

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

In the Matter of)
)
Application of New Cingular Wireless PCS, LLC,) WT Docket No. 15-271
and Farmers Telecommunications Corporation)
)
For Consent To Assign License)

MEMORANDUM OPINION AND ORDER

Adopted: March 28, 2016

Released: March 28, 2016

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the application of AT&T and Farmers for Commission consent to the assignment to AT&T of one Lower 700 MHz C Block license covering one local market area in Alabama. The Commission determined in the *Mobile Spectrum Holdings Report and Order* that increased aggregation of below-1-GHz spectrum would be treated as an “enhanced factor” under its case-by-case review of license transfers if post-transaction the acquiring entity would hold approximately one-third or more of the suitable and available spectrum below 1 GHz.¹ In the proposed transaction, AT&T would increase its spectrum holdings, and in particular, would hold post-transaction more than one-third of the currently suitable and available below-1-GHz spectrum in this local market area. After carefully evaluating the likely competitive effects of AT&T’s increased aggregation of below-1-GHz spectrum in this local market area, as well as the other factors ordinarily considered in a case-by-case review, we find that the likelihood of competitive harm is low. Further, we find some public interest benefits are likely to be realized, such as increased network quality and a better consumer experience. Based on the record before us and our competitive review, we find that the proposed assignment of license would serve the public interest, convenience, and necessity, and therefore we consent to the proposed assignment.

II. BACKGROUND AND PUBLIC INTEREST FRAMEWORK

2. *Description of the Applicants.* AT&T Inc. (together with its indirect and wholly-owned subsidiary, New Cingular Wireless PCS, LLC, AT&T), headquartered in Dallas, Texas, is a leading provider of communications and digital entertainment services in the United States.² Farmers Telecommunications Corporation (Farmers, and together with AT&T, the Applicants) is a subsidiary of

¹ *Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-269, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6133, 6238-40, paras. 282-88 (2014) (*Mobile Spectrum Holdings Report and Order*), recon. denied, Order on Reconsideration, 30 FCC Rcd 8635 (2015).

² AT&T Inc. SEC 2015 Form 10-K, at 1 (filed Feb. 18, 2016), http://www.sec.gov/Archives/edgar/data/732717/000073271716000147/ye15_10k.htm.

Farmers Telecommunications Cooperative, which provides broadband Internet access services in Alabama.³

3. *Description of the Transaction.* On October 15, 2015, AT&T and Farmers filed the Application pursuant to Section 310(d) of the Communications Act of 1934, as amended (the Act),⁴ seeking Commission consent to assign one Lower 700 MHz C Block license to AT&T.⁵ The subject license covers all of one Cellular Market Area (CMA) in Alabama: CMA 308 (Alabama 2 – Jackson).⁶ In the instant transaction, AT&T would be assigned 12 megahertz of low-band spectrum in the three counties covering this CMA. Post-transaction, AT&T would hold 115 megahertz to 125 megahertz of spectrum in total, and in particular, it would increase its below-1-GHz holdings from 43 megahertz to 55 megahertz in Alabama 2 – Jackson.⁷

4. *Standard of Review.* Pursuant to Section 310(d) of the Act,⁸ we must determine whether the Applicants have demonstrated that the proposed license assignment would serve the public interest, convenience, and necessity.⁹ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act,¹⁰ other applicable statutes, and the Commission's rules.¹¹ 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.¹² We then employ a balancing

³ Response of Farmers Telecommunications Corporation to the General Information Request Dated Nov. 10, 2015, WT Docket No. 15-271, at 1 (Nov. 24, 2015) (Farmers Information Request Response).

⁴ 47 U.S.C. § 310(d).

⁵ Application, ULS File No. 0006973413 (filed Oct. 15, 2015) (Application), Exhibit 1 – Description of Transaction and Public Interest Statement at 1 (Public Interest Statement).

⁶ Application, Exhibit 2 – Description of 700 MHz Spectrum To Be Assigned to New Cingular Wireless PCS, LLC.

⁷ Application, Exhibit 3 – Spectrum Aggregation; *New Cingular Wireless PCS, LLC and Farmers Telecommunications Corporation Seek FCC Consent to the Assignment of a Lower 700 MHz C Block License in Alabama*, Public Notice, 30 FCC Rcd 12530 (WTB 2015) (*Accepted for Filing Public Notice*). As set out in the docket, the Bureau accepted the Application for filing and established a pleading cycle, released a public notice announcing that Numbering Resource Utilization and Forecast (NRUF) reports and local number portability (LNP) data would be placed into the record and adopted the associated protective order, adopted a protective order covering the submission of confidential and highly confidential information, and sent the Applicants information requests seeking further specific information relating to the proposed transaction.

⁸ 47 U.S.C. § 310(d).

⁹ See, e.g., *Application of AT&T Mobility Spectrum LLC and Consolidated Telephone Company for Consent To Assign Licenses*, Memorandum Opinion and Order, 30 FCC Rcd 9797, 9799-800, para. 6 (WTB 2015) (*AT&T-Consolidated Order*); *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*, Memorandum Opinion and Order, 30 FCC Rcd 5107, 5111, para. 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*, Memorandum Opinion and Order, 29 FCC Rcd 2735, 2741-42, para. 13 (WTB, IB 2014) (*AT&T-Leap Order*).

¹⁰ 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-Consolidated Order*, 30 FCC Rcd at 9799-800, para. 6 & n.18; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8 & n.27; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13 & n.45.

¹¹ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9799-800, para. 6; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

¹² See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9799-800, para. 6; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.¹³ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.¹⁴

5. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.¹⁵ The Commission and the Department of Justice 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.¹⁶ 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.¹⁷ 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.¹⁸

6. *Qualifications of the Applicants.* As a threshold matter, the Commission must determine whether the applicants to a proposed transaction meet the requisite qualifications requirements to hold and transfer licenses under Section 310(d) and the Commission's rules.¹⁹ We note that no issues were raised with respect to the basic qualifications of Farmers or AT&T, and in addition, AT&T previously and repeatedly has been found qualified to hold Commission licenses.²⁰ We therefore find there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Act and our rules, regulations, and policies, of Farmers or AT&T.²¹

III. POTENTIAL PUBLIC INTEREST HARMS

7. *Competitive Overview.* In its examination of a proposed transaction, the Commission evaluates the potential public interest harms and undertakes a case-by-case review of the competitive effects of any increase in market concentration or in spectrum holdings in the relevant markets.²² In the

¹³ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9799-800, para. 6; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

¹⁴ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9799-800, para. 6; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

¹⁵ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9800, para. 7; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742-43, para. 15.

¹⁶ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9800, para. 7; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742-43, para. 15.

¹⁷ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9800, para. 7; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743-44, para. 16.

¹⁸ 47 U.S.C. § 309(e); see also, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9800, para. 7; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743, para. 15; *Application of EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp.*, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002).

¹⁹ 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see also, e.g., *Application of Hardy Cellular Telephone Company and McBride Spectrum Partners, LLC for Consent To Assign License*, Memorandum Opinion and Order, 30 FCC Rcd 9899, 9902, para. 8 (WTB 2015) (*USCC-McBride Order*); *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112, para. 10; *AT&T-Leap Order*, 29 FCC Rcd at 2744, para. 17.

²⁰ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9800, para. 8; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112-13, para. 11; *AT&T-Leap Order*, 29 FCC Rcd at 2745, para. 19.

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

²² See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113, para. 12; see also *USCC-McBride Order*, 30 FCC Rcd at 9902-03, para. 9; *AT&T-Consolidated Order*, 30 FCC Rcd at 9800-01, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2745, para. 20.

past, the Commission has used a two-part screen to help identify those markets that provide particular reason for further competitive analysis, but has not limited its consideration of potential competitive harms solely to markets identified by its screen if it encounters other factors that may bear on the public interest inquiry.²³ In the *Mobile Spectrum Holdings Report and Order*, the Commission found that it is in the public interest to continue to use its spectrum screen and case-by-case review²⁴ and, in addition, to require that any increase in spectrum holdings of below 1 GHz be treated as an “enhanced factor” in its review if post-transaction the acquiring entity would hold approximately one-third or more of such spectrum.²⁵ The Commission stated that it anticipated “that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms.”²⁶ The Commission further stated, however, that when the other factors ordinarily considered indicate a low potential for competitive or other public interest harm, the acquisition of below-1-GHz spectrum resulting in holdings of approximately one-third or more would not preclude a conclusion that a proposed transaction, on balance, furthers the public interest.²⁷

8. The Commission stated in the *Mobile Spectrum Holdings Report and Order* that low-band spectrum is less costly to deploy and provides higher quality coverage than higher-band spectrum,²⁸ and that the two leading nationwide service providers hold most of the low-band spectrum available today.²⁹ 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.³⁰ As the Commission found, without access to this low-band spectrum, rival service providers that may lack a mix of low-band and higher-band spectrum would be less able to provide a robust competitive alternative and may not be able to quickly expand coverage or provide new services.³¹ We consider below whether there would be an increased likelihood as a result of the proposed

²³ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113, para. 12; see also *USCC-McBride Order*, 30 FCC Rcd at 9902-03, para. 9; *AT&T-Consolidated Order*, 30 FCC Rcd at 9800-01, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2752, 2753, 2755-56, paras. 39, 41, 47.

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

²⁵ *Id.* at 6240, paras. 286-88; see also, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9902-03, para. 9; *AT&T-Consolidated Order*, 30 FCC Rcd at 9800-01, para. 9; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5108, para. 2.

²⁶ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, para. 286. The Commission also set out a heightened standard of review for cases in which the proposed transaction would result in an entity that already holds approximately one-third or more of below-1-GHz spectrum in a market acquiring additional below-1-GHz spectrum in that market, especially with regard to paired low-band spectrum. In these cases, the Commission stated that the required demonstration of the potential public interest benefits of the proposed transaction would need to clearly outweigh the potential public interest harms associated with such additional concentration of below-1-GHz spectrum, irrespective of other factors. *Id.* at 6240, para. 287; see also *Application of AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership for Consent To Assign Licenses*, Memorandum Opinion and Order, 30 FCC Rcd 13055, 13057, 13062, 13072-73, 13077-78, 13078-79, paras. 7, 15, 37, 48, 51 (2015) (*AT&T-Club 42 Order*); see also, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9903, para. 9 & n.31; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801, para 9 & n.34; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, 5113, 5114, 5123, 5130, paras. 8 & n.31, 13, 15, 36 & n.114, 56.

²⁷ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, para. 286.

²⁸ *Id.* at 6164, para. 60.

²⁹ *Id.* at 6156-57, 6162, 6164, paras. 46, 58, 60.

³⁰ *Id.* at 6164, para. 60.

³¹ *Id.* at 6164-65, paras. 60-61; see also, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113-14, para. 14; *USCC-McBride Order*, 30 FCC Rcd at 9903, para. 10; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801-02, para. 10.

transaction that rival service providers or potential entrants would be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market, and whether rivals' costs would be increased to the extent that they would be less likely to be able to compete robustly.³²

A. Market Definitions

9. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,³³ 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.

10. *Product and Geographic Markets.* Consistent with recent transaction orders, we find that the relevant product market is a combined "mobile telephony/broadband services" product market that comprises mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).³⁴ In addition, we find that the relevant geographic market is local.³⁵ The Applicants are seeking Commission approval of the proposed assignment of 12 megahertz of low-band spectrum that covers three counties in one local market, accounting for well under one percent of the population of the United States.

11. *Input Market for Spectrum and Market Participants.* For our analysis, we include the spectrum bands, or portions thereof, found in recent Commission orders as the input market.³⁶ Similarly, we apply recent Commission precedent and consider facilities-based entities providing mobile telephony/broadband services using cellular, PCS, SMR, 700 MHz, AWS-1, BRS, WCS, AWS-4, H Block, EBS, and AWS-3 and 600 MHz spectrum (as both the latter become available) to be market participants.³⁷

B. Competitive Effects of the Proposed Transaction

12. *Initial Review.* As discussed above, to help identify those local markets in which competitive concerns are more likely, initially we apply a 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.³⁸ The first part of the screen is based on the

³² See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9903, para. 10; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801-02, para. 10; *Applications of AT&T Mobility Spectrum LLC and KanOkla Telephone Association*, Memorandum Opinion and Order, 30 FCC Rcd 8555, 8559-60, para. 10 (WTB 2015) (*AT&T-KanOkla Order*).

³³ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904, para. 11; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115, para. 17; *AT&T-Leap Order*, 29 FCC Rcd at 2746, para. 22.

³⁴ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904, para. 12; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115-16, para. 18; *AT&T-Leap Order*, 29 FCC Rcd at 2746, para. 23.

³⁵ The Commission has found that the relevant geographic markets for certain wireless transactions generally are local, but has held that a transaction's competitive effects should also be evaluated at the national level where a transaction exhibits certain national characteristics that provide cause for concern. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5116, para. 19; see also *USCC-McBride Order*, 30 FCC Rcd at 9904, para. 12 & n.40; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801-02, para. 12 & n.43; *AT&T-Leap Order*, 29 FCC Rcd at 2748, para. 27.

³⁶ See, e.g., *AT&T-Plateau Wireless*, 30 FCC Rcd at 5117, para. 22; *USCC-McBride Order*, 30 FCC Rcd at 9904, para. 13; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801-02, para. 13; *AT&T-Leap Order*, 29 FCC Rcd at 2749-50, para. 32.

³⁷ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904, para. 13; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117, para. 23; *AT&T-Leap Order*, 29 FCC Rcd at 2751, para. 35.

³⁸ See, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66, para. 23; *USCC-McBride Order*, 30 FCC Rcd at 9904-05, para. 15; *AT&T-KanOkla Order*, 30 FCC Rcd at 8561, para. 15; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, paras. 286-88. The current total amount of below-1-GHz spectrum that is suitable and available is 134 megahertz, approximately one-

(continued....)

size of the post-transaction Herfindahl-Hirschman Index (HHI) and the change in the HHI.³⁹ The second part of the screen, which is applied on a county-by-county basis, identifies local markets where an entity would hold approximately one-third or more of the total spectrum suitable and available for the provision of mobile telephony/broadband services, post-transaction.⁴⁰ 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*.⁴¹

13. As the instant transaction does not result in the acquisition of wireless business units and customers, we do not apply the initial HHI screen. Alabama 2 – Jackson does not trigger the total spectrum screen, but in our review of the 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 in all three counties of this local market post-transaction. We therefore look more closely at the potential competitive effects that these proposed holdings may have.

14. *Record.* The Applicants argue that the proposed transaction would have no adverse competitive effects, as it would neither cause an overall aggregation of spectrum that would pose an anticompetitive risk nor reduce competition in a meaningful way,⁴² and that no subscriber transition issues are implicated as a result of the proposed transaction because it is a spectrum-only transaction.⁴³ Further, the Applicants maintain that the proposed transaction will not lead to an increase in market concentration or decrease the number of entities providing service to customers in these markets.⁴⁴ No petitions to deny or comments were received.

15. *Market-Specific Review.* Generally, in undertaking our analysis, we consider various competitive variables that help to predict the likelihood of competitive harm post-transaction. These competitive variables include, but are not limited to: the total number of rival service providers; the number of rival firms that can offer competitive service plans; the coverage by technology of the firms' respective networks; the rival firms' market shares; the combined entity's post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum

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third of which is 45 megahertz. *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6156-57, 6240, paras. 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, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904-05, para. 15 & n.45; *AT&T-KanOkla Order*, 30 FCC Rcd at 8561, para. 15 & n.48; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121, 5123, paras. 31, 35.

³⁹ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904-05, para. 15; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24; *AT&T-Leap Order*, 29 FCC Rcd at 2753, para. 41 & n.140.

⁴⁰ See, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66, para. 23; *USCC-McBride Order*, 30 FCC Rcd at 9904-05, para. 15; *AT&T-Consolidated Order*, 30 FCC Rcd at 9803, para. 15; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24.

⁴¹ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6240, paras. 267, 286-88; see also, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66, para. 23; *USCC-McBride Order*, 30 FCC Rcd at 9904-05, para. 15; *AT&T-KanOkla Order*, 30 FCC Rcd at 8561, para. 15; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24.

⁴² Public Interest Statement at 4; Response of AT&T to the General Information Request Dated Nov. 10, 2015, WT Docket No. 15-271, at 12-14 (Nov. 24, 2015) (AT&T Information Request Response).

⁴³ Public Interest Statement at 4; AT&T Information Request Response at 12-14. This is a spectrum-only transaction and does not involve the transfer of customers. Public Interest Statement at 4; AT&T Information Request Response at 13.

⁴⁴ AT&T Information Request Response at 12.

holdings of each of the rival service providers.⁴⁵

16. Alabama 2 – Jackson is a rural market of approximately 150,000 people with a population density of 62 people per square mile.⁴⁶ Two service providers have a significant market share: AT&T and Verizon Wireless (the market leader) each hold approximately [REDACTED] percent of the market.⁴⁷ Post-transaction, AT&T would hold 115 megahertz to 125 megahertz of spectrum in this CMA, including 55 megahertz of spectrum below 1 GHz, while the other three nationwide service providers hold 60 megahertz to 175 megahertz of spectrum.⁴⁸ With respect to below-1-GHz spectrum, Verizon Wireless holds 47 megahertz, Sprint holds 14 megahertz, T-Mobile holds 12 megahertz covering approximately 17 percent of the population of this CMA, and Cellular South d/b/a C Spire holds 12 megahertz covering approximately 83 percent of the population.⁴⁹

17. In terms of population and land area coverage, three service providers have significant 3G coverage.⁵⁰ Specifically, AT&T covers approximately 100 percent of the population and approximately 99 percent of the land area with its 3G network, while the comparable 3G network coverage percentages are approximately 98 percent and approximately 89 percent for Verizon Wireless, and approximately 77 percent and approximately 65 percent for T-Mobile. In addition, AT&T covers approximately 100 percent of the population and approximately 99 percent of the land area with HSPA+ and approximately 14 percent of both the population and land area with LTE, while Verizon Wireless covers approximately 98 percent of the population and approximately 89 percent of the land area with its LTE network. T-Mobile covers approximately 45 percent of the population and approximately 38 percent of the land area with both HSPA+ and LTE.

18. We find notwithstanding the fact that AT&T would hold, as a result of the proposed transaction, more than one-third of the below-1-GHz spectrum in Alabama 2 – Jackson, that the

⁴⁵ We derive market shares and HHIs from our analysis of data compiled in our June 2015 NRUF and LNP database, network coverage from July 2015 Mosaik data and 2010 U.S. Census data, and spectrum holdings from our licensing databases and the Application. We also utilized and analyzed additional data as provided by the Applicants through our information requests. *See, e.g., USCC-McBride Order*, 30 FCC Rcd at 9905, para. 17 & n.51; *AT&T-KanOkla Order*, 30 FCC Rcd at 8562, para. 13 & n.54; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120, para. 29 & n.98.

⁴⁶ The population density is measured by the number of people per square mile using Census 2010 data. Rural markets are generally characterized by fewer than 100 people per square mile. *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services et al.*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 19078, 19086-88, paras. 10-12 (2004).

⁴⁷ Sprint and T-Mobile each have a *de minimis* market presence of approximately [REDACTED]%, respectively.

⁴⁸ In addition, DISH holds 50 megahertz of above-1-GHz spectrum and 6 megahertz of unpaired below-1-GHz-spectrum. Furthermore, we note that Farmers would continue to hold 20 megahertz of AWS-1 spectrum post-transaction.

⁴⁹ We note that T-Mobile and C Spire recently submitted two applications seeking Commission consent to the assignment of certain of C Spire's Lower 700 MHz A Block spectrum licenses from C Spire to T-Mobile. *See Application To Assign Licenses from Cellular South Licenses, LLC to T-Mobile License LLC*, ULS File No. 0007141032 (lead application) (filed Feb. 19, 2016). Part of the Lower 700 MHz A Block spectrum that would be assigned, subject to Commission consent, covers DeKalb and Jackson counties within this market. If consented to, C Spire would continue to hold 10 megahertz of AWS-1 spectrum covering approximately 83% of the population of Alabama 2 – Jackson post-transaction.

⁵⁰ It has previously been found that coverage of 70% or more of the population and 50% or more of the land area is presumptively sufficient for a service provider to have a competitive presence in the market. *See, e.g., USCC-McBride Order*, 30 FCC Rcd at 9906, para. 18 & n.54; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121, para. 31 & n.102; *AT&T-Leap Order*, 29 FCC Rcd at 2770, para. 81 & n.279.

likelihood of competitive harm is low, after evaluating the particular factors ordinarily considered.⁵¹ First, Alabama 2 – Jackson is a rural market. In this rural market, we note that two other nationwide service providers, T-Mobile and Verizon Wireless, have significant 3G population and land area coverage. In addition, Verizon Wireless, the leading service provider, has significant LTE population and land area coverage, while T-Mobile has an LTE presence in this market, having deployed to around 45 percent of the population. Further, in addition to AT&T, C Spire, Sprint, T-Mobile, and Verizon Wireless, all currently have access to low-band spectrum covering all or parts of the market. We also note that 26 megahertz of paired low-band spectrum remains held in this market by parties other than the two leading nationwide service providers. In addition, the three other nationwide service providers also have access to spectrum above 1 GHz to combine with their respective low-band spectrum holdings for LTE deployment. Moreover, other entities were actively solicited with respect to this business opportunity, so they had the opportunity to acquire this low-band spectrum on the secondary market.⁵² We find that the acquisition of this spectrum by AT&T is unlikely to foreclose rival service providers from entering or expanding, or raise rivals' costs. The proposed transaction, therefore, is unlikely to materially lessen the ability of rival service providers to effectively respond to any anticompetitive behavior on the part of AT&T in Alabama 2 – Jackson.

IV. POTENTIAL PUBLIC INTEREST BENEFITS

19. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.⁵³ The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms,⁵⁴ and applies a “sliding scale approach” to evaluating benefit claims.⁵⁵ 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.”⁵⁶ Conversely, where potential harms appear less likely and less substantial, as is the case here, we will accept a lesser showing to approve the proposed transaction.⁵⁷

⁵¹ See *supra* para. 15. See also, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9906-07, paras. 19, 21; *AT&T-KanOkla Order*, 30 FCC Rcd at 8563, para. 19; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5123, para. 36.

⁵² Farmers stated that in October 2014, it engaged Charlesmead Advisors LLC (Charlesmead) to prepare an independent valuation of Farmer's Lower 700 MHz C Block and AWS-1 licenses. Farmers further stated that in April 2015, Charlesmead began to market the licenses, and contacted 16 parties, including the four nationwide providers. Farmers stated that it received proposals to acquire the licenses from two parties, and negotiations continued until July, 2015, when it made the decision to sell the Lower 700 MHz license to AT&T, and to retain the AWS-1 license. Farmers Information Request Response at 1-2; see also, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13073, para. 38.

⁵³ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9907-08, para. 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805, para. 20; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126, para. 43; *AT&T-Leap Order*, 29 FCC Rcd at 2792-93, para. 130.

⁵⁴ See *supra* para. 7. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27, para. 44; see also *USCC-McBride Order*, 30 FCC Rcd at 9907-08, para. 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805, para. 20; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132.

⁵⁵ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27, para. 44; see also *USCC-McBride Order*, 30 FCC Rcd at 9907-08, para. 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805, para. 20; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132.

⁵⁶ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9907-08, para. 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805, para. 20; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27, para. 44.

⁵⁷ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9907-08, para. 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805, para. 20; *AT&T-KanOkla Order*, 30 FCC Rcd at 8563, para. 20.

20. *Potential Benefits.* The Applicants assert, in their detailed demonstration of the claimed benefits, that the proposed transaction would enable AT&T to increase its system capacity to enhance existing services, better accommodate its overall growth, and facilitate the provision of additional products and services.⁵⁸ AT&T claims that it would use the Lower 700 MHz spectrum to be acquired in this transaction to improve the quality of service for subscribers in this market and to respond to subscribers' considerable demand for LTE services.⁵⁹ The Applicants contend that the acquisition of this Lower 700 MHz spectrum would allow AT&T to support a 10×10 megahertz LTE deployment.⁶⁰ AT&T asserts that a 10×10 megahertz deployment represents a major improvement in speed and efficiency over a 5×5 megahertz LTE deployment.⁶¹ AT&T further claims that the relative gain in capacity from a 10×10 megahertz block is greater than the total capacity of two separate 5×5 megahertz blocks, and that wider bandwidth results in noticeably better performance for users.⁶²

21. *Evaluation.* We have reviewed the detailed assertions of the Applicants regarding the benefits they allege would result from the proposed transaction, as well as their detailed responses to our requests for additional information and documents. The record provides general support for the Applicants' contentions that the proposed transaction likely would result in some public interest benefits. Specifically, we anticipate that through the acquisition of this Lower 700 MHz spectrum, AT&T would be able to deploy a more robust LTE network in a relatively short period of time.⁶³ As we found in the *AT&T-Plateau Wireless Order* and the *AT&T-Club 42 Order*, customers are likely to benefit from access to improved LTE performance and a more robust network as a result of the instant transaction.⁶⁴

V. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS

22. After carefully evaluating the likely competitive effects of AT&T's increased aggregation of below-1-GHz spectrum, we find that the ability of rival service providers to offer a competitive response to any anticompetitive behavior on the part of AT&T is unlikely to be materially lessened in Alabama 2 – Jackson. Further, we find that the record provides general support for the Applicants' claims of potential public interest benefits. Therefore, under our sliding scale approach, we find that the likelihood of harm is low and the potential public interest benefits outweigh any potential public interest harms. As a result, based on the record before us and our competitive review, we find that the proposed assignment would serve the public interest, convenience, and necessity.

⁵⁸ Public Interest Statement at 2-3; *see also* AT&T Information Request Response at 9.

⁵⁹ Public Interest Statement at 2-3; *see also* AT&T Information Request Response at 5, 9.

⁶⁰ Public Interest Statement at 2-3; *see also* AT&T Information Request Response at 9.

⁶¹ AT&T Information Request Response at 7. AT&T asserts that the 10 megahertz block would have approximately 10% more capacity than two 5 megahertz blocks. *Id.* at 7; *see also* AT&T Exhibits ATT-FTC000001, ATT-FTC000006, and ATT-FTC-000042.

⁶² AT&T Information Request Response at 6-7. AT&T cites the 10×10 megahertz LTE's deployment's greater trunking and signaling efficiencies, maintaining that these improvements result in higher system capacity, greater spectral efficiency, and better user throughput than is possible over two separate 5×5 megahertz blocks. AT&T Information Request Response at 4-8; *see also* AT&T Exhibits ATT-FTC000001, ATT-FTC000006, and ATT-FTC-000042.

⁶³ For the deployment timeline, AT&T asserts that to the extent that there are cell sites in this market where only AT&T's B Block spectrum is operational, it expects to deploy the C Block spectrum at those sites within 60 to 90 days after closing. AT&T Information Request Response at 8.

⁶⁴ *See, e.g., AT&T-Club 42 Order*, 30 FCC Rcd at 13076-77, paras. 46-47; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5129, para. 53; *see also, e.g., AT&T-Consolidated Order*, 30 FCC Rcd at 9805-06, para. 22; *AT&T-KanOkla Order*, 30 FCC Rcd at 8564, para. 22.

VI. ORDERING CLAUSES

23. 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 a license held by Farmers Telecommunications Corporation to New Cingular Wireless PCS, LLC, is GRANTED.

24. 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, or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, may be filed within thirty days of the date of release of this Memorandum Opinion and Order.

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

FEDERAL COMMUNICATIONS COMMISSION

Jon Wilkins
Chief
Wireless Telecommunications Bureau