

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

In the Matter of)	
)	
Application of Cellular South Licenses, LLC)	WT Docket No. 15-111
d/b/a C Spire Wireless and Waller Wireless, Inc.)	
)	
For Consent To Assign Licenses)	

MEMORANDUM OPINION AND ORDER

Adopted: February 26, 2016

Released: February 26, 2016

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the application of C Spire and Waller for Commission consent to the assignment to C Spire of three Lower 700 MHz C Block licenses, covering three local market areas in parts of Mississippi. 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, C Spire 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 C Spire’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 for consumers living in these rural areas in Mississippi. Based on the record before us and our competitive review, we find that the proposed assignment 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.* Cellular South Licenses, LLC d/b/a C Spire Wireless (“C Spire”), headquartered in Ridgeland, Mississippi, provides wireless and other communications services to nearly one million consumers throughout Mississippi and in portions of Alabama, Tennessee,

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).

and Florida.² Waller Wireless, Inc. (“Waller,” and together with C Spire, the “Applicants”) is a Commission licensee that does not currently provide mobile wireless services.³

3. *Description of the Transaction.* On March 31, 2015, C Spire and Waller filed an application (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 C Spire.⁵ Through the assignment of these three licenses, C Spire would acquire 12 megahertz of low-band spectrum in twenty-two counties covering three Cellular Market Areas (“CMAs”) in parts of Mississippi.⁶ Post-transaction, C Spire would hold from 39 megahertz to 84 megahertz of spectrum in total, including 24 megahertz to 49 megahertz of below-1-GHz spectrum, in these three CMAs. In particular, C Spire would end up having an interest in more than one-third of the below-1-GHz spectrum in parts of two of the CMAs: CMA 493 (Mississippi 1 – Tunica) and CMA 496 (Mississippi 4 – Yalobusha).⁷

4. *Standard of Review.* Pursuant to section 310(d) of the Act,⁸ we must determine whether the Applicants have demonstrated that the proposed assignment of licenses would serve the public interest, convenience, and necessity.⁹ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act,¹⁰ other applicable statutes, and the

² See Application for Assignment of Licenses from Waller Wireless, Inc. to Cellular South Licenses, LLC, ULS File No. 0006715462 (filed Mar. 31, 2015, amended Apr. 24, 2015) (“Application”), Exhibit 1 – Description of Transaction and Public Interest Statement at 1 (“Public Interest Statement”).

³ See Public Interest Statement at 1; Response of Waller Wireless, Inc. to the General Information Request Dated Jun. 22, 2015, WT Docket No. 15-111, at 2-3 (July 6, 2015) (“Waller Information Request Response”).

⁴ 47 U.S.C. § 310(d).

⁵ See Application; Public Interest Statement at 1.

⁶ See Cellular South Licenses, LLC d/b/a C Spire Wireless and Waller Wireless, Inc. Seek Consent to the Assignment of Three Lower 700 MHz Licenses in Mississippi, WT Docket No. 15-111, *Public Notice*, 30 FCC Rcd 6386 (WTB 2015) (“*Accepted for Filing Public Notice*”). See also Application, Exhibit 2 – Spectrum Aggregation.

⁷ See Application, Exhibit 2 – Spectrum Aggregation; *Accepted for Filing Public Notice*, 30 FCC Rcd at 6386-87. 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.

⁸ 47 U.S.C. § 310(d).

⁹ 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*”).

¹⁰ 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.¹¹ 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.¹² We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.¹³ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.¹⁴

5. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.¹⁵ 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.¹⁶ 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.¹⁷ 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.¹⁸

6. *Qualifications of the Applicants.* As a threshold matter, the Commission must determine whether the applicants to a proposed transaction meet the requisite qualifications requirements to hold and transfer licenses under section 310(d) and the Commission's rules.¹⁹ We note that no issues were raised with respect to the basic qualifications of Waller or C Spire, and in addition, C Spire previously and repeatedly has been found qualified to hold Commission licenses.²⁰ We therefore 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 Waller or C Spire.²¹

¹¹ 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.

¹² See *id.*

¹³ See *id.*

¹⁴ See *id.*

¹⁵ 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.

¹⁶ See *id.*

¹⁷ 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.

¹⁸ 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).

¹⁹ 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.

²⁰ See, e.g., Application for Assignment of License from Callis Communications, Inc. to Cellular South, Inc., ULS File No. 0006006225 (filed Dec. 11, 2013); Application for Assignment of License from Corr Wireless Communications, Inc. to Cellular South, Inc., ULS File No. 0003953098 (filed Oct. 16, 2009, amended Dec. 3, 2009).

²¹ 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.²² 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.²³ 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,²⁴ 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.²⁵ 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.”²⁶ 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.²⁷

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,²⁸ and that the leading two nationwide service providers hold most of the low-band spectrum available today.²⁹ 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.³⁰ As the Commission found, without access to this low-band spectrum, rival

²² 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.

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 2752 ¶ 39, 2753 ¶ 41, 2755-56 ¶ 47.

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

²⁵ 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.

²⁶ *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.

²⁷ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.

²⁸ See *id.*, 29 FCC Rcd at 6164 ¶ 60.

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

³⁰ 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.³¹ 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.³²

A. Market Definitions

9. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,³³ 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).³⁴ In addition, we find that the relevant geographic market is local.³⁵ The Applicants are seeking Commission approval of the proposed assignment of 12 megahertz of low-band spectrum that covers twenty-two counties in all of 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.³⁶ 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.³⁷

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

³¹ 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.

³² 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*").

³³ 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.

³⁴ 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.

³⁵ 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.

³⁶ 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.

³⁷ 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.³⁸ 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.³⁹ 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.⁴⁰ 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*.⁴¹

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 three markets trigger the total spectrum screen, but in our review of the below-1-GHz spectrum holdings, we find that C Spire would hold more than one-third, or more than 45 megahertz, of the currently suitable and available below-1-GHz spectrum in five counties in parts of two of the three CMAs: CMA 493 (Mississippi 1 – Tunica) and CMA 496 (Mississippi 4 – Yalobusha). We therefore look more closely at the potential competitive effects that these proposed holdings may have.⁴²

14. *Record.* The Applicants argue that the proposed transaction would have no adverse competitive effects, as it would put fallow spectrum to use, no subscriber transition issues are implicated as a result of the proposed transaction, and C Spire would be a stronger competitor against the four nationwide service providers, which are all license holders in the relevant markets.⁴³ Further, the Applicants maintain that the proposed transaction would not lead to an increase in market concentration or decrease the number of entities providing service to customers in these markets.⁴⁴ No petitions to deny or comments were received.

³⁸ 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.

³⁹ 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.

⁴⁰ 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.

⁴¹ 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.

⁴² C Spire would also acquire 12 megahertz of low-band spectrum in all nine counties of CMA 494 (Mississippi 2 – Benton). Post-transaction, C Spire would hold 24 megahertz of below-1-GHz spectrum throughout this market and therefore we do not apply enhanced factor review to this market, nor do we find any particular factor that would lead us to further competitive review. See Application, Exhibit 2 – Spectrum Aggregation. See also *Accepted for Filing Public Notice*, 30 FCC Rcd at 6386.

⁴³ See Public Interest Statement at 1, 4-5. See also Response of C Spire to the General Information Request Dated Jun. 22, 2015, WT Docket No. 15-111, at 5-6 (July 6, 2015) (“C Spire Information Request Response”).

⁴⁴ See Public Interest Statement at 1, 4.

15. *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.⁴⁵

16. We begin our analysis with our review of Mississippi 1 – Tunica, which is a rural market of approximately 193,000 people, with a population density of 50 people per square mile.⁴⁶ Five service providers have a significant market share: AT&T, C Spire, Sprint, T-Mobile, and Verizon Wireless each hold approximately [REDACTED] percent of the market. Post-transaction, C Spire would hold 39 megahertz to 84 megahertz of spectrum, including 24 megahertz to 49 megahertz of below-1-GHz across the CMA.⁴⁷ The four nationwide service providers' spectrum holdings range from 40 megahertz to 183 megahertz of spectrum. With respect to below-1-GHz spectrum, Verizon Wireless holds 47 megahertz, AT&T holds from 18 megahertz to 43 megahertz, and Sprint holds 14 megahertz.⁴⁸ In terms of population and land area coverage, four service providers – C Spire, AT&T, T-Mobile, and Verizon Wireless – each has significant 3G coverage.⁴⁹ C Spire covers approximately 98 percent of the population and 96 percent of the land area with its 3G network, while the comparable 3G population and land area percentages are approximately 100 percent for both for AT&T, approximately 79 percent and 65 percent for T-Mobile, and approximately 99 percent and 97 percent for Verizon Wireless.⁵⁰ In addition, three of the four nationwide service providers have deployed a significant LTE network: The population and land area percentages are approximately 99 percent and 98 percent for Verizon Wireless, approximately 99 percent and 97 percent for AT&T, and approximately 78 percent and 63 percent for T-Mobile.⁵¹ Further,

⁴⁵ 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.

⁴⁶ 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).

⁴⁷ C Spire would hold 49 megahertz of below-1-GHz spectrum post-transaction in four of the seven counties that make up Mississippi 1 – Tunica, covering approximately 60% of the population in this market.

⁴⁸ In addition, DISH holds 6 megahertz of unpaired below-1-GHz spectrum, and 50 megahertz of above-1-GHz spectrum.

⁴⁹ 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 ¶ 18 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.

⁵⁰ According to Mosaik, Sprint covers approximately 59% of the population and 37% of the land area with its 3G network.

⁵¹ According to Mosaik, Sprint covers approximately 57% of the population and 30% of the land area with its LTE network.

C Spire has some LTE presence: It has built out to cover approximately 48 percent of the population and 35 percent of the land area.⁵²

17. We find, notwithstanding the fact that C Spire would hold post-transaction more than one-third of the below-1-GHz spectrum in four of the seven counties in Mississippi 1 – Tunica, that the likelihood of competitive harm is low, when evaluating the particular factors ordinarily considered.⁵³ Mississippi 1 – Tunica is a rural market. There are currently five service providers that each have significant market shares in this market. In addition to C Spire, AT&T, T-Mobile, and Verizon Wireless each have significant 3G population and land area coverage. Further, these same three nationwide service providers have significant LTE population and land area coverage. Moreover, as the Commission noted in the *Mobile Spectrum Holdings Report and Order*, non-nationwide service providers present a significantly lower risk of effectively denying access to low-band spectrum to competitors because of their relative lack of resources.⁵⁴ We find that the acquisition of this low-band spectrum by C Spire 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 C Spire in Mississippi 1 – Tunica.

18. We next turn to our review of Mississippi 4 – Yalobusha, which is a rural market of approximately 125,000 people, with a population density of 39 people per square mile. Three service providers have significant market shares: AT&T, C Spire, and Verizon Wireless hold approximately [REDACTED] percent of the market, respectively.⁵⁵ Post-transaction, C Spire would hold 64 megahertz to 79 megahertz of spectrum, including 24 megahertz to 49 megahertz of below-1-GHz spectrum,⁵⁶ while the four nationwide service providers hold 50 megahertz to 146 megahertz of spectrum. With respect to below-1-GHz spectrum, Verizon Wireless holds 47 megahertz, AT&T holds 43 megahertz, and Sprint holds 14 megahertz.⁵⁷ In terms of population and land area coverage, four service providers have significant 3G coverage. C Spire covers approximately 95 percent of the population and 85 percent of the land area, while the comparable 3G population and land area percentages are approximately 100 percent for both for AT&T, approximately 84 percent and 65 percent for T-Mobile, and approximately 98 percent and 95 percent for Verizon Wireless.⁵⁸ In addition, while C Spire has rather limited LTE coverage, AT&T, T-Mobile, and Verizon Wireless each have significant LTE coverage. C Spire covers approximately 32 percent of the population with its LTE network and 16 percent of the land area,⁵⁹ while the comparable LTE population and land area percentages are approximately 99 percent and 94 percent

⁵² We note that staff analysis of the data submitted by the Applicants indicates that C Spire covers approximately [REDACTED] percent of the population and land area, respectively, with its LTE network.

⁵³ See ¶ 15 *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.

⁵⁴ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6207 ¶ 180.

⁵⁵ In addition, T-Mobile has some market presence, holding approximately [REDACTED] percent of the market, while Sprint has a *de minimis* market presence of [REDACTED] percent.

⁵⁶ C Spire would hold 49 megahertz of below-1-GHz spectrum post-transaction in one of the six counties that make up Mississippi 4 – Yalobusha, covering approximately 17 percent of the population in this market.

⁵⁷ In addition, DISH holds 6 megahertz of unpaired below-1-GHz spectrum, and 50 megahertz of above-1-GHz spectrum.

⁵⁸ According to Mosaik, Sprint covers approximately 49 percent of the population and 25 percent of the land area with its 3G network.

⁵⁹ We note that staff analysis of the data submitted by the Applicants indicates that C Spire has significant LTE population coverage, covering approximately [REDACTED] percent of the population and land area, respectively.

for AT&T, approximately 73 percent and 51 percent for T-Mobile, and approximately 99 percent and 98 percent for Verizon Wireless.⁶⁰

19. We find, notwithstanding the fact that C Spire would hold, as a result of the proposed transaction, more than one-third of the below-1-GHz spectrum in Clay County, which accounts for only 17 percent approximately of the population of Mississippi 4 – Yalobusha, that the likelihood of competitive harm is low, after evaluating the particular factors ordinarily considered.⁶¹ Mississippi 4 – Yalobusha is a rural market. There are two nationwide service providers, AT&T (the leading service provider) and Verizon Wireless, who have significant market shares. In addition, T-Mobile has some market presence. Further, in addition to C Spire’s significant 3G network, AT&T, T-Mobile, and Verizon Wireless each have significant 3G (and LTE) population and land area coverage in this rural market. Moreover, as the Commission noted in the *Mobile Spectrum Holdings Report and Order*, non-nationwide service providers present a significantly lower risk of effectively denying access to low-band spectrum to competitors because of their relative lack of resources.⁶² We find that the acquisition of this spectrum by C Spire 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 C Spire in Mississippi 4 – Yalobusha.

IV. POTENTIAL PUBLIC INTEREST BENEFITS

20. 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 approve the proposed transaction.⁶⁷

21. *Potential Benefits.* The Applicants, in their detailed demonstration of the claimed public interest benefits, assert that the additional spectrum would allow C Spire “to offer improved services to its customers, enabling C Spire to become a stronger competitor in the Markets and nationwide.”⁶⁸ According to the Applicants, the proposed transaction would be “immediately useful”⁶⁹ to improve

⁶⁰ According to Mosaik, Sprint covers approximately 48% of the population and 23% of the land area with its LTE network.

⁶¹ See ¶ 15 *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.

⁶² See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6207 ¶ 180.

⁶³ 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 ¶ 43; *AT&T-Leap Order*, 29 FCC Rcd at 2792-93 ¶ 130.

⁶⁴ See ¶ 7 *supra*. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27 ¶ 44. See also, e.g., *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.

⁶⁵ See *id.*

⁶⁶ 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.

⁶⁷ 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.

⁶⁸ Public Interest Statement at 1.

⁶⁹ C Spire Information Request Response at 4.

capacity and data throughput speeds for broadband service to customers and roamers within its service area.⁷⁰ The Applicants maintain that the spectrum would allow C Spire to “immediately deploy LTE services”⁷¹ that are interoperable with other service providers’ networks and enable consumers to enjoy the benefits of greater competition and more choices of devices.⁷² In addition, C Spire asserts that low-band spectrum is far more useful in low-population density areas, such as the markets at issue, to service providers “with a desire to provide service to rural consumers.”⁷³ C Spire further contends that the acquisition of this Lower 700 MHz C Block spectrum would allow C Spire to “improve[e] coverage, capacity, and throughput” for consumers by putting Waller’s “fallow spectrum to use.”⁷⁴

22. *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 C Block spectrum, C Spire would be able to deploy a more robust LTE network in a relatively short period of time on spectrum that would otherwise lie fallow.⁷⁵ Moreover, as the Commission noted in the *Mobile Spectrum Holdings Report and Order*, non-nationwide service providers are important sources of competition in rural areas, where multiple nationwide service providers may have less incentive to offer high quality services.⁷⁶ The Commission further noted that non-nationwide service providers enhance competitive choices for consumers in the mobile wireless marketplace, and help promote deployment in rural areas.⁷⁷ Thus, as a result of the proposed transaction, customers are likely to benefit in the immediate future from improved throughput performance and access to a more robust network, resulting in a better customer experience.

V. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS

23. After carefully evaluating the likely competitive effects of C Spire’s increased aggregation of below-1-GHz spectrum, we find that the ability of rival service providers to offer a competitive response to any anticompetitive behavior on the part of C Spire is unlikely to be materially lessened in Mississippi 1 – Tunica and Mississippi 4 – Yalobusha, the markets to which we applied enhanced factor review. In addition, we have reviewed the Applicants’ detailed demonstration of the

⁷⁰ See Public Interest Statement at 2. C Spire claims that its current spectrum holdings are insufficient to meet present and projected demand for the company’s service. See C Spire Information Request Response at 4-5.

⁷¹ Public Interest Statement at 4.

⁷² See Public Interest Statement at 4; C Spire Information Request Response at 3-5. C Spire maintains that it is not able to fully utilize its 12 megahertz of Lower 700 MHz A Block spectrum due to interoperability and interference problems. See Public Interest Statement at 3-4; C Spire Information Request Response at 3.

⁷³ C Spire Information Request Response at 5. See also Public Interest Statement at 4.

⁷⁴ C Spire Information Request Response at 5. See also Public Interest Statement at 2, 4. Waller states that it acquired the spectrum more than five years ago and, Waller asserts, it ultimately determined that “for the large investment required for a relatively new technology, both the deployment and the lease/lease-back options for the Spectrum involved an unacceptable level of risk for the Company.” Waller Information Request Response at 2. See also Public Interest Statement at 1.

⁷⁵ See Public Interest Statement at 4. See also C Spire Information Request Response at 5.

⁷⁶ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6206 ¶ 179. See also, e.g., Notification of Triangle Communication System, Inc. and Celco Partnership d/b/a Verizon Wireless for a Long-Term Spectrum Manager Leasing Agreement, WT Docket No. 15-210, *Memoranda Opinion and Order*, DA 16-88, at ¶¶ 17, 19, 22 (WTB rel. Jan. 22, 2016) (“*Triangle-Verizon Wireless Order*”); *USCC-McBride Order*, 30 FCC Rcd at 9906 ¶ 19, 9907 ¶ 21, 9909 ¶ 24.

⁷⁷ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6207 ¶ 180. See also, e.g., *Triangle-Verizon Wireless Order*, DA 16-88, at ¶ 22; *USCC-McBride Order*, 30 FCC Rcd at 9909 ¶ 24.

claimed potential public interest benefits, and we find that the record provides general support for the Applicants' claims. 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

24. 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 three licenses held by Waller Wireless, Inc. to Cellular South Licenses, LLC is GRANTED.

25. 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 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.

26. 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