

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Application of AT&T Mobility Spectrum LLC)	WT Docket No. 15-79
and East Kentucky Network, LLC for Consent to)	File No. 0006672533
Assign Licenses)	

PETITION TO DENY OF T-MOBILE USA, INC.

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PETITION TO DENY OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”)¹ respectfully petitions the Federal Communications Commission (“Commission”) to deny the application² for the proposed assignment of Lower 700 MHz licenses for spectrum in CMA 110 (Huntington-Ashland, WV/KY/OH), CMA 116 (Lexington-Fayette, KY), and CMA 448 (Kentucky 6 – Madison) held by East Kentucky Network, LLC (“East Kentucky”) (collectively “the Markets”) to AT&T Mobility Spectrum LLC, an indirect wholly-owned subsidiary of AT&T Inc. (collectively “AT&T”) in the above-captioned proceeding.³

I. INTRODUCTION AND SUMMARY

T-Mobile is a nationwide provider of mobile telephony and broadband. Spectrum is a crucial input for the company, especially below-1-GHz, or “low-band,” spectrum that travels farther distances in rural areas and penetrates buildings more deeply than higher frequency spectrum. T-Mobile and the consumers it serves, including in the Markets in this proceeding, will have fewer competitive choices and opportunities as a direct result of the increasing

¹ T-Mobile USA, Inc. is a wholly owned subsidiary of T-Mobile US, Inc., a publicly traded company.

² See ULS File No. 0006672533 (filed Feb. 17, 2015) (“Application”).

³ *AT&T Mobility Spectrum LLC and East Kentucky Network, LLC Seek FCC Consent to the Assignment of Three Lower 700 MHz C Block Licenses in Kentucky, Ohio, and West Virginia*, WT Docket No. 15-79, Public Notice, DA 15-617 (rel. May 21, 2015) (“Public Notice”).

consolidation of scarce low-band spectrum resources by AT&T and Verizon. Thus, T-Mobile is a party in interest with standing to submit this petition.⁴

The Commission has repeatedly acknowledged the dominance of AT&T and Verizon in the market for mobile wireless broadband and the potential for harm to competition resulting from the concentrated power of these two companies.⁵ The United States Department of Justice (“DOJ”) has joined the Commission in recognizing these carriers’ motives to use their dominant positions to impair competitors’ access to critical spectrum inputs, particularly spectrum below 1 GHz, which has unique and highly valuable propagation characteristics that allow greater coverage quality at less cost to deploy as compared to spectrum above 1 GHz.⁶ Recognizing the importance of low-band spectrum, the Commission has adopted policies to ensure that consumers have competitive alternatives for high-quality, affordable broadband services. In last year’s *Mobile Spectrum Holdings Order*, the Commission decided to treat holdings of spectrum below 1 GHz as an “enhanced factor” in evaluating secondary market spectrum transactions if the transaction would result in a carrier holding more than one-third of the suitable and available below-1-GHz spectrum in the market.⁷

The license assignments sought in the Application would result in AT&T holding more than one-third of the spectrum below 1 GHz in the Huntington-Ashland and Lexington-Fayette CMAs. Although six entities currently hold low-band spectrum in these Markets, this

⁴ 47 C.F.R. § 1.939(a).

⁵ See, e.g., *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd 5411, 5426–27 ¶ 27 (2011) (citing concerns about the incentives of the two largest providers to offer reasonable roaming); *Policies Regarding Mobile Spectrum Holdings*, Report and Order, 29 FCC Rcd 6133, 6168 ¶ 68 (2014) (“*MSH Order*”) (citing concerns that low-band spectrum is disproportionately concentrated in the hands of the two largest providers).

⁶ See *MSH Order*, 29 FCC Rcd at 6165 ¶ 62. See also United States Department of Justice, *Ex Parte* Submission, WT Docket No. 12-269 at 1–2 (filed May 14, 2014) (“*2014 DOJ Ex Parte*”); United States Department of Justice, *Ex Parte* Submission, WT Docket No. 12-269 at 2, 12–13 (filed Apr. 11, 2013) (“*2013 DOJ Ex Parte*”).

⁷ *MSH Order*, 29 FCC Rcd at 6239 ¶ 283.

transaction, if approved, will eliminate one of them entirely.⁸ Verizon and AT&T control most of the low-band resources in these markets: They each hold more than 36 megahertz of low-band spectrum in CMA 110 and CMA 116. No other competitor holds more than 14 megahertz of low-band spectrum, and T-Mobile holds no low-band spectrum in any of the Markets.⁹ AT&T already controls *over 50% of the Lexington market*.¹⁰ Verizon and Sprint are the second and third largest competitors, with roughly 21% and 16% of the market, respectively.¹¹ Prepaid wireless provider TracFone has a nearly 7% market share. T-Mobile has 41,977 subscribers in the Lexington region—a roughly 4% market share—making it the smallest competitor in the area.¹² T-Mobile needs access to low-band spectrum in order to better compete in that area against AT&T’s commanding market share.

In the Charleston-Huntington market, which encompasses CMA 110, AT&T is even more dominant, controlling more than 60% of the market compared to Verizon’s almost 23% and Sprint’s approximately 12% market share.¹³ T-Mobile has no presence in the Charleston-Huntington area, and it needs low-band spectrum to begin providing competitive, affordable wireless services to consumers in CMA 110.

AT&T has failed to meet the applicable heightened standards for demonstrating that the proposed transaction is in the public interest when balanced with the serious anticompetitive risks posed by the increased concentration of below-1-GHz spectrum. Rather, AT&T flouts the *Mobile Spectrum Holdings Order* by insisting that the proposed transaction “demonstrate[s] on

⁸ ULS File No. 0006672533 Ex. 4 *Competitors*, 1–3.

⁹ *Id.*

¹⁰ KPMG StreamShare – April 2015 Report. Market share figures are calculated by Designated Market Area (“DMA”).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

[its] face” that it will not “undermine policies” or rules of the Commission.¹⁴ This assertion, of course, cannot be true given the Commission’s finding that “any transaction that would result in an entity holding approximately one-third or more of suitable and available below-1-GHz spectrum will more likely . . . cause competitive harm.”¹⁵ AT&T’s Application ignores the heightened evidentiary standard set forth in the *Mobile Spectrum Holdings Order*.

Rather than ignore the relevant standard, AT&T must address the high bar for transactions that propose spectrum concentrations in excess of one-third of the available low-band resources that the Commission established to protect consumers. The Commission, meanwhile, must enforce its well-reasoned “enhanced factor” analysis in a manner that meaningfully protects consumers against the increased market position that this transaction would allow AT&T to achieve. With this acquisition, AT&T will prove far more able to exclude competitors, raise their costs, damage their businesses and ultimately lessen competition in the Markets. Consumers in the Markets, which have a low population density with a high percentage of low-income consumers, will suffer from reduced competitive choice, less innovation, and higher quality-adjusted prices if the Commission allows AT&T to further entrench its growing duopoly with Verizon.

The competitive harms resulting from the proposed transaction greatly outweigh any potential benefits AT&T has or could advance; therefore, the Commission should deny the Application as inconsistent with the public interest, convenience, and necessity.¹⁶

¹⁴ ULS File No. 0006672533 Ex. 1 *Description of Transaction and Public Interest Statement*, 2 (“*Public Interest Statement*”).

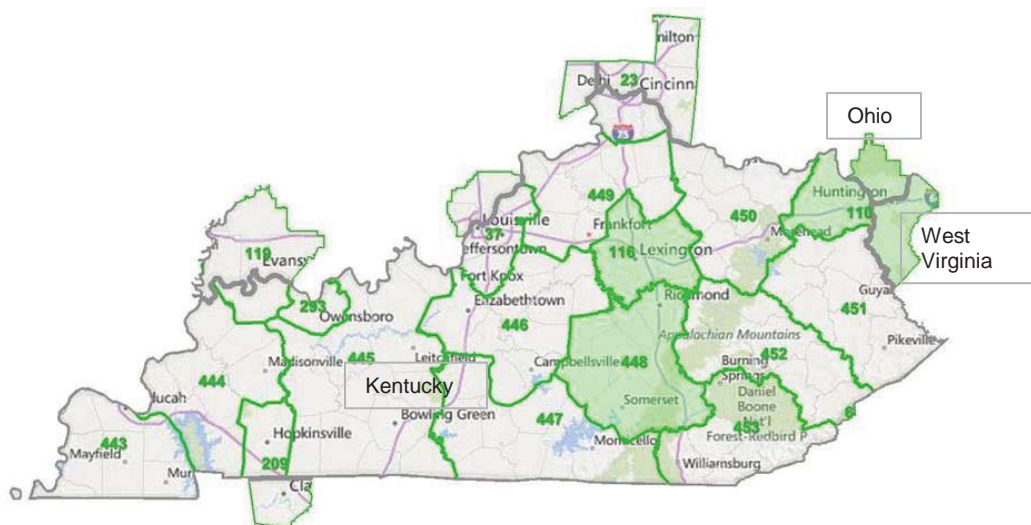
¹⁵ *MSH Order*, 29 FCC Rcd at 6240 ¶ 286.

¹⁶ 47 C.F.R. § 1.939(d).

II. LOW-BAND SPECTRUM IS CRITICAL FOR COMPETITIVE WIRELESS SERVICES

Low-band spectrum exhibits unique propagation characteristics that enable wireless carriers to provide higher coverage quality at lower deployment costs than is possible with high-band spectrum.¹⁷ In the *Mobile Spectrum Holdings Order*, the Commission relied on technical studies, theoretical and empirical propagation models, and customer surveys to conclude that spectrum below 1 GHz has “distinct propagation advantages for network deployment over long distances, while also reaching deep into buildings and urban canyons.”¹⁸ Spectrum above 1 GHz, although also important for mobile broadband deployment, cannot compare in terms of indoor penetration and expansive coverage.¹⁹

In rural areas such as the Markets (indicated below in green), which include central and northeastern Kentucky as well as parts of West Virginia and Ohio, mountainous terrain makes antenna search rings smaller, and practical impediments such as lack of power or road connectivity make tower siting difficult.²⁰



¹⁷ *MSH Order*, 29 FCC Rcd at 6160 ¶ 54.

¹⁸ *Id.* at 6135, 6160 ¶¶ 3, 54.

¹⁹ *Id.* at 6160 ¶ 54.

²⁰ Letter from Trey Hanbury, Counsel to T-Mobile to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, WT Docket No. 12-269 (Apr. 1, 2014), Declaration of Mark McDiarmid at 15–18 (“McDiarmid Declaration”).

The superior propagation of low-band spectrum allows a carrier to serve a larger geographic area while using fewer transmitters, resulting in lower deployment and operating costs that can be passed on to consumers.²¹ Low-band signals cover more territory than high-band signals, allowing providers to overcome the costs of operating in lower population density areas.²² In general, wireless operators require roughly eight times as many cell sites using higher-band spectrum to cover the same area using 700 MHz.²³

In more urban and suburban areas like Lexington, low-band spectrum's greater in-building penetration also increases the quality of service to users and provides greater access to 911 and other emergency communications.²⁴ As the Commission has observed, "skyrocketing consumer demand for mobile broadband" necessitates increased throughput for mobile broadband applications, which in turn requires greater deployment of spectrum with greater capabilities for coverage and in-building penetration.²⁵ Low-band spectrum is ideally suited for meeting these needs.²⁶

Because of the distinct features and important benefits of low-band spectrum, the Commission considers this scarce resource crucial to competitive service and has sought to ensure that multiple providers are able to obtain access to spectrum below 1 GHz. The *Mobile Spectrum Holdings Order* concluded that access by multiple providers to a mix of low-band and high-band spectrum is "essential for ensuring the robust competition that drives lower prices,

²¹ *MSH Order*, 29 FCC Rcd at 6162 ¶ 58.

²² See Letter from Trey Hanbury, Counsel to T-Mobile to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268, WT Docket No. 12-269 at 3 (filed Apr. 23, 2015).

²³ *Id.* at 6–7 ("It would take roughly 8 cell sites using 1.9 GHz spectrum to cover the same area as one base station using 700 MHz, and at least 13 cell sites at 2.5 GHz to cover the same area as one 700 MHz tower. . . . Because mid-band spectrum's weaker in-building capabilities and poorer propagation over distance make coverage expansions comparatively expensive to implement, operating exclusively with higher frequency spectrum requires disproportionately large capital expenditures." (quoting McDiarmid Declaration at 17–18, 20)).

²⁴ *MSH Order*, 29 FCC Rcd at 6162 ¶ 58.

²⁵ *Id.* at 6157 ¶ 47.

²⁶ *Id.*

higher quality, and increased innovation.”²⁷ The DOJ, which is the federal agency responsible for enforcing the antitrust laws and promoting competition and which has significant expertise in telecommunications issues, has similarly found that low-band spectrum is “important in determining a carrier’s ability to compete in offering coverage across a broad service area.”²⁸ When evaluating the competitive impact of wireless transactions, the DOJ considers whether merging wireless carriers have a particularly strong position in low-frequency spectrum.²⁹

Spectrum below 1 GHz is scarce: there is only 134 megahertz of low-band spectrum, a fraction of the total amount of spectrum suitable and available for the provision of mobile broadband service.³⁰ The Commission has observed that AT&T and Verizon present an especially substantial risk to competition because of the companies’ overwhelming control over low-band spectrum.³¹ AT&T and Verizon together have amassed a significant portion of the available low-band spectrum. Both companies, through their predecessors-in-interest, were granted initial cellular licenses in the 1980s for free, and today hold more than 90 percent of the cellular spectrum.³² Moreover, AT&T and Verizon together hold more than 70 percent of the 700 MHz spectrum.³³ The Commission estimates that AT&T and Verizon hold approximately 73 percent of all low-band spectrum nationwide.³⁴ To compare, Sprint and T-Mobile as the third and fourth largest nationwide providers together hold approximately 15 percent of the low-band spectrum.³⁵

²⁷ *Id.* at 6184–85 ¶ 118.

²⁸ 2013 DOJ *Ex Parte* at 2, 11, 14.

²⁹ *Id.* at 12–14.

³⁰ *MSH Order*, 29 FCC Rcd at 6156–57 ¶ 46. Even with a successful auction of 600 MHz spectrum, low-band spectrum will continue to be only a small fraction of suitable and available spectrum for mobile broadband.

³¹ *Id.* at 6156–57 ¶¶ 45–47.

³² *Id.* at ¶ 46.

³³ *Id.*

³⁴ *Id.* at 6162 ¶ 58.

³⁵ *Id.*

AT&T and Verizon’s dominance is especially problematic in rural areas, where the Commission has found that the concentration of low-band spectrum in the holdings of the Big Two providers “makes it difficult for rural consumers to have access to the competition and choice that would be available if more wireless competitors also had access to low-band spectrum.”³⁶ In this case, CMAs 110, 116, and 448 are rural, hilly,³⁷ and low-band spectrum is essential to provide widespread, cost-effective, high-quality service for consumers.³⁸

III. APPLYING THE “ENHANCED FACTOR” TEST WOULD EFFECTUATE THE PRO-COMPETITIVE AIMS OF THE MOBILE SPECTRUM HOLDINGS ORDER

Low-band spectrum’s critical importance to wireless competition and concerns over further concentration of spectrum holdings below 1 GHz by AT&T and Verizon spurred the Commission to solicit comments for appropriate policies to account for the different characteristics of spectrum bands when evaluating spectrum transactions.³⁹ The Commission resolved to view spectrum holdings below 1 GHz as an “enhanced factor” in the Commission’s review of the competitive impact of secondary market spectrum transactions.⁴⁰ The Commission designed a heightened standard of review to combat competitive harms resulting from the highly concentrated holdings of low-band spectrum by the two largest carriers.⁴¹

The test AT&T must satisfy is clear. In transactions such as the one proposed here by AT&T and East Kentucky where the acquiring party does not currently hold more than one-third of the below-1-GHz spectrum in a market but will upon consummation of the transaction, the

³⁶ *Id.* at 6161 ¶ 56.

³⁷ See University of Kentucky, *Kentucky Topographic Map Image Download Center*, <http://www.uky.edu/KGS/gis/krweb/> (last accessed June 13, 2015).

³⁸ See Tom Wheeler, FCC Chairman, *Getting the Incentive Auction Right*, Official FCC Blog (Apr. 18, 2014, 12:32 PM), <https://www.fcc.gov/blog/getting-incentive-auction-right> (explaining that low-band spectrum is “particularly important in rural areas”).

³⁹ *Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, Notice of Proposed Rulemaking, 27 FCC Rcd 11710, 11725–28 ¶¶ 35–38 (2012).

⁴⁰ *MSH Order*, 29 FCC Rcd at 6217, 6233, 6240 ¶¶ 212, 267, 287.

⁴¹ *Id.* at 6156 ¶ 45.

acquiring party must provide “a detailed demonstration regarding why the public interest benefits outweigh harms.”⁴² The Commission implemented this standard to mitigate the potential for competitive and other public interest harms.⁴³ Unless the acquiring entity proves “by a preponderance of the evidence . . . that the proposed transaction . . . will serve the public interest,” then the transaction “will more likely be found to cause competitive harm in [the Commission’s] case-by-case review” of the application.⁴⁴ AT&T must therefore present the Commission with sufficiently persuasive evidence to prove its assertion that the proposed transactions will more likely than not provide public benefits that outweigh public harms.⁴⁵

Under this standard, the Commission determines the extent of competitive harm by weighing the following factors: the number of rival service providers in the market; the number of rival firms that can offer competitive service plans; coverage by technology of these firms’ respective networks; rival firms’ market shares; the amount of spectrum suitable for the provision of mobile telephony/broadband services available to both the combined entity as well as rival service providers; the acquisition of below-1-GHz spectrum nationwide; and concentration in a particular band with an important ecosystem.⁴⁶ The Commission noted in the *Mobile Spectrum Holdings Order* that these areas of inquiry are not exhaustive. The Commission may also consider how the acquiring party uses its current spectrum holdings, whether the additional spectrum would facilitate more robust data roaming, the level of special access competition in the market, and opportunities for designated entities.⁴⁷ The Commission has had few opportunities to apply the “enhanced factor” test to concentrations of more than one-

⁴² *Id.* at 6240 ¶ 286.

⁴³ *Id.* at 6239 ¶ 285.

⁴⁴ *Id.* at 6239–6240 ¶¶ 285–86.

⁴⁵ The preponderance of the evidence standard usually requires the moving party to present superior evidence and enough to “incline a fair and impartial mind to one side of the issue rather than the other.” Black’s Law Dictionary (9th ed. 2009).

⁴⁶ *MSH Order*, 29 FCC Rcd at 6239 ¶ 284.

⁴⁷ *Id.*

third of all available low-band spectrum. Here, AT&T must prove by a preponderance of the evidence that the public benefits of the proposed transaction outweigh the competitive and other public interest harms of this transaction – a showing AT&T has failed to make.

IV. AT&T’S PROPOSED ACQUISITION THREATENS TO HARM COMPETITION AND THE PUBLIC INTEREST

To satisfy the Commission’s spectrum screen criteria, AT&T must establish that the proposed acquisition of low-band spectrum will not harm the public interest. Here AT&T has failed to meet its substantial burden of demonstrating that the “enhanced factor” criteria for its proposed acquisition of more than one-third of the below-1-GHz spectrum in CMAs 110 and 116 are satisfied.⁴⁸

AT&T filed an initial Public Interest Statement with its application on February 17, 2015.⁴⁹ After the Commission requested detailed information on AT&T’s planned 4G LTE deployment, how the company would use the East Kentucky spectrum holdings, and how and when deployment of a 10 x 10 MHz LTE network would improve spectrum efficiency, AT&T filed a response on June 4, 2015.⁵⁰ Neither the *Public Interest Statement* nor the *AT&T Response* provides the Commission with sufficient evidence to find that the proposed transaction’s public benefits will outweigh its competitive and other public interest harms.

⁴⁸ In CMA 448, AT&T proposes to hold 43 out of 134 megahertz of available low-band spectrum, just 1.67 megahertz under one-third of all available low-band spectrum. *Competitors* at 2–3. The acquisition of spectrum in CMA 448 is not a stand-alone transaction, but rather part of a larger transaction demanding enhanced factor review. Where closely related markets are acquired in a single transaction, the Commission should apply its enhanced factor standard to the transaction as a whole. Even if a different standard were to apply to CMA 448, AT&T still has failed to demonstrate the public interest benefits of the transaction in this area. The Commission must determine whether the proposed transaction is in the public interest, considering factors such as increased aggregation of below-1-GHz spectrum and other potential competitive harms. *MSH Order*, 29 FCC Rcd at 6221–22 ¶ 225. The Commission should reject AT&T’s application in CMA 448 because the competitive harms of increased low-band spectrum aggregation outweigh any perceptible public benefits.

⁴⁹ *Public Interest Statement* at 1.

⁵⁰ AT&T, *Response of AT&T to General Information Request Dated May 21, 2015*, WT Docket No. 15-79, 3–7 (filed June 4, 2015) (“*AT&T Response*”).

Under the proposed transaction, AT&T would be assigned 12 megahertz of below-1-GHz spectrum in each county in all three Markets. After this acquisition, AT&T would hold more than 45 megahertz of the 134 megahertz (that is: more than one-third) of currently suitable and available low-band spectrum in CMA 110 (Huntington-Ashland, WV/KY/OH) and CMA 116 (Lexington-Fayette, Kentucky).⁵¹

AT&T's *Public Interest Statement* ignores key portions of the *Mobile Spectrum Holdings Order* by concluding that the proposed assignment presents “no spectrum aggregation or other competitive concerns.”⁵² AT&T bases this conclusion on the fact that it will not “exceed the Commission’s initial ‘screen.’”⁵³ The “screen” to which the *Public Interest Statement* refers is the 194 megahertz screen for *all* spectrum—AT&T does not mention the Commission’s special screen for aggregation of low-band spectrum.

When it comes to treating high- and low-band spectrum differently, AT&T wants to have it both ways. In the *Public Interest Statement*, the company touts the public benefits of low-band spectrum while at the same time ignoring the heightened standard the Commission set forth when scrutinizing transfer of low-band spectrum. AT&T points out that deployments in the 700 MHz band “enable AT&T to offer faster, higher quality services to its customers in the affected markets” and thus “serve the public interest.”⁵⁴ The company even ventures that “the proposed transaction will *enhance* competition by enabling AT&T to be a more effective competitor.”⁵⁵ This assertion is hardly plausible. In CMAs 110 and 116 post-transaction, the other dominant

⁵¹ *Public Notice* at 1–2. In the third market included in the proposed transaction, CMA 448 (Kentucky 6 – Madison), AT&T would hold 43 of 134 megahertz of the low-band spectrum, just shy of one-third. *Id.* at 1. In CMAs 110 and 116, AT&T already holds 43 megahertz of the low-band spectrum, and in CMA 448, AT&T currently holds 31 megahertz. *Competitors* at 1–3.

⁵² *Public Interest Statement* at 1 (emphasis added). The *Public Interest Statement* mentions the *Mobile Spectrum Holdings Order* only twice: Once to explain which spectrum bands the Commission will include in its initial screen, and again to state that the revised screen is 194 megahertz. *Id.* at 4, nn. 13, 14.

⁵³ *Id.* at 4.

⁵⁴ *Id.* at 3.

⁵⁵ *Id.* (emphasis added).

carrier, Verizon, would hold 47 megahertz of low-band spectrum, while the provider with the third-largest low-band spectrum holdings, Sprint, would hold only 14 megahertz. The average spectrum holding across all competitors in these two markets currently stands at 19.4 megahertz.⁵⁶ As such, AT&T's pre-transaction 37 megahertz in CMAs 110 and 116 already make it a stronger competitor than most, and indeed, AT&T has a majority market share in both markets.⁵⁷

The standard of review AT&T suggests the Commission should use to assess its application dates from 2007. AT&T blatantly ignores the now-mandatory "enhanced factor" of the low-band spectrum aggregation test. Instead, AT&T insists the Commission should employ a straightforward balancing test, with no burden on the acquiring party to prove any aspect of its argument for the transaction.⁵⁸ AT&T would fail even the ordinary burden applicants must carry to demonstrate an application serves the public interest. But AT&T's *Public Interest Statement*, apparently drafted in the misplaced belief that it does not have to follow the Commission's demand of proving public interest "by a preponderance of the evidence,"⁵⁹ follows an outdated standard and is doubly inadequate. AT&T's conclusion that no competitive harm will result simply because it will not eliminate *all* local competitors⁶⁰ lends no value to the company's argument.

⁵⁶ *Competitors* at 1–2.

⁵⁷ AT&T and Verizon, unlike any other competitor in the Markets, hold sufficient spectrum for a 10 x 10 MHz low-band LTE deployment. Larger aggregations of contiguous low-band spectrum allow carriers to balance demand across spectrum resources, improve resource utilization, and maximize spectrum efficiency, and 10 x 10 deployments are an "essential element of a robust wireless network." Letter from Neville Ray, Chief Technology Officer, T-Mobile to Chairman Wheeler, GN Docket No. 12-268, WT Docket No. 12-269 at 5 (filed June 2, 2015).

⁵⁸ *Public Interest Statement* at 1, nn. 1, 2 (citing *Applications of AT&T Inc. and Dobson Communications Corporation For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd 20295 ¶¶ 2, 10 (2007)).

⁵⁹ In the *Mobile Spectrum Holdings Order*, the Commission stated that "the applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest." *MSH Order*, 29 FCC Rcd at 6239 ¶ 285.

⁶⁰ *Public Interest Statement* at 5.

The proposed transaction would actually eliminate one of AT&T's competitors. East Kentucky Network, doing business as Appalachian Wireless, would cease to hold any spectrum in the Markets post-transaction.⁶¹ Four competitors would remain. Only one, Verizon, holds sufficient spectrum to be capable of a 10 x 10 MHz low-band LTE deployment, while the rest would hold no more than 14 megahertz of low-band spectrum each.⁶² T-Mobile does not hold any low-band spectrum in the Markets, and if given the opportunity to acquire some, T-Mobile would be able to create a bigger presence in the market it currently serves (CMA 116) and enter the market it currently does not (CMA 110).⁶³ If T-Mobile rather than AT&T acquired the spectrum currently held by East Kentucky, the number of competitors using low-band spectrum in the Markets would remain the same. T-Mobile has a proven track record of quickly deploying spectrum once acquired. After acquiring 700 MHz A block spectrum in separate transactions last year and earlier this year, T-Mobile will nearly triple its LTE coverage area from 600,000 square miles at the end of 2014 to 1.6 million square miles by the end of 2015. And T-Mobile continues to seek to acquire additional low-band spectrum throughout the United States where T-Mobile does not face foreclosure level pricing from the two dominant carriers, AT&T and Verizon.

AT&T's primary public interest argument is that the transaction will provide the company with access to more contiguous spectrum, resulting in a more efficient 4G LTE deployment.⁶⁴ While the potential efficiencies of contiguous spectrum may benefit AT&T, the Commission's recently updated analysis requires more compelling reasons than this to overcome

⁶¹ *Competitors* at 1–3. Appalachian Wireless markets itself as “Eastern Kentucky’s leading provider of high quality telecommunications products” and is “the *only* locally-owned and operated cellular carrier to deploy CDMA technology.” Appalachian Wireless, *About Us*, <http://www.appalachianwireless.com/?page=aboutus> (last visited June 12, 2015) (emphasis in original).

⁶² *Competitors* at 1–3.

⁶³ *Id.*

⁶⁴ *Public Interest Statement* at 3.

the likely competitive harms that would result from allowing AT&T to stockpile additional, scarce low-band spectrum. As the Commission’s General Counsel recently observed, “the [Commission’s] public interest standard also supports the pursuit of values that do not stand or fall on efficiency gains,” and the Commission expands “the contours of competition to include broader public interest considerations.”⁶⁵

While AT&T asserts that enabling 10 x 10 MHz LTE deployments is in the public interest, the company *already* has sufficient contiguous low-band spectrum in all three Markets to accommodate a 10 x 10 MHz deployment, making the proposed transaction superfluous.⁶⁶ This transaction appears to be no more than an attempt by AT&T to eliminate a local competitor, foreclose others from efficiently entering or improving their competitive positions, and further entrench its dominance by amalgamating large swaths of spectrum in a region where it already controls more than half of the market share.⁶⁷

The application does not serve the public interest and would impose a special hardship on consumers, who face severe financial challenges and have few, if any, competitive choices for mobile communications and cost-effective access to the Internet. The area encompassing the Markets is highly impoverished: 18 of the 20 counties across the three Markets have poverty rates above the national average,⁶⁸ and Casey County, Kentucky in CMA 448 is one of the

⁶⁵ Jonathan Sallet, General Counsel, FCC, *Remarks at the Duke Law Center for Innovation Policy Conference*, 5–6 (Oct. 17, 2014), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db1017/DOC-330010A1.pdf.

⁶⁶ *Competitors* at 1–3. AT&T holds 25 megahertz of the Cellular A block in CMA 110 and 25 megahertz of the Cellular B block in CMAs 116 and 448. *Id.*

⁶⁷ *See* Competitive Carriers Association, Comments In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capacity to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 12-228 at 8–9 (filed Sep. 20, 2012).

⁶⁸ Poverty USA, *Poverty Map*, <http://www.povertyusa.org/the-state-of-poverty/poverty-map-county/> (last accessed June 12, 2015).

poorest in the country.⁶⁹ More Americans every year are relying solely on smartphones for access to the Internet,⁷⁰ and low-income consumers are especially likely to be smartphone-dependent: 13% of adults making less than \$30,000/year rely entirely on phones for Internet connectivity, compared to 7% of all adults nationwide.⁷¹ The region's economic plight is exacerbated by its remoteness, making mobile telephony and broadband connectivity crucial.⁷² Higher wireless bills arising from reduced competition would hit the people in the Markets currently served by East Kentucky especially hard. Competitive, low-cost services are an essential part of economic revitalization and community connectivity. This transaction, if approved, will only serve to further entrench the growing duopoly of the dominant providers, reduce consumer choice and increase prices.

V. CONCLUSION

T-Mobile urges the Commission to deny the proposed license assignment transaction. In its *Mobile Spectrum Holdings Order*, the Commission adopted rules to protect consumers against the harms that result from precisely the type of excessive spectrum concentration AT&T proposes in its application. AT&T has failed to show how the demonstrable harm of excessive low-band spectrum concentration that will result from permitting these transactions is outweighed by the ostensible benefit to AT&T from amassing yet more critical low-band spectrum resources in these markets. At a minimum, AT&T has not established by a

⁶⁹ The Census Bureau estimates Casey County's per capita income to be \$15,603 per year, about one-third of the per capita income in Washington, DC. United States Census Bureau, *Casey County QuickFacts*, <http://quickfacts.census.gov/qfd/states/21/21045.html> (last accessed June 12, 2015); United States Census Bureau, *District of Columbia QuickFacts*, <http://quickfacts.census.gov/qfd/states/11000.html> (last accessed June 12, 2015) (estimating Washington's per capita income to be \$45,290 per year).

⁷⁰ Pew Research Center, *U.S. Smartphone Use in 2015* 2–3 (Apr. 1, 2015). Pew found that 7% of Americans are “smartphone-dependent” (having a smartphone but no broadband connectivity at home), and 7% of rural Americans are smartphone-dependent. *Id.* at 18.

⁷¹ *Id.*

⁷² See Annie Lowrey, *What's the Matter With Eastern Kentucky?*, N.Y. Times Magazine, June 29, 2014, at MM13.

preponderance of evidence that the demonstrable public interest harms are so outweighed by the ostensible benefits to AT&T that they overcome the presumption against excessive spectrum concentration the Commission adopted in the *Mobile Spectrum Holdings Order*.⁷³

Respectfully submitted,

/s/ Andrew W. Levin

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June 22, 2015

⁷³ The Commission stated that a transaction resulting in one entity holding more than one-third of the low-band spectrum in a market is “more likely [to] be found to cause competitive harm” because of “concerns about the potential effects of further concentration of below-1-GHz spectrum on competition and innovation in the mobile wireless services marketplace.” *MSH Order*, 29 FCC Rcd at 6239–40 ¶¶ 283, 286.

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Application of AT&T Mobility Spectrum LLC)	WT Docket No. 15-79
and East Kentucky Network, LLC for Consent to)	File No. 0006672533
Assign Licenses)	

AFFIDAVIT OF DIRK MOSA

1. My name is Dirk Mosa. I am submitting this Affidavit in support of T-Mobile USA, Inc.'s ("T-Mobile") Petition to Deny the Application of AT&T Mobility Spectrum LLC and East Kentucky Network, LLC for Consent to Assign Licenses.

2. I am the Senior Vice President, Corporate Development and Roaming at T-Mobile. I joined T-Mobile International in April of 1994 in Bonn, Germany, and later joined T-Mobile in September of 2001 after the successful completion of the Deutsche Telekom/VoiceStream merger. My responsibilities include mergers and acquisitions, Federal Communications Commission spectrum auctions and other spectrum acquisitions, and domestic and international roaming, among other responsibilities.

3. I have reviewed the Petition to Deny and, to the best of my knowledge, information and belief, the facts set forth therein are true and correct.

I, Dirk Mosa, hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

/s/ Dirk Mosa

Dirk Mosa

Executed on June 22, 2015