

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

In the Matter of)
)
Application of AT&T Mobility Spectrum LLC and) WT Docket No. 14-145
Club 42CM Limited Partnership)
)
For Consent To Assign Licenses)

MEMORANDUM OPINION AND ORDER

Adopted: November 10, 2015

Released: November 12, 2015

By the Commission:

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I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the application of AT&T and Club 42 for Commission consent to the assignment from Club 42 to AT&T of two Lower 700 MHz B Block licenses covering two local market areas in California. 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, or 45 megahertz or more, of the currently

suitable and available spectrum below 1 GHz.¹ As a result of the instant transaction, AT&T would increase its low-band spectrum holdings from 43 megahertz to 55 megahertz in CA 12 – Kings.²

2. The Commission further determined that it likely would have even greater concerns where 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. In the latter case, the Commission stated that the required 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.³ As a result of the instant transaction, AT&T would increase its low-band spectrum holdings from 49 megahertz to 61 megahertz in CA 5 – San Luis Obispo.⁴

3. After carefully evaluating the likely competitive effects of the proposed transaction, and for the reasons set forth below, we find that the likelihood of competitive harm is low in both local markets, notwithstanding AT&T's post-transaction holdings of low-band spectrum. Further, we find that some public interest benefits are likely to be realized, such as increased network quality and a better consumer experience resulting from the accelerated deployment of a more robust LTE network in these two license areas. Based on the record before us and our competitive review, we find that the potential public interest benefits clearly outweigh any potential public interest harms. 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

A. Description of the Applicants

4. AT&T Mobility Spectrum LLC, an indirect wholly-owned subsidiary of AT&T Inc. (together with 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.⁵ As of June 30, 2015, AT&T reported approximately 124 million wireless subscribers and approximately \$36 billion in wireless service and equipment revenues, which accounted for approximately 56 percent of AT&T's total revenues for that six-month period.⁶ Club 42CM Limited Partnership ("Club 42," and together with AT&T, the "Applicants") is a limited partnership formed under the laws of the state of California,⁷ and does not currently provide mobile wireless services. The Club 42 licenses at issue here were granted to Club 42 in 2012 as the winning bidder in Auction 73.⁸

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, 6238-40 ¶¶ 282-88 (2014) ("*Mobile Spectrum Holdings Report and Order*"), *recon. denied*, *Order on Reconsideration*, 30 FCC Rcd 8635 (2015) ("*Mobile Spectrum Holdings Reconsideration Order*").

² See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.

³ See *id.*, 29 FCC Rcd at 6240 ¶ 287.

⁴ See *id.*

⁵ 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.

⁶ See AT&T Inc., SEC Form 10-Q, at 2, 22, 23 (filed Aug. 7, 2015), available at http://www.sec.gov/Archives/edgar/data/732717/000073271715000079/q2_10q.htm.

⁷ See Ownership Disclosure Filing of Club 42, FCC Form 602, Third Amended Exhibit A – Ownership.

⁸ See Application, Exhibit 1 – Description of Transaction and Public Interest Statement at 1 n. 1 ("Public Interest Statement").

B. Description of the Transaction

5. On July 15, 2014, AT&T and Club 42 filed the Application pursuant to section 310(d) of the Communications Act of 1934, as amended (the “Act”),⁹ seeking Commission consent to assign two Lower 700 MHz B Block licenses to an indirect, wholly-owned subsidiary of AT&T.¹⁰ In the instant transaction, AT&T would acquire 12 megahertz of spectrum in each of two single-county Cellular Market Areas (“CMAs”) in California.¹¹ Post-transaction, AT&T would hold between 141 and 170 megahertz of spectrum in total, and between 55 and 61 megahertz of below-1-GHz spectrum in these two local markets.¹²

6. The Applicants assert that, as a result of the proposed transaction, AT&T would be able to increase its system capacity to enhance existing services, better accommodate its overall growth, and facilitate the provision of additional products and services in these two markets.¹³ According to the Applicants, the spectrum at issue would be used to deploy AT&T’s Long-Term Evolution (“LTE”) network and would increase network capacity to the benefit of all its subscribers.¹⁴ Specifically, the Applicants maintain that the acquisition of this spectrum would give AT&T 24 megahertz of contiguous Lower 700 MHz spectrum, enough to support a 10×10 megahertz LTE deployment.¹⁵

C. Transaction Review Process

7. On September 8, 2014, the Commission released a public notice, which announced the acceptance of the Application for filing and established a pleading cycle.¹⁶ 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*.¹⁷ It further explained where the entity acquiring below-1-GHz spectrum already holds approximately one-third or more of the below-1-GHz spectrum in a particular market, the demonstration of the public interest benefits of the proposed transaction would need to clearly outweigh the potential public interest harms.¹⁸ 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, 2014.¹⁹ In response to the *Accepted for Filing Public Notice*, the

⁹ 47 U.S.C. § 310(d).

¹⁰ See Public Interest Statement at 1. The Application was assigned ULS File No. 0006344543.

¹¹ See Application of AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership for Consent to the Assignment of Two Lower 700 MHz B Block Licenses in California, WT Docket No. 14-145, *Public Notice*, 29 FCC Rcd 10525 (WTB 2014) (“*Accepted for Filing Public Notice*”). See also Application, Exhibit 3 – Spectrum Aggregation.

¹² See *Accepted for Filing Public Notice*, 29 FCC Rcd at 10525-26. See also Public Interest Statement at 4.

¹³ See Public Interest Statement at 3. See also *Accepted for Filing Public Notice*, 29 FCC Rcd at 10525.

¹⁴ See Public Interest Statement at 3.

¹⁵ See Public Interest Statement at 3. See also *Accepted for Filing Public Notice*, 29 FCC Rcd at 10525; Response of AT&T Mobility Spectrum LLC to the General Information Request Dated September 22, 2014, WT Docket 14-145, at 5-9 (Oct. 6, 2014) (“AT&T General Information Request Response”).

¹⁶ See generally *Accepted for Filing Public Notice*, 29 FCC Rcd 10525.

¹⁷ See *Accepted for Filing Public Notice*, 29 FCC Rcd at 10525-26, citing *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶¶ 286-88.

¹⁸ See *Accepted for Filing Public Notice*, 29 FCC Rcd at 10526.

¹⁹ See generally Pleading Cycle Extended for Proposed Assignment to AT&T from Club 42 of Two Lower 700 MHz Licenses, WT Docket No. 14-145, *Public Notice*, 29 FCC Rcd 11756 (WTB 2014) (“*Extension Public Notice*”). On September 29, 2014, the Competitive Carriers Association (“CCA”) requested a seven business-day

(continued....)

Commission received a Petition To Deny filed by the Competitive Carriers Association (“CCA”),²⁰ a Joint Opposition to the CCA Petition To Deny,²¹ and a reply by CCA.²² The petition asserted that AT&T has failed to meet its substantial burden of demonstrating that the “enhanced factor” criteria for its increases in below-1-GHz spectrum are satisfied.²³ 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 proposed below-1-GHz spectrum transactions.²⁴ We address the issues raised in these filings below.²⁵

8. 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 placed into the record.²⁶ The same day, pursuant to section 308(b) of the Act, as amended,²⁷ the Bureau sent letters to AT&T and Club 42 requesting the submission of written responses and supporting documentation by October 6,

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extension of the pleading deadlines. *See generally* Motion for Extension of Time of the Competitive Carriers Association, WT Docket No. 14-145 (filed Sept. 29, 2014).

²⁰ *See generally* Competitive Carriers Association Petition To Deny, WT Docket No. 14-145 (filed Oct. 17, 2014) (“CCA Petition To Deny”).

²¹ *See generally* AT&T Mobility Spectrum LLC and Club 42 CM Limited Partnership Joint Opposition, WT Docket No. 14-145 (filed Oct. 27, 2014) (“Joint Opposition”).

²² *See generally* Competitive Carriers Association Reply, WT Docket No. 14-145 (filed Nov. 3, 2014) (“CCA Reply”).

²³ *See* CCA Petition To Deny at 8-10, 14.

²⁴ *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, dated Oct. 9, 2014 (“Increased Below-1-GHz Spectrum Aggregation Letter”). *See* ¶ 26 *infra*.

²⁵ The Applicants assert that CCA has failed to establish “party-in-interest” status with respect to the proposed transaction. Joint Opposition at 1 n.1. CCA responded that it “and several of its members with interests in the specific Markets at issue have expressed specific competitive concerns regarding AT&T’s increased aggregation of low-band spectrum,” citing the Increased Below-1-GHz Spectrum Aggregation Letter. CCA Reply at 15. Section 309(d) requires petitioners to deny to provide specific allegations of fact supported by affidavit on personal knowledge to support their claims of qualification as a party in interest. In cases involving claims of associational standing, that showing would include claims that CCA’s members would have standing as competitors to AT&T in these two CMAs; the interests it seeks to protect are germane to CCA’s purpose; and its claims do not require the participation of its individual members. *See, e.g., United States Telecom Ass’n v. FCC*, 295 F.3d 1326, 1330 (D.C. Cir. 2002); *Living Way Ministries, Inc., Memorandum Opinion and Order*, 23 FCC Rcd 15070 (2008). Given our evaluation of the below-1-GHz spectrum aggregation in this order and the fact that CCA’s pleadings focus on this precise issue, we do not consider it necessary to resolve the issue of CCA’s standing and we will address its arguments as part of our review of the instant transaction.

²⁶ *See generally* Application of AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership for Consent To Assign Two Lower 700 MHz B Block Licenses in California, Numbering Resource Utilization and Forecast Reports and Local Number Portability Reports To Be Placed into the Record, Subject to Protective Order, WT Docket No. 14-145 and CC Docket No. 99-200, *Public Notice*, 29 FCC Rcd 11408 (WTB 2014); Application of AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership for Consent To Assign Licenses, WT Docket No. 14-145, *NRUF/LNP Protective Order*, 29 FCC Rcd 11401 (WTB 2014).

²⁷ 47 U.S.C. § 308(b).

2014, to specific inquiries related to the proposed transaction.²⁸ 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.²⁹ On February 19, 2015, the Bureau sent a letter to AT&T requesting the supplemental submission of written responses and supporting documentation.³⁰ On May 20, 2015, the Bureau sent a letter to AT&T requesting a second supplemental submission of written responses and supporting documentation.³¹ AT&T's supplemental responses were filed on March 9 and June 2, 2015.³²

III. STANDARD OF REVIEW

9. Pursuant to section 310(d) of the Act,³³ we must determine whether the Applicants have demonstrated that the proposed assignment of licenses would serve the public interest, convenience, and necessity.³⁴ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act,³⁵ other applicable statutes, and the Commission's rules, including whether the applicants are qualified to hold licenses.³⁶ 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.³⁷ We then employ a balancing test weighing any potential public interest harms of the proposed transaction

²⁸ See generally Letter from Roger C. Sherman, Chief, WTB, to Michael P. Goggin, AT&T, WT Docket No. 14-145 (WTB rel. Sept. 22, 2014) ("*AT&T General Information Request*"); Letter from Roger C. Sherman, Chief, WTB, to Puneet Wadhwa, Club 42CM Limited Partnership, WT Docket No. 14-145 (WTB rel. Sept. 22, 2014) ("*Club 42 General Information Request*").

²⁹ See generally Applications of AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership for Consent To Assign Licenses, WT Docket No. 14-145, *Joint Protective Order*, 29 FCC Rcd 11401 (WTB 2014).

³⁰ See generally Letter from Roger C. Sherman, Chief, WTB, to Michael P. Goggin, AT&T, WT Docket No. 14-145 (WTB rel. Feb. 19, 2015) ("*AT&T First Supplemental Information Request*").

³¹ See generally Letter from Roger C. Sherman, Chief, WTB, to Michael P. Goggin, AT&T, WT Docket No. 14-145 (WTB rel. May 20, 2015) ("*AT&T Second Supplemental Information Request*").

³² See generally Response of AT&T Mobility Spectrum LLC to Supplemental Information Request Dated February 19, 2015 (Mar. 9, 2015) ("*AT&T First Supplemental Information Request Response*"); Response of AT&T Mobility Spectrum LLC to Second Supplemental Information Request Dated May 20, 2015 (June 2, 2015) ("*AT&T Second Supplemental Information Request Response*").

³³ 47 U.S.C. § 310(d).

³⁴ 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*").

³⁵ 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, n.27; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42 ¶ 13, n.45; 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*").

³⁶ 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; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2327 ¶ 14.

³⁷ See *id.*

against any potential public interest benefits.³⁸ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.³⁹

10. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.⁴⁰ 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.⁴¹ 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.⁴² 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.⁴³ 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.⁴⁴

IV. QUALIFICATIONS OF APPLICANTS

11. Among the factors the Commission considers in its public interest review is whether an applicant for a license has the requisite “citizenship, character, financial, technical, and other qualifications.”⁴⁵ 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.⁴⁶

12. *Discussion.* As an initial matter, we note that no parties have raised issues with respect to the basic qualifications of Club 42. The Commission generally does not reevaluate the qualifications of assignors unless issues related to basic qualifications have been sufficiently raised in petitions to warrant

³⁸ *See id.*

³⁹ *See id.*

⁴⁰ *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742-43 ¶ 15; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2328-29 ¶ 16.

⁴¹ *See id.*

⁴² *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9. *See also AT&T-Leap Order*, 29 FCC Rcd at 2742-43 ¶ 15; *T-Mobile-MetroPCS Order*, 28 FCC Rcd 2328-29 ¶ 16.

⁴³ 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 2742-43 ¶ 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).

⁴⁴ *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*”).

⁴⁵ 47 U.S.C. §§ 308, 310(d); *see also, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112 ¶ 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*”).

⁴⁶ *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 ¶ 10; *AT&T-Leap Order*, 29 FCC Rcd at 2744 ¶ 17; *Alaska Wireless Order*, 28 FCC Rcd at 10444-45 ¶ 28.

designation for hearing.⁴⁷ 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 Club 42. 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.⁴⁸ 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 AT&T.

V. POTENTIAL PUBLIC INTEREST HARMS

13. In reviewing a proposed transaction, the Commission evaluates the potential public interest harms, including potential competitive harms that may result from the transaction.⁴⁹ 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.⁵⁰ 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.⁵¹ In its analysis, the Commission has used 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.⁵²

14. 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.⁵³ 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.⁵⁴ The Commission reached this conclusion primarily because low-band spectrum is less costly to deploy and provides higher quality coverage than higher-band spectrum,⁵⁵ and the two leading nationwide providers hold most of the low-band spectrum

⁴⁷ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112-13 ¶ 11; *Alaska Wireless Order*, 28 FCC Rcd at 10445 ¶ 29. See also *AT&T-Leap Order*, 29 FCC Rcd at 2744-45 ¶ 18.

⁴⁸ 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.

⁴⁹ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716, 10734 ¶¶ 47-48, ¶ 95. See also *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 20.

⁵⁰ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12; *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.

⁵¹ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12. See also *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 20.

⁵² See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48. See also *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 20.

⁵³ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223-24 ¶ 231.

⁵⁴ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6240 ¶ 267, ¶¶ 286-88. The Commission applied this below-1-GHz review in the *AT&T-Plateau Wireless Order*. See generally *AT&T-Plateau Wireless Order*, 30 FCC Rcd 5107.

⁵⁵ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164 ¶ 60.

available today.⁵⁶ 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.⁵⁷ 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 or innovative services.⁵⁸

15. As noted above, 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.”⁵⁹ 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.⁶⁰ The Commission further 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.”⁶¹ The Commission concluded that careful consideration of the likely effects of increased aggregation of low-band spectrum under these standards of review 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.⁶²

A. Competitive Overview and Market Definitions

1. Competitive Overview

16. Spectrum is an essential input in the provision of mobile wireless services, and ensuring that sufficient spectrum, including below-1-GHz spectrum, is available for incumbent licensees as well as potential new entrants is critical to promoting competition and innovation in the marketplace.⁶³ When

⁵⁶ 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.

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

⁵⁸ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6162-65 ¶¶ 58-61; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113-14 ¶ 14; 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, 12893-94 ¶¶ 40-41 (WTB 2013) (“*AT&T-Verizon Wireless-Grain Order*”); *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

⁵⁹ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286. 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.

⁶⁰ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.

⁶¹ *Id.*, 29 FCC Rcd at 6240 ¶ 287.

⁶² See *id.*, 29 FCC Rcd at 6240 ¶ 288.

⁶³ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6167-68 ¶ 67. See also, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5114-15 ¶ 16; *AT&T-Leap Order*, 29 FCC Rcd at 2745-46 ¶ 21; Applications of AT&T Inc. and Atlantic Tele-Network, Inc. for Consent To Transfer Control of and Assign Licenses and

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considering the potential competitive effects of spectrum aggregation resulting from a proposed transaction, the Commission has considered whether there would be an increased likelihood that rival service providers or potential entrants would be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market, and also whether rivals' costs would be increased to the extent that they would be less likely to be able to compete robustly.⁶⁴ If rival service providers are unable to expand capacity or deploy mobile broadband technologies, this might well reduce quality and consumer choice.⁶⁵ We evaluate below the likely competitive effects of an increase in spectrum holdings in the two local markets involved in this proposed transaction,⁶⁶ including, in particular, the increased aggregation of below-1-GHz spectrum by AT&T as a result of the proposed transaction.⁶⁷

2. Market Definitions

17. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,⁶⁸ 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,⁶⁹ 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).⁷⁰ 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.⁷¹ We therefore find that it is in the public interest to retain the current product market definition.

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Authorizations, WT Docket No. 13-54, *Memorandum Opinion and Order*, 28 FCC Rcd 13670, 13681 ¶ 19 (WTB, IB 2013) ("AT&T-ATN Order").

⁶⁴ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10725-26 ¶ 72; Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent To Assign Licenses and Transfer Control of Licenses, MB Docket No. 10-56, *Memorandum Opinion and Order*, 26 FCC Rcd 4238, 4252-53 ¶ 34 (2011). See also *AT&T-Verizon Wireless-Grain Order*, 28 FCC Rcd at 12887 ¶ 20.

⁶⁵ See, e.g., 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, 16472 ¶ 34 (2012) ("AT&T WCS Order"); *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10726 ¶ 74 n.186.

⁶⁶ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5114-15 ¶ 16; *AT&T-Leap Order*, 29 FCC Rcd at 2745-46 ¶ 21; *AT&T-ATN Order*, 28 FCC Rcd at 13681 ¶ 19; *Alaska Wireless Order*, 28 FCC Rcd at 10446-47 ¶ 33.

⁶⁷ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6240 ¶ 267, ¶¶ 286-88. See also *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5114-15 ¶ 16.

⁶⁸ 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.

⁶⁹ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115-16 ¶ 18; *Alaska Wireless Order*, 28 FCC Rcd at 10447 ¶ 35. See also *AT&T-Leap Order*, 29 FCC Rcd at 2746 ¶ 23.

⁷⁰ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115-16 ¶ 18; *Alaska Wireless Order*, 28 FCC Rcd at 10447 ¶ 35. 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.

⁷¹ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115-16 ¶ 18; *AT&T-Leap Order*, 29 FCC Rcd at 2747-48 ¶ 26. See also *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6225 ¶ 237.

19. *Geographic Market(s)*. The Commission has found in recent transaction orders that the relevant geographic markets for certain wireless transactions generally are local, but it 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.⁷² 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, and in addition, service providers compete at the local level on factors such as coverage and service quality.⁷³ 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.⁷⁴ 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 of the proposed assignment of 12 megahertz of Lower 700 MHz B Block spectrum covering two single-county CMAs in the United States, accounting for a population of approximately 400,000 in total. We find that any potential competitive harms arising from the proposed transaction would be limited to these two local markets.

20. *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 post-transaction holdings of spectrum that is "suitable" and "available" in the near term for the provision of mobile telephony/broadband services.⁷⁵ 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.⁷⁶ Spectrum is considered available if it is "fairly certain that it will meet the criteria for suitable spectrum in the near term."⁷⁷

21. 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

⁷² 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; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6225-26 ¶ 238.

⁷³ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5116 ¶ 19; *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.

⁷⁴ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5116 ¶ 19; *AT&T WCS Order*, 27 FCC Rcd at 16469 ¶ 27; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718-19 ¶ 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 service providers, AT&T, Verizon Wireless, Sprint, and T-Mobile, as well as some other service providers set the same rates for a given plan everywhere and advertise nationally. 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. See, e.g., *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6226 ¶ 239; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5116 ¶ 19, n.70; *AT&T WCS Order*, 27 FCC Rcd at 16469 ¶ 27; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718-19 ¶ 57.

⁷⁵ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5116-17 ¶ 21; *Alaska Wireless Order*, 28 FCC Rcd at 10448-49 ¶ 38. 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.

⁷⁶ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5116-17 ¶ 21; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169 ¶ 71; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17605-6 ¶ 38.

⁷⁷ *Id.*

Service spectrum (“BRS,” on a market-by-market basis), and Wireless Communications Service (“WCS”) spectrum.⁷⁸ 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”).⁷⁹

22. *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.⁸⁰ 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.⁸¹

B. Competitive Effects of the Proposed Transaction

1. Initial Review

23. 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.⁸² The first part of the screen is based on the size of the post-transaction Herfindahl-Hirschman Index (“HHI”)⁸³ and the change in the HHI.⁸⁴ The second part of the screen,

⁷⁸ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117 ¶ 22; *AT&T WCS Order*, 27 FCC Rcd at 16469-70, 16470-71 ¶¶ 29, 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.

⁷⁹ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169 ¶ 70. See also, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117 ¶ 22.

⁸⁰ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117 ¶ 23; *Alaska Wireless Order*, 28 FCC Rcd at 10449-50 ¶ 41. 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 has noted that it will exclude MVNOs and resellers from consideration when computing initial concentration measures. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117 ¶ 23 n.78; *Alaska Wireless Order*, 28 FCC Rcd at 10449-50 ¶ 41. See also *AT&T-Leap Order*, 29 FCC Rcd at 2752 ¶ 37.

⁸¹ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117 ¶ 23; *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.

⁸² 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, as noted above. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6156-57, 6240 ¶ 46, ¶¶ 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.

⁸³ For purposes of determining HHIs, we use our June 2014 NRUF database, which tracks phone number usage by all service providers. 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

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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.⁸⁵ 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*.⁸⁶

24. In the transaction before us, AT&T would acquire 12 megahertz of low-band spectrum in two single-county CMAs in parts of California. As the instant transaction does not result in the acquisition of wireless business units and customers, we do not apply the initial HHI screen. Neither local market triggers the total spectrum screen, but in our review of below-1-GHz spectrum holdings we find 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 both of these single-county CMAs.⁸⁷ Specifically, in CA 12 – Kings, AT&T holds 43 megahertz of low-band spectrum pre-transaction and would increase its holdings to 55 megahertz of such spectrum post-transaction. This market is therefore subject to enhanced factor review as set forth in paragraph 286 of the *Mobile Spectrum Holdings Report and Order*.⁸⁸ In CA 5 – San Luis Obispo, AT&T holds 49 megahertz of low-band spectrum pre-transaction, or more than one-third of the currently suitable and available low-band spectrum, and would further increase its holdings to 61 megahertz of such spectrum post-transaction. This market is therefore subject to enhanced factor review as set forth in paragraph 287 of the *Mobile Spectrum Holdings Report and Order*.⁸⁹

2. Competitive Analysis

25. *Record*. In the Applicants' initial filing, the Applicants assert that the proposed transaction would not cause an overall aggregation of spectrum that would pose an anticompetitive risk nor reduce actual competition in any meaningful way.⁹⁰ In particular, the Applicants contend that AT&T would not meet or exceed the revised spectrum screen as discussed in the *Mobile Spectrum Holdings*

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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 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-Plateau Wireless Order*, 30 FCC at 5118 ¶ 24 n.82; *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.

⁸⁵ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC at 5118 ¶ 24; *Alaska Wireless Order*, 28 FCC Rcd at 10450 ¶ 42; *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/EBS spectrum are everywhere available. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6229 ¶ 251, n.667.

⁸⁶ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6240 ¶ 267, ¶¶ 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.

⁸⁷ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233 ¶ 267, 6240 ¶¶ 286-88. See also, e.g., *AT&T-Plateau Wireless Order*, 30 FCC at 5118 ¶ 24; *AT&T-Verizon Wireless-Grain Order*, 28 FCC at 12893-97 ¶¶ 39-45; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17606 ¶ 31. Similar to our application of the initial 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.

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

⁸⁹ See *id.*, 29 FCC Rcd at 6240 ¶ 287.

⁹⁰ See Public Interest Statement at 4.

*Report and Order.*⁹¹ Further, the Applicants maintain that there would continue to be numerous licensed providers other than AT&T in the affected counties that would provide effective competitive constraints.⁹²

26. CCA, T-Mobile, and Public Knowledge assert that the Commission should prevent the concentration of scarce low-band spectrum⁹³ by the two largest service providers and implement the below-1-GHz review in a manner that meaningfully preserves and protects competition.⁹⁴ In particular, CCA argues that as a result of the proposed transaction, AT&T would be permitted to significantly diminish its rivals' ability to compete on price or offer innovative services.⁹⁵ CCA also contends that AT&T's broader acquisition of below-1-GHz spectrum nationwide should be considered.⁹⁶ CCA, T-Mobile, and Public Knowledge maintain that, in the application and AT&T's responses to the information requests, AT&T has failed to meet its substantial burden of demonstrating that the "enhanced factor" criteria for its increases in below-1-GHz spectrum are satisfied.⁹⁷ CCA further contends that the Applicants attempt "to dilute the new standard by treating below-1-GHz spectrum as interchangeable with above-1-GHz spectrum."⁹⁸ Moreover, CCA asserts that several of the factors the Commission considers in its case-by-case review indicate that there would be substantial public interest harms post-transaction,⁹⁹ and that AT&T's past, present, and future influence over the Lower 700 MHz Band is a factor weighing against the proposed transaction.¹⁰⁰ In addition, as noted above, a number of parties filed a letter in the

⁹¹ See Public Interest Statement at 4.

⁹² See Public Interest Statement at 5.

⁹³ CCA asserts that it is now well-established that below-1-GHz spectrum has unique propagation characteristics that enable wireless providers to provide higher coverage quality at lower deployment costs than is possible with high-band spectrum. See CCA Petition to Deny at 3-4. See also Letter from Public Knowledge and New America's Open Technology Institute, to Marlene H. Dortch, Secretary, FCC, dated Sept. 21, 2015, at 2 ("Public Knowledge/New America's OTI Sept. 21, 2015 *Ex Parte*"); Letter from Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, dated July 2, 2015, at 2-3 ("CCA July 2, 2015 *Ex Parte*"); Letter from T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, dated July 2, 2015, at 3-4 ("T-Mobile July 2, 2015 *Ex Parte*"); Letter from Competitive Carriers Association Representatives, to Marlene H. Dortch, Secretary, FCC, dated May 7, 2015, at 1-2 ("CCA Representatives May 7, 2015 *Ex Parte*").

⁹⁴ See CCA Petition to Deny at 5, 8-9, 12. See also Letter from Public Knowledge, to Marlene H. Dortch, Secretary, FCC, dated Oct. 22, 2015, at 1-2 ("Public Knowledge Oct. 22, 2015 *Ex Parte*"); Letter from Public Knowledge, to Marlene H. Dortch, Secretary, FCC, dated Oct. 16, 2015, at 1-3 ("Public Knowledge Oct. 16, 2015 *Ex Parte*"); Letter from Public Knowledge, to Marlene H. Dortch, Secretary, FCC, dated Oct. 5, 2015, at 3 ("Public Knowledge Oct. 5, 2015 *Ex Parte*"); Letter from CCA, T-Mobile, and Public Knowledge, to Marlene H. Dortch, Secretary, FCC, dated Sept. 24, 2015, at 4-5 ("CCA/T-Mobile/Public Knowledge Sept. 24, 2015 *Ex Parte*"); Public Knowledge/New America's OTI Sept. 21, 2015 *Ex Parte* at 1, 4; Letter from Competitive Carriers Association and T-Mobile, to Marlene H. Dortch, Secretary, FCC, dated Sept. 2, 2015, at 1, 4-5 ("CCA/T-Mobile Sept. 2, 2015 *Ex Parte*"); CCA July 2, 2015 *Ex Parte* at 3; T-Mobile July 2, 2015 *Ex Parte* at 3-4, 6-7; CCA Representatives May 7, 2015 *Ex Parte* at 2; Letter from Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, dated Jan. 15, 2015, at 1-2 ("CCA Jan. 15, 2015 *Ex Parte*").

⁹⁵ See CCA Petition to Deny at 12. See also CCA Representatives May 7, 2015 *Ex Parte* at 2.

⁹⁶ See Letter from Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, dated Feb. 18, 2015, at 1-2 ("CCA Feb. 18, 2015 *Ex Parte*"); CCA Jan. 15, 2015 *Ex Parte* at 4.

⁹⁷ See CCA Petition to Deny at 8-10, 14. See also Public Knowledge Oct. 16, 2015 *Ex Parte* at 3; Public Knowledge Oct. 5, 2015 *Ex Parte* at 3; Public Knowledge/New America's OTI Sept. 21, 2015 *Ex Parte* at 3; CCA July 2, 2015 *Ex Parte* at 4; T-Mobile July 2, 2015 *Ex Parte* at 6-7, 12-13; CCA Representatives May 7, 2015 *Ex Parte* at 2-3.

⁹⁸ CCA Reply at 5-6.

⁹⁹ See CCA Jan. 15, 2015 *Ex Parte* at 2-3.

¹⁰⁰ See CCA Jan. 15, 2015 *Ex Parte* at 4. In addition, CCA maintains that its analysis of the NRUF data indicates that AT&T and Verizon Wireless together serve a significant percentage in each of the markets involved, and that

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Mobile Spectrum Holdings rulemaking proceeding regarding the Commission's enhanced factor review of proposed below-1-GHz spectrum transactions,¹⁰¹ although this letter did not address any factors specific to a particular proposed transaction.¹⁰²

27. In the Joint Opposition, the Applicants assert that “all of the other national carriers are present in each of the two counties at issue,”¹⁰³ and note that while AT&T would hold more than 45 megahertz of spectrum below 1 GHz in both markets, it would remain well below the overall spectrum screen.¹⁰⁴ In AT&T's responses to the requests for supplemental information, AT&T asserts that this additional concentration of below-1-GHz spectrum, specifically, would not preclude rival service providers and potential new entrants from expanding or entering into CMA 340 (CA 5 – San Luis Obispo).¹⁰⁵ This is in part because other service providers already have access to spectrum, whether low-band or high-band or some combination of both, that is suitable for 10×10 megahertz LTE deployments of their own.¹⁰⁶ In particular, AT&T contends that its competitors in CA 5 – San Luis Obispo “have sufficient spectrum assets – including low-band spectrum – to compete effectively with AT&T.”¹⁰⁷ AT&T also asserts that its competitors are competing [REDACTED].¹⁰⁸ AT&T contends that, as a result, this acquisition would not enable AT&T to raise prices or prevent AT&T's competitors from lowering prices and that the Club 42 license has no foreclosure value.¹⁰⁹

28. In addition, the Applicants state that the spectrum was offered openly, through a broker, and that other service providers had the same opportunity as AT&T to purchase Club 42's licenses.¹¹⁰ The Applicants further state that other rival service providers [REDACTED].¹¹¹ AT&T argues that [REDACTED].¹¹² Further, AT&T argues that it holds only 37 megahertz of “true” below-1-GHz spectrum in San Luis Obispo and that the unpaired Lower 700 MHz D and E Blocks should not be

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this level of market concentration “epitomizes the risk of foreclosure of competition.” CCA Feb. 18, 2015 *Ex Parte* at 1-3.

¹⁰¹ 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.

¹⁰² See Increased Below-1-GHz Spectrum Aggregation Letter at 2-4.

¹⁰³ Joint Opposition at 3-4.

¹⁰⁴ See Joint Opposition at 4.

¹⁰⁵ See Response of AT&T Inc. to the Supplemental Information Request Dated February 19, 2015, WT Docket 14-145, at 11 (Mar. 9, 2015) (“AT&T First Supplemental Information Request Response”); Response of AT&T Inc. to the Supplemental Information Request Dated May 20, 2015, WT Docket 14-145, at 4-5, 8 (June 2, 2015) (“AT&T Second Supplemental Information Request Response”).

¹⁰⁶ See AT&T First Supplemental Information Request Response at 11; AT&T Second Supplemental Information Request Response at 4-5, 8.

¹⁰⁷ AT&T Second Supplemental Information Request Response at 4-5.

¹⁰⁸ See AT&T First Supplemental Information Request Response at 12; AT&T Second Supplemental Information Request Response at 5, 7-8.

¹⁰⁹ See AT&T Second Supplemental Information Request Response at 8-10.

¹¹⁰ See AT&T Second Supplemental Information Request Response at 3, 11-13.

¹¹¹ See Response of Club 42 to the General Information Request Dated September 22, 2014, WT Docket No. 14-145, at 1 (Oct. 6, 2014) (“Club 42 General Information Request Response”); AT&T First Supplemental Information Request Response at 13; AT&T Second Supplemental Information Request Response at 3, 11-13.

¹¹² See AT&T First Supplemental Information Request Response at 13. See also Club 42 General Information Request Response at 1; AT&T Second Supplemental Information Request Response at 3, 11-13.

included in the Commission's analysis because this spectrum currently can only be used in conjunction with spectrum above 1 GHz, rendering moot many of the “inherent benefits” of spectrum below 1 GHz.¹¹³ In addition, AT&T asserts that it is unable to integrate this unpaired D and E Block spectrum with its Lower 700 MHz LTE network because to do so would create an unacceptable level of self-interference within a device supporting both blocks.¹¹⁴

29. CCA responded in an *ex parte* letter by arguing that in the *AT&T-Qualcomm Order*, the Commission rejected AT&T's arguments that Lower 700 MHz D and E Block spectrum does not carry with it competitive advantages.¹¹⁵ CCA further asserts that these findings were reiterated in the *Mobile Spectrum Holdings Report and Order*, contending that the Commission rejected AT&T's arguments that it is limited to pairing Lower 700 MHz D and E Block spectrum only with high-band spectrum, which the Commission determined was “insufficient technical evidence” to support these claims.¹¹⁶ CCA maintains that the better propagation of low-band spectrum on the downlink D and E Block spectrum still improves service performance and user experience indoors and at the cell edge relative to operations using high-band spectrum for both uplink and downlinks, irrespective of its pairing.¹¹⁷ CCA concludes that AT&T's arguments in favor of disregarding this unpaired spectrum in the Commission's below-1-GHz spectrum analysis should be rejected as an untimely attempt to reconsider the Commission's decision in the *Mobile Spectrum Holdings Report and Order*.¹¹⁸ T-Mobile contends that while the benefits of such unpaired spectrum will only be available within the footprint of associated high-band spectrum, AT&T has ample high-band spectrum upon which to rely.¹¹⁹

30. *Discussion.* First, as explained below, and as set out in the *Mobile Spectrum Holdings Report and Order*, the Commission has already determined that Lower 700 MHz D and E Block spectrum is included in the spectrum screen.¹²⁰ It also concluded that such spectrum is relevant in its evaluation of

¹¹³ See AT&T First Supplemental Information Request Response at 4. See also Joint Opposition at 4 n.8.

¹¹⁴ See AT&T First Supplemental Information Request Response at 5. AT&T claims that such self-interference occurs because these blocks are directly adjacent and there is not enough frequency separation to mitigate interference. See *id.* See also Joint Opposition at 4 n.8. AT&T further claims that while use of the unpaired 700 MHz spectrum for supplemental downlink will improve performance, the benefits “will not be fully equivalent to those seen in paired 700 MHz spectrum,” as it must operate at a lower power level on the D and E Blocks than on other below-1-GHz spectrum and therefore is not able to achieve coverage and propagation benefits commensurate with paired low-band spectrum. AT&T First Supplemental Information Request Response at 5-6.

¹¹⁵ See Letter from Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, dated Mar. 20, 2015, at 3 (“CCA Mar. 20, 2015 *Ex Parte*”).

¹¹⁶ See CCA Mar. 20, 2015 *Ex Parte* at 3 (citing *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6206 ¶ 178). See also CCA Reply at 6-7. In addition, CCA argues that AT&T has announced plans to deploy commercial mobile broadband services using carrier aggregation technology to combine transmissions across either AWS or PCS high-band spectrum with Lower 700 MHz D and E Block spectrum and is also exploring the possibility of offering eMBMS services in these bands. See CCA Mar. 20, 2015 *Ex Parte* at 4 (citing the *Seventeenth Competition Report*).

¹¹⁷ See CCA Mar. 20, 2015 *Ex Parte* at 4. See also Letter from Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, dated Mar. 25, 2015, at 2-3 (“CCA Mar. 25, 2015 *Ex Parte*”); CCA Reply at Exhibit A ¶¶ 2-3. CCA also argues that AT&T does not present any engineering or technical evidence to support its claim of passive intermodulation interference when combining its Lower D and E Block spectrum with other low-band spectrum, such as other Lower 700 MHz frequencies. See CCA Mar. 20, 2015 *Ex Parte* at 5; Hyslop II Declaration at ¶ 3. See also CCA Mar. 25, 2015 *Ex Parte* at 2-3.

¹¹⁸ See CCA Mar. 20, 2015 *Ex Parte* at 2-5; CCA Mar. 25, 2015 *Ex Parte* at 2.

¹¹⁹ See T-Mobile July 2, 2015 *Ex Parte* at 8-9.

¹²⁰ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6206, 6169-70, ¶ 178, ¶ 72. See also *id.*, 29 FCC Rcd at 6169 ¶¶ 70-71.

proposed secondary market transactions that implicate increased below-1-GHz spectrum concentration. Next, we apply enhanced factor review to these two local markets in California.¹²¹ We find, contrary to the contentions of CCA and T-Mobile, that competitive harm is unlikely in these markets as a result of the proposed transaction, notwithstanding AT&T's post-transaction low-band spectrum holdings.¹²²

31. In the *Mobile Spectrum Holdings Report and Order*, the Commission set out which spectrum bands would be included or excluded in the input market for spectrum: of the spectrum considered suitable and available for the provision of mobile wireless services, Lower 700 MHz D and E Block spectrum is included.¹²³ As such, this spectrum is part of the Commission's framework for analyzing increased below-1-GHz spectrum concentration as it makes up part of the 134 megahertz of currently suitable and available below-1-GHz spectrum.¹²⁴

32. AT&T's response to the first supplemental information request contains arguments that are contrary to what the Commission determined in the *Mobile Spectrum Holdings Report and Order*.¹²⁵ The Commission disagreed with AT&T's assertions that the Commission should exclude from the 134 megahertz of below-1-GHz spectrum the 12 megahertz of spectrum of unpaired Lower 700 MHz D and E blocks because it is used for supplemental downlink only and must be paired with mid-to high-band spectrum for a two-way mobile broadband network.¹²⁶ The Commission also found insufficient technical evidence to support AT&T's claim that the Lower 700 MHz D and E blocks could only be aggregated with high-band spectrum rather than cellular or 600 MHz Band spectrum.¹²⁷ In the *Mobile Spectrum Holdings Report and Order*, the Commission noted that carrier aggregation or supplemental downlink is currently possible with different bands below 1 GHz such as between Band 12 (Lower 700 MHz A, B, and C blocks) and Band 5 (cellular).¹²⁸ AT&T did not seek timely reconsideration or judicial review of the Commission's determination in that Report and Order,¹²⁹ and in any event it advances no basis for such reconsideration.

33. As the Commission has also previously found, the Lower 700 MHz D and E Block spectrum is valuable low-band spectrum. For example, in the *AT&T-Qualcomm Order*, AT&T asserted that it planned to aggregate this unpaired spectrum primarily with its paired spectrum above 1 GHz for downlink purposes.¹³⁰ The Commission found that although such aggregation likely would not result in the full range of benefits associated with below-1-GHz spectrum, such as increased uplink coverage and uplink in-building penetration, that nonetheless, if aggregated with AWS-1, AT&T would achieve

¹²¹ See *id.*, 29 FCC Rcd at 6206 ¶ 178.

¹²² We note that in response to CCA, we do not factor in AT&T's broader acquisition of below-1-GHz spectrum in our analysis of the instant transaction. As discussed above, the Commission has in the past, analyzed a proposed transaction's competitive effects at the national level, where appropriate. In this case, we find that any potential competitive harms arising from the proposed transaction would be limited to these two local markets. See ¶ 19 *supra*.

¹²³ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169-70 ¶ 72.

¹²⁴ See *id.*, 29 FCC Rcd at 6240 ¶¶ 286-88.

¹²⁵ See AT&T First Supplemental Information Request Response at 4-6.

¹²⁶ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6156-57, 6206, ¶ 46, ¶ 178.

¹²⁷ See *id.* at 6206 ¶ 178.

¹²⁸ See *id.*

¹²⁹ See 47 C.F.R. § 1.429(d). The 30-day time period for filing a petition for reconsideration begins at the time of publication in the Federal Register. The *Mobile Spectrum Holdings Report and Order* was published in the Federal Register on September 9, 2014.

¹³⁰ See *AT&T-Qualcomm Order*, 26 FCC Rcd at 17611 ¶ 50.

significant increases in downlink capacity associated with the use of below-1-GHz spectrum.¹³¹ The Commission further noted that AT&T could aggregate the Lower 700 MHz spectrum with its cellular spectrum and fully achieve the benefits of increased coverage and in-building penetration associated with below-1-GHz spectrum.¹³² In addition, the Commission found that although there is a significant potential for operations on the Lower 700 MHz D and E Blocks to cause interference to uplink operations in the Lower 700 MHz A, B, and C Block due to the proximity of these downlink operations, in areas where AT&T controls both the C Block and the supplemental downlink band, as is the case here, AT&T can effectively manage both sides of the interference equation.¹³³ Thus, as previously concluded by the Commission in various contexts, Lower 700 MHz D and E Blocks are relevant in its evaluation of proposed secondary market transactions that implicate increased below-1-GHz spectrum concentration.

34. *Market-by-Market Review.* In our analysis, we evaluate whether the acquisition of this below-1-GHz spectrum by AT&T likely would harm competition in either CA 5 – San Luis Obispo or CA 12 – Kings.¹³⁴ Generally, in undertaking our analysis,¹³⁵ 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.¹³⁶ As noted above, CA 12 – Kings is subject to enhanced factor review as set forth in paragraph 286 of the *Mobile Spectrum Holdings Report and Order*,¹³⁷ and CA 5 – San Luis Obispo is subject to enhanced factor review, but as set forth in paragraph 287 of the *Mobile Spectrum Holdings Report and Order*.¹³⁸

35. We begin our analysis with CA 12 – Kings, which is a non-rural market of approximately 153,000 people, with a population density of 110 people per square mile.¹³⁹ Post-transaction, AT&T would hold 170 megahertz of spectrum in this single county market, including 55 megahertz of spectrum below 1 GHz, while the other three nationwide providers hold 52 to 139 megahertz of spectrum. With respect to below-1-GHz spectrum holdings, Verizon Wireless holds 47 megahertz, Sprint holds 14

¹³¹ See *id.*

¹³² See *id.*

¹³³ See *AT&T-Qualcomm Order*, 26 FCC Rcd at 17617 ¶ 66.

¹³⁴ See, e.g., *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164-67 ¶¶ 60-66; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120 ¶ 29.

¹³⁵ 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 the information requests. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120 ¶ 29 n.98.

¹³⁶ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120 ¶ 29; *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.

¹³⁷ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.

¹³⁸ See *id.*, 29 FCC Rcd at 6240 ¶ 287.

¹³⁹ 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).

megahertz, T-Mobile holds 12 megahertz, and DISH holds 6 megahertz.¹⁴⁰ The four nationwide service providers all have a significant market share: AT&T is the leading service provider in the market, and holds approximately [REDACTED] percent of the market, while Sprint, T-Mobile, and Verizon Wireless have market shares of approximately [REDACTED] percent, respectively. In terms of population and land area coverage,¹⁴¹ AT&T and Verizon Wireless each have significant 3G population and land area coverage, while both Sprint and T-Mobile have significant 3G population coverage in this market.¹⁴² In addition, AT&T covers close to 100 percent of the population and the land area with HSPA+ and with LTE, while Verizon Wireless covers close to 100 percent of the population and the land area with LTE.¹⁴³

36. We find that the likelihood of competitive harm is low in CA 12 – Kings when evaluating the particular factors ordinarily considered,¹⁴⁴ notwithstanding the fact that AT&T would hold more than one-third of the below-1-GHz spectrum post-transaction.¹⁴⁵ We note that Verizon Wireless has a significant market share and significant LTE population and land area coverage. Further, both Sprint and T-Mobile have a significant market share and significant 3G population coverage, and T-Mobile covers close to half of the land area. In CA 12 – Kings, in addition to AT&T, consumers are currently able to choose from the three other nationwide service providers, each with significant market share and 3G population coverage, and the acquisition of this particular spectrum in this particular market by AT&T would be unlikely to reduce this choice.¹⁴⁶ For these reasons, we find that the acquisition of the additional spectrum in 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.

37. We next turn to CA 5 – San Luis Obispo, which is a rural market of approximately 270,000 people, with a population density of 82 people per square mile. AT&T already holds 49 megahertz of below-1-GHz spectrum in this market and would acquire additional paired low-band spectrum.¹⁴⁷ As discussed above, in these cases, the required demonstration of potential public interest

¹⁴⁰ In addition, DISH holds 50 megahertz of spectrum above 1 GHz.

¹⁴¹ 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 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-ATN Order*, 28 FCC Rcd at 13691-92 ¶ 43 n.123; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2339 ¶ 50 n.119.

¹⁴² AT&T covers 100% of the population and the land area with its 3G network, while the 3G population and land area coverage percentages are approximately 100% for Verizon Wireless, approximately 70% and 26% for Sprint, and approximately 88% and 48% for T-Mobile.

¹⁴³ Neither Sprint nor T-Mobile has deployed an LTE network in this market.

¹⁴⁴ *See* ¶ 34 *supra*. *See also AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5123 ¶ 36.

¹⁴⁵ As noted above, 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 in both these local markets are evaluated in section VI. below.

¹⁴⁶ As described in more detail below, Club 42 claims that it made efforts to sell the spectrum, which is currently lying fallow, on the secondary market. *See AT&T Second Supplemental Information Request Response* at 3-4, 11-13. *See also* n.150 *infra*.

¹⁴⁷ The four nationwide service providers each have a significant market share, and cover well over 70% of the population with their respective 3G networks. Further, AT&T has significant HSPA+ population and land area coverage, while Verizon Wireless has significant LTE population and land area coverage, and both Sprint and T-Mobile have significant LTE population coverage. While Mosaik data indicates that AT&T’s LTE coverage is very limited, our analysis of the Applicants’ data indicates that AT&T covers approximately [REDACTED]% of the population and land area, respectively. We note that the *Mobile Spectrum Holdings Report and Order* requires that we analyze the proposed acquisition of low-band spectrum irrespective of other factors if, as is the case in this

(continued....)

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.¹⁴⁸ In considering the acquisition of this 12 megahertz of Lower 700 MHz B Block spectrum, irrespective of other factors, we find that it is unlikely that rivals' costs would be raised to any significant extent, or that expansion or entry would be foreclosed, notwithstanding the fact that AT&T would hold 61 megahertz of below-1-GHz spectrum post-transaction.

38. We begin our analysis by noting first that, post-transaction, the three other nationwide service providers all hold low-band spectrum: Verizon Wireless holds 47 megahertz (25 megahertz of cellular spectrum and 22 megahertz of Upper 700 MHz C Block spectrum), Sprint holds 14 megahertz of SMR spectrum, and T-Mobile holds 12 megahertz of Lower 700 MHz A Block spectrum. The three other nationwide service providers therefore each have access in this particular market to low-band spectrum that would allow at least a 5×5 megahertz LTE deployment on below-1-GHz spectrum. In addition, the three other nationwide service providers also have access to spectrum above 1 GHz to combine with their low-band spectrum holdings for LTE deployment. We find that the spectrum holdings of the other three nationwide service providers would likely allow them to effectively respond to any anticompetitive behavior on the part of AT&T,¹⁴⁹ and note that each of the three other nationwide service providers currently cover at least 70 percent of the population of the market with LTE. Next, the acquisition of this Lower 700 MHz B Block spectrum by AT&T is not likely to foreclose expansion into hitherto unserved geographic portions of the market because the particular spectrum at issue would not have been a likely means of expansion for rival service providers in this particular local market given the nature of their current spectrum portfolios. In addition, we note that the circumstances of the sale of this spectrum, which was offered openly through a broker so that other entities had the opportunity to acquire the Club 42 spectrum on the secondary market,¹⁵⁰ further indicates that its acquisition by AT&T is unlikely to foreclose rival service providers or new entrants from expanding coverage or entering the market or otherwise raise other service providers' costs.¹⁵¹ For these reasons, although AT&T would increase its low-band spectrum holdings from 49 megahertz to 61 megahertz post-transaction, we find that,

(Continued from previous page) _____

particular market, the entity's current low-band spectrum holdings are already above the current approximate one-third threshold of 45 megahertz. *See Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 287.

¹⁴⁸ *See Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 287. *See also* ¶ 15 *supra*.

¹⁴⁹ *See id.*, 29 FCC Rcd at 6164-65 ¶¶ 60-61. Total spectrum holdings vary by service provider: AT&T would hold 141 megahertz of spectrum in total post-transaction, while Sprint holds 201 megahertz, Verizon Wireless holds 87 megahertz, and T-Mobile holds 77 megahertz. In addition, DISH holds 50 megahertz of undeployed spectrum above 1 GHz, and Club 42 would continue to hold 30 megahertz of undeployed spectrum above 1 GHz post-transaction.

¹⁵⁰ In particular, Club 42 asserts that its broker approached [REDACTED]. Club 42 General Information Request Response at 1. *See also* AT&T First Supplemental Information Request Response at 13; AT&T Second Supplemental Information Request Response at 3, 11-13.

¹⁵¹ AT&T argues that the Commission may not consider whether the public interest would be better served if the licenses were assigned to someone else, citing Section 310(d) of the Communications Act, 47 U.S.C. § 310(d). AT&T Second Supplemental Information Request Response at 12. Similarly, Public Knowledge argues that "the Commission's consideration of the public interest harms and public interest benefits in a transaction review cannot take into account whether other parties had the opportunity to bid on a license." Public Knowledge Oct. 5, 2015 *Ex Parte* at 2. *See also* Public Knowledge Oct. 22, 2015 *Ex Parte* at 1-2; Public Knowledge Oct. 16, 2015 *Ex Parte* at 2-3. In considering whether AT&T's proposed acquisition of additional below-1-GHz spectrum forecloses its rivals from offering competitive service, we reference the circumstances of the sale of this spectrum merely as an indication, in addition to the analysis in text, that such foreclosure is unlikely. Thus, we are determining not whether the public interest would be better served if the licenses were assigned to someone else, but only whether AT&T's acquisition of the spectrum serves the public interest or contravenes it. Similar to any traditional antitrust or competitive analysis of a merger, that determination is not foreclosed by section 310(d).

irrespective of other factors, the potential public interest harm of such additional concentration of this particular spectrum in this particular market is low.

VI. POTENTIAL PUBLIC INTEREST BENEFITS

39. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.¹⁵² As discussed below, we anticipate that the proposed transaction likely would facilitate certain transaction-specific public interest benefits such as the quicker deployment of a more robust higher quality LTE network in these two local markets than would be likely otherwise, and a better consumer experience.

A. Analytical Framework

40. The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms.¹⁵³ First, the claimed benefit must be transaction-specific.¹⁵⁴ Second, the claimed benefit must be verifiable.¹⁵⁵ 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.¹⁵⁶ In addition, “the magnitude of benefits must be calculated net of the cost of achieving them.”¹⁵⁷ 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 occur closer to the present.¹⁵⁸ Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims.¹⁵⁹ 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.”¹⁶⁰ Conversely, where potential harms appear less likely and less substantial, we will accept a lesser showing to approve the proposed transaction.¹⁶¹

B. Potential Benefits and Evaluation

41. According to the Applicants, the additional spectrum would be used to deploy AT&T’s 4G network using LTE technology, and the more robust LTE network made possible by the proposed transaction would increase network capacity and enable AT&T to offer faster, higher quality to the

¹⁵² See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC at 5126 ¶ 43; *AT&T-Leap Order*, 29 FCC Rcd at 2792-93 ¶ 130; *Alaska Wireless Order*, 28 FCC Rcd at 10467 ¶ 85.

¹⁵³ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC at 5126-27 ¶ 44; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87. See also *AT&T-Leap Order*, 29 FCC Rcd at 2793-94 ¶ 132.

¹⁵⁴ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC at 5126-27 ¶ 44; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94 ¶ 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87.

¹⁵⁵ See *id.*

¹⁵⁶ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC at 5126-27 ¶ 44; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734-35 ¶ 97. See also *AT&T-Leap Order*, 29 FCC Rcd at 2793-94 ¶ 132.

¹⁵⁷ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC at 5126-27 ¶ 44; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94 ¶ 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87.

¹⁵⁸ See *id.*

¹⁵⁹ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC at 5126-27 ¶ 44; *Alaska Wireless Order*, 28 FCC Rcd at 10468-69 ¶ 88. See also *AT&T-Leap Order*, 29 FCC Rcd at 2793-94 ¶ 132.

¹⁶⁰ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC at 5126-27 ¶ 44; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94 ¶ 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468-69 ¶ 88.

¹⁶¹ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468-69 ¶ 88; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623 ¶ 82.

benefit of its customers.¹⁶² The Applicants assert that the acquisition of this additional Lower 700 MHz spectrum would give AT&T 24 megahertz of contiguous paired Lower 700 MHz spectrum, which would be enough to support a 10×10 megahertz LTE deployment.¹⁶³ The Applicants contend that a contiguous 10×10 megahertz deployment is more spectrally efficient than a deployment of two non-contiguous 5×5 megahertz blocks,¹⁶⁴ and has a greater throughput than a 5×5 megahertz deployment.¹⁶⁵

42. AT&T asserts that it typically would launch LTE in a 5×5 megahertz configuration where only a single 12 megahertz block of Lower 700 MHz B Block or C Block spectrum is available, and would launch LTE in a 10×10 megahertz configuration in areas where both the Lower 700 MHz B Block and C Block 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.¹⁶⁶ According to the Applicants, the 10×10 megahertz deployment of contiguous Lower 700 MHz B Block and C Block spectrum at issue in the instant transaction would lead to greater trunking and signaling efficiencies, with the Applicants further asserting that these efficiency improvements would result in higher system capacity and spectral efficiency and a better user throughput experience than is possible over two separate 5×5 megahertz blocks.¹⁶⁷ In addition, AT&T maintains that it can deploy LTE in the Lower 700 MHz spectrum involved in the proposed transaction within approximately 60 to 90 days where AT&T already provides LTE service in the Lower 700 MHz C Block.¹⁶⁸

43. CCA contests these assertions, arguing that technical studies have shown that spectral efficiency of LTE essentially is the same for all channel sizes.¹⁶⁹ CCA contends that AT&T has not presented any evidence of network congestion in these markets, nor discussed whether its current use of its spectrum is being maximized, whether there are unique capacity constraints in the markets at issue that would necessitate the acquisition of additional below-1-GHz spectrum, or whether above-1-GHz spectrum would be an equal, if not superior, solution to any ostensible capacity constraints.¹⁷⁰ In addition, T-Mobile asserts that "AT&T has not demonstrated a consumer need for additional spectrum in these markets, nor has AT&T shown that any such need could not be met through additional base station deployment, or densification, or the transition to new technologies."¹⁷¹ Further, T-Mobile argues that

¹⁶² See Public Interest Statement at 3. See also AT&T General Information Request Response at 6.

¹⁶³ See Public Interest Statement at 3. See also AT&T General Information Request Response at 6.

¹⁶⁴ See Joint Opposition at 2, 4, 8-12. See also AT&T General Information Request Response at 6-7.

¹⁶⁵ See Joint Opposition at 2, 4, 9; Public Interest Statement at 3. See also AT&T General Information Request Response at 6-8; AT&T's Second Supplemental Request Response at 3-4.

¹⁶⁶ See AT&T General Information Request Response at 6. See also AT&T First Supplemental Information Request Response at 7-8. See generally Letter from Eric W. DeSilva, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, dated July 6, 2015.

¹⁶⁷ See Joint Opposition at 2, 4, 9. See also AT&T General Information Request Response at 6; AT&T First Supplemental Information Request Response at 9-10; AT&T Second Supplemental Request Response at 3-4. AT&T estimates that the average downlink capacity of a 10×10 megahertz block, optimized for average user performance is 2.2 times the capacity of a 5×5 megahertz block – such that a 10×10 megahertz block would have approximately 10% more capacity than two 5×5 megahertz blocks. See AT&T General Information Request Response at 7. See also AT&T Information Request Response, AT&T Exhibits C42000001, C42000006, C42000014, C42000019, and C42000042.

¹⁶⁸ See AT&T General Information Request Response at 9.

¹⁶⁹ See CCA Reply at 12. CCA asserts that according to a 4G Americas study, LTE spectral efficiency improvements taper off once a 5×5 megahertz channel is deployed, with only a few percentage points of efficiency gained with a 10×10 megahertz deployment as compared to a 5×5 megahertz deployment. See *id.* at 12-13.

¹⁷⁰ See CCA Reply at 3, 13. See also Public Knowledge/New America's OTI Sept. 21, 2015 *Ex Parte* at 2-4; CCA Mar. 25, 2015 *Ex Parte* at 2-3; CCA July 2, 2015 *Ex Parte* at 3.

¹⁷¹ T-Mobile July 2, 2015 *Ex Parte* at 7.

AT&T has “failed to demonstrate that the number of exclusively 2G and 3G devices on its network precludes it from refarming portions of its Cellular and PCS band networks;” and that AT&T “therefore has a simple means of deploying additional, efficient, LTE spectrum without the risks to competition that would flow from the subject transaction.”¹⁷² CCA, T-Mobile, and Public Knowledge further emphasize that AT&T’s claimed public interest benefits resulting from the proposed transaction lack the specificity that the Commission’s enhanced factor analysis requires and argue the Commission should therefore deny the proposed transaction.¹⁷³

44. AT&T asserts that the proposed transaction would have “clear public interest benefits” as it would enable AT&T to provide a robust higher-speed 4G LTE network in these two local markets.¹⁷⁴ Further, AT&T argues that the ability to offer a 10×10 megahertz LTE deployment or even a 20×20 megahertz LTE deployment has become increasingly important competitively.¹⁷⁵ In addition, although in San Luis Obispo, AT&T already holds 49 megahertz of suitable and available below-1-GHz spectrum, and would increase its holdings to 61 megahertz of such spectrum, AT&T asserts that this additional concentration of below-1-GHz spectrum is necessary to maintain, enhance, or expand the mobile telephony/broadband services that it provides to its consumers.¹⁷⁶

45. Specifically, AT&T asserts that its [REDACTED].¹⁷⁷ Further, AT&T claims that in recent months [REDACTED].¹⁷⁸ In addition, AT&T claims that [REDACTED].¹⁷⁹ AT&T further maintains that the acquisition of this low-band spectrum in San Luis Obispo would make its spectrum holdings and LTE deployments more consistent with those in surrounding areas, where it already holds the Lower 700 MHz B and C blocks, and this would improve coverage and efficiency in market border areas as AT&T would be able to more effectively manage interference.¹⁸⁰ AT&T contends that the acquisition of the Club 42 license would enable it to increase the quality of service it offers to consumers in this market and would allow it to achieve significant gains in network reliability and performance.¹⁸¹

46. *Discussion.* We anticipate that through the acquisition of this spectrum, AT&T would be able to deploy a more robust LTE network in these two local markets in a relatively short period of time, to the benefit of wireless consumers.¹⁸² In particular, we recognize the potential for the more efficient use of Club 42’s Lower 700 MHz B Block spectrum via a 10×10 megahertz LTE deployment by AT&T. Further, we note that this spectrum is currently lying fallow; its acquisition by AT&T will allow this spectrum in these particular markets to be put to use to the benefit of wireless consumers. We find that

¹⁷² T-Mobile July 2, 2015 *Ex Parte* at 7-8.

¹⁷³ See CCA/T-Mobile Sept. 2, 2015 *Ex Parte* at 5; CCA July 2, 2015 *Ex Parte* at 4; T-Mobile July 2, 2015 *Ex Parte* at 7-10, 12; CCA Jan. 15, 2015 *Ex Parte* at 4-6. See also Public Knowledge Oct. 16, 2015 *Ex Parte* at 3; Public Knowledge Oct. 5, 2015 *Ex Parte* at 1-2.

¹⁷⁴ See AT&T General Information Request Response at 11.

¹⁷⁵ See AT&T General Information Request Response at 11-12. See also AT&T First Supplemental Information Request Response at 10-12.

¹⁷⁶ See AT&T First Supplemental Information Request Response at 8-10.

¹⁷⁷ See AT&T First Supplemental Information Request Response at 9.

¹⁷⁸ See AT&T First Supplemental Information Request Response at 9.

¹⁷⁹ See AT&T First Supplemental Information Request Response at 8.

¹⁸⁰ See AT&T First Supplemental Information Request Response at 8.

¹⁸¹ See AT&T First Supplemental Information Request Response at 9.

¹⁸² AT&T says that it can deploy the spectrum to be acquired within approximately 60 to 90 days where it already provides LTE service in the Lower 700 MHz C Block. See AT&T General Information Request Response at 9. In contrast, Club 42 is not obligated to build out anything until the first buildout date – December 13, 2016 – applicable to the two licenses involved in this proposed transaction.

acquiring the Lower 700 MHz B Block spectrum would enable AT&T to expand its LTE service offerings on contiguous spectrum, which will allow AT&T to improve its throughput to the benefit of its consumers.¹⁸³ As we found in the *AT&T-Plateau Wireless Order*, consumers 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.¹⁸⁴

47. We have carefully evaluated the issues raised by CCA and T-Mobile, as discussed above. We note first that there are specific public interest benefits to the deployment of a 10×10 megahertz channel over two 5×5 megahertz channels. Whatever the gains of spectral efficiency may be, a 10×10 megahertz channel provides double the peak user rate of two 5×5 megahertz channels, and requires only a single base station radio, which will simplify network operation. Further, the deployment of a 10×10 megahertz radio channel instead of a single 5×5 megahertz radio channel will allow AT&T to offer twice the throughput in the 700 MHz band.¹⁸⁵ Second, while we note the potential alternative of refarming portions of cellular and PCS spectrum, the timeline for cellular spectrum in particular is uncertain,¹⁸⁶ and PCS spectrum is not low-band spectrum, which is the focus of this review. Neither will provide the benefits of a quicker deployment that would likely be achievable by AT&T through the near-term deployment of this currently fallow low-band spectrum. Consequently, we anticipate that as a result of the acquisition of this spectrum by AT&T, consumers are likely to benefit in the immediate future from an improved experience.

VII. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS

48. In the proposed transaction, AT&T would increase its low-band spectrum holdings from 43 megahertz to 55 megahertz of below-1-GHz spectrum post-transaction in CA 12 – Kings. In CA 5 – San Luis Obispo, a market in which it already holds 49 megahertz, or more than one-third of below-1-GHz spectrum, AT&T would further increase its low-band spectrum holdings to hold 61 megahertz of such spectrum post-transaction. 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-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms.”¹⁸⁷ The Commission further 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

¹⁸³ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5129 ¶ 53, n.160; *AT&T-Leap Order*, 29 FCC Rcd at 2799-2800 ¶¶ 149, 151. These Orders recognized there are some inefficiencies associated with a 5×5 megahertz LTE deployment, as compared to a 10×10 megahertz LTE deployment. See *id.*

¹⁸⁴ See *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5129 ¶ 53.

¹⁸⁵ Contrary to the claims of CCA and T-Mobile, recognizing the public interest benefits of a 10×10 megahertz channel does not in any way undermine our conclusion that 10×10 megahertz blocks are not required for effective mobile broadband deployment. See *Mobile Spectrum Holdings Reconsideration Order*, 30 FCC Rcd at 8639 ¶ 10; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6210 ¶ 190. See also CCA/T-Mobile Sept. 2, 2015 *Ex Parte* at 4-5.

¹⁸⁶ The Commission currently has pending before it a Further Notice of Proposed Rulemaking concerning reform of the Cellular Service, including proposed rule changes to facilitate deployment of wideband technologies such as LTE. See Amendment of Parts 1 and 22 of the Commission’s Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area, *et al.*, WT Docket No. 12-40, *Report and Order and Further Notice of Proposed Rulemaking*, 29 FCC Rcd 14100 (2014).

¹⁸⁷ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.

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.”¹⁸⁸

49. As noted above, CCA, T-Mobile, and Public Knowledge maintain that the Commission should implement enhanced factor review in a manner that meaningfully preserves and protects competition.¹⁸⁹ CCA and T-Mobile argue that the Commission’s review of the AT&T/Club 42 transaction, which implicates “the more stringent standard applicable to entities who hold more than one-third of all suitable and available low-band spectrum before consummation of the transaction,” be demonstrably different than prior to the *Mobile Spectrum Holdings Report and Order* or else the enhanced factor standards will have little meaning or impact.¹⁹⁰ In a similar vein, Public Knowledge and New America’s OTI urge that “[t]he Commission must not establish a precedent that ties its hands in promoting wireless competition and preventing the largest carriers from foreclosing access to low-band spectrum through secondary market acquisitions.”¹⁹¹

50. In our evaluation of the instant transaction, we have carefully applied enhanced factor review, consistent with what was set out by the Commission in the *Mobile Spectrum Holdings Report and Order*.¹⁹² In that Report and Order, the Commission determined not to adopt a bright-line standard that would have prevented the largest holders of low-band spectrum from acquiring additional low-band spectrum on the secondary market. Rather, it maintained, subject to heightened review, our case-by-case competitive review of proposed transactions involving below-1-GHz spectrum.¹⁹³ We emphasize that the particular circumstances of this specific transaction guide our decision regarding these two markets. Each proposed transaction that comes before us that implicates enhanced factor review will be carefully reviewed as to its particular facts to determine if it is consistent with the standards set out in the *Mobile Spectrum Holdings Report and Order*.¹⁹⁴

51. We therefore find, after our careful review of the likely competitive effects of AT&T’s increased aggregation of below-1-GHz spectrum in CA 12 – Kings, that the likelihood of competitive harm is low when evaluating the particular factors ordinarily considered, notwithstanding the fact that AT&T would hold more than one-third of the below-1-GHz spectrum post-transaction. We further find that in CA 5 – San Luis Obispo, the market in which AT&T already holds more than one-third of the below-1-GHz spectrum pre-transaction, it is unlikely that rivals’ costs would be raised to any significant extent, or that expansion by rival service providers or new entry into the market would be foreclosed, irrespective of other factors, notwithstanding the fact that AT&T would further increase its low-band spectrum holdings to 61 megahertz. In addition, we have reviewed the Applicants’ claims regarding the benefits they allege would result, as well as their responses to the requests for additional information and documents if AT&T were permitted to acquire, in particular, this below-1-GHz spectrum. The record

¹⁸⁸ *Id.*, 29 FCC Rcd at 6240 ¶ 287.

¹⁸⁹ See CCA Petition to Deny at 5, 8-9, 12. See also Public Knowledge Oct. 16, 2015 *Ex Parte* at 1-3; Public Knowledge Oct. 5, 2015 *Ex Parte* at 3; CCA/T-Mobile/Public Knowledge Sept. 24, 2015 *Ex Parte* at 4-5; Public Knowledge/New America’s OTI Sept. 21, 2015 *Ex Parte* at 1, 4; CCA/T-Mobile Sept. 2, 2015 *Ex Parte* at 1, 4-5; CCA July 2, 2015 *Ex Parte* at 3-4; T-Mobile July 2, 2015 *Ex Parte* at 2-4, 6-7; CCA Representatives May 7, 2015 *Ex Parte* at 2; CCA Jan. 15, 2015 *Ex Parte* at 1-2.

¹⁹⁰ See CCA/T-Mobile Sept. 2, 2015 *Ex Parte* at 5.

¹⁹¹ Public Knowledge/New America’s OTI Sept. 21, 2015 *Ex Parte* at 4 (“[t]he Commission should be cognizant that its decision will determine how the enhanced factor review will be interpreted and applied in future transactions and will establish whether the Commission will use the review as a tool to address the harmful effects of low-band spectrum aggregation, or render the review meaningless.”). *Id.* at 4.

¹⁹² See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 287.

¹⁹³ See *id.*, 29 FCC Rcd at 6233 ¶¶ 265, 267.

¹⁹⁴ See *id.*, 29 FCC Rcd at 6240 ¶¶ 286-87.

provides general support for the Applicants' contentions that the proposed transaction would likely result in some public interest benefits, such as increased network quality through the deployment of spectrum that is currently lying fallow, and a better consumer experience. We emphasize that while we find these benefits weigh in favor of approving the transaction, they may not be sufficient to support the approval of future transactions. Based on the record before us and our competitive review under our sliding scale approach,¹⁹⁵ we find that the potential public interest benefits clearly outweigh any potential public interest harms. We find that the proposed assignment of licenses would serve the public interest, convenience, and necessity, and therefore we approve the proposed transaction.

VIII. ORDERING CLAUSES

52. ACCORDINGLY, having reviewed the Application 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 application for assignment of licenses held by Club 42CM Limited Partnership to AT&T Mobility Spectrum LLC is GRANTED.

53. 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 Petition To Deny filed by the Competitive Carriers Association is DENIED for the reasons stated herein.

54. 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

¹⁹⁵ See Section VI.A. *supra*.