

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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

**RESPONSE OF AT&T MOBILITY SPECTRUM LLC TO
SECOND SUPPLEMENTAL INFORMATION REQUEST DATED MAY 20, 2015**

June 2, 2015

**Response of AT&T Mobility Spectrum LLC to Second Supplemental
Request for Information Dated May 20, 2015**

June 2, 2015

Introduction

AT&T Mobility Spectrum LLC (“Mobility Spectrum”), an indirect wholly-owned subsidiary of AT&T Inc. (collectively, “AT&T”) hereby provides this response (the “Response”) to the letter dated May 20, 2015 from Roger Sherman, Chief of the Wireless Telecommunications Bureau of the Federal Communications Commission (“FCC” or “Commission”), and the Second Supplemental Request for Information for AT&T attached thereto (collectively, the “Second Supplemental Request”). In its request, the FCC asks AT&T (sometimes referred to in the request as the “Company,” as defined therein) to provide as soon as possible documents, data, and other information to complete the Commission’s review of the application of Mobility Spectrum and Club 42 CM Limited Partnership (“Club 42”) for consent to the assignment of two Lower 700 MHz licenses from Club 42 to Mobility Spectrum.

While this response does not include any Confidential or Highly Confidential information pertaining to AT&T specifically, it does reference (and redacts) information obtained from the Numbering Resource Utilization and Forecast (“NRUF”) and Local Number Portability (“LNP”) placed in the record by the Commission pursuant to its Protective Order of September 22, 2014. AT&T has marked these redactions with “[**BEGIN NRUF/LNP INFORMATION**] . . . [**END NRUF/LNP INFORMATION**].” Finally, AT&T has redacted Highly Confidential information contained in Club 42’s response to its General Information Request, and has marked the redactions with “[**BEGIN CLUB 42 HIGHLY CONFIDENTIAL INFORMATION**] . . . [**END CLUB 42 HIGHLY CONFIDENTIAL INFORMATION**].”

The redacted Response is marked “**REDACTED – FOR PUBLIC INSPECTION**” and is being filed electronically in the Commission’s Electronic Comment Filing System (“ECFS”).

The Highly Confidential, unredacted Response is marked, “**HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO JOINT PROTECTIVE ORDER IN WT DOCKET NO. 14-145 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION – ADDITIONAL COPYING RESTRICTED**” and is being delivered to the Secretary.

Additional copies of the unredacted Response are being delivered as instructed in the Second Supplemental Request. No additional documents have been produced in connection with the Second Supplemental Request.

RESPONSES

1. REQUEST:

In California 5-San Luis Obispo, AT&T already holds 49 megahertz of below-1-GHz spectrum, which comprises more than one-third of currently suitable and available below-1-GHz spectrum and, as a result of the Proposed Transaction, would increase its holdings to 61 megahertz of such spectrum. The Commission stated in the Mobile Spectrum Holdings Report and Order that the leading nationwide providers hold most of the low-band spectrum available today, and 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. The Commission also concluded that, where an 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 will need to clearly outweigh the potential public interest harms, irrespective of other factors. In order to make such a demonstration, provide a detailed explanation, consistent with the Commission’s conclusions about the importance of low-band spectrum, for why the proposed acquisition of this specific Lower 700 MHz B Block below-1-GHz spectrum would not raise rivals’ costs or foreclose competition such that the ability of rival service providers to offer a competitive response to any potential anticompetitive behavior on the part of AT&T would be eliminated or significantly lessened. Provide all documents relied on in preparing the response.

RESPONSE:

AT&T’s proposed acquisition of the Club 42 Spectrum does not pose any significant risk of anticompetitive effects, nor would it “raise rivals’ costs or foreclose competition such that the

ability of rival service providers to offer a competitive response to any potential anticompetitive behavior.” *First*, AT&T’s competitors in this market have sufficient spectrum assets – including low-band spectrum – to compete effectively with AT&T. There is little risk of anticompetitive effects where, as here, competitors have the spectrum resources and ability to offer an effective competitive response to any attempt to behave in an anticompetitive manner. *Second*, this spectrum acquisition neither enables AT&T to raise prices nor prevents AT&T’s competitors from lowering prices. Indeed, because, as the Commission has recognized, the competitors in this market price and advertise services at a national level, and therefore the threat of anticompetitive impact from the acquisition of a single spectrum license in a single county is remote at best. In fact, AT&T’s acquisition of this license would leave AT&T with the same amount of low-band spectrum in California 5 – San Luis Obispo as it already holds in adjacent California markets, and there is no indication that AT&T’s low band spectrum holdings in those areas have had any effect other than to enhance competition by making AT&T a more effective competitor. *Third*, the Club 42 licenses were offered openly through a broker. Accordingly, other carriers were not “foreclosed” but instead had the same opportunity as AT&T to purchase the Club 42 Licenses. **[BEGIN CLUB 42 HIGHLY CONFIDENTIAL INFORMATION]**

[END CLUB 42 HIGHLY CONFIDENTIAL INFORMATION].

As a preliminary matter, as has been explained extensively in this proceeding, there are obvious efficiencies for AT&T in having a 10 x 10 MHz LTE deployment. The Department of Justice (“DOJ”) has recognized that “there may be substantial efficiencies associated with

ownership of relatively large blocks of spectrum” and that “there may be capital cost efficiencies associated with deploying larger blocks of spectrum.”¹ As AT&T has explained, approval of this transaction would enable AT&T to expand its 700 MHz LTE deployment from a 5 x 5 MHz configuration to a 10 x 10 MHz configuration, enabling AT&T to take advantage of the significant technical advantages associated with such a deployment. Indeed, DOJ further notes that “[e]ven if a carrier has not yet identified a use for specific spectrum to accommodate its customers' data consumption, deploying the spectrum can provide a significant increase in user throughput at relatively low cost.”² As a result, DOJ cautions that the FCC “should not needlessly prevent carriers from assembling spectrum portfolios that can take advantage of these efficiencies.”³ The Commission has echoed this finding and stated that such an LTE deployment enhancement carries significant public interest benefits.⁴ The Commission has found such acquisitions to be particularly beneficial where, as here, the acquired 700 MHz block previously had been lying fallow.⁵

AT&T's Competitors Have Sufficient Spectrum to Compete with AT&T. AT&T's competitors in the California 5 – San Luis Obispo CMA have sufficient spectrum assets – including low-band spectrum – to compete effectively with AT&T. The DOJ has noted that “the

¹ *Ex Parte* Submission of the United States Department of Justice, WT Docket No. 12-269, at 15 (Apr. 11, 2013) (“DOJ April 11 *Ex Parte*”).

² *Id.*

³ *Id.*

⁴ *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, FCC 15-53, ¶¶ 52-53 (2015) (“*AT&T/Plateau Order*”).

⁵ *Id.* at ¶ 53.

‘foreclosure value’ [of spectrum] does not reflect consumer value; to the contrary, it represents the private value of foreclosing competition by, for instance, forestalling entry or expansion that threatens to inject additional competition into the market.”⁶ Here, however, AT&T’s competitors in the market already have significant spectrum holdings to enable them to compete effectively and to offer a competitive response to any potential anticompetitive conduct. Specifically, in this county Verizon Wireless has 47 megahertz of low-band spectrum (a cellular authorization in addition to the 22 MHz Upper 700 MHz license), as well as 10 MHz of PCS spectrum, 30 MHz of contiguous AWS-1 spectrum, and a 10 x 10 MHz AWS-3 license. Sprint has 14 MHz of 800 MHz SMR spectrum, as well as 20 MHz of contiguous PCS spectrum, the 10 MHz G Block, and appears to have the entire BRS/EBS band – 196 MHz of contiguous spectrum. T-Mobile has 12 MHz of Lower 700 MHz A Block spectrum, 20 MHz of contiguous PCS spectrum (B & E Blocks) and 40 MHz of contiguous AWS spectrum (D, E & F Blocks).

Notwithstanding their spectrum holdings, neither Sprint nor T-Mobile has deployed extensively outside of the urban areas in this market. Publicly available coverage data from Sprint and T-Mobile’s websites demonstrates that neither carrier has deployed outside of the most populated areas of the county. The fact that Sprint and T-Mobile have not deployed a network on their low-band spectrum or on *any* spectrum band in large portions of the county indicates that they have sufficient resources to expand both their coverage and capacity. Moreover, it would not be uneconomical for them to do so – AT&T’s previously provided coverage maps illustrate that AT&T has deployed high band coverage in large portions of the county (*e.g.*, the southeast) where T-Mobile and Sprint have no coverage at all. This establishes

⁶ DOJ April 11 *Ex Parte* at 11. See also *Policies Regarding Mobile Spectrum Holdings*, Report and Order, 29 FCC Rcd 6133, ¶ 43 (2014) (“*Mobile Spectrum Holdings Order*”).

plainly that lack of access to low band spectrum is not an economic bar for Sprint or T-Mobile to expand coverage into these areas. Moreover, as noted above, both Sprint and T-Mobile *have* access to low band spectrum.

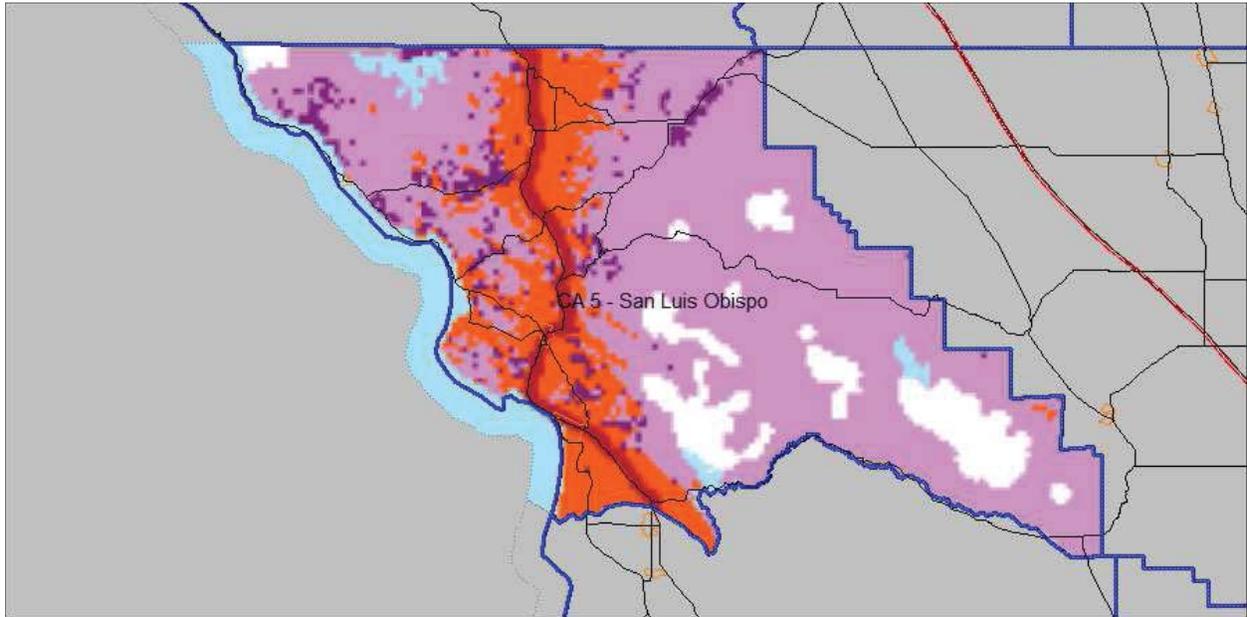


Figure 1: Sprint Coverage Map as of May 22, 2015⁷
Orange indicates 4G LTE data coverage, dark purple indicates 3G data coverage, light purple indicates off-network roaming, and white indicates no coverage.

⁷ See <https://coverage.sprint.com/IMPACT.jsp#!/> (last accessed May 22, 2015).

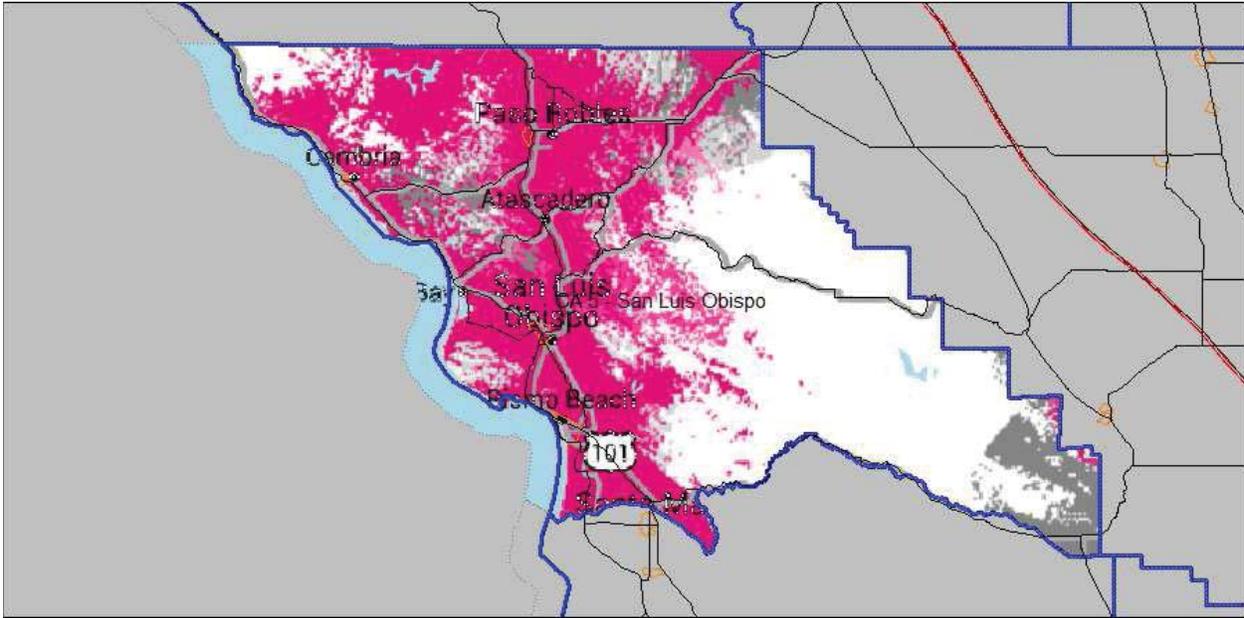


Figure 2: T-Mobile Coverage Map as of May 22, 2015⁸

Dark magenta indicates 4G LTE coverage, medium magenta indicates 4G coverage, light magenta indicates 3G coverage, dark grey indicates 2G coverage, light grey indicates partner (roaming) coverage, and white indicates no coverage.

However, in this market [BEGIN NRUF/LNP CONFIDENTIAL INFORMATION]

[END NRUF/LNP CONFIDENTIAL INFORMATION]⁹

And clearly, [BEGIN NRUF/LNP CONFIDENTIAL INFORMATION]

⁸ See <http://www.t-mobile.com/coverage.html> (last accessed May 22, 2015).

⁹ Derived from NRUF/LNP data supplied in this proceeding.

[END NRUF/LNP

CONFIDENTIAL INFORMATION]¹⁰

In short, each carrier in the California 5 – San Luis Obispo market has the resources to compete effectively, and all carriers compete on the basis of price, network quality, coverage, and capacity. Because each of AT&T’s competitors has sufficient low and high band spectrum to compete effectively in the market, [BEGIN NRUF/LNP CONFIDENTIAL

INFORMATION]

[END

NRUF/LNP CONFIDENTIAL INFORMATION], there is no possibility of foreclosure, nor does the Club 42 License have foreclosure value.

Acquisition of the Club 42 License Does Not Enable AT&T to Raise Prices or Prevent Competitors From Lowering Prices. One argument advanced by the Department of Justice and endorsed by the Commission in the *Mobile Spectrum Holdings Order*, is the notion that “the value of keeping spectrum out of competitors’ hands could be very high. For example, if competitors acquire spectrum to provide broader service offerings, expand coverage, or increase capacity, prices for existing customers would fall, threatening the margins being earned.”¹¹ As noted above, AT&T’s acquisition of the Club 42 Spectrum in this market could not prevent its competitors from expanding coverage or increasing capacity. Nor would the acquisition of the Club 42 Spectrum enable AT&T to raise prices or prevent AT&T’s competitors from lowering prices.

First, all four competitors in this CMA price and advertise their services on a national level, not locally. As the Commission itself has noted, “certain elements of the provision of

¹⁰ *Id.*

¹¹ DOJ April 11 *Ex Parte* at 11. *See also Mobile Spectrum Holdings Order* at ¶ 43.

mobile wireless services are national in scope,” including “key variables such as pricing, development of equipment, and service plan offerings.”¹² This is certainly true for the national carriers, and as a result, prices are highly unlikely to be affected by the assignment of a single license covering a single county. Indeed, when the Commission recently granted AT&T’s application to acquire spectrum from Plateau Wireless, it noted that “two key competitive variables – monthly pricing and service plan offerings – do not vary for most providers across most geographic markets,” and added that “AT&T, Verizon Wireless, Sprint, and T-Mobile, as well as some other providers, set the same rates for a given plan everywhere and advertise nationally.”¹³ Reduced to its essence, the “foreclosure” argument is that AT&T reaps a benefit from acquiring Club 42’s spectrum because it will be able to levy supra-competitive prices in San Luis Obispo County by denying competitors the capacity to expand – a theory that is directly contradicted by the existing precedent on the way carriers set prices. In fact, given AT&T’s schedule for deployment in the market, the proposed acquisition will rapidly increase mobile capacity in the market, which should increase competition and benefit consumers.

Second, even if pricing were not set at a national level, all of the other competitors in this CMA have the ability to effectively constrain any attempt by AT&T to raise prices or reduce output. As noted above, all of the competitors in this CMA already have access to sufficient low and high band spectrum to expand coverage and capacity. Moreover, the national carriers’ advertising reflects vigorous price competition.¹⁴ Accordingly, there is no basis to suggest, even

¹² *Mobile Spectrum Holdings Order* at ¶ 263.

¹³ *AT&T/Plateau Order* at ¶ 19, n. 70 (2015).

¹⁴ *See, e.g.*, Sprint, “Cut Your Rate in Half,” at <https://www.youtube.com/watch?v=NqO40mzDdgE> (last accessed May 28, 2015); T-Mobile, “Switch Without a Hitch,” at <https://www.youtube.com/watch?v=OjAAqYFMBaw> (last

if pricing were local, that any attempt to unilaterally raise prices in San Luis Obispo would not be met with effective competitive responses from all of the other national carriers. In short, there is no basis to infer that the acquisition of a single license in a single county would affect competition “such that the ability of rival service providers to offer a competitive response to any potential anticompetitive behavior” would be “eliminated or significantly lessened.”

Data Regarding Adjacent Markets Shows That AT&T’s Possession of Contiguous Low Band Spectrum Would Not Harm Competition. One need look no farther than adjacent markets to see that AT&T’s acquisition of contiguous low-band spectrum holdings in California 5 – San Luis Obispo will not harm competition. The two CMAs where AT&T proposes to acquire spectrum from Club 42 are adjoined by six neighboring markets.¹⁵ AT&T’s acquisition of the Club 42 spectrum in California 5 – San Luis Obispo and California 12 – Kings would cause AT&T’s low-band spectrum portfolio in these two markets to match exactly with four of the six surrounding CMAs. In the remaining two, the only difference will be that AT&T does not hold the Lower 700 MHz E Block¹⁶ which, as AT&T has explained previously, is not a band that should be considered the equivalent of paired low-band spectrum.¹⁷ And yet, **[BEGIN NRUF/LNP CONFIDENTIAL INFORMATION]**

accessed May 28, 2015); Verizon, “Virtually Everything |\$80|10 Promo,” at <https://www.youtube.com/watch?v=0eqiHCiH4rs> (last accessed May 28, 2015).

¹⁵ These CMAs are Oxnard-Simi Valley-Ventura, CA (CMA 73), Fresno, CA (CMA 74), Bakersfield, CA (CMA 94), Santa Barbara-Santa Maria-Lompoc, CA (CMA 124), Salinas-Seaside-Monterey, CA (CMA 126), and Visalia-Tulare-Portersville, CA (CMA 150).

¹⁶ These two CMAs are Fresno, CA and Visalia-Tulare-Portersville, CA.

¹⁷ See AT&T Response to Supplemental Information Request, at 4-6.

[END NRUF/LNP CONFIDENTIAL INFORMATION] It is clear, then, that the fact that AT&T has a consistent low-band spectrum profile across adjacent markets is no guarantee that market shares will be consistent across the region. The fact that competing carriers [BEGIN NRUF/LNP CONFIDENTIAL INFORMATION]

[END NRUF/LNP CONFIDENTIAL INFORMATION] demonstrates that AT&T's low-band spectrum holdings alone do not impact the competitive position of AT&T's competitors.

Club 42 Employed a Broker. AT&T's acquisition of this spectrum cannot possibly be considered to have a foreclosure effect when [BEGIN CLUB 42 HIGHLY CONFIDENTIAL INFORMATION]

[END CLUB 42 HIGHLY CONFIDENTIAL INFORMATION] As Club 42 previously noted, [BEGIN CLUB 42 HIGHLY CONFIDENTIAL INFORMATION]

[END CLUB 42 HIGHLY CONFIDENTIAL INFORMATION]¹⁸ In addition, [BEGIN CLUB 42 HIGHLY CONFIDENTIAL INFORMATION]

¹⁸ See Club 42 Response to General Information Request.

[END CLUB 42

HIGHLY CONFIDENTIAL INFORMATION]¹⁹

Thus, the Commission should reject arguments that this transaction would foreclose other parties from acquiring the Club 42 Licenses. As an initial matter, legally the Commission may not consider whether the public interest would be better served if the Club 42 Licenses were assigned a party other than AT&T.²⁰ Moreover, there is direct evidence that other carriers were not foreclosed from obtaining the licenses. Indeed, “other rival service providers had the opportunity to acquire [the Club 42 licenses] on the secondary market if they had chosen to do so.”²¹

In conclusion, there is no basis to assume that this transaction would harm competition in any way, much less “raise rivals’ costs or foreclose competition.” AT&T’s competitors in the California 5 – San Luis Obispo CMA all have access to substantial amounts of spectrum – including low-band spectrum. Further, all of the competitors in this market are national carriers who make pricing decisions on a national level, but even if pricing were set locally, competition in this CMA is vigorous, and all competitors have the ability to offer an effective competitive response in response to any potential anticompetitive conduct. Indeed, the intense competition in neighboring CMAs where AT&T’s low-band spectrum position is the same as it will be in San Luis Obispo, further demonstrates that there is no basis to assume that AT&T’s acquisition of contiguous 700 MHz spectrum in this CMA would threaten any competitive harm. Finally, there

¹⁹ *Id.*

²⁰ 47 U.S.C. § 310(d) (“[I]n acting thereon the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or a license to a person other than the proposed transferee or assignee.”).

²¹ *AT&T/Plateau Order* at ¶ 35.

can be no foreclosure where, as in this case, other rival service providers had the opportunity to purchase the assets in question and did not. The public interest benefits that would flow from this transaction are plain and substantial, and clearly outweigh the potential public interest harms, which are highly unlikely. AT&T therefore asks the Commission to promptly conclude its review of this transaction and grant the application of AT&T and Club 42.