Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
T-Mobile License LLC Spectrum Manager Lease Arrangements	)	ULS File Nos. 0009021213 and 0009021220
	)	

COMMENTS OF AT&T SERVICES, INC.

Jessica B. Lyons
Michael P. Goggin
Gary L. Phillips
David L. Lawson
AT&T SERVICES, INC.
1120 20th Street, NW
Washington, DC 20036
(202) 457-2100

September 18, 2020

Its Attorneys

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
T-Mobile License LLC Spectrum Manager Lease Arrangements	))	ULS File Nos. 0009021213 and 0009021220

COMMENTS OF AT&T SERVICES, INC.

I. INTRODUCTION AND SUMMARY

AT&T Services, Inc., on behalf of its affiliates (collectively, "AT&T") hereby files these comments in response to the above-captioned applications of T-Mobile License, LLC ("T-Mobile"), the Petition for Reconsideration (and associated reply) of Verizon,[1] and the Opposition of T-Mobile.[2] The combination of Sprint and T-Mobile has resulted in an unprecedented concentration of spectrum in the hands of one carrier. In fact, the combined company exceeds the Commission's spectrum screen, often by a wide margin, in Cellular Market Areas ("CMAs") representing 82 percent of the U.S. population, including all major markets. This level of concentration requires much more transparency into how the Commission evaluates transactions (and auction applications) involving spectrum aggregation in excess of the screen. It also warrants changes in the Commission's review process and a re-examination of how the Commission approaches its spectrum screen.

---

[1] Corrected Petition for Reconsideration of Verizon, ULS File Nos. 0009021213 and 0009021220 (Aug. 7, 2020) ("Verizon Petition"); Reply in Support of Petition for Reconsideration, ULS File Nos. 0009021213 and 0009021220 (Aug. 24, 2020) ("Verizon Reply").

[2] Opposition of T-Mobile License LLC, ULS File Nos. 0009021213 and 0009021220 (Aug. 17, 2020) ("T-Mobile Opposition").

II. T-MOBILE'S SPECTRUM HOLDINGS ARE UNPRECEDENTED AND HAVE BROUGHT THE COMMISSION'S SPECTRUM SCREEN REVIEW INTO A NEW ERA

As Verizon accurately observes in its Petition for Reconsideration, the result of the merger of Sprint and T-Mobile is an unprecedented degree of spectrum aggregation by a single carrier.[3] Since the Commission first adopted its spectrum screen review in 2004, instances of a carrier exceeding the screen as the result of a transaction have been generally infrequent, with the Commission generally conditioning transactions on divestitures that would, for the most part, bring the applicant's holdings either back beneath the screen or much closer to it. However, because the Commission chose not to require divestitures in the Sprint/T-Mobile merger, T-Mobile currently exceeds the spectrum screen, often by a wide margin, in virtually all major markets. Indeed, even if the Commission adds additional bands to the input market for spectrum (raising the screen) and T-Mobile makes no additional acquisitions, T-Mobile likely will continue to exceed the screen for some time. This unprecedented level of spectrum concentration in the hands of one carrier compels changes in how the Commission addresses additional acquisitions of spectrum by that carrier.

In the *Sprint/T-Mobile Order*, the Commission noted that the CMAs where New T-Mobile would exceed the screen cover 82 percent of the population of the United States (and territories).[4] Since the Commission approved the *Sprint/T-Mobile Order*, it has increased the screen from 240 MHz to 250 MHz, but this presumably only increased T-Mobile's attributable

---

[3] Verizon Petition at 7-13.

[4] *Applications of T-Mobile US, Inc., and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations,* Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, FCC 19-103, ¶ 97 (2019) ("*Sprint/T-Mobile Order*").

holdings relative to the screen.[5] In the applications at issue here, T-Mobile proposed to lease between 10 and 30 MHz of spectrum in a total of 204 counties. Prior to the leases, T-Mobile already exceeded the screen in 193 of the 204 counties.[6] These leases will cause T-Mobile to *exceed* the 250 MHz screen by as much as 112 MHz.[7] In fact, there are counties impacted by these leases where T-Mobile currently exceeds the screen by such a wide margin that T-Mobile may continue to exceed the screen even if the Commission were to raise the screen substantially.[8] For example, AT&T expects that as a result of the upcoming C Band auction, the Commission will increase its initial screen from 250 MHz to 345 MHz.[9] Notably, there are markets (including three impacted by these leases) where T-Mobile's holdings already exceed

---

[5] Specifically, the Commission raised the spectrum screen by 10 MHz as a result of its decision to increase the amount of "suitable and available" Educational Broadcast Service ("EBS") spectrum from 89 to 116.5 MHz. Because T-Mobile is currently attributed with the vast majority of EBS spectrum, it is likely that this 10 MHz increase in the screen nonetheless increased T-Mobile's attributable holdings by 10 MHz or more, thus causing T-Mobile to either exceed the screen by a greater degree and/or exceed the screen in additional markets.

[6] ULS File No. 0009021213, at Exhibit 1, pp. 6-7.

[7] ULS File No. 0009021213, at Exhibit 3.

[8] AT&T's analysis is based on the data filed by T-Mobile in connection with the applications that are the subject of this proceeding. AT&T notes that T-Mobile's calculation of its attributable holdings in these applications was premised on the former, 240 MHz spectrum screen, and that T-Mobile may subsequently have been attributed with additional EBS spectrum that would increase its overall attributable holdings.

[9] Currently, the spectrum screen is 250 MHz, or approximately one-third of the total "suitable and available" spectrum (743 MHz). AT&T assumes the Commission will continue its practice of dividing the total amount of "suitable and available" spectrum (743 plus 280 or 1,023) by three (341) and rounding up to the nearest multiple of five (345) to produce its revised screen.

345 MHz,[10] and many others where T-Mobile would exceed the new, higher screen if it won even a single block in Auction 107.[11]

The Commission has never before approved a transaction that would result in such widespread spectrum screen issues without requiring spectrum divestitures (which could have the impact of bringing the applicant back below the spectrum screen, or at least closer to it). The closest case is the 2008 Sprint/Clearwire transaction, though the applicants in that transaction benefited from fortuitous timing with respect to the Commission's calculation of the spectrum screen.[12] All other major transactions approved by the Commission have involved mostly isolated instances of an applicant exceeding the screen, and/or divestitures that brought the

---

[10] Among just the CMAs that are the subject of this lease, T-Mobile has 345 MHz or more of attributable spectrum in the Dallas-Fort Worth, TX, Columbus, OH, and Washington 1 – Clallam CMAs.

[11] Among just the CMAs that are the subject of this lease, T-Mobile has 325 MHz or more of attributable spectrum in the Los Angeles, CA, Chicago, IL, Philadelphia, PA, Boston, MA, Houston, TX, St. Louis, MO-IL, Minneapolis-St. Paul, MN-WI, Atlanta, GA, Seattle-Everett, WA, Tampa-St. Petersburg, FL, Phoenix, AZ, San Jose, CA, Providence-Warwick-Pawtucket, RI, Gary-Hammond-East Chicago, IN, Worcester-Fitchburg-Leominster, MA, Wilmington, DE-NJ-MD, New Bedford-Fall River, MA, Tacoma, WA, Bakersfield, CA, Lancaster, PA, Stockton, CA, Reading, PA, Bremerton, WA, Georgia 2 – Dawson, Indiana 1- Newton, and Louisiana 7-West Feliciana CMAs.

[12] In that transaction, the Commission minimized the spectrum aggregation impact to Sprint and Clearwire by determining that only a small portion of BRS spectrum – and no EBS spectrum – was attributable (a position it later reversed). *Sprint Nextel Corporation and Clearwire Corporation,* Memorandum Opinion and Order, 23 FCC Rcd 17570, ¶¶ 70-71 (2008) ("*Sprint/Clearwire Order*"). The Commission further mitigated the spectrum screen impact by choosing the *Sprint/Clearwire Order* as the moment it would begin to attribute the AWS-1 spectrum auctioned in 2006 (of which Sprint had none), giving Sprint an extra 30 MHz of headroom in many markets it otherwise would not have had. *Sprint/Clearwire Order* at ¶ 72. These decisions permitted the Commission to determine that Sprint would exceed the spectrum screen in just 43 Cellular Market Areas ("CMAs"). *Id.* at ¶ 79.

applicant either back below the screen or closer to it.[13] As things stand today, T-Mobile has already exceeded the spectrum screen in nearly all major markets and virtually any future acquisition of spectrum by T-Mobile would result in T-Mobile exceeding the screen by an even wider margin. In the sixteen years since the spectrum screen was put into effect, this situation has never presented itself before. Put simply, we have entered a new era of the Commission's spectrum screen and the Commission's approach to the screen should reflect that.

III. PRINCIPLES OF TRANSPARENCY COMPEL THE ISSUANCE OF A WRITTEN ORDER EXPLAINING THE COMMISSION'S ANALYSIS AND CONCLUSIONS REGARDING THESE APPLICATIONS

Although AT&T takes no position on whether T-Mobile's lease applications were properly accepted by the FCC, it believes that the Commission should provide an explanation of why it permitted T-Mobile to further exceed the spectrum screen. Typically, if an assignment, transfer, or lease of spectrum would cause the applicant to exceed the spectrum screen, the Commission issues a written order that includes competitive analysis supporting whatever decision it reaches. Here, however, the Commission approved the leases without conducting any public-facing competitive analysis. Principles of transparency compel the issuance of a written

---

[13] *See, e.g., 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,* Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (2008) (Verizon agreed to divest spectrum in all 27 CMAs where it exceeded the spectrum screen); *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, Appendix D (2014) (AT&T agreed to divest spectrum in 12 out of 38 CMAs where it exceeded the spectrum screen); *Sprintcom, Inc., Shenandoah Personal Communications, LLC, and NTELOS Holdings Corp.,* Memorandum Opinion and Order, 31 FCC Rcd 3631, ¶ 24, Appendix A (2016) ("*Sprint/Shentel/NTELOS Order*") (Sprint agreed to divest spectrum in all seven CMAs where it exceeded the spectrum screen).

order that explains how the Commission reached the conclusion that these aggregations of spectrum are in the public interest.

The Commission's failure to issue a written order in a transaction allowing spectrum aggregation in excess of the screen to this degree is highly unusual.[14] Indeed, the Commission frequently will issue a written order explaining its analysis even if no third party contests the transaction, and for good reason.[15] When a transaction causes the applicant to exceed the spectrum screen, the review process in such circumstances is supposed to involve analysis of "the complex technical, strategic, and economic factors that determine the likely competitive effects of increased spectrum aggregation."[16] Where the Commission engages in such thorough analysis, there is a public interest in the Commission sharing and explaining its results. Just as applicants should be expected to make a more thorough competitive showing in cases where a transaction would trigger the screen, so too should the Commission be expected to articulate the basis for its decision to approve, deny, or condition such an application.

---

[14] Although spectrum manager lease applications are procedurally unique in that they do not require prior Commission consent, parties are obliged to make the same competitive showings as in license assignments or *de facto* transfer lease applications. Accordingly, where an aggregation of spectrum exceeds the screen it is appropriate for the Commission to issue a written Order explaining its conclusions, as it would for a license assignment or *de facto* transfer lease application.

[15] *See, e.g., Applications of AT&T Spectrum LLC and KanOkla Telephone Association for Consent to Assign Lower 700 MHz Licenses,* Memorandum Opinion and Order, 30 FCC Rcd. 8555 (WTB 2015); *Application of AT&T Inc. and Cellular Properties, Inc. for Consent to Assign Authorizations,* Memorandum Opinion and Order, 31 FCC Rcd 318 (WTB, IB 2016); *Sprint/Shentel/NTELOS Order*.

[16] *Policies Regarding Mobile Spectrum Holdings,* Report and Order, 29 FCC Rcd 6133, ¶ 231 (2014) ("*Mobile Spectrum Holdings Order*").

Moreover, without a written order explaining its analysis, there is no evidence that the Commission has carefully attempted to evaluate the potential for competitive harm. In its attempt to refute Verizon's arguments regarding competitive review of these applications, T-Mobile improperly equates the applications' processing time with the rigor of the Commission's review. Specifically, T-Mobile posits that "the Bureau's analysis took 75 days to complete" and therefore "a 'searching review' of competition . . . has, in fact, already been conducted."[17] Although it may be the case that the Commission conducted a "searching review" of the competitive impact of these leases, the fact that the Commission took 75 days to review the applications is not evidence in support of that fact. Even uncontested transactions that do not raise any spectrum screen issues may nonetheless take more than 75 days to review for competitive impacts.[18] When one considers that T-Mobile's applications were filed in the early days of the COVID-19 pandemic and remote operations by the FCC, one would expect that the Commission might require additional processing time for lease applications regardless of their competitive implications.[19] In the absence of a written Order by the Commission articulating the

---

[17] T-Mobile Opposition at 4 ("The ULS history also indicates 'Geographic Overlap Review Completed' on July 8, 2020 – meaning that the Bureau's analysis took 75 days to complete. The relief sought by Verizon on reconsideration—a 'searching review' of competition—has, in fact, already been conducted, thus rendering the *Verizon Petition* moot.").

[18] *See, e.g.,* ULS File No. 0008585427 (filed April 5, 2019) (partial assignment of 700 MHz B Block license from Ligtel Communications, Inc. to AT&T that was filed on April 5, 2019 with Geographic Overlap Review completed on August 5, 2019 – 122 days later); ULS File No. 0008467947 *et seq* (filed December 13, 2018) (assignment of 700 MHz licenses from FBS 700, LLC to AT&T that was filed on December 13, 2018 with Geographic Overlap Review completed on February 27, 2019 – 76 days later). Neither transaction implicated any of the Commission's spectrum aggregation screens.

[19] The Commission instituted its current telework status on March 13, 2020. The lease applications were filed eleven days (seven business days) later, on March 24, 2020. During this time, the Wireless Bureau was also processing a plethora of requests for spectrum access and

basis for its conclusion that T-Mobile satisfied the heightened review called for in this situation, there is no way for T-Mobile's competitors or the public to ascertain how searching a review may have been conducted by the Commission or the basis for the Commission's conclusions.

Accordingly, without taking a position on whether the lease transaction at issue should have been approved, AT&T believes the Commission should issue an Order on Reconsideration. At a minimum, that Order should explain in more detail how and why the Commission reached the conclusion it did.

IV. A NEW ERA CALLS FOR A REVISED APPROACH TO THE SPECTRUM SCREEN

The approval of such an unprecedented degree of spectrum aggregation by a single carrier not only requires more transparency than was provided in the Commission's acceptance of the lease applications at issue here, but also compels a revised approach to the spectrum screen and the Commission's review of spectrum aggregation events that implicate it. Either the spectrum screen means something, and neither T-Mobile nor any other entity will be permitted to continue to amass holdings far in excess of the screen, or the screen is little more than a tool to be applied on an arbitrary basis to unfairly favor some entities over others. The Commission is at a crossroads with respect to the spectrum screen, and if the Commission's objective is for the screen to actually serve as an analytical tool, a revised approach is warranted.

The Commission has concluded – at least in this case – that it is acceptable for a single carrier to aggregate spectrum holdings well in excess of the screen trigger in virtually all major markets, and without any need for divestitures. However, it would be incorrect for T-Mobile to

---

various forms of regulatory relief due to the pandemic, rescheduling the CBRS auction, and processing applications filed by winning bidders in Auction 103, among other activities.

allege that the Commission's approval of the Sprint/T-Mobile transaction constitutes a blank check that would permit T-Mobile to aggregate additional holdings with impunity.[20] Nor can the Commission abdicate its responsibility to closely review such transactions on the basis that it already concluded T-Mobile could exceed the screen and, as such, it must permit T-Mobile to do so again. For the foreseeable future, an acquisition of spectrum by T-Mobile that will cause it to trip the screen or exceed the screen even further will be the rule, not the exception.

One way the Commission can reframe its spectrum screen analysis for this new era is to extend its approach to low-band (below 1 GHz) spectrum aggregation to all spectrum transactions subject to the overall spectrum screen. Although AT&T has supported the removal of the second, low-band spectrum screen, AT&T believes that the Commission's approach to low-band spectrum provides a framework that is appropriately layered upon the Commission's current approach to the spectrum screen writ large. Specifically, the Commission should extend its two-tiered framework under which an even more rigorous standard of review is applied in cases where an applicant's holdings already exceed the spectrum screen and it seeks to exceed the screen further.[21] There is no reason why the Commission, having found this analytical

---

[20] T-Mobile Opposition at 5-6 (suggesting that Commission statements regarding the Sprint/T-Mobile merger extend to subsequent aggregation of spectrum); Verizon Reply at 3. *See also* ULS File No. 0009217476, Public Interest Statement and Waiver Request at 8 ("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.") (emphasis added).

[21] *Mobile Spectrum Holdings Order* at ¶¶ 286-287 ("[W]e anticipate 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. . . . we anticipate that we likely would have even greater concerns where the proposed transaction would result in an assignee or transferee 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

framework appropriate for aggregation of spectrum below 1 GHz, should not apply it to spectrum aggregation more generally. This is just one example of how the Commission can refine its spectrum screen review to reflect this new era.

Finally, AT&T notes that the Commission does not have the luxury of waiting for a future transaction to come along, and then pausing to consider how it wants to apply the spectrum screen and case-by-case review on a going forward basis. Bidding in the C Band auction starts in less than three months, and the Commission has stated it will apply its spectrum screen and case-by-case review to the long form application process.[22] If T-Mobile participates in the auction, the Commission will almost certainly be forced to contend – for the first time – with the situation of applying its spectrum screen (and post-auction case-by-case review) to an acquisition of licenses by an applicant whose holdings already exceed the screen by a wide margin. Despite the fact that the Commission has espoused a case-by-case review policy for auctions on-and-off since 2008, it has never had to apply case-by-case review in an auction under circumstances such as these.[23] Not only will the Commission need to decide how it will

---

spectrum. In these cases, the demonstration of the 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.").

[22] *Auction of Flexible-Use Service Licenses in the 3.7-3.98 GHz Band for Next Generation Wireless Services, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 107*, Public Notice, FCC 20-110, at ¶ 112 (August 7, 2020).

[23] The Commission announced that its case-by-case review of spectrum acquisitions in the secondary market would apply to the initial licensing of spectrum post-auction (on a going forward basis) in the wake of Auction 73 in November 2008. *Mobile Spectrum Holdings Order* at ¶ 136. The Commission rescinded this policy in favor of ex ante limits in the *Mobile Spectrum Holdings Order* in 2014. *Id.* at ¶ 139. No major spectrum auctions took place during the first period when case-by-case review was in effect. The Commission reinstated case-by-case review for post-auction applications in 2018. *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services,* Third Report and Order, Memorandum Opinion and Order, and Third Further Notice of Proposed Rulemaking, FCC 18-73 at ¶ 32 (2018). AT&T is not aware of any

determine whether auction results that trip the spectrum screen pose competitive harm, but it also will need to decide what remedies will be adopted if it concludes that harm will result. The Commission should assume that it will soon be forced to do so, come up with a plan, and be mindful that the clock is ticking.

V. CONCLUSION

The Commission, through its actions in this and other proceedings, has deemed it acceptable for a single carrier to exceed the spectrum screen by a wide margin over a large swath of the country. Having made this decision, the Commission must acknowledge the new era it is in and the approach it will take to its spectrum screen going forward if the screen is to serve as a means of promoting and protecting competition. It is essential that the Commission evaluate the spectrum screen – and transactions that impact it – in a transparent, even-handed manner. The Commission must also recognize that the spectrum screen may soon be tested even further in the future and prepare for how it will handle this test when it comes.

Respectfully Submitted,

/s/ Jessica B. Lyons

Jessica B. Lyons
Michael P. Goggin
Gary L. Phillips
David L. Lawson
AT&T Services, Inc.
1120 20th Street, N.W.
Washington, D.C. 20036
202-457-2100
Its Attorneys

September 18, 2020

long form application filed since the reinstatement of case-by-case review that implicated any Commission spectrum aggregation limit, and in any event all subsequent auctions have involved the millimeter wave spectrum screen, not the "traditional" spectrum screen.

CERTIFICATE OF SERVICE

I, Jessica B. Lyons, certify that on this 18th day of September, 2020, I caused copies of the foregoing Comments to be served by electronic mail* on the following:

Trey Hanbury
trey.hanbury@hoganlovells.com
Hogan Lovells
Counsel for Channel 51 License Co LLC and LB License Co, LLC

Doane Kiechel
doane@kiechellaw.com
Doane F. Kiechel Attorney at Law
Counsel for T-Mobile License LLC

Nancy Victory
nancy.victory@dlapiper.com
DLA Piper LLP (US)
Counsel for T-Mobile License LLC

Tamara Preiss
Katharine Saunders
Tamara.preiss@verizon.com
Katharine.saunders@verizon.com
Verizon

/s/ Jessica B. Lyons

* AT&T is serving these parties via electronic mail consistent with the parties' prior practice in this proceeding.