

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

In the Matter of)
)
Applications of AT&T Inc. and Pine Cellular) WT Docket No. 15-13
Phones, Inc.)
)
For Approval of Long-Term *De Facto* Transfer)
Spectrum Leasing Arrangements)

MEMORANDUM OPINION AND ORDER

Adopted: December 21, 2015

Released: December 21, 2015

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the applications of AT&T and Pine Cellular for Commission approval of several long-term *de facto* transfer spectrum leases. AT&T would lease from Pine Cellular spectrum under one Lower 700 MHz B Block license covering one local market area in Arkansas. Pine Cellular would lease from AT&T spectrum under one partitioned Lower 700 MHz B Block license, three partitioned Lower 700 MHz C Block licenses, and four partitioned PCS licenses in Oklahoma. 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, AT&T and Pine Cellular each would increase their attributable spectrum holdings in certain of these local market areas.² Specifically, each would be attributed post-transaction with more than one-third of the currently suitable and available below-1-GHz spectrum in certain areas. After carefully evaluating the likely competitive effects of the proposed leasing arrangements, as well as the other factors ordinarily considered in a case-by-case review, we find that the likelihood of competitive harm is low. Further, we find some public interest benefits are likely to be realized, such as increased network quality and a better consumer experience. Based on the record before us and our competitive review, under our sliding scale approach, we find that the proposed long-term *de facto* transfer spectrum leases would serve the public interest, convenience, and necessity, and therefore we grant them.

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, 6238-40 ¶¶ 282-88 (2014) (“*Mobile Spectrum Holdings Report and Order*”), *recon. denied, Order on Reconsideration*, 30 FCC Rcd 8635 (2015).

² The *Mobile Spectrum Holdings Report and Order* states that the Commission attributes long-term *de facto* transfer spectrum leasing arrangements to both the lessor and the lessee. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6245 ¶¶ 301-2.

II. BACKGROUND AND PUBLIC INTEREST FRAMEWORK

2. *Description of the Applicants.* AT&T Inc. (together with its indirect and wholly-owned subsidiary, AT&T Mobility Spectrum LLC, “AT&T”), headquartered in Dallas, Texas, is a communications holding company that ranks among the leading providers of telecommunications services in the United States.³ Pine Cellular Phones, Inc. (“Pine Cellular,” and together with AT&T, the “Applicants”) provides a number of services, including television, telephone, wireless, and Internet, to its customers across South Eastern Oklahoma.⁴

3. *Description of the Transaction.* On October 14, 2014, AT&T and Pine Cellular filed the Applications⁵ pursuant to section 310(d) of the Communications Act of 1934, as amended (the “Act”),⁶ seeking Commission grant of several long-term *de facto* transfer spectrum leases.⁷ In the instant transaction, AT&T would lease 12 megahertz of low-band spectrum from Pine Cellular in one Cellular Market Area (“CMA”) in Arkansas.⁸ In particular, AT&T would be attributed with 95 to 135 megahertz of spectrum in total, and 55 megahertz of below-1-GHz spectrum in all five counties in CMA 332 (Arkansas 9 – Polk) post-transaction.⁹ Pine Cellular would lease 22 to 34 megahertz of spectrum from AT&T in five counties covering parts of CMA 165 (Fort Smith, AK-OK); CMA 601 (Oklahoma 6 – Seminole); and CMA 605 (Oklahoma 10 – Haskell) in Oklahoma.¹⁰ As a result of the lease, Pine Cellular would be attributed with 32 to 101 megahertz of spectrum in total, including 12 to 49 megahertz of below-1-GHz spectrum in these three CMAs: Specifically, it would end up having an interest in more than one-third of below-1-GHz spectrum in McCurtain County in Oklahoma 10 – Haskell.¹¹

³ See AT&T Inc., SEC Form 10-K, at 1 (filed Feb. 20, 2015), available at http://www.sec.gov/Archives/edgar/data/732717/000073271715000016/ye14_10k.htm.

⁴ See Pine Cellular website, available at <http://www.pinecellular.com/about-pine-cellular.asp>.

⁵ The Applicants filed four applications, one involving the lease of spectrum to AT&T (ULS File No. 0006452003, which has been designated the lead application) (“AT&T Application”), and three involving the lease of spectrum to Pine Cellular (ULS File Nos. 0006469742, 0006470285, and 0006502325) (collectively, “Pine Cellular Applications”).

⁶ 47 U.S.C. § 310(d).

⁷ See AT&T Application and Pine Cellular Applications, Exhibit 1 - Description of Lease and Analysis of Competitive Effects. AT&T and Pine Cellular each filed its own Public Interest Statements (“AT&T Public Interest Statement” and “Pine Cellular Public Interest Statement”).

⁸ See 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, WT Docket No. 15-13, *Public Notice*, 30 FCC Rcd 2882, 2882-83 (WTB 2015) (“*Accepted for Filing Public Notice*”). See also AT&T Application, Exhibit 3 – Spectrum Aggregation.

⁹ See *Accepted for Filing Public Notice*, 30 FCC Rcd at 2883. See also AT&T Application, Exhibit 3 – Spectrum Aggregation.

¹⁰ See *Accepted for Filing Public Notice*, 30 FCC Rcd at 2883. See also Pine Cellular Applications, Exhibit 3 – Spectrum Aggregation. Note that Pine Cellular would be leasing 10 megahertz of PCS spectrum and 12 to 24 megahertz of Lower 700 MHz spectrum in these five counties.

¹¹ See Pine Cellular Applications, Exhibit 3 – Spectrum Aggregation. See also *Accepted for Filing Public Notice*, 30 FCC Rcd at 2882-83. As set out in the docket, the Bureau accepted the Applications for filing and established a pleading cycle, 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 the associated protective order, adopted a protective order covering the submission of confidential and highly confidential information, and sent the Applicants information requests seeking further specific information relating to the proposed transaction.

4. *Standard of Review.* Pursuant to section 310(d) of the Act,¹² we must determine whether the Applicants have demonstrated that the proposed transaction would serve the public interest, convenience, and necessity.¹³ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act,¹⁴ other applicable statutes, and the Commission's rules.¹⁵ 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.¹⁶ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.¹⁷ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.¹⁸

5. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.¹⁹ 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.²⁰ 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.²¹ 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.²²

¹² 47 U.S.C. § 310(d).

¹³ See, e.g., Application of AT&T Mobility Spectrum LLC and Consolidated Telephone Company for Consent To Assign Licenses, WT Docket No. 14-254, *Memorandum Opinion and Order*, 30 FCC Rcd 9797, 9799-9800 ¶ 6 (WTB 2015) ("*AT&T-Consolidated Order*"); 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*").

¹⁴ 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-Consolidated Order*, 30 FCC Rcd at 9799-9800 ¶ 6, n.18; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8, n.27; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42 ¶ 13, n.45.

¹⁵ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9799-9800 ¶ 6; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42 ¶ 13.

¹⁶ See *id.*

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9800 ¶ 7; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742-43 ¶ 15.

²⁰ See *id.*

²¹ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9800 ¶ 7; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743-44 ¶ 16.

²² 47 U.S.C. § 309(e); see also *AT&T-Consolidated Order*, 30 FCC Rcd at 9800 ¶ 7; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742-43 ¶ 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).

6. *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.²³ We note that no issues were raised with respect to the basic qualifications of Pine Cellular or AT&T, and in addition, AT&T and Pine Cellular previously and repeatedly have been found qualified to hold Commission licenses.²⁴ We find there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Act and our rules, regulations, and policies, of Pine Cellular or AT&T.²⁵

III. POTENTIAL PUBLIC INTEREST HARMS

7. *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.²⁶ 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.²⁷ 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,²⁸ 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.²⁹ 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."³⁰ The Commission further stated, however, that when the other factors ordinarily considered

²³ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see also, e.g., Application of Hardy Cellular Telephone Company and McBride Spectrum Partners, LLC for Consent To Assign License, WT Docket No. 14-240, *Memorandum Opinion and Order*, 30 FCC Rcd 9899, 9902 ¶ 8 (WTB 2015) ("USCC-McBride Order"); *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112 ¶ 10; *AT&T-Leap Order*, 29 FCC Rcd at 2744 ¶ 17.

²⁴ See, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9800 ¶ 8; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112-13 ¶ 11; *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 19. See also Application for Assignment of Licenses from VoiceStream GSM License Company, LLC to Pine Cellular Phones, Inc., ULS File No. 0002303164 (filed Sept. 22, 2005).

²⁵ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948.

²⁶ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12. See also *USCC-McBride Order*, 30 FCC Rcd at 9902-3 ¶ 9; *AT&T-Consolidated Order*, 30 FCC Rcd at 9800-1 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2745 ¶ 20.

²⁷ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113 ¶ 12. See also *USCC-McBride Order*, 30 FCC Rcd at 9902-3 ¶ 9; *AT&T-Consolidated Order*, 30 FCC Rcd at 9800-1 ¶ 9; *AT&T-Leap Order*, 29 FCC Rcd at 2752 ¶ 39, 2753 ¶ 41, 2755-56 ¶ 47.

²⁸ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223-24 ¶ 231.

²⁹ See *id.*, 29 FCC Rcd at 6240 ¶¶ 286-88. See also, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9902-3 ¶ 9; *AT&T-Consolidated Order*, 30 FCC Rcd at 9800-1 ¶ 9; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5108 ¶ 2.

³⁰ *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 Application of AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership for Consent To Assign Licenses, WT Docket No. 14-145, *Memorandum Opinion and Order*, FCC 15-150, at ¶ 7, ¶ 15, ¶ 37, ¶ 48, ¶ 51 (rel. Nov. 12, 2015) ("*AT&T-Club 42* (continued....)

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.³¹

8. 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,³² and the leading nationwide providers hold most of the low-band spectrum available today.³³ The 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.³⁴ 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.³⁵ We consider below whether there would be an increased likelihood as a result of the proposed transaction 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.³⁶

A. Market Definitions

9. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,³⁷ 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.

10. *Product and Geographic Market.* 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).³⁸ In addition, we find that the relevant geographic markets are local.³⁹ AT&T is seeking Commission approval of the proposed leasing

(Continued from previous page) _____

Order"); *USCC-McBride Order*, 30 FCC Rcd at 9903 n.31; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801 n.34; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111 ¶ 8 n.31, 5113 ¶ 13, 5114 ¶ 15, 5123 ¶ 36 n.114, 5130 ¶ 56.

³¹ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 286.

³² See *id.*, 29 FCC Rcd at 6164 ¶ 60.

³³ See *id.*, 29 FCC Rcd at 6156-57 ¶ 46, 6164 ¶ 60.

³⁴ See *id.*, 29 FCC Rcd at 6164 ¶ 60.

³⁵ See *id.*, 29 FCC Rcd at 6164-65 ¶¶ 60-61; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113-14 ¶ 14. See also *USCC-McBride Order*, 30 FCC Rcd at 9903 ¶ 10; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801-2 ¶ 10.

³⁶ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9903 ¶ 10; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801-2 ¶ 10; Applications of AT&T Mobility Spectrum LLC and KanOkla Telephone Association, WT Docket No. 14-199, *Memorandum Opinion and Order*, 30 FCC Rcd 8555, 8559-60 ¶ 10 (WTB 2015) ("*AT&T-KanOkla Order*").

³⁷ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904 ¶ 11; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115 ¶ 17; *AT&T-Leap Order*, 29 FCC Rcd at 2746 ¶ 22.

³⁸ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904 ¶ 12; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115-16 ¶ 18; *AT&T-Leap Order*, 29 FCC Rcd at 2746 ¶ 23.

³⁹ 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. See also *USCC-McBride Order*, 30 FCC Rcd at 9904 n.40; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801-2 n.43; *AT&T-Leap Order*, 29 FCC Rcd at 2748 ¶ 27.

of 12 megahertz of spectrum that covers all five counties in one local market that accounts only for well under one percent of the population of the United States; Pine Cellular is seeking Commission approval of the proposed leasing of between 22 and 34 megahertz of spectrum that covers five counties in parts of three local markets, which also account for less than one percent of the United States population.

11. *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.⁴⁰ Similarly, 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.⁴¹

B. Competitive Effects of the Proposed Transaction

12. *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.⁴² 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.⁴³ 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.⁴⁴ In instances where an applicant is gaining spectrum below 1 GHz,⁴⁵ 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*.⁴⁶

13. As the instant transaction does not result in the acquisition of wireless business units and customers, we do not apply the initial HHI screen. Neither market triggers the total spectrum screen but in our review of the below-1-GHz spectrum holdings, we find that AT&T and Pine Cellular would each

⁴⁰ 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 *USCC-McBride Order*, 30 FCC Rcd at 9904 ¶ 13; *AT&T-Consolidated Order*, 30 FCC Rcd at 9801-2 ¶ 13; *AT&T-Leap Order*, 29 FCC Rcd at 2749-50 ¶ 32.

⁴¹ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904 ¶ 13; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117 ¶ 23; *AT&T-Leap Order*, 29 FCC Rcd at 2751 ¶ 35.

⁴² See, e.g., *AT&T-Club 42 Order*, FCC 15-150, at ¶ 23; *USCC-McBride Order*, 30 FCC Rcd at 9904-5 ¶ 15; *AT&T-KanOkla Order*, 30 FCC Rcd at 8561 ¶ 15; *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, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904-5 n.45; *AT&T-KanOkla Order*, 30 FCC Rcd at 8561 n.48; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121, 5123 ¶¶ 31, 35.

⁴³ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9904-5 ¶ 15; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24; *AT&T-Leap Order*, 29 FCC Rcd at 2753 ¶ 41 n.140.

⁴⁴ See, e.g., *AT&T-Club 42 Order*, FCC 15-150, at ¶ 23; *USCC-McBride Order*, 30 FCC Rcd at 9904-5 ¶ 15; *AT&T-Consolidated Order*, 30 FCC Rcd at 9803 ¶ 15; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24.

⁴⁵ Here, the increase in low-band spectrum holdings post-transaction is being attributed to both the lessee and the lessor, as this proposed transaction involves leasing arrangements as described above. See n.2 *supra*.

⁴⁶ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233 ¶ 267, 6240 ¶¶ 286-88. See also, e.g., *AT&T-Club 42 Order*, FCC 15-150, at ¶ 23; *USCC-McBride Order*, 30 FCC Rcd at 9904-5 ¶ 15; *AT&T-KanOkla Order*, 30 FCC Rcd at 8561 ¶ 15; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118 ¶ 24.

be attributed with more than one-third, or more than 45 megahertz, of the currently suitable and available below-1-GHz spectrum in at least one county as a result of the proposed leasing arrangements. AT&T would be attributed with more than one-third of such spectrum in all five counties in CMA 332 (Arkansas 9 – Polk), and Pine Cellular would be attributed with more than one-third of such spectrum in McCurtain County, covering approximately 40 percent of the population of CMA 605 (Oklahoma 10 – Haskell). We therefore look more closely at the potential competitive effects that these proposed spectrum leasing arrangements may have.

14. *Record.* AT&T contends the proposed transaction would have no adverse competitive effects, as it would neither cause an overall aggregation of spectrum that would pose an anticompetitive risk nor reduce competition in a meaningful way,⁴⁷ and that no subscriber transition issues are implicated as a result of the proposed transaction.⁴⁸ Pine Cellular contends that the proposed lease would have no adverse competitive effects, as Pine Cellular would not exceed the Commission's spectrum screen in any of the implicated counties in the markets involved in the proposed transaction, and actual competition would not be reduced.⁴⁹ No petitions to deny or comments were received.

15. *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.⁵⁰

16. We begin our analysis with the proposed lease of low-band spectrum to AT&T in which it would hold, post-transaction, 55 megahertz of below-1-GHz spectrum in Arkansas 9 – Polk. This market is a very rural market of approximately 72,000 people, with a population density of 21 people per square mile.⁵¹ Two service providers have a significant market share: AT&T holds approximately [REDACTED] percent of the market, while Verizon Wireless has a market share of approximately [REDACTED] percent. Post-transaction, AT&T would be attributed with 95 to 135 megahertz of spectrum in this CMA, including 55 megahertz of spectrum below 1 GHz, while the other three nationwide service providers hold 52 to 211 megahertz of spectrum. With respect to below-1-GHz spectrum, Verizon Wireless holds 47 megahertz, Sprint holds 14 megahertz, T-Mobile holds 12 megahertz, Pine Cellular would continue to be attributed with 12 megahertz, and DISH holds 6 megahertz.⁵²

⁴⁷ See AT&T Public Interest Statement at 1. See also Response of AT&T to the General Information Request Dated Apr. 2, 2015, WT Docket No. 15-13, at 3-4 (Apr. 16, 2015) ("AT&T Information Request Response").

⁴⁸ See AT&T Information Request Response at 3.

⁴⁹ See Pine Cellular Public Interest Statement at 1.

⁵⁰ We derive market shares and HHIs from our analysis of data compiled in our December 2014 NRUF and LNP database, network coverage from January 2015 Mosaik data and 2010 U.S. Census data, and spectrum holdings from our licensing databases and the Applications. We also utilized and analyzed additional data as provided by the Applicants through our information requests. See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9905 n.51; *AT&T-KanOkla Order*, 30 FCC Rcd at 8562 n.54; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120 ¶ 29, n.98.

⁵¹ The population density is measured by the number of people per square mile using Census 2010 data. Rural markets are generally 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*, WT Docket Nos. 02-381, 01-14, 03-202, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 19078, 19086-88 ¶¶ 10-12 (2004).

⁵² In addition, DISH holds 50 megahertz of spectrum above 1 GHz.

17. In terms of population and land area coverage, two service providers have significant 3G and LTE coverage.⁵³ Specifically, AT&T covers approximately 100 percent of the population and 99 percent of the land area with its 3G network, while the comparable 3G network coverage percentages are approximately 97 percent and 81 percent for Verizon Wireless. In addition, AT&T covers approximately 94 percent of the population and 78 percent of the land area with LTE, while the comparable LTE network coverage percentages are approximately 97 and 81 percent for Verizon Wireless.⁵⁴

18. We find notwithstanding the fact that AT&T would be attributed with, as a result of the proposed transaction, more than one-third of the below-1-GHz spectrum in Arkansas 9 – Polk, that the likelihood of competitive harm is low, after evaluating the particular factors ordinarily considered.⁵⁵ Arkansas 9 – Polk is a rural market. We note that while there is only one other service provider, Verizon Wireless, with a significant, and leading, market share as well as significant 3G and LTE population and land area coverage in this very rural market, the two other nationwide service providers, Sprint and T-Mobile, each have access to low-band spectrum. Further, the other three nationwide service providers all have access to spectrum above 1 GHz in addition to their low-band spectrum holdings. We further note that Pine Cellular is neither a significant service provider in terms of market share nor does it cover a significant percentage of the population or the land area of Arkansas 9 – Polk. We find that the leasing of this spectrum by AT&T is unlikely to foreclose rival service providers from entering or expanding, or raise rivals' costs, and thus, the proposed transaction is unlikely to materially lessen the ability of rival service providers to effectively respond to any anticompetitive behavior on the part of AT&T in Arkansas 9 – Polk.

19. We turn next to our analysis of the proposed lease of low-band spectrum to Pine Cellular in which it would hold, post-transaction, 49 megahertz of below-1-GHz spectrum in McCurtain County in Oklahoma 10 – Haskell. This market is very rural, with a population of approximately 84,000 people, and a population density of 16 people per square mile.⁵⁶ Four service providers have a significant market share: AT&T, MBO Wireless, Pine Cellular, and USCC each hold, respectively, approximately [REDACTED] percent of the market. In addition, Verizon Wireless has some market presence, with a market share of approximately [REDACTED] percent. Post-transaction, Pine Cellular would be attributed with 32 to 101 megahertz of spectrum in this market, including 12 to 49 megahertz of spectrum below 1 GHz, while the four nationwide service providers hold between 32 to 184 megahertz of spectrum, MBO Wireless holds 20 to 30 megahertz, and USCC holds 25 to 35 megahertz of spectrum. With respect to below-1-GHz spectrum, Pine Cellular would increase its low-band spectrum holdings to 49 megahertz in McCurtain County, covering 40 percent of the population of Oklahoma 10 – Haskell. USCC holds 25 megahertz of cellular spectrum across the entire CMA, MBO Wireless and Oklahoma Western Telephone Company between them hold 25 megahertz of below-1-GHz spectrum covering the remaining approximately 60 percent of the population of the CMA, AT&T holds 18 megahertz, Verizon Wireless holds 22 megahertz, Sprint holds 14 megahertz, T-Mobile holds 12 megahertz, and DISH holds 6 megahertz.⁵⁷

20. In terms of population and land area coverage, three service providers have significant population and land area 3G coverage. Pine Cellular covers approximately [REDACTED] percent of the

⁵³ It has previously 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., *USCC-McBride Order*, 30 FCC Rcd at 9906 n.54; *AT&T-KanOkla Order*, 30 FCC Rcd at 8562 n.59; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121 n.102; *AT&T-Leap Order*, 29 FCC Rcd at 2770 n.279.

⁵⁴ Neither T-Mobile nor Sprint have built out a 3G or LTE network in this market.

⁵⁵ See ¶ 15 *supra*. See also, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9906-7 ¶¶ 19, 21; *AT&T-KanOkla Order*, 30 FCC Rcd at 8563 ¶ 19; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5123 ¶ 36.

⁵⁶ See n.51 *supra*.

⁵⁷ In addition, DISH holds 50 megahertz of spectrum above 1 GHz.

population and the land area, respectively, with its 3G network, and approximately [REDACTED] percent with its LTE network.⁵⁸ The comparable 3G network coverage percentages are approximately 86 percent and 78 percent for MBO Wireless, and approximately 91 percent and 71 percent for US Cellular. In addition, AT&T has significant 3G land area coverage (approximately 58 percent), and covers approximately 67 percent of the population. Further, AT&T covers approximately 49 percent of the population and 38 percent of the land area with LTE, while the LTE population and land area coverage percentages are approximately 77 percent and 47 percent for MBO Wireless, and approximately 85 percent and 56 percent for US Cellular.

21. We find that notwithstanding the fact that Pine Cellular would be attributed with, as a result of the proposed transaction, more than one-third of the below-1-GHz spectrum in McCurtain County in Oklahoma 10 – Haskell, the likelihood of competitive harm is low after evaluating the particular factors ordinarily considered.⁵⁹ Oklahoma 10 – Haskell is a rural market. There are three other service providers, USCC (the leading service provider), AT&T, and MBO Wireless, who have significant market shares. In addition, Verizon Wireless has some market presence. Further, as well as Pine Cellular’s significant 3G network, USCC and MBO Wireless have significant population and land area coverage, and AT&T covers well over 50 percent of the land area and close to 70 percent of the population with 3G. Moreover, as the Commission noted in the *Mobile Spectrum Holdings Report and Order*, 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.⁶⁰ We find that the leasing of this spectrum by Pine Cellular is unlikely to foreclose rival service providers from entering or expanding, or raise rivals’ costs, and thus, the proposed transaction is unlikely to materially lessen the ability of rival service providers to effectively respond to any anticompetitive behavior on the part of Pine Cellular in Oklahoma 10 – Haskell.

IV. POTENTIAL PUBLIC INTEREST BENEFITS

22. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.⁶¹ The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms,⁶² and applies a “sliding scale approach” to evaluating benefit claims.⁶³ 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.”⁶⁴ Conversely, where potential harms appear less likely and less substantial, as is the case here, we will accept a lesser showing to approve the proposed transaction.⁶⁵

⁵⁸ The coverage information is based on the data submitted by the Applicants in response to the Information Request. According to Mosaik data, Pine Cellular has not deployed a 3G or LTE network in this market.

⁵⁹ See ¶ 15 *supra*. See also, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9906-7 ¶¶ 19, 21; *AT&T-KanOkla Order*, 30 FCC Rcd at 8563 ¶ 19; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5123 ¶ 36.

⁶⁰ See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6207 ¶ 180.

⁶¹ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9907-8 ¶ 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805 ¶ 20; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126 ¶ 43; *AT&T-Leap Order*, 29 FCC Rcd at 2792-93 ¶ 130.

⁶² See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27 ¶ 44. See also, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9907-8 ¶ 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805 ¶ 20; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94 ¶ 132.

⁶³ See *id.*

⁶⁴ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9907-8 ¶ 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805 ¶ 20; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27 ¶ 44.

⁶⁵ See, e.g., *USCC-McBride Order*, 30 FCC Rcd at 9907-8 ¶ 22; *AT&T-Consolidated Order*, 30 FCC Rcd at 9805 ¶ 20; *AT&T-KanOkla Order*, 30 FCC Rcd at 8563 ¶ 20.

23. *Potential Benefits.* AT&T contends that its proposed leasing of spectrum would result in a more robust LTE network that would improve spectral efficiency, increase network capacity, and enable AT&T to offer faster, higher quality services to its customers in the affected market.⁶⁶ Specifically, AT&T asserts that the additional spectrum would enable AT&T to increase its system capacity to enhance and extend its existing services.⁶⁷ According to AT&T, the proposed leasing of this Lower 700 MHz B Block spectrum would allow AT&T to support a 10×10 megahertz LTE deployment.⁶⁸ AT&T asserts that the capacity of a 10×10 megahertz block is greater than the total capacity of two separate 5×5 megahertz blocks⁶⁹ and contends that the wider bandwidth results in noticeably better performance for users than a deployment using two 5×5 megahertz blocks.⁷⁰

24. Pine Cellular asserts that the proposed transaction would enable it to realize greater operational efficiencies and offer more robust and advanced services to meet the needs of its new and existing subscribers.⁷¹ Pine Cellular further asserts that the spectrum at issue would provide it with system capacity that is needed for the long-term provision of products and services to the public in the markets implicated by the proposed transaction.⁷² According to Pine Cellular, it does not have access to any other spectrum with which it can go forward efficiently and in the near-term.⁷³

25. *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 the leasing arrangements involving each Applicant acquiring, in particular, the below-1-GHz spectrum at issue. The record provides general support for the Applicants' contentions that the proposed leasing arrangements would result in some public interest benefits post-transaction. Specifically, we anticipate that AT&T's leasing of the Lower 700 MHz spectrum at issue would enable it to improve throughput and deploy a more robust LTE network in a relatively short period of time.⁷⁴ As we found in the *AT&T-Plateau Wireless Order* and the *AT&T-Club 42 Order*, customers are likely to benefit in the immediate future from access to improved LTE performance and a more robust network as a result of the instant transaction.⁷⁵ Similar to AT&T, we find that Pine Cellular's leasing of the below-1-GHz spectrum

⁶⁶ See AT&T Public Interest Statement at 2. See also AT&T Information Request Response at 6-8.

⁶⁷ See AT&T Public Interest Statement at 2. See also AT&T Information Request Response at 8, 10.

⁶⁸ See AT&T Public Interest Statement at 2. See also AT&T Information Request Response at 8-10.

⁶⁹ See AT&T Information Request Response at 6-7. AT&T asserts that the 10 megahertz block would have approximately 10% more capacity than two 5 megahertz blocks. See *id.* at 7.

⁷⁰ See AT&T Information Request Response at 6-7. AT&T cites the 10×10 megahertz LTE's deployment's greater trunking and signaling efficiencies, maintaining that these improvements result in higher system capacity, greater spectral efficiency, and better user throughput than is possible over two separate 5×5 megahertz blocks. See AT&T Information Request Response at 8-9. See also AT&T Exhibits ATT-PINE000007 and ATT-PINE000049-ATT-PINE000050.

⁷¹ See Pine Cellular Public Interest Statement at 1-2. See also Response of Pine Cellular to the General Information Request Dated Apr. 2, 2015, WT Docket No. 15-13, at 3, 5 (Apr. 16, 2015) ("Pine Cellular Information Request Response").

⁷² See Pine Cellular Public Interest Statement at 1, 2.

⁷³ See Pine Cellular Information Request Response at 5.

⁷⁴ For the timeline for deployment, AT&T states that where it has already deployed LTE on its Lower 700 MHz C Block spectrum, it expects to deploy the Lower 700 MHz B Block spectrum within 60 to 90 days after the lease takes effect. See AT&T Information Request Response at 9-10.

⁷⁵ See *AT&T-Club 42 Order*, FCC 15-150, at ¶¶ 46-47; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5129 ¶ 53. See also, e.g., *AT&T-Consolidated Order*, 30 FCC Rcd at 9805-6 ¶ 22; *AT&T-KanOkla Order*, 30 FCC Rcd at 8564 ¶ 22.

at issue would allow it to expand, in the near future, its service offerings and deploy a more robust network to the benefit of its customers.

V. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS

26. 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 both AT&T's and Pine Cellular's increased aggregation of below-1-GHz spectrum, we find that the ability of rival service providers to offer a competitive response to any anticompetitive behavior on the part of AT&T and Pine Cellular is unlikely to be materially lessened in Arkansas 9 – Polk and Oklahoma 10 – Haskell, the markets to which we applied enhanced factor review. Further, we find that the record provides general support for the Applicants' claims of potential public interest benefits. Therefore, under our sliding scale approach, we find that the likelihood of harm is low and the potential public interest benefits outweigh the harms. As a result, based on the record before us and our competitive review, we find that grant of the proposed long-term *de facto* transfer spectrum leases would serve the public interest, convenience, and necessity.

VI. ORDERING CLAUSES

27. ACCORDINGLY, having reviewed the Applications 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 applications for approval of long-term *de facto* transfer spectrum leasing arrangements filed by AT&T Mobility Spectrum LLC and Pine Cellular Phones, Inc. are GRANTED.

28. IT IS FURTHER ORDERED that this 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.

29. 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