

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of:)
)
AT&T MOBILITY SPECTRUM LLC)
and EAST KENTUCKY NETWORK, LLC) File No. 0006672533
) WT Docket No. 15-79
For Commission Consent to the Assignment)
of Three Lower 700 MHz C Block Licenses)
in Kentucky, Ohio, and West Virginia)

OPPOSITION TO PETITION TO DENY

East Kentucky Network, LLC d/b/a Appalachian Wireless (“EKN”), by its attorneys and pursuant to § 1.939(f) of the Commission’s Rules and Public Notice, DA 15-617 (May 11, 2015), hereby opposes the petition to deny filed by T-Mobile USA, Inc. (“T-Mobile”)¹ with respect to the above-captioned application for Commission consent to the assignment of the Lower 700 MHz C Block licenses in CMA 110 (Huntington-Ashland, WV/KY/OH), CMA 116 (Lexington-Fayette, KY) and CMA 448 (Kentucky 6-Madison) from EKN to AT&T Mobility Spectrum LLC (“AT&T”), and states as follows:

T-Mobile correctly notes that EKN “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.’” Petition at 13 n.61. However, as the parties disclosed in their assignment application,² and as EKN addressed in its response to the Commission’s General Information Request,³ EKN did not construct 700 MHz facilities in CMAs 110, 116 and 448, and

¹ See Petition to Deny of T-Mobile USA, Inc., WT Dkt. No. 15-79 (June 22, 2015) (“Petition”).

² See File No. 0006672533, FCC Form 603, at 9.

³ See Letter from Roger C. Sherman to W. A. Gillum, WT Dkt. No. 15-79 (May 21, 2015).

it does not provide service in those markets.⁴ Therefore, T-Mobile was incorrect when it alleged that the consummation of the proposed assignment of the 700 MHz licenses “would actually eliminate one of AT&T’s competitors.” Petition at 61. The transaction will effect no change in the “total number of rival service providers” in the three CMAs, which is a factor the Commission should consider. *Policies Regarding Mobile Spectrum Holdings*, 29 FCC Rcd 6133, 6239 (2014).

The Commission should afford little weight to T-Mobile’s claims that: (1) it needs low-band spectrum in order to “better compete” with AT&T in CMA 116, and to “begin providing competitive, affordable wireless services to consumers in CMA 110,” Petition at 3; and (2) “if given the opportunity to acquire some [low-band spectrum, it] 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).” *Id.* at 13. In fact, T-Mobile was given the opportunity to purchase EKN’s 700 MHz spectrum in CMAs 110, 116 and 448, but it declined to make an offer for any of the low-band spectrum.⁵ Apparently, T-Mobile made the business decision that it would not pursue the acquisition of the low-band spectrum it claims to need to compete with AT&T in CMA 116 and to enter the market in CMA 110.

It also appears that T-Mobile is claiming to be a party in interest with respect to markets in which it has little interest. The Commission should reject T-Mobile’s attempt to use this particular proceeding as a soapbox from which to espouse its views on how spectrum below 1 GHz should be treated in the evaluation of secondary market transactions. The Petition should be summarily denied.

⁴ See Letter from David L. Nace to Marlene H. Dortch, WT Dkt. No. 15-79, at 3 (June 4, 2015).

⁵ See *infra* Declaration of Edward D. Moise, Jr. at 1-2 (June 30, 2015).

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Russell D. Lukas" and "David L. Nace".

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July 2, 2015

DECLARATION OF EDWARD D. MOISE, JR.

I, Edward D. Moise, Jr., declare the following:

1. I am a Managing Partner of Alpina Capital, LLC (“Alpina”), which is a FINRA-registered broker/dealer investment banking company headquartered in Denver, Colorado, and head the New Orleans, Louisiana branch office of the firm. Alpina specializes in mergers, acquisitions, private placement of equity and debt, restructuring and advisory services, focusing on rural telecom and energy services.

2. Alpina is a leader in the emerging spectrum market. In particular, it has successfully completed more than fifty-three 700 MHz transactions since the conclusion of Auction 73, and currently has six transactions pending approval from the FCC. The firm believes that this transaction volume is more than any other investment bank. Alpina has been involved in the sale of 700 MHz systems and spectrum to AT&T, United States Cellular Corporation, and other wireless carriers. Those transactions include spectrum in the 700 MHz A, B and C Blocks and involve outright sales for cash and/or spectrum swaps.

3. In July 2014, East Kentucky Network, LLC (“EKN”) authorized Alpina to contact all companies that may have an interest in purchasing the Lower 700 MHz C Block licenses it holds for CMA 110 (Huntington-Ashland, WV/KY/OH), CMA 116 (Lexington-Fayette, KY), and CMA 448 (Kentucky 6-Madison). I contacted T-Mobile USA, Inc. (“T-Mobile”) on August 3, 2014 by emailing Mr. Scott Sundblad, of T-Mobile’s Corporate Development group a presentation that indicated that the aforementioned licenses were for sale and the demographic and economic highlights associated with each market. AT&T, DISH, Sprint, US Cellular, and Bluegrass Cellular all received the same package within two business days of August 3, 2014.

4. By August 18, 2014, DISH, Sprint, US Cellular, and Bluegrass Cellular had all

communicated to Alpina that they were not interested in the licenses. On that date, AT&T submitted a letter to Alpina stating their interest in the licenses offered by EKN. I contacted Scott Sundblad by telephone to see if T-Mobile was interested in making an offer for the licenses. Mr. Sundblad stated that they were only interested in paying prices close to that at which EKN acquired the licenses. He declined to submit a written offer for the licenses, either whole or in part, or verbally indicate a specific price at which T-Mobile would be interested in purchasing the licenses. Alpina's independent valuation of the spectrum and AT&T's initial offer for the spectrum were significantly higher than EKN's original purchase price.

5. I declare under penalty of perjury that the foregoing is true and correct. Executed on June 30, 2015.

 _____
Edward D. Moise, Jr.

CERTIFICATE OF SERVICE

I, Linda J. Evans, hereby certify that on this 2nd day of July, 2015, I provided copies of the foregoing OPPOSITION TO PETITION TO DENY by e-mail in pdf format or, alternatively, by first-class mail, postage prepaid, to the following:

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/s/ Linda J. Evans