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LATHAM & WATKINS LLP

November 3, 2014

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Reply to Joint Opposition, *Application of AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership*, WT Docket No. 14-145

REDACTED – FOR PUBLIC INSPECTION

Dear Ms. Dortch,

Competitive Carriers Association (“CCA”) hereby submits its Reply to the Joint Opposition of AT&T Mobility Spectrum LLC (“AT&T”) and Club 42 CM Limited Partnership.¹ The attached version of CCA’s Reply has been redacted to remove references Highly Confidential information submitted into the record by AT&T. A Highly Confidential version of CCA’s Reply is being filed simultaneously under separate cover in accordance with the procedures set forth in the Joint Protective Order.² The redactions have been marked with “[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] . . . [END AT&T HIGHLY CONFIDENTIAL INFORMATION].

¹ Joint Opposition of AT&T Mobility Spectrum LLC and Club 42 CM Limited Partnership, WT Docket No. 14-145 (filed Oct. 27, 2013).

² *Application of AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership*, WT Docket No. 14-145, Joint Protective Order, DA 14-1378 (rel. Sep. 22, 2014).

LATHAM & WATKINS LLP

Please contact the undersigned should you have any questions.

Respectfully submitted,

/s/

Elizabeth R. Park
of LATHAM & WATKINS LLP
Counsel for Competitive Carriers Association

Attachment

cc: Scott Patrick
Kate Matraves
Jim Bird
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
AT&T Mobility Spectrum LLC and Club) WT Docket No. 14-145
42CM Limited Partnership Application for)
Consent to the Assignment of Two Lower 700)
MHz B Block Licenses in California)
)

REPLY TO JOINT OPPOSITION

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November 3, 2014

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REPLY TO JOINT OPPOSITION

Competitive Carriers Association (“CCA”) hereby replies to the Joint Opposition of AT&T Mobility Spectrum LLC (“AT&T”) and Club 42 CM Limited Partnership (“Club 42” together with AT&T, the “Applicants”) to CCA’s Petition to Deny filed against the parties’ assignment application (the “Application”) in the above-referenced proceeding.¹

I. INTRODUCTION AND SUMMARY

AT&T and Club 42 have failed to meet their burden of proof under the Commission’s newly adopted “enhanced factor” and failed to prove that the proposed transaction serves the public interest.² The Applicants had three separate opportunities—in the Application, in AT&T’s Response to the Commission’s General Information Request filed on October 6, 2014 (“AT&T Response”), and in the Joint Opposition—to provide a “detailed demonstration” that the public interest benefits of the proposed transaction outweigh the competitive harms caused by AT&T’s acquisition of more than one third of below-1-GHz spectrum in the affected California

¹ Joint Opposition of AT&T Mobility Spectrum LLC and Club 42 CM Limited Partnership, WT Docket No. 14-145 (filed Oct. 27, 2013) (“Joint Opposition”); Petition to Deny of Competitive Carriers Association, WT Docket No. 14-145 (filed Oct. 17, 2014) (“Petition”).

² *Policies Regarding Mobile Spectrum Holdings*, Report and Order, 29 FCC Rcd 6133 ¶ 286 (2014) (“*Mobile Spectrum Holdings Order*”).

Cellular Market Areas (“CMAs”), California 5-San Luis Obispo CMA (“CA-5”) and California 12-Kings CMA (“CA-12”) (together, the “Markets”). Other than reiterating vague and generic claims of spectrum efficiency, the Applicants have refused to acknowledge the now well-established harms attendant to AT&T’s continued low-band spectrum acquisition spree, or to present any credible evidence of benefits derived from the transaction.

The threshold problem is the Applicants’ attempt to affirmatively dilute the Commission’s new stricter standard of review for evaluating transactions that may excessively consolidate low-band spectrum. The Joint Opposition describes the Commission’s recent *Mobile Spectrum Holdings Order* as simply “reaffirm[ing]” the agency’s traditional case-by-case method of analyzing transactions “introduced a decade ago.”³ As characterized by the Applicants, below-1-GHz spectrum aggregation is merely a newly-identified factor that is still one among many, requiring a limited amount of additional scrutiny but otherwise lost in a multi-factor balancing test.⁴ This characterization is understated, to say the least, and inaccurate in its implication. In fact, AT&T’s disproportionate hoarding of low-band spectrum is the *entire reason* the Commission felt compelled to introduce below-1-GHz spectrum concentration as an enhanced factor for evaluating transactions in the first place.⁵ In essence, the Commission’s “enhanced factor” analysis requires the Applicants to overcome a heavy burden to show that AT&T’s proposed additional accumulation low-band spectrum will yield specific and detailed public interest benefits to consumers in the Markets. And because AT&T already holds more than one-third of the suitable and available low-band spectrum in CA-5, the Commission’s enhanced review demands a particular demonstration that the public interest benefits “clearly

³ See Joint Opposition at 2-3.

⁴ *Id.*

⁵ *Mobile Spectrum Holdings Order* ¶¶ 68, 283, 286-87.

outweigh the potential public interest harms associated with such additional concentration of below-1-GHz spectrum in that market, *irrespective of other factors.*”⁶

In this regard, the Applicants have failed to heed the Commission’s clear direction in the *Mobile Spectrum Holdings Order*, reemphasized through the General Information Requests. AT&T, for example, in both the Public Interest Statement filed with the Application and again in the AT&T Response, does nothing to address whether it has attempted to implement alternative technical measures to efficiently utilize its current spectrum holdings, whether there are unique capacity constraints in the Markets that necessitate the acquisition of additional low-band spectrum (again, as opposed to other measures that AT&T could take to deploy its existing spectrum more efficiently), or whether higher-band spectrum would be an equal, if not superior, solution to any ostensible capacity constraints it faces. Moreover, AT&T disregards entirely the risk of competitive harms that the Commission has concluded are *inherent* in transactions involving a dominant carrier that holds, or post-transaction will hold, more than one-third of low-band spectrum suitable for mobile wireless services in the relevant market.

Finally, CCA’s Petition meets relevant procedural requirements, and CCA has adequately demonstrated its standing to oppose the instant transaction. The Application should be denied.

II. AT&T SEEKS TO DILUTE THE HEIGHTENED STANDARD OF REVIEW ADOPTED IN THE *MOBILE SPECTRUM HOLDINGS ORDER* DESIGNED TO PROMOTE COMPETITION IN THE WIRELESS MARKET

Based on the importance of low-band spectrum to robust wireless competition, the Commission has determined that transactions resulting in concentrations of greater than one-third of the available below-1-GHz spectrum in a given market “will be subject to enhanced

⁶ *Id.* ¶ 287 (emphasis added).

review.”⁷ In standard transactions without the specific concern of large aggregations of low-band spectrum, applicants already “bear the burden of proving, by a preponderance of the evidence that the proposed transaction, on balance, will serve the public interest.”⁸ In particular, in transactions where below-1-GHz spectrum is not at issue, applicants must show that any potential public interest benefits outweigh any potential harms.⁹ Far from a minimal burden, the Commission’s standard public interest test requires an applicant to demonstrate, among other things, that: (1) the claimed benefits are specific to the transaction; (2) the likelihood and magnitude of the claimed benefits are independently verifiable; (3) the benefits are sufficiently concrete and not merely likely to occur in the distant future; and (4) any cost reductions represent ongoing marginal cost reductions rather than one-time fixed cost reductions.¹⁰

The Commission’s “enhanced factor” review increases this burden of proof. When a transaction would result in the acquirer holding more than one-third of the suitable below-1-GHz spectrum in a given market, the applicant must provide the Commission with a “*detailed demonstration*” of why the public interest benefits outweigh the harms.¹¹ Only where the applicant can provide a convincing evidentiary basis to demonstrate “a *low potential* for

⁷ *Mobile Spectrum Holdings Order* ¶ 256.

⁸ *Id.* ¶ 285 (citing *Applications of Softbank Corp., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 28 FCC Rcd 9642 ¶ 23 (2013); *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses*, Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd 10698 ¶ 28 (2012) (“*Verizon/SpectrumCo Memorandum Opinion and Order*”); *Application of AT&T and Qualcomm, Incorporated for Consent to Assign Licenses and Authorizations*, Memorandum Opinion and Order, 26 FCC Rcd 17589 ¶ 23 (2011)).

⁹ *Mobile Spectrum Holdings Order* ¶ 285.

¹⁰ *See, e.g., Verizon/SpectrumCo Memorandum Opinion and Order* ¶ 97.

¹¹ *Mobile Spectrum Holdings Order* ¶ 285 (emphasis added).

competitive or other public interest harm,” can it acquire the additional low-band spectrum.¹²

Absent that detailed demonstration, the Commission will find that the transaction causes competitive harm.¹³ In other words, unless the applicant provides a detailed and persuasive showing that the transaction is in the public interest, the transaction must be denied.

There is an even greater threshold for markets in which the acquiring party, pre-transaction, already holds greater than one-third of the suitable and available low-band spectrum. In such 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,” which the Commission suggests should include a “particularly detailed showing . . . that [the applicants] currently are maximizing the use of their spectrum and how the proposed transaction is necessary to maintain, enhance, or expand services provided to consumers.”¹⁴ Only by requiring this substantial showing can the Commission adequately “ensur[e] that the ability of rival service providers to offer a competitive response to any price increase or to offer new innovative services is not eliminated or significantly lessened.”¹⁵

In this case, there is no dispute that, once consummated, the proposed transaction will result in the concentration of greater than one-third of the suitable and available spectrum below 1 GHz in the Markets, and that AT&T already exceeds this threshold in CA-5. These facts trigger the particularized public interest showings required by the new “enhanced factor” analysis, and specific consideration of how the harms flowing from the concentration of below-1-GHz spectrum can be mitigated. But the Joint Opposition attempts to dilute the new standard by

¹² *Id.* (emphasis added).

¹³ *Id.*

¹⁴ *Id.* ¶ 287 (emphasis added).

¹⁵ *Id.*

treating below-1-GHz spectrum as interchangeable with above-1-GHz spectrum, and abandons the enhanced factor analysis for a single purported public interest benefit.

For example, in support of the purported public interest benefits of acquiring contiguous spectrum below-1-GHz, the Joint Opposition refers to 10 x 10 megahertz LTE deployments by competitors primarily *above*-1-GHz, without regard to the essential facts that the present transaction involves spectrum *below* 1 GHz.¹⁶ Similarly, although the Applicants nominally acknowledge that an “enhanced factor” analysis should apply to transactions involving the acquisition of below-1-GHz spectrum that result in holdings of one-third or more of such spectrum, and thus “warrant heightened scrutiny,” they rely principally on an application of the *overall* spectrum screen to allege an absence of competitive harm, without ever addressing the greater potential for public interest harms that the Commission *has already determined to exist* with respect to the concentration of spectrum below 1 GHz.¹⁷

In addition, the Joint Opposition attempts to re-litigate the Commission’s findings in the *Mobile Spectrum Holdings Order* by arguing that 700 MHz D and E Block spectrum should not be counted as heavily for purposes of the enhanced factor review.¹⁸ But the Applicants have already lost this argument. The *Mobile Spectrum Holdings Order* determined that 700 MHz D and E Block spectrum should be considered “suitable and available” for commercial wireless broadband deployment, and included these blocks in its spectrum screen and enhanced factor

¹⁶ See Joint Opposition at 5-7.

¹⁷ *Id.* at 3-4. Indeed, on this score, even before it adopted the “enhanced factor” test, the Commission held that falling below the initial spectrum screen alone was insufficient to ensure that a transaction is in the public interest, particularly where increased aggregation of below-1-GHz spectrum is involved. *Mobile Spectrum Holdings Order* ¶ 225.

¹⁸ Joint Opposition at 4, n.8. Notably, even when the unpaired spectrum is excluded from the spectrum aggregation calculation, AT&T by its own admission *still* holds more than 45 megahertz of below-1-GHz spectrum, and remains subject to the enhanced factor analysis.

review, expressly rejecting AT&T's assertion that these bands should be excluded.¹⁹ AT&T did not challenge this decision, and it is disingenuous of AT&T now to suggest in this proceeding that the Commission should discount the value and usefulness of unpaired spectrum.²⁰ AT&T will continue to benefit immensely from this low-band spectrum even when it is not paired with other Lower 700 MHz Band spectrum.²¹

The Commission should reject the Joint Opposition's effort to water down the "enhanced factor" standard. As noted in CCA's Petition and reiterated below, the Applicants simply have not carried their heavy public interest burden.

¹⁹ *Mobile Spectrum Holdings Order* ¶ 178.

²⁰ AT&T misleadingly suggests that the FCC has expressed a willingness to discount unpaired low-band spectrum in the enhanced factor analysis. *See* Joint Opposition 4, n.8. The Commission, however, never indicates that unpaired spectrum is to be discounted. Instead, the Commission explains that where, as here, a carrier already exceeds the 45-megahertz threshold and proposes to acquire additional low-band spectrum, the Commission will be even more concerned if that spectrum is paired. *See Mobile Spectrum Holdings Order* ¶ 287.

²¹ AT&T's claim that it is unable to integrate this unpaired spectrum with other Lower 700 MHz spectrum is without merit. AT&T previously explained its plans to use its unpaired 700 MHz licenses to provide supplemental downlinks in conjunction with its AWS, PCS, and Cellular licenses. *See Application of AT&T Inc. and Qualcomm Incorporated, for Consent to Assign Licenses and Authorizations*, 26 FCC Rcd 17589 ¶ 65 (2011) (requiring as a condition, consistent with AT&T's statements in its application, to use the Lower 700 MHz D and E Block spectrum only for downlink transmission). Even when aggregated with high-band spectrum, better propagation of low-band spectrum on the downlink band 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. *See* Declaration of Douglas Hyslop, attached hereto as Exhibit A, at ¶¶ 2-3. Moreover, as the Commission noted in the *Mobile Spectrum Holdings Order* in rejecting AT&T's arguments that D and E Block spectrum should be omitted from the screen, while AT&T may *initially* operate the unpaired low-band spectrum with a higher frequency band pair, AT&T can easily switch the pairing later once AT&T deploys LTE in the Cellular or 600 MHz bands. *See Mobile Spectrum Holdings Order* ¶ 178.

III. AT&T IGNORES SEVERAL DISTINCT COMPETITIVE HARMS POSED BY THE TRANSACTION

The policy justification underlying both the higher standard of review of transactions involving low-band spectrum and the spectrum reserve for the 600 MHz incentive auction set forth in the *Mobile Spectrum Holdings Order* is the heightened risk of competitive harms that the Commission has recognized exists where scarce low-band spectrum resources are involved. Here, the Applicants must demonstrate that the significant potential for anticompetitive conduct in the mobile wireless marketplace—including highly concentrated holdings of low-band spectrum, high market concentration, high margins and high barriers to entry, which all create a high risk of foreclosure of entry—are overcome by any claimed public interest benefits.²² CCA has identified several tangible, transaction-specific harms resulting from approval of the Application, each of which has gone unrebutted by the Applicants.

First, allowing the dominant player in the Markets to acquire some of the few critical spectrum inputs it does not already control harms competition and, consequently, consumers. The Commission has explained that “[e]nsuring that sufficient spectrum is available for multiple existing mobile service providers as well as potential entrants is crucial to promoting consumer choice and competition throughout the country . . . and is similarly crucial to fostering innovation in the marketplace.”²³

AT&T’s proposed low-band spectrum acquisition will shut the door on choice and innovation stemming from facilities-based investment in the Markets.²⁴ In CA-12, for example, AT&T will hold almost 40 megahertz more spectrum post-transaction than the second largest

²² *Mobile Spectrum Holdings Order* ¶ 62.

²³ *Id.* ¶ 17.

²⁴ *See* Joint Opposition at 7.

license holder in the market.²⁵ AT&T's acquisition of low-band spectrum has the effect of preventing any potential rival from gaining access to the low-band spectrum resources necessary to deploy infrastructure on a cost effective basis in these rural markets.²⁶ And contrary to AT&T's assertions, deployment on scarce spectrum in an inefficient manner can have the same anti-competitive effect as "stockpiling" spectrum resources.²⁷ Indeed, the presence of AT&T's existing, low-band tailored infrastructure should demand more—not less—vigilance from the Commission. Adding radios to AT&T's existing towers is relatively inexpensive compared to the cost of building out a completely new low-frequency network. Given AT&T's extensive existing network of low-frequency deployments, AT&T enjoys deployment costs substantially less than those of its non-dominant rivals, which have far less and, in many cases, no low-band spectrum.

AT&T also baldly asserts in response to the impending elimination of a potential competitor that nothing would preclude Club 42 from competing in the Markets in the future,²⁸ a claim that is absurd on its face. Upon consummation of the proposed transaction, Club 42 would be eliminated as a potential competitor in CA-12 and would retain a single block of PCS spectrum in CA-5, rendering the prospects of any future competition or entry by Club 42 unlikely. Indeed, due to the scarcity of low-band spectrum the barriers to acquiring such

²⁵ Application, Exhibits 3, 4.

²⁶ See *Mobile Spectrum Holdings Order* ¶ 60 (finding that "deploying high-band spectrum is more costly, more time-consuming, and more subject to variation given the increased number of cell sites required for deployment to achieve similar service quality" and that "low-band spectrum is less costly to deploy and provides higher coverage quality").

²⁷ AT&T posits an all-or-nothing world where spectrum is either "stockpiled" or it is not. But AT&T could purchase the spectrum, deploy it, and still keep it out of the hands of competitors to suppress downward pricing pressure. See, e.g., Letter of Trey Hanbury to Marlene H. Dortch, WT Docket No. 12-269 and GN Docket No. 12-268 at 3-4 (filed Oct. 13, 2013).

²⁸ Joint Opposition at 7.

spectrum are high, and the Commission has acknowledged that the market for spectrum is illiquid: “spectrum is made available for initial licensing at irregular times and in irregular amounts . . . [and the] secondary market for spectrum licenses in any geographic area has very few buyers and sellers.”²⁹ Several CCA members with interests in these Markets have urged that “[p]ermitting AT&T, already the largest competitor in most of these markets, to purchase this low-band spectrum would deny competitors the opportunity to enter or expand services in the market and result in further concentration of market share in the affected geographic areas,” and cautioned the Commission to carefully review “any proposed transaction involving a dominant operator that would eliminate a competitor from the market and further concentrate competitively-impactful low-band spectrum.”³⁰ Both conditions apply here.

Moreover, in any transaction—including spectrum-only transactions³¹—the Commission considers the ability of rival firms to compete on price and quality of service.³² As CCA explained in its Petition, the Commission analyzed at length the potential for competitive disadvantages that could result from increased aggregation of spectrum, particularly spectrum below 1 GHz,³³ but the Applicants do not seriously attempt to address this point in their Public Interest Statement, their responses to the Commission’s Information Requests or in the Joint Opposition. For example, the Applicants disregard the inability of a provider holding mostly

²⁹ *Mobile Spectrum Holdings Order* ¶ 64.

³⁰ *See Ex Parte* letter of T-Mobile, Sprint, Writers Guild of America, New America Foundation, Public Knowledge, Computer & Communications Industry Association, Free Press, and COMPTTEL, WT Docket No. 12-269 and GN Docket No. 12-268 at 3-4 (filed Oct. 9, 2014) (“*October Ex Parte*”).

³¹ *See* Joint Opposition at 7-8.

³² *Mobile Spectrum Holdings Order* ¶ 284.

³³ *Mobile Spectrum Holdings Order* ¶¶ 60-61; Petition at 4-5.

high-band spectrum —with an attendant higher cost structure and greater service challenges—to compete effectively in terms of ubiquitous network coverage in rural areas like the Markets.³⁴

Finally, the proposed transaction is tainted due to historical and future conditions specific to the 700 MHz Band. AT&T currently holds licenses for approximately 70 percent of the suitable and available 700 MHz spectrum in tandem with the other dominant carrier.³⁵ But AT&T’s singular concentration of Band Class 12 spectrum is even more alarming, as previously demonstrated by its ability to create a boutique band class for this spectrum that required Commission intervention to make interoperable.³⁶

In sum, several competitive and other public interest harms have gone unaddressed by the Applicants. This in and of itself warrants denial of the Application.

IV. AT&T FAILS TO MEET ITS HEAVY BURDEN UNDER THE ENHANCED FACTOR ANALYSIS TO SHOW SUFFICIENTLY COUNTERVAILING PUBLIC INTEREST BENEFITS

Framed against the significant harms engendered by increased below-1-GHz concentration, the sole public interest benefit cited by AT&T in support of the proposed transaction is its ability to secure capacity gains by acquiring contiguous low-band spectrum.³⁷ This non-specific benefit is not enough to warrant approval of the Application.

³⁴ Rather, AT&T insists that each of the four nationwide providers “offers advanced mobile broadband services over robust networks at very competitive rates, with ample spectrum available to accommodate increased demand.” Joint Opposition at 4. Apart from disregarding any potential for a *new* entrant to enter the Markets, this statement undermines AT&T’s own claimed justification for granting the Application.

³⁵ *Mobile Spectrum Holdings Order* ¶ 46.

³⁶ *See In the Matter of Promoting Interoperability in the 700 MHz Commercial Spectrum; Requests for Waiver and Extension of Lower 700 MHz Band Interim Construction Benchmark Deadlines*, Report and Order and Order of Proposed Modification, 28 FCC Rcd 15122 (2013) (addressing the lack of interoperability in the 700 MHz band caused by the creation of different band classes).

³⁷ *See* Joint Opposition at 8-12.

The Applicants’ claimed justification for the proposed spectrum acquisition is that it would “make AT&T a more effective competitor,” and that competition would be enhanced by allowing AT&T to acquire additional low-band.³⁸ Such an argument is untenable, however, when married with the Commission’s finding of the competitive harms resulting from low-band spectrum already being overwhelmingly controlled by the two largest wireless carriers. Although the Joint Opposition references other transactions that apparently relied on the public interest benefit of enabling competition through the acquisition of adjacent spectrum and attendant efficiency gains,³⁹ those cases were not subject to the heightened standard applicable here. And in any event, such a justification is more compelling when the stated competitive enhancements are obtained by a competitive carrier rather than one of the two dominant incumbents already found in tandem to possess 73 percent of the low-band spectrum nationwide.⁴⁰

Regardless of the general efficiency benefits to a carrier of deploying contiguous spectrum, the enhanced factor standard requires AT&T to show extraordinary public interest benefits that can outweigh the severe risk of competitive harm in instances of significant aggregation of low-band spectrum. As an initial matter, the spectral efficiency benefits of contiguous spectrum blocks when used for LTE are incremental. Technical studies have shown that spectrum efficiency of LTE essentially is the same for all channel sizes.⁴¹ According to a

³⁸ See *id.* at 8.

³⁹ *Id.* at 6.

⁴⁰ *Mobile Spectrum Holdings Order* ¶ 68.

⁴¹ See, e.g., 4G Americas, *Mobile Broadband Explosion: The 3GPP Wireless Evolution*, at 22 (Aug. 2013), available at <http://www.4gamericas.org/UserFiles/file/White%20Papers/4G%20Americas%20Mobile%20Broadband%20Explosion%20August%202013%209%205%2013%20R1.pdf>. Indeed, efficiency differences among LTE channel sizes are due solely to a reduction of

4G Americas study, LTE spectral efficiency improvements taper off once a 5 x 5 megahertz channel is deployed, with only a few percentage points of efficiency gained with a 10 x 10 megahertz deployment compared to a 5 x 5 megahertz deployment.⁴²

More significantly, AT&T has failed to show any specific need for the additional aggregation of low-band spectrum. For instance, AT&T has not presented any evidence of network congestion in these markets, nor does it discuss whether its current spectrum is being maximized or used efficiently or whether more plentiful high-band spectrum could equally serve this same capacity purpose (and a 10 x 10 megahertz LTE deployment) without foreclosing competitors' access to low-band spectrum. Indeed, AT&T's spectrum deployment strategy

[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]

[END

AT&T HIGHLY CONFIDENTIAL INFORMATION].⁴³

The Commission's primary goal in adopting the enhanced factor test is to ensure that "the ability of rival service providers to offer a competitive response to any price increase or to offer

control channel overhead as channel size increases. 4G Americas, *The Benefits of Digital Dividend*, at 10 (Sept. 2012), available at http://www.4gamericas.org/documents/4G%20Americas-Benefits%20of%20Digital%20Dividend-September_2012.pdf ("All LTE channel sizes offer the comparable spectral efficiency at the physical layer in terms of bits/second/hertz since they all use the same modulation and coding formats; however, a larger bandwidth channel will benefit from lower overhead due to control channels. . . ."). Notably, the principal author of the 4G Americas *The Benefits of Digital Dividend* white paper is an engineer for AT&T.

⁴² See *id.*

⁴³ See AT&T Response at 5-6.

new innovative services is not eliminated or significantly lessened.”⁴⁴ In order to determine whether foreclosure of such competitive opportunities would occur, the Commission suggests that it would consider whether the applicants “currently are maximizing the use of their spectrum and how the proposed transaction is necessary to maintain, enhance, or expand services provided to customers.”⁴⁵ The Applicants have not made such a showing, and have not adequately demonstrated that AT&T is maximizing the use of its spectrum. The Applicants do not explain why micro cells or cell splitting or other spectrum enhancing techniques cannot be used to meet AT&T’s capacity needs, as opposed to AT&T merely acquiring additional spectrum and eliminating a potential competitor in the process. Nor do the Applicants discuss why higher-band spectrum would be insufficient for relieving any ostensible capacity constraints. This showing is particularly important given AT&T’s position as a dominant carrier.

AT&T also has failed to show any evidence of network congestion in the Markets. The benefits associated with the capacity increases resulting from additional spectrum would not be as pronounced for a carrier that already has significant spectrum holdings in the Markets, which are comprised of rural counties that are lightly populated.⁴⁶ Because AT&T has failed to show that LTE networks in these two rural counties are lightly loaded with traffic relative to densely populated areas where AT&T operates a 10x10 megahertz LTE carrier at 700 MHz, it should be presumed that the benefits of increased capacity are likely to be minimal to AT&T on the facts of this case, and certainly would not be meaningful enough to outweigh the demonstrable public

⁴⁴ See, e.g., *Mobile Spectrum Holdings Order* ¶ 287.

⁴⁵ *Id.*

⁴⁶ The more densely populated portions of the Markets represent a small part of the geographic license area.

interest harms of the proposed acquisition of additional low-band spectrum by a dominant provider.

AT&T's sole purported public interest justification for acquiring this spectrum fails to withstand scrutiny. This, coupled with the substantial public interest harms identified above, warrants a denial of the Application by the Commission.

V. CCA'S PETITION MEETS THE RELEVANT PROCEDURAL REQUIREMENTS FOR FILING A PETITION TO DENY

Contrary to various suggestions in the Joint Opposition, CCA is a "party-in-interest" in this proceeding and its Petition is properly filed.⁴⁷ CCA 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,⁴⁸ and CCA has reiterated those concerns here. Indeed, CCA members have joined a coalition of public interest groups and other trade associations requesting that the Commission conduct a comprehensive review of several of AT&T's pending below-1-GHz transactions.⁴⁹ This broad-based coalition of interested parties noted that the "enhanced factor" analysis must, by definition, exceed the public interest analysis of acquisitions that do not involve critical low-band spectrum resources. The coalition documented the FCC's findings that low-band spectrum acquisitions in excess of one-third of all below-1-GHz commercial broadband spectrum by dominant providers (like AT&T) raise competitive concerns not found in other spectrum acquisitions.⁵⁰

⁴⁷ See Joint Opposition at 1, n.1.

⁴⁸ See *October Ex Parte*.

⁴⁹ *Id.*

⁵⁰ See *id.* at 3.

In any event, CCA's Petition is based on specific and undisputed facts and findings of which official notice can be taken,⁵¹ including: (i) AT&T holds or will hold after the proposed transaction greater than one-third of the low-band spectrum in each of the Markets, and (ii) the Commission already has determined that competitive harm would likely result from the increased concentration of critical low-band spectrum beyond the one-third level, unless a heightened public interest burden is met. As discussed, the Applicants have failed to meet this burden.

VI. CONCLUSION

For the foregoing reasons, and as detailed in CCA's Petition, the Commission should ensure that the heightened standard of review adopted in the *Mobile Spectrum Holdings Order* for transactions involving over one-third of suitable low-band spectrum is implemented in a manner that affords the intended competitive protections. AT&T's only purported public interest justification does not outweigh the multiple harms associated with it acquiring additional low-band spectrum in the Markets. Thus, the Commission should deny the proposed license assignment.

⁵¹ See 47 U.S.C. § 309(d)(1).

Respectfully submitted,

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Counsel to Competitive Carriers Association

November 3, 2014

EXHIBIT A

**Before the
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DECLARATION OF DOUGLAS HYSLOP

I, Douglas Hyslop, provide the following declaration pursuant to 47 C.F.R. § 1.16:

1. My name is Douglas Hyslop. I am a principal in Wireless Strategy, LLC, a consulting firm that provides business and technology consulting to wireless operators. I work with new entrants and established providers to plan, deploy and operate wireless networks, including researching air interface technologies, developing system requirements and evaluating coverage and capacity issues for providers. Prior to founding Wireless Strategy, LLC, I was a Director of Next Generation Access Technologies for Sprint Nextel Corp. While at Sprint I led the radio access network (“RAN”) technology selection for Sprint’s 2.5 GHz band. At Nextel (prior to its merger with Sprint) I designed, deployed and launched the first iDEN systems in California, and directed the radio frequency (“RF”) engineering department for Nextel’s Houston, San Antonio and Austin markets. I was also instrumental in standardizing national guidelines for RF design, optimization and capacity planning for Nextel. I hold a B.S. in Electrical Engineering from the University of Virginia.

2. I have reviewed the Joint Opposition of AT&T Mobility Spectrum LLC and Club 42 CM Limited Partnership (“Applicants”) filed in response to Competitive Carriers

Association’s Petition to Deny that transaction (the “Joint Opposition”). In the Joint Opposition, the Applicants argue that AT&T’s Lower 700 MHz D and E Block spectrum should not be counted towards the total amount of spectrum it holds below 1 GHz because “AT&T is unable to integrate this unpaired spectrum with its 700 MHz LTE network”¹ Regardless of the technical impediments that may exist today to utilizing unpaired Lower 700 MHz D and E Block spectrum in conjunction with other Lower 700 MHz spectrum frequencies, other options exist that support inclusion of this spectrum in the total amount of below 1 GHz spectrum held by AT&T under the Commission’s spectrum screen.²

3. For example, AT&T may aggregate the Lower 700 MHz D and E Blocks, identified by the Third Generation Partnership Project (“3GPP”) as Band 29, with an existing high-frequency spectrum band like PCS (Band 2). The 700 MHz channel would experience considerably better performance than the PCS forward link channel because of the more favorable radiofrequency propagation characteristics of the 700 MHz spectrum relative to high-frequency band spectrum. Specifically, the 700 MHz LTE channel will typically experience 10 decibels (dB) less attenuation over distance than an equivalent channel in the PCS band. The lower amount of loss increases the available signal strength at the user device. In rural environments, the main factor limiting wireless broadband performance is coverage, whereas interference is the limiting factor in urban environments. Thus, the increase in signal strength from the more favorable propagation of the low-band LTE channel improves the overall signal-to-interference-plus-noise ratio (“SINR”) of the link. The LTE protocol is flexibly capable of

¹ Joint Opposition at 4, n.8.

² The following technical information is in addition to the policy decision reached by the Commission in May 2015 to include Lower 700 MHz D and E Block holdings under its case-by-case spectrum screen review. *See Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, Report and Order, FCC 14-63 at ¶ 178 (2014).

delivering a scalable amount of data to a device, ranging from a few hundred kbps to multiple Mbps depending on the link quality, or SINR, available. With a 10 dB increase in SINR from the more favorable propagation, the 700 MHz channel would deliver three to six times the throughput of the PCS channel. The full value of this enhanced throughput may be leveraged because the reverse link need not match the forward link in throughput, and thus is able to make up the coverage range difference by concentrating power within a small portion of the PCS reverse link channel. With this approach, the device is able to maintain a connection to the network and acknowledge the multiple Mbps stream arriving on the forward link, while delivering a more modest reverse link throughput. Thus, the 700 MHz D and E Blocks would deliver value consistent with their low-frequency nature and comparable to other low-frequency forward link channels even when paired with higher frequency spectrum.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 3, 2014 in Vienna, Virginia.



Douglas Hyslop
Principal, Wireless Strategy, LLC

