

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

In the Matter of )
Application of AST Telecom, LLC, and ) WT Docket No. 16-264
Club 42CM Limited Partnership )
For Consent To Assign Licenses )

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 Bluesky and Club 42 for Commission consent to the assignment to Bluesky of a Lower 700 MHz B Block license and a Lower 700 MHz E Block license covering American Samoa. 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, Bluesky 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 American Samoa. After carefully evaluating the likely competitive effects of Bluesky's increased aggregation of below-1-GHz spectrum in American Samoa, 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 the deployment of LTE in American Samoa, increased network quality, and a better consumer experience in this hard-to-serve market area. Based on the record before us and our public interest review, we find that the proposed assignment of 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. AST Telecom, LLC, d/b/a Bluesky (Bluesky), is a Delaware limited liability company whose principal business is the provision of facilities-based communications services in American Samoa.2 Club 42CM Limited Partnership (Club 42, and together

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 Bluesky is a wholly-owned, direct subsidiary of eLandia International, Inc. (eLandia International), a Delaware corporation that is a diversified holding company with investments in the information technology and communications sectors. Application of AST Telecom, LLC, and Club 42CM Limited Partnership for Consent To Assign Licenses, ULS File No. 0007294780 (filed June 7, 2016) (Application), Exhibit 1—Description of Transaction and Public Interest Statement at 2 (Public Interest Statement).

with Bluesky, the Applicants) is a limited partnership formed under the laws of the state of Nevada, and does not currently provide mobile wireless services.<sup>3</sup>

3. *Description of the Transaction.* On June 7, 2016, Bluesky and Club 42 filed the Application pursuant to Section 310(d) of the Communications Act of 1934, as amended (the Act),<sup>4</sup> seeking Commission consent to assign a Lower 700 MHz B Block license and a Lower 700 MHz E Block license from Club 42 to Bluesky.<sup>5</sup> Through the instant transaction, Bluesky would be assigned 18 megahertz of low-band spectrum from Club 42 in Cellular Market Area (CMA) 733 (American Samoa).<sup>6</sup> Post-transaction, Bluesky would hold from 80 megahertz to 105 megahertz of spectrum in total, and in particular, it would increase its below-1-GHz holdings to 55 megahertz in most of the American Samoa CMA.<sup>7</sup>

4. *Standard of Review.* Pursuant to Section 310(d) of the Act,<sup>8</sup> we must determine whether the Applicants have demonstrated that the proposed assignment of licenses would serve the public interest, convenience, and necessity.<sup>9</sup> In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act,<sup>10</sup> other applicable statutes, and the Commission's rules.<sup>11</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>12</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>3</sup> *Id.*

<sup>4</sup> 47 U.S.C. § 310(d).

<sup>5</sup> Public Interest Statement at iii.

<sup>6</sup> *AST Telecom, LLC d/b/a Bluesky, and Club 42 CM Limited Partnership Seek FCC Consent To the Assignment of Two Lower 700 MHz Licenses in American Samoa*, Public Notice, 31 FCC Rcd 10680 (WTB 2016) (*Accepted for Filing Public Notice*); see also Application, Exhibit 2—Spectrum Aggregation Analysis.

<sup>7</sup> *Accepted for Filing Public Notice*, 31 FCC Rcd at 10680; Application, Exhibit 2—Spectrum Aggregation Analysis. 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.

<sup>8</sup> 47 U.S.C. § 310(d).

<sup>9</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., 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>10</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-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>11</sup> 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.

<sup>12</sup> 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.

interest benefits.<sup>13</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>14</sup>

5. The Commission has fully discussed the contours of the required public interest determination in several orders,<sup>15</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>16</sup> 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.<sup>17</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>18</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>19</sup>

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.<sup>20</sup> We note that no issues were raised with respect to the basic qualifications of Club 42 or Bluesky, and in addition, Bluesky previously and repeatedly has been found qualified to hold Commission licenses.<sup>21</sup> 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 Club 42 or Bluesky.<sup>22</sup>

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<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</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>16</sup> 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.

<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> 47 U.S.C. § 309(e); see also, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3635, 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).

<sup>20</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>21</sup> See, e.g., FCC Application for Renewal of Call Sign KNLF302, ULS File No. 0006800367 (filed May 12, 2015, and granted July 8, 2015); FCC Application for a Cellular License, File No. 0003114067 (filed July 17, 2007, and granted Sept. 10, 2007).

<sup>22</sup> 47 U.S.C. § 310(d); 47 CFR § 1.948.

### III. POTENTIAL PUBLIC INTEREST HARMS

7. *Competitive Overview.* In its examination of a proposed transaction, the Commission evaluates the potential public interest harms and undertakes a case-by-case review of the competitive effects of any increase in market concentration or in spectrum holdings in the relevant markets.<sup>23</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>24</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>25</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>26</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>27</sup> 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.<sup>28</sup>

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,<sup>29</sup> and that the leading two nationwide service providers hold most of the low-band spectrum available today.<sup>30</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>31</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

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<sup>23</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>24</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; see also *AT&T-Leap Order*, 29 FCC Rcd at 2752, 2753, 2755-56, paras. 39, 41, 47.

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

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

<sup>27</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 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>28</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, para. 286.

<sup>29</sup> *Id.* at 6164, para. 60.

<sup>30</sup> *Id.* at 6156-57, 6162, 6164, paras. 46, 58, 60.

<sup>31</sup> *Id.* at 6164, para. 60.

services.<sup>32</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>33</sup>

#### A. Market Definitions

9. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,<sup>34</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.

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).<sup>35</sup> In addition, we find that the relevant geographic market is local.<sup>36</sup> The Applicants are seeking Commission approval of the proposed assignment of 18 megahertz of low-band spectrum that covers American Samoa, accounting for well under one percent of the population of the United States and its territories.

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

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

<sup>33</sup> *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.

<sup>34</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>35</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.

<sup>36</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>37</sup> *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.

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

<sup>39</sup> *Id.*

<sup>40</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

## 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.<sup>41</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>42</sup> 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.<sup>43</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>44</sup>

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. This market does not trigger the total spectrum screen,<sup>45</sup> but in our review of the below-1-GHz spectrum holdings, we find that Bluesky would hold more than one-third, or more than 45 megahertz, of the currently suitable and available below-1-GHz spectrum in two parts of this local market post-transaction.<sup>46</sup> 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 will put unused spectrum to work for wireless consumers in American Samoa without diminishing wireless competition.<sup>47</sup> Bluesky states that the company seeks to deploy LTE and expand coverage in critical areas in American Samoa, a remote and underserved telecommunications market.<sup>48</sup> Bluesky asserts that American Samoa faces

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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.

<sup>41</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, 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.

<sup>42</sup> *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.

<sup>43</sup> *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.

<sup>44</sup> *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.

<sup>45</sup> *See supra* para. 11; *see also Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3637-39, paras. 15, 17 & n.52.

<sup>46</sup> *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.

<sup>47</sup> Public Interest Statement at iii; *see also* Response of AST Telecom, LLC, To the General Information Request Dated Sept. 21, 2016, at 9 (Oct. 6, 2016) (Bluesky Information Request Response).

<sup>48</sup> Public Interest Statement at 1, 6-7.

unique geographic and economic characteristics because of its remoteness and there are significant obstacles to facilities-based investment in American Samoa.<sup>49</sup> Bluesky argues that although it will increase its holdings of below-1-GHz spectrum in American Samoa as a result of the transaction, the American Samoa Telecommunications Authority (ASTCA), Bluesky's competitor, possesses a sufficient amount of low-band spectrum to compete effectively against Bluesky, and additional low-band spectrum remains available to support rival service expansions on the islands.<sup>50</sup> 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.<sup>51</sup>

16. American Samoa, a small and remote unincorporated U.S. territory located in the South Pacific Ocean, is a non-rural market of approximately 56,000 people, and a population density of 459 people per square mile.<sup>52</sup> Two local service providers, Bluesky and ASTCA, each have a significant market share in American Samoa. Post-transaction, Bluesky would hold from 80 megahertz to 105 megahertz of spectrum in this CMA, including 30 megahertz to 55 megahertz of spectrum below 1 GHz, while ASTCA holds between 112 megahertz to 137 megahertz of spectrum, including 12 megahertz to 37 megahertz of spectrum below 1 GHz.<sup>53</sup> In addition to these two service providers, AT&T holds 6 megahertz of low-band spectrum, Sprint holds 14 megahertz, and Club 42 would continue to hold 22 megahertz of such spectrum post-transaction. In terms of population and land area coverage, Bluesky and ASTCA have significant 3G population coverage covering approximately 94 percent and 98 percent, respectively, while their land area coverage is approximately 40 percent and 46 percent, respectively.<sup>54</sup> Further, Bluesky covers approximately 94 percent of the population and 40 percent of the land area with HSPA+.

17. As we have done in other contexts, we consider the specific and unique conditions in

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<sup>49</sup> *Id.* at 5-6 (maintaining that American Samoa's location in the South Pacific exposes it to risk of devastation from tropical storms, hurricanes, and other natural disasters; further, a 2009 earthquake and tsunami caused extensive damage to Tutuila (where 98% of the population of American Samoa is located), including to its electric and telecommunications infrastructure).

<sup>50</sup> *Id.* at 9.

<sup>51</sup> 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.

<sup>52</sup> 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 or less per square mile. *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).

<sup>53</sup> In addition, we note that DISH holds 65 megahertz of spectrum above 1 GHz.

<sup>54</sup> 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.

American Samoa as an integral part of our competitive analysis.<sup>55</sup> We find notwithstanding the fact that Bluesky would hold, as a result of the proposed transaction, more than one-third of the below-1-GHz spectrum in American Samoa, that the likelihood of competitive harm is low. In American Samoa, both local service providers have a significant market share. Further, ASTCA has 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 its low-band spectrum holdings for LTE deployment. We also note that 36 megahertz of paired low-band spectrum remains held in this market by parties other than the two regional service providers, including 14 megahertz of SMR allowing for a 5×5 megahertz LTE deployment, and 22 megahertz of Upper 700 MHz C Block spectrum allowing for a 10×10 megahertz LTE deployment. In terms of population coverage, Bluesky and ASTCA both have significant 3G coverage. Moreover, as the Commission noted in the *Mobile Spectrum Holdings Report and Order*, non-nationwide service providers present a significantly lower risk of effectively denying access to low-band spectrum to competitors because of their relative lack of resources.<sup>56</sup> We find that the acquisition of this below-1-GHz spectrum by Bluesky is unlikely to foreclose rival service providers from entering or expanding in American Samoa, 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 Bluesky in American Samoa.

#### IV. POTENTIAL PUBLIC INTEREST BENEFITS

18. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.<sup>57</sup> Under Commission precedent, the Applicants bear the burden of demonstrating the potential public interest benefits of a proposed transaction.<sup>58</sup> The Commission applies several criteria in deciding whether a claimed benefit is cognizable. First, each claimed benefit must be transaction-specific.<sup>59</sup> Second, each claimed benefit must be verifiable.<sup>60</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.<sup>61</sup> The Commission applies a “sliding scale

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<sup>55</sup> We have considered the unique characteristics of the affected geographies in other transactions. See, e.g., *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); *Applications of AT&T Mobility Spectrum LLC, 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*, Memorandum Opinion and Order and Declaratory Ruling, 31 FCC Rcd. 7890, 7900, para. 23 (WTB/IB 2016); *Application of The Alaska Wireless Network, LLC, and T-Mobile License LLC for Consent To Assign License*, Memorandum Opinion and Order, 31 FCC Rcd 4447, 4456, para. 21 (WTB 2016); *Alaska Wireless Order*, 28 FCC Rcd at 10435, para. 3.

<sup>56</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6207, para. 180.

<sup>57</sup> See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647, 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.

<sup>58</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>59</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>60</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>61</sup> 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 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.

approach” to evaluating benefit claims.<sup>62</sup> 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>63</sup> 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.<sup>64</sup>

19. *Record.* The Applicants assert, in their detailed demonstration of the claimed benefits, that the proposed transaction would enable Bluesky to improve coverage within its existing footprint and to expand coverage to reach additional coastal areas that are critical to American Samoa’s economy.<sup>65</sup> According to the Applicants, the superior signal penetration of Lower 700 MHz spectrum would allow Bluesky to improve coverage within its existing network footprint, and promote more seamless and reliable access to mobile services on the islands.<sup>66</sup> The Applicants assert that the additional spectrum would be used to deploy Bluesky’s 4G network using LTE technology and would increase network capacity to the benefit of Bluesky’s subscribers.<sup>67</sup> In particular, the Applicants maintain that the acquisition of this spectrum is necessary for Bluesky to increase coverage, capacity, and device interoperability.<sup>68</sup> Bluesky asserts that in order to support the delivery of Lower 700 MHz LTE services it needs additional spectrum beyond the Lower 700 MHz A Block spectrum it holds today.<sup>69</sup> Accordingly, Bluesky maintains that it plans to use the Lower 700 MHz B Block spectrum that it would acquire together with its existing Lower 700 MHz A Block license to deliver high-speed LTE services in American Samoa to meet the needs of wireless consumers on the island.<sup>70</sup>

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 Bluesky acquiring, in particular, the below-1-GHz spectrum at issue in American Samoa. 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 Bluesky, through the acquisition of this low-band spectrum, would be better able to deploy a LTE network in American Samoa. Thus, as a result of the proposed transaction, customers are likely to benefit from the deployment of LTE and a more robust network, resulting in a better customer experience on American Samoa.<sup>71</sup>

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<sup>62</sup> See, e.g., *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.

<sup>63</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.

<sup>64</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.

<sup>65</sup> Public Interest Statement at iii, 7; see also Bluesky Information Request Response at 4-5.

<sup>66</sup> Public Interest Statement at 7.

<sup>67</sup> *Id.* at 6-7, 9; see also Bluesky Information Request Response at 5-6.

<sup>68</sup> Public Interest Statement at 9; see also Bluesky Information Request Response at 4-7.

<sup>69</sup> Bluesky Information Request Response at 3.

<sup>70</sup> *Id.* at 3, 6.

<sup>71</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. 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.

**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 Bluesky's increased aggregation of below-1-GHz spectrum in American Samoa, we find that the ability of rival service providers to offer a competitive response to any anticompetitive behavior on the part of Bluesky 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 two licenses held by Club 42CM Limited Partnership to AST Telecom, LLC, d/b/a Bluesky, 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