

UScellular is attributed with the spectrum held by Advantage because of its 90% non-controlling limited partnership interest.⁹ UScellular also operates the spectrum pursuant to several spectrum manager leases.¹⁰

4. Following completion of the transaction, UScellular will own, directly and indirectly, 100% of Advantage.¹¹ As described in the T-Mobile-UScellular Memorandum Opinion and Order being released today,¹² these licenses will ultimately be held by T-Mobile.

5. *Transaction Review Process.* Advantage, Vail, and UScellular filed their application for transfer of control on July 1, 2024. The application was accepted for filing on July 10, 2024.¹³ On July 24, 2024, the Petitioners filed their petition to deny alleging that UScellular and Advantage lack the character qualifications to hold licenses.¹⁴ William C. Vail, Advantage, and UScellular filed a joint opposition to the petition on August 5, 2024.¹⁵ On August 12, 2024, O'Connor/Leibman filed their Reply.¹⁶ No other parties filed petitions or comments with respect to the transfer of control of Advantage to UScellular.

III. DISCUSSION

6. *Standing.* Section 309(d)(1) of the Act provides that only a “party in interest” may file a petition to deny a proposed transfer of control.¹⁷ A petition to deny must “contain specific allegations of fact sufficient to show that the petitioner is a party in interest,” as well as contain the necessary factual allegations to support a *prima facie* case that grant of the application would be inconsistent with the public interest, convenience, and necessity.¹⁸ Under the Commission’s long-standing precedent, party-in-interest status will be accorded to a petitioner if grant of the application would result in, or be reasonably likely to result in, some injury to the petitioner of a direct, tangible, or substantial nature.¹⁹ In the context

⁹ Public Interest Statement at 1.

¹⁰ See ULS File No. 0009142955 (spectrum manager lease application from Advantage to UScellular accepted Dec. 30, 2020); ULS File No. 0009142976 (spectrum manager lease application from Advantage to UScellular accepted Dec. 30, 2020); ULS File No. 0009146825 (spectrum manager lease application from Advantage to UScellular accepted May 21, 2024 with condition).

¹¹ Public Interest Statement at 1.

¹² *Applications of T-Mobile US, Inc. and United States Cellular Corporation for Consent to Transfer Control of Licenses, Authorizations, and Leases*, Memorandum Opinion and Order, GN Docket No. 24-286, DA 25-605 (rel. July 11, 2025).

¹³ *Wireless Telecommunications Bureau, Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and De Facto Transfer Lease Applications, and Designated Entity Reportable Eligibility Event Applications, Accepted for Filing*, Public Notice, Report No.18779 (July 10, 2024).

¹⁴ Petition to Deny (*citing to* Amended Complaint, Case 1:20-cv-02070-TSC Document 174 (filed Apr. 29, 2022) (filed with the FCC July 24, 2024)).

¹⁵ William C. Vail, Advantage Spectrum, L.P., and United States Cellular Corporation, Joint Opposition, ULS File No. 0011135862 (filed Aug. 5, 2024) (Opposition).

¹⁶ Mark J. O'Connor and Sara F. Leibman Reply to Opposition, ULS File No. 0011135862 (filed Aug. 12, 2024) (Reply).

¹⁷ 47 U.S.C. § 309(d)(1).

¹⁸ 47 U.S.C. § 309(d)(1) (requiring that a petition to deny “contain specific allegations of fact sufficient to show . . . that a grant of the application would be *prima facie* inconsistent with” the standards for grant of the application at issue and requiring that such allegations, except for those of which official notice may be taken “be supported by affidavit of a person or persons with personal knowledge thereof”).

¹⁹ See, e.g., *Entercom License, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 7149, 7152 (2017) (citing *Pinelands, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6058, 6063 (1992)).

of a transfer of control proceeding this means the petitioner must allege and show that it has suffered or will suffer an injury in fact, that there is a causal link between the proposed assignment and the injury in fact, and that not granting the assignment would remedy or prevent the injury in fact.²⁰

7. O'Connor/Leibman have not demonstrated how grant of this application would cause them any direct, tangible, or substantial injury. However, because a party's character is an important part of the public interest factors the Commission considers in determining whether an applicant has the requisite qualifications to become or remain a Commission licensee,²¹ we will address Petitioners' contentions.²²

8. *Qualifications of the Applicants.* Pursuant to section 310(d) of the Act, we must determine whether the application for the proposed transfer of control of the licenses held by Advantage will serve "the public interest, convenience, and necessity."²³ Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite "citizenship, character, financial, technical, and other qualifications" to hold a license.²⁴ Therefore, as a threshold matter, the Commission must determine whether the applicants to a proposed transaction meet the requisite qualification requirements to hold and transfer licenses under section 310(d) of the Act and the Commission's rules.²⁵

9. In their Petition, O'Connor/Leibman argue that we should hold the application in abeyance, or deny or dismiss the application, based on allegations that UScellular and Advantage lack the character qualifications to be a licensee.²⁶ O'Connor/Leibman have filed *qui tam* actions in federal court against UScellular and Advantage, arguing that they fraudulently obtained the benefit of designated entity credits in Auction 97.²⁷ They ask us to delay our consideration of the Application until their *qui*

²⁰ See, e.g., *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (summarizing constitutional minimum requirements for Article III standing that the party must (1) have suffered an "injury in fact" that is concrete and particularized and actual or imminent; (2) there must be a causal connection between the injury and the conduct complained of; and (3) it must be likely that the injury will be redressed by a favorable decision); *MCI Communications Corporation*, Memorandum Opinion and Order, 12 FCC Rcd 7790, 7794-95 (1997) (affirming that entities claiming standing must allege and prove a personal injury that is "fairly traceable" to the challenged action and a substantial likelihood that the relief requested will redress the injury claimed).

²¹ See 47 U.S.C. § 308(b).

²² See, e.g., *Entercom License, LLC*, Hearing Designation Order, 31 FCC Rcd 12196, 12206, para. 23 (2016) (petition to deny treated as an informal objection due to lack of standing).

²³ 47 U.S.C. § 310(d).

²⁴ 47 U.S.C. §§ 308, 310(d); *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, 10597, para. 43 (2019) (*T-Mobile-Sprint Order*); *Applications of Level 3 Communications, Inc. and CenturyLink, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 32 FCC Rcd 9581, 9587, para. 12 (2017) (*Century Link-Level 3 Order*); *Application of Verizon Communications Inc. and Straight Path Communications, Inc. for Consent To Transfer Control of Local Multipoint Distribution Service, 39 GHz, Common Carrier Point-to-Point Microwave, and 3650-3700 MHz Service Licenses*, Memorandum Opinion and Order, 33 FCC Rcd 188, 191, para. 9 (WTB 2018) (*Verizon-Straight Path Order*).

²⁵ See, e.g., *T-Mobile-Sprint Order*, 34 FCC Rcd at 10596-97, para. 43; *CenturyLink-Level-3 Order*, 32 FCC Rcd at 9587, para. 12; *Verizon-Straight Path Order*, 33 FCC Rcd at 191-92, para. 9.

²⁶ Petition at 1-2.

²⁷ *Id.* O'Connor/Leibman initially filed their *qui tam* complaint against Advantage in 2015, the Department of Justice declined to intervene, and the district court dismissed the complaint in 2022. See *U.S. ex rel. Mark J. O'Connor and Sara F. Leibman v. US Cellular, et al*, No. 20-cv-2070, United States' Motion to Lift Seal (filed Dec.

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tam action has been fully resolved, or in the alternative, to deny the Application.²⁸ We decline to do so. The Commission generally does not reevaluate the qualifications of transferors unless issues related to basic qualifications have been sufficiently raised in petitions to warrant designation for hearing on the question of whether the transferee is fit to be a licensee or should instead have its licenses revoked.²⁹ We find, for the reasons discussed below, that has not occurred here.

10. O'Connor/Leibman essentially allege that UScellular improperly took control of Advantage. Most of their allegations, however, are with respect to actions taken by UScellular and Advantage before Advantage was granted the licenses, actions O'Connor/Leibman knew about at the time Advantage's original license applications were under consideration. Yet they chose not to object to those applications and state here that they do not seek to relitigate Advantage's eligibility for bidding credits. We therefore will not consider those allegations as a basis for calling into question UScellular's previously reviewed qualifications.³⁰ The remaining allegation is that certain construction notices filed in 2022 show that UScellular was using all of Advantage's spectrum, contrary to our rules.³¹ UScellular responds that O'Connor/Leibman misread the notices, and that UScellular was using only part of Advantage's spectrum, which is permissible under the Commission's Designated Entity rules.³² Even assuming O'Connor/Leibman to be correct, we find that this allegation does not rise to the level that would require us to set for hearing whether UScellular is qualified to hold licenses.³³ In sum, we do not

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4, 2019) (referencing government's decision to decline intervention); *U.S. ex rel. Mark J. O'Connor and Sara F. Leibman*, No. 20-cv-2071 (D.D.C.) (filed Mar. 31, 2022). O'Connor/Leibman later filed an amended complaint which was also dismissed. *U.S. ex rel. Mark J. O'Connor and Sara F. Leibman*, No. 20-cv-2070, 2023 WL 2424605 (D.D.C. Mar. 9, 2023). O'Connor/Leibman have appealed the dismissal, which appeal is pending. *U.S. ex rel. Mark J. O'Connor and Sara F. Leibman*, No. 23-7041 (D.C. Cir., appeal pending). O'Connor/Leibman also filed a *qui tam* alleging similar wrongdoing by UScellular and other designated entities, including Carroll Wireless, LP, Barat Wireless, LP and King Street Wireless LP, in Auction 58, Auction 66, and Auction 73. That action was also dismissed in 2023. *United States v. U.S. Cellular Corp*, Civil Action No. 20-cv-2071, 2023 WL 2598678 (D.D.C. Mar. 22, 2023), *aff'd*, 128 F.4th 276 (D.C. Cir. 2025).

²⁸ Petition at 8-10; Reply at 6-10.

²⁹ See, e.g., *T-Mobile-Sprint Order*, 34 FCC Rcd at 10597, para. 45; *CenturyLink-Level 3 Order*, 32 FCC Rcd at 9587, para. 13. See generally *Jefferson Radio Co. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964); *Stereo Broadcasters, Inc. v. FCC*, 652 F.2d 1026, 1030 (D.C. Cir. 1981) (Commission policy generally prohibits the assignment of a license while basic qualifications issues raised against the licensee remain unresolved, and thus serves as a deterrent to licensee misconduct). O'Connor/Leibman are incorrect, however, that *Jefferson Radio* requires us to wait until a district court has determined their fraud allegations to reach a decision here. See Petition at 9.

³⁰ Even if we were to consider all of the allegations made by Petitioners to be true and accurate, the "totality of the circumstances" does not lead us to the conclusion that the actions taken by the Applicants would have caused us to deny the original license applications, or even ensured that we would have denied bidding credits. Included in that original post-Auction 97 License Application was a certification signed by Vail that made it clear that there were no secret agreements and that the arrangement between Vail, Advantage, and UScellular was reviewed thoroughly before the licenses were granted. That certification also acknowledged that any additional agreements entered into by the licensee after approval of the application were subject to the reporting requirements of 47 CFR §§ 1.2110(n) and 1.2114. *Application of Advantage Spectrum, L.P.*, File Number 0006668843, Certification (filed March 31, 2016).

³¹ Petition at 5-6; Reply at 8-9.

³² Joint Opposition at 9, 10-11.

³³ The Commission views "misrepresentation and lack of candor in an applicant's dealings with the Commission as serious breaches of trust." See *Swan Creek Communications, Inc. v. F.C.C.*, 39 F.3d 1217, 1221-22 (D.C. Cir. 1994) (quoting *1986 Character Policy Statement*, 102 FCC 2d at 1211). The Commission defines misrepresentation as "an intentional misrepresentation of fact intended to deceive." *Id.* at 1222. Lack of candor exists when an applicant breaches its duty "to be fully forthcoming as to all facts and information relevant to a matter before the FCC, whether or not such information is particularly elicited." *Id.* The Commission will not disqualify an applicant,

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find there is currently a material question of fact regarding UScellular's basic qualifications to be a Commission licensee.

11. For the reasons set forth above, we consent to the application and deny the petition to deny filed by O'Connor/Leibman.

IV. ORDERING CLAUSES

12. Accordingly, having reviewed the applications and record in this matter, IT IS ORDERED that, pursuant to sections 4(i-j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i-j), 303(r), 309, 310(d), the application for transfer of control filed by Vail, Advantage, and UScellular is GRANTED.

13. IT IS FURTHER 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 Petition to Deny filed by O'Connor/Leibman is DENIED for the reasons stated herein.

14. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon adoption. Petitions for Reconsideration under section 1.106 of the Commission's Rules, 47 CFR § 1.106, may be filed within thirty days of the date of adoption of this Memorandum Opinion and Order.

15. 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

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however, for a negligent omission; "intent to deceive [is] an essential element of a misrepresentation or lack of candor showing." *Id.* An intent to deceive is established when "factual evidence" shows that "the inconsistency involved an intent to deceive. . . ." *Weyburn Broadcasting Ltd. Partnership v. F.C.C.*, 984 F.2d 1220, 1232 (D.C. Cir. 1993). The record here does not contain the factual evidence necessary to demonstrate that UScellular and Advantage acted with intent to deceive the Commission, a necessary predicate for a finding of misrepresentation or lack of candor.