

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

In the Matter of
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
WT Docket No. 14-144

MEMORANDUM OPINION AND ORDER

Adopted: May 6, 2015

Released: May 8, 2015

By the Commission: Commissioners Pai and O’Rielly issuing separate statements.

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I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the applications of AT&T and Plateau Wireless for Commission consent to the assignment to AT&T of three AWS-1 licenses, three cellular licenses, two Lower 700 MHz C Block licenses, and 23 common carrier fixed point-to-point

microwave licenses. The subject licenses encompass largely rural parts of New Mexico and Texas. The Applicants also seek to assign three international section 214 authorizations to AT&T. In addition, Plateau Wireless's approximately 40,000 subscribers, along with network equipment and other assets, would be transferred to AT&T as part of the proposed transaction.

2. The Commission recently determined in the *Mobile Spectrum Holdings Report and Order* that increased aggregation of below-1-GHz spectrum would be treated as an "enhanced factor" under its case-by-case review of license transfers if post-transaction the acquiring entity would hold approximately one-third or more of the suitable and available spectrum below 1 GHz. In the proposed transaction, in addition to acquiring Plateau Wireless's customers, network equipment and other assets, AT&T would also increase its spectrum holdings. In particular, AT&T would hold post-transaction more than one-third of the currently suitable and available below-1-GHz spectrum. The Applicants have facilitated our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh the harms. After carefully evaluating the likely competitive effects of the proposed transaction, including the effects of increased market concentration and specifically the likely competitive effects of AT&T's increased aggregation of below-1-GHz spectrum in these markets, we find that the likelihood of competitive harm is low. Further, we find some public interest benefits are likely, such as increased network quality and roaming cost savings. Thus, based on the record before us and our competitive review, we find that the Applicants have demonstrated that the proposed assignment of licenses and authorizations would serve the public interest, convenience, and necessity. We therefore approve the proposed transaction for the reasons discussed below.

II. BACKGROUND

A. Description of the Applicants

3. AT&T Inc. (together with its subsidiaries, "AT&T"), headquartered in Dallas, Texas, is a communications holding company that ranks among the leading providers of telecommunications services in the United States.¹ As of December 31, 2014, AT&T reported more than 120 million wireless subscribers and approximately \$74 billion in wireless service and equipment revenues, which accounted for approximately 56 percent of AT&T's total revenues.² AT&T's nationwide wireless network currently covers approximately 306 million people, or 99.2 percent of the population of the United States.³ E.N.M.R. Telephone Cooperative ("E.N.M.R."), Plateau Telecommunications, Inc. ("Plateau Telecommunications"), New Mexico RSA 4 East Limited Partnership, and Texas RSA 3 Limited Partnership (together with E.N.M.R., Plateau Telecommunications, and New Mexico RSA 4 East Limited Partnership, "Plateau Wireless," and together with AT&T, the "Applicants") offers wireline and wireless phone, cable television, and high-speed Internet services to its customers in parts of eastern New Mexico and western Texas.⁴

B. Description of the Transaction

4. On July 15, 2014, AT&T and Plateau Wireless filed the Applications pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (the "Act"),⁵ seeking Commission

¹ See AT&T Inc., SEC Form 10-K, at 1 (filed Feb. 20, 2015), available at http://www.sec.gov/Archives/edgar/data/732717/000073271715000016/ye14_10k.htm.

² See AT&T Inc., SEC Form 10-K, Exhibit 12, at 4, 5 (filed Feb. 20, 2015), available at http://www.sec.gov/Archives/edgar/data/732717/000073271715000016/ye14_10k.

³ Mosaik Solutions Data ("Mosaik"), July 2014.

⁴ See Application for Assignment of Licenses from Plateau Telecommunications, Inc. to Powell Acquisition Company LLC, ULS File No. 0006366669 (filed July 14, 2014) ("Lead Application"), Exhibit 1 – Description of the Transaction and Public Interest Statement at 2 ("Public Interest Statement"). See Appendix for a list of the applications.

⁵ 47 U.S.C. §§ 214, 310(d).

consent to assign three Advanced Wireless Services (“AWS-1”) licenses, three cellular licenses, two Lower 700 MHz C Block licenses, 23 common carrier fixed point-to-point microwave licenses, and three international 214 authorizations to an indirect, wholly-owned subsidiary of AT&T.⁶ In the instant transaction, AT&T proposes to acquire 32 to 57 megahertz of spectrum in 24 counties covering three rural Cellular Market Areas (“CMAs”) in parts of New Mexico and Texas.⁷ Post-transaction, AT&T would hold from 135 to 173 megahertz of spectrum in total, and from 18 to 55 megahertz of below-1-GHz spectrum (varying by county).⁸ In addition, Plateau Wireless’s approximately 40,000 subscribers, along with network equipment and other assets, would be transferred to AT&T.⁹

5. AT&T asserts that, as a result of the proposed transaction, it would complete Plateau Wireless’s HSPA+ deployment and overlay LTE technology at a “much faster pace than Plateau Wireless would be able to achieve.”¹⁰ In the areas where AT&T’s and Plateau Wireless’s networks overlap, AT&T claims that it “will integrate complementary cell sites and select other equipment, resulting in a denser network with improved coverage and capacity.”¹¹ AT&T further asserts that greater cell site density would enable faster data speeds and permit better signal penetration of homes and other buildings.¹² According to AT&T, customers of both companies would enjoy a better experience, particularly in areas where they may be experiencing dropped calls, dead spots, and coverage gaps.¹³

C. Transaction Review Process

6. On July 15, 2014, the Applicants filed the Applications. On September 8, 2014, the Commission released a public notice, which announced the acceptance of the Applications for filing and established a pleading cycle.¹⁴ The *Accepted for Filing Public Notice* explained that the Wireless Telecommunications Bureau (“WTB” or “the Bureau”) would treat the proposed increase in below-1-GHz spectrum holdings as an “enhanced factor” in its review pursuant to the *Mobile Spectrum Holdings Report and Order*.¹⁵ On October 2, 2014, the Bureau extended the pleading cycle, with petitions due October 17, 2014, oppositions due October 27, 2014, and replies due November 3, 2014.¹⁶ In response to

⁶ See Public Interest Statement at 1-2.

⁷ See AT&T Inc. and Plateau Wireless Seek FCC Consent to the Assignment of Advanced Wireless Services, Cellular, Lower 700 MHz, and Microwave Licenses, and International Section 214 Authorizations, WT Docket No. 14-144, *Public Notice*, DA 14-1287, at 2 (WTB rel. Sept. 8, 2014) (“*Accepted for Filing Public Notice*”). This includes 12 megahertz of 700 MHz B Block spectrum in 20 counties covering two CMAs, 25 megahertz of cellular spectrum covering 21 counties in all or parts of the three CMAs, and 20 megahertz of AWS-1 spectrum covering all 24 counties. See generally Lead Application, Appendix A – Spectrum Aggregation.

⁸ See *Accepted for Filing Public Notice* at 1-2. See also Public Interest Statement at 1, 8.

⁹ See *Accepted for Filing Public Notice* at 1. See also Public Interest Statement at 2.

¹⁰ See Public Interest Statement at 5.

¹¹ See Public Interest Statement at 5.

¹² See Public Interest Statement at 5-6.

¹³ See Public Interest Statement at 5. See also Response of AT&T Inc. to the General Information Request Dated September 22, 2014, WT Docket No. 14-144, at 14-15 (Oct. 6, 2014) (“AT&T Information Request Response”).

¹⁴ See generally *Accepted for Filing Public Notice*.

¹⁵ See *Accepted for Filing Public Notice* at 2, citing Policies Regarding Mobile Spectrum Holdings Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, WT Docket No. 12-269, GN Docket No. 12-268, *Report and Order*, 29 FCC Rcd 6133, 6240 ¶¶ 286-88 (2014) (“*Mobile Spectrum Holdings Report and Order*”).

¹⁶ See generally Pleading Cycle Extended for Proposed Assignment to AT&T from Plateau Wireless of Advanced Wireless Services, Cellular, Lower 700 MHz, and Microwave Licenses, and International Section 214 Authorizations, WT Docket No. 14-144, *Public Notice*, DA 14-1441 (WTB rel. Oct. 2, 2014) (“*Extension Public*”).

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the *Accepted for Filing Public Notice*, the Commission received a Petition for Conditions filed by T-Mobile USA, Inc. (“T-Mobile”),¹⁷ an AT&T Opposition to the T-Mobile Petition for Conditions,¹⁸ and a reply from T-Mobile.¹⁹ The petition urged the Commission to condition any grant of the Applications on AT&T’s adherence to Plateau’s current roaming agreement with T-Mobile, for a period of five years.²⁰ In addition, on October 9, 2014, as described in more detail below, a number of parties filed a letter in the Mobile Spectrum Holdings docket regarding several pending transactions proposed by AT&T, including the instant transaction, that implicate the Commission’s enhanced factor review for certain proposed below-1-GHz transactions.²¹ We address the issues raised in these filings below.

7. On September 22, 2014, the Bureau released a public notice that announced that Numbering Resource Utilization and Forecast (“NRUF”) reports and local number portability (“LNP”) data would be placed into the record and adopted a protective order pursuant to which the Applicants and third parties would be allowed to review the specific NRUF reports and LNP data.²² Also, on September 22, 2014, pursuant to section 308(b) of the Act,²³ the Bureau sent letters to AT&T and Plateau Wireless requesting the submission of written responses and supporting documentation by October 6, 2014, to specific inquiries related to the proposed transaction.²⁴ The Bureau also released a *Joint Protective Order* to ensure that any confidential or proprietary documents submitted to the Commission would be adequately protected from public disclosure, and to announce the process by which interested parties could gain access to confidential information filed in the record.²⁵

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Notice”). On September 29, 2014, the Competitive Carriers Association (CCA) requested a seven business-day extension of the pleading deadlines. *See generally* Motion by Competitive Carriers Association for Extension of Pleading Cycle, WT Docket No. 14-144 (filed Sept. 29, 2014).

¹⁷ *See generally* T-Mobile USA, Inc. Petition for Conditions, WT Docket No. 14-144 (filed Oct. 17, 2014) (“T-Mobile Petition for Conditions”).

¹⁸ *See generally* AT&T Inc. Opposition to Petition for Conditions, WT Docket No. 14-144 (filed Oct. 27, 2014) (“AT&T Opposition”).

¹⁹ *See generally* T-Mobile USA, Inc. Reply to Opposition, WT Docket No. 14-144 (filed Nov. 3, 2014) (“T-Mobile Reply”).

²⁰ *See* T-Mobile Petition for Conditions at 1.

²¹ *See generally* Letter from T-Mobile USA, Inc., Sprint Corporation, Writers Guild of America, West, Open Technology Institute, New America Foundation, Public Knowledge, Computer & Communications Industry Association, Free Press, and COMPTTEL to Chairman Thomas Wheeler, WT Docket No. 12-269, filed Oct. 9, 2014 (“Increased Below-1-GHz Spectrum Aggregation Letter”). *See* ¶ 28 *infra*.

²² *See generally* Applications of AT&T Inc., Plateau Telecommunications, Inc., E.N.M.R. Telephone Cooperative, New Mexico RSA 4 East Limited Partnership, and Texas RSA 3 Limited Partnership for Consent To Assign Licenses and Authorizations; Numbering Resource Utilization and Forecast Reports and Local Number Portability Reports To Be Placed into the Record, Subject to Protective Order, WT Docket No. 14-144, CC Docket No. 99-200, *Public Notice*, DA 14-1374 (WTB rel. Sept. 22, 2014); Applications of AT&T Inc., Plateau Telecommunications, Inc., E.N.M.R. Telephone Cooperative, New Mexico RSA 4 East Limited Partnership, and Texas RSA 3 Limited Partnership for Consent To Assign Licenses and Authorizations, WT Docket No. 14-144, *NRUF/LNP Protective Order*, DA 14-1373 (WTB rel. Sept. 22, 2014).

²³ 47 U.S.C. § 308(b).

²⁴ *See generally* Letter from Roger C. Sherman, Chief, WTB, to Michael P. Goggin, AT&T, WT Docket No. 14-144 (WTB rel. Sept. 22, 2014) (“*AT&T Information Request*”); Letter from Roger C. Sherman, Chief, WTB, to Launa Waller, Plateau Telecommunications, Inc., WT Docket No. 14-144 (WTB rel. Sept. 22, 2014) (“*Plateau Wireless Information Request*”).

²⁵ *See generally* Applications of AT&T Inc., Plateau Telecommunications, Inc., E.N.M.R. Telephone Cooperative, New Mexico RSA 4 East Limited Partnership, and Texas RSA3 Limited Partnership for Consent To Assign

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III. STANDARD OF REVIEW

8. Pursuant to sections 214(a) and 310(d) of the Act,²⁶ we must determine whether the Applicants have demonstrated that the proposed assignment of licenses and authorizations would serve the public interest, convenience, and necessity. In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act,²⁷ other applicable statutes, and the Commission's rules, including whether the applicants are qualified to hold licenses.²⁸ If the proposed transaction does not violate a statute or rule, we next consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.²⁹ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.³⁰ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.³¹

9. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.³² The Commission and the Department of Justice ("DOJ") each have independent authority to examine the competitive impacts of proposed mergers and transactions involving transfers of Commission licenses, but the Commission's competitive

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Licenses and Authorizations, WT Docket No. 14-144, *Joint Protective Order*, DA 14-1371 (WTB rel. Sept. 22, 2014).

²⁶ 47 U.S.C. §§ 214(a), 310(d).

²⁷ Section 310(d) requires that we consider the application as if the proposed assignee were applying for the licenses directly under section 308 of the Act. 47 U.S.C. §§ 308, 310(d). *See, e.g.*, Applications of AT&T Inc., Leap Wireless International, Inc., Cricket License Co., LLC and Leap LicenseCo, Inc. for Consent To Transfer Control and Assign Licenses and Authorizations, WT Docket No. 13-193, *Memorandum Opinion and Order*, 29 FCC Rcd 2735, 2741 ¶ 13 (WTB, IB 2014) ("*AT&T-Leap Order*"); Applications of Sprint Nextel Corp. and SoftBank Corp. and Starburst II, Inc. for Consent to Transfer Control of Licenses and Authorizations, IB Docket No. 12-343, *Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration*, 28 FCC Rcd 9642, 9650 ¶ 23 (2013) ("*SoftBank-Sprint Order*"); Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. for Consent To Transfer of Control of Licenses and Authorizations, WT Docket No. 12-301, *Memorandum Opinion and Order and Declaratory Ruling*, 28 FCC Rcd 2322, 2327 ¶ 14 (WTB, IB 2013) ("*T-Mobile-MetroPCS Order*").

²⁸ *See, e.g.*, *AT&T-Leap Order*, 29 FCC Rcd at 2741-42 ¶ 13; *SoftBank-Sprint Order*, 28 FCC Rcd at 9650 ¶ 23; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2327 ¶ 14.

²⁹ *See id.*

³⁰ *See id.*

³¹ *See id.* For example, the Commission set out in the *Mobile Spectrum Holdings Report and Order* its anticipation "that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms." The Commission also stated that "we anticipate that we likely would have even greater concerns where the proposed transaction would result in an assignee or transferee that already holds approximately one-third or more of below-1-GHz spectrum in a market acquiring additional below-1-GHz spectrum in that market, especially with regard to paired low-band spectrum. In these cases, the demonstration of the public interest benefits of the proposed transaction would need to clearly outweigh the potential public interest harms associated with such additional concentration of below-1-GHz spectrum, irrespective of other factors." *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶¶ 286-87.

³² *See, e.g.*, *AT&T-Leap Order*, 29 FCC Rcd at 2742 ¶ 15; *SoftBank-Sprint Order*, 28 FCC Rcd at 9651 ¶ 25; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2328-29 ¶ 16.

analysis under the public interest standard is somewhat broader.³³ For example, the Commission considers whether a proposed transaction would enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant markets.³⁴ If we are unable to find that the proposed transaction serves the public interest for any reason or if the record presents a substantial and material question of fact, we must designate the application(s) for hearing.³⁵ Finally, the Commission's public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.³⁶

IV. QUALIFICATIONS OF APPLICANTS

10. 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."³⁷ Therefore, as a threshold matter, the Commission must determine whether the applicants to the proposed transaction – both the assignee and the assignor – meet the requisite qualifications requirements to hold and transfer licenses under section 310(d) and the Commission's rules.³⁸

11. *Discussion.* As an initial matter, we note that no parties have raised issues with respect to the basic qualifications of Plateau Wireless. The Commission generally does not reevaluate the qualifications of assignors unless issues related to basic qualifications have been sufficiently raised in petitions to warrant designation for hearing.³⁹ We find that there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Act and our rules, regulations, and policies, of Plateau Wireless. In addition, no issues have been raised with respect to the basic qualifications of AT&T. AT&T previously and repeatedly has been found qualified to hold Commission licenses.⁴⁰ We find that there is no reason to reevaluate the requisite citizenship, character,

³³ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9651 ¶ 25. See also *AT&T-Leap Order*, 29 FCC Rcd at 2742 ¶ 15; *T-Mobile-MetroPCS Order*, 28 FCC Rcd 2328-29 ¶ 16.

³⁴ See *id.*

³⁵ 47 U.S.C. § 309(e); see also *AT&T-Leap Order*, 29 FCC Rcd at 2743 ¶ 15; *SoftBank-Sprint Order*, 28 FCC Rcd at 9652 ¶ 25; Applications of EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp., CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559, 20574 ¶ 25 (2002).

³⁶ See, e.g., *AT&T-Leap Order*, 29 FCC Rcd at 2743 ¶ 16; *SoftBank-Sprint Order*, 28 FCC Rcd at 9652 ¶ 25; Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent To Assign AWS-1 Licenses, WT Docket No. 12-4, *Memorandum Opinion and Order*, 27 FCC Rcd 10698, 10711 ¶ 30 (2012) ("*Verizon Wireless-SpectrumCo Order*").

³⁷ 47 U.S.C. §§ 308, 310(d); see also, e.g., *AT&T-Leap Order*, 29 FCC Rcd at 2744 ¶ 17; Applications of GCI Communication Corp., ACS Wireless License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. for Consent To Assign Licenses to the Alaska Wireless Network, LLC, WT Docket No. 12-187, 28 FCC Rcd 10433, 10444 ¶ 28 (2013) ("*Alaska Wireless Order*"); *SoftBank-Sprint Order*, 28 FCC Rcd at 9652 ¶ 26.

³⁸ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see also, e.g., *AT&T-Leap Order*, 29 FCC Rcd at 2744 ¶ 17; *Alaska Wireless Order*, 28 FCC Rcd at 10444-45 ¶ 28; *SoftBank-Sprint Order*, 28 FCC Rcd at 9652-53 ¶ 26.

³⁹ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10445 ¶ 29; *SoftBank-Sprint Order*, 28 FCC Rcd at 9653 ¶ 27. See also *AT&T-Leap Order*, 29 FCC Rcd at 2744 ¶ 17.

⁴⁰ See, e.g., *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 19; Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corporation, Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas & Electric Company for Consent To Assign and Transfer Licenses, WT Docket No. 12-240, *Memorandum Opinion and Order*, 27 FCC Rcd 16459, 16466-67 ¶ 19 (2012) ("*AT&T WCS Order*").

financial, technical, or other basic qualifications under the Act and our rules, regulations, and policies, of AT&T.

V. POTENTIAL PUBLIC INTEREST HARMS

12. 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.⁴¹ The Commission undertakes a case-by-case review of the competitive effects of any increase in market concentration or in spectrum holdings in the relevant markets.⁴² The Commission's competitive analysis of wireless transactions focuses initially on markets where the acquisition of customers and/or spectrum would result in significant concentration of either or both, and thereby could lead to competitive harm.⁴³ In its analysis, the Commission uses an initial two-part screen to help identify those markets that provide particular reason for further competitive analysis. As set out in various transactions orders, however, the Commission has not limited its consideration of potential competitive harms solely to markets identified by its initial screen, if it encounters other factors that may bear on the public interest inquiry.⁴⁴

13. In the *Mobile Spectrum Holdings Report and Order*, the Commission found that it is in the public interest to continue to use its initial spectrum screen and case-by-case review to evaluate the likely competitive effects of increased spectrum aggregation through secondary market transactions.⁴⁵ In addition to modifying the spectrum screen as explained below, the *Mobile Spectrum Holdings Report and Order* requires that any increase in spectrum holdings of below 1 GHz 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.⁴⁶

14. The Commission reached this conclusion primarily because low-band spectrum is less costly to deploy and provides higher quality coverage than higher-band spectrum,⁴⁷ and the leading nationwide providers hold most of the low-band spectrum available today.⁴⁸ The Commission found that if they were to acquire all, or substantially all, of the remaining low-band spectrum, they would benefit, independently of any deployment, to the extent that rival service providers are denied its use.⁴⁹ As the Commission found, without access to this low-band spectrum, rival service providers that may lack a mix

⁴¹ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9656 ¶ 34; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶¶ 47-48, 10734 ¶ 95. See also *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 20.

⁴² See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; 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, 17602 ¶ 31 (2011) ("*AT&T-Qualcomm Order*"). See also *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 20.

⁴³ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9656 ¶ 34. See also *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 20.

⁴⁴ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9656 ¶ 35; *AT&T WCS Order*, 27 FCC Rcd at 16467 ¶ 21; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17609-10 ¶¶ 49-50.

⁴⁵ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223-24 ¶ 231.

⁴⁶ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233 ¶ 267, 6240 ¶¶ 286-88.

⁴⁷ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164 ¶ 60.

⁴⁸ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6156-57 ¶ 46. The *Mobile Spectrum Holdings Report and Order* states that "in many service areas currently suitable and available below-1-GHz spectrum is disproportionately concentrated in the hands of larger nationwide service providers: the two largest providers hold 73 percent of the low-band spectrum." *Id.*, 29 FCC Rcd at 6168 ¶ 68.

⁴⁹ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164 ¶ 60.

of low-band and higher-band spectrum would be less able to provide a robust competitive alternative, and may not be able to quickly expand coverage or provide new or innovative services.⁵⁰

15. The Commission stated in the *Mobile Spectrum Holdings Report and Order* that it anticipated “that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms.”⁵¹ The Commission stated, however, that when the other factors ordinarily considered indicate a low potential for competitive or other public interest harm, the acquisition of below-1-GHz spectrum resulting in holdings of approximately one-third or more would not preclude a conclusion that a proposed transaction, on balance, furthers the public interest.⁵² The Commission concluded that careful consideration of the likely effects of increased aggregation of low-band spectrum under this standard will help ensure that further concentration of such spectrum will not adversely affect competition either in particular local markets or on a broader regional or national level.⁵³

A. Competitive Overview and Market Definitions

1. Competitive Overview

16. Horizontal transactions such as the proposed transaction, in which rival firms in the same market are combining, raise potential competitive concerns when the merged entity has the incentive and the ability, either by itself or in coordination with other service providers, to raise prices, lower quality, or otherwise harm competition in a relevant market.⁵⁴ We examine the likelihood of competitive harm by first estimating the extent to which market concentration, as measured by the Herfindahl-Hirschman Index (“HHI”), would increase as a result of the proposed transaction.⁵⁵ Second, we assess whether any substantial increases in horizontal market concentration would provide the combined entity with the

⁵⁰ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164-65 ¶¶ 60-61; Applications of AT&T Inc., Cellco Partnership d/b/a Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC for Consent To Assign and Lease AWS-1 and Lower 700 MHz Licenses, WT Docket No. 13-56, *Memorandum Opinion and Order*, 28 FCC Rcd 12878, 12893 ¶¶ 40-41 (WTB 2013) (“*AT&T-Verizon Wireless-Grain Order*”); Applications of Cellco Partnership d/b/a Verizon Wireless and E.N.M.R. Telephone Cooperative and Its Wholly-Owned Subsidiary Plateau Telecommunications, Incorporated for Consent To Assign Licenses and Authority, ULS File Nos. 0005034870, 0005034877, and 0005063051, and File No. ITC-ASG-20120420-00105, *Memorandum Opinion and Order*, 27 FCC Rcd 12159, 12154 ¶ 15 (WTB, IB 2012) (“*Verizon Wireless-E.N.M.R. Order*”); *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

⁵¹ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286. The Commission also set out a heightened standard of review for cases in which the proposed transaction would result in an entity that already holds approximately one-third or more of below-1-GHz spectrum in a market acquiring additional below-1-GHz spectrum in that market, especially with regard to paired low-band spectrum. In these cases, the Commission stated that the required demonstration of the potential public interest benefits of the proposed transaction would need to clearly outweigh the potential public interest harms associated with such additional concentration of below-1-GHz spectrum, irrespective of other factors. See *id.*, 29 FCC Rcd at 6240 ¶ 287.

⁵² See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.

⁵³ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 288.

⁵⁴ See, e.g., *AT&T-Leap Order*, 29 FCC Rcd at 2744-46 ¶ 21; Applications of AT&T Inc. and Atlantic Tele-
Network, Inc. for Consent To Transfer Control of and Assign Licenses and Authorizations, WT Docket No. 13-54, *Memorandum Opinion and Order*, 28 FCC Rcd 13670, 13681 ¶ 19 (WTB, IB 2013) (“*AT&T-ATN Order*”); *SoftBank-Sprint Order*, 28 FCC Rcd at 9656 ¶ 34.

⁵⁵ To assess whether the increase in horizontal market concentration is significant or not, we consider the absolute level of the post-transaction HHI, a widely utilized measure of market concentration, as well as the change in the HHI. See section V.B.1. *infra*.

ability to act anticompetitively.⁵⁶ In addition, we evaluate the competitive effects of an increase in spectrum holdings on the marketplace,⁵⁷ including, in particular, the increased aggregation of below-1-GHz spectrum as a result of the proposed transaction.⁵⁸ Spectrum is an essential input in the provision of mobile wireless services, and ensuring that sufficient spectrum is available for incumbent licensees as well as potential new entrants is therefore critical to promoting effective competition and innovation in the marketplace.⁵⁹

2. Market Definitions

17. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,⁶⁰ 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. We note that no party in the proceeding has challenged the Commission's current market definitions for the proposed transaction.

18. *Product Market.* In recent transaction orders,⁶¹ the Commission has determined that the relevant product market 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).⁶² Consistent with past Commission determinations, we find that this product market definition continues to encompass the mobile voice and data services that are provided today, and is sufficiently flexible to reflect emerging, next-generation wireless services.⁶³ As set out in prior transaction proceedings, the product market we define encompasses differentiated services (*e.g.*, voice-centric or data-centric), devices (*e.g.*, feature phone, smartphone, tablet, etc.), and contract features (*e.g.*, prepaid vs. postpaid).⁶⁴ While such distinctions may suggest the possibility of smaller markets nested within that product market,⁶⁵ we find it unnecessary to examine that possibility in order to analyze the potential competitive effects of the proposed transaction.

⁵⁶ See, *e.g.*, *AT&T-Leap Order*, 29 FCC Rcd at 2744-46 ¶ 21; *AT&T-ATN Order*, 28 FCC Rcd at 13681 ¶ 19; *SoftBank-Sprint Order*, 28 FCC Rcd at 9656 ¶ 34.

⁵⁷ See, *e.g.*, *AT&T-Leap Order*, 29 FCC Rcd at 2744-46 ¶ 21; *AT&T-ATN Order*, 28 FCC Rcd at 13681 ¶ 19; *Alaska Wireless Order*, 28 FCC Rcd at 10446 ¶ 33.

⁵⁸ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233 ¶ 267, 6240 ¶ 286-88.

⁵⁹ See, *e.g.*, *AT&T-Leap Order*, 29 FCC Rcd at 2744-46 ¶ 21; *AT&T-ATN Order*, 28 FCC Rcd at 13681 ¶ 19; *AT&T WCS Order*, 27 FCC Rcd at 16467 ¶ 20; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6167-68 ¶ 67.

⁶⁰ See, *e.g.*, *AT&T-Leap Order*, 29 FCC Rcd at 2746 ¶ 22; *Alaska Wireless Order*, 28 FCC Rcd at 10447 ¶ 34; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 36.

⁶¹ See, *e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10447 ¶ 35; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 37. See also *AT&T-Leap Order* 29, FCC Rcd at 2746 ¶ 23.

⁶² See, *e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10447 ¶ 35; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 37. See also *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6224 ¶ 234 n.623; *AT&T-Leap Order*, 29 FCC Rcd at 2746 ¶ 23.

⁶³ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6225 ¶ 237.

⁶⁴ See, *e.g.*, *AT&T-Leap Order*, 29 FCC Rcd at 2747-48 ¶ 26. See also *AT&T-Qualcomm Order*, 26 FCC Rcd at 17603 ¶ 33. The Commission has previously determined that there are separate relevant product markets for interconnected mobile voice and data services, and also for residential and enterprise services, but found it reasonable to analyze all of these services under a combined mobile telephony/broadband services product market. See, *e.g.*, *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10717 ¶ 53 n.119; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17603 ¶ 33.

⁶⁵ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6225 ¶ 237.

We consider these aspects of product differentiation, as appropriate, when we analyze the competitive effects of the proposed transaction within the markets we define. We therefore find that it is in the public interest to retain the current product market definition.

19. *Geographic Markets.* The Commission has found in recent transaction orders that the relevant geographic markets for certain wireless transactions generally are local, but has held that a transaction's competitive effects should also be evaluated at the national level where a transaction exhibits certain national characteristics that provide cause for concern.⁶⁶ Because most consumers use their mobile telephony/broadband services at or close to where they live, work, and shop, they purchase mobile telephony/broadband services from service providers that offer and market such services locally.⁶⁷ Service sold in distant locations is generally not a good substitute for service near a consumer's home or work.⁶⁸ In addition, service providers compete at the local level on factors such as coverage and service quality.⁶⁹ As the Commission has recognized previously, however, two key competitive variables – monthly prices and service plan offerings – do not vary for most providers across most geographic markets.⁷⁰ In addition, certain key elements in the provision of mobile wireless services, such as the development of mobile broadband equipment and devices, are done largely on a national level.⁷¹

20. While the Commission has in the past, where appropriate, analyzed a proposed transaction's competitive effects at the national level, we see no reason to do so for the instant transaction. The Applicants are seeking Commission approval to the transfer of approximately 40,000 subscribers, along with network equipment and other assets, as well as the proposed assignment of 32 to 57 megahertz of spectrum covering 24 counties in three CMAs, accounting for well under one percent of the population of the United States. We find that any potential competitive harms arising from the proposed transaction would be limited to local markets.

21. *Input Market for Spectrum.* When a proposed transaction would increase the concentration of spectrum holdings in any local market, the Commission evaluates the acquiring firm's

⁶⁶ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10447-48 ¶ 36; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 38. See also *AT&T-Leap Order*, 29 FCC Rcd at 2748 ¶ 27; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6225-26 ¶ 238.

⁶⁷ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 38; *AT&T WCS Order*, 27 FCC Rcd at 16469 ¶ 26; *AT&T-Leap Order*, 29 FCC Rcd at 2748-49 ¶ 29; see also *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6225-26 ¶ 238; Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services, WT Docket No. 11-186, *Sixteenth Report*, 28 FCC Rcd 3700, 3735 ¶¶ 22-23 (2013).

⁶⁸ See, e.g., *AT&T-Leap Order*, 29 FCC Rcd at 2748-49 ¶ 29; *Alaska Wireless Order*, 28 FCC Rcd at 10448 ¶ 37; *AT&T WCS Order*, 27 FCC Rcd at 16469 ¶ 26. See also *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6225-26 ¶ 238.

⁶⁹ See, e.g., *AT&T-Leap Order*, 29 FCC Rcd at 2748-49 ¶ 29; *Alaska Wireless Order*, 28 FCC Rcd at 10448 ¶ 37; *AT&T WCS Order*, 27 FCC Rcd at 16469 ¶ 26. See also *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6225-26 ¶ 238.

⁷⁰ See, e.g., *AT&T WCS Order*, 27 FCC Rcd at 16469 ¶ 27; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 57. See also *AT&T-Leap Order*, 29 FCC Rcd at 2749 ¶ 30; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6226 ¶ 239. The four nationwide providers, AT&T, Verizon Wireless, Sprint, and T-Mobile, as well as some other providers set the same rates for a given plan everywhere and advertise nationally. See, e.g., *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6226 ¶ 239; *AT&T WCS Order*, 27 FCC Rcd at 16469 ¶ 27; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718-19 ¶ 57; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604-5 ¶ 35.

⁷¹ See, e.g., *AT&T-Leap Order*, 29 FCC Rcd at 2749 ¶ 30; *AT&T WCS Order*, 27 FCC Rcd at 16469 ¶ 27; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 57. See also *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6226 ¶ 239.

post-transaction holdings of spectrum that is “suitable” and “available” in the near term for the provision of mobile telephony/broadband services.⁷² Suitability is determined by whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its use for mobile services.⁷³ Spectrum is considered available if it is “fairly certain that it will meet the criteria for suitable spectrum in the near term.”⁷⁴

22. The Commission has determined in prior transaction orders that the following bands, or portions thereof, meet this definition of suitable and available spectrum, and should be included in the input market: cellular, broadband PCS, SMR, 700 MHz band spectrum, Advanced Wireless Services in the 1710-1755 and 2110-2155 MHz band (“AWS-1,” on a market-by-market basis), Broadband Radio Service spectrum (“BRS,” on a market-by-market basis), and Wireless Communications Service (“WCS”) spectrum.⁷⁵ Further, in the *Mobile Spectrum Holdings Report and Order*, the Commission determined that the following spectrum bands are suitable and available and also should be included: the 600 MHz band (at the conclusion of the Incentive Auction), Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz spectrum bands (“AWS-4”), H Block, additional BRS spectrum, the majority of the EBS spectrum, and the Advanced Wireless Services-3 (“AWS-3”) band (on a market-by-market basis as it becomes “available”).⁷⁶ The Commission also determined in that Report and Order that the Upper 700 MHz D Block and a certain amount of the SMR spectrum should not be included.⁷⁷

23. *Market Participants.* In previous transactions, the Commission has considered only facilities-based entities providing mobile telephony/broadband services using cellular, PCS, SMR, 700 MHz, AWS-1, BRS, and WCS spectrum to be market participants.⁷⁸ Consistent with the *Mobile Spectrum Holdings Report and Order*, we will also consider facilities-based entities providing mobile telephony/broadband services using AWS-4, H Block, EBS, and AWS-3 and 600 MHz spectrum (as both the latter become available) to be market participants.⁷⁹

⁷² See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10448-49 ¶ 38; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657-58 ¶ 39. See also *AT&T-Leap Order*, 29 FCC Rcd at 2749-50 ¶ 32; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169 ¶ 70.

⁷³ See, e.g., *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169 ¶ 71; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17605-6 ¶ 38.

⁷⁴ See, e.g., *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169 ¶ 71; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17605-6 ¶ 38.

⁷⁵ See e.g., *AT&T WCS Order*, 27 FCC Rcd at 16469-70 ¶ 29, 16470-71 ¶ 31; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17606 ¶ 39. See also *AT&T-Leap Order*, 29 FCC Rcd at 2749-50 ¶ 32; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169-70 ¶ 72.

⁷⁶ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169 ¶ 70.

⁷⁷ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169 ¶ 70.

⁷⁸ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10449-50 ¶ 41; *SoftBank-Sprint Order*, 28 FCC Rcd at 9660 ¶ 43. See also *AT&T-Leap Order*, 29 FCC Rcd at 2751 ¶ 35. The Commission has assessed the competitive effect of MVNOs and resellers in prior transactions but noted that it will exclude MVNOs and resellers from consideration when computing initial concentration measures. See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10449-50 ¶ 41; *SoftBank-Sprint Order*, 28 FCC Rcd at 9660 ¶ 43. See also *AT&T-Leap Order*, 29 FCC Rcd at 2752 ¶ 37.

⁷⁹ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6135 ¶ 4. See also, e.g., *AT&T-Leap Order*, 29 FCC Rcd at 2751 ¶ 35; *Alaska Wireless Order*, 28 FCC Rcd at 10449-50 ¶ 41; *SoftBank-Sprint Order*, 28 FCC Rcd at 9660 ¶ 43.

B. Competitive Effects of the Proposed Transaction

1. Initial Review

24. As discussed above, to help identify those local markets in which competitive concerns are more likely, we apply an initial two-part screen,⁸⁰ as well as consider the markets where the acquiring entity would increase its below-1-GHz spectrum holdings to hold approximately one-third or more of such spectrum post-transaction.⁸¹ The first part of the screen is based on the size of the post-transaction HHI and the change in the HHI,⁸² and for purposes of determining HHIs in the proposed transaction, we use our June 2014 NRUF database, which tracks phone number usage by all service providers.⁸³ Consistent with our local geographic market definition, in calculating HHIs and the change in the HHIs, we analyze service provider data by CMA. The second part of the screen, which is applied on a county-by-county basis, identifies local markets where an entity would hold approximately one-third or more of the total spectrum suitable and available for the provision of mobile telephony/broadband services, post-transaction.⁸⁴ Further, because AT&T is acquiring spectrum below 1 GHz in all three CMAs, we also carefully examine the possible competitive effects resulting from an increase in below-1-GHz spectrum holdings that would be above the threshold identified in the *Mobile Spectrum Holdings Report and Order*, as discussed herein.⁸⁵

25. The application of the initial two-part screen to the proposed transaction results in the HHI screen being triggered in two of the three CMAs (CMA 556 (New Mexico 4 – Santa Fe) and CMA 654 (Texas 3 – Parmer)), while the total spectrum screen is not triggered in any of the three markets. In examining the holdings of below-1-GHz spectrum, we find that there is one of these three local markets, Texas 3 – Parmer, in which AT&T would hold more than one-third of the suitable and available below-1-GHz spectrum post-transaction. We analyze the likely competitive effects that may result from a reduction in the number of facilities-based service providers in New Mexico 4 – Santa Fe and Texas 3 –

⁸⁰ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10450 ¶ 42; *SoftBank-Sprint Order*, 28 FCC Rcd at 9660 ¶ 44.

⁸¹ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286. The current total amount of below-1-GHz spectrum that is suitable and available is 134 megahertz; approximately one-third of which is 45 megahertz. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6156-57 ¶ 46, 6240 ¶¶ 286-88.

⁸² Our initial HHI screen identifies, for further case-by-case market analysis, those markets in which, post-transaction: (1) the HHI would be greater than 2800 and the change in HHI would be 100 or greater; or (2) the change in HHI would be 250 or greater, regardless of the level of the HHI. See, e.g., *AT&T-Leap Order*, 29 FCC Rcd at 2753 ¶ 41 n.140; *AT&T-ATN Order*, 28 FCC Rcd at 13684-85 ¶ 30 n.77; *Alaska Wireless Order*, 28 FCC Rcd at 10450 ¶ 42 n.135.

⁸³ These data indicate the number of assigned phone numbers that a wireless service provider has in a particular wireline rate center. Rate centers are geographic areas used by local exchange carriers for a variety of reasons, including the determination of toll rates. See HARRY NEWTON, *NEWTON'S TELECOM DICTIONARY: 19TH EXPANDED & UPDATED EDITION 660* (July 2003). All mobile wireless providers must report to the FCC the quantity of their phone numbers that have been assigned to end users, thereby permitting the Commission to calculate the total number of mobile subscribers. For purposes of geographical analysis, the rate center data can be associated with a geographic point, and all of those points that fall within a county boundary can be aggregated together and associated with much larger geographic areas based on counties.

⁸⁴ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10450-51 ¶¶ 42-43. See also, e.g., *AT&T WCS Order*, 27 FCC Rcd at 16469-70 ¶ 29; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59. The current total amount of spectrum that is suitable and available is 580.5 megahertz, which yields a trigger of 194 megahertz, assuming that AWS-1 and BRS spectrum are everywhere available. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6229 ¶ 251.

⁸⁵ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233 ¶ 267, 6240 ¶ 286-88. See also, e.g., *AT&T-Verizon Wireless-Grain Order*, 28 FCC at 12893-97 ¶¶ 39-45; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17601-2 ¶ 31.

Parmer, and consider the extent to which the increased below-1-GHz spectrum concentration by AT&T could affect the ability of rival service providers to provide robust competition in Texas 3 – Parmer.

2. Competitive Analysis

26. The market for mobile telephony/broadband services in the United States is differentiated. Service providers compete not only on the basis of price but also on other variables such as plan features, call quality, geographic coverage, and customer service.⁸⁶ Competition may be harmed either through unilateral actions by the combined entity, or through coordinated interaction among service providers competing in the relevant market. Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by increasing its price or otherwise harming competition.⁸⁷ In the case of the provision of mobile telephony/broadband services, in addition to increasing prices, this might take the form of delaying improvements in service quality, adversely adjusting the features of a service offering without changing the price of the plan, or reducing the rate of new product development or other innovation in a relevant market.⁸⁸ Coordinated effects arise when firms take actions that are profitable for each of them only as a result of the accommodating reactions of others.⁸⁹ Either or both unilateral and coordinated effects may arise from a proposed transaction, and the distinction between them is not always clear cut.⁹⁰

27. *Record.* The Applicants assert that the proposed transaction would not cause an overall aggregation of spectrum that would result in any competitive harm nationwide or in the three markets involved in the proposed transaction.⁹¹ In particular, the Applicants contend that AT&T would not meet or exceed the revised spectrum screen as discussed in the *Mobile Spectrum Holdings Report and Order*.⁹² Further, the Applicants maintain that there would not be competitive harm because of the spectrum holdings of the other three nationwide providers in the affected counties.⁹³

⁸⁶ While service providers can change some of these conduct variables, for example, price and customer service, relatively quickly, other variables – particularly non-price variables such as quality and coverage – require investments in spectrum or infrastructure and are not easily modified. *See, e.g., AT&T-Leap Order*, 29 FCC Rcd at 2756 ¶ 49 n.173; *AT&T-ATN Order*, 28 FCC Rcd at 13686-87 ¶ 34 n.90.

⁸⁷ *See, e.g.,* Horizontal Merger Guidelines, U.S. Department of Justice and the Federal Trade Commission, August 19, 2010, at § 6, p. 20 (“2010 DOJ/FTC Horizontal Merger Guidelines”) (“A merger between firms selling differentiated products may diminish competition by enabling the merged firm to profit by unilaterally raising the price of one or both products above the pre-merger level.”). *See also, e.g., AT&T-ATN Order*, 28 FCC Rcd at 13687 ¶ 35 n.91; *Alaska Wireless Order*, 28 FCC Rcd at 10451 ¶ 44 n.142; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2336 ¶ 42 n.101.

⁸⁸ *See, e.g., AT&T-Leap Order*, 29 FCC Rcd at 2756-57 ¶ 49; *AT&T-ATN Order*, 28 FCC Rcd at 13687 ¶ 35; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2336 ¶ 42.

⁸⁹ A merger may diminish competition by enabling or encouraging post-merger coordinated interaction among firms in the relevant market that harms customers. *2010 DOJ/FTC Horizontal Merger Guidelines* at § 7, p. 24. *See also, e.g., AT&T-Leap Order*, 29 FCC Rcd at 2757 ¶ 49 n.175; *AT&T-ATN Order*, 28 FCC Rcd at 13687 ¶ 35 n.92; *Alaska Wireless Order*, 28 FCC Rcd at 10460-61 ¶ 65.

⁹⁰ *See 2010 DOJ/FTC Horizontal Merger Guidelines* at § 2. *See also, e.g., AT&T-Leap Order*, 29 FCC Rcd at 2757 ¶ 49; *AT&T-ATN Order*, 28 FCC Rcd at 13687 ¶ 35; *Alaska Wireless Order*, 28 FCC Rcd at 10446 ¶ 33 n.104.

⁹¹ *See* Public Interest Statement at 8. The Applicants note that AT&T would hold more than 45 megahertz of below-1-GHz spectrum in Texas 3 – Parmer, but maintain that there is no competitive harm in this market, as the three other nationwide providers and Flat Wireless all offer plans with nationwide coverage. *See id.* at 9, n.28.

⁹² *See* Public Interest Statement at 8.

⁹³ *See* Public Interest Statement at 8, n.26. The Applicants note that Flat Wireless also operates in two of the markets involved in the proposed transaction. *See id.* at 8.

28. As noted above, a number of parties filed a letter in the Mobile Spectrum Holdings rulemaking proceeding regarding the Commission's below-1-GHz spectrum review,⁹⁴ asserting that access to such spectrum by providers is essential to fueling robust competition, promoting consumer choice, and encouraging investment and innovation.⁹⁵ Specifically, these parties contend that AT&T's acquisition of below-1-GHz spectrum, including the licenses at issue here, would deny competitors the opportunity to enter or expand services and result in further market share concentration.⁹⁶ These parties assert that the Commission should give meaning to the high hurdle "enhanced factor" review creates, and should rigorously apply it.⁹⁷

29. *Market-by-Market Review.* In our market-by-market analysis, we evaluate the likely competitive effect of increased market and spectrum concentration, including increased below-1-GHz spectrum concentration, and assess whether, post-transaction, the combined entity would have the incentive and ability to harm competition in any local market. In undertaking our analysis,⁹⁸ we consider various competitive variables that help to predict the likelihood of competitive harm post-transaction. These competitive variables include, but are not limited to: the total number of rival service providers; the number of rival firms that can offer competitive service plans; the coverage by technology of the firms' respective networks; the rival firms' market shares; the combined entity's post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum holdings of each of the rival service providers.⁹⁹ As discussed, there are two local markets that we have identified for our market-by-market review: CMA 556 (New Mexico 4 – Santa Fe) and CMA 654 (Texas 3 – Parmer).

30. New Mexico 4 – Santa Fe is a rural market¹⁰⁰ of approximately 292,000 people that triggers the HHI screen but does not raise below-1-GHz spectrum concentration issues. In this market, the post-transaction HHI would be [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], and the change in the HHI would be [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]. The number of service providers with a significant market share would be reduced from five to four: AT&T currently holds approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]

⁹⁴ See generally Increased Below-1-GHz Spectrum Aggregation Letter. The letter mentioned this proposed transaction and another AT&T proposed transaction in particular, noting that the Bureau had requested additional information from AT&T regarding its public interest showings. See *id.* at 3 n.17.

⁹⁵ See Increased Below-1-GHz Spectrum Aggregation Letter at 4.

⁹⁶ See Increased Below-1-GHz Spectrum Aggregation Letter at 3.

⁹⁷ See Increased Below-1-GHz Spectrum Aggregation Letter at 2, 4.

⁹⁸ We derive market shares and HHIs from our analysis of data compiled in our 2014 NRUF and LNP database as well as from data submitted by the Applicants. We derive network coverage from Mosaik July 2014 data and 2010 U.S. Census data, as well as from data submitted by the Applicants, and we obtain spectrum holdings from our licensing databases and the Applications. In addition, we examine porting data from our 2014 LNP database, as well as from data submitted by the Applicants, which include each instance of a customer porting a phone number from one mobile provider to another, and indicate both the origin and destination provider.

⁹⁹ See, e.g., *AT&T-Leap Order*, 29 FCC Rcd at 2745-46 ¶ 21; *Alaska Wireless Order*, 28 FCC Rcd at 10454-56 ¶¶ 51-55; *AT&T-WCS Order*, 27 FCC Rcd at 16472 ¶ 34.

¹⁰⁰ The population density is measured by the number of people per square mile using Census 2010 data. Rural markets are characterized by fewer than 100 people per square mile. See *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum Based Services, Report and Order*, 19 FCC Rcd 19078, 19087-88 (2004). The population density in New Mexico 4 – Santa Fe is 13.

percent of the market and Plateau Wireless holds approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent; the three other nationwide service providers, Verizon Wireless, Sprint, and T-Mobile, have market shares of approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent, respectively, in this market.¹⁰¹

31. Post-transaction, AT&T would hold 138 to 163 megahertz of spectrum on a county-by-county basis, including 18 to 43 megahertz of spectrum below 1 GHz, which is less than one-third of the currently suitable and available spectrum below 1 GHz. The other nationwide service providers' spectrum holdings range from 35 to 159 megahertz. In terms of population and land area coverage, the proposed transaction would not decrease the number of service providers with significant 3G or 4G coverage,¹⁰² as Plateau Wireless does not currently provide significant 3G or 4G population or land area coverage.¹⁰³ In addition, AT&T currently does not have significant 3G coverage, as it covers approximately 67 percent of the population and 38 percent of the land area with its 3G network. Verizon Wireless, however, has significant population and land area coverage, covering approximately 98 percent of the population and 71 percent of the land area with its 3G network, while Sprint has significant 3G population coverage, and T-Mobile has significant 3G land area coverage.¹⁰⁴ Finally, AT&T covers approximately 65 percent of the population with HSPA+,¹⁰⁵ while Verizon Wireless has significant LTE coverage, covering approximately 95 percent of the population and 50 percent of the land area.¹⁰⁶

32. We find that the likelihood of competitive harm is low in New Mexico 4 – Santa Fe, given these particular facts as noted above, including but not limited to the rural nature of the market, the number of service providers with a significant market share post-transaction, the number of service providers with substantial mobile broadband coverage and capacity, and the ability of other rival service providers to offer competitive services. We find that the proposed transaction is unlikely to lessen the ability of rival service providers to respond to any anticompetitive behavior on the part of the combined entity in this local market.

¹⁰¹ In addition to the nationwide providers, Flat Wireless has a market share of approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]%, and holds 0 to 30 megahertz of spectrum on a county-by-county basis.

¹⁰² It has previously been found that coverage of 70% or more of the population and 50% or more of the land area is presumptively sufficient for a service provider to have a competitive presence in the market. *See, e.g., AT&T-ATN Order*, 28 FCC Rcd at 13704 ¶ 43 n.123; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2339 ¶ 50 n.119; *see also AT&T WCS Order*, 27 FCC Rcd at 16472 ¶ 35 n.101, n.102.

¹⁰³ According to Plateau Wireless's submitted data, Plateau Wireless covers approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] with HSPA+. *See* Response of Plateau Wireless to the General Information Request Dated September 22, 2014, WT Docket No. 14-144, Plateau Wireless Exhibit 3.1 (Oct. 6, 2014) ("Plateau Wireless Information Request Response"). We note that according to Mosaik, July 2014, Plateau Wireless has not deployed a 3G or 4G network.

¹⁰⁴ Sprint covers approximately 87% of the population and 23% of the land area with its 3G network, while the respective figures for T-Mobile are approximately 66% and 73%.

¹⁰⁵ According to the Applicants' data, post-transaction, the combined entity would cover approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] with HSPA+. *See* AT&T Information Request Response, AT&T Exhibit 3.1; Plateau Wireless Information Request Response, Plateau Wireless Exhibit 3.1.

¹⁰⁶ We note that Sprint covers approximately 22% of the population with LTE, while T-Mobile has no HSPA+ or LTE coverage.

33. Texas 3 – Parmer is a rural market¹⁰⁷ of approximately 136,000 people that triggers both the HHI screen and our review of increased below-1-GHz spectrum concentration, because AT&T would hold 55 megahertz of low-band spectrum post-transaction, which is more than one-third of the currently suitable and available spectrum below 1 GHz. In this market, the post-transaction HHI would be [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], and the change in the HHI would be [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION].¹⁰⁸ The number of service providers with a significant market share would be reduced from four to three: AT&T currently holds approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent of the market and Plateau Wireless holds approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent; two of the other three nationwide service providers, Verizon Wireless and Sprint, have market shares of approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent, respectively, in this market.¹⁰⁹

34. In terms of population and land area coverage, all four nationwide service providers have significant 3G coverage, covering at least approximately 74 percent of the population and at least approximately 67 percent of the land area with their respective 3G networks.¹¹⁰ In addition, AT&T covers approximately 76 percent of the population and approximately 78 percent of the land area with HSPA+, and approximately 45 percent of both the population and land area with LTE, while Sprint covers approximately 70 percent of the population and approximately 54 percent of the land area with LTE, and Verizon Wireless covers approximately 100 percent of the population and approximately 98 percent of the land area with LTE. In analyzing the data submitted by Plateau Wireless, the proposed transaction would [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], post-transaction, result in four service providers with significant 3G or 4G coverage.¹¹¹

¹⁰⁷ The population density of this rural market is 14.

¹⁰⁸ As proxied by porting data, AT&T and Plateau Wireless are not close substitutes in either New Mexico 4 – Santa Fe or Texas 3 – Parmer. Approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]% of Plateau Wireless’s subscribers ported to AT&T and [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]% of AT&T’s subscribers ported to Plateau Wireless in 2014. *See* 2014 LNP Data; Plateau Wireless Information Request Response, Plateau Wireless Exhibit 5.1; AT&T Information Request Response, AT&T Exhibit 8.1.

¹⁰⁹ We note that the NRUF data indicate that T-Mobile has [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] market share. In addition to the nationwide providers, Flat Wireless has a market share of approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]%, and holds 30 megahertz of spectrum in this market.

¹¹⁰ AT&T covers approximately 77% of the population and 80% of the land area, while the respective figures are 100% and 98% for Verizon Wireless, 84% and 71% for Sprint, and 74% and 67% for T-Mobile.

¹¹¹ According to Plateau Wireless’s submitted data, Plateau Wireless covers [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]. *See* Plateau Wireless Information Request Response, Plateau Wireless Exhibit 3.1. We note that according to Mosaik, July 2014, Plateau Wireless has not deployed a 3G or 4G network. If we were to use the Mosaik data, there would be the same number of service providers who would have significant 3G or 4G coverage post-transaction as pre-transaction, which is four.

35. AT&T would hold 135 to 165 megahertz of spectrum on a county-by-county basis, post-transaction, including 55 megahertz of spectrum below 1 GHz, while the other nationwide service providers' spectrum holdings range from 25 to 193 megahertz of spectrum. In Texas 3 – Parmer, the other holders of below-1-GHz spectrum include Verizon Wireless with 47 megahertz of cellular and Upper 700 MHz C Block spectrum, Sprint with 14 megahertz of SMR spectrum, and DISH with 6 megahertz of Lower 700 MHz spectrum. At the time of filing, three other licensees, Big Wave Ventures, Infrastructure Networks, and PVT Wireless, held the remaining 12 megahertz of Lower 700 MHz A Block spectrum between them, which could either be deployed by them or be acquired on the secondary market to be deployed by another service provider.¹¹² We further note that other rival service providers had the opportunity to acquire Plateau Wireless's below-1-GHz spectrum on the secondary market if they had chosen to do so.¹¹³

36. We find that the likelihood of competitive harm is low in Texas 3 – Parmer, when evaluating the particular facts ordinarily considered, including but not limited to the rural nature of the market, the number of service providers with a significant market share, the number of service providers with substantial mobile broadband coverage and capacity, and the ability of other rival service providers to offer competitive services, notwithstanding the fact that AT&T would hold 55 megahertz of below-1-GHz spectrum post-transaction.¹¹⁴ We note that Verizon Wireless has a significant market share and substantial LTE population and land area coverage. Further, Sprint has a significant market share and substantial LTE population and land area coverage. While T-Mobile does not have a significant market share, it does have substantial 3G population and land area coverage, and also is likely to be able to timely respond to any anticompetitive behavior. Moreover, we note that currently there is some remaining undeployed low-band spectrum in the Lower 700 MHz A Block, which if deployed, would act as an additional competitive constraint in this rural market. And thus, for these reasons, we find that the proposed transaction is unlikely to materially lessen the ability of rival service providers to respond to any anticompetitive behavior on the part of the combined entity in this local market.

C. Roaming

37. Roaming occurs when a subscriber of one mobile wireless provider travels beyond the service area of that provider and uses the facilities of another mobile wireless provider to place and receive calls, continue in-progress calls, and transmit and receive data.¹¹⁵ T-Mobile requests that approval

¹¹² Subsequent to the filing of this application, the Bureau consented to a T-Mobile application to acquire Big Wave's Lower 700 MHz A Block spectrum, which covers seven of the 11 counties in this market, as well as in certain other markets. See FN0006543658.

¹¹³ Plateau Wireless states that it [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]. See Plateau Wireless Information Request Response at 2-3.

¹¹⁴ The Commission stated in the *Mobile Spectrum Holdings Report and Order* that, in these cases, it anticipated “that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms.” *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286. See also ¶ 15 *supra*. The potential public interest benefits associated with the acquisition of this low-band spectrum by AT&T are evaluated in section VI. below.

¹¹⁵ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10729 ¶ 81; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17612 ¶ 52. See also Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, *Second Report and Order*, 26 FCC Rcd 5411 (2011), *aff'd sub nom. Cellco Partnership v. FCC*, 700 F.3d 534 (D.C. Cir. 2012) (“*Data Roaming Order*”).

of the proposed transaction be conditioned on AT&T's adherence for a period of five years to Plateau Wireless's current roaming agreement, which includes voice and data, with T-Mobile, and permits T-Mobile to roam in areas comprised of one or a few cell sites.¹¹⁶ T-Mobile notes that if the proposed transaction were approved, AT&T would be the only GSM roaming option in areas where T-Mobile currently roams on Plateau Wireless's network.¹¹⁷ T-Mobile asserts that its requested condition would allow it additional time to address roaming-related issues with AT&T, shield its customers from immediate harms associated with AT&T's implementation of its standard roaming practices, and provide T-Mobile with a timeframe in which to explore site and construction solutions to mitigate the impact of Plateau Wireless's exit from the marketplace.¹¹⁸

38. According to AT&T, it would make roaming available in accordance with the Commission's roaming rules, and a license transfer proceeding should not be used to ask the Commission to consider hypothetical violations of its roaming rules and policies.¹¹⁹ AT&T contends that T-Mobile cannot point to any transaction-specific harm that its proposed condition would remedy, and further asserts that there will not be an appreciable reduction in competition to provide roaming services because AT&T's network and Plateau Wireless's network have limited overlap.¹²⁰ In T-Mobile's reply, it notes that its proposed condition is narrowly tailored to address only the specific public interest harms that would directly result from the proposed transaction and is consistent with the Commission's prior practice.¹²¹

39. *Discussion:* Based on the record before us, we decline to impose the condition requested by T-Mobile that would require AT&T to provide T-Mobile with roaming pursuant to the terms of the T-Mobile/Plateau Wireless agreement for five years. We note that the Commission's general roaming policies and rules are intended to enable entities to obtain roaming agreements on reasonable terms and conditions. If an entity faces certain difficulties in negotiating roaming agreements, we reiterate that such entity may rely on the protections afforded by the Commission's general roaming policies and rules as well as the availability of relief under the Commission's complaint procedures.

40. We find that our decision here is consistent with prior Commission decisions in transaction orders relating to roaming conditions. For instance, the Commission has previously conditioned consent in certain cases on the ability of service providers to have access, on behalf of their customers, to roaming services in the areas affected by the transaction in order to assure an orderly transition where service providers intend to change network technology (e.g., a change from CDMA to GSM technology), because the assignee might not sufficiently preserve or maintain the assignor's original network technology.¹²² For the instant transaction, by contrast, the record indicates that the assignee

¹¹⁶ See T-Mobile Petition for Conditions at 1. See also Letter from T-Mobile USA, Inc. to Marlene Dortch, FCC, WT Docket No. 14-144, filed Apr. 22, 2015, at 1 ("T-Mobile Apr. 22, 2015 *Ex Parte*").

¹¹⁷ See T-Mobile Petition for Conditions at 4.

¹¹⁸ See T-Mobile Petition for Conditions at 6.

¹¹⁹ See AT&T Opposition at 2.

¹²⁰ See AT&T Opposition at 4, n.6.

¹²¹ See T-Mobile Reply at 2. See also T-Mobile Apr. 22, 2015 *Ex Parte* at 2. T-Mobile provides a number of examples where the Commission has conditioned a proposed transaction on the acquiring entity's commitment to honor roaming agreements, including the *AT&T-Leap Order* and the *AT&T-Centennial Order*. T-Mobile Reply at 5-7.

¹²² See, e.g., Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for 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, 8742-43 ¶ 89, 8746 ¶ 97 (2010) ("*AT&T-Verizon Wireless Order*") (AT&T's "plans to transition the divestiture network from CDMA to UMTS" and; support from Verizon Wireless for continued administration of CDMA roaming pursuant to the Transition Services Agreement); Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent To Transfer

(continued...)

would continue to maintain the assignor's present network technology, and there is no evidence in the record suggesting that the Commission's underlying concern regarding customers' general ability to access roaming services in the affected markets would arise post-transaction.

41. Further, we find that the *AT&T-Centennial Order*,¹²³ cited by T-Mobile in support of its request, does not warrant grant of the roaming conditions sought by T-Mobile.¹²⁴ In that proceeding, the Commission found that, absent a remedy, the transaction was likely to cause competitive harm in certain markets, but found that with the imposition as conditions of certain roaming-related commitments made by AT&T, along with certain geographical market divestitures, the harms would be sufficiently mitigated.¹²⁵ By contrast, for the reasons discussed above, we here find that the likelihood of competitive harm is low for the proposed transaction. In addition, as the degree of geographic overlap between the AT&T network and the Plateau Wireless network is limited, there would appear to be only a limited reduction in the number of potential roaming partners as a result of the proposed transaction, again in contrast to the situation in the AT&T/Centennial transaction. We also observe that our action is consistent with past precedent, as the Commission has declined to impose requested roaming conditions in a number of transactions based on the facts and circumstances of those specific transactions.¹²⁶

42. In regard to T-Mobile's concerns that relate to AT&T's alleged practice, subsequent to some previous transactions, of essentially requiring roaming over larger areas, including places where it may be unnecessary,¹²⁷ we remind service providers that in the event that a service provider, including T-Mobile, encounters difficulties in the affected markets in obtaining desired roaming services under our rules and policies, it can file complaints with the Commission pursuant to our established roaming

(Continued from previous page)

Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements, WT Docket No. 08-95, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444, 17501 ¶¶ 126-27, 17254 ¶ 178 (2008) ("*Verizon Wireless-ALLTEL Order*") (Verizon Wireless acquisition of control of licenses in ALLTEL's GSM network). See also *AT&T-Leap Order*, 29 FCC Rcd at 2783-85 ¶¶ 105, 108; *AT&T-ATN Order*, 28 FCC Rcd at 13703 ¶ 60 (AT&T, a GSM provider, committed to offer CDMA roaming services over Allied's 3G EV-DO network).

¹²³ See Applications of AT&T Inc. and Centennial Communications Corp. for Consent To Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements, WT Docket No. 09-104, *Memorandum Opinion and Order*, 24 FCC Rcd 13915, 13966 ¶ 126, 13967-69 ¶¶ 129-33 (2009) ("*AT&T-Centennial Order*").

¹²⁴ See T-Mobile Petition for Conditions at 7-8; T-Mobile Reply at 6.

¹²⁵ See *AT&T-Centennial Order*, 24 FCC Rcd at 13968 ¶ 130. Specifically, after performing a market-by-market analysis, the Commission found that competitive harm was likely in seven markets, with the combined entity having the incentive and ability to raise price and restrict output. In those markets, the Commission found generally that the proposed transaction would result in a reduction in the number of competitors, the combined entity would hold a high market share, and there would be insufficient network coverage by other service providers to serve as a competitive constraint. See *id.*, 24 FCC Rcd at 13949-52 ¶¶ 77-86. The Commission also accepted a voluntary commitment by AT&T to provide roaming services under certain conditions, but found no other roaming conditions were necessary, given the specific circumstances of the proposed transaction. See *id.*, 24 FCC Rcd at 13968 ¶ 130. The Commission found that AT&T's roaming commitments, in conjunction with a number of market divestitures, were sufficient to prevent the significant competitive harms that would otherwise be likely to occur in the seven markets with the loss of Centennial as a roaming partner. See *id.*, 24 FCC Rcd at 13968 ¶ 130.

¹²⁶ See Applications of AT&T Inc. and Cellular South, Inc. for Consent To Assign Licenses Covering Parts of Alabama, Georgia, and Tennessee, *Memorandum Opinion and Order*, 28 FCC Rcd 12328, 12334-35 ¶ 15 (WTB 2013); Applications of AT&T Mobility Spectrum LLC, Triad 700, LLC, CenturyTel Broadband Wireless, LLC, 700 MHz, LLC, Cavalier Wireless, LLC, Ponderosa Telephone Co., David L. Miller, ComSouth Tellular, Inc., Farmers Telephone Company, Inc., and McBride Spectrum Partners, LLC for Consent To Assign Licenses, *Memorandum Opinion and Order*, 27 FCC Rcd 15831, 15834 ¶ 9 (WTB 2012).

¹²⁷ See T-Mobile Petition for Conditions at 4-6; T-Mobile Reply at 3.

rules.¹²⁸ Further, the Bureau recently released a declaratory ruling in which it provided additional guidance on the *Data Roaming Order's* standard for evaluating the commercial reasonableness of proffered data roaming terms and conditions.¹²⁹ The *Data Roaming Declaratory Ruling* recognizes that this additional guidance should facilitate T-Mobile's efforts to address any roaming-related issues that it anticipates might arise. For all these reasons, we deny T-Mobile's request for conditions.

VI. POTENTIAL PUBLIC INTEREST BENEFITS

43. After assessing the potential public interest harms, we also consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.¹³⁰ The Commission has recognized that “[e]fficiencies generated through a merger can mitigate competitive harms if such efficiencies enhance the merged firm’s ability and incentive to compete and therefore result in lower prices, improved quality of service, enhanced service or new products.”¹³¹ As discussed below, we anticipate that the proposed transaction likely would facilitate certain transaction-specific public interest benefits, such as the deployment of advanced broadband technologies, and reduced roaming costs.

A. Analytical Framework

44. The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms.¹³² First, the claimed benefit must be transaction-specific.¹³³ Second, the claimed benefit must be verifiable.¹³⁴ Third, the Commission has stated that it “will more likely find marginal cost reductions to be cognizable than reductions in fixed cost,” as, in general, reductions in marginal cost are more likely to result in lower prices for consumers.¹³⁵ In addition, “the magnitude of benefits must be calculated net of the cost of achieving them.”¹³⁶ Further, benefits expected to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the distant future are inherently more speculative than predictions that are expected to

¹²⁸ See *Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817, 15828 ¶ 27 (2007); *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 25 FCC Rcd 4181, 4192 ¶ 2 (2010) (“*Order on Reconsideration*” and “*Second Further Notice*,” respectively); *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, *Second Report and Order*, 26 FCC Rcd 5411 (2011) (“*Data Roaming Order*”), *aff'd sub nom. Cellco Partnership v. FCC*, 700 F.3d 534 (D.C. Cir. 2012).

¹²⁹ See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, *Declaratory Ruling*, 29 FCC Rcd 15483, 15486 ¶ 8 (2014) (“*Data Roaming Declaratory Ruling*”).

¹³⁰ See, e.g., *AT&T-Leap Order*, 29 FCC Rcd at 2792 ¶ 130; *Alaska Wireless Order*, 28 FCC Rcd at 10467 ¶ 85; *SoftBank-Sprint Order*, 28 FCC Rcd at 9677-78 ¶ 91.

¹³¹ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 86; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 92. See also *AT&T-Leap Order* 29 FCC Rcd at 2793 ¶ 131.

¹³² See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 93. See also *AT&T-Leap Order* 29 FCC Rcd at 2793 ¶ 132.

¹³³ See, e.g., *AT&T-Leap Order* 29 FCC Rcd at 2793 ¶ 131; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 93.

¹³⁴ See, e.g., *AT&T-Leap Order* 29 FCC Rcd at 2793 ¶ 131; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 93.

¹³⁵ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 97. See also *AT&T-Leap Order* 29 FCC Rcd at 2793 ¶ 131.

¹³⁶ See, e.g., *AT&T-Leap Order* 29 FCC Rcd at 2793 ¶ 131; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 93.

occur closer to the present.¹³⁷ Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims.¹³⁸ Under this sliding scale 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.”¹³⁹

B. Potential Benefits

45. According to the Applicants, the proposed transaction would benefit the customers of both companies by giving them access to a broader, denser, more advanced network while Plateau Wireless customers also would gain access to AT&T’s array of services.¹⁴⁰ Additionally, the Applicants assert that the proposed transaction would result in cost savings from reduced roaming costs.¹⁴¹

46. *Increased Network Quality.* As a result of the proposed transaction, the Applicants claim that AT&T plans to complete Plateau Wireless’s 4G HSPA+ deployment and overlay LTE technology at a much faster pace than Plateau Wireless could achieve.¹⁴² The Applicants also contend that, because AT&T has no coverage in a large part of Plateau Wireless’s service territories, once the Applicants’ networks are integrated, AT&T customers would gain on-net service in a much greater portion of the three CMAs that are implicated by this transaction.¹⁴³ Moreover, according to the Applicants, in the areas where AT&T and Plateau Wireless’s networks already overlap, AT&T would integrate complementary cell sites and certain other equipment, resulting in a denser network with improved coverage and capacity.¹⁴⁴

47. AT&T asserts that regarding the cellular spectrum from Plateau Wireless, **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** and that it intends to use the Lower 700 MHz C Block spectrum that is currently unused by Plateau Wireless **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**.¹⁴⁵ AT&T maintains **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**.¹⁴⁶ In particular, AT&T contends **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**.

[END HIGHLY CONFIDENTIAL INFORMATION]

¹³⁷ See, e.g., *AT&T-Leap Order* 29 FCC Rcd at 2793 ¶ 131; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 93.

¹³⁸ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 88; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 93. See also *AT&T-Leap Order* 29 FCC Rcd at 2793-4 ¶ 131.

¹³⁹ See, e.g., *AT&T-Leap Order* 29 FCC Rcd at 2794 ¶ 131; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 88; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 93; cf. *2010 DOJ/FTC Horizontal Merger Guidelines* at § 10, p. 31.

¹⁴⁰ See Public Interest Statement at 4.

¹⁴¹ See Public Interest Statement at 7.

¹⁴² See Public Interest Statement at 5.

¹⁴³ See Public Interest Statement at 5.

¹⁴⁴ See Public Interest Statement at 5.

¹⁴⁵ See AT&T Information Request Response at 7.

¹⁴⁶ See AT&T Information Request Response at 7.

INFORMATION].¹⁴⁷ In Texas 3 – Parmer, [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION].¹⁴⁸

48. According to AT&T, a 10×10 megahertz deployment of contiguous Lower 700 MHz B Block and C Block spectrum would be more spectrally efficient than a deployment of two non-contiguous 5×5 megahertz blocks.¹⁴⁹ Indeed, AT&T maintains that [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION].¹⁵⁰ AT&T cites, among other claimed benefits, the 10×10 megahertz LTE deployment's greater trunking and signaling efficiencies, asserting that these improvements result in higher system capacity, greater spectral efficiency, and better user throughput than is possible over two separate 5×5 megahertz blocks.¹⁵¹

49. *Potential Benefits to Plateau Wireless Customers.* The Applicants assert that Plateau Wireless's customers would gain access to the range of services available on AT&T's nationwide 4G network, including international voice and data services in more than 210 countries; the use of nearly 402,000 Wi-Fi hotspots globally; expanded choice of handsets; wider variety of rate plans; more robust data services; free mobile-to-mobile calling to an expanded customer base; and access to AT&T's nationwide footprint when traveling.¹⁵²

50. *Roaming Cost Savings.* In addition to directly benefitting consumers, the Applicants maintain that the proposed transaction also would result in roaming cost savings.¹⁵³ In particular, the Applicants claim that, by expanding AT&T's coverage, the proposed transaction would result in more on-net usage by both AT&T's current customers and the acquired Plateau Wireless customers, thereby reducing their reliance on roaming.¹⁵⁴ The Applicants contend that roaming costs would decline through the elimination of double marginalization.¹⁵⁵

¹⁴⁷ See AT&T Information Request Response at 8.

¹⁴⁸ See AT&T Information Request Response at 8.

¹⁴⁹ See AT&T Information Request Response at 9.

¹⁵⁰ See AT&T Information Request Response at 9.

¹⁵¹ See AT&T Information Request Response at 9; AT&T Information Request Response, AT&T Exhibits 1.1, 2.1-2.7.

¹⁵² See Public Interest Statement at 6.

¹⁵³ See AT&T Information Request Response at 5. In particular, AT&T estimates that this proposed transaction has an incremental net present value of [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] consisting mainly of reduced roaming expenses. See *id.*

¹⁵⁴ See Public Interest Statement at 7. AT&T estimates [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]. See AT&T Information Request Response at 5. See also AT&T Information Request Response, AT&T Exhibit 1.1, at 1-2.

¹⁵⁵ See Public Interest Statement at 7. Double marginalization occurs when firms at different stages of a production chain have market power, and each prices above marginal cost. When one firm raises prices, it reduces demand for the other's product, and *vice versa*. After a merger, each firm takes the negative consequences to the other into account, and any double marginalization is eliminated. If cost savings are passed on to consumers, then consumers would pay lower prices. See Baker, A., Brennan, T., Erb, J., Nayeem, O., & Yankelevich, A. (2014), Economics at the FCC, 2013-2014, *Review of Industrial Organization*, 45(4), 345-378.

C. Discussion

51. We have reviewed the assertions of the Applicants regarding the benefits they allege would result from the proposed transaction, as well as their responses to our requests for additional information and documents, if AT&T were permitted to acquire, in particular, the below-1-GHz spectrum at issue. The record provides general support for the Applicants' contentions that the proposed transaction would result in some public interest benefits, as described below.

52. *Increased Network Quality.* We anticipate that by combining the AT&T and Plateau Wireless networks and other assets, AT&T could deploy HSPA+ and LTE significantly faster than either would have done otherwise over a substantial portion of the markets subject to this proposed transaction. Further, our review indicates that of the [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION].¹⁵⁶ In addition, by deploying HSPA+ on the cellular spectrum that would be acquired from Plateau Wireless, our analysis indicates that [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION].¹⁵⁷ Moreover, we note that [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION].¹⁵⁸

53. In particular, given that Plateau Wireless's Lower 700 MHz C Block spectrum is currently lying fallow, we find that its acquisition by AT&T would increase the potential for its more efficient use. Specifically, in Texas 3 – Parmer, the market in which it would hold more than one-third of the currently suitable and available spectrum below 1 GHz post-transaction, AT&T asserts that it [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION].¹⁵⁹ We find that acquiring the Lower 700 MHz C Block spectrum would enable AT&T to expand its LTE service offerings on contiguous spectrum, which has the potential to allow AT&T to achieve greater spectral efficiency and greater throughput and create some transaction-specific benefits.¹⁶⁰ Consequently, customers are likely to benefit in the immediate future from access to improved LTE performance and a more robust network as a result of the instant transaction.

54. *Potential Benefits to Plateau Wireless Customers.* We place limited weight on the Applicants' alleged benefits to Plateau Wireless customers, including expanded choice of handsets; wider variety of rate plans; more robust data services; free mobile-to mobile calling to an expanded customer base; and access to AT&T's nationwide footprint when traveling, because these benefits are already

¹⁵⁶ See AT&T Information Request Response, AT&T Exhibit 1.1, at 2, 5.

¹⁵⁷ See AT&T Information Request Response, AT&T Exhibit 3.1; Supplemental Response of AT&T Inc. to the General Information Requested Dated September 22, 2014 (Nov. 19, 2014) ("AT&T Information Request Supplemental Response"), AT&T Supplemental Exhibit; Plateau Wireless Information Request Response, Plateau Wireless Exhibit 3.1.

¹⁵⁸ Plateau Wireless Information Request Response at 3-4.

¹⁵⁹ See AT&T Information Request Supplemental Response at 4.

¹⁶⁰ See, e.g., *AT&T-Verizon Wireless-Grain Order*, 28 FCC Rcd at 12902-3 ¶¶ 59-60; *AT&T-Leap Order*, 29 FCC Rcd at 2799-2800 ¶¶ 149, 151. The latter Order recognized the relative spectral inefficiency of a 5×5 megahertz configuration for LTE. See *AT&T-Leap Order*, 29 FCC Rcd at 2800 ¶ 151.

available to Plateau Wireless customers in locations where AT&T is currently offering these services as a competitor to Plateau Wireless. However, we do recognize that AT&T has no facilities-based network at all in significant parts of Plateau Wireless's service territories,¹⁶¹ and to the extent that the proposed transaction would facilitate more rapid advanced broadband deployment by AT&T in these territories, it would likely lead to discernible benefits to those Plateau Wireless customers who transition to AT&T's nationwide advanced broadband network.

55. *Roaming Cost Savings.* Finally, we find that the proposed transaction would lead to certain roaming cost savings. As we noted above, in certain areas subject to the proposed transaction, the facilities-based networks of AT&T and Plateau Wireless do not currently overlap. In these territories, AT&T and Plateau Wireless must rely on their roaming partners to provide service throughout the subject markets. For instance, certain AT&T documents in response to our information request note that **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END

HIGHLY CONFIDENTIAL INFORMATION].¹⁶² To the extent that the elimination of these costs is passed down to AT&T's customers, the proposed transaction will likely lead to immediate public benefits from roaming cost savings.

VII. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS

56. In the proposed transaction, in addition to acquiring Plateau Wireless's customers, network equipment and other assets, AT&T would also increase its spectrum holdings, and in particular, its holdings of low-band spectrum. As we discussed herein, the *Mobile Spectrum Holdings Report and Order* determined that increased aggregation of below-1-GHz spectrum would be treated as an "enhanced factor" under its case-by-case review. The Commission stated in the *Mobile Spectrum Holdings Report and Order* that it "anticipate[d] that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms."¹⁶³

57. In sum, we find that the likelihood of competitive harm is low in all three markets that are the subject of this instant transaction. Specifically, in Texas 3 – Parmer, the market in which AT&T would hold more than one-third of the suitable and available spectrum below 1 GHz post-transaction, we find that the instant transaction is unlikely to materially lessen the ability of rival service providers to respond to any anticompetitive behavior on the part of the combined entity. Further, we have reviewed the Applicants' initial claims, as well as their responses to our requests for additional information and documents regarding the benefits they allege would result if AT&T were permitted to acquire, in particular, this below-1-GHz spectrum, as well as customers, network equipment and other assets. The record provides general support for the Applicants' contentions that the potential public interest benefits outweigh the harms. Thus, based on the record before us and our competitive review, we find that the Applicants have demonstrated that the proposed transfer of control of licenses and authorizations would serve the public interest, convenience, and necessity.

VIII. ORDERING CLAUSES

58. ACCORDINGLY, having reviewed the Applications and the record in this proceeding, IT IS ORDERED that, pursuant to sections 4(i) and (j), 214, 303(r), 309, and 310(d) of the

¹⁶¹ See Public Interest Statement at 5; AT&T Information Request Response, AT&T Exhibit 3.1. Our analysis of the Applicants' submitted data indicates that the population coverage overlap across the two networks in the market areas subject to the proposed transaction is approximately **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**%.

¹⁶² See AT&T Information Request Response, AT&T Exhibit 1.1.

¹⁶³ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.

Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 303(r), 309, 310(d), the applications for assignment of licenses held by E.N.M.R. Telephone Cooperative, Plateau Telecommunications, Inc., New Mexico RSA 4 East Limited Partnership, and Texas RSA 3 Limited Partnership to Powell Acquisition Company LLC are GRANTED.

59. IT IS FURTHER ORDERED that the above grant shall include authority for the assignment of any applications regarding the Plateau Wireless assets that are pending at the time of consummation as well as any licenses or authorizations that may have inadvertently been omitted from the application forms filed by the Applicants.

60. 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), (j), 303(r), 309, and 310(d), the request for conditions in the Petition filed by T-Mobile USA, Inc. is DENIED for the reasons stated herein.

61. IT IS FURTHER ORDERED that this 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 release of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

List of Applications

Applications for the assignment of licenses from Plateau Wireless to AT&T:

| <u>File No.</u> | <u>Licensee/Assignor</u> | <u>Assignee</u> | <u>Lead Call Sign</u> |
|-----------------|---|--------------------------------|-----------------------|
| 0006366669 | Plateau Telecommunications, Inc. | Powell Acquisition Company LLC | WPWV424 |
| 0006366771 | E.N.M.R Telephone Cooperative | Powell Acquisition Company LLC | KNKN320 |
| 0006366777 | New Mexico RSA 4 East Limited Partnership | Powell Acquisition Company LLC | KNKN598 |
| 0006366780 | Texas RSA 3 Limited Partnership | Powell Acquisition Company LLC | KNKN598 |

File No. 0006366669 has been designated the lead wireless application.

Applications for consent to the assignment of international section 214 authorizations:

| <u>File No.</u> | <u>Authorization Holder</u> | <u>Assignee</u> | <u>Authorization Number</u> |
|------------------------|---|--------------------------------|-------------------------------------|
| ITC-ASG-20140714-00209 | E.N.M.R Telephone Cooperative | Powell Acquisition Company LLC | ITC-214-20030912-00436 ¹ |
| ITC-ASG-20140714-00210 | Texas RSA 3 Limited Partnership | Powell Acquisition Company LLC | ITC-214-20030912-00441 |
| ITC-ASG-20140714-00211 | New Mexico RSA 4 East Limited Partnership | Powell Acquisition Company LLC | ITC-214-20030912-00435 |

¹ This is a partial assignment of the international section 214 authorization.

**STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *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, WT Docket No. 14-144.*

With today’s decision, we apply for the first time the “enhanced” review that the Commission adopted last year for transactions involving certain amounts of below-1 GHz spectrum.¹ I dissented from that decision, explaining that the vague new standard would leave consumers worse off by injecting needless uncertainty into secondary market transactions and preventing spectrum from flowing to its highest valued use.²

But there may be a silver lining after all. The Commission’s enhanced review here considers the same factors, employs the same level of scrutiny, and achieves the same results as our traditional review. I hope this isn’t a singularity but instead a sign of the Commission’s approach going forward. American consumers ultimately benefit from a predictable and transparent approach to all secondary market transactions.

¹ See Policies Regarding Mobile Spectrum Holdings Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, WT Docket No. 12-269, GN Docket No. 12-268, *Report and Order*, 29 FCC Rcd 6133 (2014).

² *Id.* at 6268–74 (Dissenting Statement of Commissioner Ajit Pai).

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *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, WT Docket No. 14-144.*

We have before us the first application where the post-transaction holdings of sub-1-GHz, or low-band, spectrum triggers the “enhanced review” adopted in the June 2014 *Mobile Spectrum Holdings Order*.¹ In that order, the Commission implemented a flawed policy to facilitate the acquisition of frequencies below 1 GHz by certain favored entities. To promote this agenda, the Commission not only adopted a set aside, or reserve licenses, in the 600 MHz incentive auction, but also held that, if an applicant would hold more than one-third of the available low-band spectrum when a secondary market deal closes, this would be treated as an “enhanced factor” in the case-by-case analysis to determine whether a transaction causes competitive harm.² In total, it is incomprehensible to insert additional vagaries and uncertainty into our transaction review process that could allow for the picking and choosing of preferred winners and losers.

The *Mobile Spectrum Holdings Order* does not provide concrete information on how this “enhanced factor” would be applied going forward.³ Instead, the specifics as to how these transactions will be evaluated would have to be gleaned from future orders responding to specific transfer applications. But today’s order also provides little guidance as to how this “enhanced factor” is weighed in the Commission’s larger competitive review, and it does not provide any certainty to prospective applicants as to whether a transaction is likely to be approved or not. Nonetheless, I guess I should be pleased that the vague language in the *Mobile Spectrum Holdings Order* is not being interpreted as a flat-out ban on any acquisition that triggers an “enhanced review.” And, because it does not affect the outcome of this particular transaction, I am able to approve today’s order despite this needless process and mockery of sound spectrum policy.

I am well aware, however, that this will not be the last word on the issue, and we will likely find out more about this “enhanced review” when the Commission seeks to inane block a transaction or orders divestitures based on an artificial supremacy of sub-1-GHz holdings. When this occurs, it is unlikely that I will be able to support such a decision. I simply do not agree that preferential treatment should be provided to certain entities at the expense of their competitors, especially when any perceived spectrum deficiencies are the result of their own doing.⁴ Further, the FCC should not be influencing the free market or prices by hindering the transferability of spectrum to the Nation’s most popular wireless providers. Placing any restriction on who can acquire low-band spectrum in the secondary market devalues this resource and allows entities to acquire it at sub-market rates. In sum, spectrum should go to its highest value use.

¹ Policies Regarding Mobile Spectrum Holdings Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions, WT Docket No. 12-269, GN Docket No. 12-268, *Report and Order*, 29 FCC Rcd 6133, 6231 ¶ 256 (2014).

² *Id.* at 6233, 6239 ¶¶ 267, 283.

³ *Id.* at 6240 ¶¶ 286-87.

⁴ *Id.* at 6275-76 (Dissenting Statement of Commissioner Michael O’Rielly).