DESCRIPTION OF TRANSACTION AND PUBLIC INTEREST STATEMENT

As set forth in this FCC Form 608 lease application, ParkerB.com Wireless L.L.C. ("Lessor") and T-Mobile License LLC ("Lessee") (collectively, the "Parties") seek consent for a Long-Term *de Facto* Transfer Lease Agreement (the "Lease Agreement"). Under the Lease Agreement, Lessee is authorized to operate a wireless communications system using a 10 MHz block in each of the entire geographic areas (the "Markets") (the "Leased Spectrum") of the 600 MHz licenses specified in Schedule A attached hereto (the "FCC Licenses"). Because the effectuation of the agreement would result in T-Mobile leasing spectrum in some markets where it already holds one-third or more of the available low-band spectrum, the Parties are also seeking a waiver of Section 20.22(c)(2) of the Commission's Rules, to the extent applicable.[1]

Description of the Parties

Lessee is a wholly-owned subsidiary of T-Mobile USA, Inc. ("T-Mobile USA") and, indirectly, T-Mobile US, Inc. ("T-Mobile US"), a publicly-traded company and part of the family of companies that operate under the T-Mobile® brand names. Deutsche Telekom AG ("DT"), a publicly-traded German company based in Bonn, Germany, holds approximately a 43 percent interest in T-Mobile US through its wholly-owned subsidiary T-Mobile Global Zwischenholding GmbH ("T-Mobile Global"). This subsidiary owns all of the equity and voting interests of T-Mobile Global Holding GmbH ("T-Mobile Holding"), which owns all of the equity and voting interests of Deutsche Telekom Holding B.V. ("DT Holding B.V."), which in turn holds the approximately 43 percent interest in T-Mobile US. DT has *de facto* control of T-Mobile US – and thus Lessee – as a result of a proxy agreement which authorizes DT to vote a majority of the stock of T-Mobile US.

Led by a management team with decades of collective experience in the telecommunications industry, T-Mobile US is headquartered in Bellevue, Washington, offers nationwide wireless voice and data services to consumer and business customers and provides service to more than 98 million customers. The Commission has repeatedly found that Lessee and its controlling companies have the requisite character and qualifications to hold Commission authorizations.[2] An FCC Form 602 providing current ownership information for Lessee is on file with the Commission.[3]

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[1] 47 C.F.R. § 20.22(c)(2).

[2] *See, e.g.*, *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of License and Authorizations*, WT Docket No. 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, FCC 19-103 ¶ 44 (rel. Nov. 5, 2019) ("*Merger Approval Order*"); *Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. for Consent to Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd. 2322,

Lessor is a wholly owned subsidiary of DISH, a publicly traded company. DISH's Chairman and controlling shareholder, Charlie Ergen founded the company in 1980. Since then, DISH has served as a disruptive force, driving innovation and value on behalf of consumers. Through its subsidiaries, the company provides television entertainment and award-winning technology to millions of customers with its satellite DISH TV and streaming Sling TV services. Through its strategic spectrum portfolio and other assets, DISH entered the mobile voice/broadband market through its recently consummated purchase of Boost,[4] and is poised to enter the wireless market as a facilities-based provider of wireless services by deploying the nation's first cloud-native O-RAN 5G broadband network. An FCC Form 602 providing current ownership information for Lessor is on file with the Commission.[5]

Description of Spectrum Lease

As part of its approval of the merger between T-Mobile US and Sprint Corporation, the Department of Justice ("DOJ") issued a Final Judgment that, among other things, directed T-Mobile US and DISH Network Corporation "to negotiate in good faith to reach an agreement for [Lessee] to lease some or all of [Lessor]'s 600 MHz Spectrum Licenses for deployment to retail consumers by [Lessee]."[6] T-Mobile and DISH did not reach an agreement on such a lease within 180 days of entry of the Final Judgment. Under the Final Judgment, the United States may "resolve any dispute at the United States' sole discretion," provided that "such resolution shall be based on commercially reasonable and mutually beneficial terms for both parties, recognizing that the lease(s) must be for a sufficient period of time for [Lessee] to make adequate commercial use of the 600 MHz Spectrum Licenses."[7] On August 25, 2020, the Antitrust Division of the DOJ determined the major terms of the Lease Agreement between T-Mobile and DISH that is the subject of this Application. The Antitrust Division upheld this determination on September 3, 2020 and directed the Parties to submit to the Commission the required long-term spectrum lease filing as well as a request for Special Temporary Authority.[8]

The spectrum leasing arrangement discussed herein will commence upon approval by the Commission of this application. This leasing arrangement will continue in effect for up to forty-

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2330 ¶ 19 (2013); *Applications of T-Mobile USA, Inc. and SunCom Wireless Holdings, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd. 2515, 2519-20 ¶ 10 (2008).

[3] *See* FCC File No. 0009190013.

[4] Public Notice, International Authorizations Granted, 35 FCC Rcd. 385, 386 (2020).

[5] *See* FCC File No. 0006321077.

[6] *United States v. Deutsche Telekom, et al.*, No. 1:19-cv-2232, § V.A. (D.D.C., Apr. 1, 2020) ("Final Judgment").

[7] *Id*.

[8] A request for special temporary authority is being submitted concurrently.

two months after the lease commences, unless terminated earlier in accordance with the provisions of the lease agreement. DISH will have certain call-back rights (subject to specified buyer notice) in order to accommodate its network deployment. Specifically, 189 blocks will have a 24-month minimum period until the exercise of the right, with a 12-month call right exercisable after 12 months. Eleven blocks will have an 18-month minimum period, with a 12-month call right exercisable after 6 months. The attached schedules describe the specific blocks being leased and their respective call-right periods.[9]

Consistent with the Lease Agreement and the requirements of the Communications Laws, Lessor will retain *de jure* control of the Leased Spectrum throughout the lease term. Lessee, whose qualifications and eligibility are matters of Commission record, will acquire *de facto* control of the Leased Spectrum and conduct operations under the Lease Agreement subject to applicable rules and regulations.

Public Interest Benefits

The proposed leasing arrangement will deliver important public interest benefits well-recognized by the Commission. First and foremost, the lease will enable T-Mobile to promptly put to use certain spectrum licenses, as DISH gets ready to deploy it by building its nationwide 5G network.[10] The Lease will enable these frequencies immediately to be put to use to provide improved and expanded wireless service to American consumers as well as to facilitate the rapid deployment of T-Mobile's own 5G network.

Here, T-Mobile's deployment of the spectrum will also have immediate and significant benefits for consumers and competition. The Leased Spectrum will help enable T-Mobile to meet increased demand for high speed wireless services. As the Commission is aware, consumer demand for mobile broadband is growing at an unprecedented rate, and Lessee's use of the Leased Spectrum will augment its ability to satisfy this growing demand in the Markets covered

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[9] The Leased Spectrum includes spectrum that was considered "reserved" in the 600 MHz auction. Under the Commission's *Mobile Spectrum Holdings Order*, the Commission determined that, "for a period of six years, entities that acquired reserved spectrum licenses in the Incentive Auction cannot . . . enter into long-term leases regarding those licenses with, entities that would not have been in compliance with the reserve-eligible entity requirements on the date the short form application was due for the Incentive Auction." *Mobile Spectrum Holdings*, 29 FCC Rcd 6133, 6212 (¶ 197) (2014). T-Mobile, however, was eligible on the date the short form applications were due to acquire reserve spectrum in any of the 416 PEAs, *see* Wireless Telecommunications Bureau Releases Updated List of Reserve-Eligible Nationwide Service Providers in Each PEA for the Broadcast Incentive Auction, *Public Notice*, AU Docket No. 14-252, DA 16-115 (rel. Feb. 2, 2016).

[10] The terms of the lease also provide for the Lessor to be able to recover the spectrum on a market-by-market basis when ready to deploy it.

by the Leased Spectrum.[11] For example, Cisco reports that global mobile data traffic grew 71 percent in 2017,[12] and Cisco projects that U.S. mobile data traffic will grow 7-fold from 2017 to 2022.[13]

The Leased Spectrum will be put to use at an especially important time for American consumers. T-Mobile has experienced significantly increased demand for capacity since the onset of the COVID-19 pandemic and it expects such demand to continue, if not increase, for the foreseeable future, T-Mobile will use the additional low-band spectrum to meet this growing demand. This demand is more pervasive and widespread than before the pandemic as a result of increased and changed use patterns due to people sheltering at and working and schooling from home. The additional spectrum also will enable added capacity and improved data throughput speeds, helping improve network reliability and coverage in the Markets. Consumers in urban areas will benefit because the low band spectrum will allow T-Mobile to improve significantly its customers' in-building coverage. Consumers in suburban and rural areas will benefit from the increased reach of low band spectrum, which will allow T-Mobile to enhance its network performance and coverage cost-effectively.

T-Mobile has a history of rapid deployment of 600 MHz spectrum to the benefit of American consumers—exhibited most recently during the COVID-19 pandemic. As noted by OpenSignal, "[l]ess than 24 hours [after Chairman Pai launched the Keep Americans Connected Pledge], T-Mobile announced it was partnering with companies including Dish, Bluewater Wireless, LB Holdings and others to light up an additional 600 MHz spectrum and expand network capacity to respond to the impact of COVID-19 on daily life."[14] OpenSignal analyzed

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[11] *See, e.g.*, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless*, *Including Commercial Mobile Services*, Twentieth Report, 32 FCC Rcd. 8968 ¶ 35 (2017) ("increasing consumer demand for mobile data is expected to continue increasing service providers' need for spectrum."); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services,* Seventeenth Report, 29 FCC Rcd. 15311, 15356 ¶ 91 (2014) ("Rising consumer demand for mobile broadband is increasing service providers' need for spectrum at an unprecedented rate.")

[12] Cisco Systems, Inc., *VNI Mobile Forecast Highlights, Global—2017 Year in Review*,

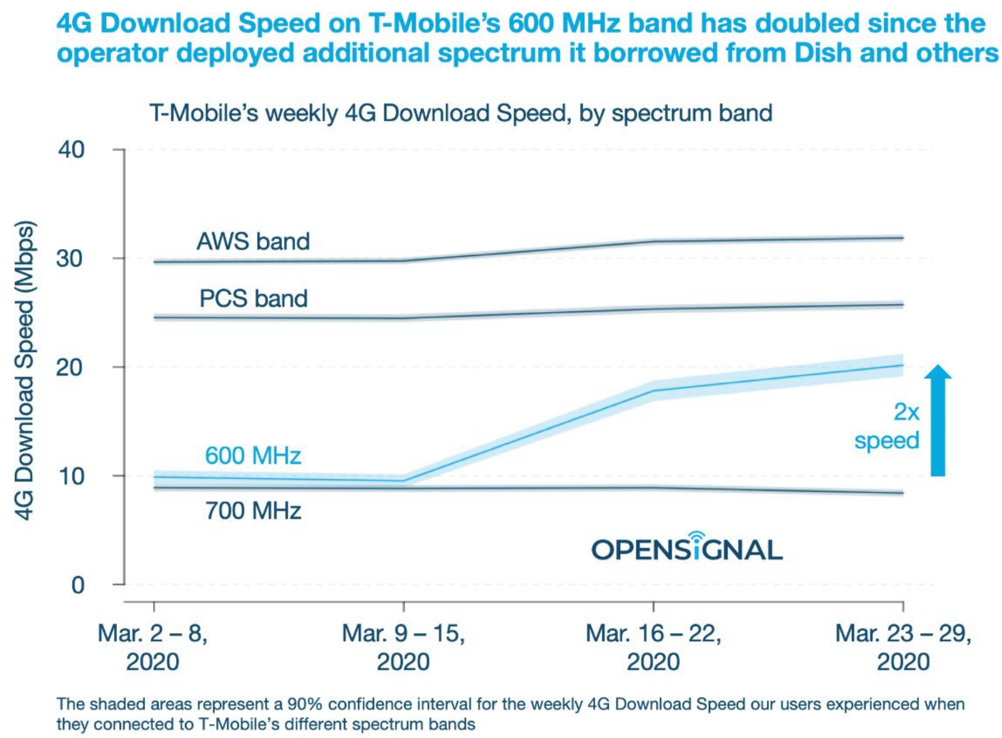
http://www.cisco.com/assets/sol/sp/vni/forecast_highlights_mobile/index.html#~Country, (last visited Sept. 7, 2020).

[13] Cisco Systems, Inc., *VNI Mobile Forecast Highlights, Global—2016-2021*,

http://www.cisco.com/assets/sol/sp/vni/forecast_highlights_mobile/index.html#~Country (last visited Sep. 7, 2020).

[14] Francesco Rizzato, OpenSignal, T-Mobile boosts mobile speeds thanks to spectrum support from FCC, Dish, others (Apr. 8, 2020), *available at*

use of the 600 MHz spectrum by T-Mobile in the top 100 U.S. Cellular Market Areas during four weeks in March, including spectrum leased to T-Mobile by DISH at no charge due to the exigencies of the pandemic, and "found that T-Mobile took less than three days to start deploying the additional spectrum it received from [DISH] and other companies."[15] OpenSignal also published the following chart depicting measured download speeds from its report:



The Leased Spectrum's additional bandwidth will also facilitate the post-merger transition of customers to the T-Mobile network and accelerate T-Mobile's refarming of spectrum for 5G services. The Commission has repeatedly emphasized that "[b]uilding leading 5G networks is of critical importance for our nation."[16] By facilitating the deployment and expansion of T-Mobile's 5G services, the lease advances this key objective of the Commission. In addition, by facilitating the post-merger network transition, the lease will accelerate the

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https://www.opensignal.com/2020/04/08/t-mobile-boosts-mobile-speeds-thanks-to-spectrum-support-from-fcc-dish-others#:~:text=Opensignal%20app-,T%2DMobile%20boosts%20mobile%20speeds%20thanks%20to,support%20from%20FCC%2C%20Dish%2C%20others&text=On%20Monday%2C%20March%2016%20%E2%80%94%20two,of%20the%20600%20MHz%20band.

[15] *Id*.

[16] *See, e.g., Merger Approval Order* ¶ 3.

network deployment synergies that the Commission found "will yield significant public interest benefits."[17]

Just as important, the proposed lease will affirmatively serve the public interest by helping DISH become a stronger competitor in the mobile voice and broadband market. The compensation payable to DISH under the Lease Agreement will contribute to funding construction of DISH's 5G network and thus facilitate DISH's entry into the market as a 5G facilities-based carrier.

In doing so, the proposed lease will also further the pro-competitive goals of the DOJ's Final Judgment. The DOJ—acting in furtherance of competition—expressly directed the Parties to enter into the leasing arrangement and reviewed and weighed in on its terms. The lease is an important element of the remedy DOJ described as designed "to facilitate DISH building and operating its own mobile wireless services network . . . to enable it to compete in the marketplace."[18] Further, DOJ emphasized that the lease "is expected to expand output by making the 600 MHz spectrum available for use by consumers even before DISH has completed building out its network, and would assist T-Mobile in transitioning consumers to its 5G network."[19] As such, the proposed lease will promote competition and deliver the other important public interest benefits described above.

Competition Analysis/Spectrum Aggregation

The leasing arrangement is pro-competitive. Lessor is not currently providing services to end-user customers on the Leased Spectrum. Hence, there will be no discontinuance, reduction, loss or impairment of service to end-user customers and no loss of an existing service provider in any Market. The lease is not only consistent with, but directed by, the DOJ as part of its clearance of the T-Mobile/Sprint merger. In addition, the proposed lease arrangements fully comply with the Act, all other laws, and all Commission rules and regulations and require no waivers.

While the proposed leasing arrangement will cause T-Mobile to either trigger or increase its overage above the spectrum screen in many of the Markets, the screen is not a finding of

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[17] *Id.* ¶ 6.

[18] Competitive Impact Statement at 2, *United States v. Deutsche Telekom, et al.*, No. 1:19-cv-2232 (D.D.C., July 30, 2020). *See also* Final Judgment at 2 ("the purpose of this Final Judgment is to preserve competition by enabling the entry of another national facilities-based mobile wireless network operator").

[19] *See* Response of Plaintiff United States to Public Comments on the Proposed Final Judgment, *United States v. Deutsche Telekom AG, et al.*, Case No. 1:19-cv-02232-TJK, U.S. District Court of the District of Columbia, p. 14, (D.D.C., Nov. 6, 2019), available at: https://www.justice.gov/atr/case-document/file/1215706/download.

competitive harm but merely a processing tool for identifying situations in which competitive concerns could arise.[20] The Commission has repeatedly found that spectrum leases or acquisitions exceeding the screen are pro-competitive and in the public interest where the spectrum would facilitate the build-out of next generation networks, improve service to customers and put fallow spectrum to use.[21] Particularly in the case of leases or acquisitions of unused, greenfield spectrum—such as we have here—competitive concerns are highly unlikely to arise as there would be no reduction in the number of competitors in the market or diminution of existing service. Indeed, where the entity acquiring the spectrum is planning to put it to immediate use, it is plain that competition would be enhanced—and consumers would benefit—by the improved service the new spectrum makes possible. The expanded demand for wireless broadband service as a result of the pandemic heightens the pro-consumer and pro-competitive impact of the proposed lease.

Further, given the substantial spectrum holdings of T-Mobile's competitors, there can be no realistic concern that the proposed leasing arrangement is anti-competitive or somehow forecloses these rival providers from access to spectrum. Indeed, in approving T-Mobile's merger with Sprint, the Commission concluded that "[o]verall, given current spectrum holdings of rival service providers, including [millimeter wave] spectrum, as well as spectrum coming online in the near future, we find it unlikely that rival service providers or potential entrants would be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market" as a result of T-Mobile acquiring significant 600 MHz and mid-band spectrum.[22] Significant amounts of additional licensed and unlicensed spectrum for wireless

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[20] The Applicants have provided an Exhibit detailing the spectrum aggregation resulting from the spectrum lease on a county-by-county basis as Exhibit A. The parties have also provided a chart of competitors holding low- and mid-band spectrum as Exhibit B.

[21] *See Merger Approval Order* ¶ 97 (recognizing that although the transaction would trigger the spectrum screen, "America's appetite for wireless broadband service is surging" and "[e]nabling next generation wireless networks and closing the digital divide will require efficient utilization of the low-, mid-, and high-bands."); *Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corporation, Horizon Wi-Com, LLC, NextWave Wireless, Inc., And San Diego Gas & Electric Company For Consent to Assign and Transfer Licenses*, Memorandum Opinion and Order, 27 FCC Rcd. 16459 ¶ 40 (2012) (finding that, although the spectrum screen was triggered in 10 markets, divestitures were not warranted and that the merger would yield significant public interest benefits, including "facilitat[ion of] the transition of long-underutilized WCS spectrum towards mobile broadband use."); *In The Matter of Sprint Nextel Corporation and Clearwire Corporation*, Memorandum Opinion and Order, 23 FCC Rcd. 17570 ¶ 27 (2008) (finding that, although the spectrum screen was triggered in 43 markets, divestitures were not warranted and that the merger would yield significant public interest benefits, including the "deploy[ment of] ... next-generation technology networks based on WiMAX standards.).

[22] *Merger Approval Order*, 31 FCC Rcd 10578, 10620.

services have recently been made available and more will be made available in the coming years, providing additional opportunities for market participants to utilize spectrum.[23]

Just as important, use of the spectrum by the Lessee is subject to an important disciplining factor – DISH's call-back rights. These rights ensure that the spectrum will not be withheld from use by DISH as it deploys its own nationwide 5G network.

Here, the proposed lease will technically trigger the spectrum screen in 280 CMAs, although in all but 18 CMAs the transaction merely represents an increase in spectrum in a CMA where T-Mobile already—with Commission approval—exceeds the screen.[24] In those 18 CMAs that represent "new" triggers, T-Mobile is not generally the largest spectrum holder—on average, AT&T holds 84 percent of the amount of spectrum T-Mobile is attributed with, and Verizon holds 122 percent of what T-Mobile has. In all of these cases, the increase is less than one percent, and in the one market where T-Mobile's percentage increase is the highest (WI 4 – Marinette, at 1.2 percent), Verizon is attributed with over two times as much spectrum as T-Mobile (204 percent). And, these holdings also omit important spectrum bands in use by other competitors, such as the 30-40 MHz of Citizens Broadband Radio Service ("CBRS") spectrum acquired in major markets by Verizon, and the substantial new CBRS licenses and other unlicensed uses of spectrum by major cable television/broadband providers.

The proposed lease of 600 MHz spectrum will result in T-Mobile being attributed with more than one-third of the available low-band (below 1 GHz) spectrum in select counties within 153 Cellular Market Areas ("CMAs"). However, an analysis of spectrum at the local level in these markets demonstrates that the transaction will be pro-competitive and will not result in foreclosure or affect the ability of any entity to compete in these areas. As discussed below, the

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[23] *See, e.g.*, Press Release, Federal Communications Commission, Chairman Pai Proposes to Make More Critical Mid-Band Spectrum Available for 5G (Sept. 8, 2020) (proposing to make the 3.45-3.55 GHz band available for commercial wireless use); *Unlicensed Use of the 6 GHz Band*, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd. 3852 (2020) (making 1200 megahertz of spectrum available for unlicensed use in the 6 GHz band (5.925-7.125 GHz)); *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Order of Proposed Modification, 35 FCC Rcd. 2343 (2020) (making available 280 megahertz of spectrum in the 3.7–3.98 GHz band for licensed use).

[24] In the 262 CMAs where T-Mobile's aggregation of spectrum exceeded the screen but was previously found to be pro-competitive, T-Mobile's holdings are increasing by an average of 0.64 percent, and by at most 1.74 percent. In all but 36 of those markets, in fact, T-Mobile is not the largest holder of spectrum, and even in the markets where it is, AT&T holds, on average, almost 70 percent as much spectrum and Verizon holds, on average, over 90 percent of the amount of spectrum with which T-Mobile is attributed.

Commission should accordingly approve the transaction and waive Section 20.22(c)(2) of its rules.[25]

As an initial matter, as T-Mobile has shown in the Low-Band Enhanced Review CMA Overview table attached hereto as Exhibit C, T-Mobile's competitors have substantial amounts of spectrum in every CMA subject to enhanced review.[26] In 116 of the 153 CMAs, for example, another major carrier holds *more* attributable spectrum than T-Mobile as an absolute matter—there are 6 CMAs, in fact, where T-Mobile is not even the largest holder of low-band spectrum. Even in those markets where T-Mobile is attributed with more spectrum than its competitors, the increase represented by the proposed lease is less than one percent of T-Mobile's holdings. And, more importantly, in those markets all of the other major carriers have very substantial spectrum holdings—in one of the CMAs, Verizon's holdings are within 0.21 percent of T-Mobile's, and in 16 of the markets where T-Mobile is the largest holder of attributable spectrum, Verizon's holdings are 90 percent or more of T-Mobile's.

Beyond that, it is undisputed that the low-band screen—and Section 20.22(c)(2) of the rules—were intended to protect smaller carriers from attempts by the two largest carriers (AT&T and Verizon), which had decades-old advantages in low-band spectrum holdings and a substantial head-start in developing those resources, from amassing low-band spectrum and foreclosing historically disadvantaged carriers from obtaining critical licenses needed to compete. As explained by the Commission, the low-band enhanced review was necessary because "low-band spectrum is less costly to deploy and provides higher quality coverage than higher-band spectrum, and *the two leading nationwide providers hold most of the low-band spectrum available today*."[27] The Commission further opined that if AT&T and Verizon "were

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[25] Section 20.22(c)(2) prohibits any carrier with more than one-third of the available low-band spectrum from acquiring—or leasing on a long-term basis—any 600 MHz spectrum. 47 C.F.R. § 20.22(c)(2).

[26] Exhibit C provides POP-weighted spectrum holdings for the 153 "enhanced review" markets for T-Mobile, DISH, AT&T, and Verizon for low-band spectrum and for overall spectrum, including mid-band and millimeter wave.

[27] *Application of AT&T Mobility Spectrum LLC and Kaplan Telephone Company, Inc. For Consent To Assign Licenses*, Memorandum Opinion and Order, 30 FCC Rcd. 8502 ¶ 11 (2015) ("*AT&T-Kaplan Order*"); *see also Applications of AT&T Mobility Spectrum LLC and KanOkla Telephone Association For Consent To Assign Licenses*, Memorandum Opinion and Order, 30 FCC Rcd. 8555 ¶ 10 (2015) ("*AT&T-KanOkla Order*"); *Application of AT&T Mobility Puerto Rico Inc. and Worldcall Inc. For Consent To Assign Licenses*, Memorandum Opinion and Order, 30 FCC Rcd. 9763 ¶ 10 (2015) ("*AT&T-Worldcall Order*"); *Application of AT&T Mobility Spectrum LLC and Consolidated Telephone Company For Consent To Assign Licenses*, Memorandum Opinion and Order, 30 FCC Rcd. 9797 ¶ 10 (2015) ("*AT&T-CTC Order*"); *Application of Hardy Cellular Telephone Company and McBride Spectrum Partners, LLC For Consent To Assign License*, Memorandum Opinion and Order, 30 FCC Rcd. 9899 ¶ 10 (2015)

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."[28] Thus, enhanced review was initially a tool to provide extra scrutiny to transactions involving AT&T and Verizon, not companies like T-Mobile.

The Commission's observation that low-band has historically been controlled by AT&T and Verizon is borne out in these markets. AT&T or Verizon owns one of the two 800 MHz cellular licenses in every CMA, and AT&T and Verizon collectively own both of the cellular authorizations in 143 of the 153 CMAs. Because these companies have had three decades or more to develop their coverage with the extended propagation benefits of low-band spectrum, their coverage in all of these markets should be as near complete as economically justifiable.

Moreover, the 2016 Broadcast Incentive Auction has conclusively demonstrated that neither AT&T nor Verizon believes low-band spectrum is a critical asset going forward. Verizon tendered an upfront payment only a dollar more than the minimum, and did not submit a single bid.[29] AT&T bid in the auction, but attempted to zero out its demand early in the auction, and then subsequently sold the licenses where it could not reduce its demand to Columbia Capital and TStar. Nor has either carrier made any effort to acquire more than incidental 600 MHz spectrum in the aftermarket. Under these circumstances, it should be evident that T-Mobile's lease of additional 600 MHz spectrum is not an attempt to foreclose competition, but rather to rapidly deploy unused assets for the benefit of the American public.[30]

In any event, as mentioned above, the proposed lease is structured to facilitate the entry of a fourth carrier, DISH, into the market, leading DOJ to endorse and indeed direct the proposed arrangement.

("*Hardy-McBride Order*"); *Application of AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership For Consent To Assign Licenses*, Memorandum Opinion and Order, 30 FCC Rcd. 13055 ¶ 10 (2015) ("*AT&T-Club 42 Order*"); *Application of AT&T Mobility Spectrum LLC and North Dakota Network Co.*, Memorandum Opinion and Order, 32 FCC Rcd. 163 ¶ 8 (2017) ("*AT&T-North Dakota Network Order*").

[28] *AT&T-Kaplan Order* ¶ 11; *AT&T-KanOkla Order* ¶ 10; *AT&T-Worldcall Order* ¶ 10; *AT&T-CTC Order* ¶ 10; *Hardy-McBride Order* ¶ 10; *AT&T-Club 42 Order* ¶ 10; *AT&T-North Dakota Network Order* ¶ 8.

[29] *See* Public Notice, Incentive Auction Closing and Channel Reassignment, 32 FCC Rcd. 2786, Appendix C (2017).

[30] *See* Opposition of T-Mobile License LLC, ULS File Nos. 0009021213 & 0009021220 at 5-7 (Aug. 17, 2020).

Foreign Ownership of Lessee

As noted above, Lessee is a wholly-owned subsidiary of T-Mobile USA. T-Mobile USA in turn is a wholly owned direct subsidiary of T-Mobile US, a U.S.-organized entity. DT, a publicly-traded German corporation, holds approximately a 43 percent interest in T-Mobile US and, indirectly in T-Mobile USA through the intermediate companies described above. DT has *de facto* control of T-Mobile US—and thus Lessee—as a result of a proxy agreement which authorizes DT to vote a majority of the stock of T-Mobile US.

On November 5, 2019, in connection with the T-Mobile/Sprint merger, the Commission granted, subject to certain conditions, T-Mobile US's Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act on behalf of its subsidiaries and affiliates holding common carrier radio licenses that it would not serve the public interest to prohibit more than 25 percent foreign ownership in T-Mobile US.[31] That ruling also specifically permitted: (i) the specific foreign entities with a non-controlling interest in T-Mobile US (*i.e.*, Kreditanstalt für Wiederaufbau and the Federal Republic of Germany ("<u>FRG</u>")), to increase their equity and/or voting interests, at some future time up to and including a non-controlling indirect 49.99 percent equity and/or voting interest; and (ii) the specific foreign entities with a controlling interest in T-Mobile US *(i.e.*, DT Holding B.V., T-Mobile Holding, T-Mobile Global and DT) to increase their interests, at some future time, up to and including 100 percent of T-Mobile US's equity and/or voting interests.[32] That declaratory ruling includes all authority available under the rules, including the standard terms and conditions set forth in Section 1.5004 (formerly Section 1.994) of the rules, and thus extends to Lessee (among other licensee subsidiaries of T-Mobile USA) and the type of wireless service licenses that are the subject of the instant transactions. The foreign ownership in the licensees as approved has not materially changed since that ruling and will not be affected by the instant transactions.

Conclusion

Accordingly, the Parties respectfully submit that the instant lease arrangement is consistent with the Commission's spectrum leasing rules and will serve the public interest, convenience and necessity.

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[31] *Merger Approval Order* ¶ 361.

[32] *Id*. ¶ 362.