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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary, Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: ULS Application File No. 0010206629

Dear Ms. Dortch:

AT&T Services, Inc. (“AT&T”) hereby files this letter in response to T-Mobile’s “Amended and Restated Mobile Spectrum Holdings” exhibit (the “Amendment”) filed in connection with the above-captioned application.¹ This exhibit, which presumably is intended to refresh the record in response to the passage of the 5G SALE Act,² further highlights the importance of the dialogue that has taken place throughout this application review process regarding spectrum concentration in the state of Hawaii. As a provider of mobile broadband services nationwide – including in Hawaii – AT&T is familiar with Hawaii’s competitive conditions and believes that T-Mobile’s spectrum concentration in Hawaii merits particular focus and careful scrutiny by the Commission.

In recognition of the competitive threat posed by excessive concentration of unpaired mid-band spectrum critical to the provision of 5G, in 2021 AT&T filed a Petition for Rulemaking seeking to adopt a mid-band spectrum screen.³ The premise was simple: just as the Commission deemed low-band spectrum critical to the provision of 4G and thus applied enhanced scrutiny to concentrations of low-band spectrum above a particular threshold,⁴ so too should the Commission adopt measures to prevent excessive concentration of mid-band spectrum deemed essential to the provision of 5G.⁵ Since AT&T filed its Petition, the Commission has conducted two auctions of unpaired mid-band spectrum. One auction’s structure and rules were tailor-made to benefit T-Mobile, and T-Mobile unsurprisingly cemented

¹ ULS File No. 0010206629, Amended and Restated Spectrum Holdings (filed January 3, 2024).

² The 5G SALE Act was signed into law on December 19, 2023.

³ Petition for a Rulemaking to Establish a Mid-Band Spectrum Screen, WT Docket No. 23-319 (Sept. 1, 2021) (“Petition”).

⁴ Report and Order, *Policies Regarding Mobile Spectrum Holdings*, 29 FCC Rcd. 6133, ¶¶ 266-267, 282-289 (2014).

⁵ Petition at 16.

its dominant mid-band position by winning the vast majority of licenses.⁶ In the other auction, the adoption of a one-time band-specific cap ensured that no carrier facing a significant deficit of unpaired mid-band spectrum would be able to catch up.⁷ As a result, T-Mobile's mobile spectrum holdings, and in particular its mid-band holdings, dwarf those of its national competitors.⁸ And this situation is particularly acute in areas such as Hawaii, where the spectrum pipeline has been empty longer than in the continental United States.

T-Mobile's Amendment highlights the excessive levels of spectrum concentration in Hawaii that would be exacerbated by grant of T-Mobile's long-form application. In Hawaii's five counties, T-Mobile's post-auction attributable spectrum holdings would range from 277 to 390 MHz.⁹ These attributable totals are particularly noteworthy because in Hawaii, unlike the continental United States, the current spectrum screen is only 250 MHz. In two of the five counties, T-Mobile would hold almost half of all spectrum "suitable and available" for the provision of mobile telephony/broadband services, and in Honolulu County T-Mobile would hold *more than half*. The reduced spectrum screen in Hawaii reflects the fact that no licenses in either the C Band or the 3.45 GHz band were made available, and indeed T-Mobile is, and will remain, the *only* holder of unpaired mid-band 5G spectrum in Hawaii, potentially for years to come.

T-Mobile's own words make clear the competitive foreclosure threat in Hawaii posed by grant of its long-form application. In seeking Special Temporary Authority to operate its Auction 108 spectrum in Maui, T-Mobile stated that "accessing the spectrum T-Mobile won in Auction 108 – which is currently unused – will enable T-Mobile to deploy larger, contiguous bandwidths to significantly expand its capacity."¹⁰ In the case of Maui, T-Mobile noted that if the Commission permitted it to access the incremental spectrum it won at auction, its maximum bandwidth in 2.5 GHz would nearly double to 190 MHz.¹¹ Notably, although this Auction 108 spectrum would, by T-Mobile's own admission, drastically improve its competitive position in Hawaii, that same spectrum would have much less competitive value in the hands of any other

⁶ Report and Order, *Transforming the 2.5 GHz Band*, 34 FCC Rcd. 5446, at Statement of Commissioner Jessica Rosenworcel Approving in Part, Dissenting in Part, at 1 (2019) ("This is a shame. Instead of using these airwaves in creative ways, we take the 2.5 GHz band, cut education from its mission and collapse the spectrum into an overlay auction system that structurally advantages a single nationwide carrier. It didn't have to be this way.").

⁷ AT&T Comments in Response to Public Notice on Petition for a Rulemaking to Establish a Mid-Band Spectrum Screen, WT Docket No. 23-319, 9-10 (Oct. 23, 2023).

⁸ T-Mobile is quick to agree with this point in venues where it is in T-Mobile's interest to do so. In investor presentations, T-Mobile CEO Mike Sievert boasted that "[T]his spectrum and network lead isn't just a head start. We're well positioned to keep the 5G advantage that will last the entirety of the 5G era. ... [W]e'll remain ahead in this race with low cost and a strong and flexible balance sheet, so we're able to defend our leading position if we choose to." T-Mobile, *Analyst/Investor Day Presentation*, at 7 (S&P Glob. Mkt. Intel. Mar. 11, 2021) (remarks of CEO Mike Sievert).

⁹ Specifically, the Amendment states that T-Mobile will hold 370 MHz in Hawaii and Maui counties, 277 MHz in Kalawao County, 390 MHz in Honolulu County, and 302.5 MHz in Kauai County. ULS File No. 0010206629, Amended and Restated Spectrum Holdings at 15.

¹⁰ T-Mobile Application for Special Temporary Authority, INBOX-1.931, at Public Interest Statement (Aug. 15, 2023), *available at* <https://www.fcc.gov/ecfs/search/search-filings/filing/1081554408600>.

¹¹ *Id.*

carrier because its value is derived from combining it with T-Mobile's existing holdings. In other words, competing carriers could not have achieved parity with T-Mobile by bidding on this spectrum themselves, and only T-Mobile was in a position to meaningfully benefit from Auction 108.¹² Nor could competitors mount a response using other unpaired mid-band spectrum: there is none.¹³

Unconditional grant of T-Mobile's acquisition of all the available unpaired mid-band spectrum in Hawaii will foreclose the opportunity for other carriers to mount a competitive response unless and until either (1) the Commission identifies, allocates, and auctions additional unpaired mid-band spectrum with licenses available in Hawaii or (2) the Commission requires a divestiture as a competitive remedy. With respect to the former, the Commission still does not have authority to conduct auctions, and there is no indication that any mid-band spectrum will be made available for commercial use in Hawaii in the near- to medium-term. Unless that changes there is and will be exactly *one* competitor with access to unpaired mid-band 5G spectrum in Hawaii, and simply ignoring this reality and hoping a solution presents itself years down the road is not consistent with the Commission's duty to preserve and promote mobile competition. It is AT&T's well-established position that T-Mobile has not demonstrated that grant of its long-form application would satisfy the Commission's public interest test and AT&T has suggested that the Commission condition any grant on competitively effective divestitures. With respect to Hawaii, this may be the only competitive remedy available.

Should any questions arise concerning this *ex parte* submission, please do not hesitate to contact me at (202) 457-2100.

Sincerely,

/s/ Jessica B. Lyons

Jessica B. Lyons

cc: Garnet Hanly
Catherine Matraves
Joel Taubenblatt

¹² See Auction 108 Fact Sheet, at <https://www.fcc.gov/auction/108> ("With overlay licenses, licensees obtain the rights to geographic area licenses 'overlaid' on top of the existing incumbent licenses. As with an ordinary flexible-use license, the overlay licensee may operate anywhere within its geographic area, subject to protecting the licensed areas of incumbent licensees...Due to these encumbrances, a substantial number of licenses in the inventory for Auction 108 have a very small amount of unassigned area or spectrum.").

¹³ Indeed, because there is no unpaired mid-band spectrum available in Hawaii for carriers other than T-Mobile, it would be impossible for anyone to replicate the 5G carrier aggregation T-Mobile recently boasted gives it a major advantage over Verizon and AT&T. News Release, T-Mobile, *T-Mobile Delivers Another World's First with 6-Carrier Aggregation* (Jan. 4, 2024), at <https://www.t-mobile.com/news/network/t-mobile-delivers-another-worlds-first-with-6-carrier-aggregation>.

CERTIFICATE OF SERVICE

I, Jessica B. Lyons, certify that on this 12th day of January, 2024, I have served a copy of the foregoing letter by email on the following:

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/s/ Jessica B. Lyons
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