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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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Re: Notice of *Ex Parte* Presentation – Response to AT&T Supplemental Information Response; AT&T Mobility Spectrum LLC and Club 42 CM Limited Partnership, Application for Consent to the Assignment of Two Lower 700 MHz B Block Licenses in California; WT Docket No. 14-145

Dear Ms. Dortch:

On March 23, 2015, Rebecca Murphy Thompson of Competitive Carriers Association (“CCA”), and James Barker and Elizabeth Park, of Latham & Watkins LLP, met with Jim Schlichting, Michael Janson, Pramesh Jobanputra, Monica DeLong, Scott Patrick, Johanna Thomas, and Gloria Sheu of the Wireless Telecommunications Bureau (“WTB”). Kate Matraves and Tom Tran of the WTB, Sean Spivey of CCA, and Douglas Hyslop of Wireless Strategy, LLC, participated by phone. During the meeting, the attendees discussed CCA’s Petition to Deny and related pleadings and *ex parte* submissions filed in the above-referenced proceeding.¹ Ms. Thompson and Messrs. Spivey and Hyslop left the meeting prior to any discussions regarding confidential information subject to the Joint Protective Order and NRUF/LNP Protective Order in the above-referenced docket.

¹ See Petition to Deny of Competitive Carriers Association, WT Docket No. 14-145 (filed Oct. 17, 2014); Reply to Joint Opposition, WT Docket No. 14-145 (filed Nov. 3, 2014); CCA Notice of *Ex Parte*, WT Docket No. 14-145 (filed Jan. 14, 2015) (“CCA Reply”); CCA *Ex Parte* Submission, WT Docket No. 14-145 (filed Feb. 18, 2015) (“CCA February 18th *Ex Parte*”); CCA *Ex Parte* Submission – Response to AT&T Supplemental Information Response, WT Docket No. 14-145 (filed Mar. 20, 2015) (“CCA March 20th *Ex Parte*”).

During this meeting, CCA's representatives reiterated that in the San Luis Obispo County, CA CMA340 ("CA-5"), AT&T's proposed acquisition of additional spectrum below 1 GHz triggers the heightened standard of review adopted in the Commission's *Mobile Spectrum Holdings Order* for transactions in which a carrier already holds more than one-third of the below-1-GHz spectrum in the market before taking into account the proposed acquisition of additional below-1-GHz spectrum.² In such cases, the applicants must demonstrate that the public interest benefits clearly outweigh the potential public interest harms associated with acquiring more below-1-GHz spectrum, irrespective of other factors that the Commission typically balances.

In reviewing how this test should be applied, CCA first noted that AT&T's proposed acquisition of Club 42's spectrum presents a case of first impression for applying the Commission's heightened standards. CCA therefore urged WTB to apply the standards in a manner that meaningfully preserves competitive opportunities and protects consumers in CA-5, and to a lesser extent but still important CA-12, where a dominant provider, AT&T, has amassed a significant amount of low-band spectrum and has failed to demonstrate that it needs more of this critical resource to effectively compete in these markets.

With respect to CA-5, where AT&T already holds more than one-third of available low-band spectrum, CCA observed that there was no question either legally or technically that AT&T's current low-band spectrum holdings—including the Lower 700 MHz D and E Blocks—trigger the application of the higher standard. AT&T's arguments as to these latter spectrum Blocks amount to an untimely reconsideration request of the *Mobile Spectrum Holdings Order*, and should not be countenanced as a matter of law. As a technical matter, Mr. Hyslop clarified during the meeting that the improvements to service performance offered by low-band spectrum also apply to the unpaired Lower 700 MHz D and E Block spectrum.³ In particular, AT&T should be capable of utilizing its D and E Block spectrum at near-to-full power by engineering sufficient isolation through proper antenna configuration,⁴ a point AT&T tacitly admits in its March 9th supplemental information response.⁵ In addition, because AT&T holds the neighboring Lower 700 MHz C Block license, it has the opportunity to make greater use of the D and E Blocks than another carrier could, as AT&T can better manage interference and make greater use of this unpaired spectrum.⁶ AT&T's claims of passive intermodulation therefore

² *Policies Regarding Mobile Spectrum Holdings*, Report and Order, 29 FCC Rcd 6133 ¶ 287 (2014) ("*MSH Order*").

³ CCA March 20th *Ex Parte* at 4, Exhibit A ¶¶ 2-3.

⁴ *Id.* at Exh. A ¶ 3.

⁵ Response of AT&T Mobility Spectrum LLC to Supplemental Information Request Dated February 19, 2015, WT Docket No. 14-145 at 5-6 (filed Mar. 9, 2015) (noting that "use of unpaired 700 MHz spectrum for supplemental downlink [could] improve the communications it supplements" through "work on its towers to combat [] interference . . .").

⁶ CCA March 20th *Ex Parte* at Exh. A ¶ 6.

should not be considered when evaluating its spectrum holdings. Mr. Hyslop also discussed assumptions that can be made regarding the lifecycle of AT&T's UMTS deployment over its Cellular spectrum holdings, and how AT&T should be expected to migrate that spectrum to 4G LTE service in the coming years.⁷ Finally, even when Lower 700 D and E Block spectrum is paired with other high-band spectrum, the benefits of this spectrum remain.⁸

Technical inaccuracies aside, CCA also stressed that AT&T still has not met its heightened burden of proof in this proceeding, as it has not adequately demonstrated that the one claimed public interest benefit of the proposed transaction can overcome the significant competitive harm resulting from holding additional low-band spectrum.⁹ Specifically, AT&T fails to demonstrate through technical evidence or otherwise that it is using its spectrum efficiently.¹⁰ Even if it can deploy service relatively quickly on the Lower 700 MHz spectrum it seeks to acquire, AT&T has not explained why it cannot use its existing spectrum to meet its spectrum needs. Given the Commission's findings regarding the competitive harms that exist where a carrier that already holds more than one-third of below-1-GHz spectrum seeks to acquire more,¹¹ AT&T should not be permitted to acquire additional low-band spectrum based solely on its assertion that it can put the spectrum at issue to use. Allowing AT&T to acquire additional low-band spectrum without an adequate demonstration that it is maximizing the use of its spectrum increases the risk that AT&T can use its dominant spectrum position to foreclose competition from smaller rivals.¹²

⁷ *Id.* at Exh. A ¶ 5.

⁸ Notably, AT&T started making devices incorporating Band 29 available as early as mid-2014. *See, e.g.,* Phil Goldstein, *AT&T Unveils LTE Phones that Support 700 MHz Spectrum It Got from Qualcomm*, FierceWireless (July 14, 2014), available at <http://www.fiercewireless.com/story/att-unveils-lte-phone-supports-700-mhz-spectrum-it-got-qualcomm/2014-07-15>. Specifically, the latest iPad and iPhone devices now support Band 29, as do the Samsung Galaxy S5 and S6. Based on AT&T's prior statements related to the limited availability of incorporating band classes into devices, at a minimum it should be presumed that AT&T is seriously considering deploying service via Band Class 29 in the near future. *See, e.g.,* AT&T Notice of *Ex Parte* Presentation, WT Docket No. 12-69 at 2 (filed July 10, 2013) (arguing in the context of the 700 MHz interoperability proceeding that mandating support of additional bands would require the addition of unnecessary components, which would reduce coverage, lower throughput, reduce battery life and compromise the form factor of devices).

⁹ CCA March 20th *Ex Parte* at 5.

¹⁰ CCA February 18th *Ex Parte* at 3.

¹¹ *See MSH Order* ¶¶ 46, 283.

¹² *See* CCA Reply at 13-14.

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If you have any questions regarding this submission, please do not hesitate to contact the undersigned.

Respectfully submitted,

/s/

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