

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

In the Matter of)
)
Applications of AT&T Mobility Spectrum LLC and) WT Docket No. 15-79
East Kentucky Network, LLC)
)
For Consent To Assign Licenses)

MEMORANDUM OPINION AND ORDER

Adopted: January 29, 2016

Released: January 29, 2016

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the applications of AT&T and East Kentucky Network for Commission consent to the assignment to AT&T of three Lower 700 MHz C Block licenses covering three local market areas in parts of Kentucky, Ohio, and West Virginia. 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 spectrum holdings, and in particular, would hold post-transaction more than one-third of the currently suitable and available below-1-GHz spectrum in two of the three local market areas. After carefully evaluating the likely competitive effects of AT&T’s increased aggregation of below-1-GHz spectrum in these two local market areas, 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 to be realized, such as increased network quality and a better consumer experience. 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 assignment.

II. BACKGROUND AND PUBLIC INTEREST FRAMEWORK

2. *Description of the Applicants.* AT&T Mobility Spectrum LLC, an indirect wholly-owned subsidiary of AT&T Inc. (together with AT&T Mobility Spectrum LLC, “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 East Kentucky Network, LLC (“East Kentucky,” and

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, 6238-40 ¶¶ 282-88 (2014) (“*Mobile Spectrum Holdings Report and Order*”), *recon. denied, Order on Reconsideration*, 30 FCC Rcd 8635 (2015).

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.

together with AT&T, the “Applicants”) is a telecommunications products and services provider that, among other things, provides mobile wireless voice and broadband data service in Kentucky.³

3. *Description of the Transaction.* On February 18, 2015, AT&T and East Kentucky filed the Application pursuant to section 310(d) of the Communications Act of 1934, as amended (the “Act”),⁴ seeking Commission consent to assign three Lower 700 MHz C Block licenses to AT&T.⁵ Through the assignment of these three licenses, AT&T would acquire 12 megahertz of low-band spectrum in 20 counties covering all of three Cellular Market Areas (“CMAs”): CMA 110 (Huntington-Ashland, WV/KY/OH), CMA 116 (Lexington-Fayette, Kentucky), and CMA 448 (Kentucky 6 – Madison).⁶ Post-transaction, AT&T would hold 113 megahertz to 145 megahertz of spectrum in total, including 43 megahertz to 55 megahertz of below-1-GHz spectrum, in these three CMAs.⁷ In particular, AT&T would end up having an interest in more than one-third of the below-1-GHz spectrum in two of the three CMAs, Huntington-Ashland and Lexington-Fayette.⁸

4. *Standard of Review.* Pursuant to section 310(d) of the Act,⁹ we must determine whether the Applicants have demonstrated that the proposed assignment of licenses would serve the public interest, convenience, and necessity.¹⁰ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act,¹¹ other applicable statutes, and the

³ See Response of East Kentucky to the General Information Request Dated May 21, 2015, WT Docket No. 15-79, at 2 (June 4, 2015) (“East Kentucky Information Request Response”). East Kentucky d/b/a Appalachian Wireless provides service in the Kentucky 9 – Elliot CMA and Kentucky 10 – Powell CMAs pursuant to licenses not part of the proposed transaction. See *id.*

⁴ 47 U.S.C. § 310(d).

⁵ See Application, ULS File No. 0006672533 (“Application”), Exhibit 1 – Description of Transaction and Public Interest Statement at 1 (“Public Interest Statement”).

⁶ See AT&T Inc. and East Kentucky Network, LLC Seek FCC Consent to the Assignment of Three Lower 700 MHz Licenses in Kentucky, Ohio, and West Virginia, WT Docket No. 15-79, *Public Notice*, 30 FCC Rcd 4924 (WTB 2015) (“*Accepted for Filing Public Notice*”). See also Application, Exhibit 3 – Spectrum Aggregation.

⁷ See Application, Exhibit 3 – Spectrum Aggregation.

⁸ As set out in the docket, the Bureau accepted the Application for filing and established a pleading cycle, 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 the associated protective order, adopted a protective order covering the submission of confidential and highly confidential information, and sent the Applicants information requests seeking further specific information relating to the proposed transaction.

⁹ 47 U.S.C. § 310(d).

¹⁰ See, e.g., Application of AT&T Mobility Spectrum LLC and Consolidated Telephone Company for Consent To Assign Licenses, WT Docket No. 14-254, *Memorandum Opinion and Order*, 30 FCC Rcd 9797, 9799-9800 ¶ 6 (WTB 2015) (“*AT&T-Consolidated Order*”); 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 Docket No. 13-193, *Memorandum Opinion and Order*, 29 FCC Rcd 2735, 2741-42 ¶ 13 (WTB, IB 2014) (“*AT&T-Leap Order*”).

¹¹ 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-Consolidated Order*, 30 FCC Rcd at 9799-9800 ¶ 6, n.18; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8, n.27; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42 ¶ 13, n.45.

Commission's rules.¹² 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.¹³ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.¹⁴ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.¹⁵

5. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.¹⁶ The Commission and the Department of Justice 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.¹⁷ 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.¹⁸ 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.¹⁹

6. *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.²⁰ We note that no issues were raised with respect to the basic qualifications of East Kentucky or AT&T, and in addition, AT&T previously and repeatedly has been found qualified to hold Commission licenses.²¹ 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 East Kentucky or AT&T.²²

¹² See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9799-9800 ¶ 6; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42 ¶ 13.

¹³ See *id.*

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9800 ¶ 7; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742-43 ¶ 15.

¹⁷ See *id.*

¹⁸ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9800 ¶ 7; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743-44 ¶ 16.

¹⁹ 47 U.S.C. § 309(e). See also, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9800 ¶ 7; *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).

²⁰ 47 U.S.C. § 310(d); 47 C.F.R. § 1.948. See also, e.g., Application of Hardy Cellular Telephone Company and McBride Spectrum Partners, LLC for Consent To Assign License, WT Docket No. 14-240, *Memorandum Opinion and Order*, 30 FCC Rcd 9899, 9902 ¶ 8 (WTB 2015) ("*USCC-McBride Order*"); *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112 ¶ 10; *AT&T-Leap Order*, 29 FCC Rcd at 2744 ¶ 17.

²¹ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9800 ¶ 8; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112-13 ¶ 11; *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 19.

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

III. POTENTIAL PUBLIC INTEREST HARMS

7. *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.²³ In the past, the Commission has used a 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 screen if it encounters other factors that may bear on the public interest inquiry.²⁴ In the *Mobile Spectrum Holdings Report and Order*, the Commission found that it is in the public interest to continue to use its spectrum screen and case-by-case review,²⁵ 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.²⁶ 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.”²⁷ 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.²⁸

8. 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,²⁹ and that the leading two nationwide service providers hold most of the low-band spectrum available today.³⁰ 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.³¹ As the Commission found, without access to this low-band spectrum, rival

²³ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12. See also *USCC-McBride Order*, 30 FCC Rcd at 9902-3 ¶ 9; *AT&T-Consolidated Order*, 30 FCC Rcd at 9800-1 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 20.

²⁴ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12. See also *USCC-McBride Order*, 30 FCC Rcd at 9902-3 ¶ 9; *AT&T-Consolidated Order*, 30 FCC Rcd at 9800-1 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2752 ¶ 39, 2753 ¶ 41, 2755-56 ¶ 47.

²⁵ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223-24 ¶ 231.

²⁶ See *id.*, 29 FCC Rcd at 6240 ¶¶ 286-88. See also, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9902-3 ¶ 9; *AT&T-Consolidated Order*, 30 FCC Rcd at 9800-1 ¶ 9; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5108 ¶ 2.

²⁷ *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 *Application of AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership for Consent To Assign Licenses*, WT Docket No. 14-145, *Memorandum Opinion and Order*, 30 FCC Rcd 13055, 13057 ¶ 7, 13062 ¶ 15, 13072-3 ¶ 37, 13077-8 ¶ 48, 13078-9 ¶ 51 (2015) (“*AT&T-Club 42 Order*”). See also, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9903 n.31; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801 n.34; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8 n.31, 5113 ¶ 13, 5114 ¶ 15, 5123 ¶ 36 n.114, 5130 ¶ 56.

²⁸ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.

²⁹ See *id.*, 29 FCC Rcd at 6164 ¶ 60.

³⁰ See *id.*, 29 FCC Rcd at 6156-57 ¶ 46, 6162 ¶ 58, 6164 ¶ 60.

³¹ See *id.*, 29 FCC Rcd at 6164 ¶ 60.

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.³² We consider below whether there would be an increased likelihood as a result of the proposed transaction 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.³³

A. Market Definitions

9. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,³⁴ 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.

10. *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).³⁵ In addition, we find that the relevant geographic market is local.³⁶ The Applicants are seeking Commission approval of the proposed assignment of 12 megahertz of low-band spectrum that covers 20 counties in three local markets, accounting for well under one percent of the population of the United States.

11. *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.³⁷ 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.³⁸

B. Competitive Effects of the Proposed Transaction

12. *Initial Review.* As discussed above, to help identify those local markets in which competitive concerns are more likely, initially we apply a two-part screen, and if the acquiring entity

³² See *id.*, 29 FCC Rcd at 6164-65 ¶¶ 60-61; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113-14 ¶ 14. See also *USCC-McBride Order*, 30 FCC Rcd at 9903 ¶ 10; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801-2 ¶ 10.

³³ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9903 ¶ 10; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801-2 ¶ 10; Applications of AT&T Mobility Spectrum LLC and KanOkla Telephone Association, WT Docket No. 14-199, *Memorandum Opinion and Order*, 30 FCC Rcd 8555, 8559-60 ¶ 10 (WTB 2015) ("*AT&T-KanOkla Order*").

³⁴ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904 ¶ 11; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115 ¶ 17; *AT&T-Leap Order*, 29 FCC Rcd at 2746 ¶ 22.

³⁵ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904 ¶ 12; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115-16 ¶ 18; *AT&T-Leap Order*, 29 FCC Rcd at 2746 ¶ 23.

³⁶ 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. See also *USCC-McBride Order*, 30 FCC Rcd at 9904 n.40; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801-2 n.43; *AT&T-Leap Order*, 29 FCC Rcd at 2748 ¶ 27.

³⁷ 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 *USCC-McBride Order*, 30 FCC Rcd at 9904 ¶ 13; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801-2 ¶ 13; *AT&T-Leap Order*, 29 FCC Rcd at 2749-50 ¶ 32.

³⁸ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904 ¶ 13; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117 ¶ 23; *AT&T-Leap Order*, 29 FCC Rcd at 2751 ¶ 35.

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.³⁹ 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.⁴⁰ 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.⁴¹ In instances where an applicant is acquiring spectrum below 1 GHz, we also carefully examine the possible competitive effects resulting from an increase in below-1-GHz spectrum holdings that would be above the threshold identified in the *Mobile Spectrum Holdings Report and Order*.⁴²

13. As the instant transaction does not result in the acquisition of wireless business units and customers, we do not apply the initial HHI screen. None of the markets triggers the total spectrum screen but in our review of the below-1-GHz spectrum holdings, we find 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 two of the three CMAs (Huntington-Ashland and Lexington-Fayette). We therefore look more closely at the potential competitive effects that these proposed holdings may have.⁴³

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.⁴⁴ Further, the Applicants maintain that the proposed transaction will not lead to an increase in market concentration or decrease the number of entities providing service to customers in these markets.⁴⁵

15. T-Mobile filed a petition to deny the Application, AT&T and East Kentucky filed oppositions to T-Mobile’s petition, and T-Mobile and Public Knowledge filed replies to the AT&T and East Kentucky oppositions.⁴⁶ T-Mobile argues that that the proposed transaction would cause competitive

³⁹ See, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-6 ¶ 23; *USCC-McBride Order*, 30 FCC Rcd at 9904-5 ¶ 15; *AT&T-KanOkla Order*, 30 FCC Rcd at 8561 ¶ 15; *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, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904-5 n.45; *AT&T-KanOkla Order*, 30 FCC Rcd at 8561 n.48; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121, 5123 ¶¶ 31, 35.

⁴⁰ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904-5 ¶ 15; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *AT&T-Leap Order*, 29 FCC Rcd at 2753 ¶ 41 n.140.

⁴¹ See, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-6 ¶ 23; *USCC-McBride Order*, 30 FCC Rcd at 9904-5 ¶ 15; *AT&T-Consolidated Order*, 30 FCC Rcd at 9803 ¶ 15; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24.

⁴² See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233 ¶ 267, 6240 ¶¶ 286-88. See also, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-6 ¶ 23; *USCC-McBride Order*, 30 FCC Rcd at 9904-5 ¶ 15; *AT&T-KanOkla Order*, 30 FCC Rcd at 8561 ¶ 15; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24.

⁴³ AT&T would also acquire 12 megahertz of low-band spectrum in CMA 448 (Kentucky 6 – Madison). AT&T would hold 43 megahertz of below-1-GHz spectrum post-transaction. In this CMA, we do not apply enhanced factor review, nor do we find any particular factor that would lead us to undertake further competitive review.

⁴⁴ See Public Interest Statement at 4. See also Response of AT&T to the General Information Request Dated May 21, 2015, WT Docket No. 15-179, at 14 (June 4, 2015) (“AT&T Information Request Response”).

⁴⁵ See AT&T Information Request Response at 14.

⁴⁶ See Petition To Deny of T-Mobile USA, Inc., WT Docket No. 15-79 (filed June 22, 2015) (“T-Mobile Petition To Deny”). AT&T and East Kentucky filed Oppositions to the T-Mobile Petition To Deny, Opposition of AT&T to Petition To Deny, WT Docket No. 15-79 (filed July 2, 2015) (“AT&T Opposition”); East Kentucky Network, LLC

(continued....)

harms by reducing competition, and that the proposed transaction's purported public interest benefits – enabling a 10×10 megahertz LTE deployment – is not in fact a benefit as AT&T already has “sufficient contiguous low-band spectrum in all three Markets to accommodate a 10[×]10 MHz deployment.”⁴⁷ T-Mobile argues that the proposed transaction would allow further spectrum concentration by “foreclosing others from efficiently entering or improving their competitive positions.”⁴⁸

16. East Kentucky and AT&T argue in their oppositions that as East Kentucky does not provide service in these markets, this transaction would not result in the exit of a competitor.⁴⁹ Further, East Kentucky and AT&T claim that T-Mobile was given the opportunity to purchase the spectrum licenses at issue but it was not willing to make a competitive offer and did not submit a formal offer.⁵⁰ In reply, T-Mobile maintains that “AT&T holds sufficient cellular spectrum to deploy a 10[×]10 LTE carrier in all of the Markets.”⁵¹ T-Mobile also argues that the licenses were priced at a “foreclosure level” to “eliminate competitors from the market to the benefit of AT&T and to the detriment of the public interest.”⁵² T-Mobile concludes that “[o]nly an entity like AT&T, seeking to foreclose offers from all other competitors in the market, could or would pay such a high amount for this spectrum.”⁵³ T-Mobile argues that “the transaction appears to be no more than an attempt by AT&T to eliminate a local competitor, foreclose others from efficiently entering or improving their competitive positions, and further entrench its dominance by amalgamating large swaths of spectrum in a region where it already

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Opposition to Petition To Deny, WT-Docket No. 15-79 (filed July 2, 2015) (“East Kentucky Opposition”). T-Mobile USA, Inc. and Public Knowledge filed Replies to the Oppositions to Petitions To Deny, T-Mobile USA, Inc. Reply to Oppositions to Petition To Deny, WT-Docket No. 15-79 (filed July 10, 2015) (“T-Mobile Reply”), Reply of Public Knowledge, WT-Docket No. 15-79 (filed July 10, 2015) (“Public Knowledge Reply”). T-Mobile also filed a Supplement. See Letter from Trey Hanbury, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 15-79 (filed July 23, 2015). In addition, T-Mobile and AT&T have both filed recent *ex parte* letters in this proceeding. See Letter from Trey Hanbury, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 15-79 (filed Dec. 23, 2015) (concerning an *ex parte* meeting with Commission staff on December 21, 2015) (“T-Mobile Dec. 23 *Ex Parte* Letter”); Letter from Michael P. Goggin, AT&T Mobility LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 15-79 (filed Jan. 11, 2016) (“AT&T Jan. 11 *Ex Parte* Letter”); Letter from Trey Hanbury, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 15-79 (filed Jan. 19, 2016) (“T-Mobile Jan. 19 *Ex Parte* Letter”); Letter from Trey Hanbury, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 15-79 (filed Jan. 20, 2016) (concerning an *ex parte* call with Edward “Smitty” Smith of Chairman Tom Wheeler’s office on January 15, 2016); Letter from Kathleen O’Brien Ham, Vice President, Federal Regulatory Affairs, T-Mobile, USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 15-79 (filed Jan. 27, 2016) (“T-Mobile Jan. 27 *Ex Parte* Letter”).

⁴⁷ T-Mobile Petition to Deny at 14.

⁴⁸ *Id.*

⁴⁹ See East Kentucky Opposition at 2; AT&T Opposition at 4.

⁵⁰ See East Kentucky Opposition at 2; AT&T Opposition at 2, 10. See also East Kentucky Information Request Response at 3 (describing the efforts of Alpina Capital, LLC to sell the licenses involved in this transaction to a number of companies and the results of those efforts).

⁵¹ T-Mobile Reply at 7.

⁵² T-Mobile Reply at 10. See also Public Knowledge Reply at 2 (arguing that “[a]pproving the transaction would gut hard-won safeguards to competition and consumer welfare adopted by the Commission” in the *Mobile Spectrum Holdings Report and Order* and “the Applicants have failed to meet their burden to show that the public interest benefits of the transaction outweigh the harms”).

⁵³ T-Mobile Reply at 9.

controls more than half of the market share.”⁵⁴ In its reply, Public Knowledge echoes the positions taken by T-Mobile in its filings regarding this transaction, asserting that AT&T has failed to carry its burden of demonstrating that the public benefits would outweigh “the obvious harms arising from allowing a dominant provider to acquire more than one-third of the low-band spectrum in a market.”⁵⁵ Public Knowledge also takes the position that the ability of competitors to seek to acquire the subject below-1-GHz spectrum is not a relevant factor to be considered in the Commission’s evaluation of proposed below-1-GHz transactions.⁵⁶

17. In its *ex parte* letter filed on December 23, 2015, T-Mobile reiterates many of its arguments in opposition to this application.⁵⁷ T-Mobile also alleges that a waiver petition recently filed by AT&T “calls into question its representations concerning the feasibility of high-band deployments as well as the timing of AT&T’s planned Lower 700 MHz deployments in the region, including at least one of the three markets at issue in this proceeding.”⁵⁸ In response, AT&T asserts that T-Mobile has misconstrued the AT&T Petition in suggesting that AT&T has contradicted its representations regarding the subject assignment of licenses.⁵⁹ AT&T notes that its waiver request includes only one CMA that is also involved in this transaction, Kentucky 6 – Madison.⁶⁰ AT&T states that in this CMA, it holds no paired Lower 700 MHz spectrum, and thus projects deploying an LTE network on Lower 700 MHz spectrum within 12 to 15 months – compared to 60 to 90 days in areas such as the other two CMAs involved in this transaction, where it has already deployed LTE on existing Lower 700 MHz spectrum.⁶¹ T-Mobile’s more recent *ex parte* underscores the arguments it has made throughout the course of this proceeding, adding that “T-Mobile stands ready to acquire the spectrum in these markets at market-based, non-foreclosure prices.”⁶²

18. *Discussion.* We apply enhanced factor review as set out below in our market-by-market analysis to two local markets in Kentucky: Huntington-Ashland and Lexington-Fayette. We find for the reasons set out below, and contrary to the contentions of T-Mobile and Public Knowledge, that competitive harm is unlikely in these two local markets as a result of the proposed transaction, notwithstanding AT&T’s post-transaction increased low-band spectrum holdings. Furthermore, we find that T-Mobile has provided little persuasive support for its claim that the price of the licenses reflected “foreclosure value.” T-Mobile discusses the amounts of the winning bids in the AWS-3 auction in its filings, and the initial asking price for this spectrum, asserting that [REDACTED].⁶³

⁵⁴ T-Mobile Petition to Deny at 14. Similarly, Public Knowledge argues that “the lack of spectrum acquisition from smaller firms cannot, and should not, be taken as evidence that they are not interested in this valuable spectrum.” Public Knowledge Reply at 6.

⁵⁵ Public Knowledge Reply at 10.

⁵⁶ *See id.* at 6.

⁵⁷ *See* T-Mobile Dec. 23 *Ex Parte* Letter at 1.

⁵⁸ *See id.* at 2. T-Mobile is referring to the AT&T Services, Inc. Petition for Waiver for Licenses in Kentucky and Tennessee, WT Docket No. 15-300 (filed Dec. 11, 2015) (“AT&T Petition”). In that filing, AT&T seeks a waiver of section 22.913 of the Commission’s rules, 47 C.F.R. § 22.913, to permit it to use a power spectral density measurement in the cellular bands in a number of specific markets, including Kentucky 6 – Madison.

⁵⁹ AT&T Jan. 11 *Ex Parte* Letter at 1.

⁶⁰ *See id.* at 3.

⁶¹ *See id.*

⁶² T-Mobile Jan. 19 *Ex Parte* Letter at 3.

⁶³ *See* T-Mobile Reply at 8-9; Declaration of Scott Sundblad at 2-3.

19. As the Commission found in the *Mobile Spectrum Holdings Report and Order*, “there are many factors that may determine the price of spectrum.”⁶⁴ In addition, the Commission stated that the secondary market for spectrum licenses in any geographic area has very few buyers and sellers, which necessarily limits the accuracy of spectrum pricing.⁶⁵ Of particular importance here, the Commission found that there are substantial differences between the characteristics of spectrum below 1 GHz as compared to spectrum above 1 GHz that may affect valuation.⁶⁶ T-Mobile has not persuaded us that the amounts of the winning bids paid for AWS-3 spectrum licenses, which is above-1-GHz spectrum,⁶⁷ compared to the initial asking price for the subject low-band spectrum licenses demonstrate foreclosure pricing. In addition, we note that T-Mobile has offered no evidence about the potential pricing of comparable below-1-GHz spectrum. We are unpersuaded by any comparison of prices paid for these licenses in Auction 44 with the initial asking price here. We note that that auction took place in 2002, well over a decade ago and notably before enactment of the Digital Television and Public Safety Act of 2005. We find a more appropriate standard for comparison to be prices paid for the Lower 700 MHz B Block licenses in Auction 73, which occurred in 2008. By comparison, the initial asking price here was only approximately [REDACTED] that of prices paid nearly eight years ago. Further, and importantly, T-Mobile declined to make a formal offer for the subject licenses and otherwise did not actively engage in the bidding process,⁶⁸ and contrary to Public Knowledge’s claims, it is appropriate for us to consider this fact as part of our competitive review.⁶⁹ The record does not support T-Mobile’s claim that there was “foreclosure pricing” in this specific transaction.

20. *Market-Specific Review.* 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.⁷⁰

21. We begin our analysis with a review of CMA 110 – Huntington-Ashland, which is a non-rural market of approximately 315,000 people, with a population density of 146 people per square mile.⁷¹

⁶⁴ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6167 ¶ 65.

⁶⁵ See *id.*, 29 FCC Rcd at 6166 ¶ 64.

⁶⁶ See *id.*, 29 FCC Rcd at 6158 ¶¶ 48-50; see also ¶ 8 *supra*.

⁶⁷ AWS-3 includes the following bands: 1695-1710, 1755-1780, and 2155-2180 MHz.

⁶⁸ See AT&T Opposition at 10; East Kentucky Opposition at 2; T-Mobile Reply at 8. T-Mobile claims that its rejection of the offer for sale was “reasonable.” See T-Mobile Reply at 8.

⁶⁹ See *AT&T-Club 42 Order*, 30 FCC Rcd at 13073-4 ¶ 38 n.151.

⁷⁰ We derive market shares and HHIs from our analysis of data compiled in our June 2015 NRUF and LNP database, network coverage from July 2015 Mosaik data and 2010 U.S. Census data, and spectrum holdings from our licensing databases and the Applications. We also utilized and analyzed additional data as provided by the Applicants through our information requests. See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9905 n.51; *AT&T-KanOkla Order*, 30 FCC Rcd at 8562 n.54; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120 ¶ 29, n.98.

⁷¹ The population density is measured by the number of people per square mile using Census 2010 data. Rural markets are generally 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*, WT Docket Nos. 02-381, 01-14, 03-202, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 19078, 19086-88 ¶¶ 10-12 (2004).

Four service providers each have a significant market share: AT&T, nTelos,⁷² Sprint, and Verizon Wireless each have market shares of approximately [REDACTED] percent, respectively. Post-transaction, AT&T would hold 125 megahertz of spectrum in this CMA, including 55 megahertz of spectrum below 1 GHz, while the other three nationwide providers each hold 40 to 137 megahertz of spectrum. In addition, nTelos holds 30 megahertz of spectrum above 1 GHz.⁷³ With respect to below-1-GHz spectrum, Verizon Wireless holds 47 megahertz, Sprint holds 14 megahertz, USCC holds 12 megahertz, and DISH holds 6 megahertz. In terms of population and land area coverage,⁷⁴ two service providers, AT&T and Verizon Wireless, have significant 3G population and land area coverage, while nTelos covers approximately 69 percent of the population.⁷⁵ In addition, AT&T covers approximately 100 percent of the population and 99 percent of the land area with HSPA+, and approximately 92 percent of the population and 67 percent of the land area with LTE, while the comparable LTE network coverage percentages for Verizon Wireless are approximately 93 percent and 67 percent.

22. We find notwithstanding the fact that AT&T would hold, as a result of the proposed transaction, more than one-third of the below-1-GHz spectrum in Huntington-Ashland, that the likelihood of competitive harm is low, after evaluating the particular factors ordinarily considered.⁷⁶ There are currently four service providers that have significant market shares in Huntington-Ashland. In addition to AT&T, Verizon Wireless has significant 3G and LTE coverage, and nTelos covers close to 70 percent of the population with its 3G network. Further, there are a number of service providers with access to low-band spectrum. We also note that 26 megahertz of paired low-band spectrum in this market remains held by parties other than the leading two nationwide service providers. We find that the acquisition of this low-band spectrum by AT&T is unlikely to foreclose rival service providers from entering or expanding, or raise rivals' costs. The proposed transaction, therefore, is unlikely to materially lessen the ability of rival service providers to effectively respond to any anticompetitive behavior on the part of AT&T in Huntington-Ashland.

23. CMA 116 – Lexington-Fayette is a non-rural market of approximately 472,000 people, with a population density of 320 people per square mile. The four nationwide service providers have a significant market share: AT&T, Sprint, T-Mobile, and Verizon Wireless each have market shares of approximately [REDACTED] percent, respectively. Post-transaction, AT&T would hold 145 megahertz of spectrum in this CMA, including 55 megahertz of spectrum below 1 GHz, while the other three nationwide providers hold 60 to 193 megahertz of spectrum. With respect to below-1-GHz spectrum, Verizon Wireless holds 47 megahertz, Sprint holds 14 megahertz, Cavalier Wireless holds 12 megahertz,

⁷² nTelos has entered into agreements with Shenandoah Personal Communications, LLC (“Shenandoah”) and Sprint pursuant to which nTelos would become a wholly-owned subsidiary of Shenandoah, and all of nTelos’s spectrum licenses would be assigned to Sprint. The applications seeking consent to the multi-party transaction are pending before the Commission. See Application To Assign Licenses from NTELOS Inc. to SprintCom, Inc., ULS File No. 0006917154 (lead application) (filed Aug. 25, 2015); SprintCom, Inc., Shenandoah Personal Communications, LLC, and NTELOS Holdings Corp. Seek Consent to the Assignment of Licenses and Spectrum Lease Authorizations and to the Transfer of Control of Spectrum Lease Authorizations and an International Section 214 Authorization, WT Docket No. 15-262, *Public Notice*, DA 15-1236 (WTB rel. Oct. 30, 2015).

⁷³ In addition, DISH holds 50 megahertz of spectrum above 1 GHz.

⁷⁴ 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., *USCC-McBride Order*, 30 FCC Rcd at 9906 n.54; *AT&T-KanOkla Order*, 30 FCC Rcd at 8562 n.59; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121 n.102; *AT&T-Leap Order*, 29 FCC Rcd at 2770 n.279.

⁷⁵ AT&T covers approximately 100% of the population and 99% of the land area with its 3G network, while the comparable 3G network population and land area coverage percentages are approximately 94% and 73% for Verizon Wireless, and approximately 69% and 16% for nTelos.

⁷⁶ See ¶ 20 *supra*. See also, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9906-7 ¶¶ 19, 21; *AT&T-KanOkla Order*, 30 FCC Rcd at 8563 ¶ 19; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5123 ¶ 36.

and DISH holds 6 megahertz.⁷⁷ In terms of population and land area coverage, the four nationwide service providers – AT&T, Verizon Wireless, Sprint, and T-Mobile – each have significant 3G coverage.⁷⁸ In addition, AT&T covers 100 percent of the population and land area with HSPA+, and approximately 100 percent of the population and 99 percent of the land area with LTE, while the comparable LTE network coverage percentages are approximately 100 percent and 99 percent for Verizon Wireless, approximately 94 percent and 69 percent for Sprint, and approximately 94 percent and 75 percent for T-Mobile.

24. We find notwithstanding the fact that AT&T would hold, as a result of the proposed transaction, more than one-third of the below-1-GHz spectrum in Lexington-Fayette, that the likelihood of competitive harm is low, after evaluating the particular factors ordinarily considered.⁷⁹ The four nationwide service providers each currently have a significant market share in Lexington-Fayette, and all four have significant 3G population and land area coverage. In addition, all four nationwide service providers have significant LTE population and land area coverage. We also note that 26 megahertz of paired low-band spectrum remains held in this market by parties other than the two leading nationwide service providers. We find that the acquisition of this low-band spectrum by AT&T is unlikely to foreclose rival service providers from entering or expanding, or raise rivals' costs. We find, therefore, that the proposed transaction is unlikely to materially lessen the ability of rival service providers to effectively respond to any anticompetitive behavior on the part of AT&T in Lexington-Fayette.

25. Finally, we are not persuaded by the additional claims made by T-Mobile in its December 21 and January 19 *Ex Parte* Letters based on AT&T's recent waiver petition. Initially, we note that Kentucky 6 – Madison is the only market covered by both this application and the waiver petition. We find that AT&T has adequately explained why its representations here regarding the 60 to 90 day deployment period for Huntington-Ashland and Lexington-Fayette involved in this transaction, where it already has an existing LTE network on its Lower 700 MHz spectrum, are not in conflict with its statements that it would take 12 to 15 months after closing to deploy an LTE network on the Lower 700 MHz spectrum to be acquired in Kentucky 6 – Madison.⁸⁰ We also note that T-Mobile is incorrect in asserting that AT&T has stated in the petition that it would need “many years” for a “700 MHz LTE deployment” in Kentucky 6 – Madison.⁸¹ Rather, AT&T stated that “[i]ncreasing the density of [its] infrastructure to optimize a high-band only LTE network in the counties for which the waiver is requested would take many years.”⁸²

26. In conclusion, we find that the acquisition of this specific low-band spectrum by AT&T is unlikely to foreclose rival service providers from entering or expanding in either of these local markets, and is unlikely to raise rivals' costs. We find therefore that the proposed transaction is unlikely to

⁷⁷ In addition, DISH holds 50 megahertz of spectrum above-1-GHz.

⁷⁸ AT&T covers approximately 100% of the population and land area with its 3G network, while the comparable 3G network population and land area coverage percentages are approximately 100% and 98% for Verizon Wireless, 97% and 81% for Sprint, and 96% and 82% for T-Mobile.

⁷⁹ See ¶ 20 *supra*. See also, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9906-7 ¶¶ 19, 21; *AT&T-KanOkla Order*, 30 FCC Rcd at 8563 ¶ 19; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5123 ¶ 36.

⁸⁰ See AT&T Jan. 11 *Ex Parte* Letter at 3. We further note that Kentucky 6 – Madison does not trigger our enhanced factor review in this transaction, and we have found no other evidence to suggest that we need to undertake a detailed competitive analysis of this market. In any competitive analysis, the potential public interest benefits of the acquisition of Lower 700 MHz spectrum in that market would, necessarily, have to be judged in accordance with the projected deployment time frame for that market.

⁸¹ See T-Mobile Jan. 19 *Ex Parte* Letter at 4. See also T-Mobile Jan. 27 *Ex Parte* Letter at 1-2.

⁸² See AT&T Petition at 11 (emphasis added).

materially lessen the ability of rival service providers to respond to any anticompetitive behavior on the part of AT&T in either Huntington-Ashland or Lexington-Fayette.

IV. POTENTIAL PUBLIC INTEREST BENEFITS

27. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.⁸³ The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms,⁸⁴ and applies a “sliding scale approach” to evaluating benefit claims.⁸⁵ 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.”⁸⁶ Conversely, where potential harms appear less likely and less substantial, as is the case here, we will accept a lesser showing to approve the proposed transaction.⁸⁷

28. *Potential Benefits.* The Applicants assert, in their detailed demonstration of the claimed benefits, 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.⁸⁸ AT&T says that it will use the Lower 700 MHz spectrum to be acquired in this transaction to improve the quality of service for subscribers in these markets and to respond to subscribers’ considerable demand for LTE services.⁸⁹ The Applicants contend that the acquisition of this Lower 700 MHz spectrum would allow AT&T to support a 10×10 megahertz LTE deployment.⁹⁰ AT&T asserts that a 10×10 megahertz deployment represents a major improvement in speed and efficiency over a 5×5 megahertz LTE deployment.⁹¹ AT&T further claims that the relative gain in capacity from a 10×10 megahertz block is greater than the total capacity of two separate 5×5 megahertz blocks, and that wider bandwidth results in noticeably better performance for users.⁹² AT&T also asserts that, “for those subscribers whose devices can take advantage of carrier aggregation technologies, they will be able to access a 20×20 MHz carrier-aggregated LTE configuration, as compared to the current 15×15 MHz configuration. This is achieved by using carrier aggregation technology to combine the Lower 700 MHz spectrum with Broadband PCS or AWS-1 spectrum.”⁹³ In addition, AT&T asserts that the acquisition of this particular spectrum will facilitate a more efficient and productive network deployment in West

⁸³ See, e.g., *USCC-McBride Order*, 30 FCC Rcd 1t 9907-8 ¶ 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805 ¶ 20; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126 ¶ 43; *AT&T-Leap Order*, 29 FCC Rcd at 2792-93 ¶ 130.

⁸⁴ See ¶ 7 *supra*. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27 ¶ 44. See also *USCC-McBride Order*, 30 FCC Rcd at 9907-8 ¶ 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805 ¶ 20; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94 ¶ 132.

⁸⁵ See *id.*

⁸⁶ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9907-8 ¶ 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805 ¶ 20; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27 ¶ 44.

⁸⁷ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9907-8 ¶ 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805 ¶ 20; *AT&T-KanOkla Order*, 30 FCC Rcd at 8563 ¶ 20.

⁸⁸ See Public Interest Statement at 3. See also AT&T Information Request Response at 8-9.

⁸⁹ See AT&T Information Request Response at 8-9.

⁹⁰ See Public Interest Statement at 3. See also AT&T Information Request Response at 6-10.

⁹¹ See AT&T Information Request Response at 7-8.

⁹² See AT&T Information Request Response at 7-8. AT&T claims that spectral efficiency benefits associated with a 10×10 megahertz LTE deployment are reflected in trunking and signaling efficiencies, and in better user throughput, than with two separate 5×5 megahertz blocks. See *id.* See also AT&T Exhibits ATT-EKY000007 and ATT-EKY000049-ATT-EKY000050.

⁹³ See AT&T Information Request Response at 5.

Virginia.⁹⁴ Further, citing its operations on the Lower 700 MHz B and C block licenses in Charleston, West Virginia, adjacent to Huntington-Fayette, AT&T asserts that “consummation of the transaction will . . . improve AT&T’s service in adjacent markets by allowing AT&T to increase its signal strength at the market border.”⁹⁵

29. *Evaluation.* We have reviewed the detailed assertions of the Applicants regarding the benefits they allege would result from the proposed transaction, as well as their detailed responses to our requests for additional information and documents. 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.⁹⁶ As we found in the *AT&T-Plateau Wireless Order* and the *AT&T-Club 42 Order*, customers are likely to benefit in the immediate future from access to improved LTE performance and a more robust network as a result of the instant transaction.⁹⁷

V. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS

30. 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 markets 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 in either Huntington-Ashland or Lexington-Lafayette, the two markets in which we applied enhanced factor review. Further, we find that the record provides general support for the Applicants’ claims of potential public interest benefits. Therefore, under our sliding scale approach, we find that the likelihood of harm is low and the potential public interest benefits outweigh any potential public interest harms. As a result, 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

31. 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 East Kentucky Network, LLC to AT&T Mobility Spectrum LLC is GRANTED.

32. IT IS FURTHER ORDERED that the June 22, 2015 Petition to Deny filed by T-Mobile IS DENIED for the reasons stated herein.

33. 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, or

⁹⁴ See AT&T Information Request Response at 11-12.

⁹⁵ See AT&T Information Request Response at 11-12. AT&T says that one of the licenses it would acquire covers Huntington, West Virginia, and in adjacent Charleston, West Virginia, it holds both the Lower 700 MHz B and C Block licenses and [REDACTED]. AT&T says that acquisition of this license will enable it to provide seamless coverage to subscribers throughout this area. See *id.*

⁹⁶ According to AT&T, where it has already deployed LTE on its Lower 700 MHz B Block spectrum in these markets, AT&T expects to deploy the C Block spectrum within 60 to 90 days after closing. See AT&T Information Request Response at 10.

⁹⁷ See *AT&T-Club 42 Order*, 30 FCC Rcd at 13076-7 ¶¶ 46-47; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5129 ¶ 53. See also, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9805-6 ¶ 22; *AT&T-KanOkla Order*, 30 FCC Rcd at 8564 ¶ 22.

applications for review under section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, may be filed within thirty days of the date of release of this Memorandum Opinion and Order.

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

FEDERAL COMMUNICATIONS COMMISSION

Roger C. Sherman
Chief
Wireless Telecommunications Bureau