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July 2, 2015

VIA ECFS

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

Re: WT Docket No. 14-145

Dear Ms. Dortch:

Pursuant to the Protective Order in this proceeding,¹ T-Mobile USA, Inc. (“T-Mobile”), hereby submits the attached redacted copy of T-Mobile’s letter in support of the Petition to Deny of Competitive Carriers Association in the above referenced docket.²

Pursuant to the Protective Order in this proceeding, the Highly Confidential, unredacted version of this document has been filed in the above-referenced docket via hand delivery to the Secretary’s Office.

Respectfully submitted,

/s/ Trey Hanbury
Trey Hanbury

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¹ See *AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership Application for Consent to the Assignment of Two Lower 700 MHz B Block Licenses in California*, WT-Docket No. 14-145, Joint Protective Order, DA 14-1378 (WTB, rel. Sep. 22, 2014) (“Protective Order”).

² Petition to Deny of Competitive Carriers Association, WT Docket No. 14-145 at 8 (Oct. 17, 2014) (“CCA Petition to Deny”).

The logo for Hogan Lovells, featuring the name "Hogan Lovells" in a white serif font on a solid yellow-green square background.

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July 2, 2015

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

Re: ***Ex Parte Submission***
AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership Application for
Consent to the Assignment of Two Lower 700 MHz B Block Licenses in California;
WT Docket No. 14-145; Application File No. 0006344543

Dear Ms. Dortch:

T-Mobile USA, Inc. (“T-Mobile” or the “Company”)¹ respectfully submits these comments in support of the Petition to Deny submitted by Competitive Carriers Association (“CCA”)² against the proposed assignment of low-band spectrum licenses from Club 42CM Limited Partnership (“Club 42”) to AT&T Mobility Spectrum LLC (“AT&T”).³ The transaction would exacerbate low-band spectrum concentration far beyond levels the Commission has identified as cause for concern.⁴ Despite multiple information requests from the Commission, AT&T has repeatedly failed to satisfy its burden of demonstrating how further low-band spectrum aggregation would promote the public interest in competition, consumer choice,

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

² Petition to Deny of Competitive Carriers Association, WT Docket No. 14-145 at 8 (Oct. 17, 2014) (“*CCA Petition to Deny*”).

³ See ULS Application File No. 0006344543 (filed Aug. 1, 2014) (the “*Application*”); *AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership Application for Consent to the Assignment of Two Lower 700 MHz B Block Licenses in California*, Public Notice, WT-Docket No. 14-145, DA 14-288 (rel. Sep. 8, 2014) (the “*Public Notice*”).

⁴ *Policies Regarding Mobile Spectrum Holdings*, Report and Order, 29 FCC Rcd 6133, 6143, ¶ 16 (2014) (“*Mobile Spectrum Holdings Report and Order*” or “*MSH Order*”). The Commission has held that “policies that would allow . . . further concentration in below-1-GHz spectrum in secondary market transactions without enhanced scrutiny, would raise significant competitive issues.” *Id.*

deployment, and innovation under the “enhanced factor” review applicable to this case or even under the less demanding standards of review that would apply in far less concentrated markets.

AT&T has not demonstrated a compelling need for additional low-band spectrum resources. Nor has AT&T explained why any one of a number of reasonable alternatives to spectrum aggregation, such as network densification and improved technology, would not satisfy any purported increase in demand AT&T might document. AT&T has also failed to make a particularized showing of exactly how ostensible demand increases in these markets require the aggregation of additional low-band spectrum by the dominant provider of services rather than the use of capacity-enhancing measures that would prove far less damaging to consumer choice and competition. Because AT&T has failed to satisfy its burden of showing that the public benefits “clearly outweigh” the potential public interest harms,⁵ the Commission must deny AT&T’s proposed low-band spectrum acquisition as CCA has requested and allow other parties an opportunity to acquire the spectrum resources necessary to challenge AT&T’s dominant position in these markets.

I. THE EXCESSIVE CONCENTRATION OF LOW-BAND SPECTRUM IS HARMING CONSUMERS AND THREATENING COMPETITION.

AT&T’s proposed low-band spectrum acquisition from Club 42 essentially asks the FCC to roll back the high standard for spectrum aggregation that the agency adopted only last year. In its *Mobile Spectrum Holdings Report and Order*, the Commission acknowledged the danger that excessive concentrations of low-band spectrum present and adopted rules that would address those risks. In that *Order*, the Commission adopted an “enhanced factor” review process for transactions involving low-band spectrum. The Commission took these steps to “protect against the risk that further concentration of spectrum, particularly low-band spectrum, would have significant effects on competition in the marketplace in the foreseeable future.”⁶

The Commission stated that its decisions in the *Mobile Spectrum Holdings Report and Order* “will have a significant impact on the extent to which competition may flourish for years to come.”⁷ As the FCC analyzes the many pending low-band acquisitions in excess of the newly established spectrum aggregation threshold that AT&T has sought since adoption of the *MSH Order*,⁸ the Commission must enforce its rules to ensure that the proposed transactions will

⁵ *MSH Order*, 29 FCC Rcd at 6240, ¶ 287.

⁶ *Id.* at 6135, ¶ 5.

⁷ *Id.* at 6158, ¶ 48.

⁸ See *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*, Public Notice, WT Docket No. 15-79, DA 15-617 (May 21, 2015); *AT&T Inc. and Kaplan Telephone Company, Inc. Seek FCC Consent to the Assignment of Cellular and Lower 700 MHz Licenses*, Public Notice, 29 FCC Rcd 11602 (Sep. 30, 2014); *AT&T Inc. and Pine Cellular Phones, Inc. Seek FCC Grant of Long-Term De Facto Transfer Spectrum Leasing Applications Involving Lower 700 MHz and Personal Communications Service Licenses in Arkansas and Oklahoma*, Public Notice, 30 FCC Rcd 2882 (Apr 2, 2015); *AT&T Inc. and Kanokla Telephone Association Seek FCC Consent to the Assignment of Two Lower 700 MHz Licenses in Kansas and Oklahoma*, Public Notice, 29 FCC Rcd 14460 (Dec. 2, 2014); *AT&T Mobility Puerto Rico Inc. and Worldcall Inc. Seek FCC Consent to the Assignment of Lower*

actually serve the public interest. Allowing AT&T or Verizon to expand their already significant low-band spectrum holdings without a rigorous review process would deprive consumers of the benefits of a competitive wireless market. Further spectrum consolidation by AT&T would deny non-dominant carriers access to a critical input they need to compete.

A. *Low-band spectrum is a competitive necessity that is largely held by the two dominant carriers.*

The Commission has explained that low-band spectrum enjoys unique propagation characteristics that make it a critical input for robust network deployments. In its *Mobile Spectrum Holdings Report and Order*, the Commission explained that low-band spectrum has “significantly greater propagation advantages”⁹ compared to mid- or high-band spectrum. Specifically, the Commission acknowledged that “low-band spectrum is less costly to deploy and provides higher coverage quality,” while “[d]eploying 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.”¹⁰ The FCC similarly found that high-band spectrum is “far less effective in providing for the growing demand for in-building use.”¹¹

The Department of Justice (“DOJ”) has found that the “competitive environment in wireless markets hinges on the availability of spectrum,” and that “low-frequency spectrum . . . has superior propagation characteristics” compared to other spectrum bands.¹² The DOJ added that its Antitrust Division carefully considers the relative low-band spectrum holdings of wireless carriers when it reviews mergers.¹³ The DOJ concluded that “spectrum policies that promote competition and enhance the potential for entry and expansion in the wireless market play a vital role in protecting, and indeed enhancing, the competitive dynamic to the benefit of American consumers.”¹⁴ The DOJ also recently explained that it “is concerned that acquisitions of [low-band] spectrum, whether at auction *or through other transactions*, by carriers that already control

700 MHz Licenses, Public Notice, 29 FCC Rcd 14528 (Dec. 2, 2014); *AT&T Inc. and Cellular Properties, Inc. Seek FCC Consent to the Assignment of Two Cellular A Block Licenses, Point-to-Point Microwave Licenses, and an International Section 214 Authorization*, Public Notice, WT Docket No. 15-78, DA 15-608 (May 20, 2015); *AT&T Mobility Spectrum LLC and Consolidated Telephone Company Seek FCC Consent to the Assignment of Two Lower 700 MHz C Block Licenses in Minnesota*, Public Notice, 29 FCC Rcd 14826 (Dec. 11, 2014).

⁹ *MSH Order*, 29 FCC Rcd at 6160, ¶ 54.

¹⁰ *Id.* at 6164, ¶ 60.

¹¹ *Id.*

¹² United States Department of Justice, *Ex Parte* Submission, WT Docket No. 12-269 at 12 (Apr. 11, 2013) (“*DOJ 2013 Submission*”). See also Letter from William J. Baer, Assistant Attorney General, U.S. Department of Justice to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-269 (May 14, 2014) (“*DOJ 2014 Submission*”); Letter from William J. Baer, Assistant Attorney General, U.S. Department of Justice to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-269 (June 24, 2015) (“*DOJ 2015 Submission*”).

¹³ *DOJ 2013 Submission* at 13-14.

¹⁴ *Id.* at 8.

large percentages of the available low-frequency spectrum, could be used to create or enhance market power.”¹⁵

Verizon and AT&T have both acknowledged that low-band spectrum allows for the cost-effective deployment of network infrastructure and is therefore essential to competitiveness. A Verizon executive noted “[s]pectrum below 1 GHz has greater propagation capabilities and therefore may require less infrastructure to deploy.”¹⁶ AT&T’s Chairman and CEO similarly stated that 700 MHz spectrum “propagates like a bandit,” thereby requiring “fewer cell sites to get a good quality signal.”¹⁷ Verizon and AT&T may know the benefits of low-band spectrum because they hold so much of it. The two largest providers hold 73 percent of the low-band spectrum that is currently suitable and available for deployment,¹⁸ much of which they received in the form of cost-free grants before the FCC received authority to auction spectrum licenses.¹⁹

This excessive concentration of low-band spectrum prompted the Commission to adopt the *Mobile Spectrum Holdings Report and Order*. By creating a reserve of low-band spectrum in the 600 MHz auction and reviewing low-band transactions using an enhanced factor, the FCC sought to comply with its statutory mandate to avoid excessive concentration of licenses and to disseminate licenses to a variety of entities.²⁰ The Commission has explicitly concluded that further concentration of low-band spectrum would “substantially harm the public interest.”²¹ Given these findings, AT&T’s attempt to further consolidate its low-band holdings is both alarming and astonishing. If the enhanced factor adopted in the *MSH Order* is to offer consumers any meaningful benefit, the FCC must deny the application.

B. Application of the enhanced factor in the Commission’s transaction review must prevent further anticompetitive concentration of low-band spectrum.

In the *Mobile Spectrum Holdings Report and Order*, the Commission adopted rules that provide for a case-by-case analysis of proposed secondary market spectrum transactions. Whether or not the Commission approves any given transaction depends on a determination of

¹⁵ *DOJ 2015 Submission* at 2 (emphasis added).

¹⁶ Reply Comments of Verizon Wireless, WT Docket 12-269 (Jan. 7, 2013), Exhibit 2, Declaration of William H. Stone, Executive Director of Network Strategy, Verizon, ¶ 7.

¹⁷ *AT&T’s Randall Stephenson on the Network’s Strength*, FORTUNE (July 18, 2012), <http://fortune.com/2012/07/18/transcript-atts-randall-stephenson-on-the-networks-strength/>.

¹⁸ *MSH Order*, 29 FCC Rcd at 6168, ¶ 68.

¹⁹ *See id.* at 6157, ¶ 46. While AT&T has accused Sprint and T-Mobile of spreading “myths” about the source of its low-band spectrum (*see* Joan Marsh, *Old Whine in New Bottles*, AT&T PUBLIC POLICY BLOG (Apr. 29, 2015), <http://www.attpublicpolicy.com/fcc/old-whine-in-new-bottles/>), it should address those complaints to the Commission, which explained “Verizon Wireless and AT&T each were the beneficiaries from their predecessors in interest of one of the two initial cellular licenses that were granted to an incumbent local exchange carrier and a new entrant in the 1980s, and have since further increased their spectrum holdings within [the Cellular] band.” *MSH Order*, 29 FCC Rcd at 6157, ¶ 46.

²⁰ 47 U.S.C. § 309(j). *See MSH Order*, 29 FCC Rcd at 6161, ¶ 56 (explaining that the restrictions placed on spectrum holdings would promote the statutory policies of Section 309(j)).

²¹ *Id.* at 6168, ¶ 68.

whether the proposed assignment or transfer is in the public interest.²² As it first explained when analyzing the Cingular-AT&T transaction,²³ the Commission uses a “spectrum screen” to help identify markets where increased spectrum concentration poses particular concern.²⁴ Commission review is also not limited to those markets identified by the screen:²⁵ it may consider a variety of factors when analyzing a transaction, including, among other things, “the total number of rival service providers; the number of rival firms that can offer competitive service plans; the coverage by technology of the firms’ respective networks; the rival firms’ market shares; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; the spectrum holdings of each of the rival service providers; the acquisition of below-1-GHz spectrum nationwide; and concentration in a particular band with an important ecosystem.”²⁶

Based on the competitive importance of low-band spectrum, the Commission has explained it will treat the concentration of below-1-GHz spectrum as an “enhanced factor” in its case-by-case review.²⁷ In the *MSH Order*, the FCC stated that “any transaction that would result in an entity holding approximately one-third or more of suitable and available [low-band] spectrum will more likely be found to cause competitive harm.”²⁸ For such a transaction, the acquiring party must provide “a detailed demonstration regarding why the public interest benefits outweigh harms,”²⁹ and unless the acquiring entity proves by a preponderance of the evidence that the proposed transaction will serve the public interest, the Commission will generally deny the application.

Furthermore, the Commission has explained that “even greater concerns [exist] where the proposed transaction would result in an assignee or transferee that *already* holds approximately one-third or more of the below-1-GHz spectrum in a market acquiring additional [low-band] spectrum, especially with regard to paired low-band spectrum.”³⁰ The FCC will generally block these types of transactions unless the public interest benefits “clearly outweigh the potential

²² See 47 U.S.C. § 310(d) (“No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.”).

²³ *Application of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21569-70, ¶¶ 106-109 (2004).

²⁴ See *MSH Order*, 29 FCC Rcd at 6221-22, ¶¶ 225-227.

²⁵ See *id.* at 6222, ¶ 227 (“[W]e find it in the public interest not to limit our analysis of potential competitive harms to solely those markets identified by the initial screen, if we encounter other factors that may bear on the public interest inquiry.”).

²⁶ *Id.* at 6239, ¶ 284.

²⁷ *Id.* at 6239, ¶ 283.

²⁸ *Id.* at 6240, ¶ 286.

²⁹ *Id.*

³⁰ *Id.* at 6240, ¶ 287 (emphasis added).

public interest harms associated with such additional concentration of below-1-GHz spectrum, irrespective of other factors.”³¹

The Commission adopted these heightened standards for review due to “concerns about the potential effects of further concentration of below-1-GHz spectrum on competition and innovation in the mobile wireless services marketplace.”³² These concerns are no less pressing today than when the Commission adopted the *Mobile Spectrum Holdings Report and Order*. If anything, given AT&T’s many proposed low-band transactions that implicate enhanced factor review, it is particularly important that the Commission establish a strong precedent by requiring AT&T to carry the burden of proof and show the concrete public interests that will flow from the transactions. As Competitive Carriers Association explained in its Petition to Deny, “[f]ailing to give teeth to the measures adopted in the *Mobile Spectrum Holdings Order* would perpetuate the dominance of AT&T and Verizon to the detriment of consumers.”³³

II. THE PUBLIC INTEREST BENEFITS OFFERED BY AT&T ARE FLAWED AND UNPERSUASIVE.

The transaction proposed here would involve AT&T acquiring the Lower 700 MHz B block licenses in CMA340 (California 5 – San Luis Obispo) and CMA347 (California 12 – Kings). Both licenses consist of 12 megahertz of low-band spectrum that will be directly contiguous to AT&T’s Lower 700 MHz C block licenses in those markets. In CMA340, AT&T already holds 49 megahertz of low-band spectrum, which is more than one-third of the spectrum below 1 GHz that is suitable and available in the market, and would hold 61 megahertz of low-band spectrum post-transaction. In CMA347, AT&T holds 43 megahertz of low-band spectrum, and would hold 55 megahertz post-transaction. The transaction represents exactly the type of further concentration of low-band spectrum that the Commission feared when it explained that increased aggregation of low-band spectrum would present a “substantial likelihood of competitive harm.”³⁴

On no less than four occasions, AT&T has had the opportunity to explain how the benefits of the proposed transaction “clearly outweigh”³⁵ the potential public interest harms that flow from increased concentration of low-band spectrum.³⁶ Despite these opportunities, the

³¹ *Id.*

³² *Id.* at 6239, ¶ 283.

³³ *CCA Petition to Deny* at 8.

³⁴ *MSH Order*, 29 FCC Rcd at 6164, ¶ 60.

³⁵ *Id.* at 6240, ¶ 287.

³⁶ AT&T has failed to justify the transaction in its initial Public Interest Statement and its three subsequent responses to FCC information requests. See *Application*, Exhibit 1; Response of AT&T Mobility Spectrum LLC to General Information Request Dated September 22, 2014, WT Docket No. 14-145 at 6-8 (Oct. 6, 2014) (“*AT&T General Information Request Response*”); Response of AT&T Mobility Spectrum LLC to Supplemental Information Request Dated February 19, 2015, WT Docket No. 14-145 at 8 (Mar. 9, 2015) (“*AT&T Supplemental Information Request Response*”); Response of AT&T Mobility Spectrum LLC to Second Supplemental Information Request Dated May 20, 2015, WT Docket No. 14-145 at 7 (June 2, 2015) (“*AT&T Second Supplemental Information Request Response*”).

record remains incomplete and, in any case, AT&T has failed to meet the substantial burden of enhanced factor review. The ostensible public interest benefits identified by AT&T fall into two main categories: the ever-present and nominal “efficiency” benefits of greater spectrum contiguity, and the alleged cost-saving for AT&T. AT&T does not actually require any additional low-band spectrum to deploy greater 4G LTE coverage. It could leverage existing and underutilized spectrum to achieve the same goals. Moreover, AT&T’s claims of potential economic or competitive benefits are unsupported and outweighed by the substantial competitive and consumer harm that would occur if the transaction were approved.

A. *Technical Claims*

AT&T’s technical arguments are misleading and incomplete. AT&T asserts that by adding Club 42’s spectrum licenses to its own, AT&T could deploy a 10+10 megahertz LTE deployment that is more “spectrally efficient” than a deployment of two non-contiguous 5+5 megahertz carriers.³⁷ As an initial matter, AT&T has not demonstrated a consumer need for additional spectrum in these markets, nor has AT&T shown that any such need could not be met through additional base station deployment, or densification, or the transition to new technologies.

Even assuming there is sufficient demand to warrant additional capacity, AT&T can add capacity through numerous methods that do not involve blocking would-be rivals’ access to low-band spectrum resources in this market. While it is generally true that by adding contiguous spectrum, such as the B block spectrum here, a network may become more efficient, there are alternative means available to AT&T to increase its LTE bandwidth. Specifically, AT&T has at least 40 megahertz of contiguous PCS spectrum in the two markets,³⁸ but it claims that **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** [REDACTED] **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** [REDACTED] AT&T fails to mention that a large percentage of those customers have devices that support LTE in the PCS band, and that portions of the spectrum could therefore easily be refarmed for LTE.

AT&T’s spectrum utilization in the markets is also confounding, in that it has devoted **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** [REDACTED] **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** [REDACTED] **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** This network deployment plan appears to directly contradict AT&T’s claims that it needs more LTE spectrum, particularly in **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** [REDACTED] **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** [REDACTED] **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** To be sure, AT&T has failed to

³⁷ AT&T General Information Request Response at 6-8.

³⁸ See Application Exhibit 3.

³⁹ AT&T Supplemental Information Request Response at 8.

⁴⁰ *Id.* at 7.

⁴¹ *Id.* at 7-8.

⁴² *Id.* at 9.

demonstrate that the number of exclusively 2G and 3G devices on its network precludes it from refarming portions of its Cellular and PCS band networks. Indeed, AT&T acknowledges that it plans to deploy LTE service in certain markets using, among other spectrum blocks, PCS,⁴³ but has provided no justification for why such a plan is unavailable in the markets here. AT&T therefore has a simple means of deploying additional, efficient, LTE spectrum without the risks to competition that would flow from the subject transaction.

Furthermore, AT&T's other spectrum acquisitions since filing for this transaction undercut AT&T's claim that it needs to acquire low-band spectrum in the secondary market to deploy additional 10+10 LTE carriers. Specifically, AT&T and T-Mobile consummated a spectrum swap in the San Luis Obispo market through which AT&T acquired a 20 megahertz block of AWS-1 spectrum,⁴⁴ **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]**
[REDACTED] **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** AT&T also acquired 20 megahertz of contiguous spectrum in the AWS-3 auction⁴⁶ and can use that spectrum to support a 10+10 LTE deployment, although some segments may not be immediately available due to encumbrances. Finally, AT&T can acquire additional low-band spectrum in the 600 MHz broadcast incentive auction which is scheduled to take place early next year.⁴⁷

AT&T also asks the FCC to ignore its unpaired low-band spectrum holdings in the Lower 700 MHz D and E Blocks that the FCC previously found useful and available for broadband operations.⁴⁸ AT&T acknowledges that it can use the D and E block licenses as supplemental downlink for spectrum above 1 GHz, but argues that doing so would render moot many of low-band spectrum's inherent benefits.⁴⁹ AT&T is incorrect. While the benefits of that supplemental spectrum will only be available within the footprint of the high-band spectrum, AT&T has ample

⁴³ See *AT&T General Information Request Response* at 5 (“As more customers upgrade to LTE service, and compatible handsets and equipment become available, AT&T expects to deploy LTE service using additional spectrum bands, including cellular, PCS, WCS, and lower 700 MHz D and E Blocks.”).

⁴⁴ See ULS Application No. 0006340995.

⁴⁵ *AT&T Supplemental Information Request Response* at 7, n. 10.

⁴⁶ See *Auction of Advanced Wireless Services (AWS-3) Licenses Closes*, Public Notice, 30 FCC Rcd 630, Attachment B (Jan. 30, 2015) (showing that AT&T won the AWS-3 H and I blocks in both Kings and San Luis Obispo counties in Auction 97).

⁴⁷ See Statement of FCC Chairman Tom Wheeler Regarding DC Circuit Decision to Uphold Incentive Auction Framework, News Release (June 12, 2015) (“We are gratified that the Court agrees with the Commission’s balanced, market-based approach to freeing up more valuable spectrum for innovative wireless broadband services. This decision provides the Commission and all stakeholders with the certainty necessary to proceed apace toward a successful auction in the first quarter of next year.”). See also Malathi Nayak, *Broadcast TV Airwaves Auction ‘On Track’ For Early 2016: FCC Chief*, REUTERS (Apr. 15, 2015).

⁴⁸ *AT&T Supplemental Information Request Response* at 4-6, 7-8. See *MSH Order*, 29 FCC Rcd at 6207, ¶ 178 (“We also disagree with AT&T’s assertions that the Commission should exclude from the 134 megahertz of below-1-GHz spectrum the 12 megahertz of spectrum of unpaired Lower 700 MHz D and E blocks”).

⁴⁹ *AT&T Supplemental Information Request Response* at 4.

high-band spectrum upon which to rely.⁵⁰ Furthermore, the 700 MHz layer will greatly enhance the end user experience within that area.⁵¹ In addition, while the Lower 700 MHz D and E blocks can only be aggregated with spectrum above 1 GHz at this time, the Commission has explained that they could also be aggregated with cellular or 600 MHz spectrum licenses at some point in the future.⁵²

B. Economic Claims

AT&T's economic claims ring just as hollow and false as its technical assertions. AT&T claims that the proposed transaction will benefit the public by virtue of enabling 4G LTE network deployment.⁵³ However, this benefit would not be unique to AT&T – indeed Club 42 could deploy a network, or lease its spectrum rights, or contract to sell the spectrum to any of the other mobile carriers operating in the relevant markets that would not present the anticompetitive risk of increased low-band spectrum concentration.

Similarly, AT&T claims that the proposed transaction would allow it to “become a more effective competitor,” but fails to explain how this could possibly benefit consumers.⁵⁴ AT&T already controls [BEGIN NRUF/LNP CONFIDENTIAL INFORMATION] [REDACTED] [END NRUF/LNP CONFIDENTIAL INFORMATION] compared to Sprint and T-Mobile's [BEGIN NRUF/LNP CONFIDENTIAL INFORMATION] [REDACTED] [END NRUF/LNP CONFIDENTIAL INFORMATION]. Any further concentration of market share in the hands of the two dominant carriers would be a cause for concern, rather than a justification for grant of this transaction. Indeed, the level of concentration in these markets as measured by the Herfindahl-Hirschman Index (“HHI”) during the periods for which the Commission provided data⁵⁷ [BEGIN NRUF/LNP CONFIDENTIAL INFORMATION] [REDACTED]

⁵⁰ AT&T holds 80 megahertz of high-band spectrum in CMA340 and 115 megahertz in CMA347. *See Application Exhibit 3.*

⁵¹ For example, when an AT&T customer is at the edge of the high-band coverage footprint, the 700 MHz supplemental downlink signal will be stronger and the Signal to Interference and Noise Ratio (“SINR”) will be higher than the corresponding high-band signal. Thus the 700 MHz supplemental downlink will deliver a superior data rate compared to a high-band signal alone.

⁵² *See MSH Order*, 29 FCC Rcd at 6206, ¶ 178.

⁵³ *AT&T General Information Request Response* at 11.

⁵⁴ *Id.* at 13.

⁵⁵ Derived from NRUF/LNP data supplied in this proceeding.

⁵⁶ Derived from NRUF/LNP data supplied in this proceeding. Verizon holds [BEGIN NRUF/LNP CONFIDENTIAL INFORMATION] [REDACTED] [END NRUF/LNP CONFIDENTIAL INFORMATION]. So while AT&T is correct that [BEGIN NRUF/LNP CONFIDENTIAL INFORMATION] [REDACTED] [END NRUF/LNP CONFIDENTIAL INFORMATION] should weigh against grant of the Application.

⁵⁷ An estimate of the current HHI level for these markets would likely be much higher, due to AT&T's acquisition of Leap Wireless. *See Applications of AT&T Inc., Leap Wireless International, Inc., Cricket License Co., LLC and*

[REDACTED]
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AT&T's next argument, [BEGIN NRUF/LNP CONFIDENTIAL INFORMATION]
[REDACTED] [END NRUF/LNP CONFIDENTIAL INFORMATION] is either intentionally misleading or based on miscomprehension of the NRUF/LNP data. [BEGIN NRUF/LNP CONFIDENTIAL INFORMATION] [REDACTED]

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Leap LicenseCo, Inc. for Consent to Transfer Control and Assign Licenses and Authorizations, Memorandum Opinion and Order, 29 FCC Rcd 2735 (WTB 2014).

⁵⁸ Derived from NRUF/LNP data supplied in this proceeding.

⁵⁹ The DOJ and FTC consider markets with an HHI of between 1,500 and 2,500 points to be moderately concentrated, and markets with an HHI in excess of 2,500 points to be highly concentrated. *See* U.S. Department of Justice & FTC, Horizontal Merger Guidelines § 5.2 (2010).

⁶⁰ *AT&T Supplemental Information Request Response* at 12.



[END

NRUF/LNP CONFIDENTIAL INFORMATION]

AT&T goes on to argue that its acquisition of the spectrum here would neither enable it to raise prices, nor prevent competitors from lowering prices.⁶¹ AT&T may establish prices nationally, but it can readily tailor its *quality-adjusted* prices to each market.⁶² AT&T has the

⁶¹ *AT&T Second Supplemental Information Request Response* at 2-3.

⁶² *See, e.g., William Lehr, Benefits of Competition in Mobile Broadband Services, attached to Letter of Rebecca Murphy Thompson, General Counsel, Competitive Carriers Association to Marlene Dortch, Secretary, FCC, WT Docket Nos. 13-135, 12-269, GN Docket Nos. 12-268, 13-185 (Mar. 24, 2014)* (“[C]ost reductions may be observed in expanded value (quality) without an attendant price increase. This last manifestation of a cost reduction amounts to a decrease in appropriate quality adjusted prices, but making such adjustments empirically is notoriously difficult. Observing these price effects directly is difficult in any case because it is necessary to control for quality

incentive and ability to build fewer base station locations, offer fewer local retail outlets and service options, and conduct fewer local marketing promotions than it would in a more competitive market, among other things. These and similar acts or omissions have the same bottom-line effect on consumers, who will pay more for less robust service offerings compared to consumers in markets where necessary spectrum inputs are not held by only one or two dominant carriers.

AT&T also argues that the transaction will not prevent competitors from lowering prices, but this ignores the cost benefits associated with low-band spectrum deployments. The Commission has explained that “[t]he superior propagation of [low-band spectrum] means that larger geographic areas may be served more cost effectively through use of fewer transmitters.”⁶³ To support this position, T-Mobile has provided comprehensive analyses to the Commission that show low-band spectrum facilitates deployments at a fraction of the cost of mid- or high-band spectrum.⁶⁴ Armed with sufficient low-band spectrum, T-Mobile would be able to cost-effectively deploy LTE networks throughout the country and potentially pass those cost savings on to its customers.

Taken together, AT&T’s claims of economic or competitive benefits are almost entirely devoid of support. It is unclear how AT&T’s acquisition of the subject licenses would promote any competition other than AT&T’s direct competition with Verizon. If the Commission is genuinely interested in promoting greater competition, it should deny the proposed transaction and require AT&T to make more efficient use of the massive low-band spectrum holdings it already has.

III. AT&T HAS FAILED TO SATISFY THE HIGH STANDARD REQUIRED FOR GRANT OF ITS PROPOSED ACQUISITION.

In reviewing transactions that will result in increased concentration of spectrum, the Commission requires that applicants prove, by a preponderance of the evidence, that “the proposed transaction, on balance, will serve the public interest.”⁶⁵ The applicant must provide a “detailed demonstration” showing why the public interest benefits of the transaction outweigh the potential harms.⁶⁶ AT&T has failed to meet that standard, and the transaction should therefore be denied.

improvements, product differentiation effects, and changes how products are sold (e.g., whether bundled, subject to term contracts, or with special discounts).”).

⁶³ *MSH Order*, 29 FCC Rcd at 6161, ¶ 58.

⁶⁴ *See, e.g.*, Letter of Trey Hanbury, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, WT Docket No. 12-269 (Apr. 23, 2015) (explaining that low-band spectrum is essential for cost-effective deployments in rural areas); CostQuest Associates, *T-Mobile USF Mobility Model Report* (Oct. 1, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7521069118>; Letter of Trey Hanbury, Counsel to T-Mobile USA, Inc. to Marlene Dortch, Secretary, FCC, GN Docket No. 12-268, WT Docket No. 12-269 (Jan. 29, 2014) (showing that a network deployed using 1900 MHz band spectrum would require nearly 300 percent more total investment than a comparable network deployed using 700 MHz band spectrum).

⁶⁵ *MSH Order*, 29 FCC Rcd at 6239, ¶ 285.

⁶⁶ *Id.* at 6240, ¶ 286.

AT&T has failed to identify a single public interest benefit that could not be achieved through improving its own network, transitioning its users from older technologies, and refarming under-utilized spectrum blocks.⁶⁷ The argument that it needs an additional 10+10 megahertz LTE carrier to effectively compete is without merit: AT&T already has a number of 10+10 carriers in the Cellular, AWS-1, and PCS bands that it could use for LTE.

Having failed to show by a preponderance of the evidence that the transaction would benefit the public, AT&T has doubly failed to show that any purported benefits “clearly outweigh the potential public interest harms”⁶⁸ that would flow from a provider that already holds more than one-third of the low-band spectrum acquiring even more of this scarce public resource. AT&T’s recent submission in which it misrepresents T-Mobile’s business and network deployment strategies are false⁶⁹ and, in any case, add nothing to the purported public interest benefits of the proposed transaction. If anything, the threats to sustained competition presented by the proposed transaction would clearly outweigh whatever benefits AT&T might gain. As explained above, AT&T holds the burden of proof for this transaction and has failed to meet the high standard required for approval.

IV. CONCLUSION

For the foregoing reasons, T-Mobile urges the Commission to deny AT&T’s proposed acquisition of the Lower 700 MHz B block licenses. Further concentration of low-band spectrum by AT&T would only depress competition, reduce investment, and stifle innovation. By denying the proposed transaction, the Commission can set a strong precedent that its enhanced factor analysis will meaningfully protect competition in the future by preventing further low-band spectrum concentration in the hands of dominant carriers.

Respectfully submitted,

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⁶⁷ See Section II.A, *supra*.

⁶⁸ *MSH Order*, 29 FCC Rcd at 6240, ¶ 287.

⁶⁹ *AT&T Second Supplemental Information Request Response* at 7. Like AT&T, T-Mobile cannot economically deploy a network where it lacks low-band spectrum. Claims that T-Mobile has not focused on network coverage and therefore does not require low-band spectrum are ridiculous and fundamentally confuse cause and effect. T-Mobile cannot deploy a network with broad coverage in sparsely populated areas because it lacks sufficient low-band spectrum!