

Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Applications of AT&T Mobility Spectrum LLC, ) WT Docket No. 15-255
Tampnet Inc., Tampnet Licensee LLC, Broadpoint )
License Co., LLC, and Broadpoint Wireless )
License Co., LLC, for Consent To Assign Licenses )
and Approval of Long-Term De Facto Transfer )
Spectrum Leasing Arrangements )
Applications of Tampnet Inc. and Broadpoint ) File Nos. SES-ASG-20150828-00555, SES-
License Co., LLC for Consent To Assign Satellite ) ASG-20150828-00565
Earth Station Licenses )
Application of Tampnet Inc. for Global or Limited ) File No. ITC-214-20150901-00218
Global Facilities-Based Service, Global or Limited )
Global Resale Service )
Petition for Declaratory Ruling of Tampnet Inc. ) File No. ISP-PDR-20150507-00003

MEMORANDUM OPINION AND ORDER AND DECLARATORY RULING

Adopted: July 28, 2016

Released: July 28, 2016

By the Chief, Wireless Telecommunications Bureau, and Chief, International Bureau:

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## I. INTRODUCTION

1. In this Memorandum Opinion and Order and Declaratory Ruling, we consider the applications of AT&T, Tampnet, and Broadpoint for Commission consent to the assignment of a number of licenses from Broadpoint to AT&T and Tampnet, approval of long-term *de facto* transfer spectrum leasing arrangements between AT&T and Tampnet, and issuance of an international Section 214 authorization to Tampnet. The subject licenses cover the Gulf of Mexico. Tampnet also has filed a petition for declaratory ruling to permit foreign ownership of Tampnet Licensee LLC to exceed the 25 percent benchmark in Section 310(b)(4) of the Communications Act.<sup>1</sup>

2. 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.<sup>2</sup> As a result of the proposed transaction, AT&T and Tampnet each would be attributed post-transaction with more than one-third of the currently suitable and available below-1-GHz spectrum in certain areas of the Gulf of Mexico.<sup>3</sup> After carefully evaluating the likely competitive effects of AT&T’s and Tampnet’s aggregation of below-1-GHz spectrum in these 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. As we have done in other contexts, we consider the specific and unique conditions in the Gulf of Mexico as an integral part of our competitive analysis. Further, we find that some public interest benefits are likely to be realized, such as increased network quality, extended coverage, and a better consumer experience. Based on the record before us and our competitive review, we find that the potential public interest benefits are likely to outweigh any potential public interest harms.

3. In this proceeding, we grant the international Section 214 application filed by Tampnet pursuant to Section 214(a) of the Act.<sup>4</sup> We also issue a declaratory ruling under Section 310(b)(4) of the Act to permit 100 percent foreign ownership of Tampnet Inc., the controlling U.S.-organized parent of Tampnet Licensee LLC, subject to specific terms and conditions.<sup>5</sup> We find overall that the proposed assignment of wireless licenses and implementation of spectrum leasing arrangements, along with the assignment of earth station licenses and issuance of an international Section 214 authorization, is in the public interest, and therefore we consent to the proposed transaction.

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<sup>1</sup> 47 U.S.C. § 310(b)(4).

<sup>2</sup> *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, paras. 282-88 (2014) (*Mobile Spectrum Holdings Report and Order*), *recon. denied*, Order on Reconsideration, 30 FCC Rcd 8635 (2015).

<sup>3</sup> The *Mobile Spectrum Holdings Report and Order* states that the Commission attributes long-term *de facto* transfer spectrum leasing arrangements to both the lessor and the lessee. *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6245, paras. 301-02.

<sup>4</sup> 47 U.S.C. § 214(a); Application for International Section 214 Authority Under Section 214 of the Communications Act of 1934, as amended, ITC-214-20150901-00218 (filed September 1, 2015) (Section 214 Application). Page citations refer to the Section 214 Application as supplemented on June 15, 2016; Letter from K.C. Halm, Counsel, Davis Wright Tremaine LLP, Richard Gibbs, Counsel, David Wright Tremaine LLP, to Marlene H. Dortch, Secretary, FCC (June 15, 2016) (on file in ITC-214-20150901-00218).

<sup>5</sup> 47 U.S.C. § 310(b)(4); Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended, ISP-PDR-20150507-00003 (filed May 7, 2015 and refiled March 11, 2016) (Petition). Page citations to the Petition refer to the Petition for Declaratory Ruling filed March 11, 2016, as supplemented on June 15, 2016; Letter from K.C. Halm, Counsel, Davis Wright Tremaine LLP, Richard Gibbs, Counsel, David Wright Tremaine LLP, to Marlene H. Dortch, Secretary, FCC (June 15, 2016) (on file in ISP-PDR-20150507-00003).

## II. BACKGROUND AND PUBLIC INTEREST FRAMEWORK

4. *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.<sup>6</sup> Tampnet Inc., together with its subsidiary Tampnet Licensee LLC (Tampnet Licensee, and together with Tampnet Inc., Tampnet), is a wireless infrastructure and service provider in the Gulf of Mexico.<sup>7</sup> Tampnet AS is the parent company of Tampnet Inc.,<sup>8</sup> and is a Norwegian company operating as an independent supplier of high capacity and low latency communications to offshore oil and gas installations in both the Norwegian and United Kingdom parts of the North Sea.<sup>9</sup> Broadpoint License Co., LLC, and Broadpoint Wireless License Co., LLC (Broadpoint), currently provide wireless services throughout the Gulf of Mexico.<sup>10</sup>

5. *Description of the Transaction.* On August 28, 2015, AT&T, Tampnet, and Broadpoint (the Applicants) filed applications pursuant to Sections 214(a) and 310(d) of the Communications Act of 1934, as amended (the Act),<sup>11</sup> seeking approval of a number of license assignments and long-term *de facto* transfer spectrum leasing arrangements, as well as issuance of an international Section 214 authorization to Tampnet.<sup>12</sup> Tampnet Inc., as the controlling U.S. parent of Tampnet Licensee, also has filed a petition for declaratory ruling to permit foreign ownership of Tampnet to exceed the 25 percent benchmark in Section 310(b)(4) of the Act.<sup>13</sup>

6. Broadpoint currently holds four cellular licenses that, after a previous partition, together provide access to 50 megahertz of spectrum over the entirety of the Gulf of Mexico Exclusive Zone (GMEZ).<sup>14</sup> Broadpoint proposes to assign to AT&T two of the cellular licenses, which would provide

<sup>6</sup> AT&T Inc., 2015 SEC Form 10-K, at 1 (filed Feb. 18, 2016), [http://www.sec.gov/Archives/edgar/data/732717/000073271716000147/ye15\\_10k.htm](http://www.sec.gov/Archives/edgar/data/732717/000073271716000147/ye15_10k.htm).

<sup>7</sup> Tampnet website, Tampnet in the Gulf of Mexico, <http://www.tampnet.com/gulf-of-mexico> (last visited July 19, 2016).

<sup>8</sup> Tampnet Inc. FCC Ownership Report, Form 602, ULS File No. 0007330945 (filed July 7, 2016).

<sup>9</sup> Application To Assign Licenses from Broadpoint Wireless License Co., LLC to Broadpoint Newco, LLC, ULS File No. 0006893367 (Tampnet Application), Exhibit 1 – Description of Transaction and Public Interest Statement at 2 (Tampnet Public Interest Statement).

<sup>10</sup> Broadpoint website, About Broadpoint, <http://www.broadpointinc.com/about-us> (last visited July 19, 2016).

<sup>11</sup> 47 U.S.C. §§ 214(a), 310(d).

<sup>12</sup> The Applicants filed six applications, one involving the assignment of licenses to AT&T Mobility Spectrum LLC from Broadpoint License Co., LLC (ULS File No. 0006888586, which has been designated the lead application) (AT&T Application), the second involving the lease of spectrum to Tampnet Licensee LLC from AT&T Mobility Spectrum LLC (ULS File No. 7035CLNL15; this manual application is attached to ULS File No. 0006888586), the third involving the assignment of licenses from Broadpoint Wireless License Co., LLC, to Broadpoint Newco, LLC (ULS File No. 0006893367), two applications for assignment of earth station authorizations from Broadpoint License Co., LLC, to Broadpoint Newco, LLC (Newco) (IBFS File Nos. SES-ASG-20150828-00555 and SES-ASG-20150828-00565), and an application for the issuance of an international Section 214 authorization to Tampnet Inc. (File No. ITC-214-20150901-00218) (Applications). At closing, control of Newco would be transferred, and Newco would become a wholly-owned subsidiary of Tampnet Inc.

<sup>13</sup> 47 U.S.C. § 310(b)(4). See File No. ISP-PDR-20150507-00003.

<sup>14</sup> The Gulf of Mexico Service Area (GMSA) for cellular service is defined as the water area of the Gulf of Mexico bounded on the west, north, and east by the “coastline,” which in turn is defined as “the line of ordinary low water along that portion of the coast which is in direct contact with the open sea, and the line marking the seaward limit of inland waters.” 47 CFR § 22.99. The GMSA has been divided into two areas for licensing purposes. These two areas are the GMEZ, which essentially is defined as the GMSA, except for the Gulf of Mexico Coastal Zone (GMCZ). 47 CFR § 22.950(a)(1). The GMCZ is the geographical area in the GMSA extending twelve nautical

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access to 50 megahertz of spectrum covering a previously partitioned area in the GMEZ extending out approximately 16 nautical miles from the coastline, excluding any area within the GMCZ.<sup>15</sup> In the area subject to the assignment, AT&T, post-transaction, would hold 108 megahertz of spectrum in total,<sup>16</sup> and 68 megahertz of below-1-GHz spectrum.<sup>17</sup>

7. Tampnet would then lease back from AT&T 25 megahertz of cellular spectrum in that portion of the Gulf.<sup>18</sup> Tampnet also would obtain Broadpoint's remaining two cellular licenses, which provide access to 50 megahertz covering the rest of the GMEZ,<sup>19</sup> as well as two Advanced Wireless Services (AWS-1) licenses encompassing the Gulf of Mexico and licenses for satellite earth stations primarily located in the Gulf of Mexico. Post-transaction, Tampnet would hold or lease 55 to 80 megahertz of spectrum in total, including up to 50 megahertz of below-1-GHz spectrum, in parts of the Gulf of Mexico.<sup>20</sup> As a result of the instant transaction, Tampnet and AT&T each would be attributed with more than 45 megahertz of the 134 megahertz of currently suitable and available below-1-GHz spectrum in portions of the Gulf of Mexico.

8. Tampnet filed a petition for declaratory ruling pursuant to Section 310(b)(4) of the Act<sup>21</sup> and Section 1.990(a)(1) of the Commission's rules,<sup>22</sup> requesting that the Commission issue a declaratory ruling permitting foreign ownership of Tampnet Inc., as the controlling U.S.-organized parent of Tampnet Licensee, to exceed the 25 percent benchmark in Section 310(b)(4). Tampnet states that it is owned by a 50-50 joint venture of Brent Infrastructure I S.a.r.l. and Brent Infrastructure II SA, both of which are organized under the laws of Luxembourg. These companies are affiliated with EQT I and EQT II, comprised of a group of private equity funds based in Europe.

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miles from the coastlines of Florida and Alabama into the GMSA. 47 CFR § 22.950(a)(2). As a practical matter, coverage in the GMCZ is currently provided by land-based cellular licensees.

<sup>15</sup> The cellular licenses to be assigned by Broadpoint to AT&T in the proposed transaction are WQWD617 and WQWD618. WQWD618 and WQWD617 cover the same geographic area in which New Cingular Wireless PCS, LLC, an affiliate of AT&T Mobility, currently leases 25 megahertz of cellular spectrum from Broadpoint. See FCC Lease IDs L000011377 and L000011378. At the closing of the transactions, Lease IDs L000011377 and L000011378 will be cancelled. Public Interest Statement at n.2.

<sup>16</sup> AT&T Mobility Spectrum LLC, Tampnet Inc., Tampnet Licensee LLC, Broadpoint Licensee Co., LLC, and Broadpoint Wireless Licensee Co., LLC Seek FCC Grant of Assignment and Long-term *De Facto* Transfer Spectrum Leasing Applications Involving Four Cellular, Two Advanced Wireless Services, and Satellite Earth Station Licenses, an International Section Authorization, and a Foreign Ownership Declaratory Ruling, WT Docket No. 15-255, *Public Notice*, 30 FCC Rcd 11574 (WTB 2015) (*Accepted for Filing Public Notice*); AT&T Application, Exhibit 3 – Spectrum Aggregation.

<sup>17</sup> *Accepted for Filing Public Notice*, 30 FCC Rcd at 11574; AT&T Application, Exhibit 3 – 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 confidential and highly confidential information, and sent the Applicants information requests seeking further specific information relating to the proposed transaction.

<sup>18</sup> As proposed, Broadpoint would assign cellular licenses WQWD617 and WQWD618 to AT&T in Cellular Market Area (CMA) 306 (the Gulf of Mexico), which in turn would lease 25 megahertz of this spectrum to Tampnet Licensee pursuant to a long-term *de facto* transfer spectrum leasing arrangement. As noted above, these licenses exclude any area located within the GMCZ.

<sup>19</sup> These cellular licenses are KNKA411 and KNKA412.

<sup>20</sup> *Accepted for Filing Public Notice*, 30 FCC Rcd at 11574.

<sup>21</sup> 47 U.S.C. § 310(b)(4).

<sup>22</sup> 47 CFR § 1.990(a)(1). The petition for a declaratory ruling has been assigned the following file number: ISP-PDR-20150507-00003.

9. On November 4, 2015, the Commission received a submission from the Department of Justice (DOJ), including the Federal Bureau of Investigation, with the concurrence of the Department of Homeland Security (DHS) and the Department of Defense (DOD) (collectively, the Agencies).<sup>23</sup> In that filing, the Agencies requested that the Commission defer action on the Applications and Petition until they had completed their review of any national security, law enforcement, or public safety implications. Subsequently, on June 10, 2016, the DOJ, including the Federal Bureau of Investigation, with the concurrence of DHS and DOD, submitted a Petition to Adopt Conditions.<sup>24</sup> The filing states that the Agencies have no objection to grant of the Applications and Petition provided that the Commission conditions its approval on the compliance by Tampnet and Tampnet AS with the commitments and undertakings set forth in the June 8, 2016, Letter of Agreement (Agreement)<sup>25</sup> between Tampnet, Tampnet AS, and the DOJ.

10. *Standard of Review.* Pursuant to Sections 214 and 310(d) of the Act,<sup>26</sup> we must determine whether the Applicants have demonstrated that the proposed transaction would serve the public interest, convenience, and necessity.<sup>27</sup> In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act,<sup>28</sup> other applicable statutes, and the Commission's rules.<sup>29</sup> 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.<sup>30</sup> We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public

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<sup>23</sup> Letter from Hunter P. Deeley, Law Clerk, DOJ, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 15-255, ITC-214-20150901-00218, ISP-PDR-20150507-00003 (filed Nov. 4, 2015).

<sup>24</sup> Petition To Adopt Conditions to Authorizations and Licenses of the U.S. Department of Justice, WT Docket No. 15-255 (filed June 10, 2016), <https://ecfsapi.fcc.gov/file/60002112569.pdf> (Petition to Adopt Conditions).

<sup>25</sup> Letter from David Heximer, CEO, Tampnet Inc., and Per Helge Svensson, CEO, Tampnet AS, to John Carlin, Assistant Attorney General for National Security, DOJ (June 8, 2016) (Agreement), <https://ecfsapi.fcc.gov/file/60002112570.pdf>. The Agreement is attached to the Petition to Adopt Conditions.

<sup>26</sup> 47 U.S.C. §§ 214, 310(d).

<sup>27</sup> See, e.g., *Applications of SprintCom, Inc., Shenandoah Personal Communications, LLC, and NTELOS Holdings Corp. for Consent To Assign Licenses and Spectrum Lease Authorizations and To Transfer Control of Spectrum Lease Authorizations and an International Section 214 Authorization*, Memorandum Opinion and Order, 31 FCC Rcd 3631, 3634, para. 6 (WTB/IB 2016) (*Sprint-Shentel-NTELOS Order*); *Applications of AT&T Inc. and Cellular Properties, Inc. for Consent To Assign Authorizations*, Memorandum Opinion and Order, 31 FCC Rcd 318, 319-20, para. 4 (WTB, IB 2016) (*AT&T-CPI 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*, Memorandum Opinion and Order, 30 FCC Rcd 5107, 5111, para. 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*, Memorandum Opinion and Order, 29 FCC Rcd 2735, 2741-42, para. 13 (WTB, IB 2014) (*AT&T-Leap Order*).

<sup>28</sup> 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., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6 & n.15; *AT&T-CPI Order*, 31 FCC Rcd at 319-20, para. 4; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8 & n.27; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13 & n.45.

<sup>29</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *AT&T-CPI Order*, 31 FCC Rcd at 319-20, para. 4; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

<sup>30</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *AT&T-CPI Order*, 31 FCC Rcd at 319-20, para. 4; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

interest benefits.<sup>31</sup> The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.<sup>32</sup>

11. The Commission has fully discussed the contours of the required public interest determination in several orders,<sup>33</sup> which we follow here. In general, the competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.<sup>34</sup> The Commission and the DOJ each have independent authority to examine the competitive impacts of proposed mergers and transactions involving transfers of Commission licenses, but the Commission's competitive analysis under the public interest standard is somewhat broader.<sup>35</sup> 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.<sup>36</sup> 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.<sup>37</sup>

12. *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.<sup>38</sup> We note that no issues were raised with respect to the basic qualifications of Broadpoint, AT&T, and Tampnet, and in addition, AT&T and Tampnet previously have been found qualified to hold Commission licenses.<sup>39</sup> We find there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under

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<sup>31</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *AT&T-CPI Order*, 31 FCC Rcd at 319-20, para. 4; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

<sup>32</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *AT&T-CPI Order*, 31 FCC Rcd at 319-20, para. 4; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

<sup>33</sup> See, e.g., *Applications of AT&T and DIRECTV for Consent To Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 29 FCC Rcd 9131, 9139-41, paras. 18-22 (2015); *Applications of GCI Communication Corp., ACS Wireless License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. for Consent to Assign Licenses to the Alaska Wireless Network, LLC*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 10433, 10442-44, paras. 23-27 (2013) (*Alaska Wireless Order*).

<sup>34</sup> See, e.g., *AT&T-CPI Order*, 31 FCC Rcd at 320, para. 5; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742-43, para. 15.

<sup>35</sup> See, e.g., *AT&T-CPI Order*, 31 FCC Rcd at 320, para. 5; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742-43, para. 15.

<sup>36</sup> See, e.g., *AT&T-CPI Order*, 31 FCC Rcd at 320, para. 5; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743-44, para. 16.

<sup>37</sup> 47 U.S.C. § 309(e); see also, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3635, para. 7; *AT&T-CPI Order*, 31 FCC Rcd at 320, para. 5; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743, para. 15; *Application of EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp.*, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002).

<sup>38</sup> 47 U.S.C. § 310(d); 47 CFR § 1.948; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3635, para. 8; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112, para. 10; *AT&T-Leap Order*, 29 FCC Rcd at 2744, para. 17.

<sup>39</sup> For AT&T, see, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112-13, para. 11; *AT&T-Leap Order*, 29 FCC Rcd at 2745, para. 19. For Tampnet, see, e.g., ULS Microwave Industrial/Business Pool License WQKF526, one of 43 Microwave Industrial/Business Pool Licenses held by Tampnet; 3650-3700 MHz License WQHV537.

the Act and our rules, regulations, and policies, of Broadpoint, AT&T, or Tampnet.<sup>40</sup>

13. The Applicants state that Tampnet and its parent company, Tampnet AS, currently operate two offshore, high capacity communication networks serving approximately 250 oil and gas platforms, floating production storage and offloading units and exploration rigs in the Gulf of Mexico and the North Sea.<sup>41</sup> Tampnet's domestic U.S. operations include operating a high speed, multi-point broadband network utilizing, in part, thirty-eight microwave licenses issued to the company in 2014.<sup>42</sup> Tampnet AS is a Norwegian company operating as an independent supplier of high capacity and low latency communications to offshore oil and gas installations in both the Norwegian and United Kingdom parts of the North Sea.<sup>43</sup> According to the Applicants, Tampnet and its parent have deployed, installed, and currently operate a redundant subsea infrastructure network of 2,500 km fiber and approximately 100 radio links.<sup>44</sup> The Applicants assert that Tampnet's and Tampnet AS's collective experience in deploying high-capacity networks in unique off-shore environments demonstrates its capabilities to deploy and operate the planned 4G LTE network in a manner that will meet the demands of consumers of wireless data and voice services in the Gulf of Mexico.<sup>45</sup>

### III. POTENTIAL PUBLIC INTEREST HARMS

14. *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.<sup>46</sup> 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.<sup>47</sup> 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,<sup>48</sup> 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.<sup>49</sup> 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."<sup>50</sup> The

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<sup>40</sup> 47 U.S.C. § 310(d); 47 CFR § 1.948.

<sup>41</sup> Response of Tampnet Inc. to the General Information Request Dated October 23, 2015, WT Docket No. 15-255, at 3 (Nov. 13, 2015) (Tampnet Information Request Response).

<sup>42</sup> Tampnet Public Interest Statement at 1.

<sup>43</sup> *Id.* at 1-2.

<sup>44</sup> Tampnet Information Request Response at 3-4.

<sup>45</sup> *Id.*

<sup>46</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3635, para. 9; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113, para. 12; *AT&T-Leap Order*, 29 FCC Rcd at 2745, para. 20.

<sup>47</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3636, para. 9; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113, para. 12; see also *AT&T-Leap Order*, 29 FCC Rcd at 2752, 2753, 2755-56, paras. 39, 41, 47.

<sup>48</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223-24, para. 231.

<sup>49</sup> *Id.* at 6240, paras. 286-88; see also, e.g., *AT&T-CPI Order*, 31 FCC Rcd at 321, para. 8; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113, para. 13.

<sup>50</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, para. 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

(continued....)

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.<sup>51</sup>

15. 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,<sup>52</sup> and that the leading two nationwide service providers hold most of the low-band spectrum available today.<sup>53</sup> 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.<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup>

#### A. Market Definitions

16. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,<sup>57</sup> 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.

17. *Product and Geographic Market.* 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).<sup>58</sup> In addition, we find that the

(Continued from previous page) \_\_\_\_\_  
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. *Id.* at 6240, para. 287; *see also, e.g., Application of AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership for Consent To Assign Licenses*, Memorandum Opinion and Order, 30 FCC Rcd 13055, 13057, 13062, 13072-73, 13077-78, 13078-79, paras. 7, 15, 37, 48, 51 (2015) (*AT&T-Club 42 Order*); *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, 5113, 5114, 5123, 5130, paras. 8 & n.31, 13, 15, 36 & n.114, 56.

<sup>51</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, para. 286.

<sup>52</sup> *Id.* at 6164, para. 60.

<sup>53</sup> *Id.* at 6156-57, 6162, 6164, paras. 46, 58, 60.

<sup>54</sup> *Id.* at 6164, para. 60.

<sup>55</sup> *Id.* at 6164-65, paras. 60-61; *see also, e.g., AT&T-CPI Order*, 31 FCC Rcd at 322, para. 9; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113-14, para. 14.

<sup>56</sup> *See, e.g., AT&T-CPI Order*, 31 FCC Rcd at 322, para. 9; *AT&T-Club 42 Order*, 30 FCC Rcd at 13073, para. 37; *see also Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6154, 6164-65, 6168, paras. 41, 61, 68-69.

<sup>57</sup> *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115, para. 17; *AT&T-Leap Order*, 29 FCC Rcd at 2746, para. 22.

<sup>58</sup> *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115-16, para. 18; *AT&T-Leap Order*, 29 FCC Rcd at 2746, para. 23.

relevant geographic market is local.<sup>59</sup> The Applicants are seeking Commission approval of the proposed assignment of 50 megahertz of cellular spectrum to AT&T in a portion of one local market, the Gulf of Mexico, and the proposed assignment or lease of 55 to 80 megahertz of spectrum to Tampnet, in the Gulf of Mexico.

18. *Input Market for Spectrum and Market Participants.* The Commission has determined in prior orders that the following bands, or portions thereof, should be included in the input market: cellular, broadband PCS, SMR, 700 MHz, AWS-1 and BRS on a market-by-market basis, WCS, the 600 MHz band (at the conclusion of the Incentive Auction), AWS-4, H Block, the majority of the EBS spectrum, and the AWS-3 band (on a market-by-market basis as it becomes “available”).<sup>60</sup> The *Sprint-Shentel-NTELOS Order* found that the AWS-3 1695-1710 MHz band satisfies the standard adopted by the Commission in the *Mobile Spectrum Holdings Report and Order* and “should now be considered available, as well as suitable, on a nationwide basis.”<sup>61</sup> Therefore, the total amount of spectrum suitable and available for the provision of mobile telephony/broadband services is now 595.5 megahertz, approximately one-third of which is 199 megahertz.<sup>62</sup> We consider facilities-based entities providing mobile telephony/broadband services using these spectrum bands to be market participants.<sup>63</sup>

## B. Competitive Effects of the Proposed Transaction

19. *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.<sup>64</sup> 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.<sup>65</sup> The second

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<sup>59</sup> 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., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3636, para. 12; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5116, para. 19; *AT&T-Leap Order*, 29 FCC Rcd at 2748, para. 27.

<sup>60</sup> *See, e.g., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3637, para. 13; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117, para. 23; *AT&T-Club 42 Order*, 30 FCC Rcd at 13064-65, para. 21; *see also Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169, para. 70.

<sup>61</sup> *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3637-38, para. 15.

<sup>62</sup> *Id.*

<sup>63</sup> *See, e.g., id.* at 3638, para. 16; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117, para. 23; *AT&T-Leap Order*, 29 FCC Rcd at 2751, para. 35. The Commission has assessed the competitive effect of MVNOs and resellers in prior transactions, but noted that it will exclude MVNOs and resellers from consideration when computing initial concentration measures. *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117, para. 23 & n.78; *AT&T-Leap Order*, 29 FCC Rcd at 2752, para. 37. Further, as AWS-3 (1755-1780 MHz and 2155-2180 MHz on a market-by-market basis) and 600 MHz spectrum become available, we will also consider facilities-based entities providing mobile telephony/broadband services using that spectrum to be market participants. *Sprint-Shentel-NTELOS Order* at 3638, para. 16.

<sup>64</sup> *See, e.g., AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66, para. 23; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, para. 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, paras. 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., AT&T-Club 42 Order*, 30 FCC Rcd at 13065, para. 23 & n.82; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121, 5123, paras. 31, 35.

<sup>65</sup> *See, e.g., AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66, para. 23; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24; *AT&T-Leap Order*, 29 FCC Rcd at 2753, para. 41 & n.140.

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.<sup>66</sup> 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*.<sup>67</sup>

20. As the instant transaction does not result in a change in the number of competitors in the Gulf of Mexico, we find no reason to consider further any changes in market concentration.<sup>68</sup> The total spectrum screen is not triggered in this transaction but in our review of the below-1-GHz spectrum holdings, we find that AT&T and Tampnet each would be attributed with more than one-third, or more than 45 megahertz, of the currently suitable and available below-1-GHz spectrum in the Gulf of Mexico as a result of the proposed transaction.<sup>69</sup> We therefore look more closely at the potential competitive effects that these proposed spectrum transfer and leasing arrangements may have.

21. *Record.* The Applicants contend 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.<sup>70</sup> AT&T asserts that although all of the spectrum it proposes to acquire in this transaction will be attributed to AT&T under the Commission's rules,<sup>71</sup> it would only be operating on 25 megahertz of cellular spectrum in the partitioned area that it calls the Gulf of Mexico Coastal Area<sup>72</sup> since Tampnet would be operating on the other 25 megahertz pursuant to the *de facto* transfer spectrum leasing arrangements described above.<sup>73</sup> AT&T further contends that as a result of the proposed transaction AT&T would be able to enhance and extend its terrestrial network services and expand its cellular spectrum coverage over the Gulf of Mexico.<sup>74</sup> AT&T claims that these benefits cannot be replicated through the acquisition of any spectrum in these markets other than the Broadpoint licenses.<sup>75</sup> Tampnet asserts that the 50 megahertz of cellular spectrum is necessary for it to deliver its market-specific service offerings in the Gulf of Mexico, given the unique customer base, the

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<sup>66</sup> See, e.g., *AT&T-CPI Order*, 31 FCC Rcd at 323-24, para. 13; *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66, para. 23; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24.

<sup>67</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6240, paras. 267, 286-88. See also, e.g., *AT&T-CPI Order*, 31 FCC Rcd at 324, para. 13; *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-06, para. 23; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24.

<sup>68</sup> There is no change in the number of wireless providers in this market because Broadpoint is transitioning its customers to Tampnet through a transition services agreement. See *infra* para. 30.

<sup>69</sup> See *supra* para. 15; see also *AT&T-Club 42 Order*, 30 FCC Rcd at 13066, para. 24; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118-19, para. 25. Post-transaction, AT&T would be attributed with 68 megahertz of below-1-GHz spectrum in parts of the Gulf of Mexico overall, and Tampnet would be attributed with up to 50 megahertz of below-1-GHz spectrum in parts of the Gulf of Mexico.

<sup>70</sup> AT&T Application, Exhibit 1 – Description of Transaction and Public Interest Statement at 5 (AT&T Public Interest Statement); AT&T Information Request Response at 9-10.

<sup>71</sup> We note that AT&T is already attributed with the cellular A block and cellular B block spectrum leased from Broadpoint in the Gulf of Mexico. FCC Lease IDs L000011377 and L000011378. Response of AT&T to the General Information Request Dated October 23, 2015, WT Docket No. 15-255, 3-4 (Nov. 6, 2015) (AT&T Information Request Response).

<sup>72</sup> AT&T's Gulf of Mexico Coastal Area is not the same as the Gulf of Mexico Coastal Zone defined in the Commission's rules. See *supra* para. 6.

<sup>73</sup> AT&T Public Interest Statement at 5.

<sup>74</sup> AT&T Information Request Response at 6.

<sup>75</sup> AT&T Information Request Response at 5-6.

large distance between base stations, and the sometime harsh weather conditions such as hurricanes, which necessitate high-bandwidth applications.<sup>76</sup> No petitions to deny or comments were received.<sup>77</sup>

22. *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.<sup>78</sup>

23. *Gulf of Mexico.* As we have done in other contexts, we consider the specific and unique conditions in the Gulf of Mexico as an integral part of our competitive analysis.<sup>79</sup> As a body of water with no permanent residents, and with varied weather conditions, the Gulf of Mexico presents particular operating challenges for mobile networks. We note first that AT&T already operates pursuant to lease on 25 megahertz of the spectrum it would acquire from Broadpoint, and that it would lease 25 megahertz of the spectrum to be acquired to Tampnet. Although AT&T and Tampnet both would be attributed with more than one-third of the currently suitable and available spectrum below 1 GHz post-transaction, other service providers would continue to hold low-band spectrum throughout the Gulf of Mexico.<sup>80</sup> In particular, Sprint holds 14 megahertz, Chevron holds 30 megahertz, and Verizon Wireless holds 22 megahertz. In addition, Infrastructure Networks is also attributed with 22 megahertz of low-band spectrum through its spectrum manager leasing arrangement with Verizon Wireless.<sup>81</sup> Taking into account the particular facts of this case, including the unique challenges posed in the Gulf of Mexico, particularly deep offshore, we find that the proposed transaction is unlikely to foreclose rival service providers from entering or expanding in the Gulf of Mexico, or raise rivals' costs. We find therefore that the likelihood of any competitive harm is low.

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<sup>76</sup> Tampnet Information Request Response at 3, 8; Tampnet Supplement to Response to Commission RFIs, WT Docket No. 15-255, at 1 (June 7, 2016) (Tampnet Supplemental Response).

<sup>77</sup> As noted above, the Department of Justice, including the Federal Bureau of Investigation, with the concurrence of the Department of Defense and the Department of Homeland Security, initially filed a request with the Commission to defer action in this proceeding. The Agencies subsequently entered into an agreement with Tampnet, and advised the Commission that they had no objection to the grant of the Applications and Petition so long as the Commission conditions its approval upon Tampnet's compliance with that agreement. *See supra* para. 9.

<sup>78</sup> We obtained 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., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3641, para. 21 & n.66; *AT&T-CPI Order*, 31 FCC Rcd at 325, para. 16 & n.51; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120, para. 29 & n.98.

<sup>79</sup> *See, e.g., Amendment of Parts 1 and 22 of the Commission's Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area*, 29 FCC Rcd 14100, 14170, para. 4 (2014) (noting "the unique licensing regime established over decades for the Gulf of Mexico Service Area"). We also have considered the unique characteristics of the affected geographies in other transactions. *Applications of AT&T Inc. and Centennial Communications Corp. for Consent To Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Memorandum Opinion and Order, 24 FCC Rcd 13915, 13934, paras. 41-42 (2009) (considering the unique characteristics of Puerto Rico and the U.S. Virgin Islands in part because of their limited geographic scope and isolated nature). *See also Alaska Wireless Order*, 28 FCC Rcd at 10435, para. 3.

<sup>80</sup> Also, according to the Applicants, [REDACTED]. Broadpoint Information Request Response at 2-4.

<sup>81</sup> Infrastructure Networks has a long-term spectrum manager leasing arrangement with Verizon Wireless. Application of Infrastructure Networks, Inc. and Verizon Wireless, long-term spectrum manager lease notification, ULS File No. 0005843174 (filed July 2, 2013). In addition, DISH holds 65 megahertz of spectrum above 1 GHz, while Rignet and Space Data each hold 20 megahertz of spectrum above 1 GHz.

#### IV. POTENTIAL PUBLIC INTEREST BENEFITS

24. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.<sup>82</sup> Under Commission precedent, the Applicants bear the burden of demonstrating the potential public interest benefits of a proposed transaction.<sup>83</sup> The Commission applies several criteria in deciding whether a claimed benefit is cognizable. First, each claimed benefit must be transaction-specific.<sup>84</sup> That is, the claimed benefit must be likely to occur as a result of the transaction and unlikely to be realized without the transaction or by a practical alternative that would raise fewer competitive concerns than the proposed transaction.<sup>85</sup> Second, each claimed benefit must be verifiable.<sup>86</sup> Because much of the information relating to the potential benefits of a transaction is in the sole possession of the Applicants, they have the burden of providing sufficient evidence to support each claimed benefit to enable us to verify its likelihood and magnitude.<sup>87</sup> We will discount or dismiss speculative benefits that we cannot verify. Further, benefits expected to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the distant future are inherently more speculative than predictions that are expected to occur closer to the present.<sup>88</sup> Third, we calculate the magnitude of benefits net of the cost of achieving them and benefits must flow through to consumers, and not inure solely to the benefit of the company. For example, we will more likely find marginal cost reductions to be cognizable than reductions in fixed cost because reductions in marginal cost are more likely to result in lower prices for consumers.<sup>89</sup>

25. The Commission applies a “sliding scale approach” to evaluating benefit claims: Under this 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.”<sup>90</sup> Conversely, where potential harms appear less likely and less substantial, we will accept a lesser showing to approve the proposed transaction.<sup>91</sup>

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<sup>82</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647, para. 34; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126, para. 43; *AT&T-Leap Order*, 29 FCC Rcd at 2792-93, para. 130.

<sup>83</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647, para. 34; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 86; see also *AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 131.

<sup>84</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647, para. 34; *AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 87.

<sup>85</sup> U.S. Department of Justice and the Federal Trade Commission, *Horizontal Merger Guidelines*, August 19, 2010, 20 § 10 & n.13 (*2010 DOJ/FTC Horizontal Merger Guidelines*) (stating that “the agencies will not deem efficiencies to be merger-specific if they could be attained by practical alternatives that mitigate competitive concerns, such as divestiture or licensing”). Cf. *Alaska Wireless Order*, 28 FCC Rcd at 10467, para. 85.

<sup>86</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647-48, para. 34; *AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 87.

<sup>87</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3648, para. 34; *AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 87.

<sup>88</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3648, para. 34; *AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 87.

<sup>89</sup> See e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3648, para. 34; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 87.

<sup>90</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3648, para. 35; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27, para. 44; *AT&T-Club 42 Order*, 30 FCC Rcd at 13074, para. 40; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 88.

<sup>91</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3648, para. 35; *AT&T-Club 42 Order*, 30 FCC Rcd at 13074, para. 40; see also *AT&T-Leap Order*, 29 FCC Rcd at 2794, para. 131; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 88; cf. *2010 DOJ/FTC Horizontal Merger Guidelines* at § 10, p. 31.

26. *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 to its customers.<sup>92</sup> AT&T maintains that the spectrum to be acquired in this transaction will enable it to provide its terrestrial customers with improved quality of service while also providing coverage to other roaming partners.<sup>93</sup> AT&T also asserts that the proposed transaction will allow it to offer new services and facilities over the Gulf of Mexico.<sup>94</sup> According to the Applicants, the acquisition of this spectrum will also preserve the interference management that AT&T currently achieves through its existing spectrum leasing arrangements with Broadpoint in the Gulf of Mexico Coastal Area.<sup>95</sup>

27. The Applicants assert that Tampnet is planning to deploy an offshore 4G/LTE network in the Gulf of Mexico that will yield higher capacity and lower latency network infrastructure to benefit users in the Gulf, improving upon the existing 2G network infrastructure in this market.<sup>96</sup> Tampnet asserts that the below-1-GHz spectrum is necessary to fulfill its network deployment plans because higher frequency bands do not show equal performance within steel structures and radio frequency studies have demonstrated that 850 MHz spectrum has deeper signal penetration capabilities on offshore facilities like those used in the Gulf of Mexico.<sup>97</sup> Specifically, Tampnet contends that it will add more new cell sites to the current GSM network in the Gulf of Mexico, with a focus on deploying new sites where existing coverage is lacking.<sup>98</sup> Tampnet further contends that it plans to add [REDACTED].<sup>99</sup> Further, Tampnet maintains that it expects to achieve greater coverage through technical modifications to existing antennas.<sup>100</sup>

28. Tampnet asserts that the planned upgrade of the existing 2G network to 4G/LTE is necessary to meet increasing customer demand, and will improve the health, safety, quality, and operational efficiency of persons involved in offshore operations through the use of bandwidth-intensive applications such as high definition video, video conference calls, and machine-to-machine communications.<sup>101</sup> Tampnet claims that the remote and harsh environment of the Gulf of Mexico and the high expense of helicopters and marine vessels used for transportation to and from sites in the Gulf of Mexico create the need for reliable remote solutions.<sup>102</sup> Tampnet maintains that the distance between sites in the Gulf of Mexico requires high bandwidth channels in low frequency bands in order to achieve high

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<sup>92</sup> AT&T Public Interest Statement at 4; *see also* AT&T Information Request Response at 5.

<sup>93</sup> AT&T Information Request Response at 4.

<sup>94</sup> For example, AT&T claims that it will be able to offer new [REDACTED]. AT&T Information Request Response at 4.

<sup>95</sup> AT&T Public Interest Statement at 4-5; AT&T Information Request Response at 8.

<sup>96</sup> Tampnet Public Interest Statement at 6.

<sup>97</sup> Tampnet Information Request Response at 14.

<sup>98</sup> Tampnet Supplemental Response at 1.

<sup>99</sup> *Id.*

<sup>100</sup> Tampnet asserts that it plans to [REDACTED]. Tampnet Supplemental Response at 1-2. Tampnet also asserts that it plans to [REDACTED]. *Id.* at 2.

<sup>101</sup> Tampnet Information Request Response at 3, 12. Tampnet states that major oil and gas operators are developing integrated operations whereby control rooms located in offshore rigs are mirrored in onshore sites in order to remotely control production and operations. *Id.* at 12. Tampnet notes that a remote access and control strategy has the benefit of moving people out of the harsh, offshore environment to safer onshore sites. *Id.* at 12.

<sup>102</sup> Tampnet Information Request Response at 7.

capacity offerings, and the 50 megahertz of cellular spectrum is particularly well suited for these needs because of the low carrier frequency and wide bandwidth available in this band.<sup>103</sup>

29. Tampnet claims that the floating oil and gas production facilities in the Gulf of Mexico have been limited to low bandwidth satellite services, or installation of stabilized radio link systems, because of the nature of the production vessels, which experience rotation, pitch, and roll. Customers in the Gulf require symmetrical end-to-end, non-contended, dedicated, services with a high degree of service guarantees for large bandwidth operations.<sup>104</sup> Further, Tampnet asserts that having access to high quality and high speed communications in an emergency will enable a better and more focused response, increasing safety at sea and minimizing the impact to the environment in case of an incident.<sup>105</sup> Tampnet states that the company will upgrade the network as a dual frequency, high channel bandwidth network to provide LTE services with minimal offshore intervention, and continuous service when customers move offshore.<sup>106</sup>

30. *Customer Transition.* As a result of the proposed transaction, certain subscriber transition issues are implicated.<sup>107</sup> We note that Broadpoint and Tampnet have agreed to a Transition Services Agreement (TSA) to ensure continued service to Broadpoint's current retail, wholesale, and roaming customers.<sup>108</sup> Broadpoint and Tampnet assert that the TSA specifically addresses the transition process and contemplates that the parties will continue to provide services to existing Broadpoint customers that are substantially similar to those currently provided by Broadpoint.<sup>109</sup> In the TSA, Broadpoint and Tampnet agree to continue to provide current services at current prices to each of Broadpoint's customers until the earlier of six months after closing or the execution of a written contract with such customers.<sup>110</sup> Broadpoint and Tampnet maintain that the TSA specifically contemplates continuity of the service plans, service features, and bill format that customers currently receive.<sup>111</sup> The Applicants note that during the transition period, Tampnet will actively communicate to customers the details of the network upgrade plans and the terms and rates for the services that will be available over the

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<sup>103</sup> Tampnet Supplemental Response at 2-3.

<sup>104</sup> *Id.* at 3.

<sup>105</sup> *Id.*

<sup>106</sup> Tampnet Information Request Response at 7 (stating that Tampnet will use the cellular and AWS-1 spectrum for its overbuild and upgrade of Broadpoint's GSM network and Tampnet's private WiMAX network to deploy a high capacity LTE network); Tampnet Supplemental Response at 4.

<sup>107</sup> Response of Broadpoint to the General Information Request Dated October 23, 2015, WT Docket No. 15-255, at 4-5 (Nov. 5, 2015) (Broadpoint Information Request Response).

<sup>108</sup> Letter from Todd Slamowitz, Counsel for Broadpoint Wireless Co., LLC, and K.C. Halm, Counsel for Tampnet Inc. and Tampnet Licensee LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 15-255, at 1 (filed May 19, 2016) (Broadpoint-Tampnet Customer Transition Letter). The Applicants state that, "[a]s part of the transaction, Tampnet is not assuming Broadpoint's existing arrangements with such customers primarily because Broadpoint's current customer arrangements are not reflected in currently effective written contracts, but are month-to-month arrangements reflected on the customers' monthly invoice." *Id.* The Applicants state that Tampnet will enter into long-term roaming agreements with other telecommunications providers in the Gulf. Tampnet Public Interest Statement at 6; Tampnet Supplemental Response at 4.

<sup>109</sup> Broadpoint-Tampnet Customer Transition Letter at 1. The Applicants state that while the pricing plans offered by Tampnet may vary from those currently in place today, Tampnet intends to provide improved service at rates that are, on average, the same or lower than the rates currently offered by Broadpoint. *Id.* at 2. The Applicants also state that customers will be able to continue to receive existing service over the 2G network, if they so choose. *Id.*

<sup>110</sup> Broadpoint-Tampnet Customer Transition Letter at 1.

<sup>111</sup> *Id.*

new 4G LTE network.<sup>112</sup>

31. *Evaluation.* We have reviewed the Applicants' asserted benefits, as well as their responses to our requests for additional information and documents regarding the potential benefits of the arrangements involving each Applicant acquiring or leasing, in particular, the below-1-GHz spectrum at issue. The record provides general support for the Applicants' contentions that the proposed license assignments and spectrum leasing arrangements would result in some public interest benefits post-transaction. Specifically, we anticipate that the acquisition of spectrum by AT&T and Tampnet from Broadpoint, including the spectrum leasing arrangement between AT&T and Tampnet will enable AT&T and Tampnet to increase system bandwidth, capacity, and enhance existing services to consumers in the Gulf of Mexico, an area with a particularly challenging operating environment. In particular, we note that the proposed transaction will likely enable Tampnet to upgrade the existing 2G network, and deploy a Gulf-wide 4G/LTE network, which will be more robust and reliable. As we found in the *AT&T-Plateau Wireless Order* and the *AT&T-Club 42 Order*, customers are likely to benefit from access to improved performance and a more robust network as a result of the instant transaction, resulting in a better customer experience.<sup>113</sup>

## V. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS

32. The Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms. 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 AT&T and Tampnet acquiring and/or leasing, in particular, the below-1-GHz spectrum at issue in the Gulf of Mexico. After carefully evaluating the likely competitive effects of both AT&T's and Tampnet's increased aggregation of below-1-GHz spectrum in the Gulf of Mexico, we find that the ability of rival service providers to offer a competitive response to any anticompetitive behavior on the part of AT&T or Tampnet is unlikely to be materially lessened. 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 public interest harms is low and the potential public interest benefits outweigh any harms. As a result, based on the record before us and our competitive review, we find that approval of the proposed transaction would serve the public interest, convenience, and necessity.

## VI. FOREIGN OWNERSHIP AND DECLARATORY RULING

### A. Foreign Ownership

33. Tampnet requests a declaratory ruling, pursuant to Section 310(b)(4) of the Act and Section 1.990(a)(1) of the Commission's rules,<sup>114</sup> to permit 100 percent foreign ownership of Tampnet Inc., which is the direct, controlling U.S.-organized parent of Tampnet Licensee. As discussed in Section II above, Tampnet, through its proposed ownership of Broadpoint Newco, LLC, is the proposed assignee of certain of Broadpoint's cellular and AWS licenses, and Tampnet Licensee is the proposed lessee of 25 megahertz of cellular spectrum that AT&T would acquire from Broadpoint upon closing of the proposed transaction. Tampnet requests that the ruling apply to Tampnet Licensee as well as any of Tampnet's

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<sup>112</sup> *Id.* at 1-2.

<sup>113</sup> See, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13076-77, paras. 46-47; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5129, para. 53.

<sup>114</sup> 47 CFR § 1.990(a)(1). The rules applicable to foreign ownership of common carrier licensees and spectrum lessees are set forth in Sections 1.990 through 1.994 of the Commission's rules. 47 CFR §§ 1.990-1.994. See also *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, IB Docket No. 11-133, Second Report and Order, 28 FCC Rcd 5741 (2013) (*2013 Foreign Ownership Second Report and Order*).

subsidiaries and affiliates, whether currently existing or subsequently formed or acquired.<sup>115</sup> Tampnet also requests specific approval for the 85 foreign-organized entities and foreign individuals that hold equity and/or voting interests directly or indirectly in Tampnet in excess of five percent (or, in certain situations, 10 percent).<sup>116</sup> The Petition further seeks advance approval for these named foreign entities and individuals to increase their interests in Tampnet at some future time up to and including a non-controlling 49.99 percent equity and/or voting interest.<sup>117</sup> Tampnet currently operates in the Gulf of Mexico on a private carrier basis, utilizing, in part, 38 microwave licenses issued to the company in 2014.<sup>118</sup> Tampnet states that grant of its Petition will provide it with greater operational flexibility to market its services on a common carrier basis and thereby reach additional customers, which will further strengthen Tampnet's ability to provide innovative products and services in the Gulf of Mexico.<sup>119</sup>

34. According to the Petition, Tampnet Inc. is a direct, wholly-owned subsidiary of Tampnet AS, a Norwegian company. Tampnet AS is owned by a 50-50 joint venture of Brent Infrastructure I S.a.r.l. and Brent Infrastructure II S.A., both organized under the laws of Luxembourg.<sup>120</sup> Each of these companies is, in turn, owned and controlled by foreign private equity holders through two funds, EQT Infrastructure and EQT Infrastructure II, which were established by the European private equity firm EQT.<sup>121</sup> Numerous foreign-organized entities and foreign individuals hold indirect equity and voting interests in Tampnet through these two funds. In accordance with the requirements of Sections 1.991(e) through (h) of the Commission's rules, Tampnet has provided a narrative description and ownership diagram of its disclosable interest holders that reflects the aggregate equity and voting interests held directly and/or indirectly by each such interest holder.<sup>122</sup>

35. Tampnet states that it is, and will continue to be, controlled by its Board of Directors and

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<sup>115</sup> Petition at 1, 3 (citing 47 CFR § 1.994(b)(1)). Section 1.994(b) of the Commission's rules provides that, unless otherwise specified in a particular foreign ownership ruling, a licensee's ruling shall cover the licensee as well as any of its U.S.-organized subsidiaries or affiliates, as those terms are defined in Section 1.990(d), whether the subsidiary or affiliate exists at the time the ruling is issued or is formed or acquired subsequently, provided that the licensee and subsidiary/affiliate certify in any future applications that they are in compliance with the terms and conditions of the ruling and the Commission's rules.

<sup>116</sup> *Id.* Exhibit C-1. Exhibit C-1 is included as Appendix B to this Order. Section 1.991(i) of the Commission's rules requires that Tampnet seek specific approval for any foreign investor, or "group" of foreign investors as defined in Section 1.990(d)(5) of the rules, that would hold directly and/or indirectly more than five percent of Tampnet's equity and/or voting interests, or more than 10 percent where the petitioner demonstrates under Section 1.993(i)(3) of the rules that the interests are exempt from the general five percent specific approval requirement in Section 1.993(i).

<sup>117</sup> *Id.* at 3 (citing 47 CFR § 1.991(k)(2)).

<sup>118</sup> *Id.* at 3 n.3. Tampnet subsequently assigned these licenses and a 3650-3700 MHz wireless service license to Tampnet Licensee in a *pro forma* reorganization. Tampnet Inc. and Tampnet Licensee have pending before the Commission numerous applications to modify the regulatory status of the microwave licenses from private to common carrier. *Id.* at 1-2.

<sup>119</sup> *Id.* at 14.

<sup>120</sup> Section 214 Application, Attach. 2 at 1.

<sup>121</sup> *Id.*

<sup>122</sup> Petition at 4. Section 1.991(e)-(h) of the rules requires all Section 310(b) petitions for declaratory ruling to contain the name, address, citizenship and principal business(es) of any individual or entity, regardless of citizenship, that directly or indirectly holds (or would hold, after effectuation of any planned ownership changes described in the petition) at least 10 percent of the equity or voting interests in the controlling U.S. parent of a petitioning common carrier licensee or a controlling interest, as well as a narrative description and a diagram of the petitioner's ownership and control structure. We note that all of Tampnet's disclosable interest holders are foreign individuals and foreign-organized entities that also require specific approval under Section 1.991(i) of the rules.

company officers, who are responsible for the management and oversee the day-to-day operations of the company.<sup>123</sup> The board of directors of Tampnet's parent company, Tampnet AS, also exercises indirect control over Tampnet through the power of the Tampnet AS Board of Directors to appoint members of the Tampnet board.<sup>124</sup> Tampnet states that no single person or entity or "group" has *de jure* or *de facto* control of Tampnet or Tampnet AS.<sup>125</sup>

36. The equity and voting interests of all foreign-organized entities and foreign individuals requiring specific approval under Section 1.991(i) are included in the ownership diagram in Exhibit B of the Petition and in Exhibit C-1, which lists the name of each of the entities and individuals for which Tampnet seeks specific approval and their place(s) of formation or citizenship; the type of organization (in the case of a business entity); principal business; and each investor's direct and/or indirect aggregate equity interest and aggregate voting interest in Tampnet.

37. Certain of the foreign individuals that require specific approval hold no equity interest in Tampnet but serve as non-member managers or directors of numerous foreign limited liability companies (LLCs) situated above Tampnet in its vertical chain of ownership. As non-member managers/directors, these foreign individuals cannot satisfy the "no active involvement" insulation criteria in Section 1.993 of the rules<sup>126</sup> and are therefore deemed to hold indirectly the same voting interest in Tampnet as is held or is deemed held, under the rules, by the foreign LLCs for which they serve as managers/directors.<sup>127</sup> These foreign individuals and the LLCs for which they serve as non-member managers/directors are listed in Exhibit C-2 of the Petition and on the ownership diagram in Exhibit B-1. Similarly, certain foreign individuals and entities that are limited partners or members of the limited partnerships (LPs) or LLCs in Tampnet's vertical ownership chain require specific approval because, although their respective equity interests in Tampnet may be *de minimis*, the record does not support a finding that the limited partner/member is "insulated" from active involvement in the management or operation of the LP/LLC. As a result, the uninsulated partner/member is deemed to hold indirectly the same voting interest in Tampnet as is held or is deemed held, under the rules, by the LP/LLC. Thus, to the extent the LP/LLC holds or is deemed to hold a voting interest in Tampnet that requires specific approval, the uninsulated

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<sup>123</sup> *Id.* at 10.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 10-12.

<sup>126</sup> 47 CFR § 1.993.

<sup>127</sup> Sections 1.992 and 1.993 of the Commission's rules specify the methodology for calculating the foreign equity and voting interests in the controlling U.S. parent of a common carrier licensee that require specific approval under Section 1.991(i) of the rules. Equity interests held indirectly in the controlling U.S. parent are calculated using a "multiplier" to dilute the percentage of each investor's equity interest when those interests are held through intervening companies. The multiplier is applied to each link in the vertical ownership chain, regardless of whether any particular link represents a controlling interest in the company positioned in the next lower tier. The resulting product yields the *pro rata* equity holdings of the investors in the U.S. parent company separate from the voting power associated with the investors' shareholdings. 47 CFR § 1.992(b)(1); *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5803, para. 118. In calculating foreign voting interests, the multiplier is not applied to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier. In circumstances where foreign voting interests are held indirectly in the controlling U.S. parent through one or more intervening partnerships or LLCs, the multiplier is not applied to dilute a general partnership interest or an "uninsulated" interest held in a limited partnership or LLC. A general partner, uninsulated limited partner or uninsulated member of an LLC (or non-member manager/director of an LLC) is considered to hold the same voting interest as the partnership or LLC holds in the company situated in the next lower tier of the vertical ownership chain and, ultimately, the same voting interest as the partnership or LLC is calculated as holding in the U.S. parent. *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5803-04, 5806, paras. 119, 124. Where a limited partner or LLC member is insulated, the limited partner's or LLC member's voting interest in the U.S. parent is calculated as equal to the limited partner's or LLC member's equity interest in the U.S. parent. *Id.*

partners/members also require specific approval.<sup>128</sup>

38. The Petition has identified for the record, in response to staff request, 85 foreign-organized entities that hold ownership interests indirectly in Tampnet that are not shown on the ownership diagram in Exhibit B. Exhibit E of the Petition identifies each of these entities and their places of formation. Tampnet states that none of these entities is required to be disclosed in the Petition under Section 1.991(e)-(f) of the Commission's rules because none holds, directly or indirectly, a 10 percent or greater equity or voting interest in Tampnet. Tampnet also asserts that these entities do not require specific approval under Section 1.991(i) because their indirect interests in Tampnet do not exceed 10 percent and are effectively insulated within the meaning of Section 1.993 of the Commission's rules.<sup>129</sup>

39. Tampnet explains that the 85 foreign-organized entities listed in Exhibit E hold their interests in Tampnet through three "feeder" entities in the Tampnet ownership structure: SEP Holdings, B.V. (SEP Holdings); CBTJ Financial Services, B.V. (CBTJ); and EQT Holdings Cooperatief, W.A. (EQT Holdings Cooperatief).<sup>130</sup> Tampnet states that the organizational documents for the three "feeder" entities do not contain language that explicitly insulates the 85 foreign-organized entities listed in Exhibit E.<sup>131</sup> However, Tampnet has supplemented its Petition with a certification from each of the three "feeder" entities stating that, notwithstanding any provision of the company's articles of association or any other agreement, no foreign share owner of the company that has not received the Commission's specific approval is, or will be, engaged in active involvement in the management or operation of the company, Tampnet AS, or Tampnet, any subsidiaries of Tampnet, or any of their successors-in-interest (referred to collectively as the "Covered Entities").<sup>132</sup> We find that the certifications provided for the record satisfy the concerns underlying the insulation criteria in Section 1.993 of the Commission's rules.<sup>133</sup> Based on

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<sup>128</sup> The Commission's treatment of uninsulated interests in a limited partnership (or in a limited liability company) is based on the concern that the partners in a limited partnership or members of a limited liability company, through contractual arrangements, largely have the power themselves to determine the rights of the limited partners or members. *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5804 n.317 (citing *Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities*, Memorandum Opinion and Order, 1 FCC Rcd 802, 803-04, paras. 9-10 (1986)).

<sup>129</sup> Section 1.991(i)(3) of the rules contains an exception to the general rule in Section 1.991(i) that requires Section 310(b)(4) petitions to include a request for specific approval of any foreign investor that would hold a greater-than-five percent equity and/or voting interest directly or indirectly in the licensee's controlling U.S. parent (here, Tampnet). Under Section 1.991(i)(3), specific approval is not required where a non-controlling foreign investor's direct or indirect interest in the U.S. parent does not exceed 10 percent of the parent's equity and/or voting interests (47 CFR § 1.991(i)(3)(i)) and the investor's interest is non-influential in nature (47 CFR § 1.991(i)(3)(ii)). The Commission will presume, in the absence of evidence to the contrary, that a membership or limited partnership interest in a limited liability company or limited partnership, respectively, satisfies this criterion for exemption where the interest is "insulated" within the meaning of Section 1.993 of the rules. 47 CFR § 1.991(i)(3)(ii)(C).

<sup>130</sup> Petition, Exhibit E.

<sup>131</sup> Petition at 12.

<sup>132</sup> Each certification is signed by or on behalf of a duly authorized director of SEP Holdings, CBTJ, and EQT Cooperatief under penalty of perjury. The SEP Holdings, CBTJ, and EQT Cooperatief certifications further specify that a foreign share owner that has not been specifically approved by the Commission shall not serve as an officer, director, manager, committee member, employee, independent contractor, agent or otherwise perform any services for the company, with the exception of making loans to, or acting as a surety for them; shall not be involved, directly or indirectly, in the policymaking activities of the Covered Entities or in their day-to-day management or operations; and shall not exercise investor rights (or be permitted to vote its investment units) on matters beyond the usual and customary investor protections delineated in 47 CFR § 1.993(c), as may be amended from time to time, or any successor section. In addition, a foreign share owner that has not been specifically approved by the FCC may nominate directors, officers, and managers, but is barred from appointing them.

<sup>133</sup> 47 CFR § 1.993. See also *Applications of LightSquared Subsidiary LLC, Debtor-in-Possession, and LightSquared Subsidiary LLC for Consent To Assign and Transfer Licenses and Other Authorizations and Request*

(continued...)

the certifications of SEP Holdings, CBTJ, and EQT Cooperatief, we find that the foreign-organized entities listed in Exhibit E of the Petition are exempt from specific approval pursuant to Section 1.991(i)(3).

40. *Section 310(b)(4) Declaratory Ruling.* We grant Tampnet's Petition subject to the conditions set out below. We received no comments objecting to grant of the Petition, and the Agencies have advised the Commission that they have no objection to the Commission approving the authority sought provided that the Commission conditions its approval on the compliance by Tampnet and Tampnet AS with the commitments and undertakings set forth in the June 8, 2016, Agreement between Tampnet, Tampnet AS, and the DOJ.<sup>134</sup> We find that grant of the Petition will serve the public interest by providing Tampnet Licensee with the authority required under Section 310(b) of the Act to acquire and operate common carrier wireless facilities. Such authorization should facilitate Tampnet's ability to reach additional customers and strengthen its ability to compete in the provision of a variety of wireless products and services in the Gulf of Mexico to serve the unique needs of customers in that area. As explained above, we find that the likelihood of public interest harms is low and the potential public interest benefits outweigh any harms. Thus, pursuant to the rules and policies established by the Commission's *2013 Foreign Ownership Second Report and Order*, we find that the public interest would not be served by prohibiting foreign ownership of Tampnet in excess of the 25 percent benchmark in Section 310(b)(4) of the Act.

41. Specifically, this ruling permits aggregate foreign ownership of Tampnet, as the controlling U.S.-organized parent of Tampnet Licensee, to exceed, directly and/or indirectly, 25 percent of Tampnet's equity and/or voting interests, subject to the terms and conditions set forth herein and in Section 1.994 of the Commission's rules, including the requirement to obtain Commission approval before Tampnet's foreign ownership exceeds the terms and conditions of this ruling. In addition, this ruling specifically permits the foreign individuals and entities listed in Exhibit C-1 of the Petition (which is included as Appendix B to this Order) to hold equity and/or voting interests directly and/or indirectly in Tampnet in the amounts specified in Appendix B. This ruling also grants advance approval, under Section 1.991(k)(2) of the rules, for the foreign investors named in Appendix B to increase their respective equity and/or voting interests in Tampnet up to and including a non-controlling 49.99 percent equity and/or voting interest (to the extent their current interests shown in Appendix B fall at or below 49.99 percent). Grant of the Petition is also conditioned on Tampnet's and Tampnet AS's compliance with the commitments and undertakings set forth in their Agreement with the DOJ.

42. We add that Tampnet Licensee, pursuant to Section 1.994(a)(1), is required to seek and obtain Commission approval before any foreign individual, entity, or "group" not specifically approved in this ruling acquires, directly and/or indirectly, more than five percent of Tampnet's equity and/or voting interests, or a controlling interest, with the exception of any foreign individual, entity, or "group" that acquires an equity and/or voting interest of 10 percent or less, *provided that* the interest is exempt under Section 1.991(i)(3) of the Commission's rules.<sup>135</sup> Tampnet Licensee has an affirmative duty to monitor its

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*for Declaratory Ruling on Foreign Ownership*, Memorandum Opinion and Order and Declaratory Ruling, 30 FCC Rcd 1398, 1412, paras. 27-28 (2015).

<sup>134</sup> See *supra* para. 9.

<sup>135</sup> As one example of many scenarios that might precipitate the specific approval requirement, Tampnet would require specific approval before a previously unapproved foreign individual or foreign-organized entity assumes the position of non-member manager/director of a U.S.- or foreign-organized LLC that holds, directly or indirectly, more than five percent of Tampnet's voting interests (or more than 10 percent in circumstances where the LLC's interest is exempt under Section 1.991(i)(3) from the general five percent specific approval requirement in Section 1.991(i)). However, we note that in circumstances where an LLC's foreign non-member manager/director has been specifically approved to hold a given percentage of Tampnet's voting interests (e.g., up to and including a non-controlling 49.99 percent voting interest), Tampnet would not be required to again seek the Commission's specific approval before the foreign non-member manager/director assumed the same position with a different LLC holding

(continued....)

foreign equity and voting interests, calculate these interests consistent with the standards and criteria set forth in Sections 1.992 through 1.993 of the Commission's rules and otherwise ensure continuing compliance with the provisions of Section 310(b) of the Act.

#### **B. National Security, Law Enforcement, Foreign Policy, and Trade Policy**

43. When analyzing an application in which foreign investment is involved, we also consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the Executive Branch.<sup>136</sup> As noted above, Tampnet and Tampnet AS have entered into an Agreement with the DOJ addressing such concerns.<sup>137</sup>

44. In assessing the public interest, we take into account the record and consider the national security, law enforcement, foreign policy, and trade policy concerns raised by the Executive Branch as we undertake our independent public interest analysis.<sup>138</sup> As the Commission stated in the *Foreign Participation Order*, foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch.<sup>139</sup> In accordance with the request of the DOJ, we condition our grant of the Applications and Petition on compliance by Tampnet and Tampnet AS with the commitments and undertakings set forth in the Agreement with the DOJ.

### **VII. ORDERING CLAUSES**

45. ACCORDINGLY, having reviewed the Applications and the record in this proceeding, IT IS ORDERED that, pursuant to Sections 4(i)-(j), 214(a), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 214(a), 303(r), 309, 310(d), the applications filed by AT&T Mobility Spectrum LLC, Tampnet Inc., Tampnet Licensee LLC, Broadpoint License Co., LLC, and Broadpoint Wireless License Co., LLC, are GRANTED.

46. IT IS FURTHER ORDERED that, pursuant to Sections 4(i)-(j) and 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 310(b), and Section 1.2 of the Commission's rules, 47 CFR § 1.2, the Petition for Declaratory Ruling filed by Tampnet Inc. IS GRANTED to the extent set forth herein, and otherwise DENIED.

47. IT IS FURTHER ORDERED that, pursuant to Sections 4(i)-(j) and 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 310(b), and Section 1.41 of the Commission's rules, 47 CFR § 1.41, the Petition To Adopt Conditions filed by the Department of Justice, including the Federal Bureau of Investigation, with the concurrence of the Department of Homeland Security, and the Department of Defense, IS GRANTED.

48. IT IS FURTHER ORDERED that, pursuant to Sections 4(i)-(j), 214, 303(r), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 214, 303(r), 309, 310(b), 310(d), grant of the Applications and Petition for Declaratory Ruling IS CONDITIONED UPON compliance by Tampnet Inc. and Tampnet AS with the commitments and undertakings set forth in the June 8, 2016, Letter of Agreement between Tampnet Inc. and Tampnet AS, and the Department of Justice. Any failure to comply and/or remain in compliance with any of these commitments and

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interests in Tampnet, unless doing so would cause the foreign non-member manager/director's calculated voting interest in Tampnet to exceed the percentage for which Tampnet received the Commission's specific approval.

<sup>136</sup> *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market: Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-21, paras. 59-66 (1997) (*Foreign Participation Order*).

<sup>137</sup> *See supra* para. 9.

<sup>138</sup> *Foreign Participation Order*, 12 FCC Rcd at 23918-21, paras. 59-66.

<sup>139</sup> *Id.* at 23919, para. 62.

undertakings shall constitute a failure to meet a condition of the underlying authorizations and licenses and thus grounds for declaring the authorizations and licenses terminated without any further action on the part of the Commission. Failure to meet a condition of the license may also result in monetary sanctions or other enforcement action by the Commission.

49. 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 CFR § 1.106, or applications for review under Section 1.115 of the Commission's rules, 47 CFR § 1.115, may be filed within thirty days of the date of release of this Memorandum Opinion and Order.

50. This action is taken under delegated authority pursuant to Sections 0.51, 0.131, 0.261, and 0.331 of the Commission's Rules, 47 CFR §§ 0.51, 0.131, 0.261, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Jon Wilkins  
Chief  
Wireless Telecommunications Bureau

Mindel De La Torre  
Chief  
International Bureau

## APPENDIX A

## Applications Granted

## SECTION 310(d) APPLICATIONS

The applications for the assignment of licenses and long-term *de facto* transfer leasing arrangements are granted.

| <u>File No.</u>        | <u>Assignor or Lessor</u>            | <u>Assignee or Lessee</u>  | <u>Lead Call Sign</u> |
|------------------------|--------------------------------------|----------------------------|-----------------------|
| 0006888586             | Broadpoint License Co., LLC          | AT&T Mobility Spectrum LLC | WQWD617               |
| 7035CLNL15             | AT&T Mobility Spectrum LLC           | Tampnet Licensee LLC       | WQWD617               |
| 0006893367             | Broadpoint Wireless License Co., LLC | Broadpoint Newco, LLC      | KNKA411               |
| SES-ASG-20150828-00555 | Broadpoint License Co., LLC          | Broadpoint Newco, LLC      | E850118               |
| SES-ASG-20150828-00565 | Broadpoint License Co., LLC          | Broadpoint Newco, LLC      | E040350               |

## SECTION 214 APPLICATION

The application for consent to the issuance of an international section 214 authorization is granted.

| <u>File No.</u>        | <u>Applicant</u> |
|------------------------|------------------|
| ITC-214-20150901-00218 | Tampnet Inc.     |

## PETITION FOR DECLARATORY RULING UNDER SECTION 310(b)(4)

The Tampnet Inc. petition for a declaratory ruling pursuant to Section 310(b)(4) of the Act and Section 1.990(a)(1) of the Commission's rules is granted, subject to the conditions set forth in the Memorandum Opinion and Order and Declaratory Ruling above.

| <u>File No.</u>        | <u>Petitioner</u> |
|------------------------|-------------------|
| ISP-PDR-20150507-00003 | Tampnet Inc.      |

## APPENDIX B

## Entities and Individuals Seeking Specific Approval

| Name  | Citizenship or Place of Organization | Type of Organization          | Principal Business | Interest in Filer |        |
|---|--------------------------------------|-------------------------------|--------------------|-------------------|--------|
|   |                                      |                               |                    | Equity            | Voting |
| 1. Tampnet AS                                     | Norway                               | Private Corp.                 | Telecommunications | 100%              | 100%   |
| 2. Brent Invest AS                                | Norway                               | Private Corp.                 | Investment         | 100%              | 100%   |
| 3. Brent Holding AS                               | Norway                               | Private Corp.                 | Investment         | 100%              | 100%   |
| 4. Brent Infrastructure I B.V.                    | Netherlands                          | Limited Liability Corp.       | Investment         | 94.92%            | 100%   |
| 5. Brent Infrastructure I S.à.r.l.                | Luxembourg                           | Limited Liability Corp.       | Investment         | 47.46%            | 100%   |
| 6. Brent Holding Guernsey Limited                 | Guernsey                             | Private Corp.                 | Investment         | 47.46%            | 100%   |
| 7. EQT Infrastructure (No. 1) Limited Partnership | England and Wales                    | Limited Partnership           | Investment         | 39.79%            | 84.99% |
| 8. EQT Infrastructure (No. 3) Limited Partnership | England                              | Limited Partnership           | Investment         | 4.68%             | 10%    |
| 9. EQT Infrastructure (General Partner) LP        | Guernsey                             | Limited Partnership           | Investment         | 0.47%             | 100%   |
| 10. EQT Infrastructure LLP                        | Guernsey                             | Limited Liability Partnership | Investment         | 0%                | 100%   |
| 11. EQT V GmbH & Co. KG                           | Germany                              | Limited Partnership           | Investment         | 0%                | 100%   |
| 12. EQT V Verwaltung GmbH                         | Germany                              | Limited Liability Corp.       | Investment         | 0%                | 100%   |
| 13. CBTJ Financial Services B.V.                  | Netherlands                          | Limited Liability Corp.       | Investment         | 0%                | 100%   |
| 14. EQT Infrastructure Limited                    | Guernsey                             | Private Corp.                 | Investment         | 0.3%              | 100%   |
| 15. EQT Funds Management Limited                  | Guernsey                             | Private Corp.                 | Investment         | 0%                | 100%   |
| 16. SEP Holdings B.V.                             | Netherlands                          | Limited Liability Corp.       | Investment         | 0%                | 100%   |
| 17. SEP Integrated I B.V.                         | Netherlands                          | Limited Liability Corp.       | Investment         | 0%                | 46.47% |
| 18. SEP Integrated II B.V.                        | Netherlands                          | Limited Liability Corp.       | Investment         | 0%                | 100%   |
| 19. SEPCO B.V.                                    | Netherlands                          | Limited Liability Corp.       | Investment         | 0%                | 17.58% |
| 20. Glen Matsumoto                                | U.S.                                 | Individual                    | N/A                | 0%                | 16.59% |
| 21. Steep Bay B.V.                                | Netherlands                          | Limited Liability Corp.       | Investment         | 0%                | 18.18% |
| 22. Geltis Holding B.V.                           | Netherlands                          | Limited Liability Corp.       | Investment         | 0%                | 11.18% |
| 23. Stefan Glevén                                 | Sweden                               | Individual                    | N/A                | 0%                | 16.26% |
| 24. Conni Jonsson                                 | Sweden                               | Individual                    | N/A                | 0%                | 27.55% |

|   |             |                         |            |        |        |
|---|-------------|-------------------------|------------|--------|--------|
| 25. Qarlbo Associates                         | Luxembourg  | Limited Liability Corp. | Investment | 0%     | 22.55% |
| 26. Victor de Roo                             | Netherlands | Individual              | N/A        | 0%     | 100%   |
| 27. Nathalie Ouwerkerk                        | Netherlands | Individual              | N/A        | 0%     | 100%   |
| 28. Martjin Sibren van der Schaaf             | Netherlands | Individual              | N/A        | 0%     | 100%   |
| 29. Rakso Holding B.V.                        | Netherlands | Limited Liability Corp. | Investment | 0%     | 22.22% |
| 30. Christian Sinding                         | Norwegian   | Individual              | N/A        | 0%     | 19.73% |
| 31. Caspar Callerstrom                        | Swedish     | Individual              | N/A        | 0%     | 16.73% |
| 32. Brent Infrastructure II SA                | Luxembourg  | Corporation             | Investment | 47.46% | 100%   |
| 33. Brent Infrastructure Holding B.V.         | Netherlands | Limited Liability Corp. | Investment | 47.46% | 100%   |
| 34. Peter Veldman                             | Netherlands | Individual              | N/A        | 0%     | 100%   |
| 35. Brent Infrastructure II Holding S.à.r.l.  | Luxembourg  | Limited Liability Corp. | Investment | 47.46% | 100%   |
| 36. Michael Anatolitis                        | Cyprus      | Individual              | N/A        | 0%     | 100%   |
| 37. Karl Heinz Horrер                         | Germany     | Individual              | N/A        | 0%     | 100%   |
| 38. Jens Hollermann                           | Germany     | Individual              | N/A        | 0%     | 100%   |
| 39. Andrea Neubock-Escher                     | Austria     | Individual              | N/A        | 0%     | 100%   |
| 40. EQT Infrastructure II Limited Partnership | Netherlands | Limited Partnership     | Investment | 46.92% | 100%   |
| 41. EQT Infrastructure II GP B.V.             | Netherlands | Limited Liability Corp. | Investment | 0%     | 100%   |
| 42. EQT Infrastructure II (No. 1) Feeder LP   | U.K.        | Limited Partnership     | Investment | 32.93% | 70.18% |
| 43. EQT Infrastructure II (No. 2) Feeder LP   | U.K.        | Limited Partnership     | Investment | 10.02% | 21.36% |
| 44. EQT Holdings II B.V.                      | Netherlands | Limited Liability Corp. | Investment | 0%     | 100%   |
| 45. EQT Infrastructure II (GP) Ltd.           | U.K.        | Private Corp.           | Investment | 0%     | 100%   |
| 46. EQT Netherlands Management B.V.           | Netherlands | Limited Liability Corp. | Investment | 0%     | 100%   |
| 47. EQT AB                                    | Sweden      | Corporation             | Investment | 0%     | 100%   |
| 48. James Campbell Arrol                      | U.K.        | Individual              | N/A        | 0%     | 100%   |
| 49. Lars Adam Ludvig Larsson                  | Sweden      | Individual              | N/A        | 0%     | 100%   |
| 50. Investor Investments Holding AB           | Sweden      | Corporation             | Investment | 0%     | 100%   |
| 51. EQT International Holdings B.V.           | Netherlands | Limited Liability Corp. | Investment | 0%     | 100%   |
| 52. EQT Holdings Cooperatief W.A.             | Netherlands | Cooperative             | Investment | 0%     | 100%   |
| 53. Investor Growth Capital Holding B.V.      | Netherlands | Limited Liability Corp. | Investment | 0%     | 100%   |
| 54. Investor AB                               | Sweden      | Corporation             | Investment | 0%     | 100%   |
| 55. Investor Netherlands B.V.                 | Netherlands | Limited Liability Corp. | Investment | 0%     | 100%   |
| 56. Knut and Alice Wallenberg Foundation      | Sweden      | Foundation              | Research   | 0%     | 42.2%  |

|                                     |                             |                         |            |       |        |
|-------------------------------------|-----------------------------|-------------------------|------------|-------|--------|
| 57. Marcus Jacobus Maria Hollander  | Netherlands                 | Individual              | N/A        | 0%    | 100%   |
| 58. Andreas Georg Christiaan Demmel | German                      | Individual              | N/A        | 0%    | 100%   |
| 59. Robert de Heus                  | Netherlands                 | Individual              | N/A        | 0%    | 100%   |
| 60. Petra Hedengran                 | Sweden                      | Individual              | N/A        | 0%    | 100%   |
| 61. Anders Eckerwall                | Sweden                      | Individual              | N/A        | 0%    | 100%   |
| 62. Fredrik Åtting                  | Sweden                      | Individual              | N/A        | 0%    | 10.29% |
| 63. Harry Klagsbrun                 | Sweden                      | Individual              | N/A        | 0%    | 12.39% |
| 64. Michael Föcking                 | Germany                     | Individual              | N/A        | 0%    | 11.49% |
| 65. Paul de Rome                    | U.K.                        | Individual              | N/A        | 0%    | 10.09% |
| 66. Patrick de Muynck               | Belgium                     | Individual              | N/A        | 0%    | 14.15% |
| 67. Jan Ståhlberg                   | Sweden                      | Individual              | N/A        | 0%    | 16.19% |
| 68. Thomas von Koch                 | Sweden                      | Individual              | N/A        | 0%    | 16.1%  |
| 69. Marcus Brennecke                | Germany                     | Individual              | N/A        | 0%    | 17.74% |
| 70. TomCo 2 B.V.                    | Netherlands                 | Limited Liability Corp. | Investment | 0%    | 11.1%  |
| 71. Martin Mok                      | Hong Kong S.A.R.            | Individual              | N/A        | 0%    | 16.37% |
| 72. EHKM Holdings Coöperatief W.A.  | Netherlands                 | Cooperative             | Investment | 0%    | 10%    |
| 73. Lennart Blecher                 | Sweden                      | Individual              | N/A        | 0%    | 18.32% |
| 74. Fengyu B.V.                     | Netherlands                 | Limited Liability Corp. | Investment | 0%    | 10.19% |
| 75. Tak Wai Chung                   | British National (Overseas) | Individual              | N/A        | 0%    | 10.66% |
| 76. Anders Misund                   | Norway                      | Individual              | N/A        | 0%    | 10%    |
| 77. Per Franzén                     | Sweden                      | Individual              | N/A        | 0%    | 10.24% |
| 78. CM Capital B.V.                 | Netherlands                 | Limited Liability Corp. | Investment | 0%    | 100%   |
| 79. Harkla B.V.                     | Netherlands                 | Limited Liability Corp. | Investment | 0%    | 7.39%  |
| 80. Trill B.V.                      | Netherlands                 | Limited Liability Corp. | Investment | 0%    | 9.67%  |
| 81. Skogco B.V.                     | Netherlands                 | Limited Liability Corp. | Investment | 0%    | 8.72%  |
| 82. LEFA Holding B.V.               | Netherlands                 | Limited Liability Corp. | Investment | 0%    | 8.61%  |
| 83. Stichting Bawau                 | Netherlands                 | Foundation              | Trust      | 0%    | 100%   |
| 84. IGPE LP                         | Guernsey                    | Limited Partnership     | Investment | 0.33% | 70%    |
| 85. EQT Holdings B.V.               | Netherlands                 | Limited Liability Corp. | Investment | 0%    | 100%   |