

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

In the Matter of)	
)	
Application of Aloha Spectrum Holdings)	
Company LLC (Assignor) and AT&T Mobility II)	WT Docket No. 07-265
LLC (Assignee) Seeking FCC Consent For)	File No. 0003205282
Assignment of Licenses and Authorizations)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: January 25, 2008

Released: February 4, 2008

By the Commission: Commissioner Adelstein concurring and issuing a statement; Commissioner Copps dissenting and issuing a statement.

I. INTRODUCTION

1. In this Order, we consider an application (“Application”) filed by AT&T Mobility II LLC (“AT&T Mobility”), a wholly-owned subsidiary of AT&T Inc. (“AT&T”), and Aloha Spectrum Holdings Company LLC (“Aloha Spectrum”), a wholly-owned subsidiary of Aloha Partners, L.P. (“Aloha”) (together “the Applicants”) pursuant to Section 310(d) of the Communications Act of 1934, as amended.¹

2. In this Application, the Applicants seek Commission approval of the assignment of 281 Cellular Market Area C-block licenses in the 700 MHz band from Aloha Spectrum to AT&T Mobility.² As discussed below, we conclude, pursuant to our review under Section 310(d) of the Communications Act of 1934, as amended (the “Communications Act”), that approval of this application as conditioned will serve the public interest, convenience, and necessity.

II. BACKGROUND

3. AT&T is a communications holding company incorporated in the State of Delaware and has its principal offices in San Antonio, Texas.³ Through its subsidiaries and affiliates, AT&T is a provider of communications services, including local exchange and long-distance voice services, wireless services, data/broadband services and high-speed Internet access, Wi-Fi, and IP-based communications services to businesses.⁴ AT&T provides wireless service to 63.7 million customers and has more subscribers than any other wireless provider in the United States.⁵ It holds spectrum licenses in all fifty states, the District

¹ 47 U.S.C. § 310(d).

² Application to Assign Licenses Held by Aloha Spectrum Holdings Company LLC to AT&T Mobility II LLC, File No. 0003205282 (filed Oct. 23, 2007, and subsequently amended) (“Application”).

³ AT&T Inc., Form 10-K, at 1 (Feb. 26, 2007) (“AT&T Form 10-K”), available at <http://www.att.com/gen/investor-relations?pid=5691>; AT&T, Corporate Profile, <http://www.att.com/gen/investor-relations?pid=5711>, at 1 (last visited Oct. 16, 2007) (“AT&T Corporate Profile”) (displaying “all segments of the Company Overview”).

⁴ AT&T Form 10-K at 1, 4; AT&T to Acquire Dobson Communications, Expand Wireless Coverage, http://www.dobson.net/ir_press_releases.html, at 1 (last visited Oct. 1, 2007) (“Press Release”); AT&T Corporate Profile at 1, 3.

⁵ AT&T Corporate Profile at 2.

of Columbia, Puerto Rico, and the United States Virgin Islands,⁶ and has a network footprint that covers over 284 million people.⁷ AT&T provides digital service on its network using primarily Global System for Mobile Communications (“GSM”) and General Packet Radio Service (“GPRS”) technology and offers Enhanced Data rates for GSM Evolution (“EDGE”) for wireless broadband.⁸ AT&T is also in the process of deploying Universal Mobile Telecommunications System/High Speed Downlink Packet Access (“UMTS/HSDPA”) broadband to deliver high-speed, wireless broadband services.⁹ AT&T provides its customers the ability to make calls in 190 countries using internationally enabled phones, with wireless data roaming in 130 countries for laptops, hand-held devices, and other data services.¹⁰

4. Aloha is based in Providence Rhode Island and acquired 700 MHz C-Block licenses in FCC auctions as well as on the secondary market.¹¹ Aloha’s spectrum covers 196 million people in 281 markets including 72 of the top 100 and all of the top 10 markets in the United States.¹² Aloha has conducted two limited market trials of mobile applications using their 700 MHz spectrum.¹³

5. On October 9, 2007, AT&T announced that it had entered into an agreement to purchase Aloha’s 700 MHz licenses and certain other related assets.¹⁴ This agreement covered the 239 licenses that Aloha held at the time of the agreement, as well as other licenses that Aloha was in the process of acquiring.¹⁵ On October 23, 2007, the Applicants filed the Application seeking Commission consent to assign Aloha’s 239 licenses to AT&T. Subsequent to the initial filing of this Application, the Applicants amended the Application to include 42 additional 700 MHz licenses that had been acquired from third parties.¹⁶

6. The Application was placed on Public Notice on November 21, 2007.¹⁷ No petitions to deny were filed against the proposed transaction.

III. DISCUSSION

⁶ *Id.*

⁷ See Press Release at 4; AT&T, 2006 Online Annual Report, Wireless, http://www.att.com/Investor/ATT_Annual/wireless/index.html (last visited Jan 23, 2008).

⁸ AT&T Form 10-K at 3; AT&T Corporate Profile at 5. AT&T also provides service using Time Division Multiple Access (“TDMA”) technology. See AT&T Form 10-K at 3. AT&T states that it has moved most of its wireless traffic over to its GSM network. See AT&T, 2006 Online Annual Report, Chairman’s Letter, http://www.att.com/Investor/ATT_Annual/letter/02.html (last visited Jan. 23, 2008).

⁹ AT&T Form 10-K at 3; AT&T Corporate Profile at 5.

¹⁰ AT&T Corporate Profile at 2; See AT&T, 2006 Online Annual Report, Wireless, http://www.att.com/Investor/ATT_Annual/wireless/02.html (last visited Jan. 23, 2008).

¹¹ Aloha Partners Overview, http://www.alohapartners.net/ap_overview.htm (last visited Jan. 23, 2008).

¹² AT&T News Release “AT&T Acquires Wireless Spectrum from Aloha Partners,” (rel. Oct. 9, 2007).

¹³ Application, Exhibit 1 at 1.

¹⁴ AT&T News Release “AT&T Acquires Wireless Spectrum from Aloha Partners,” (rel. Oct. 9, 2007).

¹⁵ Application, Exhibit 1 at 2.

¹⁶ See Application.

¹⁷ AT&T Mobility II LLC and Aloha Spectrum Holdings Company LLC Seek FCC Consent for Assignment of Licenses, WT Docket No. 07-265, *Public Notice*, DA 07-4710 (rel. Nov. 21, 2007).

7. Pursuant to Section 310(d) of the Communications Act,¹⁸ we must determine whether the Applicants have demonstrated that the proposed assignment of Aloha's licenses and authorizations would serve the public interest, convenience, and necessity. In applying our public interest test, we must assess whether the proposed transaction complies with the specific provisions of the Communications Act,¹⁹ the Commission's rules, and federal communications policy.²⁰ If a proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.²¹ The Commission then employs a balancing test weighing any potential public interest harms of a proposed transaction against any potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest.²²

8. The Applicants state that the proposed transaction would serve the public interest, because it would enable AT&T to meet the growing demand for spectrum-intensive wireless data and content services and to provide these services more cost effectively.²³ Further, there have been no questions raised with regard to the basic qualifications of either AT&T or Aloha, and we find no evidence that the assignee lacks the requisite financial, legal, technical, or other basic qualifications to be a licensee under the Communications Act.²⁴ Thus, we find that AT&T possesses the requisite basic qualifications to be the assignee of the licenses and authorizations currently held by Aloha.

9. The vast majority of the licenses to be assigned were acquired with 35 percent bidding credits. Where applicants seek consent to assign licenses that were won at auction with bidding credits, we must ensure that, where applicable under section 1.2111(d)(2)(ii), bidding credits are repaid.²⁵ Accordingly, any amount due arising out of unjust enrichment obligations must be paid before AT&T and Aloha may consummate their proposed transaction. Therefore, our approval of the assignment of licenses granted herein is conditioned upon assignors making unjust enrichment payments to the U.S. government pursuant to section 1.2111(d) of the Commission's rules.²⁶

10. Consistent with our practice when reviewing proposed wireless transactions affecting the mobile telephony market, we next consider the potential competitive effects that might result from

¹⁸ 47 U.S.C. § 310(d).

¹⁹ Section 310(d), 47 U.S.C. § 310(d), requires that we consider the applications as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. *See, e.g.*, Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control, WT Docket No. 07-153, *Memorandum Opinion and Order*, 22 FCC Rcd 20295, 20301 ¶ 10 (2007) (*AT&T-Dobson Order*).

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 20302 ¶ 10.

²³ Application, Exhibit 1 at 3-6.

²⁴ 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." 47 U.S.C. §§ 308, 310(d). *See also AT&T-Dobson Order*, 22 FCC Rcd 20302 ¶ 11.

²⁵ These licenses were initially granted on four different dates between 2003 and 2005: January 24, 2003, March 14, 2003, December 11, 2003 and on December 5, 2005. With respect to bidding credits, the unjust enrichment rule applicable to these licenses requires those seeking to transfer or assign licenses to entities that do not qualify for a bidding credit, like AT&T, to reimburse the government for the amount of the bidding credit, plus interest, subject to certain reductions depending on the period the license has been held. *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2395, ¶ 264; *Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, Fifth Memorandum Opinion and Order, 10 FCC Rcd 403, 469 ¶ 127 (1994); 47 C.F.R. § 1.2111(d)(2)(ii).

²⁶ 47 C.F.R. § 1.2111(d).

increased concentration.²⁷ We find that the proposed transaction would not have an adverse effect on competition in the mobile telephony market. When examining the effect of proposed transactions, we have first applied a three-part initial “screen” that identifies those local markets in which there is clearly no competitive harm arising from the transaction. Two parts of the screen utilize changes in the measures of the Herfindahl-Hirschman Index (“HHI”) market concentration. The final part of this screen examines the input market for spectrum available on a nationwide basis for the provision of mobile telephony services.²⁸ It identifies the markets in which a proposed transaction would result in spectrum aggregation in amounts of 95 megahertz or more.²⁹

11. This transaction did not trigger either of our HHI screens. The 95 megahertz initial spectrum aggregation screen was triggered in 11 Cellular Market Areas (CMAs). The following is a list of the 11 CMAs and the range of spectrum holdings by the merged entity on a county-by-county basis: (1) CMA032 Hartford, CT (97 MHz); (2) CMA066 Youngstown-Warren, OH (97 MHz); (3) CMA130 Erie, PA (107 MHz); (4) CMA238 Sharon, PA (107 MHz); (5) CMA500 Mississippi 8-Claiborne (42-107 MHz); (6) CMA591 Ohio 7-Tuscarawas (72-97 MHz); (7) CMA595 Ohio 11-Columbiana (107 MHz); (8) CMA612 Pennsylvania 1-Crawford (82-97 MHz); (9) CMA660 Texas 9-Runnels (57-102 MHz); (10) CMA667 Texas 16-Burleson (72-102 MHz); (11) CMA691 Virginia 11-Madison (77-97 MHz).

12. Based on the further competitive review of each of these 11 CMAs, we find that it is unlikely that the transaction would result in competitive harm. Further competitive review of each of these CMAs included, among other things, the determination of: (1) the total spectrum available for mobile telephony use; (2) the merged entity’s portion of available spectrum; (3) licensees in the market and their spectrum holdings; (4) licensees currently providing service in the market; (5) whether current service providers, who may be capacity constrained in the near-term, can access additional spectrum in the market either through auction or on the secondary market; and (6) licensees currently holding spectrum that could enter the market to provide service. Upon evaluation of this data, we find that in each of these markets there are at least two, and as many as four, other providers that currently have sufficient market share and spectrum throughout the CMA to compete in the provision of mobile telephony services. Further, several additional firms currently hold sufficient spectrum that would enable them either to expand their provision of services or to enter the market and begin providing services. In addition, a significant amount of this spectrum is potentially available in the secondary market to others, as is the additional spectrum in the 700 MHz auction,³⁰ which may enable new entrants to enter the market or could enhance the spectrum holdings of any other provider that might be capacity constrained.

13. In conclusion, based on the record before us, we find that the Applicants have demonstrated that the proposed transaction would serve the public interest, convenience, and necessity; and that granting consent to the proposed assignment application would further the public interest, subject to the conditions discussed above.

IV. ORDERING CLAUSES

²⁷ See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd 20306 ¶ 15; Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, at § 0.1, n.6. (Apr. 2, 1992, revised Apr. 8, 1997) (“*DOJ/FTC Merger Guidelines*”).

²⁸ See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd 20307 ¶ 16.

²⁹ *Id.* at 20312-14 ¶¶ 30-31. This initial spectrum aggregation screen of 95 megahertz is approximately one-third of the 280 megahertz of cellular, broadband Personal Communications Service, Specialized Mobile Radio, and 700 MHz spectrum suitable for mobile telephony. *Id.*

³⁰ See “Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 73 and 76,” *Public Notice*, 22 FCC Rcd 18141 (WTB 2007) (establishing commencement date of this auction).

14. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, 310(d), the above-referenced application for the assignment of licenses and authorizations from Aloha Spectrum Holdings Company LLC to AT&T Mobility II LLC is GRANTED, subject to the condition precedent that assignors make any unjust enrichment payments to the U.S. government that are required pursuant to section 1.2111(d) of the Commission's rules, 47 C.F.R. § 1.2111(d).

15. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**DISSENTING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: AT&T Mobility II LLC and Aloha Spectrum Holdings Company LLC Seek FCC Consent for Assignment of Licenses and Authorizations

Today's decision authorizes the transfer of licenses for 12 MHz of extremely valuable spectrum in the 700 MHz band, covering 196 million Americans, to the nation's largest wireless carrier. It affects 72 of the top 100 markets in the United States—and every single one of the top 10 markets. By any measure, it represents an important development in the wireless marketplace—a marketplace that has seen round after round of consolidation in recent years.

Most unfortunately, today's order contains only an extremely abbreviated analysis of the competitive effects of this change in ownership. Instead, we have a rush to judgment that seems hard to square with the FCC's statutory duty to promote competition in the wireless marketplace and diverse ownership of spectrum licenses.

To begin with, the Order applies the Commission's faulty new 95 MHz spectrum screen—a figure that (as I argued in greater detail in my dissent to another spectrum acquisition this fall) is based on sloppy math and inaccurate assumptions. And even though today's Order concedes that this transaction will cause the applicant to *exceed* the far-too-generous 95 MHz figure in 11 different locations across the country, it requires no divestiture or remedy of any sort to temper the effects of this acquisition on wireless competition. Our license transfer orders also traditionally analyze the public interest benefits of a transaction—but not this one, which is largely silent on the issue.

Because today's hasty decision seems destined to reduce competition and diversity in the wireless marketplace, and because I see little demonstration of countervailing benefits and precious little serious analysis of any sort, I must respectfully dissent.

**CONCURRING STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Applications of AT&T Mobility II LLC and Aloha Spectrum Holdings Company LLC for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-265.

This is a significant merger, and I think it was proper that a decision of this scope was reviewed by the full Commission. The transfer of control to AT&T Mobility of Aloha's assets and authorizations for 12 MHz of 700 MHz spectrum is a transaction that affects 196 million people in 281 markets, including 72 of the top 100, and all of the top ten markets in the United States. A merger of this size requires a thorough public interest review. It raises questions for policymakers and consumers because communications services – voice, data, and video – are so integral to our daily lives and to the economic success of our communities and our national economy.

As there is no public opposition to this merger, I am voting to allow the merger to proceed in the hope that AT&T will address the growing demand for spectrum-intensive wireless data and content services and to provide these services more cost effectively, as asserted by the applicants.

I only concur because the *Order* lacks both substance and analysis in its review of whether, on balance, the transaction serves the public's interest. We are required to do more than simply conclude that a transaction benefits the public and will not have an adverse effect on competition. I would have preferred to see a more thorough assessment weighing the potential public interest harms and benefits of this transaction and its impact on the mobile telephony market.

I also remain troubled by our inclusion of the 80 MHz of the 700 MHz band spectrum in the total amount of spectrum suitable for mobile telephony nationwide in our competitive review. Given that we cannot predict how the 700 MHz spectrum will be distributed and whether any single party, including the acquiring party in this proceeding, might get a disproportionate share of the spectrum, I remain concerned that increasing the spectrum aggregation screen to 95 percent raises concerns regarding increased likelihood of competitive harm in certain overlapping markets.