

## DESCRIPTION OF TRANSACTION AND PUBLIC INTEREST STATEMENT

### I. Description of Transaction

AT&T Mobility Spectrum LLC (“Mobility Spectrum”), an indirect wholly-owned subsidiary of AT&T Inc. (collectively with Mobility Spectrum, “AT&T”), together with Kaplan Telephone Company, Inc. (“Kaplan”) (AT&T and Kaplan are individually a “Party” and collectively the “Parties”) hereby seek Commission consent to the assignment of two Lower 700 MHz C Block call signs and a B Block cellular call sign (the “Kaplan Licenses”) to Mobility Spectrum. The Kaplan Licenses are described in more detail in Exhibit 2. As described in more detail below and in Exhibit 3, no spectrum aggregation or other competitive concerns are raised by this proposed assignment. Accordingly, and as described in more detail below, the Parties respectfully submit that Commission approval of the proposed transaction will serve the public interest, convenience and necessity and request that the Commission expeditiously grant this transaction.

### II. Commission Approval of the Proposed Transaction is in the Public Interest

Under Section 310(d) of the Communications Act of 1934, as amended (the “Act”), a license may be transferred or assigned where the Commission finds “that the public interest, convenience and necessity will be served thereby.”<sup>1</sup> This standard involves a balancing process that weighs the potential public interest benefits of the proposed transaction against any potential harm.<sup>2</sup> As demonstrated below, this transaction does not pose any harm and will benefit wireless consumers. In particular, by acquiring control of the spectrum described in Exhibit 2, AT&T will be able to augment its network capacity in order to enhance the scope and depth of services it offers in the affected markets.<sup>3</sup>

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<sup>1</sup> 47 U.S.C. § 310(d); see *Applications of AT&T Inc. and Dobson Communications Corporation For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd 20295, at ¶ 2 (2007) (“*AT&T-Dobson Order*”); *Applications of Midwest Wireless Holdings, L.L.C. and Alltel Communications, Inc. For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 21 FCC Rcd 11526, 11535 (2006) (“*Alltel-Midwest Order*”); *Applications of Nextel Communications, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13967, 13976 (2005) (“*Sprint-Nextel Order*”); *Applications of Western Wireless Corporation and Alltel Corporation For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13053, 13062 (2005) (“*Alltel-Western Order*”); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21542 (2004) (“*Cingular-AT&T Wireless Order*”); *Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, to Subsidiaries of Cingular Wireless LLC*, Memorandum Opinion and Order, 19 FCC Rcd 2570, 2580 (“*Cingular-NextWave Order*”).

<sup>2</sup> *AT&T-Dobson Order* at ¶ 10; *Alltel-Midwest Order*, 21 FCC Rcd at 11535; *Sprint-Nextel Order*, 20 FCC Rcd at 13976; *Alltel-Western Order*, 20 FCC Rcd at 13062-63; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543; *Cingular-NextWave Order*, 19 FCC Rcd at 2580-81.

<sup>3</sup> See, e.g., *AT&T-Dobson Order* at ¶ 79; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21602; *Cingular-NextWave Order*, 19 FCC Rcd at 2585; see also *Alltel-Midwest Order*, 21 FCC Rcd at 11566-68.

In evaluating assignment applications under Section 310(d), the Commission focuses on whether the proposed assignee is qualified to hold Commission licenses.<sup>4</sup> The qualifications of AT&T to hold and control Commission licenses are matters of public record.<sup>5</sup> The Commission has properly found that the qualifications of AT&T to hold Commission licenses are well-settled and that there is no reason to re-evaluate them in each proposed license assignment.<sup>6</sup> Therefore, there is no question that AT&T possesses the qualifications required to acquire the Kaplan Licenses.

The Commission has determined that applications that demonstrate on their face that a transaction will yield affirmative public interest benefits and will neither violate the Act or Commission rules, nor frustrate or undermine policies and enforcement of the Act by reducing competition or otherwise,<sup>7</sup> do not require extensive review and expenditure of considerable resources by the Commission.<sup>8</sup> This transaction meets this standard and should thus be granted promptly.

#### **A. The Proposed Transaction Serves the Public Interest**

Commission approval of the proposed transaction will promote the public interest. The proposed transaction will enable AT&T to achieve greater operational efficiencies and offer improved, more robust and advanced services to meet the needs of new and existing subscribers.<sup>9</sup>

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<sup>4</sup> *AT&T-Dobson Order* at ¶ 11; *Alltel-Midwest Order*, 21 FCC Rcd at 11537; *Sprint-Nextel Order*, 20 FCC Rcd at 13979; *Alltel-Western Order*, 20 FCC Rcd at 13063; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546; *Cingular-NextWave Order*, 19 FCC Rcd at 2581.

<sup>5</sup> *See, e.g., AT&T-Dobson Order* at ¶ 11; *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5758 (2007) (“*AT&T-BellSouth Order*”); *Cingular-AT&T Wireless Order* at 21548-51; *Cingular-NextWave Order* at 2583 & n.112; *Applications of SBC Communications, Inc. and BellSouth Corporation (For Consent to Transfer Control or Assignment of Licenses and Authorizations)*, Memorandum Opinion and Order, 15 FCC Rcd 25459, 25463-66 (WTB/IB 2000) (“*SBC-BellSouth Order*”).

<sup>6</sup> *See, e.g., Application of New Cingular Wireless PCS, LLC and D&E Investments, Inc. For Consent to Assign Lower 700 MHz C Block Licenses*, Order, DA 12-232, ¶ 5 (WTB 2012) (“*AT&T/D&E Order*”) (“No issues have been raised in this proceeding with respect to the basic qualifications of the proposed assignee, AT&T, which has previously and repeatedly been found qualified, through its subsidiaries, to hold Commission licenses. We therefore find that there is no reason to re-evaluate the basic qualifications of AT&T.”).

<sup>7</sup> *See Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Telecommunications, Inc., Transferor to AT&T Corp., Transferee, Memorandum Opinion and Order*, 14 FCC Rcd 3160, 3170 (1999); *Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission’s Rules*, Memorandum Opinion and Order, 14 FCC Rcd 14712, at 14740-42 (1999) (“*Ameritech/SBC*”).

<sup>8</sup> *See Ameritech/SBC*, 14 FCC Rcd at 14740-42.

<sup>9</sup> Transactions that give rise to these results have been found by the Commission to be in the public interest. *See AT&T-Dobson Order* at ¶¶ 79, 83; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21602-04, 21607; *Cingular-*

Specifically, the additional spectrum will enable AT&T to increase its system capacity to enhance existing services, better accommodate its overall growth, and facilitate the provision of additional products and services to the public in the geographic areas authorized under the Kaplan Licenses.<sup>10</sup> The additional spectrum will be used to deploy AT&T's 4G network using LTE technology, and will increase network capacity to the benefit of all AT&T subscribers.<sup>11</sup>

Notably, the acquisition of this spectrum will give AT&T 24 contiguous megahertz of paired 700 MHz spectrum, enough to support a 10 x 10 MHz LTE deployment. A contiguous 10 x 10 MHz configuration is more spectrally efficient and has a greater throughput than a 5 x 5 MHz configuration. The more robust LTE network made possible by this transaction will improve spectral efficiency, increase network capacity, and enable AT&T to offer faster, higher quality services to its customers in the affected markets. The Commission has found transactions that enable 10 x 10 MHz LTE deployments in the 700 MHz band to serve the public interest.<sup>12</sup>

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*NextWave Order*, 19 FCC Rcd at 2585; *Applications of Northcoast Communications, LLC and Cellco Partnership d/b/a Verizon Wireless For Consent to Assignment of Licenses*, Memorandum Opinion and Order, 18 FCC Rcd 6490, 6493 (WTB/CWD 2003) (“*VZW-Northcoast Order*”).

<sup>10</sup> Among other things, the Commission's public interest calculus takes into consideration the extent to which the transaction will accelerate the “deployment of advanced services” and “affect the quality of communications services or will result in the provision of new or additional services to consumers.” *AT&T-Dobson Order* at ¶ 12; *Alltel-Western Order*, 20 FCC Rcd at 13064-65; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544.

<sup>11</sup> The Commission has previously concluded that, in the absence of competitive harm, the acquisition of additional 700 MHz spectrum by AT&T serves the public interest by enabling AT&T to achieve greater efficiencies, enhance existing services, accommodate growth, and facilitate the provision of additional products and services to the public. See *AT&T/D&E Order* at ¶ 8. See also *Application of AT&T Mobility Spectrum LLC and BTA Ventures II, Inc. For Consent To Assign Lower 700 MHz B Block Authorization Call Sign WQJQ779*, Order, DA 12-234, ¶ 8 (2012).

<sup>12</sup> *Applications of AT&T Inc., Cellco Partnership d/b/a Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC*, Memorandum Opinion and Order, 28 FCC Rcd 12878, ¶ 59 (2013) (“The record supports AT&T's contentions that, as part of its spectrum rationalization plan, the proposed transaction has the potential to enable AT&T to achieve greater spectral efficiency and greater throughput in the license areas at issue, which would enable AT&T to expand its LTE deployment using contiguous spectrum. Indeed, AT&T's description of its plans for these markets generally suggests that AT&T would take advantage of these potential benefits to provide better service to customers. We also note that the Commission's performance requirements for these Lower 700 MHz Band B Block licenses should help ensure that AT&T makes significant deployments of these licenses quickly. Thus, we expect generally that this proposed transaction would likely result in new deployment and/or expansion of AT&T's LTE network.”). See also *id.* at ¶ 60 (“More specifically, in the four markets discussed above where AT&T would hold 68 megahertz or more of spectrum below 1 GHz, we anticipate that the proposed transaction would lead to the realization of certain market and transaction-specific public interest benefits. In the Miami and West Palm Beach CMAs, where AT&T currently holds the Lower 700 MHz C Block license, AT&T has already deployed LTE on that spectrum. By adding the Lower 700 MHz Band B Block spectrum, AT&T would be able to expand its LTE service on contiguous spectrum. Thus, consumers would benefit from a better LTE performance . . .”).

## B. The Proposed Transaction Creates No Competitive Harm

The proposed transaction will have no adverse competitive effects. It will neither cause an overall aggregation of spectrum that would pose an anticompetitive risk nor reduce actual competition in any meaningful way for a variety of reasons.<sup>13</sup>

The proposed transaction will not cause an aggregation of spectrum that would pose an anticompetitive risk. AT&T proposes to acquire spectrum covering nine parishes in two Cellular Market Areas (“CMAs”). Post-closing, AT&T’s attributable spectrum total will range from 125 MHz to 165 MHz.<sup>14</sup> However, AT&T would not meet or exceed the revised spectrum screen recently announced by the Commission.<sup>15</sup>

The fact that AT&T will exceed the Commission’s soon-to-be-replaced spectrum screen in two parishes should not serve as a barrier to grant of this transaction. The Commission has previously stated that the spectrum screen is “designed to be conservative and ensure that any markets in which there is potential competitive harm based on spectrum aggregation are

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<sup>13</sup> In evaluating the competitive effects of proposed transactions, the Commission considers the relevant product market and geographic market. With respect to the domestic wireless markets, the Commission has defined the relevant product market as mobile telephony services. See *AT&T-Dobson Order* at ¶ 17. Spectrum suitable for mobile telephony includes cellular, PCS, SMR and 700 MHz spectrum. *Id.* at ¶¶ 17, 30. The Commission has also found that 20 megahertz of WCS spectrum are “suitable and available for the provision of mobile telephony/broadband services and should therefore be added to the spectrum screen.” See *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, FCC 12-156, at ¶ 31 (2012) (“*AT&T/WCS Licensees Order*”). The Commission has further held that, where available, it will include AWS-1 and BRS spectrum in its evaluation of the competitive effects of proposed transactions. *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-258, at ¶¶ 62-70 (Nov. 10, 2008) (“*Verizon Wireless-ALLTEL Order*”). The Commission recently adopted new policies regarding the attribution of mobile spectrum holdings for competitive purposes. Specifically, the Commission stated that it will include the AWS-4 spectrum, the AWS H Block, an additional 12 MHz of BRS spectrum, and 89 MHz of EBS spectrum in its initial screen. *Policies Regarding Mobile Spectrum Holdings*, Report and Order, FCC 14-63, ¶¶ 89, 93, 120, 125 (2014) (“*Mobile Spectrum Holdings Order*”). The Commission has defined the relevant geographic market as the area “within which a customer is most likely to shop for mobile telephony service.” *Id.* at 25; see also *Cingular-AT&T Wireless Order*, 19 FCC Red at 21563 (“[T]he appropriate definition of the relevant geographic market is neither national, on the one hand, nor as small as a county on the other.”).

<sup>14</sup> See *AT&T/WCS Licensees Order* at n. 94 (“Our modified spectrum screen is triggered where the Applicants would have, on a market-by-market basis: 102 megahertz or more of cellular, PCS, SMR, 700 MHz, and WCS spectrum, where neither BRS nor AWS-1 spectrum is available; 121 megahertz or more of spectrum, where BRS spectrum is available, but AWS-1 spectrum is not available; 132 megahertz or more of spectrum, where AWS-1 spectrum is available, but BRS spectrum is not available; or 151 megahertz or more of spectrum where both AWS-1 and BRS spectrum are available.”).

<sup>15</sup> *Mobile Spectrum Holdings Order* ¶ 251 (adopting a revised screen of 194 megahertz).

identified and subjected to more in-depth analysis.”<sup>16</sup> And, as demonstrated clearly below and in Exhibit 4, there will remain significant competition in these parishes post-transaction and thus this transaction raises no competitive concerns.

The proposed transaction will not reduce actual competition in any meaningful way in the affected parishes. To the contrary, the transaction will “preserv[e] and enhance[e] competition.”<sup>17</sup> In fact, the proposed transaction will enhance competition by enabling AT&T to be a more effective competitor, while preserving meaningful competition in the affected markets. Specifically, the transaction will not result in public interest harm in mobile telephony/mobile broadband markets because of the affected market’s “characteristics that would allow rival service providers to provide an effective competitive constraint.”<sup>18</sup> As shown in Exhibit 4, there will continue to be numerous licensed providers (including AT&T) in the affected parishes that will provide effective competitive constraints. As a result, this transaction “is unlikely to result in collusive behavior or create ‘unilateral’ market power” on the part of the assignee.<sup>19</sup>

### III. Subscriber Transition Issues

Despite the fact that Kaplan presently serves subscribers utilizing spectrum authorized under call sign KNKN805, no subscriber transition issues are implicated as a result of this transaction. Kaplan will continue to provide service to its subscribers, with no change in the terms and conditions of service, over an MVNO platform that operates in the Louisiana 5 – Beauregard CMA. Kaplan is in the process of transitioning its subscribers to this platform. The subscriber transition will be completed prior to closing.

### IV. Conclusion

As demonstrated above, AT&T is well-qualified to acquire, control and make beneficial public use of the spectrum proposed to be assigned in this transaction. In addition, as set forth above, the proposed transaction will not adversely affect competition. Indeed, grant of this application will promote competition and will otherwise serve the public interest, convenience and necessity. For these reasons, prompt Commission approval of this transaction is warranted.

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<sup>16</sup> *Verizon Wireless-ALLTEL Order* at ¶ 54 (emphasis added).

<sup>17</sup> *AT&T-Dobson Order* at ¶ 12; *Sprint-Nextel Order*, 20 FCC Rcd at 13977; *Alltel-Western Order*, 20 FCC Rcd at 13064; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544.

<sup>18</sup> *See, e.g., Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 02322, ¶ 48 (2013).

<sup>19</sup> *See Sprint-Nextel Order*, 20 FCC Rcd at 13969.