



Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
T +1 202 637 5600
F +1 202 637 5910
www.hoganlovells.com

Trey Hanbury
Partner
T: 202.637.5534
trey.hanbury@hoganlovells.com

December 23, 2015

EX PARTE VIA ECFS

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

Re: ***Ex Parte Notification***
Application of AT&T Mobility Spectrum LLC and East Kentucky Network, LLC for Consent to Assign Licenses, WT Docket No. 15-79; Application File No. 0006672533

Dear Ms. Dortch:

On December 21, 2015, representatives of T-Mobile USA, Inc. (“T-Mobile”)¹ asked the Wireless Telecommunications Bureau and the Office of General Counsel to deny AT&T’s proposed acquisition that would result in AT&T holding more than one-third of all available low-band spectrum in parts of Kentucky, West Virginia and Ohio.² Permitting AT&T to exceed the one-third threshold that triggers “enhanced factor” review would harm consumers by allowing AT&T to raise its rivals’ costs and foreclose competitive entry.

AT&T’s market share in some of these sparsely populated areas already approaches 60%. And low-band spectrum offers one of the few – if not the only – opportunity for competitive carriers and new entrants to serve consumers in these areas cost effectively. Under these circumstances, dominant firms such as AT&T have the incentive and ability to raise their rivals’ costs through input monopolization: AT&T can acquire spectrum not only to put it to the firm’s own use, but also to withhold the resource from actual or potential competitors.

AT&T has disagreed and, in this proceeding, has claimed that its rivals can use high-band spectrum to compete. But AT&T told the Commission just the opposite little more than two weeks ago.³ In seeking a waiver of its cellular power limits in numerous markets, including – remarkably – one of the three Cellular Market Areas involved in this transaction, AT&T said that deploying denser LTE

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

² Representing T-Mobile were Kathleen O’Brien Ham, Joshua Roland, Michael Amend, and Scott Sundblad, along with the undersigned and David Crawford of Hogan Lovells US LLP. Representing the FCC were Neil Dellar, Kate Matraves, Jim Bird, Jim Schlichting, and Kathy Harris.

³ AT&T Petition for Waiver for Licenses in Kentucky and Tennessee, WT Docket No. 15-300 (filed Dec. 11, 2015) (“AT&T Waiver Petition”).

network infrastructure at higher frequency bands “would take many years,” even for a carrier such as AT&T that already has substantial infrastructure in the area.⁴

AT&T’s waiver petition also suggested that the public should not expect to see AT&T deploy 700 MHz spectrum any time soon. While AT&T has told the Commission in this proceeding that it would “expeditiously deploy” LTE using any newly acquired 700 MHz band spectrum and has implied consumers would see the benefits in the “immediate future,”⁵ AT&T’s waiver petition said just the opposite: “Even if AT&T acquires the spectrum [at issue here and in a related proceeding], AT&T will be able to more efficiently deploy LTE over Cellular using PSD in the short term.”⁶ AT&T added that because it had already deployed LTE using cellular spectrum in the markets that were the subject of its waiver request, AT&T could “easily” modify cellular-frequency transmitters to use increased power, “whereas deploying LTE over 700 MHz would require additional time and monetary resources to acquire and deploy 700 MHz LTE radios.”⁷

AT&T’s waiver petition calls into question its representations concerning the feasibility of high-band deployments as well as the timing of AT&T’s planned 700 MHz deployments in the region, including at least one of the three markets at issue in this proceeding. At a minimum, AT&T’s inconsistent statements also serve to highlight the unambiguous public interest harm of this transaction. Granting AT&T’s proposed acquisition of the low-band spectrum licenses at issue in this proceeding will deny consumers in parts of Kentucky, West Virginia, and Ohio the competition and choice that they would otherwise enjoy if AT&T did not control such a disproportionate share of low-band spectrum resources. The Commission should therefore deny AT&T’s proposed low-band spectrum acquisition.

Under section 1.1206(b)(2) of the Commission’s rules, an electronic copy of this letter is being filed in the above-referenced docket. Please direct any questions regarding this filing to me.

Respectfully submitted,

/s/ Trey Hanbury

Trey Hanbury
Counsel to T-Mobile USA, Inc.

cc: Jim Bird
Neil Dellar
Jim Schlichting
Kathy Harris
Kate Matraves

⁴ *Id.* at 11 (emphasis added).

⁵ Opposition of AT&T to Petition to Deny, WT Docket No. 15-79, at 6-7 (filed July 2, 2015).

⁶ AT&T Waiver Petition at 11, n. 25 (emphasis added).

⁷ *Id.* (emphasis added).