

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

In the Matter of
Applications of AT&T Mobility Spectrum LLC
and KanOkla Telephone Association
For Consent To Assign Licenses
WT Docket No. 14-199

MEMORANDUM OPINION AND ORDER

Adopted: August 27, 2015

Released: August 27, 2015

By the Chief, Wireless Telecommunications Bureau:

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION..... 1
II. BACKGROUND AND PUBLIC INTEREST FRAMEWORK 2
III. POTENTIAL PUBLIC INTEREST HARMS 9
A. Market Definitions 11
B. Competitive Effects of the Proposed Transaction..... 14
IV. POTENTIAL PUBLIC INTEREST BENEFITS 20
V. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS..... 23
VI. ORDERING CLAUSES..... 24

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the applications of AT&T and KanOkla for Commission consent to the assignment to AT&T of one Lower 700 MHz C Block license and the partial assignment of a second Lower 700 MHz C Block license, for a total of 12 megahertz, covering all or parts of two local market areas in Kansas and Oklahoma. The Commission 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.1 In the proposed transaction, AT&T would increase its low-band spectrum holdings in these two local market areas, and would hold post-transaction more than one-third of the currently suitable and available below-1-GHz spectrum. After carefully evaluating the likely competitive effects of AT&T's increased aggregation of below-1-GHz spectrum in these two local market areas, as well as the other factors ordinarily considered in a case-by-case review, we find that the likelihood of

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, 6240 ¶¶ 286-88 (2014) ("Mobile Spectrum Holdings Report and Order"), recon. denied, Order on Reconsideration, FCC 15-79 (rel. Aug. 11, 2015).

competitive harm is low. Further, we find some public interest benefits are likely, such as increased network quality and a better user experience. Thus, based on the record before us and our competitive review, we find that the proposed assignment of licenses would serve the public interest, convenience, and necessity, and therefore we approve the proposed transaction.

II. BACKGROUND AND PUBLIC INTEREST FRAMEWORK

2. *Description of the Applicants.* AT&T Inc. (together with its indirect and wholly-owned subsidiary, AT&T Mobility Spectrum LLC, “AT&T”), headquartered in Dallas, Texas, is a communications holding company that ranks among the leading providers of telecommunications services in the United States.² KanOkla Telephone Association (“KanOkla,” and together with AT&T, the “Applicants”) is a rural incumbent local exchange provider that, among other things, provides local telephone service, broadband Internet service, and fixed wireless broadband Internet access service³ in rural areas of southern Kansas and northern Oklahoma.

3. *Description of the Transaction.* On September 4, 2014, AT&T and KanOkla filed the Applications pursuant to section 310(d) of the Communications Act of 1934, as amended (the “Act”),⁴ seeking Commission consent to assign one Lower 700 MHz C Block license and a second, partitioned Lower 700 MHz C Block license to AT&T.⁵ Through these two licenses, AT&T would acquire 12 megahertz of low-band spectrum in eleven counties in all or parts of two Cellular Market Areas (“CMAs”) in Kansas and Oklahoma.⁶ Post-transaction, AT&T would hold 98 to 150 megahertz of spectrum in total, and 18 to 55 megahertz of below-1-GHz spectrum in these two CMAs.⁷

4. AT&T asserts that, as a result of the proposed transaction, the additional spectrum would enable it to increase its system capacity to enhance existing services, better accommodate its overall growth, and facilitate the provision of additional products and services to the public in these geographic areas.⁸ The Applicants further contend that the acquisition of this spectrum would provide AT&T with 24 contiguous megahertz of Lower 700 MHz spectrum that would support a 10×10 megahertz Long-Term Evolution (“LTE”) deployment, and would improve spectral efficiency, increase network capacity, and enable AT&T to offer faster, higher quality services to its customers.⁹

5. *Transaction Review Process.* On September 4, 2014, the Applicants filed the Applications. On December 2, 2014, the Commission accepted the Applications for filing and established

² 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.

³ See Response of KanOkla to the General Information Request Dated December 2, 2014, WT Docket No. 14-199, at 2 (Dec. 16, 2014) (“KanOkla Information Request Response”). KanOkla provides fixed wireless broadband Internet access service using its licensed Lower 700 MHz C Block spectrum and 3650-3700 MHz spectrum (“3650 MHz”) in rural Kansas and Oklahoma. KanOkla Information Request Response at 2. See also n.46 *infra* (concerning the transition of customers by KanOkla).

⁴ 47 U.S.C. § 310(d).

⁵ See Application, ULS File No. 0006447565 (“Lead Application”), Exhibit 1 – Description of Transaction and Public Interest Statement at 1 (“Public Interest Statement”). The other Application is ULS File No. 0006447568. See Application, Exhibit 2 – Description of 700 MHz Spectrum To Be Assigned to AT&T Mobility Spectrum LLC.

⁶ See AT&T Inc. and KanOkla Telephone Association Seek FCC Consent to the Assignment of Two Lower 700 MHz Licenses in Kansas and Oklahoma, WT Docket No. 14-199, *Public Notice*, 29 FCC Rcd 14460 (WTB 2014) (“Accepted for Filing Public Notice”). See also Application, Exhibit 3 – Spectrum Aggregation.

⁷ See Application, Exhibit 3 – Spectrum Aggregation.

⁸ See Public Interest Statement at 3. See also *Accepted for Filing Public Notice*, 29 FCC Rcd at 14460.

⁹ See Public Interest Statement at 3.

a pleading cycle.¹⁰ The Commission received no filings in response to the *Accepted for Filing Public Notice*.¹¹ On December 2, 2014, the Wireless Telecommunications Bureau (“WTB” or “the Bureau”) released a public notice announcing 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.¹² Also, on December 2, 2014, pursuant to section 308(b) of the Act¹³ the Bureau sent letters to AT&T and KanOkla requesting the submission of written responses and supporting documentation by December 16, 2014, to specific inquiries related to the proposed transaction.¹⁴

6. *Standard of Review.* Pursuant to section 310(d) of the Act,¹⁵ we must determine whether the Applicants have demonstrated that the proposed assignment of licenses would serve the public interest, convenience, and necessity.¹⁶ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act,¹⁷ other applicable statutes, and the Commission’s rules.¹⁸ If the proposed transaction does not violate a statute or rule, we next consider

¹⁰ See generally *Accepted for Filing Public Notice*, 29 FCC Rcd 14460. Petitions were due January 5, 2015, oppositions were due January 15, 2015, and replies were due January 23, 2015.

¹¹ Although no filings were received, a number of parties filed a letter in the Mobile Spectrum Holdings docket regarding several pending transactions proposed by AT&T that implicate the Commission’s enhanced factor review. 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 ¶ 14 *infra*.

¹² See generally Applications of AT&T Mobility Spectrum LLC and KanOkla Telephone Association for Consent To Assign Lower 700 MHz Licenses, Numbering Resource Utilization and Forecast Reports and Local Number Portability Reports To Be Placed into the Record, Subject to Protective Order, WT Docket No. 14-199, CC Docket No. 99-200, *Public Notice*, 29 FCC Rcd 14481 (WTB 2014); Applications of AT&T Mobility Spectrum LLC and KanOkla Telephone Association for Consent To Assign Licenses, WT Docket No. 14-199, *NRUF/LNP Protective Order*, 29 FCC Rcd 14474 (WTB 2014).

¹³ 47 U.S.C. § 308(b).

¹⁴ See generally Letter from Roger C. Sherman, Chief, WTB, to Michael P. Goggin, AT&T, WT Docket No. 14-199 (WTB rel. Dec. 2, 2014) (“*AT&T Information Request*”); Letter from Roger C. Sherman, Chief, WTB, to Greg Aldridge, CEO, KanOkla, WT Docket No. 14-199 (WTB rel. Dec. 2, 2014) (“*KanOkla Information Request*”). 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. See generally Applications of AT&T Mobility Spectrum LLC and KanOkla Telephone Association for Consent To Assign Licenses, WT Docket No. 14-199, *Joint Protective Order*, 29 FCC Rcd 14464 (WTB 2014).

¹⁵ 47 U.S.C. § 310(d).

¹⁶ See, e.g., 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*, 30 FCC Rcd 5107, 5111 ¶ 8 (2015) (“*AT&T-Plateau Wireless Order*”); 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, 2741-42 ¶ 13 (WTB, IB 2014) (“*AT&T-Leap Order*”).

¹⁷ 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., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741 ¶ 13.

¹⁸ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42 ¶ 13.

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.¹⁹ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.²⁰ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.²¹

7. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.²² 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 analysis under the public interest standard is somewhat broader.²³ 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.²⁴ 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.²⁵

8. *Qualifications of the Applicants.* As a threshold matter, the Commission must determine whether the applicants to the proposed transaction meet the requisite qualifications requirements to hold and transfer licenses under section 310(d) and the Commission’s rules.²⁶ We note that no issues were raised with respect to the basic qualifications of KanOkla or AT&T, and in addition, AT&T previously and repeatedly has been found qualified to hold Commission licenses.²⁷ We find 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 KanOkla or AT&T.²⁸

III. POTENTIAL PUBLIC INTEREST HARMS

9. *Competitive Overview.* In its examination of a proposed transaction, the Commission evaluates the potential public interest harms and undertakes a case-by-case review of the competitive

¹⁹ See *id.*

²⁰ See *id.*

²¹ See *id.*

²² See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742 ¶ 15.

²³ See *id.*

²⁴ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743-44 ¶ 16; 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*”).

²⁵ 47 U.S.C. § 309(e); see also *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743 ¶ 15; Application 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).

²⁶ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see also, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112 at ¶ 10; *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, *Memorandum Opinion and Order and Declaratory Ruling*, 28 FCC Rcd 10433, 10444-45 ¶ 28 (2013) (“*Alaska Wireless Order*”).

²⁷ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112-13 ¶ 11; *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 19.

²⁸ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948.

effects of any increase in market concentration or in spectrum holdings in the relevant markets.²⁹ The Commission has used an initial two-part screen to help identify those markets that provide particular reason for further competitive analysis, but 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.³⁰ 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,³¹ and, in addition, to require that any increase in spectrum holdings of below 1 GHz be treated as an “enhanced factor” in its review if post-transaction the acquiring entity would hold approximately one-third or more of such spectrum.³² The Commission stated 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.”³³ The Commission further 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.³⁴

10. The Commission stated in the *Mobile Spectrum Holdings Report and Order* that low-band spectrum is less costly to deploy and provides higher quality coverage than higher-band spectrum,³⁵ and that the two leading nationwide providers hold most of the low-band spectrum available today.³⁶ 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.³⁷ As the Commission found, without access to this low-band spectrum, rival service providers that may lack a mix 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 services.³⁸

²⁹ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12; 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.

³⁰ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12; *Alaska Wireless Order*, 28 FCC Rcd at 10446-47 ¶ 33, 10450 ¶ 42; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17609-10 ¶¶ 49-50. See also *AT&T-Leap Order*, 29 FCC Rcd at 2752 ¶ 39, 2753 ¶ 41, 2755-56 ¶ 47.

³¹ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223-24 ¶ 231.

³² See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶¶ 286-88. The Commission applied this below-1-GHz review for the first time in the recently released *AT&T-Plateau Wireless Order*. See generally *AT&T-Plateau Wireless Order*, 30 FCC Rcd 5107.

³³ *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. See also *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8 n.31, 5113 ¶ 13, 5114 ¶ 15, 5123 ¶ 36 n.114, 5130 ¶ 56.

³⁴ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.

³⁵ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164 ¶ 60.

³⁶ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6156-57 ¶ 46, 6164 ¶ 60.

³⁷ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164 ¶ 60.

³⁸ 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*, (continued....)

We consider below whether, as a result of the proposed transaction, there would be an increased likelihood in these local market areas that rival service providers or potential entrants would be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market, and whether rivals' costs would be increased to the extent that they would be less likely to be able to compete robustly.³⁹

A. Market Definitions

11. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,⁴⁰ 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.

12. *Product and Geographic Markets.* Consistent with recent transaction orders, we find 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).⁴¹ In addition, we find that the relevant geographic market is local – the Applicants are seeking Commission approval of the proposed assignment of 12 megahertz of spectrum that covers eleven counties accounting for well under one percent of the population of the United States.⁴²

13. *Input Market for Spectrum and Market Participants.* For our analysis, we include the spectrum bands, or portions thereof, found in recent Commission orders as the input market.⁴³ Similarly, we apply recent Commission precedent and consider facilities-based entities providing mobile telephony/broadband services using cellular, PCS, SMR, 700 MHz, AWS-1, BRS, WCS, AWS-4, H Block, EBS, and AWS-3 and 600 MHz spectrum (as both the latter become available) to be market participants.⁴⁴

B. Competitive Effects of the Proposed Transaction

14. *Record.* The Applicants argue that the proposed transaction would have no adverse competitive effects, as it would neither cause an overall aggregation of spectrum that would pose an anticompetitive risk nor reduce competition in a meaningful way,⁴⁵ and that no subscriber transition issues

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28 FCC Rcd 12878, 12893-94 ¶¶ 40-41 (WTB 2013) ("AT&T-Verizon Wireless-Grain Order"). See also AT&T-Qualcomm Order, 26 FCC Rcd at 17602 ¶ 31.

³⁹ See, e.g., Verizon Wireless-SpectrumCo Order, 27 FCC Rcd at 10725 ¶ 72; AT&T-Verizon Wireless-Grain Order, 28 FCC Rcd at 12887 ¶ 20.

⁴⁰ See, e.g., AT&T-Plateau Wireless Order, 30 FCC Rcd at 5115 ¶ 17; AT&T-Leap Order, 29 FCC Rcd at 2746 ¶ 22; Alaska Wireless Order, 28 FCC Rcd at 10447 ¶ 34.

⁴¹ See, e.g., AT&T-Plateau Wireless Order, 30 FCC Rcd at 5115 ¶ 18; AT&T-Leap Order, 29 FCC Rcd at 2746 ¶ 23.

⁴² The Commission has found 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. See, e.g., AT&T-Plateau Wireless Order, 30 FCC Rcd at 5116 ¶ 19; Alaska Wireless Order, 28 FCC Rcd at 10447-48 ¶ 36. See also AT&T-Leap Order, 29 FCC Rcd at 2748 ¶ 27.

⁴³ See, e.g., AT&T-Plateau Wireless, 30 FCC Rcd at 5117 ¶ 22; Mobile Spectrum Holdings Report and Order, 29 FCC Rcd at 6169-70 ¶¶ 70, 72. See also AT&T-Leap Order, 29 FCC Rcd at 2749-50 ¶ 32.

⁴⁴ See, e.g., AT&T-Plateau Wireless Order, 30 FCC Rcd at 5117 ¶ 23; AT&T-Leap Order, 29 FCC Rcd at 2751 ¶ 35; Alaska Wireless Order, 28 FCC Rcd at 10449-50 ¶ 41.

⁴⁵ See Public Interest Statement at 4. See also Response of AT&T to the General Information Request Dated December 2, 2014, WT Docket No. 14-199, at 15 (Dec. 16, 2014) ("AT&T Information Request Response").

are implicated as a result of the proposed transaction.⁴⁶ No petitions to deny or comments were received, although, as noted above, a number of parties filed a letter in the Mobile Spectrum Holdings rulemaking proceeding regarding the Commission's enhanced factor review of below-1-GHz spectrum transactions, although this letter did not address any factors specific to a particular proposed transaction.⁴⁷

15. *Initial Review.* As discussed above, to help identify those local markets in which competitive concerns are more likely, we apply an initial two-part screen, and if the acquiring entity would increase its below-1-GHz spectrum holdings to hold approximately one-third or more of such spectrum post-transaction, we apply enhanced factor review.⁴⁸ The first part of the screen is based on the size of the post-transaction Herfindahl-Hirschman Index ("HHI") and the change in the HHI.⁴⁹ 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.⁵⁰ In instances where an applicant is acquiring spectrum below 1 GHz, 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*.⁵¹

16. In the transaction before us, AT&T would acquire 12 megahertz of low-band spectrum in 11 counties in all or parts of two CMAs in Kansas and Oklahoma. As the instant transaction does not result in the acquisition of wireless business units and customers, we do not apply the initial HHI screen. Next, examining the market on a county-by-county basis does not result in either market triggering the total spectrum screen. We do find, however, after review on a county-by-county basis,⁵² that AT&T would hold more than one-third, or more than 45 megahertz, of the currently suitable and available below-1-GHz spectrum post-transaction in five counties in CMA 598 (Oklahoma 3 – Grant), covering approximately 83 percent of the population of that market, and therefore we look more closely at the potential competitive effects this holding may have.⁵³

⁴⁶ See AT&T Information Request Response at 15. KanOkla asserts that [REDACTED]. See KanOkla Information Request Response at 2.

⁴⁷ See generally Increased Below-1-GHz Spectrum Aggregation Letter. See also *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120 ¶ 28.

⁴⁸ See *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *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. As with our application of the initial total spectrum screen, we evaluate increases in below-1-GHz spectrum concentration on a county-by-county basis. See *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121, 5123 ¶¶ 31, 35.

⁴⁹ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *AT&T-Leap Order*, 29 FCC Rcd at 2753 ¶ 41 n.140.

⁵⁰ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *Alaska Wireless Order*, 28 FCC Rcd at 10450 ¶ 42. 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/EBS spectrum are everywhere available. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6229 ¶ 251 n.667.

⁵¹ 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 17602 ¶ 31.

⁵² See *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118-19 ¶¶ 24-25.

⁵³ AT&T would also acquire 12 megahertz of low-band spectrum in CMA 441 (Kansas 14 – Reno). Post-transaction, AT&T would hold 18 megahertz of below-1-GHz spectrum in this CMA: We do not apply enhanced factor review, nor do we find any particular factor that would lead us to undertake further competitive review.

17. *Market-Specific Review.* Generally, in undertaking our analysis, 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.⁵⁴

18. Oklahoma 3 – Grant is a rural market of approximately 233,000 people, with a population density of 41 people per square mile.⁵⁵ The four nationwide service providers all have a significant market share: AT&T holds approximately [REDACTED] percent of the market, while Verizon Wireless, Sprint, and T-Mobile each have market shares of approximately [REDACTED] percent, respectively.⁵⁶ Post-transaction, AT&T would hold 98 to 150 megahertz of spectrum in this CMA, including 18 to 55 megahertz of spectrum below 1 GHz (including 12 megahertz of Lower 700 MHz C Block spectrum in five counties covering approximately 83 percent of the population in this CMA), while the other three nationwide providers hold 60 to 211 megahertz of spectrum.⁵⁷ With respect to below-1-GHz spectrum, Verizon Wireless holds 47 megahertz, Sprint holds 14 megahertz, USCC holds 12 megahertz, and DISH holds 6 megahertz.⁵⁸ In terms of population and land area coverage,⁵⁹ four service providers – AT&T, Verizon Wireless, Sprint, and USCC – each have significant 3G coverage.⁶⁰ In addition, AT&T covers 100 percent of the population and the land area with HSPA+, and approximately 92 percent of the population and 82 percent of the land area with LTE, while the comparable LTE

⁵⁴ We derive market shares and HHIs from our analysis of data compiled in our 2014 NRUF and LNP database, network coverage from Mosaik July 2014 data and 2010 U.S. Census data, and spectrum holdings from our licensing databases and the Applications. We also utilized and analyzed additional data as provided by the Applicants through our information requests. *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120 ¶ 29 n.98.

⁵⁵ 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 ¶¶ 11-12 (2004).

⁵⁶ In addition, USCC has some market presence, with a market share of approximately [REDACTED]%. The HHI is [REDACTED].

⁵⁷ USCC also holds 15 to 50 megahertz of spectrum above 1 GHz, and DISH holds 50 megahertz of spectrum above 1 GHz.

⁵⁸ Pioneer Enid holds 25 megahertz of cellular spectrum in Grant County (covering approximately 2% of the population). Central Cellular holds 12 megahertz of Lower 700 MHz C Block spectrum (covering approximately 15% of the population), and KanOkla will continue to hold 12 megahertz of Lower 700 MHz C Block spectrum in Grant County. We note that KanOkla, together with Cellular Network Partnership (“CNP”), have filed applications seeking the assignment of three Lower 700 MHz C Block licenses from KanOkla to CNP, including Grant county in Oklahoma 3 – Grant. *See Cellular Network Partnership and KanOkla Telephone Association Seek FCC Consent to the Assignment of Three Lower 700 MHz Licenses in Oklahoma*, WT Docket No. 15-48, *Public Notice*, 30 FCC Rcd 3517 (WTB 2015).

⁵⁹ 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-Plateau Wireless Order*, 30 FCC Rcd at 5121 ¶ 31 n.102; *AT&T-Leap Order*, 29 FCC Rcd at 2770 ¶ 81 n.279.

⁶⁰ AT&T covers 100% of the population and the land area with its 3G network, while the comparable 3G network population and land area coverage percentages are close to 100% for Verizon Wireless, approximately 84% and 51% for Sprint, and approximately 95% and 76% for USCC. In addition, the 3G population and land area coverages are approximately 27% and 7% for T-Mobile, and approximately 8% and 31% for Pioneer Enid Cellular.

network coverage percentages are approximately 100 percent and 99 percent for Verizon Wireless, and approximately 93 percent and 68 percent for Sprint.⁶¹

19. We find that, notwithstanding the fact that AT&T would hold more than one-third of the below-1-GHz spectrum as a result of the proposed transaction in five counties in Oklahoma 3 – Grant, the likelihood of competitive harm is low when evaluating the particular factors ordinarily considered.⁶² The three other nationwide service providers, Verizon Wireless, Sprint, and T-Mobile, each have significant market shares in this rural market, and USCC has some market presence. In addition, Verizon Wireless, Sprint, and USCC each have significant 3G population and land area coverage. Further, multiple service providers have access to low-band spectrum. Moreover, as detailed in the footnote below, other rival service providers were provided with the opportunity to acquire KanOkla’s below-1-GHz spectrum on the secondary market, but did not choose to do so.⁶³ We find that the acquisition of this spectrum by AT&T is unlikely to foreclose rival service providers from entering or expanding in this local market, and is unlikely to raise rivals’ costs. 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 AT&T in this local market.

IV. POTENTIAL PUBLIC INTEREST BENEFITS

20. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.⁶⁴ The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms,⁶⁵ and applies a “sliding scale approach” to evaluating benefit claims.⁶⁶ 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.”⁶⁷ Conversely, where potential harms appear less likely and less substantial, as is the case here, we will accept a lesser showing to approve the proposed transaction.⁶⁸

21. *Potential Benefits.* The Applicants assert that the proposed transaction would enable AT&T to increase its system capacity to enhance existing services, better accommodate its overall growth, and facilitate the provision of additional products and services.⁶⁹ The Applicants contend that the acquisition of this Lower 700 MHz spectrum would allow AT&T to support a 10×10 megahertz LTE

⁶¹ LTE population and land area coverage percentages are approximately 10% and 4% for T-Mobile, and approximately 13% and 27% for Pioneer Enid Cellular. USCC covers approximately 2% of both the population and land area with LTE.

⁶² See ¶ 17 *supra*. See also *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5127 ¶ 46.

⁶³ KanOkla states that it engaged Alpina Capital, LLC (“Alpina”), to assist in a review of KanOkla’s operations and assets, and Alpina’s efforts were focused on [REDACTED]. At this point, KanOkla maintains that Alpina contacted a group of potential buyers, including wireline, wireless, video, and data services providers. KanOkla claims that [REDACTED]. See KanOkla Information Request Response at 3.

⁶⁴ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126 ¶ 43; *AT&T-Leap Order*, 29 FCC Rcd at 2792 ¶ 130; *Alaska Wireless Order*, 28 FCC Rcd at 10467 ¶ 85.

⁶⁵ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27 ¶ 44; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87. See also *AT&T-Leap Order*, 29 FCC Rcd at 2793 ¶ 132.

⁶⁶ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27 ¶ 44; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 88. See also *AT&T-Leap Order*, 29 FCC Rcd at 2793-94 ¶ 132.

⁶⁷ See *id.*

⁶⁸ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468-69 ¶ 88; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 85.

⁶⁹ See Public Interest Statement at 3. See also AT&T Information Request Response at 8-9.

deployment.⁷⁰ AT&T maintains that it typically would launch LTE in a 5×5 megahertz configuration where only a single 12 megahertz block of Lower 700 MHz spectrum is available, and will launch LTE in a 10×10 megahertz configuration in areas where both the Lower 700 MHz B and C Blocks are available. Where Lower 700 MHz spectrum is not available, AT&T's initial LTE deployments would use AWS-1 spectrum and/or other spectrum bands.⁷¹ AT&T asserts that a 10×10 megahertz deployment represents a major improvement in speed and efficiency over a 5×5 megahertz LTE carrier.⁷² AT&T further claims that the relative gain in capacity from a 10×10 megahertz block is greater than the total capacity of two separate 5×5 megahertz blocks, and that wider bandwidth results in noticeably better performance for users.⁷³ AT&T asserts that in two adjacent CMAs, [REDACTED], and acquisition of this spectrum would enable it to provide seamless coverage to subscribers moving throughout the area.⁷⁴

22. *Evaluation.* We have reviewed the Applicants' asserted benefits, as well as their responses to our requests for additional information and documents regarding the potential benefits of AT&T acquiring, in particular, the below-1-GHz spectrum at issue in Oklahoma 3 – Grant. The record provides general support for the Applicants' contentions that the proposed transaction would result in some public interest benefits. Specifically, we anticipate that through the acquisition of this Lower 700 MHz spectrum, AT&T would be able to deploy a more robust LTE network in a relatively short period of time.⁷⁵ We further find that by acquiring this low-band spectrum, AT&T would be able to expand, in the near future, its LTE service offerings on contiguous spectrum, which has the potential to enable it to achieve greater spectral efficiency and consistently greater throughput.⁷⁶ Thus, customers are likely to benefit in the immediate future from improved throughput performance, resulting in a better user experience.

V. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS

23. In the proposed transaction, AT&T would increase its low-band spectrum holdings, and would hold post-transaction 18 megahertz of low-band spectrum in Kansas 14 – Reno, and 55 megahertz of low-band spectrum in five counties in Oklahoma 3 – Grant. As 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-

⁷⁰ See Public Interest Statement at 3. See also AT&T Information Request Response at 6-10. AT&T asserts that in the longer term, [REDACTED]. See AT&T Information Request Response at 6.

⁷¹ See AT&T Information Request Response at 4; Letter from Eric W. DeSilva, Counsel to AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 14-199, dated July 6, 2015.

⁷² See AT&T Information Request Response at 6-7.

⁷³ See AT&T Information Request Response at 6-7. AT&T claims that spectral efficiency benefits associated with a 10×10 megahertz LTE deployment are reflected in trunking and signaling efficiencies, and in better user throughput, than with two separate 5×5 megahertz blocks. See *id.* at 8. See also AT&T Exhibits ATT-KAN000001, ATT-KAN000006, and ATT-KAN000042.

⁷⁴ See AT&T Information Request Response at 12-13. AT&T also asserts that this spectrum will allow for more efficient use of spectrum resources in adjacent markets by allowing AT&T to increase its signal strength at the market border. See *id.* at 8.

⁷⁵ According to AT&T, where it has already deployed LTE on its Lower 700 MHz B Block spectrum in the Oklahoma 3 – Grant market, AT&T expects to deploy the Lower 700 MHz C Block spectrum in the counties covered by the KanOkla license within 60 to 90 days after closing. See AT&T Information Request Response at 11.

⁷⁶ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5129-30 ¶ 54; *AT&T-Leap Order*, 29 FCC Rcd at 2799-2800 ¶¶ 149, 151. These Orders recognized the relative spectral inefficiency of a 5×5 megahertz configuration for LTE. See *id.*

by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms.”⁷⁷ We have reviewed the Applicants’ initial claims, as well as their responses to our requests for additional information and documents. After carefully evaluating the likely competitive effects of AT&T’s increased aggregation of below-1-GHz spectrum in the markets implicated by the proposed transaction, we find that the ability of rival service providers to offer a competitive response to any anticompetitive behavior on the part of AT&T is unlikely to be materially lessened in Oklahoma 3 – Grant, the market in which we applied enhanced factor review. Thus, the likelihood of competitive harm is low in this local market. Further, we find that the record provides general support for the Applicants’ claims, and under our sliding scale approach, the likelihood of harm is low and the potential public interest benefits outweigh the harms. Thus, based on the record before us and our competitive review, we find that the proposed assignment would serve the public interest, convenience, and necessity.

VI. ORDERING CLAUSES

24. ACCORDINGLY, having reviewed the Applications and the record in this proceeding, IT IS ORDERED that, pursuant to sections 4(i) and (j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d), the applications for assignment of licenses held by KanOkla Telephone Association to AT&T Mobility Spectrum LLC are GRANTED.

25. 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.

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

FEDERAL COMMUNICATIONS COMMISSION

Roger C. Sherman
Chief
Wireless Telecommunications Bureau

⁷⁷ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.