

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

In the Matter of)
)
Application of T-Mobile License LLC and Channel) ULS File No. 0009021213
51 License Company LLC for Spectrum Manager)
Lease Arrangement)
)
Application of T-Mobile License LLC and LB) ULS File No. 0009021220
License Co, LLC for Spectrum Manager Lease)
Arrangement)

ORDER ON RECONSIDERATION

Adopted: December 3, 2020

Released: December 3, 2020

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order on Reconsideration, we deny Verizon’s petition for reconsideration¹ of the Wireless Telecommunications Bureau’s (Bureau) acceptance of T-Mobile License LLC’s Spectrum Manager Lease Arrangements with Channel 51 License Company LLC and LB License Co, LLC.² We also dismiss requests by AT&T and T-Mobile to revise the Commission’s spectrum screen here.³ While wholesale changes to our mobile spectrum holdings policies are outside the scope of the instant proceeding, we nonetheless take this opportunity to acknowledge the substantial amount of spectrum that the Commission has made available for mobile wireless services since the Commission adopted these policies in 2014.⁴ We also emphasize that the Commission’s screen is not a hard cap on a company’s

¹ Corrected Verizon Petition for Reconsideration, File Nos. 0009021213 & 0009021220 (filed Aug. 7, 2020) (Petition). The Verizon companies participating in this proceeding are the regulated, wholly owned subsidiaries of Verizon Communications Inc. Id. at 1 & n.1.

² See Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports Action, Public Notice, Report No. 15137, at 19 (July 15, 2020) (Action Public Notice); see also Application of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements, Order on Reconsideration, 27 FCC Rcd 16444, 16445, para. 2 (2012); General Motors Corp. and Hughes Electronics Corp., Transferors, and The News Corp. Ltd., Transferee, For Authority to Transfer Control, MB Docket No. 03-124, Order on Reconsideration, 23 FCC Rcd 3131, 3132, para. 4 (2008).

³ 47 CFR § 1.106(p)(5).

⁴ Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Report and Order, 29 FCC Rcd 6133 (2014) (Mobile Spectrum Holdings Report and Order).

holding but simply a trigger for further competitive analysis regarding the impact of a transaction on the competitive market for wireless services.

II. BACKGROUND

2. On March 24, 2020, LB License Co, LLC (LB License) and Channel 51 License Company LLC (Channel 51) each filed an application notifying the Commission that it had entered into a long-term spectrum manager lease agreement with T-Mobile License LLC (T-Mobile) (together with LB License and Channel 51, collectively, the Applicants),⁵ pursuant to section 1.9020 of the Commission's rules.⁶ The spectrum manager leases expire on February 28, 2023. The Applicants indicated that T-Mobile will operate a wireless communications system using LB License's 600 MHz licenses and Channel 51's 600 MHz licenses specified in the applications.⁷ The Applicants amended the applications on March 25, 2020, and June 23, 2020. The Bureau undertook a thorough review of the spectrum leasing applications pursuant to the Commission's rules⁸ and performed a competitive analysis—including enhanced factor review—of the leased spectrum.⁹ The spectrum manager lease notifications were accepted on July 9, 2020.¹⁰

3. On August 7, 2020, Verizon filed a single petition requesting reconsideration of the Bureau's acceptance of the spectrum manager lease applications and asserting that the Commission should conduct a competitive analysis of the spectrum leasing arrangements of a type that normally is applied to transactions that exceed the spectrum screen.¹¹ Verizon requests that the Commission conduct a "searching inquiry" into the competitive consequences of the lease arrangements and, if there are competitive harms, reject the applications or, as an alternative, require spectrum divestitures.¹² Verizon argues that the leasing arrangements exacerbate the extent to which T-Mobile exceeds the spectrum screen.¹³

III. DISCUSSION

4. We deny Verizon's petition and find that accepting the spectrum manager leasing notifications would serve the public interest. We also dismiss requests by various other parties to revisit the Commission's spectrum holdings policies, including its previous decisions regarding the

⁵ See ULS File Nos. 0009021220 (LB License) and 0009021213 (Channel 51).

⁶ See 47 CFR § 1.9020.

⁷ Description of Transaction and Public Interest Statement, ULS File No. 0009021213, 5 (filed Mar. 23, 2020); Description of Transaction and Public Interest Statement, ULS File No. 0009021220, 5 (filed Mar. 23, 2020) (collectively, Public Interest Statements).

⁸ See 47 CFR § 1.9020(g) (post-notification review where Commission determines spectrum manager lease "raises foreign ownership, competitive, or other public interest concerns"); see also 47 CFR § 20.22(a).

⁹ See 47 CFR § 20.22(a). The Commission applies its spectrum screen and case-by-case analysis to evaluate the likely competitive effects of increased spectrum aggregation in secondary market transactions. *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6221-22, para. 225. For purposes of its application of the spectrum screen, the Commission includes in T-Mobile's spectrum holdings the kind of spectrum leases at issue here. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6245, para. 301 (confirming the Commission's practice of attributing "long-term spectrum leasing arrangements, with limited exceptions, to both lessee and lessor").

¹⁰ See Action Public Notice; 47 CFR § 1.9020(e)(1)(iii), (e)(2)(iv).

¹¹ Petition at 2.

¹² *Id.* at 1-2.

¹³ *Id.* at 1, 3, 8-14.

T-Mobile/Sprint transaction¹⁴ and the Commission's approach to spectrum holdings for the 3.7-4.2 GHz band in the *3.7 GHz Report and Order*.¹⁵ We nonetheless note the substantial increase in available spectrum for facilities-based mobile wireless services that has occurred since the Commission adopted those policies in 2014, and we emphasize that the Commission's spectrum screen is not a hard cap on a company's holdings but instead is simply a threshold for further competitive analysis.

A. Spectrum Leases

5. We reaffirm our finding that the likelihood of competitive harm resulting from the leasing arrangements is low.¹⁶ Further, we find that the transactions are likely to lead to public interest benefits, such as the use of this spectrum for the deployment of 5G products and services to the benefit of American consumers. Overall, we conclude that the leasing arrangements' potential public interest benefits outweigh any potential public interest harms.

6. *Standard for Analysis.* In reviewing applications involving a proposed transaction, the Commission evaluates the potential public interest harms, including potential competitive harms that may result from the transaction.¹⁷ We also consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.¹⁸ Under Commission precedent, the Applicants bear the burden of demonstrating the potential public interest benefits of a proposed transaction.¹⁹ The Commission applies a "sliding scale approach" to evaluating benefit claims.²⁰ 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."²¹ Conversely,

¹⁴ *Applications of T-Mobile US, Inc., and Sprint Corporation For Consent To Transfer Control of Licenses and Authorizations; Applications of American H Block Wireless L.L.C., DBSD Corporation, Gamma Acquisition L.L.C., and Manifest Wireless L.L.C. for Extension of Time*, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578 (2019) (*T-Mobile/Sprint Order*).

¹⁵ AT&T Comments at 1-2, 5; T-Mobile Reply to AT&T at 6; Letter from Gregory Guice, Director of Government Affairs, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, T-Mobile License LLC Spectrum Manager Lease Arrangements ULS File Nos. 0009021213 & 0009021220, and T-Mobile De Facto Transfer Arrangement ULS File No. 0009217476, 3 (filed Oct. 20, 2020) (Public Knowledge Oct. 20 *Ex Parte* Letter). See *Expanding Flexible Use of the 3.7 to 4.2 GHz*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2345, para. 4 (2020) (*3.7 GHz Report and Order*).

¹⁶ The two applications are virtually identical, were filed simultaneously, involve similar leasing arrangements between T-Mobile and the lessors, involve lessors with common ownership, and are the subject of a single petition for reconsideration.

¹⁷ See, e.g., *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, 5113, para. 12 (2015) (*AT&T/Plateau Wireless Order*). As the instant transaction does not result in the acquisition of wireless business units and customers, we do not apply the initial Herfindahl-Hirschman Index (HHI) screen. *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, 13066, para. 24 (2015) (*AT&T/Club 42 Order*).

¹⁸ See, e.g., *T-Mobile/Sprint Order*, 34 FCC Rcd at 10596, para. 41; *AT&T/Plateau Wireless Order*, 30 FCC Rcd at 5126, para. 43.

¹⁹ *T-Mobile/Sprint Order*, 34 FCC Rcd at 10596, para. 41.

²⁰ *Application of Cellco Partnership d/b/a Verizon Wireless and Nextlink Wireless, LLC For Consent to Long-Term De Facto Transfer Spectrum Leasing Arrangement*, Memorandum, Opinion, and Order, 31 FCC Rcd 7767, 7777, para. 22 (WTB 2016) (*Verizon Wireless/Nextlink Order*).

²¹ *Verizon Wireless/Nextlink Order*, 31 FCC Rcd at 7777, para. 22.

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.²²

7. As part of its competitive analysis, the Commission employs an initial spectrum screen and case-by-case review to evaluate the likely competitive effects resulting from increased spectrum aggregation through secondary market transactions.²³ In the *Mobile Spectrum Holdings Report and Order*, the Commission additionally determined that any increase in spectrum holdings below 1 GHz would be treated as an “enhanced factor” for case-by-case review if post-transaction the acquiring entity would hold approximately one-third or more of the suitable and available spectrum below 1 GHz.²⁴

8. *Market Definitions, Input Market for Spectrum, and Market Participants.* We begin the competitive analysis by determining the appropriate market definitions for the transaction,²⁵ 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. Consistent with recent transaction orders and the Bureau’s initial analysis, we find that the relevant product market for the proposed leases 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).²⁶ In addition, we analyze the transaction at the local level.²⁷ At the time of filing of the spectrum manager leasing notifications, the total amount of spectrum suitable and available for the provision of mobile telephony/broadband services was 715.5 megahertz, with an associated spectrum screen trigger of 240 megahertz.²⁸ Finally, we consider facilities-

²² *Id.*

²³ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223-24, para. 231. Further, we point out that the screen is the first step in our competitive evaluation, and, as the Commission has previously found, *ex ante* limits on spectrum aggregation may prevent transactions that are in the public interest. *Id.*

²⁴ *Id.* at 6233, 6238-40, paras. 267, 282-88. The Commission established enhanced factor review in a rulemaking, and we therefore apply it in this competitive analysis, as the Commission did in the *T-Mobile/Sprint Order*. *T-Mobile/Sprint Order*, 34 FCC Rcd at 10621, para. 101 & n.329. As the Commission explained in that order, however, concerns expressed in the dissent from the *Mobile Spectrum Holdings Report and Order* appear to have come to pass; for example, mid-band spectrum has grown in value as a competitive asset as a result of technological innovation. *Id.* (citing *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6268, 6271-74 (dissenting Statement of Commissioner Ajit Pai)). The Commission has indicated that reexamination of enhanced factor review may be warranted in a future rulemaking. *T-Mobile/Sprint Order*, 34 FCC Rcd at 10621, para. 101 & n.329.

²⁵ See, e.g., *T-Mobile/Sprint Order*, 34 FCC Rcd at 10601-10, paras. 55-78.

²⁶ See, e.g., *id.* at 10603, para. 60; *AT&T/Plateau Wireless Order*, 30 FCC Rcd at 5115-16, para. 18.

²⁷ See, e.g., *T-Mobile/Sprint Order*, 34 FCC Rcd at 10605, para. 66; *AT&T/Plateau Wireless Order*, 30 FCC Rcd at 5116, para. 19. See Public Interest Statements at 12-13.

²⁸ We previously discounted the available 112.5 megahertz of EBS spectrum such that 89 megahertz was included in the screen for review of proposed secondary market transactions. *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6177-79, 6184-6187, paras. 100-02, 118-25. Following the adoption of the *2.5 GHz Report and Order*, which became effective on April 27, 2020, the amount of EBS spectrum now included in the spectrum screen increased to 116.5 megahertz, which resulted in an increase of the current screen trigger to 250 megahertz. *Transforming the 2.5 GHz Band*, Report and Order, WT Docket No. 18-120, 34 FCC Rcd 5446, 5481, 5482-83, para. 96 & n.279, paras. 99-100 (2019); *T-Mobile/Sprint Order*, 34 FCC Rcd at 10608, para. 72 & n.228. While the Applicants’ original public interest showing was made with respect to a spectrum screen with a trigger of 240 megahertz, and where the EBS spectrum was discounted, our conclusions about the competitive effects of the transaction do not change under the current screen with a trigger of 250 megahertz without discounting the EBS spectrum.

based entities providing mobile telephony/broadband services using these spectrum bands to be market participants.²⁹

9. *Competitive Analysis.* T-Mobile would lease 10 to 30 megahertz of 600 MHz spectrum in 204 counties in all or parts of 64 cellular market areas (CMAs) through these two leasing arrangements, which together cover approximately 32% of the population of the United States.³⁰ After the transactions, T-Mobile would be attributed with a maximum of 362.5 megahertz of spectrum in the CMAs, including a maximum of 76 megahertz of below-1-GHz spectrum.³¹ We therefore evaluated both its total spectrum holdings, as well as undertook enhanced factor review.

10. As an initial matter, we note that neither lessor currently provides services to end-user customers on the leased spectrum; thus, as Applicants explain, there would be no discontinuance, reduction, loss, or impairment of service to end-user customers and no loss of an existing service provider in any market as a result of the leases.³² The Applicants additionally note that T-Mobile will remain below the applicable limit for low-band spectrum holdings in 88% of the counties covered by the leasing arrangements, even when taking into account overlapping Sprint spectrum.³³

11. Moreover, during the past four years, the Commission has made available—or is in the process of making available—over 5 gigahertz of additional spectrum for flexible use in the low-, mid-, and high-bands. For example, the Commission has made 70 megahertz available for licensed flexible use in the 600 MHz band through the broadcast incentive auction.³⁴ The Commission recently auctioned 70 megahertz of spectrum in the 3.5 GHz band through Priority Access Licenses.³⁵ The 70 megahertz of

²⁹ See, e.g., *T-Mobile/Sprint Order*, 34 FCC Rcd at 10609, para. 73. As in previous transactions, we account for the competitive role that mobile virtual network operators (MVNOs) may play. See *id.* at 10609-11, paras. 73, 78. In addition, we note that facilities-based service providers may also provide mobile telephony/broadband services using millimeter-wave spectrum.

³⁰ The spectrum leases range from 10 to 20 megahertz across all or parts of most CMAs, with 30 megahertz of spectrum being leased in all or parts of two CMAs. ULS File Nos. 0009021213 and 0009021220, Exhibit 4, Spectrum Aggregation Analysis, 1 (filed June 23, 2020) (Spectrum Aggregation Analysis) (noting that the leasing arrangements result in an additional 30 megahertz of spectrum in Dallas–Fort Worth, TX (CMA 9) and in one county in Sherman–Denison, TX (CMA 292)).

³¹ Enhanced factor review is triggered if, post-transaction, the entity would hold approximately one-third or more of the suitable and available amount of low-band spectrum. The current trigger is 68 megahertz.

³² Public Interest Statements at 1, 4. See *AT&T/Club 42 Order*, 30 FCC Rcd at 13076-77, paras. 46-47 (noting the benefits of near-term deployment of currently fallow spectrum).

³³ Public Interest Statements at 3-4.

³⁴ FCC, *Broadcast Incentive Auction and Post-Auction Transition*, <https://www.fcc.gov/about-fcc/fcc-initiatives/incentive-auctions> (last visited Oct. 27, 2020); Press Release, FCC, Post-Incentive Auction Transition Successfully Meets 39-Month Deadline (July 13, 2020), <https://docs.fcc.gov/public/attachments/DOC-365479A1.pdf> (Post-Incentive Auction Transition Press Release); see also *Review of the Commission's Rules Governing the 896-901/935-940 MHz Band*, WT Docket No. 17-200, Report and Order, Order of Proposed Modification, and Orders, 35 FCC Rcd 5183 (2020) (realigning the 900 MHz band to enable broadband use of the spectrum).

³⁵ *Auction of Priority Access Licenses For the 3550-3650 MHz Band; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 105; Bidding in Auction 105 scheduled to Begin June 25, 2020*, AU Docket No. 19-244, Public Notice, 35 FCC Rcd 2140 (2020) (rescheduled from June 25, 2020 to July 23, 2020 due to the COVID-19 pandemic); *Auction of Priority Access Licenses in the 3550-3650 MHz Band; Winning Bidders Announced for Auction 105*, AU Docket No. 19-244, Public Notice, DA 20-1009, at 1, para. 1, <https://auctionfiling.fcc.gov/form175/search175/index.htm> (OEA, WTB Sept. 2, 2020). Given the unique characteristics of this band, the Commission did not include this spectrum in its spectrum screen as applied to

(continued....)

Priority Access Licenses spectrum is part of the larger 150 megahertz of spectrum in the 3.5 GHz band available for use through an innovative, three-tiered licensing framework. The Commission has also freed-up additional rural 2.5 GHz spectrum for mobile wireless use—the largest swath of contiguous spectrum in the country below 3 GHz.³⁶ In February 2020, the Commission adopted an order to make 280 megahertz of the 3.7-4.2 GHz band (C-band) available via competitive bidding, which will begin in December 2020.³⁷ Following the C-Band auction, the amount of “suitable and available” spectrum will increase to 1,023 megahertz.³⁸ In addition, the Commission has proposed to make 100 megahertz of spectrum in the 3.45-3.55 GHz band available for flexible use,³⁹ and it has adopted rules permitting expanded use of 50 megahertz of previously underutilized spectrum in the 4.9 GHz band.⁴⁰ The Commission has also conducted three auctions to make 4,950 megahertz of millimeter-wave spectrum available to mobile providers for licensed use.⁴¹ In light of the Commission’s ongoing efforts to increase the total supply of spectrum that it allocates and licenses for mobile broadband use,⁴² we find it highly unlikely that T-Mobile’s additional aggregation of 10 to 30 megahertz of spectrum will foreclose entry into the market or raise rivals’ costs.

secondary market transactions. *Promoting Investment in the 3550-3770 MHz Band*, GN Docket No. 17-258, Report and Order, 33 FCC Rcd 10598, 10653-54, para. 107 & n.410.

³⁶ *Transforming the 2.5 GHz Band*, Report and Order, WT Docket No. 18-120, 34 FCC Rcd 5446, 5447, para. 3 (2019).

³⁷ *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2345, 2413, paras. 3-4, 168 (2020) (*3.7 GHz Report and Order*); *Auction of Flexible-Use Service Licenses in the 3.7-3.98 GHz Band for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 107; Bidding in Auction 107 Scheduled to Begin December 8, 2020*, AU Docket No. 20-25, Public Notice, 35 FCC Rcd 8404, 8406, paras. 1-2 (Aug. 7, 2020).

³⁸ See *3.7 GHz Report and Order*, 35 FCC Rcd at 2383-84, para. 87-89.

³⁹ *Facilitating Shared Use in the 3100-3550 MHz Band*, WT Docket No. 19-348, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 11078, 11079, 11110, paras. 4, 94 (2020). Through these proceedings, the Commission is on track to have a contiguous 530-megahertz of spectrum made available from 3.45-3.98 GHz. *Remarks of FCC Chairman Ajit Pai to the CTIA 5G Summit*, <https://docs.fcc.gov/public/attachments/DOC-367849A1.pdf> (last visited Nov. 17, 2020).

⁴⁰ *Amendment of Part 90 of the Commission’s Rules*, WT Docket No. 07-100, Sixth Report and Order and Seventh Further Notice of Proposed Rulemaking, FCC 20-137 (rel. Oct. 2, 2020).

⁴¹ Auctions 101, 102, and 103 collectively made available spectrum in the 28 GHz, 24 GHz, and Upper 37 GHz, 39 GHz, and 47 GHz bands. *Auction of 28 GHz Upper Microwave Flexible Use Service Licenses for Next-Generation Wireless Services Closes; Gross Winning Bids Amounts Announced for Auction 101*, AU Docket No. 18-85, Public Notice, 34 FCC Rcd 75 (WTB 2019) (*28 GHz Auction Public Notice*); *Auction of 24 GHz Upper Microwave Flexible Use Service Licenses Closes, Winning Bidders Announced for Auction 102*, AU Docket No. 18-85, Public Notice, 34 FCC Rcd 4294 (OEA, WTB 2019) (*24 GHz Auction Public Notice*); *Incentive Auction of Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz, and 47 GHz Bands for Next-Generation Wireless Services, Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 103*, AU Docket No. 19-59, Public Notice, 34 FCC Rcd 5532 (2019) (*37 GHz, 39 GHz, and 47 GHz Auction Procedures Public Notice*); *Incentive Auction of Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz, and 47 GHz Bands for Next-Generation Wireless Services, Winning Bidders Announced for Auction 103*, AU Docket No. 19-59, Public Notice, 35 FCC Rcd 2015 (OEA, WTB 2020) (*37 GHz, 39 GHz, and 47 GHz Auction Public Notice*); see also CTIA Comments at 59.

⁴² *Communications Marketplace Report et al.*, Report, 33 FCC Rcd 12558, 12584-85, para. 31 (2018) (*Communications Marketplace Report*).

12. In any event, the Applicants note that there are numerous other service providers serving these markets, which would ensure that a high degree of competition continues to exist.⁴³ The Applicants argue further that rival service providers have competitive coverage and access to spectrum in these markets.⁴⁴ Specifically, both AT&T and Verizon have robust coverage in areas where T-Mobile will exceed the screen. AT&T, Verizon, and DISH, as well as other entities, hold spectrum licenses in some or all of the markets covered by the proposed leases.

13. Accordingly, even though the leasing arrangements increase T-Mobile's spectrum holdings above the screen (or newly trigger the screen) in the relevant markets, we agree with the Applicants that the proposed leasing arrangements do not raise any particular competitive or other public interest concerns.⁴⁵ Overall, given current spectrum holdings of rival service providers, including their holdings of millimeter-wave spectrum, as well as the spectrum coming online in the near future (not to mention the 1,245 megahertz of additional unlicensed mid-band spectrum the Commission has recently made available), we find it unlikely that rival service providers or potential entrants will be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market, notwithstanding T-Mobile's post-transaction attributable spectrum holdings under these leasing arrangements.⁴⁶

14. We find that the leasing arrangements will provide substantial public interest benefits. We agree with the Applicants that approval of the spectrum manager leases would provide immediate access to between 10 and 30 megahertz of additional 600 MHz spectrum for up to three years to promote T-Mobile's rapid buildout of its 5G network.⁴⁷ We find that the spectrum leasing arrangements would serve the public interest by allowing T-Mobile to put into use spectrum that previously lay fallow.⁴⁸

15. We agree with the Applicants that the added spectrum would result in enhanced competition and consumer benefits.⁴⁹ In particular, the added spectrum would permit T-Mobile to launch, enhance, or expand its Long-Term Evolution (LTE) and 5G New Radio (NR) network capacity in these geographic markets.⁵⁰ The Applicants explain that the additional spectrum would enable increased LTE service on a temporary basis to accommodate traffic loading and provide coverage infills for Sprint customers with compatible LTE band 71 devices.⁵¹ Accordingly, we agree with Applicants that

⁴³ Public Interest Statements at 8; Spectrum Aggregation Analysis at 1-12.

⁴⁴ Spectrum Aggregation Analysis at 1-12.

⁴⁵ Public Interest Statements at 1, 3-9.

⁴⁶ See *T-Mobile/Sprint Order*, 34 FCC Rcd at 10620, para. 99.

⁴⁷ Public Interest Statements at 4-9.

⁴⁸ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6238, para. 282; *AT&T/Club 42 Order*, 30 FCC Rcd at 13076-77, paras. 46-47; *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent To Assign AWS-1 Licenses et al.*, Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd 10698, 10715, para. 46 (2012) (finding that the decision to move unused spectrum into the hands of a buyer that has the wherewithal to use the spectrum is an efficient use of spectrum). As Applicants make clear, neither Channel 51 nor LB License is currently providing services to end-user customers on the leased spectrum; thus, there was no discontinuance, reduction, loss or impairment of service to end-user customers and no loss of an existing service provider in any market. Public Interest Statements at 4.

⁴⁹ Spectrum Aggregation Analysis at 1-12.

⁵⁰ *Id.*; Public Interest Statements at 3-6.

⁵¹ Public Interest Statements at 4-5.

consumers in these CMAs may benefit from the increased reach of this low-band spectrum, which should enhance network coverage and performance in these markets.⁵²

16. We also note that these are spectrum manager leases, and not a proposed acquisition, and that at the latest, the leasing arrangements would terminate by early 2023.⁵³ In light of the limited term of the leases, we note that we would have an opportunity to reevaluate—and mitigate as necessary—should any competitive concerns arise at the end of the leasing period. Moreover, the Commission retains the right to terminate the leases at any time should it determine that the arrangement raises competitive or public interest concerns.⁵⁴ In the *Mobile Spectrum Holdings Report and Order*, the Commission determined that leasing provides lessees the flexibility to lease a small or large quantity of spectrum for shorter or longer time periods depending on their business needs.⁵⁵ Given robust competition in the marketplace, T-Mobile’s post-transaction spectrum holdings do not raise any particular competitive concerns.

17. *Verizon and AT&T’s Claims.* Based on the record, the Bureau finds no reason to revisit its decision to accept the leases. Neither Verizon nor AT&T has identified any specific harms that would result from these leasing arrangements—both merely argue that the leasing arrangements will further increase T-Mobile’s holdings above the spectrum screen and thus, the Commission should examine the transaction carefully.⁵⁶ In addition, Verizon states that T-Mobile’s gaining additional spectrum “will necessarily make it harder for other providers to compete.”⁵⁷

18. To the extent Verizon and AT&T are concerned that T-Mobile’s holdings are above the screen, we reiterate that the screen is simply a trigger that prompts the Commission to apply additional analysis—it is not a hard cap on a service provider’s holdings.⁵⁸ Here, even though the leasing arrangements further increase T-Mobile’s holdings above the screen trigger, Verizon and AT&T have failed to identify any particular competitive harm. Indeed, in the *Mobile Spectrum Holdings Report and Order*, the Commission considered and rejected a rebuttable presumption that a transaction that triggers the spectrum screen is presumed not in the public interest.⁵⁹

19. In addition, we do not find persuasive Verizon’s argument that T-Mobile’s increase of 10 to 30 megahertz in certain areas of the country will make it harder for other providers to compete.⁶⁰ AT&T and Verizon have not established that this spectrum is essential to their deployment plans or that

⁵² Public Interest Statements at 5-6.

⁵³ *Verizon Wireless/Nextlink Order*, 31 FCC Rcd at 7772, para. 12.

⁵⁴ 47 CFR § 1.9020(g).

⁵⁵ *See Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6245, para. 301.

⁵⁶ Petition at 1-2, Verizon Reply at 3-6; AT&T Comments at 2-5, 7 (arguing that the combination of T-Mobile and Sprint has led to an excessive concentration of spectrum in the hands of a single carrier and these leases will cause T-Mobile to further exceed the 250 megahertz screen by as much as 112 megahertz).

⁵⁷ Petition at 4; *see also* Verizon Reply at 1-6 (asserting that competitive concerns arise from T-Mobile’s acknowledged, and now increasing, lead in mid-and low-band spectrum over its nearest competitors, both nationwide and in the most populated partial economic areas in which T-Mobile is obtaining even more spectrum through these arrangements).

⁵⁸ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223, para. 231.

⁵⁹ *Id.* at 6229-31, paras. 252-58.

⁶⁰ Petition at 4.

they lack the spectrum necessary to meet their current needs.⁶¹ In any case, our mandate is to protect competition, not any particular competitor. We agree with the Applicants that the deployment of this 600 MHz spectrum provides benefits for consumers and competition by promptly putting to use idle spectrum to expand and enhance network capacity. We conclude that the leasing arrangements' potential public interest benefits outweigh any potential public interest harms. Accordingly, we find that accepting the lease applications serves the public interest and we deny the petition for reconsideration.

B. Dismissal of Requests to Revisit Spectrum Holdings Policies

20. Commenters also seek review of the Commission's spectrum screen policies or to address spectrum aggregation issues relating to Auction 107.⁶² Some commenters suggest that T-Mobile's spectrum holdings warrant a revision of the spectrum screen or the adoption of a new enhanced total spectrum screen because T-Mobile's post-transaction holdings will further exceed the screen.⁶³ AT&T and T-Mobile raise spectrum aggregation issues related to the upcoming Auction 107 for spectrum in the 3.7-4.2 GHz band.⁶⁴ Reconsideration of the instant spectrum manager leasing notifications is not the appropriate proceeding within which to address these requests. To the extent commenters suggest that we reexamine the spectrum screen policy in this Order on Reconsideration, we dismiss those requests as outside the scope of this proceeding.⁶⁵ While the Bureau has adjusted the spectrum screen in response to transactions pursuant to its delegated authority in certain cases,⁶⁶ commenters in response to Verizon's petition call for more fundamental revisions to the Commission's spectrum screen policy that would not be appropriate here. These issues raised by commenters might more appropriately be raised through an alternate vehicle, such as a petition for rulemaking.⁶⁷

21. Further, to the extent the petition and comments take issue with determinations made in the *T-Mobile/Sprint Order* or the *3.7 GHz Report and Order*, these arguments would have been more appropriately included in a petition for reconsideration of the relevant order. The Commission carefully evaluated spectrum aggregation, including enhanced factor review, and other competitive issues in the *T-*

⁶¹ T-Mobile Opposition at 5-7 (arguing that the public interest benefit of these leases extends to rural Americans as the leased spectrum will be deployed on over 900 sites in rural areas); Public Knowledge Oct. 20 *Ex Parte* Letter at 1-3. Further, we agree with the Applicants that the spectrum aggregation screen does not account for all available spectrum used by mobile providers. T-Mobile Reply to AT&T at 6.

⁶² AT&T Comments at 1-2, 5, 8-11; T-Mobile Reply to AT&T at 5-10; Public Knowledge Oct. 20 *Ex Parte* Letter at 3.

⁶³ AT&T Comments at 8-10 (asserting that the aggregation of spectrum by T-Mobile compels a revised approach to the spectrum screen with a higher standard of review where an applicant's holdings already exceed the spectrum screen). We note that in the T-Mobile/Sprint transaction, AT&T filed comments asserting that it did not take a position on whether the Commission should approve the T-Mobile/Sprint merger; further, AT&T did not request revisions to the spectrum aggregation screen or spectrum divestitures in that proceeding. Comments by AT&T Services Inc., WT Docket 18-197 (filed Aug. 27, 2018).

⁶⁴ AT&T Comments at 8-11; T-Mobile Reply to AT&T at 8-10 (asserting that the Commission should revisit the spectrum aggregation policies applicable to Auction 107 to find that there is a presumption of no competitive harm where the spectrum won by any auction participant does not exceed more than one-third of the auctioned spectrum in a local market). *Id.* at 10-11.

⁶⁵ 47 CFR § 1.106(p)(5).

⁶⁶ See, e.g., *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, 3638, para. 15 (WTB 2016).

⁶⁷ See Public Knowledge Oct. 20 *Ex Parte* Letter at 2-3 (urging the Commission to deny the Verizon Petition and consider initiating a proceeding to explore possible updates to the spectrum aggregation screen).

Mobile/Sprint Order and determined that, as conditioned, the public interest benefits of the transaction outweighed the competitive harms.⁶⁸ Additionally, the Commission made clear in the *3.7 GHz Report and Order*, as well as the bidding procedures announced in the Public Notice for Auction 107, that it will perform a case-by-case review of the long-form license applications following the auction.⁶⁹ As the Commission noted in the *3.7 GHz Report and Order*, case-by-case review permits bidders to participate fully in spectrum auctions while still allowing the Commission to assess the impact such auction results may have on competition.⁷⁰ Petitions for reconsideration of these orders were due to be filed with the Commission by December 5, 2019 in the case of the *T-Mobile/Sprint Order*⁷¹ and May 26, 2020 in the case of the *3.7 GHz Report and Order*.⁷² Therefore, to the extent portions of the petition and comments seek to reverse decisions of general applicability made by the Commission in the *T-Mobile/Sprint Order* or the *3.7 GHz Report and Order*, those requests are untimely and are hereby dismissed.

22. Finally, and notwithstanding the fact that these concerns are outside the scope of this proceeding, we take this opportunity to acknowledge the substantial amount of spectrum the Commission has made available to the mobile wireless marketplace since 2014. As noted, the Commission has made—and continues to make—an unprecedented amount of new spectrum available for mobile services in the low-, mid-, and high-bands—not all of which is accounted for in the Commission’s spectrum screen.⁷³ We also believe that robust participation in Auction 107 is in the public interest and remind parties that the Commission’s spectrum screen serves as a threshold for further competitive analysis, and does not act as a bright-line cap on a provider’s spectrum holdings.⁷⁴

IV. ORDERING CLAUSES

23. ACCORDINGLY, IT IS ORDERED pursuant to Sections 4(i), 4(j), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and 405, as well as delegated authority in Section 0.331 and 1.106 of the Commission’s rules, 47 CFR § 0.331 and 1.106, that the Petition for Reconsideration filed by Verizon on August 7, 2020, IS DENIED and that the requests to reconsider the Commission’s spectrum screen policies or to address spectrum aggregation issues relating to Auction 107 submitted by AT&T and T-Mobile ARE DISMISSED.

⁶⁸ *T-Mobile/Sprint Order*, 34 FCC Rcd at 10745, paras. 384-85.

⁶⁹ *3.7 GHz Report and Order*, 35 FCC Rcd at 2381, 2382-84 paras. 83, 86, 89; *C-Band Auction Public Notice*, 35 FCC Rcd at 8441, para. 112.

⁷⁰ *3.7 GHz Report and Order*, 35 FCC Rcd at 2384, para. 89. In particular, “the Commission may allow a license applicant . . . ‘to exceed the threshold if it finds that this would not foreclose other competitors from acquiring similar’ spectrum” *Id.* at 2384, para. 89 n.373 (quoting *2018 Spectrum Frontiers Order and FNPRM*, 33 FCC Rcd at 5591, para. 35); *see also id.* (“Further, in the event that a divestiture is required before issuing any new licenses, an applicant would have greater flexibility to choose which spectrum to divest among its existing spectrum holdings already in the screen, in a manner that nevertheless would address competitive concerns.”) (internal quotations omitted).

⁷¹ 47 CFR § 1.106(f).

⁷² 47 CFR § 1.429(d).

⁷³ *See T-Mobile/Sprint Order*, 34 FCC Rcd at 10620, para. 99.

⁷⁴ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223, para. 231.

24. IT IS FURTHER ORDERED that, pursuant to section 1.103(a) of the Commission's rules, 47 CFR 1.103(a), this Order on Reconsideration SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Donald K. Stockdale, Jr.
Chief, Wireless Telecommunications Bureau