

**DESCRIPTION OF TRANSACTION, PUBLIC INTEREST STATEMENT, AND  
REQUEST FOR WAIVER**

**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 Nsight Spectrum, LLC (“Nsight” and, together with AT&T, the “Applicants”) hereby seek the Federal Communications Commission’s (“Commission” or “FCC”) consent to assign certain Lower 700 MHz and 3.45 GHz licenses (the “Licenses”) from Nsight to AT&T (the “Transaction,” and the FCC applications being filed with respect thereto being the “Applications”). The Licenses to be assigned to AT&T are described in more detail in Exhibit 2.

As explained below, because the Transaction will result in AT&T having an attributable interest in more than 40 megahertz (“MHz”) of 3.45 GHz spectrum in the affected Partial Economic Areas (“PEAs”), the Applicants respectfully request waiver of Section 27.1606 of the Commission’s rules to the extent it is necessary.<sup>1</sup> Grant of the Transaction and the waiver, will serve the public interest by facilitating more capable and competitive 5G deployments in the areas covered by the Licenses, allowing AT&T to keep up with its competitors’ mid-band spectrum holdings and better meet the needs of its customers. Moreover, as discussed in greater detail herein, the Transaction does not create any competitive harm. Accordingly, the Applicants respectfully request that the Commission expeditiously grant the foregoing Applications.

**II. COMMISSION APPROVAL OF THE PROPOSED TRANSACTION IS IN THE PUBLIC INTEREST**

**A. 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.”<sup>2</sup> In making this determination, the 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.<sup>3</sup> The Commission then considers whether the transaction could result in public interest harms, and, in the absence of such harms or if any exist but have been ameliorated by narrowly tailored conditions, the Commission next evaluates the

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<sup>1</sup> See 47 C.F.R. § 27.1606(a) (providing that the cap will expire four years post-auction, which in this case is January 4, 2026). See also *Auction of Flexible-Use Service Licenses in the 3.45-3.55 GHz Band Closes, Winning Bidders Announced for Auction 110*, Public Notice, 37 FCC Red 308, ¶ 1 (2022) (announcing January 4, 2022 as the end date of the auction).

<sup>2</sup> 47 U.S.C. § 310(d); see also *AT&T/Kaplan Order* ¶ 7; *AT&T/KanOkla Order* ¶ 6; *AT&T/Worldcall Order* ¶ 6; *AT&T/Data-Max Order* ¶ 4.

<sup>3</sup> See *AT&T/Kaplan Order* ¶ 7; *AT&T/KanOkla Order* ¶ 6; *AT&T/Worldcall Order* ¶ 6; *AT&T/Data-Max Order* ¶ 4.

transaction's public interest benefits.<sup>4</sup> As demonstrated below, consummation of the Transaction will not pose any harm and will benefit wireless consumers. In particular, by acquiring control of the Licenses, AT&T will be able to augment its network capacity and improve the quality of services it offers in the affected geographic areas.

## **B. The Proposed Transaction Has Numerous Public Interest Benefits**

As explained herein, Commission approval of the Transaction will promote the public interest. By acquiring the Licenses, AT&T will be able to use this spectrum to increase its system capacity to enhance existing services and, over time, to facilitate the provision of additional products and services in the affected geographic areas. This will enable AT&T to better meet the needs of new and existing subscribers by offering improved, more robust, and more advanced services.

In particular, allowing AT&T to acquire the 3.45 GHz licenses contemplated by the Transaction will yield multiple public interest benefits. As the Commission has acknowledged, mid-band spectrum is a uniquely indispensable asset in any 5G provider's spectrum portfolio "due to its desirable coverage, capacity, and propagation characteristics."<sup>5</sup> Indeed, providers today can only offer consumers the full benefits of 5G if they have competitive access to wide, contiguous swaths of mid-band spectrum. Unlike legacy spectrum below 2.5 GHz, mid-band spectrum is neither encumbered by legacy technologies<sup>6</sup> nor broken up into narrow, paired slivers incapable of supporting high-speed 5G applications.<sup>7</sup> And unlike millimeter wave spectrum, mid-band spectrum is capable of supporting wide-area networks covering urban and suburban neighborhoods.<sup>8</sup>

For these reasons, carriers like T-Mobile have aptly hailed mid-band as "the 'goldilocks' of spectrum."<sup>9</sup> With mid-band's desirable characteristics, "it is quite clear today that providers

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<sup>4</sup> See *Applications of Level 3 Communications, Inc. and CenturyLink, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 32 FCC Rcd 9581, ¶¶ 9-10 (2017) ("Level 3/CenturyLink Order").

<sup>5</sup> See *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Report and Order and Order of Proposed Modification*, 35 FCC Rcd 2343, ¶ 3 (2020) ("C-Band Order").

<sup>6</sup> Indeed, refarming 3G/LTE spectrum requires significant investment and is a "time-intensive, highly coordinated, and complex networking effort, with spectrum re-farmed block-by-block and carefully executed to avoid any impact on consumers' wireless experience." See CTIA, *Smarter and More Efficient: How America's Wireless Industry Maximizes Its Spectrum*, at 4 (July 2019), [https://api.ctia.org/wp-content/uploads/2019/07/Spectrum\\_Efficiency.pdf](https://api.ctia.org/wp-content/uploads/2019/07/Spectrum_Efficiency.pdf)

<sup>7</sup> See 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, RM-11966, at 1-2 (Oct. 23, 2023) ("Unlike legacy mobile spectrum between 600 MHz and 2.5 GHz, mid-band spectrum is unencumbered by licensing policies designed for prior-generation technologies: it is both unpaired and available in the wide contiguous swaths needed for the highest-performance 5G functionality.").

<sup>8</sup> *Id.*

<sup>9</sup> Neville Ray, *The Current State of 5G*, T-Mobile Blog (Apr. 19, 2021), <https://www.tmobile.com/news/network/the-current-state-of-5g>.

need far more than 40 megahertz of contiguous mid-band spectrum to unleash the full benefits offered by 5G technologies.”<sup>10</sup> This Transaction is an example of how parties can and should find innovative means to maximize the performance of existing licensed 5G mid-band spectrum in the near to mid-term, given the lack of a spectrum pipeline and the expiration of the Commission’s statutory auction authority.

AT&T is best positioned to rapidly deploy Nsight’s 3.45 GHz spectrum for advanced services. Unlike its competitors, AT&T has prioritized building a 5G network in the 3.45 GHz spectrum in the near term and, as discussed below in Section III.B, stands ready to integrate Nsight’s 3.45 GHz spectrum into its deployment plans upon the consummation of the Transaction. Likewise, the acquisition of the 700 MHz spectrum involved in the Transaction will yield multiple public interest benefits. In the near term, acquiring the 700 MHz licenses will enable AT&T to greatly enhance the quality of the LTE service it offers to its subscribers.

In sum, the acquisition of the Licenses will allow AT&T to increase its system capacity to enhance existing services and facilitate the provision of additional products and services in the affected markets, thereby serving the public interest. The Transaction will result in more customers receiving faster speeds as it will enhance AT&T’s 5G network capacity in the affected areas, supporting the company’s commitment to providing a reliable, best-in-class experience. The Commission should expeditiously grant the waiver and approve the Transaction so that consumers can take advantage of these substantial benefits.

### **C. The Proposed Transaction Creates No Competitive Harm**

The Transaction will have no adverse competitive effects. The Transaction 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.<sup>11</sup>

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<sup>10</sup> *Id.* at 15. GSMA, *3.5 GHz in the 5G Era*, at 2, 6, 8 (Apr. 2021), <https://www.gsma.com/spectrum/wp-content/uploads/2021/04/3.5-GHz-for-5G.pdf> (“For the 3.3-4.2 GHz frequencies, channels of 80-100 MHz are required for each operator to maximize the efficiency and affordability in the first phase of roll out. More capacity will be required as demand increases.”); Comments of Nokia, GN Docket No. 18-122, at 5 (Oct. 29, 2018) (“Nokia C-Band Comments”) (noting that China and other nations have allotted each provider “between 80 MHz to 130 MHz of [3 GHz] spectrum, providing the abundant bandwidth required for the feature sets, speed and performance to fuel the full potential of 5G. It is through these first-to-market, robust spectrum initiatives that these other countries seek to lead the ‘Race to 5G.’”).

<sup>11</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 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., Applications of T-Mobile US, Inc., and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion & Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, ¶ 60 (Nov. 5, 2019) (“*T-Mobile/Sprint Order*”). The Commission has defined the relevant geographic market to be the local markets directly affected by the transaction. *Id.* ¶ 66. When a proposed transaction would increase the concentration of spectrum holdings in any local market, the Commission evaluates the acquiring firm’s post-transaction holdings of spectrum that is “suitable” and “available” in the near term for the provision of mobile telephony/broadband services. *Id.* ¶ 77. This includes the following spectrum: 600 MHz, 700

*First*, this transaction does not even implicate the majority of metrics used by the Commission to evaluate competitive harm. This transaction is a spectrum-only transaction that does not involve the transfer of facilities or customers. As a result, the Herfindahl-Hirschman Index (“HHI”) is unaffected by this transaction and the Commission’s HHI screen is not applicable.<sup>12</sup> Similarly, and as discussed further below, other competitive variables considered by the Commission in its market-specific transaction review are not changed by this transaction.<sup>13</sup>

*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” in any affected county as a result of the Transaction.<sup>14</sup> Although the Transaction would result in AT&T’s 3.45 GHz attributable holdings exceeding the Commission’s temporary 40 MHz cap that sunsets on January 4, 2026, as explained in Section III below, waiver of the cap is warranted and would serve the public interest.

*Third*, the Transaction will in fact preserve and enhance competition in the affected geographic areas. As described in greater detail in Section III.C, the Transaction will enhance competition by enabling AT&T to strengthen its competitive offerings, thus enhancing—and not reducing—overall competition in the affected areas. Specifically, the Transaction will not result in public interest harm in the mobile telephony/mobile broadband market because of the affected markets’ “characteristics that would allow rival service providers to provide an effective competitive constraint.”<sup>15</sup> As shown in Exhibit 4, there will continue to be numerous licensed providers in all of the affected license areas that will provide effective competitive constraints. Accordingly, the Transaction “is unlikely to materially lessen the ability of rival service providers to respond to any anticompetitive behavior” in the affected markets.<sup>16</sup>

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MHz, Cellular, SMR, Broadband PCS, AWS-1, AWS-3 (in markets where such spectrum is now available), AWS-4, H Block, Wireless Communications Service, Broadband Radio Service, Educational Broadband Service, 3.7 GHz, and 3.45 GHz spectrum. *See In the Matter of Communications Marketplace Report*, 2024 Communications Marketplace Report, GN Docket No. 24-119, FCC 24-136, ¶ 69 (rel. Dec. 31, 2024) (“2024 Communications Marketplace Report”).

<sup>12</sup> *See AT&T/KanOkla Order* ¶¶ 15-16.

<sup>13</sup> 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* ¶ 22.

<sup>14</sup> For proposed secondary market transactions, the current spectrum screen trigger is 385 MHz, or approximately one-third of the total amount of currently suitable and available spectrum. *See 2024 Communications Marketplace Report* ¶ 69. This transaction will not cause AT&T to exceed the spectrum screen in any affected county. *See Exhibit 3*.

<sup>15</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 2322, ¶ 48 (2013).

<sup>16</sup> *Id.*

### III. THE COMMISSION SHOULD WAIVE SECTION 27.1606 OF ITS RULES

The Applicants respectfully request that the Commission waive its 3.45 GHz spectrum aggregation limit, which would otherwise prohibit AT&T from having an attributable interest in more than 40 MHz of 3.45 GHz spectrum prior to January 4, 2026.<sup>17</sup> Under Section 1.925 of the Commission’s rules, the Commission may waive its rules when a party demonstrates: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, contrary to the public interest, or the applicant has no reasonable alternative.<sup>18</sup> The Commission also may waive its rules for good cause shown.<sup>19</sup>

As explained further below, waiver of the 40 MHz aggregation limit would serve the public interest. *First*, the underlying purported purpose of the aggregation limit would not be served by continued application, because its primary underlying purpose has already been served. *Second*, there is good cause for the requested waiver because it would expedite the deployment of advanced services and enable deployment of spectrum that would otherwise lie fallow, thus serving the public interest. *Third*, continued application of the 3.45 GHz spectrum cap would thwart and/or frustrate the Commission’s broader efforts to promote competition in the wireless marketplace. *Fourth*, and finally, waiver is strongly supported by Commission precedent with respect to in-band spectrum caps.

#### A. The 40 MHz Spectrum Cap Has Already Served its Intended Purpose

When the Commission adopted the 40 MHz spectrum cap, it emphasized that one of its primary purposes was to encourage a greater diversity of winning bidders in Auction 110.<sup>20</sup> Specifically, the Commission cited its emphasis on “promoting dissemination of licenses among a wider variety of applicants, particularly in the rollout of the next generation of wireless broadband service that is expected to play a much greater role in the nation’s economy.”<sup>21</sup> The Commission further determined that “adopting a pre-auction limit for the 3.45 GHz band provides greater certainty and predictability as to which licenses a bidder could win and retain, helps provide more opportunities for smaller carriers to compete, and should thereby encourage greater participation by a wider variety of bidders.”<sup>22</sup>

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<sup>17</sup> 47 C.F.R. § 27.1606. *See also Auction of Flexible-Use Service Licenses in the 3.45-3.55 GHz Band Closes, Winning Bidders Announced for Auction 110*, Public Notice, 37 FCC Rcd 308 (2022) (announcing January 4, 2022 as the end date of the auction).

<sup>18</sup> *See* 47 C.F.R. § 1.925(b)(3).

<sup>19</sup> *See* 47 C.F.R. § 1.3.

<sup>20</sup> *Facilitating Shared Use in the 3100-3550 MHz Band*, Second Report and Order, Order on Reconsideration, and Order of Proposed Modification, 36 FCC Rcd 5987, ¶ 104 (March 17, 2021) (“3.45 GHz Order”).

<sup>21</sup> *Id.* ¶ 103.

<sup>22</sup> *Id.* ¶ 105.

The cap's primary purpose of encouraging a greater diversity of winning bidders was already realized in the results of Auction 110. Comparing the results of Auction 110 with its immediate predecessor, Auction 107 (the C-Band Auction), makes clear that the spectrum cap has already served its intended purpose. Auction 110 had more winning bidders than Auction 107 despite the fact that Auction 110 offered fewer than half the number of licenses offered in Auction 107 and about one-third as much spectrum. In Auction 107, all 5,684 licenses covering 280 MHz were won by 21 winning bidders.<sup>23</sup> In Auction 110, all 4,041 licenses covering 100 MHz were won by 23 winning bidders.<sup>24</sup> In addition, two-thirds of qualified bidders in Auction 110 won licenses, another improvement over Auction 107, where only one-third of participants won licenses.<sup>25</sup>

As the results of Auction 110 make clear, the cap has already served its purported purpose of encouraging additional winning bidders. Indeed, the Commission recognized at the time of the cap's adoption the importance of preserving licensees' flexibility to engage in beneficial secondary market transactions.<sup>26</sup> Continuing to enforce the cap now will merely impose the "severe costs" Chairman Carr has warned about, including "fallow spectrum and delayed builds."<sup>27</sup> Indeed, inhibiting the ability of licensees to engage in beneficial secondary market transactions such as this one would infringe on the business interests of the very entities the Commission sought to assist with this rule and would frustrate the deployment of 5G services in the 3.45 GHz band.

## **B. Waiver Would Permit More Rapid Deployment of Advanced Services**

One of the underlying purposes of the spectrum cap would be thwarted by its application to this specific case because it would delay the deployment of advanced services in the 3.45 GHz band. In addition to promoting greater diversity in auction participants and winners, the Commission indicated that another fundamental underlying purpose of the spectrum cap was to help ensure the rapid auction, licensing, and deployment of the 3.45 GHz band. Specifically, the Commission noted that "[o]ur balancing of the various Section 309(j) factors in determining whether and what limits to apply in this band reflects, in part, the importance Congress assigned to rapid deployment of this particular band and the timetable set forth in the Beat China to 5G Act."<sup>28</sup> The Commission was referring to the statutory timetable set forth by Congress for the auction and licensing of the 3.45 GHz band.<sup>29</sup> The Commission further noted that this approach

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<sup>23</sup> See FCC, *Auction 107 Fact Sheet*, <https://www.fcc.gov/auction/107> (last visited October 17, 2023).

<sup>24</sup> See *id.*

<sup>25</sup> In Auction 107, 21 out of 57 qualified bidders won licenses. See FCC, *Auction 107 Fact Sheet*, <https://www.fcc.gov/auction/107> (last visited October 17, 2023). In Auction 110, 23 out of 33 qualified bidders won licenses. See FCC, *Auction 110 Fact Sheet*, <https://www.fcc.gov/auction/110> (last visited October 17, 2023).

<sup>26</sup> *3.45 GHz Order*, ¶ 109.

<sup>27</sup> *Id.*, Statement of Commissioner Carr.

<sup>28</sup> *Id.* at ¶ 103.

<sup>29</sup> The Beat CHINA to 5G Act required that the Commission license the 3.45 GHz band by December 31, 2021. *3.45 GHz Order* ¶ 7. The Commission issued all licenses on May 4, 2021. Although the Applicants are

would “provide[] an important opportunity to get additional mid-band spectrum to the market to be put to use quickly, which should help the United States be a global leader in 5G.”<sup>30</sup>

Waiver of the 40 MHz spectrum cap in this Transaction will help achieve the Commission’s goal of ensuring rapid deployment of 3.45 GHz band spectrum to support state-of-the-art services. AT&T is well positioned to put the Licenses to rapid and productive use as the national carrier leading the way in 3.45 GHz band deployment. Of the nationwide carriers, AT&T is the only one that has prioritized building a 5G network in the 3.45 GHz band in the near term.<sup>31</sup> Verizon opted not to pursue the 3.45 GHz band as part of its network strategy, and T-Mobile has no 3.45 GHz spectrum in these markets.<sup>32</sup> With respect to other markets, the Commission has consented to a transaction pursuant to which T-Mobile will assign the majority of its 3.45 GHz spectrum to Columbia Capital, confirming that T-Mobile does not intend to make the 3.45 GHz band part of its deployment strategy.<sup>33</sup> EchoStar, meanwhile, has given no indication that the 3.45 GHz band is part of its near-term deployment plans. This leaves AT&T as the only nationwide service provider prioritizing deployment in the 3.45 GHz band. Thus, permitting AT&T to acquire the Licenses is the clearest, fastest path to deployment of advanced services in 3.45 GHz spectrum in the affected PEAs consistent with the Commission’s and Congress goals in the Beat China to 5G Act.

### **C. Strict Adherence to the Spectrum Cap and Holding Period Would Undermine the Commission’s Broader Competition Policies**

When the Commission adopted the 40 MHz cap and holding period for the 3.45 GHz band, it did so against a broader backdrop of concern with the state of wireless competition. Specifically, the Commission noted at the time that it retains an ongoing “interest in continuing to monitor for excessive concentration of spectrum holdings across all bands suitable and available for the provision of mobile wireless services.”<sup>34</sup> In 2021, the Commission envisioned the 3.45 GHz cap and holding period working in tandem with its existing competition policies. In 2025, however, these principles are in tension with each other, and continued enforcement of the spectrum cap would undermine the Commission’s purpose in adopting it. As explained

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confident that the Commission would have met this deadline even without the spectrum cap, the fact remains that it has been met and the restriction is no longer needed to achieve this objective.

<sup>30</sup> *Id.* at ¶ 105.

<sup>31</sup> Although Section 310(d) prohibits the Commission from considering whether the public interest would be better served by the licenses being leased to someone other than AT&T, it is worth noting that no other carrier could bring this 3.45 GHz spectrum to market as rapidly or efficiently as AT&T. 47 U.S.C. § 310(d).

<sup>32</sup> In any event, recent statements by T-Mobile make clear that its near- to medium-term focus is on the 2.5 GHz band, not the 3.45 GHz band. Monica Allevan, *T-Mobile’s network chief awaits remaining 2.5 GHz, eyes more rural areas*, Fierce Wireless (Feb. 1, 2024), at <https://www.fierce-network.com/tech/t-mobiles-network-chief-ready-roll-remaining-25-ghz>.

<sup>33</sup> See ULS File No. 0011241054 (consented to April 25, 2025).

<sup>34</sup> *3.45 GHz Order* ¶ 109.

below, strict adherence would preclude a transaction that will make AT&T a stronger competitor.

As a general matter, band-specific spectrum caps are as likely to inhibit competition as they are to promote it.<sup>35</sup> The 3.45 GHz band is an excellent illustration of this truism. The cap ensures that no carrier can assemble a channel wide enough to harness the 3.45 GHz band's potential or rival T-Mobile and Verizon's positions in the 2.5 GHz band and C-band, respectively. Prior to Auction 110, AT&T's mid-band spectrum holdings trailed T-Mobile's and Verizon's in most CMAs, with AT&T holding an average of only 80 MHz of C-band spectrum in most CMAs. Verizon and T-Mobile were touting their respective positions in mid-band holdings.<sup>36</sup>

Due to the cap, despite AT&T winning the maximum allowable amount of spectrum in most PEAs in Auction 110, AT&T's attributable unpaired mid-band spectrum holdings remained in third place relative to Verizon and T-Mobile. That result continues. As shown in Exhibit 5, pre-Transaction, Verizon has more mid-band holdings than AT&T in all counties where AT&T stands to acquire 3.45 GHz spectrum as a result of the Transaction. Similarly, AT&T's total attributable unpaired mid-band holdings still trail T-Mobile's mid-band holdings in several of the affected counties.

Even if the Commission waives its spectrum cap and permits AT&T to acquire the 3.45 GHz licenses at issue here, AT&T's total attributable unpaired mid-band spectrum holdings would still trail those of Verizon and T-Mobile in several counties where AT&T would gain 3.45 GHz spectrum as a result of the Transaction. Specifically, post-closing, at least one nationwide provider will hold *more or the same* attributable unpaired mid-band spectrum as AT&T in all of the counties where AT&T will be acquiring 3.45 GHz spectrum. More broadly, if the Transaction is granted, AT&T's total attributable spectrum holdings will still remain well below the Commission's initial "screen."<sup>37</sup> Nor does this transaction trigger "enhanced factor" review.<sup>38</sup>

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<sup>35</sup> See *3.45 GHz Order*, Statement of Commissioner Carr; AT&T Petition for a Rulemaking to Establish a Mid-Band Spectrum Screen, RM-11966, WT Docket No. 23-319 (Sept. 1, 2021). Indeed, bright-line auction-specific caps implicitly assume that all participants enter an auction on a level playing field with respect to their existing spectrum holdings. But that assumption is, of course, false. And as a result, any auction-specific, provider-agnostic cap is inherently over- and under-inclusive as a means of combatting anticompetitive spectrum aggregation.

<sup>36</sup> Monica Allevan, *Verizon plays up C-band tune for investors*, Fierce Wireless (Mar. 11, 2021), <https://www.fierce-network.com/financial/verizon-plays-up-c-band-tune-for-investors>; Press Release, T-Mobile, T-Mobile Further Solidifies 5G Leadership Position with Successful C-Band Auction (Mar. 10, 2021), <https://www.t-mobile.com/news/network/t-mobile-further-solidifies-5g-leadership-position-with-successful-c-band-auction>.

<sup>37</sup> See Exhibit 3.

<sup>38</sup> AT&T understands that as of April 13, 2017, the trigger for "enhanced factor" review is 68 MHz of low-band spectrum. See *In the Matter of Policies Regarding Mobile Spectrum Holdings*, Report & Order, 29 FCC Rcd 6133, ¶ 81 (2014) ("*Mobile Spectrum Holdings Order*"); *Incentive Auction Closing and Channel Reassignment*,

Given the lack of a clear spectrum pipeline or mid-band spectrum auction on the horizon,<sup>39</sup> the secondary market represents the only opportunity for AT&T to catch up in the near- to mid-term. Although stakeholders are examining the possibility of making additional unpaired mid-band spectrum available in the 3 GHz range, this effort is fraught with complications and could take several years under the best-case scenario. Verizon and T-Mobile hold the majority of the remaining unpaired mid-band spectrum outside the 3.45 GHz band in these PEAs. As things currently stand, AT&T's most realistic catch-up opportunities lie in the 3.45 GHz spectrum band. For these reasons, the Commission should waive its spectrum cap rule and enable AT&T to acquire the Licenses in advance of the cap's expiration.

#### **D. Waiver of the Spectrum Cap Is Supported By Commission Precedent**

Finally, waiver of the 40 MHz spectrum cap is consistent with Commission precedent. In support of its decision to impose a four-year holding period in connection with the pre-auction spectrum cap in the 3.45 GHz band, the Commission noted that it “also adopted a holding period of six years for certain 600 MHz licenses.”<sup>40</sup> This 600 MHz holding period represents perhaps the only parallel to the one adopted by the Commission for the 3.45 GHz band, and the Commission generally did not enforce it: the Commission granted waivers to T-Mobile,<sup>41</sup> U.S. Cellular,<sup>42</sup> Sagebrush Cellular,<sup>43</sup> and BlueSky.<sup>44</sup> In fact, the Applicants can identify no instance where an applicant requested a waiver of the 600 MHz holding-period rules and did not receive it. Now that the Commission has waived those rules at literally every opportunity, it is

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Public Notice, 32 FCC Rcd 2786 (2017) (“*Channel Reassignment PN*”). Post-transaction, AT&T's attributable low-band holdings in the affected counties will continue to total, at most, 55 MHz, well below the “enhanced factor” trigger. *See* Exhibit 3.

<sup>39</sup> Congress recently granted the Commission limited authority to reactivate AWS-3 spectrum licenses held in FCC inventory. *See* Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025, H.R. 5009, 118th Cong. Title LIV (2024). However, the potential auction of the Commission's inventory of AWS-3 spectrum is not relevant here because it is not unpaired time division duplex (“TDD”) spectrum and appears to only be available in low quantities in a small scattershot of counties.

<sup>40</sup> *3.45 GHz Order* ¶ 106 n.260.

<sup>41</sup> Public Interest Statement of T-Mobile License LLC, ULS File No. 0009217476 (Sept. 9, 2020).

<sup>42</sup> *See* U.S. Cellular Waiver Request Redacted Version at 5, ULS File No. 0009593749 (Aug. 6, 2021) (“If such massive overall wireless spectrum holdings are now permissible for the largest wireless carriers, then certainly appropriate waivers of Section 20.22(c)(2) for regional carriers should also be granted.”).

<sup>43</sup> *See* Sagebrush Cellular Exhibit 1 at 2, ULS File No. 0009600177 (June 28, 2021) (“A waiver would be justified because Assignee seeks to expand its service offering to a much larger market area and population than it is currently serving. Assignee's below 1 GHz spectrum holdings are below the low-band enhanced spectrum aggregation threshold for the vast majority of the population in PEA190, and Assignee has no reasonable alternative to the acquisition of the Licenses to serve this new, large population.”).

<sup>44</sup> *See* BlueSky Request for Waiver at 5, ULS File No. 0009107973 (June 17, 2020) (“Because BlueSky intends on providing improved wireless service to remote and insular communities in American Samoa, it would be both inequitable and contrary to the public interest to strictly enforce Section 20.22(c)(2) of the Commission's rules in this instance.”).

implausible to argue that the holding period rules for 600 MHz spectrum can justify a holding period for 3.45 GHz spectrum.

Waiver of the rule in this case is further justified given that the restriction, by its own terms, is set to expire in the near future. The four-year holding period is set to expire in January 2026. Accordingly, the holding period is already more than three-quarters of the way complete. The Commission has previously granted waivers of rules that are close to expiring by their own terms.<sup>45</sup> Moreover, as explained in Section II.A, *supra*, the public interest benefits of waiving the spectrum cap and holding period for AT&T are equally, if not more, compelling than those of waiving the 600 MHz holding period for the recipients of those waivers.

#### IV. CONCLUSION

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

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<sup>45</sup> See, e.g., *Pioneer Tel. Assoc. Inc.*, Order, 15 FCC Rcd 9918, ¶ 4 (WTB 1999); see also *EchoStar Technologies L.L.C. and Hauppauge Computer Works, Inc. Petitions for Waiver of Section 15.117(b) of the Commission's Rules*, Order, 31 FCC Rcd 12770, ¶ 5 (MB 2016) (waiving a rule set to sunset less than one year from the order's release).