

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

In the Matter of)	
)	
Application of New Cingular Wireless PCS, LLC and NEATT Wireless, LLC)	ULS File No. 0004352233
)	
For Consent to Assign Licenses)	

MEMORANDUM OPINION AND ORDER

Adopted: July 23, 2012

Released: July 24, 2012

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we grant the application filed by New Cingular Wireless PCS, LLC (“New Cingular”), an indirect, wholly-owned subsidiary of AT&T Inc. (“AT&T”), and NEATT Wireless, LLC (“NEATT” and collectively with New Cingular and AT&T, the “Applicants”) to assign 13 broadband personal communications service (“PCS”) licenses in five CMAs¹ in rural Arkansas from NEATT to New Cingular (hereinafter, “AT&T”).² Our analysis suggests that, notwithstanding a Commission-imposed condition requiring divestiture of part of this spectrum by Cingular, the proposed acquisition of NEATT’s broadband PCS licenses is unlikely to cause competitive or other public interest harms and that it is in the public interest to grant the application.

II. BACKGROUND

A. Description of Applicants

1. AT&T Inc.

2. AT&T, incorporated in Delaware and headquartered in Dallas, Texas, is a communications holding company that wholly owns New Cingular.³ With its subsidiaries, affiliates, and operating companies, AT&T is among the leading providers of telecommunications services in the United States and around the world.⁴ At the end of 2011, AT&T had more than 103 million wireless

¹ Cellular Market Areas (“CMAs”) are the areas in which the Commission initially granted licenses for the cellular service. See 47 C.F.R. § 22.90.

² See Application of New Cingular Wireless PCS, LLC and NEATT Wireless, LLC for Assignment of Broadband PCS Licenses, File No. 0004352233 (filed Aug. 24, 2010, amended Sept. 28, 2010 and Dec. 14, 2010) (“Application”).

³ See AT&T Inc., SEC Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 2011, EX-13 41 ex13.htm AT&T INC. 2011 ANNUAL REPORT at 5 (filed Feb. 24, 2012) (“AT&T 2011 10-K EX-13 41”).

⁴ See AT&T Inc., SEC Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 2011, at 1 (filed Feb. 24, 2012).

connections,⁵ and earned \$63.2 billion in total wireless revenues, of which \$56.7 billion were service revenues.⁶

2. NEATT

3. NEATT was founded in 2004 and is based in Chicago, Illinois.⁷ Percy L. Berger, Sr. is the Chairman, President, and Chief Executive Officer.⁸ The Dempster Group LLC (“Dempster”) holds a 42.5 percent interest in Northeastern Arkansas Telephone and Transport, L.L.C. (“NEATT LLC”), which in turn owns 100 percent of NEATT. Mr. Berger owns 100 percent of Dempster and also directly owns 17 percent of NEATT LLC.⁹

B. Description of Transaction

4. The Applicants seek Commission consent to assign NEATT’s 13 broadband PCS licenses to AT&T in five CMAs (25 counties) in Arkansas, with a total population of approximately 690,000.¹⁰ The Applicants state that the proposed transaction would create several public interest benefits, including allowing AT&T to increase its system capacity to enhance existing services and facilitate the provision of additional products and services to the public.¹¹ Specifically, the additional spectrum would, according to the Applicants, enable the deployment of HSPA/UMTS¹² technologies and the provision of additional wireless broadband products and services in these markets while maintaining or improving service quality on its GSM/EDGE¹³ network.¹⁴

5. The majority of the licenses involved in this transaction are part of the operating units that the Commission required AT&T to divest as a condition to the *Cingular-AT&T Wireless Order*.¹⁵

⁵ AT&T 2010 10-K EX-13 41at 5.

⁶ AT&T 2010 10-K EX-13 41at 5.

⁷ Bloomberg Businessweek, NEATT Wireless, LLC, Company Information, <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=27993213> (last visited Feb. 21, 2012).

⁸ Application, Declaration of Percy L. Berger, Sr. at ¶ 1.

⁹ File No. 0004008000. Form 602 filed for NEATT Wireless LLC, Indirect Ownership, Percy L. Berger, Sr. (filed Oct. 26, 2009).

¹⁰ The five CMAs in Arkansas are CMA 326 (Arkansas 3 - Sharp), CMA 327 (Arkansas 4 - Clay), CMA 328 (Arkansas 5 - Cross), CMA 329 (Arkansas 6 - Cleburne), and CMA 330 (Arkansas 7 - Pope). See Application of New Cingular Wireless PCS, LLC and NEATT Wireless, LLC for Assignment of Broadband PCS Licenses, File No. 0004352233.

¹¹ Public Interest Statement at 1.

¹² The term “HSPA” means High Speed Packet Access and the term “UMTS” means Universal Mobile Telecommunications technology.

¹³ The term “GSM” means Global System for Mobile Communications technology and the term “EDGE” means Enhanced Data rates for GSM Evolution technology.

¹⁴ Public Interest Statement at 3, 6.

¹⁵ See Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21620 ¶ 254 (2004) (“*Cingular-AT&T Wireless Order*”). The subject application includes 13 licenses. Eight of these licenses were the subject of divestiture in the *Cingular-AT&T Wireless Order*; five of the subject licenses are not governed by the conditions set forth in the *Cingular-NEATT Order*. See generally Applications of AT&T Wireless Services and Cingular Wireless Corporation, Emergency Joint Petition of NEATT Wireless, LLC and Cingular Wireless LLC for Partial Waiver to Transfer (continued....)

AT&T assigned eight of the licenses included in this transaction to NEATT as a part of the required divestiture, and the parties now seek Commission consent to reassign these licenses to AT&T.

C. Transaction Review Process

6. On August 24, 2010, the Applicants filed an application, pursuant to section 310(d) of the Communications Act of 1934, as amended (the “Communications Act”),¹⁶ seeking Commission approval to assign the subject licenses from NEATT to AT&T. The Applicants amended the application on September 28, 2010 and December 14, 2010.¹⁷ On February 8, 2011, the Commission released a public notice seeking comment on the proposed transaction.¹⁸ The *Comment Public Notice* established a pleading cycle for the application, with petitions to deny due February 22, 2011, oppositions due March 4, 2011, and replies due March 11, 2011. In response to the *Comment Public Notice*, no petitions or comments were filed, nor has any party filed subsequently opposing the transaction.¹⁹

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

7. Pursuant to section 310(d) of the Communications Act, the Commission must determine whether the Applicants have demonstrated that the proposed assignment and transfer of control of licenses and authorizations will serve the public interest, convenience, and necessity.²⁰ We use here the standard of review and public interest framework that the Commission consistently applies in evaluating wireless transactions, most recently articulated in the Commission’s order approving the assignment of licenses from Qualcomm Incorporated to AT&T Inc.²¹

IV. QUALIFICATIONS OF APPLICANTS

8. 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.”²² In general, when evaluating assignments under section 310(d), we do not reevaluate the

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Previously Divested Customer Base to Prevent Loss of Service, *Order*, 20 FCC Rcd 19795 (2005) (“*Cingular-NEATT Order*”). See also *infra* at ¶ 9.

¹⁶ 47 U.S.C. § 310(d).

¹⁷ See amendments at FCC File No. 0004352233.

¹⁸ New Cingular Wireless PCS, LLC and NEATT Wireless, LCC Seek FCC Consent to the Assignment of Broadband PCS Licenses, ULS File No. 0004352233, *Public Notice*, 26 FCC Rcd 1283 (2011) (“*Comment Public Notice*”).

¹⁹ The only filings in this proceeding were two *ex parte* notices by AT&T. See *Ex Parte* Letter from Joan Marsh, Counsel to AT&T, to Marlene Dortch, Secretary, Federal Communications Commission (Aug. 5, 2011); *Ex Parte* Letter from Joan Marsh, Counsel to AT&T, to Marlene Dortch, Secretary, Federal Communications Commission (Oct. 3, 2011).

²⁰ 47 U.S.C. § 310(d).

²¹ See generally Application of AT&T Inc. and Qualcomm Incorporated For Consent to Assign Licenses and Authorizations, WT Docket No. 11-18, *Order*, 26 FCC Rcd 17589 (2011) (“*AT&T-Qualcomm Order*”).

²² *Id.* §§ 308, 310(d). See also, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17600-01 ¶ 27; AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless Seek FCC Consent To Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104, *Memorandum Opinion and Order*, 25 FCC Rcd 8704, 8718 ¶ 26 (2010) (“*AT&T-Verizon Wireless Order*”); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

qualifications of the transferor.²³ The exception to this rule occurs where issues related to basic qualifications of the assignor have been designated for a hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.²⁴ This is not the case here. Thus, we need not reevaluate NEATT's basic qualifications. Section 310(d) of the Communications Act also obligates the Commission to consider whether the proposed transferee is qualified to hold Commission licenses.²⁵ No issues have been raised in this proceeding concerning the basic qualifications of the proposed assignee, AT&T, which has previously and repeatedly been found qualified, through its subsidiaries, to hold Commission licenses. We therefore find that there is no reason to re-evaluate the basic qualifications of AT&T.

V. DISCUSSION

A. Competitive Analysis

9. *Overview.* The Applicants seek Commission consent for the assignment from NEATT to AT&T of 13 broadband PCS licenses in five markets in rural Arkansas. In the 2004 *Cingular-AT&T Wireless Order*, the Commission required Cingular to divest AT&T Wireless's operating units in these five markets, including eight spectrum licenses associated with these operating units²⁶ as a condition of the transaction in order to address competitive concerns.²⁷ Cingular and NEATT entered into an agreement, pursuant to which Cingular continued to provide network, billing, software support, and other related functions to NEATT until such time as it could obtain and deploy such services on its own, but no later than December 31, 2005.²⁸ In late 2005, NEATT and Cingular filed an emergency joint petition for partial waiver, requesting that NEATT be permitted to reassign to Cingular the customer contracts that had been divested by Cingular to NEATT in March 2005 pursuant to the divestiture condition in the *Cingular-AT&T Wireless Order*.²⁹ In the 2005 *Cingular-NEATT Order*, the Commission allowed Cingular to reacquire the NEATT customer contracts in order to prevent potential disruption and loss of

²³ See, e.g., Applications of Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, WT Docket No. 08-94, *Memorandum Opinion and Order*, 23 FCC Rcd 17570, 17582-83 ¶ 23 (2008) ("*Sprint Nextel-Clearwire Order*"); Applications 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 and Petition for Declaratory Ruling that the Transaction Is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444, 17464 ¶ 31 (2008) ("*Verizon Wireless-ALLTEL Order*").

²⁴ See, e.g., *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582-83 ¶ 23; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17464 ¶ 31.

²⁵ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17601 ¶ 28; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8720 ¶ 29; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

²⁶ See *supra* n. 11.

²⁷ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21620 ¶ 254.

²⁸ See Applications of AT&T Wireless Services and Cingular Wireless Corporation, Emergency Joint Petition of NEATT Wireless, LLC and Cingular Wireless LLC for Partial Waiver to Transfer Previously Divested Customer Base to Prevent Loss of Service, Order, 20 FCC Rcd 19795, 17977 ¶ 4 (2005) ("*Cingular-NEATT Order*").

²⁹ See NEATT Wireless, LLC and Cingular Wireless LLC Emergency Joint Petition for Partial Waiver to Transfer Previously Divested Customer Base to Prevent Loss of Service, Emergency Joint Petition for Partial Waiver, Expedited Action Requested, at 1 (filed Nov. 29, 2005). The 2005 Order identified the relevant party as "Dempster" rather than "NEATT." As described above, see para. 3 *supra*, Dempster is a significant investor in NEATT.

service to NEATT's customers.³⁰ The spectrum licenses, however, remained with NEATT. In the *Cingular-NEATT Order*, the Commission stated in a footnote that it "expect[s] that these [NEATT] licenses and assets will not be acquired by the primary incumbents in the Arkansas Markets, but rather that they will be made available to enable entry or expanded service by another provider."³¹

10. In August of 2010, NEATT filed applications to reassign the licenses back to the primary incumbent from which they had been originally assigned pursuant to the Commission's order in 2004.³² As discussed below, after examining the special circumstances due to the changes in the marketplace since 2004, as well as the current competitive conditions in the relevant markets, we find that it is unlikely that there would be competitive harm if we allow AT&T to reacquire the broadband PCS licenses at issue and that it is in the public interest to allow the assignment.

11. *Product and Geographic Markets.* In this Memorandum Opinion and Order, as in the Commission's most recent transactions, we evaluate the proposed transaction using a combined "mobile telephony/broadband services" product market, which is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).³³ As in the Commission's analysis of previous transactions, we use the CMA as the relevant local geographic market in which to evaluate this proposed transaction.³⁴

12. *Input Market for Spectrum and Spectrum Concentration.* This transaction does not involve the acquisition of customers³⁵ or result in a change in the number of facilities-based service providers in any of the markets, and thus, we consider only the competitive effect of spectrum concentration.³⁶ The Commission examines the effects of spectrum aggregation on the marketplace on a case-by-case basis.³⁷ As one means of evaluating potential competitive harms, the Commission applies an initial screen to identify markets where the amount of spectrum that would be held post-transaction provide reason for further competitive analysis of spectrum concentration.³⁸

³⁰ See *Cingular-NEATT Order*, 20 FCC Rcd at 19795 ¶ 1.

³¹ *Cingular-NEATT Order*, 20 FCC Rcd at 19799, n.34.

³² See Application of New Cingular Wireless PCS, LLC and NEATT Wireless, LLC for Assignment of Broadband PCS Licenses, File No. 0004352233.

³³ See e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17603 ¶ 33; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8721 ¶ 35; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17585-86 ¶¶ 33-38.

³⁴ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604 ¶ 34; Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements, WT Docket No. 08-246, Memorandum Opinion and Order, 24 FCC Rcd 13915, 13934 ¶ 41 (2009) ("*AT&T-Centennial Order*").

³⁵ We note that in 2005, the Commission permitted Cingular to reacquire the NEATT customer contracts in order to prevent potential disruption and loss of service to NEATT's subscribers. See *Cingular-NEATT Order*, 20 FCC Rcd at 19795 ¶ 1. See also *supra* ¶ 10.

³⁶ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17607-08 ¶ 43; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8720 ¶ 30; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68.

³⁷ *AT&T-Centennial Order*, 24 FCC Rcd at 13938 ¶ 50; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21525 ¶ 4; Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 02-381, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 19078, 19113 ¶ 63 (2004) ("*Rural Report and Order*").

³⁸ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8720-8721 ¶ 32; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21552 ¶ 58. Because the instant transaction does (continued....)

13. Our analysis shows that in each of the five CMAs that are the subject of this transaction, AT&T's total post-transaction spectrum holdings do not trigger the Commission's overall spectrum screen.³⁹ AT&T's post-transaction spectrum holdings in the five relevant markets range from 63 to 78 megahertz in total, with the maximum holdings being below one-third of the total spectrum that is suitable and available in the near term for the provision of mobile telephony/broadband services.⁴⁰ Further, each of the other nationwide providers holds substantial amounts of spectrum in these markets.⁴¹ Our competitive analysis, however, does not end here given that this transaction involves reacquisition of divested spectrum pursuant to the *Cingular-AT&T Wireless Order*, adopted in 2004. As discussed below, in light of the Commission's divestiture requirement in the *Cingular-AT&T Wireless Order* and the statement in the *Cingular-NEATT Order*, we further analyze the competitive conditions in the marketplace to determine whether allowing AT&T to reacquire spectrum licenses in these markets would be likely to cause any competitive harms or otherwise disserve the public interest, or, in contrast, whether allowing AT&T to reacquire this spectrum would serve the public interest.

14. We find that changes in the competitive landscape during the past eight years since the Commission's divestiture condition in the *Cingular-AT&T Wireless Order* make it unlikely that there would be competitive harm if we allow AT&T to reacquire the broadband PCS licenses at issue from NEATT. Similarly, we find that the Commission's "expectation" expressed in the *Cingular-NEATT Order* that these licenses would not be acquired by the primary incumbents in the Arkansas markets is no longer applicable given these changes.⁴² Since the 2004 *Cingular-AT&T Wireless Order*, total spectrum suitable and available for the provision of wireless telephony/broadband services has increased considerably. In 2004, there was approximately 200 megahertz of suitable and available spectrum.⁴³ Today, however, more than double that amount of spectrum is suitable and available for the provision of mobile wireless services.⁴⁴ Given its status as a primary incumbent, AT&T currently holds only limited

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not result in the acquisition of wireless business units and customers or change the number of firms in the market, we do not apply an initial screen based on the size of the post-transaction Herfindahl-Hirschman Index ("HHI") of market concentration and the change in the HHI.

³⁹ In the *AT&T-Qualcomm Order*, the Commission stated that it "may find it appropriate to reduce the amount of suitable SMR spectrum included in the screen." *AT&T-Qualcomm Order*, 26 FCC Rcd at 17607 ¶ 42. However, even if we were to make this adjustment to the spectrum screen, AT&T's total post-transaction spectrum holdings would still not trigger the screen in any of the markets. See *AT&T-Qualcomm Order*, 26 FCC Rcd at 17607 ¶ 41 (noting that under any version of the overall spectrum screen relatively few, or no, local markets are triggered for further competitive analysis); *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 3720-21 ¶ 32; *AT&T-Centennial Order*, 24 FCC Rcd at 13935 ¶ 34; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468-69 ¶¶ 41, 43.

⁴⁰ Of the five CMAs (25 counties), in only two counties in CMA 326 (Arkansas 3 – Sharp) would AT&T have 78 megahertz of total spectrum post-transaction. AT&T would hold in the other four CMAs, at the most, 73 megahertz of total spectrum post-transaction. AT&T's maximum post-transaction spectrum holdings are below one-fourth of the total spectrum that is suitable and available in the near term for the provision of mobile telephony/broadband services.

⁴¹ Verizon Wireless holds 77-92 megahertz of spectrum, Sprint-Nextel holds 46-113 megahertz, and T-Mobile holds 30-60 megahertz of spectrum. Other firms that hold at least 20 megahertz of spectrum include CenturyTel, Leap, and SpectrumCo AWS.

⁴² In light of the circumstances noted herein, the directions with respect to these licenses in our previous orders are hereby modified to be consistent with the result we reach – approving the requested transfer of licenses from NEATT to AT&T.

⁴³ See *AT&T-Cingular Wireless Order*, 19 FCC Rcd at 21560-61 ¶ 81.

⁴⁴ This includes cellular, PCS, Specialized Mobile Radio ("SMR"), and 700 MHz band spectrum, as well as AWS-1 and Broadband Radio Service ("BRS") spectrum where available.

spectrum in these markets – 43 megahertz of total spectrum in the markets involved in this transaction, including no PCS spectrum. AT&T currently uses 25 megahertz of cellular spectrum to serve its customer base for voice and 3G broadband service.⁴⁵ AT&T's only other spectrum in these markets is slated for near-term uses – 6 megahertz of unpaired 700 MHz spectrum recently acquired from Qualcomm to be used for supplemental downlink, and 12 megahertz to be used to roll out its 4G LTE.⁴⁶ AT&T, post-transaction, would hold no more than 78 megahertz of spectrum, which is in line with the spectrum holdings of the other nationwide providers in these markets. In addition, T-Mobile has significantly expanded its population and area coverage⁴⁷ and Sprint Nextel has also increased its coverage since 2004.⁴⁸ Further, in one CMA, Leap has significant population coverage and has begun to provide coverage in two other markets.⁴⁹

15. In addition, the record reveals that NEATT made a good faith effort to find a buyer for these licenses for more than two years, and during this period, AT&T was the only company that made an offer to acquire this spectrum.⁵⁰ In the Applicants' Public Interest Statement and the attached declarations,⁵¹ the Applicants provide details concerning NEATT's good faith efforts to sell these spectrum assets to a variety of potential purchasers.⁵² NEATT was unable to find a buyer, other than AT&T, that would offer to acquire its spectrum.⁵³ For the past eight years, NEATT has not been using the spectrum at issue to serve customers in these markets.⁵⁴ The most likely alternative to NEATT's purchase agreement with AT&T in these markets would be to have this spectrum continue to lay fallow,

⁴⁵ See AT&T, *AT&T Coverage Map*, available at <http://www.att.com/network/> (last visited Apr. 9, 2012).

⁴⁶ See *AT&T-Qualcomm Order*, 19 FCC Red at 17593 ¶ 14 (citing to the Applicants' Public Interest Statement regarding AT&T's use of Qualcomm's spectrum). See, e.g., *4G LTE Available in Washington, DC*, Press Release, available at <http://www.att.com/gen/press-room?pid=21937&cdvn=news&newsarticleid=33215> (last visited Apr. 5, 2012); AT&T to Roll Out 4G LTE in Dallas, Press Release, available at <http://www.att.com/gen/press-room?pid=19876&cdvn=news&newsarticleid=31957> (last visited Apr. 5, 2012) (stating that "AT&T plans to deliver 4G LTE over 700 MHz, as well as 1700/2100 MHz AWS spectrum").

⁴⁷ Commission analysis of American Roamer coverage maps, October 2011, and census block population data from the 2010 Census. See also T-Mobile, *T-Mobile Coverage Map*, available at <http://www.t-mobile.com/coverage/pcc.aspx> (last visited Apr. 9, 2012).

⁴⁸ Commission analysis of American Roamer coverage maps, October 2011, and census block population data from the 2010 Census. See also Sprint Nextel, *Sprint Nextel Coverage Map*, available at <http://coverage.sprintpcs.com/IMPACT.jsp?INTNAV=ATG:HE:Cov> (last visited Apr. 9, 2012).

⁴⁹ Commission analysis of American Roamer coverage maps, October 2011, and census block population data from the 2010 Census. See also Leap, *Leap (Cricket) Coverage Map*, available at <http://www.mycricket.com/coverage/maps/broadband> (last visited Apr. 9, 2012).

⁵⁰ See Public Interest Statement at 5-6; Application, Percy L. Berger, Sr. Declaration at ¶¶ 3-6; Application, Brian Harvey Declaration at ¶ 7. "[O]nly AT&T was willing to bid for the spectrum and to negotiate and enter into a definitive purchase agreement." Application, Brian Harvey Declaration at ¶ 8.

⁵¹ The statements made in these declarations were "under penalty of perjury," which is consistent with what is required under section 1.16 of the Commission's rules. See 47 CFR § 1.16.

⁵² See Public Interest Statement at 5-6; Application, Percy L. Berger, Sr. Declaration at ¶¶ 3-6. NEATT, through Falkenberg Capital, contacted over 25 entities, which included "major wireless operators, regional wireless operators, small market spectrum owners, and landline telecommunications companies with a presence in or near the area covered by NEATT's licenses." Application, Brian Harvey Declaration at ¶ 7.

⁵³ Public Interest Statement at 5-6; Application, Percy L. Berger, Sr. Declaration at ¶¶ 3-6; Application, Brian Harvey Declaration at ¶¶ 5-10.

⁵⁴ See Public Interest Statement at 4.

which we find would not be in the public interest.⁵⁵ Based on our analysis and the discussion above, we find that AT&T's proposed acquisition of NEATT's broadband PCS licenses is unlikely to cause competitive or other public interest harms and it would serve the public interest to allow AT&T to reacquire the broadband PCS licenses at issue from NEATT to effectuate the transaction-specific public interest benefits that the Applicants claim will occur.⁵⁶

B. Potential Public Interest Benefits

16. In addition to assessing the potential competitive harms associated with the proposed *AT&T-NEATT* transaction, we also consider whether the proposed assignment of spectrum is likely to generate verifiable, transaction-specific public interest benefits.⁵⁷ In doing so, we determine whether the proposed assignment would result in demonstrable and verifiable benefits to consumers that would not be pursued otherwise.⁵⁸

17. The Applicants assert that the proposed assignment “will enable AT&T to achieve greater operational efficiencies and offer improved, more robust and advanced services to meet the needs of new and existing subscribers.”⁵⁹ According to the Applicants, the additional spectrum sought in this transaction is necessary for AT&T to deploy new broadband service and continue to offer quality coverage in the affected markets.⁶⁰ The Applicants state that the spectrum proposed to be acquired in this transaction would make it possible for AT&T to deploy broadband UMTS services while maintaining or improving service quality on its GSM/EDGE network.⁶¹

18. As noted above, the proposed transaction does not present any competitive or other harms. As a result, we require a lesser showing of public interest benefits by the Applicants. In the end, we conclude, based on the record before us and as discussed above, that this transaction is likely to result in meaningful transaction-specific public interest benefits that support grant of the Commission's approval to the proposed transaction.

C. Conclusion

19. In conclusion, based on the record before us, we find that the Applicants have demonstrated that the assignment of these 13 broadband PCS licenses in five CMAs in Arkansas from NEATT to AT&T would serve the public interest, convenience, and necessity. Accordingly, the Commission hereby grants the application.

VI. ORDERING CLAUSES

20. Accordingly, having reviewed the application and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the application for assignment of 13 broadband PCS

⁵⁵ NEATT is not presently providing service to customers and therefore this proposed transaction would enable spectrum that has been lying fallow to be put to use in serving customers. *See id.* at 4.

⁵⁶ *See id.* at 2-3, 6.

⁵⁷ *See, e.g., AT&T-Qualcomm Order*, 19 FCC Rcd at 17622-23 ¶ 81; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8736 ¶ 73; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

⁵⁸ *See, e.g., AT&T-Qualcomm Order*, 19 FCC Rcd at 17622-23 ¶ 81; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8736 ¶ 73; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

⁵⁹ Public Interest Statement at 2-3.

⁶⁰ *Id.* at 6.

⁶¹ *Id.* at 6.

licenses in five CMAs in Arkansas (Arkansas 3 - Sharp), CMA 327 (Arkansas 4 - Clay), CMA 328 (Arkansas 5 - Cross), CMA 329 (Arkansas 6 - Cleburne), and CMA 330 (Arkansas 7 - Pope) from NEATT Wireless, LLC to New Cingular Wireless PCS, LLC, ULS File No. 0004352233, is GRANTED.

21. 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 Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary