

DESCRIPTION OF TRANSACTION AND PUBLIC INTEREST STATEMENT

I. INTRODUCTION AND SUMMARY

AT&T Mobility Spectrum LLC (“AT&T Mobility”), an indirect wholly-owned subsidiary of AT&T Inc. (collectively with AT&T Mobility, “AT&T”), together with FiberTower Corporation hereby seek Commission consent to transfer control of the 24 GHz and 39 GHz licenses held by FiberTower Spectrum Holdings LLC¹ (collectively with FiberTower Corporation, “FiberTower”) to AT&T Mobility.

The transaction will serve the public interest by facilitating AT&T’s adoption of 5G technology, which will greatly benefit consumers by enhancing existing services and enabling the provision of new ones. Indeed, accelerating U.S. leadership in the adoption of 5G services is one of the Commission’s top policy objectives. In addition, as described in more detail below, and in Exhibits 3 and 4, the transfer of control raises neither spectrum aggregation nor competitive concerns. Accordingly, the Parties respectfully submit that Commission approval of the transaction will serve the public interest, convenience and necessity. For the reasons demonstrated below, the Commission should grant these transfer applications expeditiously.

¹ As explained in greater detail in Part I.C, FiberTower holds interests in 738 24 GHz and 39 GHz licenses. *See* Exhibit 2 (listing all 738 licenses that the parties intend to transfer). The Commission’s Universal Licensing System (“ULS”) records indicate that 88 of these licenses are “active.” Accordingly, AT&T and FiberTower are submitting electronic applications for 85 of these “active” licenses. *See* ULS File Nos. 0007652635, 0007652637. The remaining three licenses (call signs WPNA435, WPNA437, and WPNA522) have pending renewal applications on file. *See* ULS File Nos. 0007558150, 0007558151, 0007558152. Because the ULS will not permit the transfer of these call signs while renewal applications are pending, the Commission should accept and consider the three call signs as incorporated in the instant applications for transfer of control. To the extent a waiver is required to incorporate the three call signs into the instant applications for transfer of control, the parties respectfully request one.

In addition, the ULS records indicate that FiberTower holds interests in 650 licenses that are the subject of a litigation remand from the United States Court of Appeals for the District of Columbia Circuit. *See* Exhibit 2 (listing the 650 “terminated” licenses). These licenses are shown as “terminated” in the ULS. Because the ULS is not currently configured to accept filings with respect to these 650 licenses, the Commission should accept and consider the 650 “terminated” licenses as incorporated in the instant applications for transfer of control. The parties also note that three of the “terminated” licenses (WMT336, WMT348, and WPNG641) are held by “FiberTower Spectrum Holdings LLC, Debtor-In-Possession.” To the extent a waiver is required to incorporate the “terminated” call signs into the instant applications for transfer of control, the parties respectfully request one.

II. DESCRIPTION OF THE APPLICANTS, THE LICENSES, AND THE TRANSACTION

A. The Applicants

1. AT&T

AT&T Mobility is a wholly-owned indirect AT&T subsidiary. AT&T is a leading provider in the United States of wireless, Wi-Fi, high-speed Internet, local, and long distance voice, mobile broadband, and advanced TV services, as well as worldwide wireless coverage and IP-based business communications services.²

In evaluating transfer of control applications under Section 310(d), the Commission focuses on whether the proposed transferee is qualified to hold Commission licenses.³ The qualifications of AT&T to hold and control Commission licenses, including 39 GHz licenses,⁴ are matters of public record.⁵ 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 transaction.⁶ Therefore, there is no question that AT&T possesses the qualifications required to acquire control of the FiberTower Licenses.

2. FiberTower

FiberTower offers point to point and point to multipoint backhaul, leasing and equipment connectivity services using its active 24 and 39 GHz licenses.

² See AT&T Inc., Annual Report (Form 10-K), at 1 (Feb. 18, 2016).

³ See, e.g., *Applications of Cricket License Company, LLC, et al., Leap Wireless International, Inc., and AT&T Inc. for Consent To Transfer Control of Authorizations*, Memorandum Opinion and Order, 29 FCC Rcd 2735, 2745 ¶ 19 (“AT&T/Leap Order”); *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, 8506 ¶ 9 (2015) (“AT&T/Kaplan Order”); *Applications of AT&T Mobility Spectrum LLC and KanOkla Telephone Association For Consent to Assign Licenses*, Memorandum Opinion and Order, 30 FCC Rcd 8555, 8588 ¶ 8 (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, 9766-67 ¶ 8 (2015) (“AT&T/Worldcall Order”)

⁴ AT&T, through its subsidiary Teleport Communications America, LLC, holds incumbent rectangular service area 39 GHz licenses.

⁵ *AT&T/Kaplan Order* at ¶ 9; *AT&T/KanOkla Order* at ¶ 8; *AT&T/Worldcall Order* at ¶ 8.

⁶ See, e.g., *AT&T/Leap Order* at 2745 ¶ 19 (“AT&T has previously and repeatedly been found qualified to hold Commission licenses” and thus concluding there is “no reason” to reevaluate AT&T’s qualifications); *AT&T/Kaplan Order* at ¶ 9; *AT&T/KanOkla Order* at ¶ 8; *AT&T/Worldcall Order* at ¶ 8.

B. Description of the Transaction

On January 25, 2017, AT&T Mobility, FiberTower, and all of its stockholders entered into a stock purchase agreement pursuant to which AT&T Mobility agreed to acquire all of the outstanding stock of FiberTower Corporation, after which FiberTower Corporation will become a wholly-owned subsidiary of AT&T Mobility. This will result in a transfer of control of FiberTower Spectrum Holdings LLC's licenses from FiberTower Corporation to AT&T Mobility. Under the terms of the stock purchase agreement, AT&T is thus acquiring *all* of the rights to FiberTower's licenses and authorizations, including the licenses that are the subject of the pending remand from the United States Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit"). The review and approval of this transaction therefore presents an ideal opportunity to simultaneously address both the transaction itself and the Fiber Tower renewal applications on remand. As explained in more detail below, granting FiberTower's renewal applications on remand as part and parcel of granting the transaction would resolve the litigation, bring certainty to the mmW bands (and this transaction) and speed the deployment of 5G services to consumers.

C. The Licenses

FiberTower holds interests in 738 24 GHz and 39 GHz licenses. Currently, the Commission's Universal Licensing System ("ULS") records indicate that 88 of these 738 licenses are "active" wireless licenses in the 24 and 39 GHz bands. 46 of those licenses shown as "active" were renewed by the Commission in 2012. The remainder are the subject of a recent remand from the D.C. Circuit.⁷ The Commission has not yet acted on the D.C. Circuit's remand. As set forth below, the Commission should resolve the D.C. Circuit's remand in this proceeding by granting FiberTower's requests for waivers, renewing all of the licenses, and approving this transaction.⁸

III. THE STANDARD OF REVIEW

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."⁹ In making this determination, the

⁷ *FiberTower Spectrum Holdings, LLC v. FCC*, 782 F.3d 692, 700 (D.C. Cir. 2015). (remanding FiberTower Spectrum's full license portfolio for the Commission "to consider anew FiberTower's requests for an extension or waiver of the substantial service requirement based on an accurate understanding of the renewal record" in light of "the proportion of licenses that have been built out"). Despite the remand, only 42 of the licenses subject to remand have been returned to "pending" status in the ULS as of this date.

⁸ See Part IV, *infra*.

⁹ 47 U.S.C. § 310(d); see also *Application of AT&T Mobility Spectrum LLC and Kaplan Telephone Company, Inc. for Consent to Assign Licenses*, Memorandum Opinion and Order, DA 15-958, ¶ 7 (2015) ("AT&T/Kaplan Order"); *Applications of AT&T Mobility Spectrum LLC and KanOkla Telephone Association For Consent to Assign Licenses*, Memorandum Opinion and Order, DA 15-963, ¶ 6 (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, DA 15-971, ¶ 6 (2015) ("AT&T/Worldcall Order").

Commission first assesses whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules, including whether the applicants are qualified to hold licenses.¹⁰ The Commission then applies a balancing process that weighs the potential public interest benefits of the proposed transaction against any potential harm.¹¹ In its analysis, the Commission "may not consider whether the public interest, convenience, or necessity might be served by" a transaction involving an entity "other than the proposed transferee."¹²

As demonstrated below, this transaction will benefit wireless consumers and does not present any potential for competitive harm. Rather, the transaction will result in consumer benefits by allowing AT&T to quickly develop and deploy 5G services using FiberTower's license assets.

IV. THE TRANSACTION WILL BENEFIT WIRELESS CONSUMERS AND SERVE THE PUBLIC INTEREST

Commission approval of the transaction will benefit consumers and promote the public interest. Indeed, the transaction will accelerate the development and deployment of next-generation 5G wireless services and promote competition. The acquisition of FiberTower's mmW spectrum will enable AT&T to better meet the needs of new and existing subscribers by offering improved, more robust, and more advanced 5G services. Simply put, the acquisition of this spectrum will result in a better experience for AT&T's current and potential customers.¹³

The transaction will help achieve the Commission's oft-stated and crucial goal of fostering a thriving 5G ecosystem throughout the United States. The Commission has made facilitating the deployment of innovative 5G services a policy priority, noting the consumer benefits that will come with the evolution to 5G services and technologies.¹⁴ It has moved quickly to reallocate various millimeter wave ("mmW") bands for mobile uses, recognizing that the actions it takes to enable 5G today will shape American leadership in the wireless industry tomorrow.¹⁵ For this reason, Chairman Pai has urged the Commission to "allow 5G to develop in the United States as quickly as the technology and consumer demand would allow."¹⁶ Indeed,

¹⁰ *AT&T/Kaplan Order* at ¶ 7; *AT&T/KanOkla Order* at ¶ 6; *AT&T/Worldcall Order* at ¶ 6.

¹¹ *AT&T/Kaplan Order* at ¶ 7; *AT&T/KanOkla Order* at ¶ 6; *AT&T/Worldcall Order* at ¶ 6.

¹² 47 U.S.C. § 310(d).

¹³ *AT&T/Kaplan Order* at ¶ 31; *AT&T/KanOkla Order* at ¶ 22; *AT&T/Worldcall Order* at ¶ 21.

¹⁴ *See In the Matter of Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8017 ¶ 1 (2016) ("*Spectrum Frontiers Order*").

¹⁵ *See id.* (emphasizing the importance of "securing the Nation's future in the next generational evolution of wireless technology to so-called 5G").

¹⁶ *See In the Matter of Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Notice of Proposed Rulemaking, 30 FCC Rcd 11878, 12012 (Statement of Commissioner Pai) (2015) ("*Spectrum Frontiers NPRM*").

the “key is to make sure the FCC does not become a regulatory bottleneck” that undermines 5G progress from the start.¹⁷

The Commission has consistently endorsed the public interest benefits of the transition to revolutionary 5G services, and it should do so again here.¹⁸ AT&T is well-positioned to fully utilize the FiberTower spectrum for the high-bandwidth, high-capacity revolutionary 5G services that consumers are eagerly awaiting. As the Commission has recognized, AT&T has been at the forefront of 5G development, unveiling a 5G roadmap and conducting field trials to gain a greater understanding of 5G’s potential in network environments and markets.¹⁹ Building on the momentum of its early planning, AT&T recently announced aggressive 5G evolution plans for 2017 and beyond.²⁰ Further, AT&T continues to collaborate with more than a dozen global technology companies around 5G standards efforts.²¹ AT&T’s efforts are paying off – initial lab trials have already achieved speeds up to 14 gigabits-per-second over a wireless connection and have validated industry expectations for 5G latency.²²

Aside from working to expedite 5G standards-setting, AT&T has launched the first U.S. 5G business customer trial in the millimeter wave bands.²³ AT&T worked alongside Ericsson and Intel to conduct a 5G demo featuring streaming 4K HD video and real-time camera feeds.²⁴ AT&T’s demonstrated commitment to making the promise of 5G a reality makes it well-suited to acquire FiberTower’s 24 GHz and 39 GHz spectrum. AT&T is ready, able, and willing to push industry to promptly develop standards²⁵ and equipment for the bands and the company will work tirelessly to put a thriving ecosystem in place to maximize the 24 and 39 GHz spectrum for innovative 5G use cases.

¹⁷ *Id.*

¹⁸ *See Spectrum Frontiers Order* at 8017-18 ¶¶ 1-3; *In the Matter of Applications of XO Holdings and Verizon Communications Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, DA 16-1281 (Nov. 16, 2016) (concluding that “public interest benefits are likely to be realized” by a transaction that would result in the “introduction of innovative 5G services”) (“*Verizon/XO Order*”).

¹⁹ *See Spectrum Frontiers Order* at 8022 ¶ 15 (citing *AT&T Unveils 5G Roadmap Including Trials in 2016*, News Release (Feb. 12, 2016), available at http://about.att.com/story/unveils_5g_roadmap_including_trials.html).

²⁰ *See AT&T Details 5G Evolution*, News Release (Jan. 4, 2017), available at http://about.att.com/story/att_details_5g_evolution.html

²¹ *See id.*

²² *See id.*

²³ *AT&T Launches First 5G Business Customer Trial with Intel and Ericsson*, News Release (Dec. 5, 2016), available at http://about.att.com/story/att_launches_first_5g_business_customer_trial_with_intel_and_ericsson.html.

²⁴ *See id.*

²⁵ Indeed, AT&T has been one of the most active operators in developing 3GPP standards for 5G.

Moreover, approving the transaction will help spur additional equipment development in the 24 and 39 GHz bands. AT&T's capability to harness the spectrum to support 5G services will provide vendors with a compelling reason to provide deployable equipment as soon as possible. AT&T has already been encouraging 39 GHz equipment developers to bring deployable equipment to market, and as a result, it expects to have 39 GHz equipment in its labs by the end of the year. Likewise, AT&T is well-positioned to spark equipment development and deployments in the 24 GHz band, which is on track to be converted to UMFU spectrum in the Spectrum Frontiers FNPRM. Through this transaction, AT&T will be able to lay the groundwork for the band so that it can be put to use for 5G services after the Commission's proceeding is completed. As commenters have advised, 24 GHz's favorable propagation characteristics can provide better coverage than higher frequencies.²⁶

To fully achieve the benefits this transaction will make possible, the public interest compels renewal of all of FiberTower's licenses. Today, Fiber Tower's spectrum is either unused or underutilized for limited point to point transmission services. Indeed, the bulk of FiberTower's licenses are the subject of litigation relating to renewal applications filed before the rules for the 24 and 39 GHz bands were changed to encourage the development of 5G services.²⁷ These applications are before the Commission on remand. With its 5G evolutionary strategy firmly in place, AT&T will be able to rapidly develop and deploy FiberTower's assets, provided that the Commission acts swiftly on remand, and renews the licenses to allow them to be put to use for 5G services.²⁸

Swift Commission action to clear up the remaining litigation and make these licenses usable for 5G services would be consistent with the Commission's recent approach in the Straight Path matter.²⁹ In that case, the Commission concluded that although Straight Path "had not actually deployed equipment with any permanency," its licenses should not be automatically terminated, as the Commission's discontinuance rules would otherwise dictate.³⁰ Citing the important public interest benefits to be gained from allowing Straight Path's mmW spectrum to be deployed as quickly as possible, the Commission determined that Straight Path should retain approximately 80 percent of its licenses with the expectation that Straight Path would attempt to

²⁶ See, e.g., Comments of Ericsson, GN Docket No. 14-177; IB Docket Nos. 15-256 & 97-95; RM-11664; WT Docket No. 10-112, at 8-10 (Sept. 30, 2016).

²⁷ See *Spectrum Frontiers Order* ¶¶ 1-4.

²⁸ To further bolster the 5G transition, AT&T believes that the Commission should also allocate the 24 GHz band for UMFUS services.

²⁹ *In the Matter of Straight Path Communications Inc., Ultimate Parent Company of Straight Path Spectrum, LLC*, Order & Consent Decree, DA 17-40 (Jan. 12, 2017) ("*Straight Path Order*" or "*Straight Path Consent Decree*," as appropriate).

³⁰ *Straight Path Order* ¶ 2.

sell its portfolio to a third party within 12 months.³¹ By allowing Straight Path to retain and transfer or assign its 39 GHz licenses, the Commission sought to ensure that the spectrum is quickly put to productive use in furtherance of the 5G transition.

The same 5G policy considerations that led the Commission to allow Straight Path to retain the vast majority of its licenses apply with even greater force in this case. Indeed, equity compels similar regulatory treatment for FiberTower's licenses, albeit without the enforcement penalties. The Commission's initial determinations about FiberTower's renewal applications and waiver requests were based on assumptions about market demand and deployment that turned out to be inaccurate.³² Moreover, FiberTower consistently worked in good faith to meet the Commission's buildout rules, invested hundreds of millions in developing and deploying service, and has been forthright with the Commission in its filings and applications.³³ In addition, FiberTower has now reached an agreement with AT&T, a company that has the technological and financial ability to rapidly develop and deploy 5G technologies and services.

By renewing FiberTower's licenses pursuant to the D.C. Circuit remand as part of this transaction, the Commission would avoid the potential for further litigation that could tie up FiberTower's spectrum and prevent its use for 5G. As it did in the Straight Path matter, the Commission should instead act quickly to resolve the ongoing litigation in a way that would make the spectrum immediately deployable for 5G. When it comes to 5G, time is of the essence. The Commission should lift the "regulatory bottleneck" surrounding FiberTower's licenses and unleash the spectrum for 5G use.³⁴ Further, as explained below, there are no potential harms—competitive or otherwise—that would result from approval of this transaction.

³¹ *Id.* ¶ 3 (requiring Straight Path to surrender only 196 of its 39 GHz authorizations). The *Straight Path Order* resolved an investigation that alleged not only that Straight Path had not actually deployed service, but that its renewal applications falsely represented that it had done so. *Id.* ¶¶ 1-3. Under the Order, Straight Path agreed to a \$100 million fine, with \$15 million to be paid upfront on an installment basis, and the remainder to be suspended for 12 months, during which time Straight Path may transfer or assign its license portfolio. *Id.* ¶ 3. If Straight Path agrees to sell or transfer its remaining licenses, it must pay the Commission 20% of the proceeds. *Straight Path Consent Decree* ¶ 16. If Straight Path is unable to sell or transfer its remaining licenses after 12 months, it must pay the Commission the remaining \$85 million fine or surrender to the Commission all of the licenses remaining in its portfolio. *See id.* ¶ 15.

³² Indeed, the Commission pointed to Straight Path's assertions that it was able to build facilities and offer "substantial service" in all of its license areas as proof that FiberTower's claims about the difficulty of deploying service and the lack of market demand were inaccurate. *See FiberTower Spectrum Holdings, LLC*, Memorandum Opinion and Order, 28 FCC Rcd 6822, 6840 ¶ 38 ("*Commission FiberTower Order*"). In light of the more recent disclosures in the *Straight Path Order*, however, it appears that Straight Path's experience did not disprove FiberTower's descriptions of market conditions, but rather confirmed them. *See Straight Path Order* ¶ 2 (stating that, contrary to Straight Path's buildout representations, it had not actually deployed permanent facilities).

³³ *See* ULS File No. 0005245093 at Attachment H, at 1-2 (Sept. 2, 2016) ("*FiberTower Legal Memo*"). AT&T incorporates by reference the arguments raised in the *FiberTower Legal Memo* urging the Commission to waive the substantial service requirements and renew FiberTower's licenses.

³⁴ *Spectrum Frontiers NPRM* at 12012 (Statement of Commissioner Pai).

V. THE PROPOSED TRANSACTION CREATES NO COMPETITIVE HARM

The proposed transaction will have no adverse competitive effects. It will neither cause an overall aggregation that would pose an anticompetitive risk nor reduce actual competition in any meaningful way for a variety of reasons.³⁵

First, this transaction does not even implicate the majority of metrics used by the Commission to evaluate competitive harm. This transaction does not involve the transfer of customers and it involves only a meager transfer of tower facilities. As a result, the Herfindahl-Hirschman Index (“HHI”) is unaffected by this transaction and the Commission’s HHI screen is not applicable.³⁶ Similarly, many of the other competitive variables considered by the Commission in its market-specific transaction review are not changed by this transaction.³⁷

Second, the proposed transaction will not cause an aggregation of spectrum that would pose an anticompetitive risk. Post-closing, AT&T through affiliated companies under its common control and in which it holds an “attributable interest” for spectrum aggregation purposes, will not exceed the Commission’s initial “screen” as a result of this transaction.³⁸

Third, the proposed transaction will in fact preserve and enhance competition. AT&T is faced with robust competition from Sprint, T-Mobile and Verizon Wireless, along with regional carriers and others such as DISH. All of the national carriers have plans to deploy 5G services.³⁹ This transaction will enhance competition by enabling AT&T to be a more effective competitor in the provision of 5G services.

³⁵ 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 a mobile telephony/broadband services product market that comprises mobile voice and data services, including mobile voice and data services provided over advanced wireless broadband networks. *See, e.g., AT&T/Kaplan Order* ¶ 15. The Commission has defined the relevant geographic market to be the local markets directly affected by the transaction in most cases. *Id.*

³⁶ *See AT&T/KanOkla Order* at ¶¶ 15-16.

³⁷ These include, but are not limited to, the total number of providers offering mobile broadband service in the market and the market shares of AT&T and its competitors. *See, e.g., AT&T/Kaplan Order* at ¶ 22.

³⁸ *See Spectrum Frontiers Order* at 8081 ¶ 184 (adopting a spectrum aggregation screen of 1250 MHz that applies to licensees acquiring spectrum in the 28 GHz, 37 GHz, and/or 39 GHz bands). Although 24 GHz spectrum is not yet considered part of the mmW spectrum screen adopted by the FCC, AT&T’s aggregate mmW holdings would not reach the 1250 MHz threshold as a result of this transaction even if it were included.

³⁹ *See, e.g., Verizon, Leading the Industry in 4G and 5G Wireless Technology*, available at <http://www.verizon.com/about/our-company/wireless-network>; *The Un-Carrier Road to 5G*, Blog Post (Sept. 20, 2016), available at <https://newsroom.t-mobile.com/news-and-blogs/the-un-carrier-road-ahead.htm>; *Sprint 2017 Plans Include More 3CCA, Small Cells, and 5G Prep*, (Jan. 3, 2017), available at <http://www.rcrwireless.com/20170103/carriers/sprint-2017-plans-include-more-3cca-small-cells-and-5g-prep-tag2>

VI. CONCLUSION

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