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January 11, 2016

EX PARTE VIA ECFS

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

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

Dear Ms. Dortch:

AT&T Mobility Spectrum LLC ("AT&T") submits this letter in response to T-Mobile USA, Inc.'s ("T-Mobile") recent *ex parte* regarding the above-captioned transaction.[1] As demonstrated in AT&T's prior filings in this docket, AT&T's proposed acquisition of paired Lower 700 MHz spectrum in the affected areas of Kentucky, Ohio, and West Virginia will bring a higher-quality LTE network and its associated public interest benefits to consumers in these markets without harming competition. T-Mobile's recent *ex parte* does not call into question the public interest benefits of the transaction. Rather, by misconstruing AT&T's December 1, 2015 petition for a waiver of certain technical rules that would allow AT&T to deploy LTE on its cellular spectrum in portions of Tennessee and Kentucky,[2] T-Mobile incorrectly suggests that AT&T has contradicted its previous statements to the Commission in connection with this license transfer. T-Mobile's claims are incorrect. AT&T's waiver request merely demonstrates that AT&T is engaged in extraordinary measures to fully and efficiently utilize its spectrum to serve its customers' needs, and its statements there do not undermine or contradict any of the statements AT&T has made in this docket to demonstrate the public interest benefits of this transaction. For these reasons, the Commission should dismiss T-Mobile's claims and promptly grant the above-captioned application.

First, despite T-Mobile's repetition of its prior claims, AT&T's acquisition of this spectrum is not motivated by any desire to "withhold the resource from actual or potential competitors,"[3]nor would it reduce competition. As AT&T has demonstrated, the acquisition of

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[1] Letter from Trey Hanbury, counsel to T-Mobile USA, Inc. to Marlene H. Dortch, FCC, WT Docket No. 15-79 (Dec. 23, 2015) ("*Ex Parte* Letter").

[2] Specifically, AT&T seeks a waiver that would authorize the use of a power spectral density model (as is currently permitted in other bands) to deploy a LTE network on its cellular spectrum in certain Tennessee and Kentucky markets.

[3] *Ex Parte* Letter at 1.

the Lower 700 MHz spectrum in this transaction will enable AT&T to enhance its network to the benefit of consumers. In two of the three CMAs in this transaction, AT&T already has deployed a 5x5 MHz LTE network on lower 700 MHz spectrum. As in other cases where AT&T has acquired additional lower 700 MHz licenses, AT&T will be able to rapidly expand its 700 MHz network in these CMAs to a 10x10 MHz deployment. AT&T's track record demonstrates that the addition of adjacent 700 MHz spectrum is a very efficient means to enhance the services it provides to customers (and to enhance competition). Further, the Commission has found foreclosure to be unlikely where, as here, spectrum "was offered openly through a broker so that other entities had the opportunity to acquire the . . . spectrum on the secondary market."[4] Not only were the East Kentucky licenses offered on the open market through a broker, but T-Mobile was given the opportunity to purchase the licenses and *declined to make a formal offer*.[5] The Commission has rejected claims of competitive foreclosure under near-identical circumstances,[6] and should do so again here.

Second, T-Mobile's assertion that AT&T admits in its waiver request that low-band spectrum is a competitive prerequisite for deploying LTE is flatly incorrect.[7] AT&T points out, in its waiver petition, as it has in this docket, that T-Mobile, Sprint and AT&T all have deployed LTE networks using high band spectrum.[8] In this proceeding, AT&T highlighted the successful efforts of its competitors to deploy LTE in spectrum above 1 GHz.[9] AT&T has also deployed LTE in spectrum above 1 GHz, and this spectrum has played a valuable role in serving AT&T's subscribers.[10] The fact remains, however, that AT&T's LTE deployment strategy historically has centered around the Lower 700 MHz band. In the absence of 700 MHz spectrum, AT&T can most effectively deploy a LTE network using cellular spectrum because AT&T's existing cell site grid in the areas covered by the waiver was designed for low-band spectrum deployments.[11] As AT&T explained in its waiver request, high band LTE deployments are most efficiently executed "where the existing cell site grid was designed for a high-band only deployment."[12] Because all carriers' cell site grids vary, their needs and priorities will differ as well. The fact that, in these areas, low-band spectrum has become the most efficient means of LTE network deployment and expansion *for AT&T* does not mean that high-band spectrum cannot be used to offer a competitive LTE network.

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4 *Application of AT&T Mobility Spectrum LLC and Club 42 CM Limited Partnership For Consent to Assign Licenses*, Memorandum Opinion and Order, FCC 15-150, at ¶ 38 (2015) ("*AT&T/Club 42 Order*").

5 Opposition to Petition to Deny of East Kentucky Network, LLC d/b/a Appalachian Wireless, WT Docket No. 15-79, Declaration of Edward D. Moise, Jr. at ¶¶ 3-4 (July 2, 2015).

6 *AT&T/Club 42 Order* at ¶ 38.

7 *Ex Parte* Letter at 2.

8 Response of AT&T to General Information Request Dated May 21, 2015, WT Docket No. 15-79, at 10 (June 4, 2015) ("AT&T Response to East Kentucky Information Request"); Petition for Waiver for Licenses in Kentucky and Tennessee, WT Docket No. 15-300, at 11 (filed Dec. 11, 2015) ("Request for Waiver").

9 AT&T Response to East Kentucky Information Request at 10.

10 *Id.* at 10-11.

11 Request for Waiver at 11.

12 *Id.*

Third, AT&T's statements regarding network deployment in its separate waiver request are entirely consistent with AT&T's statements in this and related proceedings. As T-Mobile notes, AT&T's waiver request and the East Kentucky Network transaction overlap in only one cellular market area: the Kentucky 6 – Madison Cellular Market Area ("CMA"). In this market, AT&T currently does not have any paired Lower 700 MHz licenses and must (at least at present) deploy its 4G LTE network there on alternate spectrum bands.[13] Because AT&T's acquisition of the East Kentucky spectrum did not trigger the Commission's "enhanced factor" review in the Kentucky 6 – Madison CMA, AT&T did not address that CMA in its response to the Commission's General Information Request in this proceeding. However, in connection with another transaction impacting the Kentucky 6 – Madison CMA, AT&T stated that it expects to deploy an LTE network on its 700 MHz spectrum within 12-15 months after closing (as compared to 60-90 days in areas where AT&T has already deployed LTE on its 700 MHz spectrum). It should not be surprising that AT&T can expand an existing LTE network on 850 MHz cellular spectrum more rapidly than it could construct an LTE network on 700 MHz spectrum AT&T seeks to acquire on the secondary market at a future, as-yet-unknown date.[14] This does not change the fact that AT&T can make very rapid use of the 700 MHz spectrum in the other two markets involved in this transaction, or that AT&T could rapidly deploy new 700 MHz LTE facilities in the Kentucky 6 – Madison CMA. Moreover, the fact that AT&T will offer LTE on *both* cellular and 700 MHz spectrum in these markets is unquestionably beneficial both to consumers and to competition.

T-Mobile once again has failed to refute the significant public interest benefits of this transaction, or to identify any cognizable competitive harm that would result from grant of AT&T and East Kentucky's application. Nor has it identified any actual inconsistency between AT&T's submissions in this proceeding and its separate request for waiver. AT&T once again urges the Commission to promptly dismiss T-Mobile's objections, grant the proposed transaction, and enable the expansion of AT&T's LTE network to the benefit of consumers in the affected markets.

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[13] Response of AT&T to General Information Request Dated October 5, 2015), WT Docket No. 15-225, at 11 (October 19, 2015).

[14] All of the markets covered by AT&T's waiver request are markets where AT&T has no paired 700 MHz spectrum. Request for Waiver at 11.

Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this letter is being filed in the above-captioned docket. Please direct any questions to the undersigned.

Respectfully submitted,

/s/ Michael P. Goggin

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AT&T Mobility LLC

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