

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

In the Matter of)
)
Applications of Cellular Network Partnership and) WT Docket No. 15-48
KanOkla Telephone Association)
)
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 applications of CNP and KanOkla for Commission consent to the assignment to CNP of two Lower 700 MHz C Block licenses and the partitioned assignment of a third Lower 700 MHz C Block license, for a total of 12 megahertz, covering all or parts of three local market areas in Oklahoma. 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 The *Mobile Spectrum Holdings Report and Order* also requires that, where the entity acquiring below-1-GHz spectrum already holds approximately one-third or more of the below-1-GHz spectrum in a particular market, the demonstration of the public interest benefits of the proposed transaction would need to clearly outweigh the potential public interest harms, irrespective of other factors.² As a result of the instant transaction, CNP would increase its below-1-GHz spectrum holdings in two local market areas where it already holds more than one-third of the total low-band spectrum. After carefully evaluating the likely competitive effects of CNP’s increased aggregation of below-1-GHz spectrum in these two local market areas, we find that the likelihood of competitive harm is low. Further, we find that some public interest benefits are likely to be realized, such as the improved availability of wireless broadband service at fixed locations, particularly in sparsely populated areas. 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 assignments.

II. BACKGROUND AND PUBLIC INTEREST FRAMEWORK

2. *Description of the Applicants.* Cellular Network Partnership, an Oklahoma limited partnership (“CNP”), serves mobile customers in Western and Southwestern Oklahoma and Southern

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 *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 287.

Kansas under the Pioneer Cellular name.³ KanOkla Telephone Association (“KanOkla,” and together with CNP, the “Applicants”) is a rural service provider that, among other things, provides local telephone service, broadband Internet service, and fixed wireless broadband Internet access service in rural areas of Southern Kansas and Northern Oklahoma.⁴ KanOkla has provided fixed wireless broadband Internet access service using its licensed Lower 700 MHz C Block spectrum and 3650-3700 MHz spectrum in rural Kansas and Oklahoma.⁵ KanOkla also is a non-managing general partner in the CNP limited partnership.⁶

3. *Description of the Transaction.* On December 5, 2014, CNP and KanOkla filed the Applications pursuant to section 310(d) of the Communications Act of 1934, as amended (the “Act”),⁷ seeking Commission consent to assign two Lower 700 MHz C Block licenses and the partitioned assignment of a third Lower 700 MHz C Block license to CNP.⁸ With KanOkla’s transition of its fixed wireless customers exclusively to its 3650 MHz system, it decided to sell its three Lower 700 MHz C Block licenses to CNP.⁹ In this proposed transaction, CNP would acquire 12 megahertz of low-band spectrum in eight counties in all or parts of three Cellular Market Areas (“CMAs”) in Oklahoma.¹⁰ Post-transaction, CNP would hold 47 megahertz to 79 megahertz of spectrum in total, and 37 megahertz to 59 megahertz of below-1-GHz spectrum in these eight counties.¹¹ In addition, Pioneer, the managing general

³ See Response of CNP to the General Information Request Dated Apr. 13, 2015, WT Docket No. 15-48, at 2 (Apr. 27, 2015) (“CNP Information Request Response”); Pioneer, “News,” available at <http://www.ptci.com/news-about-pioneer-cellular>. CNP is a limited partnership in which three companies hold general partnership interests: O.T.&T. Communications, Inc., a wholly owned subsidiary of Pioneer Telephone Cooperative, Inc. (“Pioneer”), owns a 58.18% interest and is the managing general partner; KanOkla owns a 24.05% interest and is a non-managing general partner; and South Central Communications, Inc. owns a 10.13% interest and is a non-managing general partner. See Application, ULS File No. 0006554006, Exhibit 1 – Description of Transaction and Public Interest Statement, at 4 n.9 (“Public Interest Statement”); FCC Form 602, FCC Ownership Disclosure Information for the Wireless Telecommunications Services, File No. 0005169832 (filed Apr. 18, 2012), Main Form & Sch. A (filer is Cellular Network Partnership, an Oklahoma Limited Partnership).

⁴ See Response of KanOkla to the General Information Request Dated Apr. 13, 2015, WT Docket No. 15-48, at 2 (Apr. 27, 2015) (“KanOkla Information Request Response”).

⁵ See KanOkla Information Request Response at 2.

⁶ See n.3 *supra*.

⁷ 47 U.S.C. § 310(d).

⁸ See Public Interest Statement at 1. The Application for full assignment was assigned ULS File No. 0006554006 (which has been designated the lead application), and the Application for partial assignment was assigned ULS File No. 0006554010. See Cellular Network Partnership and KanOkla Telephone Association Seek FCC Consent to the Assignment of Three Lower 700 MHz Licenses in Oklahoma, WT Docket No. 15-48, *Public Notice*, 30 FCC Rcd 3517, 3518 (WTB 2015) (“*Accepted for Filing Public Notice*”).

⁹ KanOkla asserts that [REDACTED]. See KanOkla Information Request Response at 2-3. KanOkla states that because it is a (non-managing) general partner in CNP, it began considering utilizing its Lower 700 MHz assets to benefit CNP, and engaged Alpina Capital, LLC (“Alpina”) to assist in a review of KanOkla’s wireless operations and assets. KanOkla asserts that on August 19, 2014, it entered into a License Purchase Agreement (“LPA”) with Pioneer, pursuant to which KanOkla agreed to assign the licenses to Pioneer; on November 17, 2014, KanOkla and Pioneer amended the LPA to assign the licenses to CNP. See *id.* at 3-4.

¹⁰ See *Accepted for Filing Public Notice*, 30 FCC Rcd 3517. See also Application, Exhibit 2 – Assignee’s Spectrum Aggregation.

¹¹ See Application, Exhibit 2 – Assignee’s Spectrum Aggregation. As set out in the docket, the Bureau accepted the Applications 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

(continued....)

partner of CNP, currently is attributed with an additional 12 megahertz of Lower 700 MHz spectrum in five of the counties implicated by the proposed transaction.

4. *Standard of Review.* Pursuant to section 310(d) of the Act,¹² we here consider whether the Applicants have demonstrated that the proposed assignment of licenses would serve the public interest, convenience, and necessity.¹³ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act,¹⁴ other applicable statutes, and the Commission's rules.¹⁵ 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.¹⁶ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.¹⁷ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.¹⁸

5. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.¹⁹ 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.²⁰ 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.²¹ If we are unable to find that the proposed

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confidential and highly confidential information, and sent the Applicants information requests seeking further specific information relating to the proposed transaction.

¹² 47 U.S.C. § 310(d).

¹³ 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*”).

¹⁴ 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.

¹⁵ 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.

¹⁶ See *id.*

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ 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.

²⁰ See *id.*

²¹ 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.

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.²²

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.²³ We note that no issues were raised with respect to the basic qualifications of KanOkla or CNP, and in addition, CNP previously has been found qualified to hold Commission licenses.²⁴ 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 KanOkla or CNP.²⁵

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.²⁶ 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.²⁷ 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,²⁸ 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.²⁹

8. 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."³⁰ The Commission further stated, however, that when the other factors ordinarily considered

²² 47 U.S.C. § 309(e); *see also 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; 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).

²³ 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.

²⁴ *See* Cellular Network Partnership, ULS File Number 0003637433 (filed Nov. 6, 2008); Wireless Telecommunications Bureau Commercial Wireless Service Information, *Public Notice*, Report No. LB-98-10 (rel. Nov. 21, 1997) (granting assignment of licenses to CNP).

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

²⁶ *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.

²⁷ *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.

²⁸ *See Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223-24 ¶ 231.

²⁹ *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.

³⁰ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.

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.³¹ 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.³²

9. 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,³³ and that the leading two nationwide service providers hold most of the low-band spectrum available today.³⁴ 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.³⁵ As the Commission found, without access to this low-band spectrum, rival service providers that may lack a mix of low-band and higher-band spectrum would be less able to provide a robust competitive alternative, and may not be able to quickly expand coverage or provide new services.³⁶ 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.³⁷

A. Market Definitions

10. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,³⁸ 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.

11. *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

³¹ See *id.*, 29 FCC Rcd at 6240 ¶ 286.

³² See *id.*, 29 FCC Rcd at 6240 ¶ 287. See also, e.g., 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, 13057-58 ¶ 7, 13062 ¶ 15, 13072-73 ¶ 37, 13077-78 ¶ 48, 13078-79 ¶ 51 (2015) ("AT&T-Club 42 Order"); *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.

³³ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164 ¶ 60.

³⁴ See *id.*, 29 FCC Rcd at 6156-57 ¶ 46, 6162 ¶ 58, 6164 ¶ 60.

³⁵ See *id.*, 29 FCC Rcd at 6164 ¶ 60.

³⁶ 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.

³⁷ 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").

³⁸ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904 ¶ 11; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5114-5 ¶ 16; *AT&T-Leap Order*, 29 FCC Rcd at 2746 ¶ 22.

advanced broadband wireless networks (mobile broadband services).³⁹ In addition, we find that the relevant geographic market is local.⁴⁰ CNP and KanOkla are seeking Commission approval of the proposed assignment of 12 megahertz of low-band spectrum that covers eight counties in all or parts of three local markets that account for well under one half of one percent of the population of the United States.

12. *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.⁴¹ 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.⁴²

B. Competitive Effects of the Proposed Transaction

13. *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 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.⁴³ 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.⁴⁴ 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.⁴⁵ In instances where an applicant is acquiring spectrum below 1 GHz, we also carefully examine the possible competitive effects resulting

³⁹ 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.

⁴⁰ 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.

⁴¹ 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.

⁴² 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.

⁴³ See, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66 ¶ 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; See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶¶ 286-88. 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.

⁴⁴ 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.

⁴⁵ See, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66 ¶ 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.

from an increase in below-1-GHz spectrum holdings that would be above the threshold identified in the *Mobile Spectrum Holdings Report and Order*, that is, above 45 megahertz.⁴⁶

14. As the instant transaction does not result in the acquisition of wireless business units and customers, we do not apply the initial HHI screen. Next, examining the markets on a county-by-county basis does not result in any of the markets triggering the total spectrum screen. We do find, however, that in both CMA 302 (Enid, Oklahoma) and CMA 597 (Oklahoma 2 – Harper), CNP is already attributed with more than 45 megahertz of low-band spectrum, and would further increase those holdings as a result of the proposed transaction.⁴⁷ Both Enid, Oklahoma and Oklahoma 2 – Harper are therefore subject to enhanced factor review as set forth in paragraph 287 of the *Mobile Spectrum Holdings Report and Order*.⁴⁸

15. *Record.* The Applicants contend that the proposed transaction would allow CNP to diversify its wireless service offerings to include broadband services to fixed locations, which the Applicants assert would promote the availability of broadband service in rural areas.⁴⁹ The Applicants also claim that CNP's acquisition of this spectrum would cause no lessening of competition.⁵⁰ The Applicants assert that the proposed transaction will not cause an aggregation of spectrum that would pose an anticompetitive risk because post-closing, neither CNP nor its managing general partner, Pioneer, will exceed the Commission's existing initial spectrum screen as a result of this transaction.⁵¹ Further, as discussed above, the Applicants assert that while they recognize that Commission approval will result in CNP holding more than one-third of the available low-band spectrum in seven of the eight counties at issue, the proposed transaction does not require enhanced factor review because CNP plans a fixed broadband service in these counties while the spectrum aggregation concerns addressed in the *Mobile Spectrum Holdings Report and Order* contemplate mobile spectrum use.⁵² No petitions to deny or comments were received.

16. *Discussion.* We disagree with the Applicants that the proposed transaction does not require enhanced factor review.⁵³ In the *Mobile Spectrum Holdings Report and Order*, the Commission stated that it retained "the authority to consider all factors that could affect the likely competitive impact of proposed transactions" and affirmed its continued use of the factors considered in its "case-by-case analyses to date of the potential competitive impacts of further concentration of spectrum in particular

⁴⁶ 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 13065-66 ¶ 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. See also *supra* note 43.

⁴⁷ CNP leases 22 megahertz of Upper 700 MHz C Block spectrum from Verizon Wireless under that service provider's "LTE in Rural America" program in each of two markets in the proposed transaction that are subject to enhanced factor review: Enid, Oklahoma and Oklahoma 2 – Harper. See Application, Exhibit 2 – Assignee's Spectrum Aggregation at n.2; CNP Information Request Response at 5.

We note that CNP would also acquire 12 megahertz of low-band spectrum in Grant County in CMA 598 (Oklahoma 3 – Grant). Post-transaction, CNP would hold 37 megahertz of below-1-GHz spectrum in Grant County. We do not apply enhanced factor review to this county, nor do we find any particular factor that would lead us to undertake further competitive review.

⁴⁸ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶¶ 286-87. See also *AT&T-Club 42 Order*, 30 FCC Rcd at 13066 ¶ 24.

⁴⁹ See Public Interest Statement at 2. See also CNP Information Request Response at 3-5.

⁵⁰ See Public Interest Statement at 6. See also CNP Information Request Response at 6-7.

⁵¹ See Public Interest Statement at 4.

⁵² See Public Interest Statement at 4-5. See also CNP Information Request Response at 3, 5.

⁵³ See Public Interest Statement at 4-5.

markets.”⁵⁴ Even assuming these licenses are to be used for fixed wireless service by CNP, the Commission has found that this spectrum is suitable and available for the provision of mobile service and that enhanced factor review is to apply to transactions that would result in a significant concentration of such low-band spectrum. In addition, we note that although the Applicants claim that service to fixed locations “is the exclusive use planned by CNP in the immediately foreseeable future” for the spectrum to be assigned, depending on customer needs, “CNP may eventually use the spectrum to serve mobile customers as well.”⁵⁵ We therefore apply enhanced factor review to the proposed transaction, and look closely at the potential competitive effects these below-1-GHz spectrum holdings may have.

17. *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.⁵⁶

18. We first note that both Enid, Oklahoma and Oklahoma 2 – Harper are rural markets.⁵⁷ The former market includes approximately 61,000 people with a population density of 57 people per square mile; the latter includes approximately 50,000 people with a population density of 8 people per square mile. In these two rural markets, CNP already holds more than 45 megahertz of the currently suitable and available below-1-GHz spectrum in each market, and would acquire an additional 12 megahertz of low-band spectrum. As a result, we evaluate the likely competitive effects of this increased aggregation, irrespective of other factors.⁵⁸ In our consideration of the proposed acquisition, we find that, given the availability of other low-band spectrum for the provision of mobile service to parties other than CNP, it is unlikely that this transaction would raise rivals’ costs to any significant extent or would foreclose expansion or entry of mobile service in either local market. In both Enid, Oklahoma, and Oklahoma 2 – Harper, four service providers other than CNP⁵⁹ hold paired low-band spectrum post-

⁵⁴ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6238-39 ¶ 282.

⁵⁵ See Public Interest Statement at 4 n.8. See also CNP Information Request Response at 7.

⁵⁶ 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.

We note that 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.

⁵⁷ 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).

⁵⁸ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 287. See also *AT&T-Club 42 Order*, 30 FCC Rcd at 13071, 13072-73 ¶ 34, ¶¶ 37-38.

⁵⁹ We note that Pioneer, the managing general partner of CNP, would be attributed with 59 to 71 megahertz of spectrum post transaction across these two markets as it holds 12 megahertz of Lower 700 MHz A Block spectrum in Harper, Ellis, and Woodward counties in Oklahoma 2 – Harper.

transaction.⁶⁰ Specifically, AT&T holds 31 megahertz, Verizon Wireless continues to be attributed with 22 megahertz of Upper 700 MHz C Block spectrum subject to its spectrum leasing arrangement with CNP, Sprint holds 14 megahertz, and USCC holds 12 megahertz to 24 megahertz of such spectrum.⁶¹ Thus, in addition to CNP, four service providers have access to low-band spectrum in both markets that would allow at least a 5×5 megahertz deployment on below-1-GHz spectrum. In addition, these four service providers also have access to spectrum above 1 GHz to combine with their low-band spectrum holdings for LTE deployment.⁶² We find that the spectrum holdings of other service providers in this market would likely allow them to effectively respond to any anticompetitive behavior on the part of CNP if it were to eventually deploy mobile wireless services on this spectrum.⁶³ Moreover, as the Commission noted in the *Mobile Spectrum Holdings Report and Order*, non-nationwide service providers such as CNP present a significantly lower risk of effectively denying access to low-band spectrum to competitors because of their relative lack of resources.⁶⁴ In considering the acquisition of this 12 megahertz of low-band spectrum, irrespective of other factors, we find that it is unlikely that rivals' costs would be raised to any significant extent, or that expansion or entry would be foreclosed in either local market. We find therefore that the potential public interest harm of such additional concentration of this particular spectrum in these particular markets is low.

IV. POTENTIAL PUBLIC INTEREST BENEFITS

19. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.⁶⁵ The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms,⁶⁶ and applies a

⁶⁰ Four service providers have significant market shares in Enid, Oklahoma. AT&T, CNP, Sprint, and T-Mobile have market shares of approximately [REDACTED]%, respectively, while USCC and Verizon Wireless have some market presence, with market shares of [REDACTED]%, respectively. In addition, AT&T, CNP, Sprint, T-Mobile, and USCC each cover well over 90% of the population with their respective 3G networks, and AT&T, CNP, T-Mobile, and USCC also have significant 3G land area coverage. Further, AT&T and T-Mobile each have significant HSPA+ and LTE population and land area coverage, while CNP, Sprint, and USCC have significant LTE population and land area coverage.

Two service providers have significant market shares in Oklahoma 2 – Harper. AT&T and CNP have market shares of approximately [REDACTED]%, respectively, while Verizon Wireless and T-Mobile have some market presence, with market shares of approximately [REDACTED]%, respectively. AT&T and CNP each have significant 3G and LTE population and land area coverage, while T-Mobile covers approximately 50% of the population and 21% of the land area with 3G and LTE.

⁶¹ In addition, DISH holds 6 megahertz of low-band unpaired spectrum in both Enid, Oklahoma and Oklahoma 2 – Harper, as well as 50 megahertz of spectrum above 1 GHz.

⁶² Above-1-GHz spectrum holdings by service provider in Enid, Oklahoma and Oklahoma 2 – Harper are as follows: AT&T holds 90 megahertz to 100 megahertz, Sprint holds 123 megahertz to 151 megahertz, T-Mobile holds 60 megahertz to 70 megahertz, USCC holds 20 megahertz, and Verizon Wireless holds 30 megahertz.

⁶³ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164-65 ¶¶ 60-61.

⁶⁴ See *id.*, 29 FCC Rcd at 6207 ¶ 180. See also, e.g., Notification of Triangle Communication System, Inc. and Cellco Partnership d/b/a Verizon Wireless for a Long-Term Spectrum Manager Leasing Agreement, WT Docket No. 15-210, *Memorandum Opinion and Order*, DA 16-88, at ¶ 17, ¶ 19 (WTB rel. Jan. 22, 2016) (“*Triangle-Verizon Wireless Order*”); *USCC-McBride Order*, 30 FCC Rcd at 9906, 9907 ¶ 19, ¶ 21.

⁶⁵ 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.

⁶⁶ 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.

“sliding scale approach” to evaluating benefit claims.⁶⁷ 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.”⁶⁸ 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.⁶⁹

20. *Potential Benefits.* The Applicants maintain that there is an unmet need for high quality and affordable broadband service at homes and businesses in the area.⁷⁰ CNP asserts that where customers are located over 18,000 feet from a digital subscriber line access multiplexer, the Pioneer companies have used various forms of technology to provide broadband service, but these include aging technologies with service limitations that also cannot provide the bandwidth demanded by customers.⁷¹ CNP further claims that LTE offers a means of providing superior broadband service, and that fixed wireless by LTE can be cost effective when the initial capital investment costs of DSL or fiber are prohibitive.⁷² The Applicants assert that the spectrum to be assigned would complement CNP’s spectrum holdings and enable it to offer LTE wireless broadband service on a wholesale basis so that its partners may market service to fixed locations using the acquired spectrum.⁷³ The Applicants contend that the Lower 700 MHz C Block spectrum in this proposed transaction is necessary to enhance and expand broadband services because other spectrum licensed or leased to CNP or Pioneer is not available for fixed broadband service,⁷⁴ and some of the spectrum is subject to capacity issues.⁷⁵ Further, the Applicants assert that this system will make it possible for wireless broadband service to be offered by CNP’s partners in areas that are too sparsely populated to be served economically by landline broadband technologies such as DSL.⁷⁶

21. *Evaluation.* We have reviewed the Applicants’ asserted public interest benefits, as well as their detailed responses to our requests for additional information and documents regarding the potential benefits of CNP acquiring, in particular, the below-1-GHz spectrum at issue in Enid, Oklahoma and Oklahoma 2 – Harper. The record provides general support for the Applicants’ contentions that the

⁶⁷ See *id.*

⁶⁸ 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.

⁶⁹ 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.

⁷⁰ See Public Interest Statement at 2. See also CNP Information Request Response at 7.

⁷¹ See CNP Information Request Response at 2-3.

⁷² See CNP Information Request Response at 3.

⁷³ See Public Interest Statement at 4. See also CNP Information Request Response at 3.

⁷⁴ See CNP Information Request Response at 5-6. The Applicants assert that CNP’s lease of Upper 700 MHz C Block spectrum from Verizon Wireless includes a per megabyte switching fee that requires a billing plan that CNP has found to be not affordable for customers who wish to use their broadband connection to view streaming media and other high-usage applications. See Public Interest Statement at 5. CNP claims that the cellular 850 MHz and PCS 1900 MHz spectrum licensed to it in the market is used to provide mobile voice and data service [REDACTED]. See CNP Information Request Response at 6.

⁷⁵ The Applicants maintain that Pioneer holds a license for 12 megahertz of Lower 700 MHz A Block spectrum that covers three of the eight counties that are the subject of this proposed transaction, and Pioneer has encountered spectrum capacity issues in one community and foresees similar issues in other parts of the counties served. See Public Interest Statement at 5. CNP further maintains that [REDACTED]. See CNP Information Request Response at 5. In addition, CNP contends that the Lower 700 MHz A Block spectrum is deployed [REDACTED]. See CNP Information Request Response at 6.

⁷⁶ See Public Interest Statement at 5-6.

proposed transaction would likely result in some public interest benefits in these rural markets. Specifically, we anticipate that through the acquisition of this Lower 700 MHz spectrum, CNP will be able to deploy a robust LTE fixed wireless broadband network with improved availability of broadband service. In particular, the use of the spectrum in this manner will make it possible for fixed wireless broadband service to be made available in sparsely populated areas. We further find that by acquiring this low-band spectrum, current capacity problems in certain areas are likely to be alleviated. Moreover, we believe that non-nationwide providers are important sources of competition in rural areas, where multiple nationwide service providers may have less incentive to offer high quality services.⁷⁷ We believe that non-nationwide service providers enhance competitive choices for consumers and help promote deployment in rural areas.⁷⁸ By acquiring this Lower 700 MHz spectrum from KanOkla, CNP will likely be able to expedite the provision of wireless broadband service at fixed locations to the benefit of its customers, resulting in a better consumer experience.

V. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS

22. After carefully evaluating the likely competitive effects in the two markets to which we applied enhanced factor review, we find it is unlikely that rivals' costs would be raised to any significant extent, or that expansion or new entry into the market would be foreclosed, irrespective of other factors, notwithstanding the fact that CNP would further increase its low-band spectrum holdings in Enid, Oklahoma and Oklahoma 2 – Harper. Further, we have reviewed the Applicants' detailed claims regarding the benefits they allege would result as well as their responses to the requests for additional information if CNP were permitted to acquire, in particular, this below-1-GHz spectrum. The record provides general support for the Applicants' contentions that the proposed transaction would likely result in some public interest benefits, such as improved availability of broadband service particularly in sparsely populated areas and an opportunity to address capacity issues in certain areas. We emphasize that while we find these benefits weigh in favor of approving this specific transaction, they may not be sufficient to support the approval of other transactions with different underlying characteristics in the future. Based on the record before us and our competitive review under our sliding scale approach, we find that the potential public interest benefits clearly outweigh any potential public interest harms. We find that grant of the proposed assignment of licenses would serve the public interest, convenience, and necessity.

VI. ORDERING CLAUSES

23. ACCORDINGLY, having reviewed the Applications 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 applications for assignment of three licenses held by KanOkla Telephone Association to Cellular Network Partnership are GRANTED.

24. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, 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.

⁷⁷ Cf. *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6206 ¶ 179.

⁷⁸ Cf. *id.*, 29 FCC Rcd at 6207 ¶ 180.

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

FEDERAL COMMUNICATIONS COMMISSION

Roger C. Sherman
Chief
Wireless Telecommunications Bureau