we should use a local or national geographic market definition or both.

27. The Commission has found that the relevant geographic markets for wireless transactions generally are "local"⁷⁵ because most consumers use their mobile telephony/broadband services where they live, work, and shop and so purchase their services from providers that offer and market services locally.⁷⁶ Service sold in distant locations is generally not a good substitute for service near a consumer's home or work.⁷⁷ In addition, service providers compete at the local level in terms of coverage, service quality, and localized promotions.⁷⁸ As the Commission has previously recognized, however, two key competitive variables – prices and service plan offerings – do not vary for most providers across most geographic markets.⁷⁹

28. While the Commission has in the past, where appropriate, analyzed a transaction's competitive effects at the national level, we see no reason to do so for the proposed transactions. AT&T's acquisition of the Lower 700 MHz Band B Block spectrum from Verizon Wireless and the leasing of Lower 700 MHz Band B Block spectrum from Grain I covers 157 counties in 42 CMAs, reflecting 14.5% of the population of the U.S. Verizon Wireless's acquisition of AWS-1 spectrum from AT&T and the leasing of AWS-1 spectrum from Grain II covers 115 counties in 36 CMAs, reflecting 11.3% of the population. The spectrum Grain I and Grain II are acquiring from AT&T and Verizon Wireless covers 142 counties in 22 CMAs, reflecting approximately 4.5% of the population of the U.S.⁸⁰ Therefore, we find that any potential competitive harms arising from these proposed transactions would be limited to local markets.

29. *Input Market for Spectrum.* When a proposed transaction would increase the concentration of spectrum holdings in any local market, the Commission evaluates the post-transaction spectrum holdings of the acquiring firm that are "suitable" and "available" in the near term for the

⁷³ See Public Interest Statement at 17. The Applicants also note that the Commission has stated that where competitive harms are unlikely in any local market involved in the transaction, the transaction is unlikely to result in an increase in prices that are set on a nationwide basis. *Id.*

⁷⁴ See *id.* at 18.

⁷⁵ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10447 ¶ 36; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 38; *AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 25; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 54.

⁷⁶ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10448 ¶ 37; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 38; *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 56. See also *Sixteenth Annual Mobile Wireless Competition Report*, 28 FCC Rcd at 3735 ¶¶ 22-23.

⁷⁷ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10448 ¶ 37; *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 56.

⁷⁸ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10448; *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 56.

⁷⁹ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 27; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718-19 ¶ 57; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604-05 ¶¶ 34-37.

⁸⁰ In total, there are 3248 counties and 734 CMAs in the United States, including Puerto Rico and the U.S. Virgin Islands.

provision of mobile telephony/broadband services.⁸¹ The Commission has previously determined that cellular, broadband Personal Communications Service, Specialized Mobile Radio (“SMR”), and 700 MHz band spectrum, as well as AWS-1 and Broadband Radio Service (“BRS”) spectrum where available,⁸² and most recently, Wireless Communications Services (“WCS”) spectrum, all meet this definition, and they have therefore been included in the initial spectrum screen.⁸³

30. For purposes of the instant transactions, we decline to modify the current input market for spectrum. We note that no party has argued that the Commission should modify in this proceeding which spectrum bands are included in this input market,⁸⁴ and we note that this issue, along with a range of other related issues, are being considered by the Commission in its ongoing review of its policies regarding mobile spectrum holdings.⁸⁵

31. *Market Participants.* As in previous transactions, we will consider only facilities-based entities providing mobile telephony/broadband services using cellular, PCS, SMR, 700 MHz, AWS-1, BRS, and WCS spectrum to be market participants, but will continue to assess the effect of mobile virtual network operators and resellers in our competitive evaluation.⁸⁶

C. Initial Screen

32. To evaluate the potential competitive effects of these transactions, we first apply the initial spectrum screen, and then analyze the impact of the transaction on the local markets identified by the screen. The spectrum screen helps the Commission identify local markets where a proposed transaction might raise particular concerns of spectrum concentration.⁸⁷ Specifically, the initial screen identifies local markets where an entity would acquire more than approximately one-third of the total spectrum suitable and available for the provision of mobile telephony/broadband services.⁸⁸ We apply

⁸¹ See, e.g., *AT&T-CellSouth Order*, DA 13-1783, at ¶ 9; *Alaska Wireless Order*, 28 FCC Rcd at 10448-49 ¶ 38; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657-58 ¶ 39; *AT&T-WCS Order*, 27 FCC Rcd at 16469-70 ¶ 29; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59.

⁸² See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10449 ¶ 38; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657-58 ¶ 39; Sprint Nextel Corporation and Clearwire Corporation Applications for Consent To Transfer Control of Licenses, Leases, and Authorizations, WT Docket No. 08-94, *Memorandum Opinion and Order*, 23 FCC Rcd 17570, 17591-92 ¶ 53 (2008).

⁸³ See, e.g., *AT&T-CellSouth Order*, DA 13-1783, at ¶ 9; *Alaska Wireless Order*, 28 FCC Rcd at 10449 ¶ 38; *SoftBank-Sprint Order*, 28 FCC Rcd at 9658 ¶ 39; *AT&T-WCS Order*, 27 FCC Rcd at 16470-71 ¶ 31.

⁸⁴ As discussed in the next section, certain parties did request changes to the screen other than which bands are included.

⁸⁵ See generally Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269, *Notice of Proposed Rulemaking*, 27 FCC Rcd 11710 (2012) (“*Mobile Spectrum Holdings NPRM*”). In the *Mobile Spectrum Holdings NPRM*, the Commission noted that during the pendency of the rulemaking proceeding, it would continue to apply its current case-by-case approach to evaluate mobile spectrum holdings in secondary market transactions and initial spectrum licensing after auctions. See *Mobile Spectrum Holdings NPRM*, 27 FCC Rcd 11710, 11718 ¶ 16 n.59. See also *AT&T-WCS Order*, 27 FCC Rcd at 16470 ¶ 30.

⁸⁶ See, e.g., *AT&T-CellSouth Order*, DA 13-1783, at ¶ 8; *Alaska Wireless Order*, 28 FCC Rcd at 10449-50 ¶ 41; *SoftBank-Sprint Order*, 28 FCC Rcd at 9660 ¶ 43; Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless For Consent To Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, 25 FCC Rcd at 8704, 8722 ¶ 41 (2010) (“*AT&T-Verizon Wireless Order*”).

⁸⁷ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 29; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

our spectrum screen on a county-by-county basis to help identify particular markets for further analysis of any possible competitive effects resulting from an increase in mobile spectrum holdings.⁸⁹

33. *Record.* Petitioners and commenters assert that, if the Commission reviews the instant applications during the pendency of the Mobile Spectrum Holdings proceeding, the Commission should consider the instant transactions under a modified spectrum screen or limit.⁹⁰ For example, RTG contends that the Commission should adopt a limit of 25 percent of the total amount of suitable and available spectrum and 40 percent of the amount of suitable and available spectrum below 1 GHz.⁹¹ In addition, DISH argues that, if the Commission does not deny the instant applications, it should require divestitures in markets in which the Applicants exceed a spectrum screen modified to give double weight to spectrum below 1 GHz.⁹²

34. The Applicants contend that the Commission should apply its current spectrum screen, and that the Commission should consider its policies regarding mobile spectrum holdings in the Commission's separate industry-wide rulemaking proceeding.⁹³ The Applicants assert that the Commission has in the past routinely decided that it will not consider the issues raised in a license assignment or transfer proceeding if those issues are being addressed in a separate industry-wide rulemaking proceeding.⁹⁴ The Applicants argue that the Commission stated that while the Mobile Spectrum Holdings proceeding is pending, it will continue to apply its current case-by-case approach to evaluate mobile spectrum holdings.⁹⁵

35. *Discussion.* For purposes of the instant transactions, we decline to modify the current spectrum screen with respect to trigger level and weighting, as requested by certain parties. As noted above, the Commission is reviewing these issues, along with a number of related issues, in an ongoing rulemaking proceeding.⁹⁶

(Continued from previous page)

⁸⁸ See, e.g., *AT&T-CellSouth Order*, DA 13-1783, at ¶ 10; *Alaska Wireless Order*, 28 FCC Rcd at 10450 ¶ 42; *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 29; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59. In particular, the spectrum screen is triggered where the Applicants would have, on a market-by-market basis, a 10 percent or greater interest in: 102 megahertz or more of cellular, PCS, SMR, 700 MHz, and WCS spectrum, where neither BRS nor AWS-1 spectrum is available; 121 megahertz or more of spectrum, where BRS spectrum is available, but AWS-1 spectrum is not available; 132 megahertz or more of spectrum, where AWS-1 spectrum is available, but BRS spectrum is not available; or 151 megahertz or more of spectrum where both AWS-1 and BRS spectrum are available. See *AT&T-WCS Order*, 27 FCC Rcd at 16471 ¶ 33 n.94.

⁸⁹ See Applications of Deutsche Telekom AG, T-Mobile USA, Inc. and MetroPCS Communications, Inc. for Consent to Transfer of Control of Licenses and Authorizations, WT Docket No. 13-384, *Memorandum Opinion and Order and Declaratory Ruling*, DA 13-384, 28 FCC Rcd 2322, 2336 ¶ 40 (WTB/IB 2013) (“*T-Mobile-MetroPCS Order*”).

⁹⁰ See DISH Network Corporation (“DISH”) Petition to Deny or Condition at 6; DISH Reply at 3-5; Public Knowledge and the Writers Guild of America, West (“Public Knowledge”) Petition to Deny at 2-3; Rural Telecommunications Group, Inc. (“RTG”) Comments at 1-7.

⁹¹ See RTG Comments at 7.

⁹² See DISH Petition to Deny or Condition at 2. Public Knowledge also argues that the spectrum screen should take into account the “differential value of spectrum bands, and the different value of spectrum in different geographic areas.” See Public Knowledge Petition at 2.

⁹³ See Joint Opposition at 4.

⁹⁴ See *id.*

⁹⁵ See *id.* at 4-5 (citing to the *Mobile Spectrum Holdings NPRM* and the *T-Mobile-MetroPCS Order*).

⁹⁶ See *Mobile Spectrum Holdings NPRM*, 27 FCC Rcd at 11725-28 ¶¶ 33-38.

D. Competitive Analysis

36. For the instant transactions, we apply the Commission's current screen to help identify local markets where spectrum concentration may raise particular concerns, further evaluating the potential competitive impacts from the increase in spectrum holdings in any markets triggered by the screen.⁹⁷ Moreover, consistent with the Commission's review of recent transactions, we examine more closely the potential competitive effects of spectrum holdings below 1 GHz as well as spectrum holdings in specific bands, such as AWS-1, that might be used for the provision of mobile broadband services.⁹⁸ Specifically, we examine below: (1) AT&T's acquisition and leasing of the Lower 700 MHz Band B Block licenses and the increase in below 1 GHz spectrum holdings that would result post-transaction; (2) Verizon Wireless's acquisition and leasing of AWS-1 spectrum and the increase in AWS-1 spectrum holdings that would result post-transaction; and (3) spectrum transactions involving Grain I and Grain II.

1. Background

37. Some parties contend that AT&T and Verizon Wireless currently dominate the wireless industry, and that post-transaction they would hold excessive amounts of spectrum in a number of markets across the country.⁹⁹ Petitioners and commenters claim that AT&T and Verizon Wireless have increasingly strengthened their position vis-à-vis other providers by accumulating substantial amounts of suitable and available spectrum both in total and with respect to spectrum holdings below 1 GHz, including the Lower 700 MHz Band.¹⁰⁰ Further, DISH argues that these transactions would result in AT&T and Verizon Wireless increasing their holdings of 700 MHz spectrum and AWS-1 spectrum, respectively – two bands that are important for the deployment of LTE mobile systems.¹⁰¹ Parties argue that the proposed transactions would result in diminished competition.¹⁰² Petitioners and commenters request that the Commission deny the applications, require spectrum divestiture or leasing, or impose certain conditions.¹⁰³

⁹⁷ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 29; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

⁹⁸ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17601-02 ¶ 30; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10726-27 ¶¶ 74-75.

⁹⁹ See Competitive Carriers Association ("CCA") Petition for Conditions at 1-6; CCA Reply at 2-3, 5-7; DISH Petition to Deny or Condition at 1-5; NTCA—The Rural Broadband Association ("NTCA") Reply at 2; Public Knowledge Petition to Deny at 4, 7; RTG Comments at 2-7; RTG Reply at 1-4.

¹⁰⁰ See CCA Petition for Conditions at 1-2, 4-5, 13; CCA Reply at 3, 5, 7; DISH Petition to Deny or Condition at 2-5; DISH Reply at 5; NTCA Reply at 2; Public Knowledge Petition to Deny at 4; RTG Comments at 2, 5-7; RTG Reply at 3. Certain parties assert that the propagation characteristics of below 1 GHz spectrum allow for more efficient use of spectrum and network resources, particularly in rural areas. See CCA Petition for Conditions at 4-5, 13; DISH Petition to Deny or Condition at 5-6; DISH Reply at 3-5. See also NTCA Reply at 2 (asserting that the Lower 700 MHz Band B Block is a particularly valuable spectrum band for the provision of wireless voice and data).

¹⁰¹ See DISH Petition to Deny or Condition at 1-2.

¹⁰² See CCA Petition for Conditions at 1-2, 13; CCA Reply at 2; DISH Petition to Deny or Condition at 1-2, 7; DISH Reply at 5; NTCA Reply at 2-3; Public Knowledge Petition to Deny at 2, 4, 7; RTG Comments at 2-4, 6-7; RTG Reply at 1-3, 6.

¹⁰³ See, e.g., DISH Petition to Deny or Condition at 2 (arguing that the Commission should deny the applications and require Verizon Wireless to assign all of its remaining Lower 700 MHz Band A and B Block licenses to a provider other than AT&T, or in the alternative, to require AT&T (1) to divest 700 MHz spectrum in markets in which it would exceed post-transaction a spectrum screen modified to double weight spectrum below 1 GHz and (2) to divest any remaining Lower 700 MHz Band A Block licenses to a provider other than AT&T); NTCA Reply (continued....)

38. The Applicants assert that there would be no potential public interest harms to competition as a result of the assignments and leasing involved in this proceeding.¹⁰⁴ The spectrum-only assignments and leases, the Applicants state, do not involve the transfer of any business facilities or other assets or customers, nor would there be a reduction in the number of wireless providers to choose from or an increase in market share.¹⁰⁵ The Applicants further contend that there is only a portion of one CMA where the spectrum screen is triggered, and that in this market there are multiple competitors that preclude the risk of potential competitive harm from spectrum aggregation.¹⁰⁶ Moreover, the Applicants argue that for each of the markets involved, there are numerous wireless providers and other spectrum licensees that can enter the market and provide additional competitive choices.¹⁰⁷ The Applicants also argue that requests by parties to require spectrum divestitures or leasing are based on issues that are non-transaction-specific, and therefore should not be addressed in this proceeding.¹⁰⁸

2. Discussion

a. AT&T's Acquisition of Lower 700 MHz Band B Block Spectrum

39. We first apply the initial spectrum screen to AT&T's acquisition of 39 Lower 700 MHz Band B Block licenses from Verizon Wireless and the long-term *de facto* lease of three Lower 700 MHz Band B Block licenses from Grain I. The total spectrum screen is not triggered in any of these 42 markets, and we find no reason to be concerned about the total amount of spectrum AT&T would hold as a result of the proposed transactions. Consistent with Commission precedent,¹⁰⁹ however, and in response to issues raised by petitioners and commenters in this proceeding, we examine more closely the potential competitive effects of AT&T's below 1 GHz spectrum holdings in markets in which it is acquiring spectrum from Verizon Wireless and Grain I.

40. The Commission has previously noted that lower frequency spectrum, *i.e.*, spectrum below 1 GHz, possesses more favorable propagation characteristics, such as better coverage across larger geographic areas and superior in-building penetration.¹¹⁰ Higher frequency spectrum, on the other hand, may be well-suited for providing increased capacity where needed, such as in high-traffic urban areas, especially to provide higher data rates, and to fill in gaps in coverage.¹¹¹ Because the properties of lower

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at 2-3 (stating that the Commission should require Verizon Wireless and AT&T to divest or lease spectrum where there would be "an excessive concentration, specifically looking at spectrum below 1 GHz"); RTG Comments at 9 (arguing that the Commission should require Verizon Wireless and AT&T to divest spectrum in markets in which post-transaction spectrum holdings of either would exceed 25 percent of the total amount of spectrum included in the screen or would exceed 40 percent of below 1 GHz spectrum included in the screen, or in the alternative require other conditions in lieu of divestiture). *See also* Other Issues section *infra*.

¹⁰⁴ See Public Interest Statement at 2-3, 8, 14-18; Joint Opposition at 2-3.

¹⁰⁵ See Public Interest Statement at 2, 15; Joint Opposition at 2.

¹⁰⁶ See Public Interest Statement at 2-3, 15-17; Joint Opposition at 3.

¹⁰⁷ See Public Interest Statement at 2.

¹⁰⁸ See Joint Opposition at 1-2, 4. The Applicants also urge the Commission to reject petitioners' requests for conditions relating to data roaming, device interoperability, device exclusivity, early termination fees, and special access and backhaul because they are alleged harms unrelated to the proposed transactions. *See* Joint Opposition at 5-6. *See* ¶ 51 *infra*.

¹⁰⁹ *See AT&T-Qualcomm Order*, 26 FCC Rcd at 17601-02 ¶ 30.

¹¹⁰ *See Mobile Spectrum Holdings NPRM*, 27 FCC Rcd at 11710 ¶ 35; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17609-11 ¶ 49.

¹¹¹ *See AT&T-Qualcomm Order*, 26 FCC Rcd at 17609-11 ¶ 49.

frequency and higher frequency spectrum are complementary, the Commission has recognized that both types of spectrum may be helpful for the development of an effective nationwide competitor that can address both coverage and capacity needs, and a provider is best positioned if it holds complementary spectrum bands.¹¹² In addition, lower frequency spectrum has advantages for coverage in rural areas compared to higher-frequency bands.¹¹³ The Commission also has noted that currently there is significantly more spectrum above 1 GHz potentially available for mobile broadband services than spectrum below 1 GHz.¹¹⁴

41. We therefore consider whether it is likely that there would be any competitive or other public interest harms resulting from AT&T's below 1 GHz spectrum holdings in markets in which it is acquiring spectrum from Verizon Wireless and Grain I. Specifically, we consider whether this aggregation of spectrum below 1 GHz could foreclose or raise costs of other service providers in these markets from deploying on below 1 GHz spectrum, and thereby prevent such rival service providers from exerting an effective competitive constraint in the marketplace. We evaluate in more detail below the four markets involved in this transaction in which AT&T would hold, post-transaction, the greatest amount of below 1 GHz spectrum.¹¹⁵

42. In two urban Florida CMAs, Miami-Fort Lauderdale (CMA 12) and West Palm Beach-Boca Raton (CMA 72), AT&T would hold 80 megahertz of below 1 GHz spectrum post-transaction,¹¹⁶ including the Lower 700 MHz Band B Block license proposed to be acquired in this transaction as well as both cellular licenses and the Lower 700 MHz Band C and D Block licenses.¹¹⁷ Verizon Wireless and Sprint also hold spectrum below 1 GHz, 34 megahertz and 16.5 megahertz, respectively, and T-Mobile holds significant spectrum above 1 GHz.¹¹⁸ In these two CMAs, all four nationwide providers all have significant market share¹¹⁹ and coverage.¹²⁰ In addition, in both CMAs, AT&T, Verizon Wireless, and T-

¹¹² See *Mobile Spectrum Holdings NPRM*, 27 FCC Rcd at 11710 ¶ 35; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17609-11 ¶ 49 n.140.

¹¹³ See *Sixteenth Annual Mobile Wireless Competition Report*, 28 FCC Rcd at 3700 ¶ 122.

¹¹⁴ See *Mobile Spectrum Holdings NPRM*, 27 FCC Rcd at 11710 ¶ 35; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17611 ¶ 49.

¹¹⁵ AT&T would hold 80 megahertz, or approximately 51 percent, of below 1 GHz spectrum in three markets post-transaction, and 68 megahertz, or approximately 43 percent, of such spectrum in the fourth market. We note that we also evaluated the other markets in which AT&T would be acquiring Lower 700 MHz Band spectrum from Verizon Wireless and Grain I, and we generally find the potential for competitive harm unlikely in those markets.

¹¹⁶ AT&T would hold 130 megahertz of total spectrum in each of these CMAs post-transaction.

¹¹⁷ Miami-Fort Lauderdale (CMA 12) has a population of 4.2 million and a population density of 1344 per square mile. West Palm Beach-Boca Raton (CMA 72) has a population of 1.3 million and a population density of 669 per square mile.

¹¹⁸ In both markets, Verizon Wireless holds 104 megahertz of total spectrum. Sprint holds 80 megahertz of total spectrum in the Miami-Fort Lauderdale market, and 85.5% in the West Palm Beach-Boca Raton market. T-Mobile holds 90 megahertz of total spectrum in both markets, none of which is below 1 GHz spectrum. In addition, EchoStar holds 6 megahertz of spectrum in both markets.

¹¹⁹ Miami-Fort Lauderdale, FL (CMA 12): AT&T has a [REDACTED]% market share; Verizon Wireless has a [REDACTED]% market share; Sprint has a [REDACTED]% market share; and T-Mobile has a [REDACTED]% market share. In this Memorandum Opinion and Order, "[REDACTED]," "[BEGIN CONFIDENTIAL]" and "[END CONFIDENTIAL]," and "[BEGIN HIGHLY CONFIDENTIAL]" and "[END HIGHLY CONFIDENTIAL]" indicates confidential or proprietary information, or analysis based on such information, submitted pursuant to the *Protective Orders* in this proceeding.

(continued....)

Mobile cover significant portions of the population and land area with their LTE networks, and Sprint has significant WiMAX population coverage in the Miami CMA.¹²¹ In both markets, given AT&T's rivals' significant market shares and coverage, including coverage with advanced telecommunications technologies, it does not appear that AT&T's acquisition of Lower 700 MHz Band B Block licenses would foreclose or significantly increase rivals' costs, at least in the near term.

43. In the Lake Charles, Louisiana market (CMA 197),¹²² post-transaction AT&T would hold 80 megahertz of below 1 GHz spectrum, including the Lower 700 MHz Band B Block license proposed to be acquired in this transaction as well as both cellular licenses and the Lower 700 MHz Band C and D Block licenses.¹²³ Verizon Wireless and Sprint both hold below 1 GHz spectrum – 22 megahertz and 18.5 megahertz, respectively.¹²⁴ AT&T, Verizon Wireless, and Sprint have significant network coverage,¹²⁵ but only Verizon Wireless has deployed LTE over a significant percentage of the population and land area.¹²⁶ In this market, AT&T would have the largest market share followed by Sprint and Verizon Wireless.¹²⁷ Given the other providers' market shares, the limited deployment of LTE or other advanced

(Continued from previous page)

West Palm Beach-Boca Raton, FL (CMA 72): AT&T has a [REDACTED]% market share. Verizon Wireless has a [REDACTED]% market share; Sprint has a [REDACTED]% market share; and T-Mobile has a [REDACTED]% market share.

¹²⁰ The Commission has previously found coverage of 70% or more of the population and 50% or more of the land area as presumptively sufficient for a provider to have a competitive presence in a market. In these two markets, each of the nationwide service providers has total coverage of at least 70% of the population and at least 50% of the land area. See *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2339 ¶ 50 n.119; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8733 ¶ 65. Population and land area coverage are derived from the July 2013 Mosaik data and the 2010 Census data.

¹²¹ Miami-Fort Lauderdale, FL (CMA 12): AT&T, Verizon Wireless, and T-Mobile each cover 100% of the population with LTE, and each cover 51%, 60%, and 40% of the land area, respectively. Sprint covers 83% of the population and 21% of the land area with WiMAX.

West Palm Beach-Boca Raton, FL (CMA 72): AT&T and Verizon Wireless, each cover 100% of the population with LTE, and each cover 73% and 78 of the land area, respectively. T-Mobile covers 99% of the population and 55% of the land area with LTE. Sprint covers 99% of the population and 58% of the land area with WiMAX.

¹²² The population is approximately 193,000, with a population density of 181. CMA 197 is a single county CMA comprised of Calcasieu Parish.

¹²³ AT&T would hold a total of 150 megahertz in the Lake Charles, Louisiana CMA.

¹²⁴ Verizon Wireless holds 72 megahertz of total spectrum. Sprint holds 104 megahertz. T-Mobile holds 50 megahertz, and Leap holds 30 megahertz. CenturyTel holds the Lower 700 MHz Band A Block license in this CMA. Echostar, Command Connect, Leap, and Stratos each hold spectrum in this CMA.

¹²⁵ AT&T, Verizon Wireless, and Sprint cover 100%, 100%, and 99% of the population, respectively, and 100%, 99% and 94% of the land area, respectively. Also, T-Mobile and Leap each cover 95% of the population, and 80% and 76% of the land area, respectively.

¹²⁶ Verizon Wireless covers 100% of the population and 97% of the land area with LTE. AT&T covers approximately 100 % of the population and 96% of the land area with HSPA+, and 3% of the population and 16% of the land area with LTE. T-Mobile has no HSPA+ or LTE coverage. Also, Sprint and Leap do not have any LTE coverage in this CMA.

¹²⁷ Lake Charles, LA (CMA 197): AT&T has a [REDACTED]% market share; Verizon Wireless has a [REDACTED]% market share; Sprint has a [REDACTED]% market share. Also, T-Mobile has a [REDACTED]% market share and Leap has a [REDACTED]% market share.

mobile technologies, and AT&T's aggregation of below 1 GHz spectrum, we see some limited potential for competitive concern in this local market, especially in the longer term.

44. In the Texas 18 – Edwards market (CMA 669),¹²⁸ AT&T would hold 68 megahertz of below 1 GHz spectrum, including the Lower 700 MHz Band B Block license proposed to be acquired in this transaction as well as the two cellular licenses and the Lower 700 MHz Band D Block license.¹²⁹ In this CMA, Verizon Wireless and Sprint, as well as certain smaller licensees, hold paired spectrum below 1 GHz.¹³⁰ AT&T, Sprint, T-Mobile, and Leap each have a significant market share, although AT&T has a substantially greater market share¹³¹ and more extensive coverage than other providers in the market.¹³² AT&T, Sprint, and Leap each have limited LTE deployment; however, none of these providers covers either 70 percent of the population or 50 percent of the land area with its LTE network.¹³³ This is a very rural CMA with a population density of 14 per square mile, and as noted earlier, characteristics of below 1 GHz spectrum make it particularly suitable for provision of mobile telephony/broadband in rural areas because low-band spectrum may provide the same geographic coverage, at a lower cost, than higher-frequency bands.¹³⁴ Given the characteristics of this rural market, we do have some concern about the potential competitive impact of this transaction in this market.

¹²⁸ This is a rural CMA with a population of approximately 251,000, and a population density of 14.

¹²⁹ AT&T would hold 103-118 megahertz of total spectrum in the Texas 18 – Edwards CMA.

¹³⁰ Verizon Wireless holds 57-89 megahertz of total spectrum (22 megahertz of below 1 GHz spectrum). Sprint holds 56-113.75 megahertz of total spectrum (15.5-18.25 megahertz of below 1 GHz spectrum). T-Mobile holds 30-60 megahertz of total spectrum, none of which is below 1 GHz spectrum. Central Texas Telephone Co-op holds 0-12 megahertz of below 1 GHz spectrum in this CMA. Texas Energy Network holds the Lower 700 MHz Band A Block license in this market; Southwest Texas Telephone and Valley Telephone Cooperative hold the Lower 700 MHz Band C Block license in different portions of this market. As for unpaired spectrum, AT&T holds the Lower 700 MHz D Block license, and DISH holds the Lower 700 MHz E Block license.

¹³¹ Texas 18 – Edwards (CMA 669): AT&T has a [REDACTED]% market share; Sprint has a [REDACTED]% market share; and T-Mobile has a [REDACTED]% market share. Leap has a [REDACTED]% market share. Verizon Wireless has a [REDACTED]% market share.

¹³² Texas 18 – Edwards (CMA 669): AT&T covers 100% of the population and 99% of the land area. . Verizon Wireless covers 52% of the population and 22% of the land area; Sprint covers 94% of the population and 41% of the land area; T-Mobile covers 95% of the population and 44% of the land area; and Leap covers 37.9% of the population and 40% of the area. Further, AT&T covers 97% of the population and 63 % of the land area with HSPA+, and T-Mobile covers 38% of the population and 1.9% of the land area with HSPA+.

¹³³ Texas 18 – Edwards (CMA 669): AT&T covers 2% of the population and less than 1% of the land area with LTE; Sprint covers 23 % of the population and 6% of the land area with LTE; and Leap covers 40% of the population and 2% of the land area with LTE. T-Mobile has no LTE coverage in this CMA.

¹³⁴ A licensee wanting to provide equivalent service coverage using primarily higher frequency bands must construct more cell sites at additional cost, compared to a licensee with primary holdings at a lower frequency. *See Sixteenth Annual Mobile Wireless Competition Report*, 28 FCC Rcd at 3700 ¶ 122.

45. *Conclusion.* Accordingly, based on our evaluation of the competitive effects of AT&T's spectrum acquisition and leasing, we find that there is a potential basis for competitive concern in two of the markets in which AT&T is acquiring access to Lower 700 MHz Band B Block spectrum.¹³⁵

b. Verizon Wireless's Acquisition of AWS-1 Spectrum

46. The application of the spectrum screen to Verizon Wireless's proposed acquisition of spectrum from AT&T and Grain II identifies only six counties in one market, Texas 7 - Fannin (CMA 658), for further examination.¹³⁶ In Texas 7 - Fannin, post-transaction, Verizon Wireless would hold 114 to 164 megahertz of total spectrum.¹³⁷ We note, however, that Verizon Wireless's spectrum holdings trigger the screen in only a portion of the market representing about one-quarter of the CMA population, which should limit the competitive impact. The nationwide providers, other than Verizon Wireless, each hold 38 to 153 megahertz of total spectrum in this CMA.¹³⁸ Other licensees also hold spectrum in parts of or throughout the CMA, with spectrum holdings in their licensed areas ranging from 10 to 37 megahertz.¹³⁹ Verizon Wireless, AT&T, Sprint, and T-Mobile each have significant market shares in this market.¹⁴⁰ Further, Verizon Wireless, AT&T, and Sprint each have significant coverage.¹⁴¹ Finally, we note that Verizon Wireless has the largest LTE coverage in terms of both population and land area, while AT&T and T-Mobile have some coverage.¹⁴² Given these factors, we find that there is limited risk of competitive harm resulting from Verizon Wireless's proposed acquisition of spectrum in this market.

¹³⁵ In ¶ 67 *infra*, we weigh this concern against the potential countervailing public interest benefits from AT&T's acquisition and leasing of spectrum in the proposed transactions.

¹³⁶ The six counties in Texas 7 - Fannin that were triggered are Camp, Franklin, Morris, Red River, Titus, and Cass. The screen was exceeded by 13 megahertz in Cass County and by 3 megahertz in the remaining counties. These six counties combined reflect approximately 26 percent of the population of CMA 658, and Cass County alone reflects approximately 7 percent. Post-transaction, Verizon Wireless would hold 30 megahertz of AWS-1 spectrum throughout the CMA.

¹³⁷ The Texas 7 - Fannin market has a population of approximately 424,560, with a population density of 49.

¹³⁸ AT&T would hold 38-93 megahertz of total spectrum. Sprint holds 117-153.125 megahertz of total spectrum. T-Mobile holds 40-50 megahertz of total spectrum.

¹³⁹ Aloha, Choice Wireless, Echostar, ETEX Communications, Leap, and Peoples Wireless hold 20 megahertz, 0-10 megahertz, 6 megahertz, 0-25 megahertz, 10 megahertz, and 12-37 megahertz of spectrum, respectively.

¹⁴⁰ Verizon Wireless has a [REDACTED]% market share. AT&T has a [REDACTED]% market share; Sprint has a [REDACTED]% market share; and T-Mobile has a [REDACTED]% market share.

¹⁴¹ Verizon Wireless covers 99% of the population and 95% of the land area. AT&T covers 94% of the population and 90% of the land area. Sprint covers 80% of the population and 69% of the land area. Also, T-Mobile covers 64% of the population and 39% of the land area. Several smaller providers provide very limited coverage. ETEX Communications and Peoples Wireless cover 12% and 19% of the population, respectively.

¹⁴² In this Texas market, Verizon Wireless covers 97% of the population and 88% of the area with LTE. AT&T covers 49% of the population and 35% of the land area with LTE, and T-Mobile covers 59% of the population and 32% of the land area with LTE. Other providers such as Peoples Wireless and Sprint have limited LTE coverage. Mosaik, July 2013 data.

47. We also analyze the potential effects of Verizon Wireless's post-transaction holdings of AWS-1 spectrum,¹⁴³ consistent with the Commission's review last year of the Verizon Wireless/SpectrumCo transaction.¹⁴⁴ As the Commission observed in the *Verizon Wireless-SpectrumCo Order*, AWS-1 spectrum has a well-developed ecosystem for LTE deployment and is a critical band for broadband growth, and concentration of this spectrum with a single provider has the potential to raise rivals' costs of providing mobile broadband service.¹⁴⁵ As discussed below, we adopt the buildout conditions that the Commission set forth in the *Verizon Wireless-SpectrumCo Order* for the AWS-1 licenses and spectrum that Verizon Wireless is acquiring from AT&T and Grain II.¹⁴⁶

c. Grain I and Grain II

48. Grain I would hold 12 megahertz of Lower 700 MHz Band B Block spectrum in three markets in North Carolina post-transaction.¹⁴⁷ The initial spectrum screen is not triggered in these markets, and in addition, the below 1 GHz spectrum holdings do not raise any potential competitive concerns. Post-transaction, Grain II would hold 10 megahertz of AWS-1 spectrum in 19 CMAs.¹⁴⁸ As Grain is a new licensee in these markets, we conclude that there would not be any potential competitive concerns with Grain's acquisition of this spectrum.

E. Other Issues

49. *Record.* RTG asserts that, if the Commission approves the proposed transactions, it should require, in those markets where either AT&T or Verizon Wireless will hold more than 25 percent of the suitable and available spectrum or more than 40 percent of the suitable and available spectrum below 1 GHz, the affected company or companies to offer data roaming to any requesting carrier at

¹⁴³ In the 36 CMAs in which Verizon Wireless is acquiring spectrum from AT&T and Grain, it would hold post-transaction 50 megahertz of AWS-1 in one CMA, 40 megahertz of AWS-1 spectrum in five CMAs, and 30 megahertz of AWS-1 spectrum in 30 CMAs.

¹⁴⁴ See *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10726-27 ¶¶ 74-75. DISH alleges that the proposed assignment of Verizon Wireless's Lower 700 MHz Band B Block licenses to AT&T in exchange for AWS-1 spectrum does not fulfill the plan Verizon Wireless presented to the Commission in the Verizon Wireless/SpectrumCo proceeding to assign its Lower 700 MHz Band licenses to address competitive concerns raised in that proceeding. See DISH Petition to Deny or Condition at 2-5 (citing Letter from Adam D. Krinsky, Wilkinson Barker Knauer, LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-45 (May 2, 2012); Letter from Kathleen Grillo, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (May 22, 2012)); DISH Reply at 1-3. We note that in the Verizon Wireless/SpectrumCo proceeding the Commission did not impose a condition on Verizon Wireless to sell its Lower 700 MHz Band licenses.

¹⁴⁵ See *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10724-27 ¶¶ 70, 74-75.

¹⁴⁶ See *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10743 ¶ 121.

¹⁴⁷ Greensboro-Winston-Salem-High Point (CMA 47); Charlotte-Gastonia (CMA 61); Raleigh-Durham (CMA 71).

¹⁴⁸ Dallas-Fort Worth, TX (CMA 9); Killeen-Temple, TX (CMA 160); Waco, TX (CMA 194); Longview-Marshall, TX (CMA 206); Wichita Falls, TX (CMA 233); Tyler, TX (CMA 237); Texarkana, TX (CMA 240); Sherman-Denison, TX (CMA 292); Arkansas 9 - Polk (CMA 332); Oklahoma 8 - Jackson (CMA 603); Oklahoma 9 - Garvin (CMA 604); Oklahoma 10 - Haskell (CMA 605); Texas 5 - Hardeman (CMA 656); Texas 6 - Jack (CMA 657); Texas 7 - Fannin (CMA 658); Texas 9 - Runnels (CMA 660); Texas 10 - Navarro (CMA 661); Texas 11 - Cherokee (CMA 662); Texas 15 - Concho (CMA 666).

commercially reasonable rates, terms and conditions.¹⁴⁹ NTCA concurs that the Commission should impose this requirement on both carriers.¹⁵⁰

50. Several of the filers urge the Commission, should it decide to approve the proposed transaction, to impose other conditions that they assert will promote competition and offset any harms that might otherwise result.¹⁵¹ First, in light of the 700 MHz licenses that would be transferred to AT&T pursuant to this transaction, CCA, NTCA, Public Knowledge, and RTG recommend that the Commission impose 700 MHz interoperability requirements on AT&T.¹⁵² Second, Public Knowledge and RTG urge the Commission to require as a condition of any license transfers that AT&T and Verizon Wireless not enter into any exclusive equipment deals that disadvantage smaller operators.¹⁵³ Third, Public Knowledge recommends that any early termination fees imposed by AT&T and Verizon Wireless be tied to specific equipment costs on a pro-rated basis.¹⁵⁴ Finally, Public Knowledge states that carriers with an advantage in special access and backhaul provision are able to leverage that advantage to keep their costs low, and asserts that therefore the Commission should require that a provider that would increase its market power as a result of the proposed transactions should make its backhaul and special access services available to competitors on the same terms it enjoys.¹⁵⁵

51. The Applicants assert that CCA, NTCA, Public Knowledge, and RTG have not identified any transaction-specific harms that the proposed data roaming, interoperability, handset exclusivity, early termination fee, and special access and backhaul conditions would address.¹⁵⁶ Instead, according to the Applicants, these proposed conditions relate only to alleged harms that exist regardless of the transaction and that are or were the subject of industry-wide proceedings, and consistent with past practice, we should decline to impose these conditions.¹⁵⁷

52. *Discussion.* We conclude that the conditions proposed by CCA, NTCA, Public Knowledge, and RTG regarding data roaming, interoperability, handset exclusivity, early termination fees, and special access and backhaul obligations are not narrowly tailored to remedy any purported harms arising out of this transaction.¹⁵⁸ In particular, regarding the interoperability issues raised by Public Knowledge and RTG, we note that the Commission has initiated a rulemaking proceeding to address such issues on an industry-wide basis.¹⁵⁹ We accordingly will not impose these proposed conditions.

¹⁴⁹ RTG Comments at 8.

¹⁵⁰ See NTCA Reply at 3.

¹⁵¹ See CCA Petition at 12; NTCA Petition at 1-2; NTCA Reply at 2; Public Knowledge Petition at 4-6; RTG Comments at 7; RTG Reply Comments at 5.

¹⁵² See CCA Petition at 6-12; NTCA Reply at 3; Public Knowledge Petition at 4-5; RTG Comments at 8-9.

¹⁵³ See Public Knowledge Petition at 5; RTG Comments at 9.

¹⁵⁴ See Public Knowledge Petition at 5-6.

¹⁵⁵ See *id.* at 6.

¹⁵⁶ See Joint Opposition at 5.

¹⁵⁷ See *id.* at 5-6.

¹⁵⁸ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16474 ¶ 39; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 94; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17622 ¶ 79. See also *AT&T-CellSouth Order*, DA 13-1783, at ¶ 15.

¹⁵⁹ See generally *Promoting Interoperability in the 700 MHz Commercial Spectrum*, WT Docket No. 12-69, *Notice of Proposed Rulemaking*, 27 FCC Rcd 3521 (2012).

VI. POTENTIAL PUBLIC INTEREST BENEFITS

53. After assessing the potential competitive harms of the proposed transactions, we next consider whether the proposed assignments of licenses are likely to generate verifiable, transaction-specific public interest benefits that outweigh any identified competitive harms.¹⁶⁰ As discussed below, we anticipate that the proposed transactions likely would facilitate certain transaction-specific public interest benefits, such as the acceleration of advanced mobile broadband services. We reach our conclusion regarding public interest benefits recognizing that it is difficult for us to precisely quantify either the magnitude of or the time period in which these benefits would be realized.¹⁶¹

A. Analytical Framework

54. The Commission has recognized that “[e]fficiencies generated through a merger can mitigate competitive harms if such efficiencies enhance the merged firm’s ability and incentive to compete and therefore result in lower prices, improved quality of service, enhanced service or new products.”¹⁶² This same analysis applies to an acquisition of assets like that contemplated by the proposed transactions before us. Under Commission precedent, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms.¹⁶³

55. The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms.¹⁶⁴ First, the claimed benefit must be transaction-specific. Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a transaction is in the sole possession of the applicants, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude. In addition, “the magnitude of benefits must be calculated net of the cost of achieving them.”¹⁶⁵ Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims.¹⁶⁶ Under this sliding scale approach, where potential harms appear “both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”¹⁶⁷

¹⁶⁰ See, e.g., *AT&T-CellSouth Order*, DA 13-1783, at ¶ 16; *Alaska Wireless Order*, 28 FCC Rcd at 10467 ¶ 85; *SoftBank-Sprint Order*, 28 FCC Rcd at 9677-78 ¶ 91; *AT&T-WCS Order*, 27 FCC Rcd at 16459 ¶ 40; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 95.

¹⁶¹ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 91; *AT&T-WCS Order*, 27 FCC Rcd at 16459 ¶ 40; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623 ¶ 82.

¹⁶² See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 86; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 92; *AT&T-WCS Order*, 27 FCC Rcd at 16459 ¶ 41; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 96.

¹⁶³ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 86; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 92; *AT&T-WCS Order*, 27 FCC Rcd at 16459 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 96.

¹⁶⁴ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 93; *AT&T-WCS Order*, 27 FCC Rcd at 16459 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 97.

¹⁶⁵ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 93; *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 97.

¹⁶⁶ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 88; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 93; *AT&T-WCS Order*, 27 FCC Rcd at 16459 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 98.

¹⁶⁷ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 88; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678-79 ¶ 93; *AT&T-WCS Order*, 27 FCC Rcd at 16459 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 98; cf. 2010 DOJ/FTC *Horizontal Merger Guidelines* at § 10, p. 31 (“The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger (continued....)”).

B. Potential Benefits

56. AT&T and Verizon Wireless claim that they would put the spectrum each would acquire to use in benefiting consumers by providing high-quality, high-speed wireless broadband.¹⁶⁸ The Applicants assert that the proposed transactions would allow AT&T and Verizon Wireless each “to further rationalize their spectrum holdings and obtain contiguous spectrum in many markets, enabling more spectrally efficient deployments.”¹⁶⁹ We anticipate that the proposed transactions have the potential to result in some important transaction-specific public interest benefits in the affected markets. The Applicants have provided support in the record for their assertions that the two companies each could use the spectrum involved in the proposed transactions to assist in rationalizing their spectrum holdings, due in part, to each obtaining contiguous spectrum in certain markets. We anticipate that, with the buildout condition imposed on Verizon Wireless, the additional spectrum will enable AT&T and Verizon Wireless to better meet customers’ continued increase in demand for wireless broadband services.

1. AT&T’s Acquisition of Lower 700 MHz Band B Block Spectrum

57. AT&T claims that as a result of the proposed transaction, it would be able to further its LTE deployment due to efficiency improvements, particularly with its utilization of contiguous Lower 700 MHz Band B and C Block spectrum.¹⁷⁰ Regarding the four markets noted above where AT&T would hold a considerable amount of below 1 GHz spectrum post-transaction, our analysis indicates that there is a likelihood that there would be initial deployment or expansion of LTE, leading to potential benefits to consumers, as discussed below.

58. AT&T asserts that it would use the Lower 700 MHz Band B Block spectrum at issue to augment or fill in gaps in AT&T’s LTE deployment and improve spectral efficiency, resulting in faster, higher quality services to its customers in the markets involved in the proposed transaction, which includes a number of small markets.¹⁷¹ AT&T contends that this spectrum would be particularly beneficial in deploying LTE in the areas where it currently holds the Lower 700 MHz Band C Block spectrum.¹⁷² AT&T claims that where it has already deployed the Lower 700 MHz Band C Block spectrum, it already has the necessary equipment in place to deploy the Lower 700 MHz Band B Block spectrum expeditiously in 60 to 90 days post-transaction.¹⁷³ According to AT&T, these locations reflect approximately 80 percent of the total population in the license areas where AT&T would acquire or lease the spectrum in these transactions.¹⁷⁴ AT&T claims that where it holds, but has not deployed, the Lower

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will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.”).

¹⁶⁸ See Public Interest Statement at 1, 8. See also Joint Opposition at 2. We note that no party in the record has put forth arguments disputing the Applicants’ alleged public interest benefits of the proposed transactions.

¹⁶⁹ Public Interest Statement at 2. See also *id.* at 11-14; Joint Opposition at 2, 9. The assignments to AT&T and Grain I complete Verizon Wireless’s sale of its Lower 700 MHz Band B Block licenses that, according to Verizon Wireless, is part of its efforts to rationalize its spectrum holdings. See Public Interest Statement at 11-12. See also Verizon Wireless Information Request Response at 10.

¹⁷⁰ See Public Interest Statement at 12; AT&T Information Request Response at 10-12.

¹⁷¹ See Public Interest Statement at 12-13.

¹⁷² See AT&T Information Request Response at 7. See also Public Interest Statement at 12; Declaration of William Hogg at ¶ 5.

¹⁷³ See AT&T Information Request Response at 4, 7; see also Public Interest Statement at 12-14.

¹⁷⁴ See Public Interest Statement at 1, 13. See also Declaration of William Hogg at ¶¶ 3-4.

700 MHz Band C Block spectrum, the addition of the spectrum subject to the transaction would allow AT&T to deploy LTE with contiguous spectrum,¹⁷⁵ leading to higher system capacity, spectral efficiency, and a better throughput experience for customers.¹⁷⁶ In the markets where AT&T holds no Lower 700 MHz Band C Block spectrum, AT&T claims that the spectrum would be used for AT&T's initial LTE deployment or to augment AT&T's initial LTE deployment of 5x5 megahertz of AWS-1 spectrum.¹⁷⁷

59. Based on the record before us, we find that AT&T's acquisition and leasing of this Lower 700 MHz Band B Block spectrum would likely result in some transaction-specific benefits. The record supports AT&T's contentions that, as part of its spectrum rationalization plan, the proposed transaction has the potential to enable AT&T to achieve greater spectral efficiency and greater throughput in the license areas at issue, which would enable AT&T to expand its LTE deployment using contiguous spectrum. Indeed, AT&T's description of its plans for these markets generally suggests that AT&T would take advantage of these potential benefits to provide better service to customers.¹⁷⁸ We also note that the Commission's performance requirements for these Lower 700 MHz Band B Block licenses should help ensure that AT&T makes significant deployments of these licenses quickly.¹⁷⁹ Thus, we expect generally that this proposed transaction would likely result in new deployment and/or expansion of AT&T's LTE network.

60. More specifically, in the four markets discussed above in which AT&T would hold 68 megahertz or more of spectrum below 1 GHz, we anticipate that the proposed transaction would lead to the realization of certain market and transaction-specific public interest benefits. In the Miami and West Palm Beach CMAs, where AT&T currently holds the Lower 700 MHz Band C Block license, AT&T has already deployed LTE on that spectrum.¹⁸⁰ By adding the Lower 700 MHz Band B Block spectrum, AT&T would be able to expand its LTE service on contiguous spectrum. Thus, consumers would benefit from a better LTE performance, and we expect this would occur no later than 90 days after the closing of the transaction.¹⁸¹ In the Lake Charles, Louisiana market, where AT&T has not yet deployed LTE, AT&T recently acquired the Lower 700 MHz Band C Block license. In this market, too, AT&T would be able to

¹⁷⁵ See AT&T Information Request Response at 7. See also Public Interest Statement at 12; Declaration of William Hogg at ¶ 5.

¹⁷⁶ See AT&T Information Request Response at 10-12. See also ATT-VZWG00000339 (undated) Performance of Various Channel Bandwidth for LTE in 700 MHz Band, AT&T Labs (presentation with an analysis of the system capacity of an LTE network as a function of channel bandwidth, considering 5 megahertz, 10 megahertz, and 15 megahertz); Speed Claims, Load, and Capacity, Simulation and Analysis, Radio Technology and Strategy, Austin, TX. AT&T contends that this particular deployment would have wider bandwidth, providing greater trunking efficiencies resulting in noticeably better performance for users, in particular a doubling of the peak data rate. See AT&T Information Request Response at 10-12.

¹⁷⁷ See AT&T Information Request Response at 7.

¹⁷⁸ See AT&T Information Request Response at 12-13.

¹⁷⁹ See 47 C.F.R. § 27.14(g).

¹⁸⁰ In the Miami, FL CMA, AT&T covers 100 percent of the population and 50 percent of the land area with LTE. In the West Palm Beach-Boca Raton, FL CMA market, AT&T covers 100 percent of the population and 73 percent of the land area with LTE. Mosaik, July 2013 data.

¹⁸¹ In these two CMAs, AT&T has entered into a short-term spectrum manager lease with Verizon Wireless, pursuant to which it has deployed LTE on the Lower 700 MHz Band B Block. See AT&T Information Request Response at 4, 7, 14-15 n.16. See also Declaration of William Hogg at ¶¶ 3, 5. AT&T's long-term deployment of LTE using this spectrum is, of course, subject to the Commission's approval of the proposed transactions

deploy LTE using contiguous spectrum, and we expect it would do so soon,¹⁸² although the timeframe is likely longer than 60 to 90 days. This LTE deployment would confer transaction-specific benefits in the rural Texas 18 – Edwards market, where no provider currently has significant LTE population or land area coverage.

2. Verizon Wireless's Acquisition of AWS-1 Spectrum

61. Verizon Wireless maintains that the proposed transaction would lead to specific public interest benefits, such as enhancing its provision of LTE services to consumers.¹⁸³ Verizon Wireless asserts that it needs the AWS-1 spectrum that it proposes to acquire and lease because of the increase in wireless data use due to data-intensive services.¹⁸⁴ Verizon Wireless asserts that, as a result of the proposed transaction, it would increase the capacity of its LTE network by using the AWS-1 spectrum to supplement its existing Upper 700 MHz Band C Block spectrum.¹⁸⁵ According to Verizon Wireless, AWS-1 spectrum is the most optimal spectrum for it to supplement its Upper 700 MHz Band C Block spectrum in order to provide capacity for growth in consumers' use of LTE.¹⁸⁶ Verizon Wireless states that the proposed AWS-1 spectrum acquisition and leasing is part of its spectrum rationalization plan, which, the company claims, would allow it to deploy a more spectrally efficient network and provide benefits to Verizon Wireless, its customers, and the public.¹⁸⁷

62. According to Verizon Wireless, the AWS-1 spectrum to be acquired or leased in this transaction would specifically further supplement its existing Upper 700 MHz Band C Block and AWS-1 spectrum in six metropolitan and surrounding areas.¹⁸⁸ In certain markets, on these AWS-1 spectrum blocks, Verizon Wireless argues that it would be able to deploy its new spectrum contiguously with

¹⁸² ATT-VZWG00000067 shows AT&T's LTE deployment plans. Project LTE deployment is projected [REDACTED].

¹⁸³ See Verizon Wireless Information Request Response at 2.

¹⁸⁴ Verizon Wireless is predicting a [REDACTED]% increase in wireless data use by 2017. See VZW-000137 Technology Evolution November 2012, Verizon Wireless Data Growth – Total Usage Forecast.

¹⁸⁵ See Verizon Wireless Information Request Response at 2.

¹⁸⁶ See *id.* at 10-11.

¹⁸⁷ See Public Interest Statement at 2, 11-12; Verizon Wireless Information Request Response at 10-11. Verizon Wireless claims that a base of customers already will be using AWS-1-capable LTE devices, and therefore consumers will receive immediate benefits from Verizon Wireless's AWS-1 deployment. Verizon Wireless asserts that after LTE device activation of AWS-1 capability, Verizon Wireless will be able to manage the traffic levels on its LTE network by moving multi-band LTE device data traffic from a more congested band to a less congested band, leading to efficiency and a better user experience in terms of latency and speed of data transfers. See Verizon Wireless Information Request Response at 5.

¹⁸⁸ See Verizon Wireless Information Request Response at 2, 6-10 (describing Verizon Wireless's specific spectrum deployment plans for each of the six metropolitan areas and surrounding areas that are encompassed by the AWS-1 licenses it is acquiring or leasing). The six metropolitan areas are Albuquerque, NM, Dallas, TX (leasing from Grain II), Fresno, CA, Los Angeles, CA, Phoenix, AZ, and Portland, OR. See Verizon Wireless Information Request Response at 2.

existing AWS-1 holdings, creating efficiency benefits and greater throughput on its LTE network.¹⁸⁹ Post-transaction, Verizon Wireless would be acquiring or leasing AWS-1 spectrum in 26 CMAs that is contiguous to its existing AWS-1 spectrum.¹⁹⁰ In areas where the newly-acquired spectrum is not adjacent to its existing AWS-1 spectrum, Verizon Wireless contends that the spectrum would be used to add capacity.¹⁹¹ Verizon Wireless asserts that its spectrum utilization plans include the deployment of the AWS-1 spectrum at issue beginning later this year, with further deployment planned for next year.¹⁹²

63. Our analysis of the record leads us to conclude that Verizon Wireless's acquisition and leasing of the AWS-1 spectrum at issue would likely result in certain transaction-specific public interest benefits. In particular, Verizon Wireless's planned utilization for the contiguous AWS-1 spectrum would further its LTE deployment and likely improve the user experience. As the Commission did in *Verizon Wireless-SpectrumCo*,¹⁹³ we accelerate the 2021 buildout deadlines that currently apply to these licenses. Verizon Wireless is acquiring from AT&T and spectrum it is leasing from Grain II in order to ensure the realization of the public interest benefits that Verizon Wireless asserts will result from the proposed transactions. We find that the accelerated schedule for Verizon Wireless's acquired AWS-1 licenses and spectrum will spur rapid use of the spectrum and benefit consumers by facilitating Verizon Wireless's expansion of capacity on its 4G LTE network.¹⁹⁴

64. Accordingly, we apply the following buildout conditions to the AWS-1 licenses that Verizon Wireless is acquiring from AT&T and the AWS-1 spectrum it is leasing from Grain II:

- Within three (3) years of the effective date of this Memorandum Opinion and Order approving the AWS-1 license assignments and the AWS-1 spectrum leasing arrangements, Verizon Wireless will provide signal coverage and offer service to at least 30 percent of the total population in the Economic Areas or the portions of Economic Areas in which it is acquiring or leasing AWS-1 license authorizations from AT&T and Grain II. The total population will be calculated by summing the population for each of these areas; and
- Within seven (7) years of the effective date of this Memorandum Opinion and Order approving the AWS-1 license assignments and the AWS-1 spectrum leasing arrangements, Verizon Wireless will provide signal coverage and offer service to at least 70 percent of the population in each Economic Area in which it is acquiring or leasing AWS-1 license authorizations from AT&T and Grain II, or, where a portion of the Economic Area is acquired or leased, to at least 70 percent of the population of the total acquired or leased portion of the licensed Economic Area.¹⁹⁵

¹⁸⁹ See Public Interest Statement at 12; Verizon Wireless Information Request Response at 12. Verizon Wireless claims that this would occur if the existing AWS-1 spectrum is cleared. See Verizon Wireless Information Request Response at 12.

¹⁹⁰ These 26 markets include the six CMAs where, post-transaction, Verizon Wireless would hold 40 megahertz or more of AWS-1 spectrum. See Verizon Wireless Information Request Response at 13-14; see also n.143 *supra*.

¹⁹¹ See Verizon Wireless Information Request Response at 12. Verizon Wireless asserts that this will occur when the next generation of hardware that is capable of operating on two non-contiguous blocks is developed and tested. Verizon Wireless projects the timeframe for the use of the non-adjacent AWS-1 spectrum at issue will be [REDACTED]. *Id.*

¹⁹² See Public Interest Statement at 2, 12; Verizon Wireless Information Request Response at 6-10.

¹⁹³ See *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10743 ¶ 121.

¹⁹⁴ See *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10742 ¶ 119.

¹⁹⁵ These buildout conditions are applicable only to Verizon Wireless and do not alter or otherwise affect the buildout obligations imposed on Grain II as a licensee pursuant to section 27.14(a) of the Commission's rules, 47 C.F.R. § 27.14(a).

- Failure to meet these requirements will result in appropriate enforcement action pursuant to the Commission's statutory authority.¹⁹⁶

3. Grain I and Grain II Transactions

65. The Applicants assert that the proposed transactions would further the Commission's goal of extending opportunities in the wireless market to small and minority-owned businesses by enabling Grain, a minority-owned business, to purchase AWS-1 and Lower 700 MHz Band licenses from Verizon Wireless and AT&T.¹⁹⁷ Grain Management, the Applicants note, is a business experienced in building, acquiring, and operating communications infrastructure and wireless tower construction, but it does not have spectrum assets.¹⁹⁸ The Applicants argue that the proposed transactions would enable Grain to diversify its wireless business interests and become a new licensee.¹⁹⁹ In particular, the Applicants assert that the proposed transactions would enable Grain to expand its existing telecommunications infrastructure business and participate in complementary spectrum-based services, initially on a wholesale basis. The Applicants contend that because of the spectrum leases to AT&T and Verizon Wireless, Grain would have additional capital that would help enable the company to expand its wireless business in the future.²⁰⁰

66. We note that in the most recent Section 257 report, the Commission recognized "the role that small communications businesses play in a robust American economy" and the importance of this "vital sector of the industry and the economy."²⁰¹ Particularly given that context, we find that the proposed assignment of licenses to Grain I and Grain II would result in transaction-specific public interest benefits, including by promoting spectrum license opportunities for entrepreneurs and other small businesses.

VII. BALANCING THE PUBLIC INTEREST BENEFITS AND THE HARMS

67. Based on our analysis of the record before us, we conclude, with the conditions we impose, that the potential benefits of the proposed transactions outweigh the potential harms and that granting the applications would serve the public interest. As discussed above, we find that in two of the four markets where AT&T would hold 68 megahertz or 80 megahertz of below 1 GHz spectrum after the transaction, there may be some potential for competitive harm. We balance those potential harms against the benefits we conclude are likely to occur in furthering LTE deployment through AT&T's spectrum utilization plans for the Lower 700 MHz Band B Block spectrum, likely leading to better services for consumers. In addition, recognizing the importance of the AWS-1 band for broadband growth, we conclude that the buildout conditions regarding the AWS-1 spectrum being acquired or leased by Verizon Wireless will ensure that spectrum is deployed quickly, heightening the public interest benefits associated with its acquisition of AWS-1 spectrum from AT&T and Grain. We also recognize, as noted above, that the proposed assignment of licenses to Grain I and Grain II would result in transaction-specific public interest benefits. Using the sliding-scale approach described above, we conclude that the expected magnitude of the public interest benefits of the proposed transactions are sufficient to outweigh the potential competitive harms.

¹⁹⁶ See 47 U.S.C. §§ 303(r), 312, 316, 503.

¹⁹⁷ See Public Interest Statement at 2, 5-6, 14. See also Joint Opposition at 2.

¹⁹⁸ See Public Interest Statement at 5-6, 14.

¹⁹⁹ See *id.* at 14.

²⁰⁰ See *id.*

²⁰¹ Section 257 Triennial Report to Congress Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses, *Report*, 26 FCC Rcd 2909, 2912 ¶ 5 (2011).

VIII. CONCLUSION

68. For the reasons stated above, we find that the proposed transactions are in the public interest.

IX. ORDERING CLAUSES

69. ACCORDINGLY, having reviewed the Applications and the record in these matters, IT IS ORDERED that, pursuant to sections 4(i) and (j), 303(r), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(b), 310(d), the applications for the assignment of Lower 700 MHz Band B Block licenses from Verizon Wireless to AT&T, the assignment of Lower 700 MHz Band B Block licenses from Verizon Wireless to Grain I, the assignment of AWS-1 licenses from AT&T to Verizon Wireless, the assignment of an AWS-1 license from AT&T to Grain II, the leasing of Lower 700 MHz Band B Block spectrum from Grain I to AT&T, and the leasing of AWS-1 spectrum from Grain II to Verizon Wireless are GRANTED to the extent specified in this Memorandum Opinion and Order and subject to the conditions specified herein.

70. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and (j), 303(r), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(b), 310(d), the Petitions to Deny filed by DISH Network Corporation and Public Knowledge and the Writers Guild of America, West are DENIED for the reasons stated herein.

71. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 303(r), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 303(r), 309, 310(b), and 310(d), the request for conditions in the Petitions or Comments filed by the Competitive Carriers Association, DISH Network Corporation, NTCA—The Rural Broadband Association, Public Knowledge and the Writers Guild of America, West, and the Rural Telecommunications Group, Inc. are DENIED for the reasons stated herein.

72. 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, and 310(d), the request for consolidation in the Statement filed by Maneesh Pangasa is DENIED for the reasons stated herein.

73. 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 release of this Memorandum Opinion and Order.

74. 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

Ruth Milkman
Chief
Wireless Telecommunications Bureau

APPENDIX A

Pleadings in WT Docket No. 13-56

Petitions:

Competitive Carriers Association

DISH Network Corporation

Public Knowledge and The Writers Guild of America, West

Comments:

Rural Telecommunications Group, Inc.

Opposition:

AT&T Inc., Cellco Partnership d/b/a/ Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC

Replies:

Competitive Carriers Association

DISH Network Corporation

NTCA—The Rural Broadband Association

Rural Telecommunications Group, Inc.