

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

In the Matter of)	
)	
Application of AT&T Mobility Spectrum LLC and Aloha Partners II, L.P.)	ULS File No. 0006065982
)	
For Consent to Assign Advanced Wireless Services A, B and C Block Licenses)	

ORDER

Adopted: July 22, 2014

Released: July 22, 2014

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we address comments filed by the Rural Wireless Association, Inc. (“RWA”) with respect to the application of AT&T Mobility Spectrum LLC (“AT&T Mobility Spectrum”), an indirect wholly-owned subsidiary of AT&T Inc. (collectively with AT&T Mobility Spectrum, “AT&T”), and Aloha Partners II, L.P. (“Aloha,” and together with AT&T, the “Applicants”), to assign Advanced Wireless Services (“AWS-1”) A, B, and C Block spectrum licenses from Aloha to AT&T Mobility Spectrum.¹ For the reasons discussed below, we deny the requests for relief set forth in the RWA comments.

II. BACKGROUND

2. AT&T, incorporated in Delaware and headquartered in Dallas, Texas, is a communications holding company that, indirectly, wholly owns AT&T Mobility Spectrum.² Aloha is a limited partnership formed in 2004 that owns AWS-1 licenses but does not currently provide wireless services to consumers.³

3. On January 7, 2014, the Applicants filed the Application, pursuant to Section 310(d) of the Communications Act of 1934, as amended,⁴ seeking Commission consent to assign the subject licenses from Aloha to AT&T. The Applicants amended the Application on February 10, 2014. On February 12, 2014, the Commission released a public notice seeking comment on the proposed transaction.⁵ In response to the *Comment Public Notice*, RWA filed comments on March 5, 2014. AT&T filed a reply on

¹ Application of Aloha Partners II, L.P. and AT&T Mobility Spectrum LLC, ULS File No. 0006065982 (filed Jan. 7, 2014, amended Feb. 10, 2014) (the “Application”).

² See Application, Exhibit 3 (filed Jan. 7, 2014).

³ See <http://www.alohapartners.net/about/> (last visited May 12, 2014).

⁴ 47 U.S.C. § 310(d).

⁵ AT&T Mobility Spectrum LLC and Aloha Partners II, L.P. Seek FCC Consent to the Assignment of Advanced Wireless Services Licenses from Aloha to AT&T Mobility Spectrum, 29 FCC Rcd 1320 (2014) (“*Comment Public Notice*”).

March 17, 2014, and Aloha filed opposition comments on March 18, 2014. RWA filed reply comments on March 24, 2014.

4. In their filings, RWA requests that we deny the proposed transaction or in the alternative delay ruling until after the Commission has released an order in the Mobile Spectrum Holdings proceeding, WT Docket No. 12- 269.⁶ Relying upon its advocacy in the Mobile Spectrum Holdings proceeding, RWA argues that the Commission should review the proposed transaction in a manner that ensures future competition between no fewer than four providers in any county.⁷ RWA argues that the best means to ensure this level of competition is through new, industry-wide rules that cap the amount of spectrum that each provider can hold to 25 percent of suitable and available spectrum in each market.⁸ Further, RWA requests that if the proposed transaction is reviewed prior to the promulgation of new rules in the Mobile Spectrum Holdings proceeding and the proposed transaction is granted, the Commission should: (1) require AT&T to divest or lease spectrum holdings that exceed 25 percent of the suitable and available spectrum in a market; or (2) require AT&T to accept the following conditions in any market in which it will hold greater than 25 percent of all suitable and available spectrum (or 40 percent of all suitable and available spectrum below 1 GHz): AT&T will publish its retail roaming rates and cap its wholesale roaming rates at that level, AT&T will sell only fully interoperable mobile devices to its customers, and AT&T will eliminate mobile device exclusivity agreements.⁹

5. In its reply, AT&T argues that RWA has failed to establish that its requests are transaction specific and that RWA has not offered evidence to show that the relief it seeks is related to anything arising from this license transfer.¹⁰ Further, AT&T asserts that RWA lacks evidence of general or transaction-specific harm in support of RWA's alternative request for conditions relating to data roaming, interoperability, and handset exclusivity.¹¹ In its opposition comments, Aloha argues that RWA's request for relief amounts to an argument for a spectrum cap that RWA has presented in several other proceedings and that the Commission has previously rejected.¹²

III. DISCUSSION

6. RWA raises general concerns that the proposed transaction would contribute to excessive spectrum aggregation on the part of AT&T.¹³ RWA has raised these same concerns in other proceedings.¹⁴ To the extent that RWA repeats arguments that the Commission has addressed in other

⁶ See RWA Reply Comments 1, 5-6.

⁷ See RWA Comments at 2 n.3, 3 n.5.

⁸ See RWA Comments at 4-7, 14.

⁹ See RWA Comments at 10-11, 14-15.

¹⁰ See AT&T Reply at 2.

¹¹ See AT&T Reply at 3.

¹² See Aloha Opposition Comments at 2 (arguing that RWA's repetition of claims amounts to an abuse of process).

¹³ See RWA Comments at 4. RWA argues that without appropriate conditions spectrum aggregation may result in one of the two smaller national providers exiting the market or relying on a lesser amount of spectrum than its competitors potentially causing spectrum-starved individual markets, increased customer churn and unprofitability. See RWA Comments at 8.

¹⁴ See, e.g., Letter from Caressa D. Bennet, General Counsel, Rural Telecommunications Group, Inc., to Marlene H. Dortch, Secretary, FCC, ULS File Nos. 0005597386 and 0005597395; WT Docket No. 12-269, Policies Regarding Mobile Spectrum Holdings; WT Docket No. 12-69, Promoting Interoperability in the 700 MHz Commercial Spectrum; GN Docket No. 12-268, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; WT Docket No. 05-265, Reexamination of Roaming Obligations of Commercial Mobile Radio (continued....)

proceedings, we need not revisit them here. Moreover, RWA fails to allege any other specific competitive harms that would result from the transaction before us and has not provided specific facts or evidence to support a finding that the transaction is likely to cause competitive or public interest harms.¹⁵ Finally, we note that RWA requested that the Commission refrain from reviewing the instant transaction until the conclusion of the Commission's Mobile Spectrum Holdings proceeding. The *Mobile Spectrum Holdings Report and Order* was adopted on May 15, 2014, and released on June 2, 2014.¹⁶ Accordingly, we deny the requests for relief set forth in RWA's Comments and Reply Comments.

V. ORDERING CLAUSES

7. IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the requests for relief set forth in the Comments and Reply Comments of the Rural Wireless Association, Inc. are DENIED for the reasons stated herein.

8. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, that the Broadband Division of the Wireless Telecommunications Bureau SHALL PROCESS the following application consistent with this Order and the Commission's rules: ULS File No. 0006065982.

9. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger C. Sherman
Chief
Wireless Telecommunications Bureau

(Continued from previous page) _____
Service Providers, filed August 30, 2013; Letter From Caressa D. Bennet, General Counsel, and Daryl Zakov, Assistant General Counsel, RuralWireless Association, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; WT Docket No. 12-269, Policies Regarding Mobile Spectrum Holdings, filed Apr. 10, 2014.

¹⁵ Under section 1.939(d) of the Commission's rules, a petition to deny must contain specific allegations of fact sufficient to make a prima facie showing that a grant of the application would be inconsistent with the public interest, convenience and necessity. While we note that RWA's filings were submitted to the Commission as Comments, not a Petition to Deny, we need not consider the procedural implications, if any, given that RWA's filings do not make transaction-specific arguments.

¹⁶ In the Matter of Policies Regarding Mobile Spectrum Holdings Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, WT Docket 12-269, 12-268, *Report and Order*, FCC 14-63 (rel. June 2, 2014) ("*Mobile Spectrum Holdings Report and Order*").