

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Application of TeleGuam Holdings, LLC and Club ) WT Docket No. 15-7
42 CM Limited Partnership )
For Consent To Assign Licenses )

MEMORANDUM OPINION AND ORDER

Adopted: September 25, 2015

Released: September 25, 2015

By the Chief, Wireless Telecommunications Bureau:

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I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the application of TeleGuam and Club 42 for Commission consent to the assignment of an Upper 700 MHz C Block license and two AWS-1 licenses from Club 42 to TeleGuam. The subject licenses cover Guam and the Commonwealth of the Northern Mariana Islands. The Commission determined in the Mobile Spectrum Holdings Report and Order that increased aggregation of below-1-GHz spectrum would be treated as an "enhanced factor" under its case-by-case review of license transfers if post-transaction the acquiring entity would hold approximately one-third or more of the suitable and available spectrum below 1 GHz.1 In the proposed transaction, TeleGuam would increase its low-band spectrum holdings in these two local market areas, and in particular, would hold post-transaction more than one-third of the currently suitable and available below-1-GHz spectrum in Guam. After carefully evaluating the likely competitive effects of TeleGuam's increased aggregation of below-1-GHz spectrum in these local market areas, as well as the other factors ordinarily considered in a case-by-case review, we find that the likelihood of competitive harm is low.

1 See Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, WT Docket No. 12-269, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6133, 6240 ¶¶ 286-88 (2014) ("Mobile Spectrum Holdings Report and Order"), recon. denied, Order on Reconsideration, FCC 15-79 (rel. Aug. 11, 2015).

Further, we find that some public interest benefits are likely, such as the deployment of a competitive LTE network and improvement in in-building signal penetration. Thus, based on the record before us and our competitive review, we find that the proposed assignment of licenses would serve the public interest, convenience, and necessity, and therefore we approve the proposed transaction.

## II. BACKGROUND AND PUBLIC INTEREST FRAMEWORK

2. *Description of the Applicants.* TeleGuam Holdings, LLC d/b/a GTA TeleGuam (“TeleGuam”), headquartered in Tamuning, Guam, provides telephone, wireless, internet, and television service in Guam.<sup>2</sup> Club 42 CM Limited Partnership (“Club 42,” and together with TeleGuam, the “Applicants”) is a Commission licensee that, while holding wireless licenses in Guam and the Northern Mariana Islands, currently does not provide mobile wireless services in either location.

3. *Description of the Transaction.* On October 6, 2014, TeleGuam and Club 42 filed an application pursuant to section 310(d) of the Communications Act of 1934, as amended (the “Act”),<sup>3</sup> seeking Commission consent to assign one Upper 700 MHz C Block license and two Advanced Wireless Service (“AWS-1”) licenses to TeleGuam.<sup>4</sup> Through these licenses, TeleGuam would acquire 42 to 62 megahertz of spectrum in two Cellular Market Areas (“CMAs”) in the South Pacific.<sup>5</sup> Post-transaction, TeleGuam would hold 82 to 97 megahertz of spectrum in total in these two CMAs, including 47 megahertz of below-1-GHz spectrum in Guam.<sup>6</sup>

4. The Applicants assert that, as a result of the proposed transaction, the additional spectrum would enable TeleGuam to deploy spectrum currently not in use and improve the scope and depth of services in the geographic areas authorized under the Club 42 licenses.<sup>7</sup> TeleGuam further contends that the acquisition of this spectrum is necessary to remain competitive through the deployment of Long-Term Evolution (“LTE”).<sup>8</sup>

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<sup>2</sup> See also Ownership Disclosure Information of TeleGuam Holdings, LLC, FCC Form 602, ULS File No. 0006780149 (filed Apr. 27, 2015).

<sup>3</sup> 47 U.S.C. § 310(d).

<sup>4</sup> See Application for Assignment of Licenses from Club 42 CM Limited Partnership to TeleGuam Holdings, LLC, ULS File No. 0006489830 (filed Oct. 6, 2014; amended Oct. 7, 2014, Jan. 30, 2015, June 4, 2015, and Aug. 11, 2015) (“Application”), Exhibit 1 – Public Interest Statement at 1 (“Public Interest Statement”). We note that subsequent to the submission of the Application, TeleGuam and Telekomunikasi Indonesia International (USA) Inc. (“Telkom USA”) submitted applications seeking consent to the transfer of control of TeleGuam to Telkom USA. See Applications Filed for the Transfer of Control of TeleGuam Holdings, LLC to Telekomunikasi Indonesia International (USA) Inc. and Request for Declaratory Ruling on Foreign Ownership, WC Docket No. 15-148, *Public Notice*, 30 FCC Rcd 6498 (2015); Joint Application of TeleGuam Holdings, LLC, Licensee, AP TeleGuam Holdings, Inc., Transferor, and Telekomunikasi Indonesia International (USA) Inc., Transferee, for Grant of Authority to Complete a Transfer of Control of the Licensee Pursuant to Section 214 of the Communications Act of 1934, as Amended, and Sections 63.04 and 63.24 of the Commission’s Rules, WC Docket No. 15-148, File No. ITC-T/C-20150612-00146 (filed June 12, 2015); Application for Transfer of Control of Licenses from TeleGuam Holdings, LLC to Telekomunikasi Indonesia International (USA) Inc., ULS File No. 0006830192 (filed June 12, 2015). TeleGuam has requested that the licenses that are the subject of the instant Application be included in the Commission’s treatment of the proposed transfer of control to Telkom USA.

<sup>5</sup> See Application, Exhibit 2 – Spectrum Aggregation.

<sup>6</sup> See TeleGuam Holdings, LLC and Club 42 CM Limited Partnership Seek FCC Consent to the Assignment of an Upper 700 MHz License and Two Advanced Wireless Service Licenses in Guam and The Commonwealth of the Northern Mariana Islands, WT Docket No. 15-7, *Public Notice*, 30 FCC Rcd 261 (WTB 2015) (“*Accepted for Filing Public Notice*”).

<sup>7</sup> See Public Interest Statement at 1.

<sup>8</sup> See Response of TeleGuam to the General Information Request Dated January 21, 2015, WT Docket No. 15-7, at 7-9 (Feb. 4, 2015) (“TeleGuam Information Request Response”).

5. *Transaction Review Process.* On January 21, 2015, the Commission accepted the Application for filing and established a pleading cycle.<sup>9</sup> The Commission received no filings in response to the *Accepted for Filing Public Notice*. On January 21, 2015, the Wireless Telecommunications Bureau (“WTB” or “the Bureau”) released a public notice announcing that Numbering Resource Utilization and Forecast (“NRUF”) reports and local number portability (“LNP”) data would be placed into the record and adopted a protective order pursuant to which the Applicants and third parties would be allowed to review the specific NRUF reports and LNP data.<sup>10</sup> Also on January 21, 2015, pursuant to section 308(b) of the Act,<sup>11</sup> the Bureau sent letters to TeleGuam and Club 42 requesting the submission of written responses and supporting documentation by February 4, 2015, to specific inquiries related to the proposed transaction.<sup>12</sup> On March 25, 2015, the Bureau requested information from the following service providers: Choice Phone, DoCoMo Pacific, and PTI Pacifica.<sup>13</sup>

6. *Standard of Review.* Pursuant to section 310(d) of the Act,<sup>14</sup> we must determine whether the Applicants have demonstrated that the proposed assignment of licenses would serve the public interest, convenience, and necessity.<sup>15</sup> In making this determination, we first assess whether the proposed

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<sup>9</sup> See generally *Accepted for Filing Public Notice*, 30 FCC Rcd 261. Petitions to deny were due February 20, 2015, oppositions were due March 2, 2015, and replies were due March 9, 2015.

<sup>10</sup> See generally Application of TeleGuam Holdings, LLC and Club 42 CM Limited Partnership for Consent To Assign Upper 700 MHz and Advanced Wireless Service Licenses; Numbering Resource Utilization and Forecast Reports and Local Number Portability Reports To Be Placed into the Record, Subject to Protective Order, WT Docket No. 15-7, CC Docket No. 99-200, *Public Notice*, 30 FCC Rcd 282 (WTB 2015); Application of TeleGuam Holdings, LLC and Club 42 CM Limited Partnership for Consent To Assign Licenses, WT Docket No. 15-7, *NRUF/LNP Protective Order*, 30 FCC Rcd 275 (WTB 2015).

<sup>11</sup> 47 U.S.C. § 308(b).

<sup>12</sup> See generally Letter from Roger C. Sherman, Chief, WTB, to Daniel J. Tydingco, TeleGuam Holdings LLC, WT Docket No. 15-7 (WTB rel. Jan. 21, 2015) (“*TeleGuam Information Request*”); Letter from Roger C. Sherman, Chief, WTB, to Puneet Wadhwa, Club 42 CM Limited Partnership, WT Docket No. 15-7 (WTB rel. Jan. 21, 2015) (“*Club 42 Information Request*”). The Bureau also released a *Joint Protective Order* to ensure that any confidential or proprietary documents submitted to the Commission would be adequately protected from public disclosure, and to announce the process by which interested parties could gain access to confidential information filed in the record. See generally Application of TeleGuam Holdings, LLC and Club 42 CM Limited Partnership for Consent To Assign Licenses, WT Docket No. 15-7, *Joint Protective Order*, 30 FCC Rcd 265 (WTB 2015).

<sup>13</sup> See generally Letter from Roger C. Sherman, Chief, WTB, to Richard Yu, Choice Phone, LLC, WT Docket No. 15-7 (WTB rel. Mar. 25, 2015); Letter from Roger C. Sherman, Chief, WTB, to John Wu, DoCoMo Pacific, Inc., WT Docket No. 15-7 (WTB rel. Mar. 25, 2015); Letter from Roger C. Sherman, Chief, WTB, to Steven Carrara, PTI Pacifica Inc., WT Docket No. 15-7 (WTB rel. Mar. 25, 2015). The third party service providers submitted responses to these requests. See Letter from Reynard Ong, Revenue Recognition Manager, Choice Phone LLC dba iConnect, to Wireless Telecommunications Bureau, WT Docket No. 15-7, dated Apr. 14, 2015; Letter from John Wu, Vice President Network Operations, DoCoMo Pacific, Inc. to Marlene H. Dortch, Secretary, FCC, WT Docket No. 15-7, dated Apr. 15, 2015; Letter from Timothy J. Cooney, Counsel to PTI Pacifica Inc. d/b/a IT&E, to Marlene H. Dortch, Secretary, FCC, WTB, WT Docket No. 15-7, dated Apr. 15, 2015.

<sup>14</sup> 47 U.S.C. § 310(d).

<sup>15</sup> See, e.g., 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, WT Docket No. 14-144, *Memorandum Opinion and Order*, 30 FCC Rcd 5107, 5111 ¶ 8 (2015) (“*AT&T-Plateau Wireless Order*”); Applications of AT&T Inc., Leap Wireless International, Inc., Cricket License Co. LLC and Leap Licenseco, Inc. for Consent To Transfer Control and Assign Licenses and Authorizations, WT Docket No. 13-193, *Memorandum Opinion and Order*, 29 FCC Rcd 2735, 2741-42 ¶ 13 (WTB, IB 2014) (“*AT&T-Leap Order*”).

transaction complies with the specific provisions of the Act,<sup>16</sup> other applicable statutes, and the Commission's rules.<sup>17</sup> If the proposed transaction does not violate a statute or rule, we next consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.<sup>18</sup> We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.<sup>19</sup> The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.<sup>20</sup>

7. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.<sup>21</sup> The Commission and the Department of Justice ("DOJ") each have independent authority to examine the competitive impacts of proposed mergers and transactions involving transfers of Commission licenses, but the Commission's competitive analysis under the public interest standard is somewhat broader.<sup>22</sup> The Commission's public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.<sup>23</sup> If we are unable to find that the proposed transaction serves the public interest for any reason or if the record presents a substantial and material question of fact, we must designate the application(s) for hearing.<sup>24</sup>

8. *Qualifications of the Applicants.* As a threshold matter, the Commission must determine whether the applicants to the proposed transaction meet the requisite qualifications requirements to hold and transfer licenses under section 310(d) and the Commission's rules.<sup>25</sup> We note that no parties have raised issues with respect to the basic qualifications of TeleGuam or Club 42, and, in addition, TeleGuam previously and repeatedly has been found qualified to hold Commission licenses.<sup>26</sup> We find that there is

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<sup>16</sup> Section 310(d) requires that we consider the application as if the proposed assignee were applying for the licenses directly under section 308 of the Act. 47 U.S.C. §§ 308, 310(d). *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741 ¶ 13.

<sup>17</sup> *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42 ¶ 13.

<sup>18</sup> *See id.*

<sup>19</sup> *See id.*

<sup>20</sup> *See id.*

<sup>21</sup> *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742 ¶ 15.

<sup>22</sup> *See id.*

<sup>23</sup> *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743-44 ¶ 16; Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent To Assign AWS-1 Licenses, WT Docket No. 12-4, *Memorandum Opinion and Order*, 27 FCC Rcd 10698, 10711 ¶ 30 (2012) ("*Verizon Wireless-SpectrumCo Order*").

<sup>24</sup> 47 U.S.C. § 309(e); *see also AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743 ¶ 15; Application of EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp., CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559, 20574 ¶ 25 (2002).

<sup>25</sup> *See* 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; *see also, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112 ¶ 10; *AT&T-Leap Order*, 29 FCC Rcd at 2744 ¶ 17; Applications of GCI Communication Corp., ACS Wireless License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. for Consent To Assign Licenses to the Alaska Wireless Network, LLC, WT Docket No. 12-187, *Memorandum Opinion and Order and Declaratory Ruling*, 28 FCC Rcd 10433, 10444-45 ¶ 28 (2013) ("*Alaska Wireless Order*").

<sup>26</sup> *See, e.g.,* Application for Assignment of License from Triad AWS Guam, Inc. to TeleGuam Holdings, LLC, ULS File No. 0006137886 (filed Feb. 20, 2014). *See also* Applications Granted for the Transfer of Control of the

(continued....)

no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Act and our rules, regulations, and policies, of TeleGuam or Club 42.<sup>27</sup>

### III. POTENTIAL PUBLIC INTEREST HARMS

9. *Competitive Overview.* In its examination of a proposed transaction, the Commission evaluates the potential public interest harms and undertakes a case-by-case review of the competitive effects of any increase in market concentration or in spectrum holdings in the relevant markets.<sup>28</sup> The Commission has used an initial two-part screen to help identify those markets that provide particular reason for further competitive analysis, but has not limited its consideration of potential competitive harms solely to markets identified by its initial screen, if it encounters other factors that may bear on the public interest inquiry.<sup>29</sup> In the *Mobile Spectrum Holdings Report and Order*, the Commission found that it is in the public interest to continue to use its initial spectrum screen and case-by-case review,<sup>30</sup> and, in addition, to require that any increase in spectrum holdings of below 1 GHz be treated as an “enhanced factor” in its review if post-transaction the acquiring entity would hold approximately one-third or more of such spectrum.<sup>31</sup> The Commission stated that it anticipated “that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms.”<sup>32</sup> The Commission further stated, however, that when the other factors ordinarily considered indicate a low potential for competitive or other public interest harm, the acquisition of below-1-GHz spectrum resulting in holdings of approximately one-third or more would not preclude a conclusion that a proposed transaction, on balance, furthers the public interest.<sup>33</sup>

10. The Commission stated in the *Mobile Spectrum Holdings Report and Order* that low-band spectrum is less costly to deploy and provides higher quality coverage than higher-band spectrum,<sup>34</sup> and that the two leading nationwide providers hold most of the low-band spectrum available today.<sup>35</sup> The

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Licenses of TeleGuam Holdings, LLC to AP TeleGuam Holdings, Inc., WC Docket No. 10-260, *Public Notice*, 26 FCC Rcd 7928 (2011).

<sup>27</sup> See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948.

<sup>28</sup> See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12; Application of AT&T Inc. and Qualcomm Incorporated for Consent To Assign Licenses and Authorizations, WT Docket No. 11-18, *Order*, 26 FCC Rcd 17589, 17602 ¶ 31 (2011) (“*AT&T-Qualcomm Order*”). See also *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 20.

<sup>29</sup> See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12; *Alaska Wireless Order*, 28 FCC Rcd at 10446-47, 10450 ¶¶ 33, 42; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17609-10 ¶¶ 49-50. See also *AT&T-Leap Order*, 29 FCC Rcd at 2752 ¶ 39, 2753 ¶ 41, 2755-56 ¶ 47.

<sup>30</sup> See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223-24 ¶ 231.

<sup>31</sup> See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶¶ 286-88. The Commission applied this below-1-GHz review for the first time in the *AT&T-Plateau Wireless Order*. See generally *AT&T-Plateau Wireless Order*, 30 FCC Rcd 5107.

<sup>32</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286. The Commission also set out a heightened standard of review for cases in which the proposed transaction would result in an entity that already holds approximately one-third or more of below-1-GHz spectrum in a market acquiring additional below-1-GHz spectrum in that market, especially with regard to paired low-band spectrum. In these cases, the Commission stated that the required demonstration of the potential public interest benefits of the proposed transaction would need to clearly outweigh the potential public interest harms associated with such additional concentration of below-1-GHz spectrum, irrespective of other factors. See *id.*, 29 FCC Rcd at 6240 ¶ 287. See also *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8 n.31, 5113 ¶ 13, 5114 ¶ 15, 5123 ¶ 36 n.114, 5130 ¶ 56.

<sup>33</sup> See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.

<sup>34</sup> See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164 ¶ 60.

<sup>35</sup> See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6156-57, 6164 ¶¶ 46, 60.

Commission 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.<sup>36</sup> As the Commission found, without access to this low-band spectrum, rival service providers that may lack a mix of low-band and higher-band spectrum would be less able to provide a robust competitive alternative, and may not be able to quickly expand coverage or provide new services.<sup>37</sup> We consider below whether there would be an increased likelihood in these local market areas that rival service providers or potential entrants would be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market, and whether rivals' costs would be increased to the extent that they would be less likely to be able to compete robustly.<sup>38</sup>

#### A. Market Definitions

11. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,<sup>39</sup> including a determination of the product market, the geographic market, the input market for spectrum suitable and available for the provision of mobile wireless services, and the market participants.

12. *Product and Geographic Markets.* Consistent with recent transaction orders, we find that the relevant product market is a combined "mobile telephony/broadband services" product market that comprises mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).<sup>40</sup> In addition, in determining the relevant geographic market for the instant transaction, we find that the relevant geographic market is local. The Applicants are seeking Commission approval of the proposed assignment of 42 to 62 megahertz of spectrum that covers Guam and the Northern Mariana Islands, two local non-contiguous CMAs that account for well under one percent of the population of the United States and its territories.<sup>41</sup>

13. *Input Market for Spectrum and Market Participants.* For our analysis, we include the spectrum bands, or portions thereof, found in recent Commission orders as the input market.<sup>42</sup> Similarly,

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<sup>36</sup> See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164 ¶ 60.

<sup>37</sup> See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164-65 ¶¶ 60-61; Applications of AT&T Inc., Cellco Partnership d/b/a Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC for Consent To Assign and Lease AWS-1 and Lower 700 MHz Licenses, WT Docket No. 13-56, *Memorandum Opinion and Order*, 28 FCC Rcd 12878, 12893-94 ¶¶ 40-41 (WTB 2013) ("*AT&T-Verizon Wireless-Grain Order*"). See also *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

<sup>38</sup> See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10725 ¶ 72; *AT&T-Verizon Wireless-Grain Order*, 28 FCC Rcd at 12887 ¶ 20.

<sup>39</sup> See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115 ¶ 17; *AT&T-Leap Order*, 29 FCC Rcd at 2746 ¶ 22; *Alaska Wireless Order*, 28 FCC Rcd at 10447 ¶ 34.

<sup>40</sup> See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115 ¶ 18; *AT&T-Leap Order*, 29 FCC Rcd at 2746 ¶ 23.

<sup>41</sup> The Commission has found that the relevant geographic markets for certain wireless transactions generally are local, but has held that a transaction's competitive effects should also be evaluated at the national level where a transaction exhibits certain national characteristics that provide cause for concern. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5116 ¶ 19; *AT&T-Leap Order*, 29 FCC Rcd at 2748 ¶ 27. We note also that the Commission found in its evaluation of the AT&T/Centennial transaction that because of Puerto Rico's and the U.S. Virgin Island's unique characteristics in terms of limited geographic scope and isolated nature, the relevant local geographic market was not any individual CMA, but rather Puerto Rico and the U.S. Virgin Islands themselves. See Applications of AT&T Inc. and Centennial Communications Corp. for Consent To Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements, WT Docket No. 08-246, *Memorandum Opinion and Order*, 24 FCC Rcd 13915, 13934 ¶ 42 (2009) ("*AT&T-Centennial Order*").

<sup>42</sup> See, e.g., *AT&T-Plateau Wireless*, 30 FCC Rcd at 5117 ¶ 22; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169-70 ¶¶ 70, 72. See also *AT&T-Leap Order*, 29 FCC Rcd at 2749-50 ¶ 32.

we apply recent Commission precedent and consider facilities-based entities providing mobile telephony/broadband services using cellular, PCS, SMR, 700 MHz, AWS-1, BRS, WCS, AWS-4, H Block, EBS, and AWS-3 and 600 MHz spectrum (as both the latter become available) to be market participants.<sup>43</sup>

### B. Competitive Effects of the Proposed Transaction

14. *Record.* The Applicants maintain that no competitors in the market would be lost since no customers currently are served using the licensed spectrum.<sup>44</sup> TeleGuam also asserts that it is at a competitive disadvantage in LTE deployment and that, to survive as a wireless provider, it has to obtain additional spectrum.<sup>45</sup> No petitions to deny or comments were received.

15. *Initial Review.* As discussed above, to help identify those local markets in which competitive concerns are more likely, we apply an initial two-part screen, and if the acquiring entity would increase its below-1-GHz spectrum holdings to hold approximately one-third or more of such spectrum post-transaction, we apply enhanced factor review.<sup>46</sup> The first part of the screen is based on the size of the post-transaction Herfindahl-Hirschman Index (“HHI”) and the change in the HHI.<sup>47</sup> The second part of the screen, which is applied on a county-by-county basis, identifies local markets where an entity would hold approximately one-third or more of the total spectrum suitable and available for the provision of mobile telephony/broadband services, post-transaction.<sup>48</sup> In instances where an applicant is acquiring spectrum below 1 GHz, we also carefully examine the possible competitive effects resulting from an increase in below-1-GHz spectrum holdings that would be above the threshold identified in the *Mobile Spectrum Holdings Report and Order*.<sup>49</sup>

16. In the transaction before us, TeleGuam would acquire 22 megahertz of low-band spectrum (and 20 to 40 megahertz of AWS-1 spectrum) in two CMAs in the South Pacific. As the instant transaction does not result in the acquisition of wireless business units and customers, we do not apply the initial HHI screen. Next, examining the markets on a county-by-county basis does not result in either market triggering the total spectrum screen. We find, however, after review on a county-by-county basis,<sup>50</sup> that TeleGuam would hold more than one-third, or more than 45 megahertz, of the currently suitable and available below-1-GHz spectrum post-transaction in one of the two CMAs – CMA 732

<sup>43</sup> See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117 ¶ 23; *AT&T-Leap Order*, 29 FCC Rcd at 2751 ¶ 35; *Alaska Wireless Order*, 28 FCC Rcd at 10449-50 ¶ 41.

<sup>44</sup> Public Interest Statement at 1.

<sup>45</sup> TeleGuam Information Request Response at 7-9.

<sup>46</sup> See *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286. The current total amount of below-1-GHz spectrum that is suitable and available is 134 megahertz, approximately one-third of which is 45 megahertz. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6156-57, 6240 ¶ 46, ¶¶ 286-88. As with our application of the initial total spectrum screen, we evaluate increases in below-1-GHz spectrum concentration on a county-by-county basis. See *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121, 5123 ¶¶ 31, 35.

<sup>47</sup> See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *AT&T-Leap Order*, 29 FCC Rcd at 2753 ¶ 41 n.140.

<sup>48</sup> See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *Alaska Wireless Order*, 28 FCC Rcd at 10450 ¶ 42. The current total amount of spectrum that is suitable and available is 580.5 megahertz, which yields a trigger of 194 megahertz, assuming that AWS-1 and BRS/EBS spectrum are everywhere available. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6229 ¶ 251, n.667.

<sup>49</sup> See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6240 ¶ 267, ¶¶ 286-88. See also, e.g., *AT&T-Verizon Wireless-Grain Order*, 28 FCC at 12893-97 ¶¶ 39-45; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

<sup>50</sup> See *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118-19 ¶¶ 24-25.

(Guam) – and therefore we look more closely at the potential competitive effects of this spectrum holding.<sup>51</sup>

17. *Market-Specific Review.* Generally, in undertaking our analysis, we consider various competitive variables that help to predict the likelihood of competitive harm post-transaction. These competitive variables include, but are not limited to: 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 combined entity's post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum holdings of each of the rival service providers.<sup>52</sup>

18. Guam is a non-rural market of approximately 159,000 people, with a population density of 759 people per square mile.<sup>53</sup> Four service providers have a significant market share: Choice Phone, DoCoMo Pacific, PTI Pacifica, and TeleGuam each hold approximately [REDACTED] percent of the market, respectively. Post-transaction, TeleGuam would hold 97 megahertz of spectrum in this CMA, including 25 megahertz of cellular spectrum and 22 megahertz of Upper 700 MHz spectrum. Further, Choice Phone holds 32 megahertz of spectrum (including 12 megahertz of Lower 700 MHz spectrum), DoCoMo Pacific holds 117 megahertz of spectrum (including 25 megahertz of cellular spectrum and 12 megahertz of Lower 700 MHz spectrum), and PTI Pacifica holds 82 megahertz of spectrum (including 12 megahertz of Lower 700 MHz spectrum).<sup>54</sup> In terms of population and land area coverage, TeleGuam, DoCoMo Pacific, and PTI Pacifica have significant 3G coverage.<sup>55</sup> TeleGuam covers approximately 98 percent of the population and 88 percent of the land area with its 3G network, while the comparable 3G network coverage percentages are approximately 99 percent and 79 percent for DoCoMo Pacific, and approximately 100 percent and 92 percent for PTI Pacifica. In addition, TeleGuam and Choice Phone have significant LTE coverage: TeleGuam covers approximately 91 percent of the population and 61 percent of the land area with LTE, and Choice Phone covers approximately 91 percent of the population and 58 percent of the land area with LTE.

19. We find that, notwithstanding the fact that TeleGuam would hold more than one-third of the below-1-GHz spectrum post-transaction in Guam, the likelihood of competitive harm is low when evaluating the particular factors ordinarily considered.<sup>56</sup> In addition to TeleGuam, there are three other

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<sup>51</sup> TeleGuam would also acquire 22 megahertz of Upper 700 MHz spectrum and 40 megahertz of AWS-1 spectrum in CMA 734 (Northern Mariana Islands). Post-transaction, TeleGuam would hold 82 megahertz of spectrum in total, including 22 megahertz of below-1-GHz spectrum: We do not apply enhanced factor review, nor do we find any particular factor that would lead us to undertake further competitive review in this market.

<sup>52</sup> We derive market shares and HHIs from our analysis of data compiled in our 2014 NRUF and LNP database, network coverage from Mosaik January 2015 data and 2010 U.S. Census data, and spectrum holdings from our licensing databases and the Application. We also utilized and analyzed additional data as provided by the Applicants and third parties through our information requests. *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120 ¶ 29, n.98.

<sup>53</sup> The population density is measured by the number of people per square mile using Census 2010 data. Rural markets are characterized by fewer than 100 people per square mile. *See Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum Based Services, Report and Order*, 19 FCC Rcd 19078, 19087-88 ¶¶ 11-12 (2004).

<sup>54</sup> We note that Choice Phone and Sprint hold the 14 megahertz of SMR spectrum in Guam between them. In addition, AT&T and Thomas Kurian each hold 6 megahertz of below-1-GHz spectrum, Sprint holds 10 megahertz of above-1-GHz spectrum, and DISH holds 50 megahertz of spectrum above 1 GHz.

<sup>55</sup> It previously has been found that coverage of 70% or more of the population and 50% or more of the land area is presumptively sufficient for a service provider to have a competitive presence in the market. *See, e.g., AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121 ¶ 31 n.102; *AT&T-Leap Order*, 29 FCC Rcd at 2770 ¶ 81 n.27.

<sup>56</sup> *See* ¶ 17 *supra*. *See also AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5127 ¶ 46.

service providers with significant market shares, and all three service providers hold low-band spectrum. Further, in addition to TeleGuam, three other service providers currently have significant 3G or LTE population and land area coverage in Guam. Moreover, as the Commission noted in the *Mobile Spectrum Holdings R&O*, non-nationwide service providers present a significantly lower risk of effectively denying access to low-band spectrum to competitors because of their relative lack of resources.<sup>57</sup> We find that TeleGuam's acquisition of this spectrum is unlikely to foreclose rival service providers from entering or expanding in Guam, and is unlikely to raise rivals' costs. For these reasons, we find that the proposed transaction is unlikely to materially lessen the ability of rival service providers to respond to any anticompetitive behavior on the part of TeleGuam in this local market.

#### IV. POTENTIAL PUBLIC INTEREST BENEFITS

20. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.<sup>58</sup> The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms,<sup>59</sup> and applies a "sliding scale approach" to evaluating benefit claims.<sup>60</sup> Under this sliding scale approach, where potential harms appear "both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand."<sup>61</sup> Conversely, where potential harms appear less likely and less substantial, as is the case here, we will accept a lesser showing to consent to the proposed transaction.<sup>62</sup>

21. *Potential Benefits.* The Applicants assert that acquiring additional below-1-GHz spectrum would enable TeleGuam to improve the scope and depth of the services it offers, such that it would result in faster, higher quality services over a larger area.<sup>63</sup> According to TeleGuam, it has limited contiguous spectrum, which in turn restricts it to a 5×5 megahertz LTE deployment.<sup>64</sup> TeleGuam contends that its 5×5 megahertz LTE service provides approximately 50 percent of the peak rate of the 10×10 megahertz LTE service.<sup>65</sup> TeleGuam further claims that at the present growth rate in data use by its subscribers, and with one of the highest smartphone subscribership rates, it would exhaust its spectrum resources next year – and allegedly well before the wireless service provider in Guam that holds over twice the amount of spectrum currently held by TeleGuam.<sup>66</sup> TeleGuam also contends that in Guam, most structures use steel-reinforced concrete due to the potential for typhoons, and the better in-building signal penetration of below-1-GHz spectrum is of particular use.<sup>67</sup> TeleGuam asserts that, if the proposed

<sup>57</sup> See *Mobile Spectrum Holdings R&O*, 29 FCC Rcd at 6207 ¶ 180.

<sup>58</sup> See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126 ¶ 43; *AT&T-Leap Order*, 29 FCC Rcd at 2792 ¶ 130; *Alaska Wireless Order*, 28 FCC Rcd at 10467 ¶ 85.

<sup>59</sup> See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27 ¶ 44; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87. See also *AT&T-Leap Order*, 29 FCC Rcd at 2793 ¶ 132.

<sup>60</sup> See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27 ¶ 44; *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 88. See also *AT&T-Leap Order*, 29 FCC Rcd at 2793-94 ¶ 132.

<sup>61</sup> See *id.*

<sup>62</sup> See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468-69 ¶ 88; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 85.

<sup>63</sup> See Public Interest Statement at 1; TeleGuam Information Request Response at 11.

<sup>64</sup> See TeleGuam Information Request Response at 7.

<sup>65</sup> See TeleGuam Information Request Response at 7.

<sup>66</sup> See TeleGuam Information Request Response at 6-7.

<sup>67</sup> See TeleGuam Information Request Response at 8.

transaction were approved, it would immediately begin constructing and implementing a 10×10 megahertz LTE channel.<sup>68</sup>

22. *Evaluation.* We have reviewed the Applicants' asserted benefits, as well as their responses to our requests for additional information and documents regarding the potential benefits of TeleGuam acquiring, in particular, the low-band spectrum at issue in Guam. The record provides general support for the Applicants' contentions that the proposed transaction would result in some public interest benefits. Specifically, we anticipate that through the acquisition of this spectrum, TeleGuam would be able to deploy a more competitive LTE network. We further find that by adding this low-band spectrum, TeleGuam has the potential to better serve Guam with higher user speeds, and better in-building signal penetration.<sup>69</sup> Thus, because of TeleGuam's acquisition of the Upper 700 MHz spectrum at issue, customers are likely to benefit from a higher-quality network, resulting in a better customer experience.

## V. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS

23. In the proposed transaction, TeleGuam would increase its spectrum holdings, and in particular, would hold post-transaction 22 megahertz of low-band spectrum in the Northern Mariana Islands, and 47 megahertz of low-band spectrum in Guam. As discussed herein, the *Mobile Spectrum Holdings Report and Order* determined that increased aggregation of below-1-GHz spectrum would be treated as an "enhanced factor" under its case-by-case review. The Commission stated in the *Mobile Spectrum Holdings Report and Order* that it "anticipate[d] that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms."<sup>70</sup> We have reviewed the Applicants' initial claims, as well as their responses to our requests for additional information and documents. After carefully evaluating the likely competitive effects of TeleGuam's increased aggregation of below-1-GHz spectrum in the markets implicated by the proposed transaction, we find that the ability of rival service providers to offer a competitive response to any anticompetitive behavior on the part of TeleGuam is unlikely to be materially lessened in Guam, the market in which we applied enhanced factor review. Further, we find that the record provides general support for the Applicants' claims, and, under our sliding scale approach, the potential public interest benefits outweigh any potential public interest harms. Thus, based on the record before us and our competitive review, we find that the proposed assignment of licenses would serve the public interest, convenience, and necessity.

## VI. ORDERING CLAUSES

24. ACCORDINGLY, having reviewed the Application and the record in this proceeding, IT IS ORDERED that, pursuant to sections 4(i) and (j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d), the application for assignment of licenses held by Club 42 CM Limited Partnership to TeleGuam Holdings, LLC is GRANTED.

25. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of release of this Memorandum Opinion and Order.

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<sup>68</sup> See TeleGuam Information Request Response at 10-11. TeleGuam maintains that upon approval of the proposed transaction, it would begin immediate construction of sites that are targeted to further expand the LTE footprint to include relatively expansive regions of roadways and housing in villages – areas to which it would be difficult and/or economically challenging to provide LTE coverage using only the short-range AWS bands. See *id.*

<sup>69</sup> See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5129 ¶ 53, n.160; *AT&T-Leap Order*, 29 FCC Rcd at 2799-2800 ¶¶ 149, 151. These Orders recognized there are some inefficiencies associated with a 5×5 megahertz LTE deployment, as compared to a 10×10 megahertz LTE deployment. See *id.*

<sup>70</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.

26. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger C. Sherman  
Chief  
Wireless Telecommunications Bureau