

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

In the Matter of)
)
Applications of AT&T Inc. and United States) WT Docket No. 16-178
Cellular Corporation)
)
For Consent To Assign Licenses)

MEMORANDUM OPINION AND ORDER

Adopted: January 5, 2017

Released: January 5, 2017

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the applications of AT&T and USCC for Commission consent to the assignment to AT&T of seven Lower 700 MHz B and C Block licenses covering all or parts of six local market areas, and the assignment to USCC of four AWS-1 licenses and one broadband PCS license covering all or parts of four local market areas. The Commission determined in the *Mobile Spectrum Holdings Report and Order* that increased aggregation of below-1-GHz spectrum would be treated as an “enhanced factor” under its case-by-case review of license transfers if post-transaction the acquiring entity would hold approximately one-third or more of the suitable and available spectrum below 1 GHz.¹ In the proposed transaction, AT&T would increase its spectrum holdings, and in particular, would hold post-transaction more than one-third of the currently suitable and available below-1-GHz spectrum in all or parts of five of the six local market areas in which low-band spectrum would be assigned. After carefully evaluating the likely competitive effects of AT&T’s increased aggregation of below-1-GHz spectrum in these five local market areas, as well as the other factors ordinarily considered in a case-by-case review, we find that the likelihood of competitive harm is low. Further, we find that some public interest benefits are likely to be realized, such as increased network quality and a better consumer experience. Based on the record before us and our public interest review, we find that the proposed assignment of these licenses would serve the public interest, convenience, and necessity, and therefore we consent to the proposed assignment.

II. BACKGROUND AND PUBLIC INTEREST FRAMEWORK

2. *Description of the Applicants.* AT&T Inc. (AT&T), headquartered in Dallas, Texas, is a communications holding company that ranks among the leading providers of telecommunications services in the United States.² United States Cellular Corporation (USCC, and together with AT&T, the

¹ *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).

² AT&T Inc., SEC 2015 Form 10-K, at 1 (filed Feb. 18, 2016), http://www.sec.gov/Archives/edgar/data/732717/000073271716000147/ye15_10k.htm.

Applicants) is headquartered in Chicago, Illinois, and provides wireless telecommunications services to approximately 4.8 million customers in 23 states.³

3. *Description of the Transaction.* On April 4, 2016, AT&T and USCC filed the Applications pursuant to Section 310(d) of the Communications Act of 1934, as amended (the Act),⁴ seeking Commission consent to assign seven Lower 700 MHz B and C Block licenses from USCC to AT&T, and four AWS-1 licenses and one broadband PCS license from AT&T to USCC.⁵ Through the instant transaction, AT&T would be assigned 12 megahertz to 24 megahertz of low-band spectrum from USCC in 23 counties covering all or parts of six Cellular Market Areas (CMAs): CMA 196 (Champaign-Urbana-Rantoul, IL), CMA 217 (Anderson, IN), CMA 271 (Kokomo, IN), CMA 388 (Idaho 1 – Boundary), CMA 399 (Illinois 6 – Montgomery), and CMA 566 (North Carolina 2 – Yancey).⁶ Post-transaction, AT&T would hold from 88 megahertz to 170 megahertz of spectrum in total, and in particular, it would increase its below-1-GHz holdings to 55 megahertz in five of these six CMAs.⁷ In turn, USCC would be assigned 10 megahertz to 20 megahertz of AWS-1 and broadband PCS spectrum from AT&T in 21 counties covering all or parts of four CMAs: CMA 397 (IL 4 – Adams), CMA 571 (NC 7 – Rockingham), CMA 572 (NC 8 – Northampton), and CMA 698 (WA 6 – Pacific). Post-transaction, USCC would hold from 45 megahertz to 104 megahertz of spectrum in total in these four markets.

4. *Standard of Review.* Pursuant to Section 310(d) of the Act,⁸ we must determine whether the Applicants have demonstrated that the proposed license assignment would serve the public interest, convenience, and necessity.⁹ In making this determination, we first assess whether the proposed

³ United States Cellular Corp., SEC Form 10-K, at 1 (filed Feb. 24, 2016), <http://www.sec.gov/Archives/edgar/data/821130/000082113016000050/usmform10k.htm>. USCC is a majority-owned (84%) subsidiary of Telephone and Data Systems, Inc.

⁴ 47 U.S.C. § 310(d).

⁵ Application To Assign Licenses from AT&T Mobility Spectrum LLC to USCOC OF RICHLAND, INC., ULS File No. 0007216619 (filed Apr. 7, 2016) (Application), Exhibit 1—Description of Transaction and Public Interest Statement at 1 (Public Interest Statement). This is the lead application for this proposed transaction. The file numbers for the additional applications are 0007217010, 0007217079, 0007217111, 0007218589, 0007218591, 0007218595, 0007218599, and 0007218603 (together with file number 0007216619, the Applications). The licenses involved in this proposed transaction are being assigned by and to subsidiaries of AT&T and USCC. For AT&T, the subsidiaries are AT&T Mobility Spectrum LLC, and New Cingular Wireless PCS, LLC. For USCC, the subsidiaries are Indiana RSA No. 4 Limited Partnership, Oregon RSA #2, Inc., United States Cellular Operating Company of Chicago, LLC, USCOC of Central Illinois, LLC, USCOC of Greater North Carolina, LLC, and USCOC of Richland, Inc.

⁶ *AT&T Inc. and United States Cellular Corporation Seek FCC Consent To the Assignment of Lower 700 MHz, Advanced Wireless Services, and Personal Communications Service Licenses*, Public Notice, 31 FCC Rcd 7833 (WTB 2016) (*Accepted for Filing Public Notice*); see also Application, Exhibits 3A and 3B—Spectrum Aggregation.

⁷ *Accepted for Filing Public Notice*, 31 FCC Rcd at 7834; Application, Exhibit 3A—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.

⁸ 47 U.S.C. § 310(d).

⁹ 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., E.N.M.R. Telephone Cooperative, Plateau Telecommunications, Inc., New Mexico RSA 4 East Limited Partnership, and Texas RSA 3*

transaction complies with the specific provisions of the Act,¹⁰ other applicable statutes, and the Commission's rules.¹¹ If the proposed transaction does not violate a statute or rule, we next consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.¹² We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.¹³ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.¹⁴

5. The Commission has fully discussed the contours of the required public interest determination in several orders,¹⁵ 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.¹⁶ The Commission and the Department of Justice each have independent authority to examine the competitive impacts of proposed mergers and transactions involving transfers of Commission licenses, but the Commission's competitive analysis under the public interest standard is somewhat broader.¹⁷ The Commission's public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.¹⁸ If we are unable to find that the proposed transaction serves the public interest for any reason or if the record presents a substantial and material question of fact, we must designate the application(s) for hearing.¹⁹

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*).

¹⁰ Section 310(d) requires that we consider the application as if the proposed assignee were applying for the licenses directly under Section 308 of the Act. 47 U.S.C. §§ 308, 310(d); *see, e.g., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6 & n.15; *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.

¹¹ *See, e.g., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

¹² *See, e.g., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

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

¹⁴ *See, e.g., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

¹⁵ *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*).

¹⁶ *See, e.g., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634-35, para. 7; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742, para. 15.

¹⁷ *See, e.g., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634-35, para. 7; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742, para. 15.

¹⁸ *See, e.g., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634-35, para. 7; *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.

¹⁹ 47 U.S.C. § 309(e); *see also, e.g., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634-35, para. 7; *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*

6. *Qualifications of the Applicants.* As a threshold matter, the Commission must determine whether the applicants to a proposed transaction meet the requisite qualifications requirements to hold and transfer licenses under Section 310(d) and the Commission's rules.²⁰ We note that no issues were raised with respect to the basic qualifications of USCC or AT&T, and in addition, both USCC and AT&T previously and repeatedly have been found qualified to hold Commission licenses.²¹ We therefore find there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Act and our rules, regulations, and policies, of USCC or AT&T.²²

III. POTENTIAL PUBLIC INTEREST HARMS

7. *Competitive Overview.* In its examination of a proposed transaction, the Commission evaluates the potential public interest harms and undertakes a case-by-case review of the competitive effects of any increase in market concentration or in spectrum holdings in the relevant markets.²³ In the past, the Commission has used a two-part screen to help identify those markets that provide particular reason for further competitive analysis, but has not limited its consideration of potential competitive harms solely to markets identified by its screen if it encounters other factors that may bear on the public interest inquiry.²⁴ In the *Mobile Spectrum Holdings Report and Order*, the Commission found that it is in the public interest to continue to use its spectrum screen and case-by-case review²⁵ and, in addition, to require that any increase in spectrum holdings of below 1 GHz be treated as an "enhanced factor" in its review if post-transaction the acquiring entity would hold approximately one-third or more of such spectrum.²⁶ The Commission stated that it anticipated "that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms."²⁷ The Commission further stated, however, that when the other factors ordinarily considered indicate a low

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).

²⁰ 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.

²¹ 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 USCC, see, e.g., *Application of United States Cellular Corporation and Hershey Cooperative Telephone Company for Consent To Assign License*, Memorandum Opinion and Order, 31 FCC Rcd 10669, 10671, para. 7 (WTB 2016); *Application of USCOC of Central Illinois, LLC, and Adams Telcom, Inc. for Consent To Assign Licenses*, Memorandum Opinion and Order, 31 FCC Rcd 3404, 3406, para. 6 (WTB 2016).

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

²³ 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.

²⁴ 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; see also *AT&T-Leap Order*, 29 FCC Rcd at 2752, 2753, 2755-56, paras. 39, 41, 47.

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

²⁶ *Id.* at 6240, paras. 286-88; see also, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113, para. 13.

²⁷ *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 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.

potential for competitive or other public interest harm, the acquisition of below-1-GHz spectrum resulting in holdings of approximately one-third or more would not preclude a conclusion that a proposed transaction, on balance, furthers the public interest.²⁸

8. The Commission stated in the *Mobile Spectrum Holdings Report and Order* that low-band spectrum is less costly to deploy and provides higher quality coverage than higher-band spectrum,²⁹ and that the leading two nationwide service providers hold most of the low-band spectrum available today.³⁰ The Commission found that if they were to acquire all, or substantially all, of the remaining low-band spectrum, they would benefit, independently of any deployment, to the extent that rival service providers are denied its use.³¹ As the Commission found, without access to this low-band spectrum, rival service providers that may lack a mix of low-band and higher-band spectrum would be less able to provide a robust competitive alternative, and may not be able to quickly expand coverage or provide new services.³² We consider below whether there would be an increased likelihood as a result of the proposed transaction that rival service providers or potential entrants would be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market, and whether rivals' costs would be increased to the extent that they would be less likely to be able to compete robustly.³³

A. Market Definitions

9. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,³⁴ including a determination of the product market, the geographic market, the input market for spectrum suitable and available for the provision of mobile wireless services, and the market participants.

10. *Product and Geographic 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).³⁵ In addition, we find that the relevant geographic market is local.³⁶ The Applicants are seeking Commission approval of the proposed assignment to AT&T of 12 megahertz to 24 megahertz of low-band spectrum that covers 23 counties in all or parts of six local markets, and to USCC of 10 megahertz to 20 megahertz of AWS-1 and broadband PCS spectrum that covers 21 counties in all or parts of four local markets, together accounting for less than one percent of the population of the United States.

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

²⁹ *Id.* at 6164, para. 60.

³⁰ *Id.* at 6156-57, 6162, 6164, paras. 46, 58, 60.

³¹ *Id.* at 6164, para. 60.

³² *Id.* at 6164-65, paras. 60-61; *see also, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113-14, para. 14.

³³ *See, e.g., 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.

³⁴ *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.

³⁵ *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.

³⁶ The Commission has found that the relevant geographic markets for certain wireless transactions generally are local, but has held that a transaction's competitive effects should also be evaluated at the national level where a transaction exhibits certain national characteristics that provide cause for concern. *See, e.g., 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.

11. *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”).³⁷ 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.”³⁸ 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.³⁹ We consider facilities-based entities providing mobile telephony/broadband services using these spectrum bands as just described to be market participants.⁴⁰

B. Competitive Effects of the Proposed Transaction

12. *Initial Review.* As discussed above, to help identify those local markets in which competitive concerns are more likely, initially we apply a two-part screen, and if the acquiring entity 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.⁴¹ 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.⁴² The second part of the screen, which is applied on a county-by-county basis, identifies local markets where an entity would hold approximately one-third or more of the total spectrum suitable and available for the provision of mobile telephony/broadband services, post-transaction.⁴³ In instances where an applicant is acquiring spectrum below 1 GHz, we also carefully examine the possible competitive effects resulting from an

³⁷ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3637, para. 13; *AT&T-Club 42 Order*, 30 FCC Rcd at 13064-65, para. 21; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117, para. 23; see also *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169, para. 70.

³⁸ *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3637-38, para. 15.

³⁹ *Id.*

⁴⁰ 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*, 31 FCC Rcd at 3638, para. 16.

⁴¹ 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, paras. 286-88. The current total amount of below-1-GHz spectrum that is suitable and available is 134 megahertz, approximately one-third of which is 45 megahertz. *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.

⁴² See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3638-39, para. 17; *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.

⁴³ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3638-39, para. 17; *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.

increase in below-1-GHz spectrum holdings that would be above the threshold identified in the *Mobile Spectrum Holdings Report and Order*.⁴⁴

13. As the instant transaction does not result in the acquisition of wireless business units and customers, we do not apply the initial HHI screen. None of the markets involved in the exchange trigger the total spectrum screen,⁴⁵ but in our review of the below-1-GHz spectrum holdings, we find that AT&T would hold more than one-third, or more than 45 megahertz, of the currently suitable and available below-1-GHz spectrum in 20 counties in five of the six local markets at issue post-transaction.⁴⁶ We therefore look more closely at the potential competitive effects that these proposed low-band spectrum holdings may have.

14. *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.⁴⁷ Further, AT&T maintains that the proposed transaction would not lead to an increase in market concentration or decrease the number of entities providing service to customers in the market.⁴⁸ No petitions to deny or comments were received.

15. *Market-Specific Review.* Generally, in undertaking our analysis, we consider various competitive variables that help to predict the likelihood of competitive harm post-transaction. These competitive variables include, but are not limited to: the total number of rival service providers; the number of rival firms that can offer competitive service plans; the coverage by technology of the firms' respective networks; the rival firms' market shares; the combined entity's post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum holdings of each of the rival service providers.⁴⁹

16. We begin our analysis with our review of the three non-rural markets implicated by the proposed transaction: Champaign-Urbana-Rantoul, IL, Anderson, IN, and Kokomo, IN.⁵⁰ The four

⁴⁴ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6240, paras. 267, 286-88; *see also, 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.

⁴⁵ *See supra* para. 11; *see also Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3637-39, paras. 15, 17 & n.52. We note that as a result of the proposed assignment of spectrum to USCC, no markets trigger our two-part screen, nor do we find any particular factor that would lead us to undertake further competitive review.

⁴⁶ *See supra* para. 8; *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. We note that in CMA 566 (North Carolina 2 – Yancey), AT&T would hold 18 megahertz to 43 megahertz of low-band spectrum as a result of the proposed transaction. This level of low-band spectrum aggregation does not require enhanced factor review, nor do we find any particular reason that would lead us to further competitive review of this market.

⁴⁷ Public Interest Statement at 3; *see also* Response of AT&T To the General Information Request Dated Mar. 2, 2016, at 13-14 (Mar. 16, 2016) (AT&T Information Request Response).

⁴⁸ AT&T Information Request Response at 12.

⁴⁹ We derive market shares and HHIs from our analysis of data compiled in our December 2015 NRUF and LNP database, network coverage from January 2016 Mosaik data and 2010 U.S. Census data, and spectrum holdings from our licensing databases and the Application. We also utilized and analyzed additional data as provided by the Applicants through our information requests. *See, e.g., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3641, para. 21 & n.66; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120, para. 29 & n.98.

⁵⁰ The population density is measured by the number of people per square mile using Census 2010 data. Rural markets are generally characterized by 100 people per square mile or less. *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services et al.*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 19078, 19086-88, paras. 10-12 (2004).

nationwide service providers each have a significant market share in all three of these markets.⁵¹ Post-transaction, AT&T would hold 125 megahertz to 170 megahertz of spectrum in these CMAs, including 55 megahertz of spectrum below 1 GHz in each market, while the other three nationwide service providers hold 42 megahertz to 225 megahertz of spectrum.⁵² Regarding below-1-GHz spectrum, Verizon Wireless holds 47 megahertz and Sprint holds 14 megahertz in all three markets, while T-Mobile holds 12 megahertz in Anderson, IN and Kokomo, IN, and USCC would continue to hold 12 megahertz in Champaign-Urbana-Rantoul, IL.⁵³ In terms of population and land area coverage, all four nationwide service providers have significant 3G population and land area coverage in all three markets.⁵⁴ In addition, all four nationwide service providers have significant LTE population and land area coverage in all three markets.⁵⁵

17. We find notwithstanding the fact that AT&T would hold, as a result of the proposed transaction, more than one-third of the below-1-GHz spectrum in these three non-rural markets, that the likelihood of competitive harm is low after evaluating the particular factors ordinarily considered.⁵⁶ All three of the other nationwide service providers each have a significant market share. Further, Sprint and Verizon Wireless each have access to low-band spectrum that would allow at least a 5×5 megahertz LTE deployment on below-1-GHz spectrum, as well as access to spectrum above 1 GHz to combine with their low-band spectrum holdings for LTE deployment. T-Mobile has similar access to low-band spectrum in Anderson, IN and Kokomo, IN, while USCC would continue to hold 12 megahertz of low-band spectrum in Champaign-Urbana-Rantoul, IL. In terms of population and land area coverage, we note that in addition to AT&T, the three other nationwide service providers have significant 3G and LTE population and land area coverage. We find that the acquisition of this below-1-GHz spectrum by AT&T is unlikely to foreclose rival service providers from entering or expanding in this local market, and is unlikely to raise rivals' costs. We find therefore that the proposed transaction is unlikely to materially lessen the

Champaign-Urbana-Rantoul, IL contains approximately 201,000 people, and has a population density of 202 people per square mile. Anderson, IN contains approximately 132,000 people, and has a population density of 291 people per square mile. Kokomo, IN contains approximately 99,000 people, and has a population density of 178 people per square mile.

⁵¹ AT&T's market share ranges from approximately [REDACTED]%, while Sprint's market share ranges from approximately [REDACTED]%, T-Mobile's market share ranges from approximately [REDACTED]% and Verizon Wireless's market share ranges from approximately [REDACTED]% in these three markets.

⁵² In addition, we note that DISH holds 6 megahertz of unpaired low-band spectrum and 65 megahertz of spectrum above 1 GHz in each of these three markets. In Champaign-Urbana-Rantoul, IL, USCC holds 20 megahertz of spectrum above 1 GHz in addition to its 12 megahertz of spectrum below 1 GHz. In Anderson, IN, Hancock Rural Telephone holds 20 megahertz of above 1 GHz spectrum.

⁵³ In Kokomo, IN, S&R Communications leases 22 megahertz of spectrum below 1 GHz through Verizon Wireless's LTE in Rural America program. Cellco Partnership and S&R Communications, LLC Notification of Long-Term Spectrum Manager Leasing Arrangement, ULS File No. 0004705572 (filed Apr. 26, 2011).

⁵⁴ It has previously been found that coverage of 70% or more of the population and 50% or more of the land area is presumptively sufficient for a service provider to have a competitive presence in the market. *See, e.g., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3643, para. 25 & n.77; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121, para. 31 & n.102; *AT&T-Leap Order*, 29 FCC Rcd at 2770, para. 81 & n.279.

Specifically, in all three markets, AT&T covers 100% of the population and land area with its 3G network, while the comparable 3G population and land area network coverage percentages are both approximately 100% for T-Mobile and Verizon Wireless, and at least approximately 97% and approximately 83% to 98% for Sprint.

⁵⁵ In all three markets, AT&T covers close to 100% of the population and land area with its LTE network, while the comparable LTE population and land area network coverage percentages are both approximately 100% for T-Mobile and Verizon Wireless, and at least approximately 96% and approximately 81% to 96% for Sprint. In addition, we note that in Kokomo, IN, S&R Communications covers approximately 6% of the population and 19% of the land area with LTE.

⁵⁶ *See supra* para. 15. *See also, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5123, para. 36.

ability of rival service providers to respond to any anticompetitive behavior on the part of AT&T in these three local markets.

18. We turn next to our evaluation of the two rural markets subject to enhanced factor review: Idaho 1 – Boundary and Illinois 6 – Montgomery.⁵⁷ In Idaho 1 – Boundary, four service providers each have a significant market share and an additional service provider has some market presence,⁵⁸ while in Illinois 6 – Montgomery, two service providers each have a significant market share and an additional service provider has some market presence.⁵⁹ Post-transaction, AT&T would hold 135 megahertz to 165 megahertz of spectrum in these two CMAs, including 55 megahertz of spectrum below 1 GHz, while the other three nationwide service providers hold 22 megahertz to 178 megahertz of spectrum.⁶⁰ Regarding below-1-GHz spectrum, in Idaho 1 – Boundary, Verizon Wireless holds 22 megahertz to 47 megahertz, Sprint holds 14 megahertz, and T-Mobile holds 12 megahertz. In addition, Inland Cellular holds 25 megahertz of cellular spectrum in parts of Idaho 1 – Boundary, and USCC would continue to hold 12 megahertz of Lower 700 MHz spectrum in Illinois 6 – Montgomery. In terms of population coverage for both markets, at least three service providers have significant 3G population coverage, while for 3G land area coverage, four service providers have significant 3G coverage in Illinois 6 – Montgomery, but 3G land area coverage is substantially more limited in Idaho 1 – Boundary.⁶¹ Regarding LTE coverage, at least two service providers have significant LTE population coverage in both markets, while for LTE land area coverage, three service providers have significant LTE coverage in Illinois 6 – Montgomery; however, LTE land area coverage is substantially more limited in Idaho 1 – Boundary.⁶²

19. We find, notwithstanding the fact that AT&T would hold as a result of the proposed transaction more than one-third of the below-1-GHz spectrum in these two rural markets, that the likelihood of competitive harm is low after evaluating the particular factors ordinarily considered.⁶³ We first note that these two markets are both rural, and in addition to AT&T, two to three of the other nationwide service providers have a significant market share or some market presence. Further, three other service providers each have access to low-band spectrum in both markets that would allow at least a 5×5 megahertz LTE deployment on below-1-GHz spectrum, as well as access to spectrum above 1 GHz to combine with their low-band spectrum holdings for LTE deployment. In terms of population coverage,

⁵⁷ Idaho 1 – Boundary contains approximately 301,000 people, and has a population density of 24 people per square mile. Illinois 6 – Montgomery contains approximately 201,000 people, and has a population density of 46 people per square mile.

⁵⁸ AT&T, Inland Cellular, Sprint, T-Mobile, and Verizon Wireless each hold approximately [REDACTED]% of the market, respectively.

⁵⁹ AT&T, Sprint, and Verizon Wireless each hold approximately [REDACTED]% of the market, respectively.

⁶⁰ In addition, we note that DISH holds 6 megahertz of unpaired low-band spectrum and 55 megahertz to 65 megahertz of spectrum above 1 GHz.

⁶¹ In Idaho 1 – Boundary, AT&T covers approximately 95% of the population and 52% of the land area with 3G. The comparable 3G population and land area percentages are approximately 90% and 33% for Verizon Wireless, approximately 70% and 9% for Sprint, and approximately 71% and 11% for T-Mobile. In Illinois 6 – Montgomery, AT&T covers 100% of both the population and land area with 3G. The comparable 3G population and land area percentages are both approximately 99% for Verizon Wireless, approximately 81% and 64% for Sprint, and approximately 58% and 56% for T-Mobile.

⁶² In Idaho 1 – Boundary, AT&T covers approximately 81% of the population and 23% of the land area with LTE. The comparable LTE population and land area percentages are approximately 95% and 45% for Verizon Wireless, approximately 51% and 3% for Sprint, and approximately 71% and 10% for T-Mobile. In Illinois 6 – Montgomery, AT&T covers approximately 99% of the population and 97% of the land area with LTE. The comparable LTE population and land area percentages are both 100% for Verizon Wireless, approximately 63% and 47% for Sprint, and approximately 57% and 55% for T-Mobile.

⁶³ See *supra* para. 15. See also, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5123, para. 36.

in addition to AT&T, Sprint, Verizon Wireless, and T-Mobile each have significant 3G population coverage in Illinois 6 – Montgomery (and Verizon Wireless also has significant LTE population coverage), and T-Mobile and Verizon Wireless have significant 3G and LTE population coverage in Idaho 1 – Boundary, while Sprint has significant 3G population coverage. In terms of land area coverage, in addition to AT&T, Sprint (close to significant), T-Mobile, and Verizon Wireless each have significant 3G and LTE coverage in Illinois 6 – Montgomery, while 3G and LTE land area coverage in Idaho 1 – Boundary is much more limited. We find that the acquisition of this below-1-GHz spectrum by AT&T is unlikely to foreclose rival service providers from entering or expanding in these two local markets, and is unlikely to raise rivals' costs. We find therefore that the proposed transaction is unlikely to materially lessen the ability of rival service providers to respond to any anticompetitive behavior on the part of AT&T in these two rural markets.

IV. POTENTIAL PUBLIC INTEREST BENEFITS

20. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.⁶⁴ Under Commission precedent, the Applicants bear the burden of demonstrating the potential public interest benefits of a proposed transaction.⁶⁵ The Commission applies several criteria in deciding whether a claimed benefit is cognizable. First, each claimed benefit must be transaction-specific.⁶⁶ Second, each claimed benefit must be verifiable.⁶⁷ 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.⁶⁸ The Commission applies a “sliding scale approach” to evaluating benefit claims.⁶⁹ 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.”⁷⁰ Conversely, where potential harms appear less likely and less substantial, we will accept a lesser showing to approve the proposed transaction.⁷¹

21. *Record.* The Applicants assert, in their detailed demonstration of the claimed public interest 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.⁷² According to the Applicants, the additional spectrum would be used to deploy and/or expand AT&T's 4G network using LTE technology and would increase

⁶⁴ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647-48, para. 34; *AT&T-Club 42 Order*, 30 FCC Rcd at 13074, para. 39; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126, para. 43.

⁶⁵ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647-48, 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.

⁶⁶ 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.

⁶⁷ 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.

⁶⁸ 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. See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647-48, para. 34; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 87.

⁶⁹ 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; see also, e.g., *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132.

⁷⁰ 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.

⁷¹ 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.

⁷² Public Interest Statement at 3; see also AT&T Information Request Response at 6-10.

network capacity to the benefit of AT&T's subscribers.⁷³ In particular, the Applicants maintain that the acquisition of the Lower 700 MHz spectrum would allow AT&T to support a 10×10 megahertz LTE deployment.⁷⁴ AT&T asserts that the capacity of a 10×10 megahertz block is greater than the total capacity of two separate 5×5 megahertz blocks,⁷⁵ and contends that the wider bandwidth results in noticeably better performance for users than a deployment using two 5×5 megahertz blocks.⁷⁶ In addition, the Applicants claim that, through this spectrum exchange, USCC also would augment its network capacity and improve services in the Illinois and North Carolina markets.⁷⁷ In particular, the Applicants maintain that USCC would use its acquired spectrum to implement enhanced LTE in the affected counties and improve its existing services.⁷⁸

22. *Evaluation.* We have reviewed the Applicants' asserted public interest benefits, as well as their detailed responses to our requests for additional information and documents regarding the potential public interest benefits of AT&T acquiring, in particular, the below-1-GHz spectrum at issue and USCC acquiring the AWS-3 and broadband PCS spectrum. The record provides general support for the Applicants' contentions that the proposed transaction would likely result in some public interest benefits post-transaction. Specifically, we anticipate that AT&T, through the acquisition of this Lower 700 MHz B Block and C Block spectrum, would be able to deploy a more robust LTE network in a relatively short period of time.⁷⁹ In addition, through the acquisition of this AWS-3 and broadband PCS spectrum, we anticipate that USCC also would be able to deploy a more robust LTE network and improve its services. Thus, as a result of the proposed transaction, customers are likely to benefit in the immediate future from access to improved LTE performance and a more robust network, resulting in a better customer experience.⁸⁰

V. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS

23. The Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms. After carefully evaluating the likely competitive effects of AT&T's increased aggregation of below-1-GHz spectrum in the five markets reviewed, we find that the ability of rival service providers to offer a competitive response to any anticompetitive behavior on the part of AT&T is unlikely to be materially lessened. Further, we find that the record provides general support for the Applicants' claims that the proposed transaction would likely

⁷³ Public Interest Statement at 3; *see also* AT&T Information Request Response at 6, 8-11.

⁷⁴ Public Interest Statement at 3; *see also* AT&T Information Request Response at 6-11.

⁷⁵ Public Interest Statement at 3; AT&T Information Request Response at 7-11. AT&T asserts that the 10 megahertz block would have approximately 10% more capacity than two 5 megahertz blocks. Public Interest Statement at 3.

⁷⁶ AT&T Information Request Response at 6-8. AT&T cites the 10×10 megahertz LTE deployment's greater trunking and signaling efficiencies, maintaining that these improvements result in higher system capacity, greater spectral efficiency, and better user throughput than is possible over two separate 5×5 megahertz blocks. AT&T Information Request Response at 6-9; *see also* AT&T Exhibits ATT-USCC000001, ATT-USCC000006, ATT-USCC000019, and ATT-USCC000042.

⁷⁷ Public Interest Statement at 2.

⁷⁸ *Id.* at 4.

⁷⁹ Regarding deployment, AT&T asserts that it recently began providing a 10×10 MHz LTE deployment using the Lower 700 MHz USCC licenses via short-term spectrum manager leases in four of the five markets implicated by the proposed transaction. AT&T Information Request Response at 6, 10.

⁸⁰ *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. As we noted in the *AT&T-Club 42 Order*, recognizing the public interest benefits of a 10×10 megahertz channel does not undermine our conclusion that 10×10 megahertz blocks are not required for effective mobile broadband deployment. *AT&T-Club 42 Order*, 30 FCC Rcd at 13076, para. 46 & n.185; *see also Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6210, para. 190.

result in some public interest benefits. Therefore, under our sliding scale approach, we find that the likelihood of harm is low and the potential public interest benefits outweigh any potential public interest harms. As a result, based on the record before us and our competitive review, we find that consent to the proposed assignment of these licenses would serve the public interest, convenience, and necessity.

VI. ORDERING CLAUSES

24. ACCORDINGLY, having reviewed the Applications and the record in this proceeding, IT IS ORDERED that, pursuant to Sections 4(i) and (j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d), the applications for the assignment of seven licenses held by United States Cellular Corporation to AT&T Inc. and the assignment of five licenses held by AT&T Inc. to United States Cellular Corporation are GRANTED.

25. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under Section 1.106 of the Commission's rules, 47 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.

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

FEDERAL COMMUNICATIONS COMMISSION

Jon Wilkins
Chief
Wireless Telecommunications Bureau