

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

In the Matter of)
Application of AT&T Mobility Puerto Rico Inc.) WT Docket No. 14-206
and Worldcall Inc.)
For Consent To Assign Licenses)

MEMORANDUM OPINION AND ORDER

Adopted: August 31, 2015

Released: August 31, 2015

By the Chief, Wireless Telecommunications Bureau:

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I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the application of AT&T and Worldcall for Commission consent to the assignment to AT&T of two Lower 700 MHz B Block licenses covering two Cellular Market Areas (“CMAs”) in Puerto Rico. The Commission determined in the Mobile Spectrum Holdings Report and Order that increased aggregation of below-1-GHz spectrum would be treated as an “enhanced factor” under its case-by-case review of license transfers if, post-transaction, the acquiring entity would hold approximately one-third or more of the suitable and available spectrum below 1 GHz.¹ In the proposed transaction, AT&T would increase its low-band spectrum holdings in these two CMAs, and would hold post-transaction more than one-third of the currently suitable and available below-1-GHz spectrum. After carefully evaluating the likely competitive effects of AT&T’s increased aggregation of below-1-GHz spectrum in these two CMAs in Puerto Rico, as well as the other factors ordinarily considered in a case-by-case review, we find that the likelihood of competitive harm is low. Further, we find some public interest benefits are likely, such as increased network quality and a

¹ See Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, WT Docket No. 12-269, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6133, 6240 ¶¶ 286-88 (2014) (“Mobile Spectrum Holdings Report and Order”), recon. denied, Order on Reconsideration, FCC 15-79 (rel. Aug. 11, 2015).

better user experience. Thus, based on the record before us and our competitive review, we find that the proposed assignment of licenses would serve the public interest, convenience, and necessity, and therefore we approve the proposed transaction.

II. BACKGROUND AND PUBLIC INTEREST FRAMEWORK

2. *Description of the Applicants.* AT&T Inc. (together with its indirect and wholly-owned subsidiary, AT&T Mobility Puerto Rico Inc., “AT&T”), headquartered in Dallas, Texas, is a communications holding company that ranks among the leading providers of telecommunications services in the United States.² Worldcall Inc. (“Worldcall,” and together with AT&T, the “Applicants”) is a wireless spectrum license holder³ that does not currently provide mobile wireless services.

3. *Description of the Transaction.* On September 18, 2014, AT&T and Worldcall filed the Application pursuant to section 310(d) of the Communications Act of 1934, as amended (the “Act”),⁴ seeking Commission consent to assign two Lower 700 MHz B Block licenses to an indirect, wholly-owned subsidiary of AT&T.⁵ Through these two licenses, AT&T would acquire 12 megahertz of low-band spectrum in 12 counties covering all of two CMAs in parts of Puerto Rico.⁶ Post-transaction, AT&T would hold 155 megahertz of spectrum in total, and 55 megahertz of below-1-GHz spectrum in these two CMAs.⁷

4. AT&T asserts that, as a result of the proposed transaction, the additional spectrum acquired would enable it to increase its system capacity to enhance existing services, better accommodate its overall growth, and facilitate the provision of additional products and services to the public in these CMAs.⁸ The Applicants further contend that the acquisition of this spectrum would provide AT&T with 24 contiguous megahertz of Lower 700 MHz spectrum that would support a 10×10 megahertz Long-Term Evolution (“LTE”) deployment, and would improve spectral efficiency, increase network capacity, and enable AT&T to offer faster, higher quality services to its customers in the affected CMAs.⁹

5. *Transaction Review Process.* On September 18, 2014, the Applicants filed the Application. On December 4, 2014, the Commission accepted the Application for filing and established a pleading cycle.¹⁰ The Commission received no filings in response to the *Accepted for Filing Public Notice*.¹¹ On December 4, 2014, the Wireless Telecommunications Bureau (“WTB” or “the Bureau”)

² See AT&T Inc., SEC Form 10-K, at 1 (filed Feb. 20, 2015), available at http://www.sec.gov/Archives/edgar/data/732717/000073271715000016/ye14_10k.htm.

³ See Worldcall, 4G/LTE Wireless Spectrum License Holder, available at <http://www.worldcall.net>.

⁴ 47 U.S.C. § 310(d).

⁵ See Application, Exhibit 1 – Description of Transaction and Public Interest Statement at 1 (“Public Interest Statement”). The Application was assigned ULS File No. 0006447466.

⁶ See AT&T Mobility Puerto Rico Inc. and Worldcall Inc. Seek FCC Consent to the Assignment of Lower 700 MHz Licenses, WT Docket No. 14-206, *Public Notice*, 29 FCC Rcd 14528 (WTB 2014) (“*Accepted for Filing Public Notice*”). See also Application, Exhibit 3 – Spectrum Aggregation.

⁷ See Application, Exhibit 3 – Spectrum Aggregation.

⁸ See Public Interest Statement at 3. See also *Accepted for Filing Public Notice*, 29 FCC Rcd at 14528.

⁹ See Public Interest Statement at 3. See also *Accepted for Filing Public Notice*, 29 FCC Rcd at 14528.

¹⁰ See generally *Accepted for Filing Public Notice*, 29 FCC Rcd 14528. Petitions were due January 5, 2015, oppositions were due January 15, 2015, and replies were due January 23, 2015.

¹¹ Although no filings were received, a number of parties filed a letter in the Mobile Spectrum Holdings docket regarding several pending transactions proposed by AT&T that implicate the Commission’s enhanced factor review. See generally Letter from T-Mobile USA, Inc., Sprint Corporation, Writers Guild of America, West, Open Technology Institute, New America Foundation, Public Knowledge, Computer & Communications Industry

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.¹² Also, on December 4, 2014, pursuant to section 308(b) of the Act,¹³ the Bureau sent letters to AT&T and Worldcall requesting the submission of written responses and supporting documentation by December 18, 2014, to specific inquiries related to the proposed transaction.¹⁴ On February 23, 2015, the Bureau requested additional information from AT&T,¹⁵ and also requested information from the following service providers: Sprint, T-Mobile, Puerto Rico Telephone Company (“PRTC”), and PRWireless.¹⁶

6. *Standard of Review.* Pursuant to section 310(d) of the Act,¹⁷ we must determine whether the Applicants have demonstrated that the proposed assignment of licenses would serve the public interest, convenience, and necessity.¹⁸ In making this determination, we first assess whether the proposed

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Association, Free Press, and COMPTTEL to Chairman Thomas Wheeler, WT Docket No. 12-269, filed Oct. 9, 2014 (“Increased Below-1-GHz Spectrum Aggregation Letter”). See ¶ 14 *infra*.

¹² See generally Application of AT&T Mobility Puerto Rico Inc. and Worldcall Inc. for Consent To Assign Cellular and Lower 700 MHz Licenses, Numbering Resource Utilization and Forecast Reports and Local Number Portability Reports To Be Placed into the Record, Subject to Protective Order, WT Docket No. 14-206, CC Docket No. 99-200, *Public Notice*, 29 FCC Rcd 14549 (WTB 2014); Application of AT&T Mobility Puerto Rico Inc. and Worldcall Inc. for Consent To Assign Licenses, WT Docket No. 14-206, *NRUF/LNP Protective Order*, 29 FCC Rcd 14542 (WTB 2014).

¹³ 47 U.S.C. § 308(b).

¹⁴ See generally Letter from Roger C. Sherman, Chief, WTB, to Michael P. Goggin, AT&T Inc., WT Docket No. 14-206 (WTB rel. Dec. 4, 2014) (“*AT&T Information Request*”); Letter from Roger C. Sherman, Chief, WTB, to Lowell Feldman, Worldcall Inc., WT Docket No. 14-206 (WTB rel. Dec. 4, 2014) (“*Worldcall Information Request*”). The Bureau also released a *Joint Protective Order* 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. See generally Application of AT&T Mobility Spectrum Puerto Rico Inc. and Worldcall Inc. for Consent To Assign Licenses, WT Docket No. 14-206, *Joint Protective Order*, 29 FCC Rcd 14532 (WTB 2014).

¹⁵ See generally Letter from Roger C. Sherman, Chief, WTB, to Michael P. Goggin, AT&T Inc., WT Docket No. 14-206 (WTB rel. Feb. 23, 2015) (“*AT&T Supplemental Information Request*”).

¹⁶ See generally Letter from Roger C. Sherman, Chief, WTB, to Robin J. Cohen, Sprint Nextel Co., WT Docket No. 14-206 (WTB rel. Feb. 23, 2015) (“*Sprint Third Party Information Request*”); Letter from Roger C. Sherman, Chief, WTB, to T-Mobile USA, Inc., WT Docket No. 14-206 (WTB rel. Feb. 23, 2015) (“*T-Mobile Third Party Information Request*”); Letter from Roger C. Sherman, Chief, WTB, to William A. Rosario, Puerto Rico Telephone Company, Inc., WT Docket No. 14-206 (WTB rel. Feb. 23, 2015) (“*PRTC Third Party Information Request*”); Letter from Roger C. Sherman, Chief, WTB, to Luis Omar Rivera Zayas, PRWireless, Inc., WT Docket No. 14-206 (WTB rel. Feb. 23, 2015) (“*PRWireless Third Party Information Request*”). The third party service providers submitted responses to these requests. See Letter from Robin J. Cohen, Senior Manager, Regulatory Affairs, Sprint, to Roger Sherman, Chief, WTB, WT Docket No. 14-206, dated Mar. 13, 2015; Letter from John T. Nakahata, Counsel to T-Mobile, to Roger Sherman, Chief, WTB, WT Docket No. 14-206, dated Mar. 9, 2015; Letter from Nancy J. Victory, Counsel to Puerto Rico Telephone Company, to Roger Sherman, Chief, WTB, WT Docket No. 14-206, dated Mar. 9, 2015; Letter from Andrew Morentz, Counsel to PRWireless, to Roger Sherman, Chief, WTB, WT Docket No. 14-206, dated Mar. 9, 2015.

¹⁷ 47 U.S.C. § 310(d).

¹⁸ See, e.g., Applications of AT&T Inc., E.N.M.R Telephone Cooperative, Plateau Telecommunications, Inc., New Mexico RSA 4 East Limited Partnership, and Texas RSA 3 Limited Partnership for Consent To Assign Licenses and Authorizations, WT Docket No. 14-144, *Memorandum Opinion and Order*, 30 FCC Rcd 5107, 5111 ¶ 8 (2015) (“*AT&T-Plateau Wireless Order*”); Applications of AT&T Inc., Leap Wireless International, Inc., Cricket License Co., LLC and Leap Licenseco, Inc. for Consent To Transfer Control and Assign Licenses and Authorizations, WT

(continued....)

transaction complies with the specific provisions of the Act,¹⁹ other applicable statutes, and the Commission's rules.²⁰ If the proposed transaction does not violate a statute or rule, we next consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.²¹ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.²² The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.²³

7. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.²⁴ The Commission and the Department of Justice ("DOJ") each have independent authority to examine the competitive impacts of proposed mergers and transactions involving transfers of Commission licenses, but the Commission's competitive analysis under the public interest standard is somewhat broader.²⁵ 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.²⁶ If we are unable to find that the proposed transaction serves the public interest for any reason or if the record presents a substantial and material question of fact, we must designate the application(s) for hearing.²⁷

8. *Qualifications of the Applicants.* 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.²⁸ We note that no issues were raised with respect to the basic qualifications of Worldcall or AT&T, and in addition, AT&T previously

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Docket No. 13-193, *Memorandum Opinion and Order*, 29 FCC Rcd 2735, 2741-42 ¶ 13 (WTB, IB 2014) ("*AT&T-Leap Order*").

¹⁹ Section 310(d) requires that we consider the application as if the proposed assignee were applying for the licenses directly under section 308 of the Act. 47 U.S.C. §§ 308, 310(d). *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741 ¶ 13.

²⁰ *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42 ¶ 13.

²¹ *See id.*

²² *See id.*

²³ *See id.*

²⁴ *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742 ¶ 15.

²⁵ *See id.*

²⁶ *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743-44 ¶ 16; 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*, 27 FCC Rcd 10698, 10711 ¶ 30 (2012) ("*Verizon Wireless-SpectrumCo Order*").

²⁷ 47 U.S.C. § 309(e); *see also AT&T- Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743 ¶ 15; Application of EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp., CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559, 20574 ¶ 25 (2002).

²⁸ *See* 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; *see also, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112 ¶ 10; *AT&T-Leap Order*, 29 FCC Rcd at 2744 ¶ 17; 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, LLC, WT Docket No. 12-187, *Memorandum Opinion and Order and Declaratory Ruling*, 28 FCC Rcd 10433, 10444-45 ¶ 28 (2013) ("*Alaska Wireless Order*").

and repeatedly has been found qualified to hold Commission licenses.²⁹ We find there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Act and our rules, regulations, and policies, of Worldcall or AT&T.³⁰

III. POTENTIAL PUBLIC INTEREST HARMS

9. *Competitive Overview.* In its examination of a proposed transaction, the Commission evaluates the potential public interest harms and undertakes a case-by-case review of the competitive effects of any increase in market concentration or in spectrum holdings in the relevant markets.³¹ The Commission has used an initial two-part screen to help identify those markets that provide particular reason for further competitive analysis, but 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.³² In the *Mobile Spectrum Holdings Report and Order*, the Commission found that it is in the public interest to continue to use its initial spectrum screen and case-by-case review,³³ and, in addition, to require that any increase in spectrum holdings of below 1 GHz be treated as an “enhanced factor” in its review if post-transaction the acquiring entity would hold approximately one-third or more of such spectrum.³⁴ The Commission stated that it anticipated “that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms.”³⁵ The Commission further stated, however, that when the other factors ordinarily considered indicate a low potential for competitive or other public interest harm, the acquisition of below-1-GHz spectrum resulting in holdings of approximately one-third or more would not preclude a conclusion that a proposed transaction, on balance, furthers the public interest.³⁶

10. The Commission stated in the *Mobile Spectrum Holdings Report and Order* that low-band spectrum is less costly to deploy and provides higher quality coverage than higher-band spectrum,³⁷

²⁹ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112-13 ¶ 11; *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 19.

³⁰ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948.

³¹ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12; 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, 17602 ¶ 31 (2011) (“*AT&T-Qualcomm Order*”). See also *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 20.

³² See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12; *Alaska Wireless Order*, 28 FCC Rcd at 10446-47, 10450 ¶¶ 33, 42; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17609-10 ¶¶ 49-50. See also *AT&T-Leap Order*, 29 FCC Rcd at 2752 ¶ 39, 2753 ¶ 41, 2755-56 ¶ 47.

³³ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223-24 ¶ 231.

³⁴ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶¶ 286-88. The Commission applied this below-1-GHz review for the first time in the recently released *AT&T-Plateau Wireless Order*. See generally *AT&T-Plateau Wireless Order*, 30 FCC Rcd 5107.

³⁵ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286. The Commission also set out a heightened standard of review for cases in which the proposed transaction would result in an entity that already holds approximately one-third or more of below-1-GHz spectrum in a market acquiring additional below-1-GHz spectrum in that market, especially with regard to paired low-band spectrum. In these cases, the Commission stated that the required demonstration of the potential public interest benefits of the proposed transaction would need to clearly outweigh the potential public interest harms associated with such additional concentration of below-1-GHz spectrum, irrespective of other factors. See *id.*, 29 FCC Rcd at 6240 ¶ 287. See also *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8 n.31, 5113 ¶ 13, 5114 ¶ 15, 5123 ¶ 36 n.114, 5130 ¶ 56.

³⁶ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.

³⁷ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164 ¶ 60.

and that the two leading nationwide providers hold most of the low-band spectrum available today.³⁸ The Commission found that if they were to acquire all, or substantially all, of the remaining low-band spectrum, they would benefit, independently of any deployment, to the extent that rival service providers are denied its use.³⁹ As the Commission found, without access to this low-band spectrum, rival service providers that may lack a mix of low-band and higher-band spectrum would be less able to provide a robust competitive alternative, and may not be able to quickly expand coverage or provide new services.⁴⁰ We consider below whether as a result of the proposed transaction there would be an increased likelihood that rival service providers or potential entrants would be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market, and whether rivals' costs would be increased to the extent that they would be less likely to be able to compete robustly.⁴¹

A. Market Definitions

11. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,⁴² including a determination of the product market, the geographic market, the input market for spectrum suitable and available for the provision of mobile wireless services, and the market participants.

12. *Product and Geographic Markets.* Consistent with recent transaction orders, we find that the relevant product market is a combined "mobile telephony/broadband services" product market that comprises mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).⁴³ In determining the relevant geographic market for the instant transaction,⁴⁴ we note that the Commission previously found in its evaluation of the AT&T/Centennial transaction that because of Puerto Rico's unique characteristics in terms of limited geographic scope and isolated nature, the relevant geographic market was not any individual CMA, but rather Puerto Rico itself.⁴⁵ Consistent with the Commission's previous

³⁸ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6156-57, 6164 ¶¶ 46, 60.

³⁹ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164 ¶ 60.

⁴⁰ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164-65 ¶¶ 60-61; Applications of AT&T Inc., Cellco Partnership 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, WT Docket No. 13-56, *Memorandum Opinion and Order*, 28 FCC Rcd 12878, 12893-94 ¶¶ 40-41 (WTB 2013) ("*AT&T-Verizon Wireless-Grain Order*"). See also *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

⁴¹ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10725 ¶ 72; *AT&T-Verizon Wireless-Grain Order*, 28 FCC Rcd at 12887 ¶ 20.

⁴² See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5114-15 ¶ 16; *AT&T-Leap Order*, 29 FCC Rcd at 2746 ¶ 22; *Alaska Wireless Order*, 28 FCC Rcd at 10447 ¶ 34.

⁴³ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115-16 ¶ 18; *AT&T-Leap Order*, 29 FCC Rcd at 2746 ¶ 23.

⁴⁴ The Commission has found that the relevant geographic markets for certain wireless transactions generally are local, but has held that a transaction's competitive effects should also be evaluated at the national level where a transaction exhibits certain national characteristics that provide cause for concern. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5116 ¶ 19; *AT&T-Leap Order*, 29 FCC Rcd at 2748 ¶ 27.

⁴⁵ See 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, 13934 ¶ 42 (2009) ("*AT&T-Centennial Order*"). We note that the Applicants are seeking Commission approval of the proposed assignment of 12 megahertz of spectrum that covers 12 counties in two CMAs in Puerto Rico, accounting for approximately 8% of the approximately 3.7 million people in Puerto Rico.

See also *Alaska Wireless Order*, 28 FCC Rcd at 10448 ¶ 37. As well as using CMAs as the local geographic markets, the Commission has also considered potential competitive harms on a statewide basis, primarily due to Alaska's isolated geographic location separated from the contiguous markets in the lower 48 states. See *id.*

determination in the AT&T/Centennial transaction, we find that the relevant local geographic market is Puerto Rico.

13. *Input Market for Spectrum and Market Participants.* For our analysis, we include the spectrum bands, or portions thereof, found in recent Commission orders as the input market.⁴⁶ Similarly, we apply recent Commission precedent and consider facilities-based entities providing mobile telephony/broadband services using cellular, PCS, SMR, 700 MHz, AWS-1, BRS, WCS, AWS-4, H Block, EBS, and AWS-3 and 600 MHz spectrum (as both the latter become available) to be market participants.⁴⁷

B. Competitive Effects of the Proposed Transaction

14. *Record.* The Applicants argue that the proposed transaction would have no adverse competitive effects, as it would neither cause an overall aggregation of spectrum that would pose an anticompetitive risk nor reduce competition in a meaningful way,⁴⁸ and that no subscriber transition issues are implicated as a result of the proposed transaction.⁴⁹ No petitions to deny or comments were received, although, as noted above, a number of parties filed a letter in the Mobile Spectrum Holdings rulemaking proceeding regarding the Commission's enhanced factor review of below-1-GHz spectrum transactions, although this letter did not address any factors specific to a particular proposed transaction.⁵⁰

15. *Initial Review.* As discussed above, to help identify those local markets in which competitive concerns are more likely, we apply an initial two-part screen, and if the acquiring entity would increase its below-1-GHz spectrum holdings to hold approximately one-third or more of such spectrum post-transaction, we apply enhanced factor review.⁵¹ The first part of the screen is based on the size of the post-transaction Herfindahl-Hirschman Index ("HHI") and the change in the HHI.⁵² The second part of the screen, which is applied on a county-by-county basis, identifies local markets where an entity would hold approximately one-third or more of the total spectrum suitable and available for the provision of mobile telephony/broadband services, post-transaction.⁵³ In instances where an applicant is acquiring spectrum below 1 GHz, we also carefully examine the possible competitive effects resulting

⁴⁶ See, e.g., *AT&T-Plateau Wireless*, 30 FCC Rcd at 5117 ¶ 22; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169-70 ¶¶ 70, 72. See also *AT&T-Leap Order*, 29 FCC Rcd at 2749-50 ¶ 32.

⁴⁷ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117 ¶ 23; *AT&T-Leap Order*, 29 FCC Rcd at 2751 ¶ 35; *Alaska Wireless Order*, 28 FCC Rcd at 10449-50 ¶ 41.

⁴⁸ See Public Interest Statement at 4. See also Response of AT&T to the General Information Request Dated December 4, 2014, WT Docket No. 14-206, at 14 (Dec. 18, 2014) ("AT&T Information Request Response").

⁴⁹ See AT&T Information Request Response at 14.

⁵⁰ See generally Increased Below-1-GHz Spectrum Aggregation Letter. See also *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120 ¶ 28.

⁵¹ See *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286. The current total amount of below-1-GHz spectrum that is suitable and available is 134 megahertz, approximately one-third of which is 45 megahertz. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6156-57, 6240 ¶ 46, ¶¶ 286-88. As with our application of the initial total spectrum screen, we evaluate increases in below-1-GHz spectrum concentration on a county-by-county basis. See *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121, 5123 ¶¶ 31, 35.

⁵² See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *AT&T-Leap Order*, 29 FCC Rcd at 2753 ¶ 41 n.140.

⁵³ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *Alaska Wireless Order*, 28 FCC Rcd at 10450 ¶ 42. The current total amount of spectrum that is suitable and available is 580.5 megahertz, which yields a trigger of 194 megahertz, assuming that AWS-1 and BRS/EBS spectrum are everywhere available. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6229 ¶ 251, n.667.

from an increase in below-1-GHz spectrum holdings that would be above the threshold identified in the *Mobile Spectrum Holdings Report and Order*.⁵⁴

16. In the transaction before us, AT&T would acquire 12 megahertz of low-band spectrum in 12 counties covering all of two CMAs in parts of Puerto Rico. As the instant transaction does not result in the acquisition of wireless business units and customers, we do not apply the initial HHI screen. Next, examining the CMAs on a county-by-county basis does not result in either CMA triggering the total spectrum screen. We do find, however, after review on a county-by-county basis,⁵⁵ that AT&T would hold more than one-third, or more than 45 megahertz, of the currently suitable and available below-1-GHz spectrum post-transaction in these two CMAs – CMA 726 (Puerto Rico 4 – Aibonito) and CMA 727 (Puerto Rico 5 – Ceiba) – and therefore we look more closely at the potential competitive effects these holdings may have on the ability of rival service providers to provide robust competition in Puerto Rico.⁵⁶ Generally, in undertaking our analysis, we consider various competitive variables that help to predict the likelihood of competitive harm post-transaction. These competitive variables include, but are not limited to: the total number of rival service providers; the number of rival firms that can offer competitive service plans; the coverage by technology of the firms' respective networks; the rival firms' market shares; the combined entity's post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum holdings of each of the rival service providers.

17. In our evaluation of these two CMAs, we note first that both are non-rural, and together account for approximately 8 percent of the total population of Puerto Rico, the relevant local geographic market.⁵⁷ In Puerto Rico, five service providers have a significant market share:⁵⁸ AT&T, PRTC, PRWireless, Sprint, and T-Mobile, respectively, each hold approximately [REDACTED] percent of the market.⁵⁹ Post-transaction, AT&T would hold 155 megahertz of spectrum, including 55 megahertz of

⁵⁴ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6240 ¶ 267, ¶¶ 286-88. See also, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *AT&T-Verizon Wireless-Grain Order*, 28 FCC at 12893-97 ¶¶ 39-45; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17606 ¶ 31.

⁵⁵ See *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118-19 ¶¶ 24-25.

⁵⁶ We note that Worldcall engaged a broker and states that the broker widely marketed the licenses in 2013 and had follow-up conversations with three companies, but none of those demonstrated a serious interest. In 2014, Worldcall maintains that it again made it known to several companies that it would be willing to sell all or part of, or partner with others for, its remaining Puerto Rico licenses; however, none of these companies showed interest. Worldcall states that AT&T was interested, and in the late summer of 2014, Worldcall and AT&T negotiated a price for the subject licenses. See Letter from Lowell Feldman, CEO, Worldcall, Inc. to Marlene H. Dortch, FCC, WT Docket No. 14-206, at 2 (Dec. 15, 2014) (“Worldcall Information Request Response”).

⁵⁷ The population density is measured by the number of people per square mile using Census 2010 data. Rural markets are characterized by fewer than 100 people per square mile. See *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum Based Services*, *Report and Order*, 19 FCC Rcd 19078, 19087-88 ¶¶ 11-12 (2004). Puerto Rico 4 – Aibonito has a population of approximately 275,000, with a population density of 672 people per square mile, while Puerto Rico 5 – Ceiba has a population of approximately 40,000, with a population density of 500 people per square mile.

⁵⁸ We derive market shares and HHIs from our analysis of data compiled in our 2014 NRUF and LNP database, network coverage from Mosaik January and July 2014 data and 2010 U.S. Census data, and spectrum holdings from our licensing databases and the Application. We also utilized and analyzed additional data as provided by the Applicants and third parties through our information requests. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120 ¶ 29, n.98.

⁵⁹ As noted above, the Commission has previously found it appropriate to calculate market shares and market concentration for Puerto Rico on a territory-wide basis. See ¶ 12 *supra*. See also *AT&T-Centennial Wireless Order*, 24 FCC Rcd at 13937 ¶ 47. The HHI calculated for Puerto Rico is [REDACTED]. Even if we were to consider market shares and market concentration across just these two CMAs, four service providers have a significant market share: AT&T, PRTC, Sprint, and T-Mobile, respectively, each hold approximately [REDACTED]%. In

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spectrum below 1 GHz, in both CMAs. The corresponding spectrum holdings in both CMAs are 67 megahertz, including 37 megahertz of below-1-GHz spectrum, for PRTC; 37 megahertz, including 22 megahertz of below-1-GHz spectrum, for PRWireless; 165 to 183 megahertz, including 14 megahertz of below-1-GHz spectrum, for Sprint; and 65 megahertz, with no below-1-GHz spectrum, for T-Mobile.⁶⁰ In terms of population and land area coverage, five service providers have significant 3G coverage.⁶¹ AT&T covers approximately 100 percent of the population and close to 100 percent of the land area with its 3G network in both CMAs. The corresponding 3G population and land area coverage percentages in both CMAs are close to 100 percent for PRTC (for both 3G population and land area coverage), close to 100 percent and 90 percent for PRWireless, at least 80 percent and close to 60 percent for Sprint, and close to 90 percent and 80 percent for T-Mobile. In addition, AT&T covers close to 100 percent of the population and land area with both its HSPA+ and LTE networks, while the corresponding LTE population and land area percentages are at least 70 percent and 60 percent for PRTC, close to 70 percent and at least 60 percent for PRWireless, and at least 90 percent and 85 percent for Sprint.

18. We find that, notwithstanding the fact that AT&T would increase its below-1-GHz spectrum holdings to hold more than one-third of the below-1-GHz spectrum post-transaction in both these CMAs in Puerto Rico, the likelihood of competitive harm is low when evaluating the particular factors ordinarily considered.⁶² Four service providers, in addition to AT&T, have significant market shares in Puerto Rico and a number of service providers have access to low-band spectrum. Further, four service providers, in addition to AT&T, currently have significant 3G population and land area coverage in both CMAs. We find that the acquisition of this spectrum by AT&T is unlikely to foreclose rival service providers from entering or expanding in Puerto Rico, or raise rivals' costs. For these reasons, we find that the proposed transaction is unlikely to materially lessen the ability of rival service providers to respond to any anticompetitive behavior on the part of AT&T in Puerto Rico.

IV. POTENTIAL PUBLIC INTEREST BENEFITS

19. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.⁶³ The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms,⁶⁴ and applies a "sliding scale approach" to evaluating benefit claims.⁶⁵ 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."⁶⁶ Conversely, where potential harms appear less likely and less substantial, as is the case here, we will accept a lesser showing to

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addition, PRWireless has some market presence with a market share of approximately [REDACTED]%. The HHI calculated across these two CMAs is [REDACTED].

⁶⁰ In addition, DISH holds 6 megahertz of spectrum below 1 GHz and 50 megahertz of spectrum above 1 GHz in each CMA.

⁶¹ It has previously been found that coverage of 70% or more of the population and 50% or more of the land area is presumptively sufficient for a service provider to have a competitive presence in the market. *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121 ¶ 31 n.102; *AT&T-Leap Order*, 29 FCC Rcd at 2770 ¶ 81 n.279.

⁶² *See* ¶ 16 *supra*. *See also AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5127 ¶ 46.

⁶³ *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126 ¶ 43; *AT&T-Leap Order*, 29 FCC Rcd at 2792 ¶ 130; *Alaska Wireless Order*, 28 FCC Rcd at 10467 ¶ 85.

⁶⁴ *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27 ¶ 44; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87. *See also AT&T-Leap Order*, 29 FCC Rcd at 2793 ¶ 132.

⁶⁵ *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27 ¶ 44; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 88. *See also AT&T-Leap Order*, 29 FCC Rcd at 2793-4 ¶ 132.

⁶⁶ *See id.*

approve the proposed transaction.⁶⁷

20. *Potential Benefits.* The Applicants assert that the proposed transaction would enable AT&T to increase its system capacity to enhance existing services, better accommodate its overall growth, and facilitate the provision of additional products and services in these CMAs.⁶⁸ In particular, the Applicants contend that the acquisition of this Lower 700 MHz spectrum would allow AT&T to support a 10×10 megahertz LTE deployment.⁶⁹ AT&T maintains that it typically would launch LTE in a 5×5 megahertz configuration where only a single 12 megahertz block of Lower 700 MHz B spectrum is available, and would launch LTE in a 10×10 megahertz configuration in areas where both the Lower 700 MHz B Block and C Block are available. Where Lower 700 MHz spectrum is not available, AT&T's initial LTE deployments would use AWS-1 spectrum and/or other spectrum bands.⁷⁰ AT&T asserts that the capacity of a 10×10 megahertz block is greater than the total capacity of two separate 5×5 megahertz blocks,⁷¹ and contends that the wider bandwidth results in noticeably better performance for users than a deployment using two 5×5 megahertz blocks.⁷²

21. *Evaluation.* We have reviewed the Applicants' asserted benefits, as well as their responses to our requests for additional information and documents regarding the potential benefits of AT&T acquiring, in particular, the below-1-GHz spectrum at issue. The record provides general support for the Applicants' contentions that the proposed transaction would result in some public interest benefits. Specifically, we anticipate that through the acquisition of this Lower 700 MHz spectrum, AT&T would be able to deploy a more robust LTE network in a relatively short period of time.⁷³ We further find that by acquiring this low-band spectrum, AT&T would be able to expand, in the near future, its LTE service offerings on contiguous spectrum, which has the potential to enable it to achieve greater spectral efficiency and consistently greater throughput.⁷⁴ Thus, customers are likely to benefit in the immediate future from improved throughput performance, resulting in a better user experience.

V. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS

22. In the proposed transaction, AT&T would increase its low-band spectrum holdings, and would hold post-transaction more than one-third of the low-band spectrum in two CMAs in Puerto Rico. As discussed herein, the *Mobile Spectrum Holdings Report and Order* determined that increased aggregation of below-1-GHz spectrum would be treated as an "enhanced factor" under its case-by-case review. The Commission stated in the *Mobile Spectrum Holdings Report and Order* that it "anticipate[d]

⁶⁷ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468-69 ¶ 88; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 85.

⁶⁸ See Public Interest Statement at 3. See also AT&T Information Request Response at 8.

⁶⁹ See Public Interest Statement at 3. See also AT&T Information Request Response at 8-10.

⁷⁰ See AT&T Information Request Response at 4-5; Letter from Eric W. DeSilva, Counsel to AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 14-199, dated July 6, 2015.

⁷¹ See AT&T Information Request Response at 6-7. AT&T asserts that the 10 megahertz block would have approximately 10% more capacity than two 5 megahertz blocks. See *id.* at 6.

⁷² See AT&T Information Request Response at 6. AT&T cites the 10×10 megahertz LTE's deployment's greater trunking and signaling efficiencies, maintaining that these improvements result in higher system capacity, greater spectral efficiency, and better user throughput than is possible over two separate 5×5 megahertz blocks. See AT&T Information Request Response at 5-6, 8-9. See also AT&T Exhibits ATT-WC000001, ATT-WC000006, and ATT-WC000042.

⁷³ According to AT&T, where it has already deployed LTE on its Lower 700 MHz C Block spectrum, it expects to deploy the B Block spectrum within 60 to 90 days after closing. See AT&T Information Request Response at 10.

⁷⁴ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5129 ¶ 53, n.160; *AT&T-Leap Order*, 29 FCC Rcd at 2799-2800 ¶¶ 149, 151. These Orders recognized the relative spectral inefficiency of a 5×5 megahertz configuration for LTE. See *id.*

that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms.⁷⁵ We have reviewed the Applicants' initial claims, as well as their responses to our requests for additional information and documents. After carefully evaluating the likely competitive effects of AT&T's increased aggregation of below-1-GHz spectrum in the two CMAs implicated by the proposed transaction, we find that the ability of rival service providers to offer a competitive response to any anticompetitive behavior on the part of AT&T is unlikely to be materially lessened as a result of the proposed transaction, and thus, the likelihood of competitive harm is low. Further, we find that the record provides general support for the Applicants' claims, and under our sliding scale approach, the likelihood of harm is low and the potential public interest benefits outweigh the harms. Thus, based on the record before us and our competitive review, we find that the proposed assignment would serve the public interest, convenience, and necessity.

VI. ORDERING CLAUSES

23. ACCORDINGLY, having reviewed the Application and the record in this proceeding, IT IS ORDERED that, pursuant to sections 4(i) and (j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d), the application for assignment of licenses held by Worldcall Inc. to AT&T Mobility Puerto Rico Inc. is GRANTED.

24. 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.

25. 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

Roger C. Sherman
Chief
Wireless Telecommunications Bureau

⁷⁵ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.