

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

In the Matter of)
)
Application of AT&T Mobility Spectrum LLC and) WT Docket No. 16-235
North Dakota Network Co.)
)
For Consent To Assign License)

MEMORANDUM OPINION AND ORDER

Adopted: January 6, 2017

Released: January 6, 2017

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the application of AT&T and North Dakota Network for Commission consent to the assignment to AT&T of one Lower 700 MHz C Block license covering part of one local market area in North Dakota. 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 part of one local market area. After carefully evaluating the likely competitive effects of AT&T’s increased aggregation of below-1-GHz spectrum in this local market area, 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 license 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 Mobility Spectrum LLC is an indirect wholly-owned subsidiary of AT&T Inc. (together with AT&T Mobility Spectrum LLC, AT&T), which is headquartered in Dallas, Texas, and is a communications holding company that ranks among the leading providers of telecommunications services in the United States.² North Dakota Network Co. (NDN, and

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.

together with AT&T, the Applicants), a subsidiary of SRT Communications, provides wireless service to substantial portions of several counties in North Dakota, including rural areas.³

3. *Description of the Transaction.* On June 6, 2016, AT&T and NDN filed the Application pursuant to Section 310(d) of the Communications Act of 1934, as amended (the Act),⁴ seeking Commission consent to assign one Lower 700 MHz C Block license to AT&T.⁵ Through the instant transaction, AT&T would be assigned 12 megahertz of low-band spectrum from NDN in six counties covering approximately 72 percent of the population of Cellular Market Area (CMA) 581 (North Dakota 2 – Bottineau).⁶ Post-transaction, AT&T would hold from 125 megahertz to 145 megahertz of spectrum in total, and in particular, it would increase its below-1-GHz holdings to 55 megahertz in these six counties in North Dakota 2 – Bottineau.⁷

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

³ Response of North Dakota Network Co. To the General Information Request Dated Aug. 24, 2016, at 3, Attachment A (Sept. 7, 2016) (NDN Information Request Response).

⁴ 47 U.S.C. § 310(d).

⁵ Application To Assign License from North Dakota Network Co. to AT&T Mobility Spectrum LLC, ULS File No. 0007286915 (filed June 6, 2016) (Application), Exhibit 1—Description of Transaction and Public Interest Statement (Public Interest Statement).

⁶ *AT&T Mobility Spectrum LLC and North Dakota Network Co. Seek FCC Consent To the Assignment of a Lower 700 MHz C Block License in North Dakota*, Public Notice, 31 FCC Rcd 9529 (WTB 2016) (*Accepted for Filing Public Notice*); see also Application, Exhibit 3—Spectrum Aggregation.

⁷ *Accepted for Filing Public Notice*, 31 FCC Rcd at 9529; Application, Exhibit 3—Spectrum Aggregation. As set out in the docket, the Bureau accepted the Application for filing and established a pleading cycle, released a public notice announcing that Numbering Resource Utilization and Forecast (NRUF) reports and local number portability (LNP) data would be placed into the record and adopted the associated protective order, adopted a protective order covering the submission of confidential and highly confidential information, and sent the Applicants information requests seeking further specific information relating to the proposed transaction.

⁸ 47 U.S.C. § 310(d).

⁹ See, e.g., *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 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.

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

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 NDN or AT&T, and in addition, AT&T previously and repeatedly has been found qualified to hold Commission licenses.²¹ We therefore find there is no reason

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 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 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.

to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Act and our rules, regulations, and policies, of NDN 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 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

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.

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.

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 of 12 megahertz of low-band spectrum that covers six counties in one local market, accounting for well under one percent of the population of the United States.

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

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.

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.*

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 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. The market does not 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 six counties covering approximately 72 percent of the population of this one local market 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

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.

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.

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.

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. In our competitive evaluation, we first note that North Dakota 2 – Bottineau is a very rural market of approximately 54,000 people with a population density of 5 people per square mile.⁵⁰ AT&T and Verizon Wireless each have a significant market share holding approximately [REDACTED] percent of the market, respectively. In addition, NDN has some market presence with approximately [REDACTED] percent of the market. Post-transaction, AT&T would hold from 125 megahertz to 145 megahertz of spectrum in this CMA, including 55 megahertz of spectrum below 1 GHz in these six counties, while the other three nationwide service providers hold from 32 megahertz to 117 megahertz of spectrum.⁵¹ Regarding below-1-GHz spectrum, Verizon Wireless holds 47 megahertz, Sprint holds 14 megahertz, T-Mobile holds 12 megahertz, and Polar Communications holds 12 megahertz covering approximately 28 percent of the population of Dakota 2 – Bottineau. In terms of population and land area coverage, AT&T and Verizon Wireless have significant 3G and LTE population and land area coverage, while T-Mobile has significant 3G and LTE land area coverage.⁵²

⁴⁷ Public Interest Statement at 3; *see also* Response of AT&T to the General Information Request Dated Aug. 24, 2016, at 10-13 (Sept. 7, 2016) (AT&T Information Request Response).

⁴⁸ AT&T Information Request Response at 10; *see also* NDN Information Request Response at 5 (Sept. 7, 2016) (describing the efforts of an investment bank that contacted six potential buyers regarding the spectrum at issue).

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).

⁵¹ We note that DISH holds 6 megahertz of unpaired low-band spectrum and 65 megahertz of spectrum above 1 GHz, while NDN would continue to hold 20 megahertz to 40 megahertz of above-1-GHz spectrum in parts of North Dakota 2 – Bottineau post-transaction. Further, ATN holds 10 megahertz of above-1-GHz spectrum in parts of this CMA.

⁵² 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.

In North Dakota 2 – Bottineau, AT&T covers 100% of the population and land area with 3G, while the comparable 3G population and land area network coverage percentages are approximately 97% and 92% for Verizon Wireless.

(continued...)

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 North Dakota 2 – Bottineau, that the likelihood of competitive harm in this very rural market is low after evaluating the particular factors ordinarily considered.⁵³ In this market, there are two nationwide service providers, AT&T and Verizon Wireless, with a significant market share, and in addition, NDN has some market presence.⁵⁴ Further, the four nationwide service providers all 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. We further note that other entities were actively solicited regarding this possible acquisition of the subject license, and therefore they also had the opportunity to acquire this low-band spectrum on the secondary market.⁵⁵ In terms of population and land area coverage, we note that in addition to AT&T, Verizon Wireless has significant 3G and LTE population and land area coverage, while T-Mobile has significant 3G and LTE land area coverage, and its 3G and LTE population coverage is close to significant. 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 ability of rival service providers to respond to any anticompetitive behavior on the part of AT&T in North Dakota 2 – Bottineau.

IV. POTENTIAL PUBLIC INTEREST BENEFITS

18. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.⁵⁶ Under Commission precedent, the Applicants bear the burden of demonstrating the potential public interest benefits of a proposed transaction.⁵⁷ The Commission applies several criteria in deciding whether a claimed benefit is cognizable. First, each claimed benefit must be transaction-specific.⁵⁸ Second, each claimed benefit must be verifiable.⁵⁹ 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.⁶⁰ The Commission applies a “sliding scale

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In addition, NDN covers approximately 40% of the population and land area with 3G, while T-Mobile covers approximately 67% of the population and 54% of the land area.

Regarding LTE coverage, AT&T covers approximately 96% of the population and 90% of the land area, while the comparable LTE population and land area network coverage percentages are approximately 98% and 95% for Verizon Wireless. In addition, T-Mobile covers approximately 67% of the population and 54% of the land area.

⁵³ See *supra* para. 15. See also, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5123, para. 36.

⁵⁴ NDN “determined that the best course for its wireless service would be to provide a PCS/AWS service, which made its 700 MHz license no longer significant to its deployment plans.” NDN Information Request Response at 5.

⁵⁵ *Id.*

⁵⁶ 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.

⁵⁷ 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.

⁵⁸ 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.

⁵⁹ 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.

⁶⁰ 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.

approach” to evaluating benefit claims.⁶¹ 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.”⁶² Conversely, where potential harms appear less likely and less substantial, as is the case here, we will accept a lesser showing to approve the proposed transaction.⁶³

19. *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.⁶⁴ 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 network capacity to the benefit of AT&T’s subscribers.⁶⁵ AT&T currently has licensed spectrum sufficient to deploy a 5×5 MHz LTE carrier in Lower 700 MHz spectrum.⁶⁶ However, AT&T states that through its spectrum manager leasing arrangement with NDN for spectrum associated with the license at issue, which recently took effect, AT&T is able to provide a 10×10 MHz LTE deployment on Lower 700 MHz in this market prior to the consummation of this transaction.⁶⁷ Through the proposed acquisition, AT&T maintains that it would enable AT&T to maintain this 10×10 MHz LTE deployment in the Lower 700 MHz spectrum in North Dakota 2 – Bottineau on a permanent basis.⁶⁸ 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,⁶⁹ and contends that the wider bandwidth results in noticeably better performance for users than a deployment using two 5×5 megahertz blocks.⁷⁰

20. *Evaluation.* We have reviewed the Applicants’ asserted public interest benefits, as well as their detailed responses to our requests for additional information and documents regarding the potential benefits of AT&T acquiring, in particular, the below-1-GHz spectrum at issue in North Dakota 2 – Bottineau. The record provides general support for the Applicants’ contentions that the proposed transaction would likely result in some public interest benefits post-transaction. Specifically, the acquisition of the license at issue from NDN will enable AT&T to provide a 10×10 MHz LTE

⁶¹ 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.

⁶² 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.

⁶³ 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.

⁶⁴ Public Interest Statement at 2; see also AT&T Information Request Response at 4-7.

⁶⁵ Public Interest Statement at 2; see also AT&T Information Request Response at 5-8.

⁶⁶ Public Interest Statement at 3; see also AT&T Information Request Response at 4.

⁶⁷ AT&T Information Request Response at 4-5, 8. AT&T has deployed this spectrum pursuant to its spectrum manager leasing arrangement with NDN. *Id.* at 5.

⁶⁸ AT&T Information Request Response at 5.

⁶⁹ Public Interest Statement at 3; AT&T Information Request Response at 5-7. AT&T asserts that the 10 megahertz block would have approximately 10% more capacity than two 5 megahertz blocks. Public Interest Statement at 3; see also AT&T Information Request Response at 7.

⁷⁰ AT&T Information Request Response at 7. 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 5-7; see also AT&T Exhibits ATT-NDN000001, ATT-NDN000006, ATT-NDN000019, and ATT-NDN000042.

deployment on the Lower 700 MHz spectrum to its subscribers.⁷¹ 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.⁷²

V. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS

21. 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 North Dakota 2 – Bottineau, 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 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 would serve the public interest, convenience, and necessity.

VI. ORDERING CLAUSES

22. ACCORDINGLY, having reviewed the Application and the record in this proceeding, IT IS ORDERED that, pursuant to Sections 4(i) and (j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d), the application for the assignment of one license held by North Dakota Network Co. to AT&T Mobility Spectrum LLC is GRANTED.

23. 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.

24. 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

⁷¹ AT&T Information Request Response at 5.

⁷² 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.