BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations	)	
from	)	
DOBSON CC LIMITED PARTNERSHIP Transferor	)	WT Docket No. 07-153
to	)	
AT&T INC. Transferee	)	

JOINT OPPOSITION
OF AT&T INC. AND DOBSON COMMUNICATIONS CORPORATION
TO PETITIONS TO DENY AND REPLY TO COMMENTS

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SUMMARY

The dearth of opposition to this merger demonstrates, as AT&T and Dobson established in the Public Interest Statement, that this merger is in the public interest.

AT&T and Dobson customers alike will benefit from the merger. Dobson's largely rural and suburban customers will enjoy a greater variety and scope of wireless handsets and advanced services, and will be able to take advantage of AT&T's large menu of rate plans. Integration of the two companies' networks will result in customers of both enjoying improved signal quality and service across a broader area. The combined company will experience a reduction in roaming costs in excess of $1 billion dollars over the next five years, and the transaction will result in an estimated $2.5 billion in additional cost synergies.

The few opponents to this transaction do not challenge these public benefits. Instead, T-Mobile focused largely on the merger's purported impact on T-Mobile's roaming agreements with the Applicants. However, the Commission just adopted an automatic roaming obligation, and T-Mobile has not advanced any basis for the Commission to revise its reasoned conclusions in that Order, applicable to the entire industry, or otherwise use this proceeding to circumvent that Order. Moreover, T-Mobile's concern is properly a question of its contract rights under its privately negotiated agreements with AT&T and Dobson. The Commission should not allow T-Mobile to use this proceeding to renegotiate them and secure additional benefits. East Kentucky Network, LLC and Mid-Tex Cellular Ltd. purport to complain about the merger's impact in two different CMAs, but their complaints fundamentally have nothing to do with the merger and are without merit. The spectrum the combined company will control in Texas RSA 9B2 does not warrant further scrutiny under Commission precedent. East Kentucky Network's complaint about the absence of a CDMA buildout in Kentucky RSA 8 has no relationship to the

applications before the Commission. There is no evidence that, absent the merger, there would have been a cellular CDMA buildout in that CMA, particularly since neither Dobson nor AT&T has constructed CDMA networks in any other geographic area in which they currently operate. Similarly without merit are attempts by T-Mobile and Mid-Tex to add heft to their unique, individual concerns by making broad, generalized, and unsubstantiated claims about the merger's alleged impact on wireless competition generally. As amply demonstrated and supported in the Public Interest Statement, the wireless marketplace is highly competitive and the merger will not harm competition in the market for wireless services. Thus, T-Mobile's and Mid-Tex's claims of anti-competitive effect do not provide any basis for denying the transfer applications or for imposing the conditions those opponents seek – conditions designed to advance their individual interests.

In view of the abundant public interest benefits and the absence of any credible evidence of competitive harm, the Commission should approve the transfer applications quickly and without conditions.

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I. INTRODUCTION

The merger of AT&T Inc. ("AT&T") and Dobson Communications Corporation ("Dobson") (collectively, the "Applicants") will provide myriad public interest benefits without harming competition in any relevant market. The few opponents that have chosen to participate in this docket do not challenge the public interest benefits, and their self-serving claims regarding the merger's impact on competition are without merit. Accordingly, the Commission should grant the transfer applications promptly and without any conditions.

II. THE MERGER WILL PRODUCE NUMEROUS PUBLIC INTEREST BENEFITS

No one challenges the fact that the merger will generate numerous, significant public benefits. Applicants clearly demonstrated these benefits in the Public Interest Statement.

Dobson's largely rural and suburban customers will enjoy a greater variety and scope of wireless handsets and services, and will be able to take advantage of AT&T's menu of rate plans.[1] The combined company's greater geographic footprint also will permit Dobson's customers to obtain free access to a much larger mobile-to-mobile customer base, and Dobson's customers will reap the benefit of AT&T's extensive international roaming agreements. Integration of the two companies' networks also will result in significant public benefits, including enhanced signal and service quality across a broader area.[2] The combined network also will significantly reduce the combined company's roaming costs by more than $1 billion over the next five years,[3] and the transaction will result in additional cost synergies currently estimated at $2.5 billion.[4] These benefits are real and substantial, and the opponents have not shown that there are any harms that warrant denying the public these improvements and enhancements.

III. OPPONENTS' CLAIMS THAT THE MERGER WILL LESSEN COMPETITION ARE NOT CREDIBLE

A. The Merger Creates No Spectrum Aggregation Concerns

1. Texas RSA 9B2 – CMA660

The complaints of Mid-Tex Cellular Ltd. ("Mid-Tex") about spectrum aggregation in Texas RSA 9B2[5] can be quickly dismissed. Mid-Tex argues that Commission precedent requires further scrutiny in Texas RSA 9B2 because the combined company will hold 70 MHz or

[1] Public Interest Statement ("PIS") at 4-7.

[2] *Id.* at 9-11.

[3] *Id.* at 10-12.

[4] *Id.* at 12-15.

[5] Texas RSA 9B2 is not a cellular market area, as the Commission has used that term in competitive analysis, but rather a partitioned area within CMA660 in which Mid-Tex holds a cellular license.

more of spectrum there.[6] In fact, what Commission precedent requires is further scrutiny in "any market in which one entity controls more than one-third" of the "total bandwidth available for mobile telephony today."[7] Contrary to Mid-Tex's imaginative arithmetic, that is not the case here.

Mid-Tex's calculation of the combined firm's spectrum holdings – the numerator of the fraction – includes not only cellular, PCS and SMR spectrum but also AWS spectrum. Without including AWS spectrum, the combined company's holdings would not reach or exceed 70 MHz in Texas RSA 9B2.[8] As Mid-Tex contends, however, the total bandwidth available for mobile telephony today consists of additional spectrum that is suitable for mobile wireless services, including, at a minimum, AWS spectrum. Therefore, the denominator of the fraction also must include all such spectrum held by others as well, including AWS. Indeed, when one includes AWS in the analysis, the total bandwidth available for mobile telephony rises to about 289 MHz, meaning that, under the Commission's traditional approach, the threshold for further scrutiny would be reached only at a level of approximately 100 MHz – a level that the combined firm does not reach in Texas RSA 9B2.[9] Thus, under any analysis, there is no basis for further scrutiny of this spectrum aggregation.

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[6] Mid-Tex Petition at 2-3.

[7] *In re Applications of AT&T Wireless Servs., Inc. & Cingular Wireless Corp. for Consent to Transfer of Control of Licenses & Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd. 21522, 21568-69 ¶ 109 (2004).

[8] If the total bandwidth available for mobile telephony today consists of about 199 MHz of cellular, PCS and SMR spectrum, then Mid-Tex is correct in stating that about one third of this, or 70 MHz, is the threshold for further scrutiny under the Commission's prior merger decisions.

[9] Mid-Tex incorrectly states that the combined company will hold 100 MHz of cellular, PCS and AWS spectrum in the part of Erath County that is in Texas RSA 9B2. The correct figure is 75 MHz – Dobson's 25 MHz cellular A band license, Dobson's 10 MHz PCS C block license, AT&T's 10 MHz PCS C block license, AT&T's 10 MHz PCS D block license, AT&T's 10 MHz PCS F block license, and AT&T's 10 MHz AWS license. AT&T holds a 25 MHz cellular B band license in the small part of Erath County that is outside Texas RSA 9B2.

Indeed, to assess the impact of the merger on the spectrum available for mobile wireless services, the analysis should properly include not only cellular, PCS, SMR and AWS but also other substitutable spectrum, most notably BRS/EBS. Sprint and Clearwire have emerged as the primary commercial holders of the BRS/EBS spectrum, with an average combined nationwide holding of about 132 MHz,[10] and are aggressively moving to complete the mandated market transitions and launch commercial service. Last month, at its "Sprint Ahead Technology Summit," Sprint demonstrated key technologies and described operational plans for providing new mobile services using the BRS/EBS spectrum. Sprint also announced its branding for these services under the name the XOHM, with a soft launch of the network expected by the end of 2007 in the Chicago and Baltimore/Washington areas.[11] Under a planned network sharing agreement between Sprint and Clearwire, the buildout is expected to reach 100 million POPs by the end of 2008.[12] BRS/EBS spectrum is clearly ripe for inclusion in the FCC's analysis of the input market for mobile telephony services.

It is consequently clear that no matter what analysis is used, there plainly are no spectrum aggregation issues in Texas RSA 9B2. The combined company will hold only about 22 percent of the cellular, PCS, SMR, and AWS spectrum in Texas RSA 9B2, which is not much more than

[10] Sprint and Clearwire together hold about 40 billion MHz POPs of BRS/EBS spectrum. *See* Lehman Brothers Worldwide Wireless and Wireline Conference, Presentation of Paul Saleh, Chief Financial Officer, Sprint, May 30, 2007, at 5 *available at* http://library.corporate-ir.net/library/12/127/127149/items/247927/SprinLehmanBros.pdf. This translates into a nationwide average of about 132 MHz (*i.e.*, 40 billion divided by the current U.S. population of about 303 million).

[11] Mike Dano, *Sprint Nextel Pushes WiMAX Into the Xohm*, RCR WIRELESS NEWS (Aug. 20, 2007).

[12] Matt Kapko, *WiMAX; Pushing Construction Boundaries*, RCR WIRELESS NEWS (Aug. 13, 2007).

the approximately 17 percent of such spectrum that Mid-Tex and its affiliates hold in Texas RSA 9B2.[13] There is thus ample spectrum available for competitors.

In any event, the Commission has never held that 70 MHz is a new CMRS spectrum cap that triggers automatic divestiture. To the contrary, in a context in which the total amount of spectrum available to all carriers was only about 200 MHz – far less than is available today – the Commission merely assumed that any holding in excess of 70 MHz warranted further analysis as to whether sufficient spectrum was available to competitors. Both CMA660, of which Texas RSA 9B2 is only a part, and Texas RSA 9B2 itself, are served by numerous wireless carriers, each of which individually, and all collectively, have ample spectrum to serve customers and to expand service. Five carriers[14] – Verizon, Sprint, T-Mobile, Mid-Tex, and Dobson – are providing facilities-based service in Texas RSA 9B2. (In contrast, AT&T does not provide facilities-based service in Texas RSA 9B2, so there will be no loss of competition from the merger.) Each of these existing facilities-based competitors, including Mid-Tex, has at least 25 MHz throughout Texas RSA 9B2.[15] In addition, there are other current holders of spectrum in Texas RSA 9B2, including MetroPCS, Leap, SpectrumCo, and Global Telecom, which can use their spectrum to compete, or lease or sell it to existing competitors or other new entrants.

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[13] Mid-Tex is affiliated with Central Texas and CT Cube, both of which are also spectrum holders in Texas RSA 9B2. Together, they hold 80 MHz of cellular, PCS, and AWS in Runnels County; 60 MHz in Coleman County; and 45 MHz in Brown, Comanche, Erath, and Mills Counties.

[14] Contrary to Mid-Tex's claim, Mid-Tex Petition at 6, five wireless carriers is not a "small" number to serve an area. *See In re Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993*, Eleventh Report, 21 FCC Rcd. 10947, 10950 ¶ 2 (2006) (finding that effective competition exists where 98 percent of the U.S. population has access to three or more carriers, 94 percent have access to four or more, and 51 percent have access to five or more).

[15] Mid-Tex mistakenly asserts that T-Mobile holds only 20 MHz in Erath County. In fact, T-Mobile has 40 MHz – a 20 MHz PCS C block license and a 20 MHz AWS license. Mid-Tex also mistakenly asserts that Sprint holds only 30 MHz in Texas RSA 9B2. Sprint, in fact has 58 MHz – a 30 MHz PCS B block license, a 10 MHz PCS G block license, and 18 MHz of SMR spectrum – plus whatever BRS/EBS spectrum it holds.

Finally, 62 MHz of additional spectrum will be offered in Texas RSA 9B2 in January 2008 in Auction No. 73. There is thus no basis to force a divestiture of spectrum in Texas RSA 9B2.

2. Kentucky RSA 8 – CMA450

The claims of East Kentucky Network, LLC ("EKN") about spectrum aggregation in CMA450 are equally insubstantial.[16] EKN asserts that the spectrum aggregation resulting from the merger will prevent a CDMA buildout for a cellular license in CMA450 and thus deprive EKN of a potential roaming partner capable of providing cost-effective, high-quality service across the mountainous and sparsely populated terrain of CMA450.[17] EKN's argument suffers from a glaring logical flaw – there is not one scintilla of evidence that, absent the merger, there would have been a CDMA buildout of a cellular license in CMA450. Both cellular licenses in CMA450 were built out using GSM, the merger will not affect this choice of technology, and, absent the merger, there is no reason to believe that either system would be converted to CDMA. Moreover, the two national CDMA carriers, Sprint and Verizon Wireless, both have spectrum and operations in CMA450. Simply stated, the purported lack of CDMA roaming options in CMA450 is the result of business decisions by the various carriers operating in the CMA and is not a consequence of the merger. Both AT&T and Dobson are GSM carriers, and combining

[16] EKN, which does not compete in CMA450, lacks standing to complain of a loss of competition in that CMA, and its petition should be dismissed on that ground. Pursuant to 47 U.S.C. § 309(d)(1) and the Commission's rules, only a "party in interest" may file a petition to deny with the Commission. 47 U.S.C. § 309(d)(1); 47 C.F.R. § 1.939(a). The Commission has held that "a petitioner that does not hold a license or have an application pending in the same service area in which the petitioned application is filed fails to demonstrate an economic injury that would meet the requirement for standing." *In re Applications of Metrocall, Inc. for Permit & Modification of Licenses for Additional Facilities to Operate on 931.0125 MHz at Morristown, Kingsport, Johnson City et al.*, Memorandum Opinion and Order, 11 FCC Rcd. 21208, 21209 ¶ 3 (CWD, WT 1996).

[17] EKN Petition at 5.

two GSM carriers will not eliminate any CDMA roaming partners for EKN. EKN thus has failed to show any merger-specific harm, and its petition to deny should be dismissed.[18]

EKN's claims about being foreclosed from acquiring spectrum in CMA450 are likewise implausible. Nine other wireless carriers besides AT&T and Dobson have managed to secure spectrum in CMA450 – Verizon, Sprint, T-Mobile, US Cellular, Leap, SpectrumCo, Cincinnati Bell, NTELOS, and Atlantic Wireless.[19] Five additional licenses with coverage in CMA450 will be offered in Auction No. 73 in January 2008. These competitors who have succeeded in acquiring spectrum in CMA450 are capable of entering the market if they choose to do so, and EKN has not shown why it merits extraordinary Commission assistance in doing what so many others have done on their own. There is thus no basis for EKN's claim here.

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[18] *See, e.g., In re AT&T Inc. & BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd. 5662, 5674-75 ¶ 22 (2007); *In re Applications for the Assignment of License from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. & the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to Gen. Commc'n, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd. 14863, 14874-75 ¶ 19 (2006); *In re Applications of Guam Cellular & Paging, Inc. & DoCoMo Guam Holdings, Inc., & Applications of Guam Cellular & Paging, Inc. & Guam Wireless Tel. Co., L.L.C.*, Memorandum Opinion and Order and Declaratory Ruling, 21 FCC Rcd. 13580, 13592-93 ¶ 17 (2006); *In re Applications of Midwest Wireless Holdings, L.L.C. & ALLTEL Commc'ns, Inc. & Application of Great Western Cellular Partners, L.L.C. & ALLTEL Commc'ns, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd. 11526, 11538-39 ¶ 20 (2006); *In re Applications of Nextel Partners, Inc., Transferor, & Nextel WIP Corp. & Sprint Nextel Corp., Transferees, for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 21 FCC Rcd. 7358, 7361 ¶ 9 (2006); *In re SBC Commc'ns Inc. & AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd. 18290, 18302-03 ¶ 19 (2005); *In re Verizon Commc'ns Inc. & MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd. 18433, 18445 ¶ 19 (2005); *In re Application of Nextel Commc'ns, Inc. & Sprint Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd. 13967, 13978-79 ¶ 23 (2005); *In re Applications of Western Wireless Corp. & ALLTEL Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd. 13053, 13065-66 ¶ 21 (2005); *In re Applications of AT&T Wireless Servs., Inc. & Cingular Wireless Corp. for Consent to Transfer of Control of Licenses & Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd. 21522, 21545-46 ¶ 43 (2004).

[19] In the PIS the Applicants incorrectly identified Cincinnati Bell Wireless as a current competitor in CMA450 (Kentucky 8 - Mason). PIS, App. B at 4. It holds 30 MHz of spectrum in two counties in that CMA but is not currently providing service.

B. The Commission's *Roaming Order* Disposes of Opponents' Requests for Roaming Conditions

T-Mobile's and Mid-Tex's requests for roaming conditions are without merit and not appropriate for this forum. The Commission recently adopted the *Roaming Order* providing that CMRS carriers have an obligation to provide automatic roaming services on just, reasonable, and nondiscriminatory terms to technologically compatible carriers without wireless licenses or spectrum usage rights in the requested roaming area.[20] AT&T has complied – and will comply – with the terms of the *Roaming Order*. The *Roaming Order* specifies that the appropriate recourse for a carrier that believes this obligation is being violated is to file a complaint with the Commission.[21] As the *Roaming Order* noted with respect to roaming objections raised in previous mergers, "[T]he Commission determined that it was appropriate to address those concerns in the context of a rulemaking proceeding to consider the Commission's roaming rules and requirements applicable to CMRS providers under current market conditions and developments in technology."[22] Now that the Commission has carefully weighed the voluminous record of evidence in that proceeding and issued new rules applicable to the industry as a whole, that should be the end of the matter, and T-Mobile's and Mid-Tex's efforts to circumvent the *Roaming Order* should be rejected.

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[20] *In re Reexamination of Roaming Obligations of Commercial Mobile Radio Serv. Providers*, WT Dkt No. 05-265, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-143, 2007 WL 2330985 (rel. Aug. 16, 2007) ("*Roaming Order*"). The roaming obligation is limited to "real-time, two-way switched voice or data services, provided by CMRS carriers, that are interconnected with the public switched network and utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls." *Roaming Order* at *6 ¶ 23. The Commission also extended the obligation to push-to-talk and text messaging services, but asked for additional comments in a further notice of proposed rulemaking on whether non-interconnected features or services should be included. *Id.* at *15 ¶ 55, *21-22 ¶¶ 77-81.

[21] *Id.* at *9 ¶ 30.

[22] *Id.* at *4 ¶ 13; *see also* *8 ¶ 28.

Thus, the request of T-Mobile for a "home roaming"[23] condition and Mid-Tex's request for "most favored" rate requirements[24] – proposals that were considered and specifically rejected by the *Roaming Order* – have no place in this proceeding. The Commission already concluded that a home roaming obligation "does not serve our public interest goals of encouraging facilities-based service and supporting consumer expectations of seamless coverage when traveling outside the home area."[25] Similarly, the Commission declined to impose any form of rate regulation on roaming fees[26] or mandate that smaller carriers be entitled to the same rates as larger carriers' "most favored" roaming partners.[27] Rather, the Commission found that "the better course … is that the rates individual carriers pay for automatic roaming services be determined in the marketplace through negotiations between the carriers, subject to the statutory requirement that any rates charged be reasonable and non-discriminatory."[28] Nothing about this merger affects the Commission's conclusions about home roaming or roaming fees. To the extent that T-Mobile and others have concerns with these conclusions or other findings of the *Roaming Order*, those concerns are properly addressed through further comments or petitions for reconsideration in the rulemaking, not in the form of conditions requested in a specific transfer proceeding.

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[23] The Commission used the term "home roaming" to describe areas where the requesting carrier holds a wireless license or spectrum usage rights and could or does compete directly with the would-be host carrier. *See id.* at *13 ¶ 49.

[24] *See* T-Mobile Comments at 6 (requesting a condition that the *Roaming Order's* obligations extend to all AT&T service areas, including those subject to the home roaming exclusion); Mid-Tex Petition at 9 (requesting a condition that AT&T be required to offer Mid-Tex its lowest roaming rate regardless of volume of minutes used).

[25] *Roaming Order* at *13 ¶ 49.

[26] *Id*. at *10-*11 ¶¶ 37-40.

[27] *Id*. at *12 ¶¶ 43-45.

[28] *Id.* at *10 ¶ 37.

T-Mobile's request that the Commission *require* AT&T to adhere to its roaming agreement with Dobson so that its roaming rates do not increase is equally without merit. T-Mobile has roaming agreements with both Dobson and AT&T. It is not within the scope of this proceeding to determine contractual rights or responsibilities, or to guarantee any carrier that it will pay a particular rate.[29] Indeed, the *Roaming Order* made clear that the Commission will not get involved in the specific rates set forth in roaming agreements freely negotiated in the marketplace, unless a specific complaint is filed with the Commission alleging that such rates are unreasonable and/or discriminatory.[30] The parties have negotiated arm's-length roaming agreements, and it would be inappropriate in this proceeding for the Commission to give T-Mobile any benefits for which it did not bargain. Additionally, T-Mobile may enforce its rights, whatever they may be, under the terms of those contracts. A transfer application is not the appropriate forum for a contract dispute, particularly where one has not occurred.

Moreover, as explained in the Public Interest Statement, AT&T will continue to need roaming partners – especially smaller, regional carriers but also T-Mobile – to provide roaming

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[29] The Commission's duty is "to protect efficient competition, not [individual] competitors." *In re AT&T Inc. & BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd. 5662, 5759 ¶ 195 (2007) (internal quotation omitted); *see also, e.g., In re Verizon Commc'ns Inc. & MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd. 18433, 18512 ¶ 150 (2005); *In re SBC Commc'ns Inc. & AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd. 18290, 18371 ¶ 151 (2005). Further, private contractual disputes are not related to the Commission's public interest analysis. *See, e.g., In re Application of Nextel Commc'ns, Inc. & Sprint Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd. 13967, 14033-34 ¶¶ 180-81 (2005); *In re Applications of AT&T Wireless Servs., Inc. & Cingular Wireless Corp. for Consent to Transfer Control of Licenses & Authorizations*, Order on Reconsideration, 20 FCC Rcd. 8660, 8665 ¶ 13 n.27 (2005); *In re Applications of AT&T Wireless Servs., Inc. & Cingular Wireless Corp. for Consent to Transfer of Control of Licenses & Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd. 21522, 21551 ¶ 56 n.222 (2004).

[30] *See Roaming Order* at *10-*11 ¶¶ 37-40 (discussing why the Commission declined to impose any form of rate regulation) and discussion above.

services in areas where AT&T may not have coverage.[31] AT&T has 52 domestic roaming agreements in place today and will remain a net payor of roaming fees after the merger.[32] In short, this transaction will not materially diminish the availability of roaming services or the incentives to enter into roaming agreements.

C. There Is No Basis for Conditioning AT&T's Participation in the 700 MHz Auction

Mid-Tex argues that the Commission should preclude AT&T from bidding "in Auction No. 73 for any licenses in any license area in which the merged AT&T controls, or has a 10 percent or greater interest in, 70 MHz or more of CMRS spectrum."[33] It contends that limiting AT&T in this manner will promote competition among CMRS providers and is consistent with the "condition imposed on AT&T and Cingular in the *AT&T/Cingular Merger Order*."[34] The request ignores the Commission's recent, careful, and detailed analysis of whether participation in Auction No. 73 should be constrained and must be denied.

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[31] PIS at 38. As the Public Interest Statement points out:

- Nationwide carriers have strong incentives to enter into reciprocal roaming agreements. That conclusion continues to apply here as well, since AT&T will continue to need roaming services and will continue to pay more roaming fees to other carriers than it collects.
- The merger will expand AT&T's customer base by less than one percent of subscribers nationwide. Such a small addition will not increase AT&T's ability or incentives to discriminate or behave in an anticompetitive manner.
- The merger does not alter the fact that two nationwide GSM carriers and several regional carriers will still offer roaming services. The Commission has previously found that the presence of two carriers constitutes a competitive market.

See PIS at 37-38.

[32] PIS at 38; Moore Decl. ¶¶ 34-35.

[33] Mid-Tex Petition at 7.

[34] *Id.* (footnote omitted).

In its recent decision adopting rules and policies for the use of the spectrum to be auctioned in Auction No. 73, the Commission fully considered whether it should limit participation in the auction. It concluded, based on a comprehensive analysis of a broad range of factors, that any such constraints were unnecessary and would disserve the public interest.[35] It found that there was no basis for concerns that incumbent carriers would use the auction to warehouse spectrum and limit competition by others, stating that "existing competition … limits any one party's incentives to attempt unilaterally to block new entrants from acquiring 700 MHz spectrum. Absent a monopoly on broadband service, an incumbent attempting to block new entrants would bear all the costs of doing so, while other incumbents would capture much of the gain."[36] The Commission further found, based on the number and variety of spectrum blocks in the auction, the diversity of geographic market sizes, and the more stringent buildout requirements, that "the revised band plan for the 700 MHz Band and the associated buildout rules will help discourage foreclosure in the market."[37] Mid-Tex has not advanced any evidence that would rebut these findings or would even justify Commission re-evaluation of them in the context of this proceeding.

Further, as the Commission recognized in the *700 MHz Second Report*, restricting participation in the auction is inconsistent with the underlying rationale for using auctions to award licenses: "The use of competitive bidding to assign licenses … serves the public interest by assigning licenses to the parties that value the licenses the most. … If, however, we exclude categories of potential licensees, we risk reducing the likelihood that the party valuing the license

[35] *See In re Serv. Rules for the 698-746, 747-762, & 777-792 MHz Bands*, WT Dkt No. 06-150 et al., Second Report and Order, FCC 07-132, 2007 WL 2301743, at *79-*80 ¶¶ 256-59 (rel. Aug. 10, 2007) ("*700 MHz Second Report*").

[36] *Id.* *79 ¶ 256.

[37] *Id.* *80 ¶ 257.

the most will win the license and put it to use for the benefit of the public."[38] The Commission went on to note: "This unavoidable uncertainty in assessing prospective competitive harms is heightened here by the substantial spectrum capacity being made available and the uncertainty regarding how that spectrum capacity ultimately will be used."[39] By limiting AT&T's participation in Auction No. 73, the Commission would run the very risks it concluded a few weeks ago were contrary to the public interest.

Finally, while the Commission conditioned its approval of the AT&T Wireless/Cingular merger on Cingular's commitment "not to apply to bid in Auction 58 for any licenses in any BTA in which Cingular controls, or has a 10 percent or greater interest in, 70 MHz or more of cellular and/or PCS spectrum," that situation was vastly different from the current application. First, Cingular had voluntarily agreed to the limitation.[40] Second, the commitment was made in the context of a merger between two national wireless carriers, whereas this transaction is far more limited both geographically and in terms of population. The commitment was also made in the context of a wireless marketplace that was markedly different and smaller than the current market. Wireless data services were still in their nascent stages, and demand for wireless services was substantially less than it is today and will be in the future as 3G services continue to roll out and 4G services take shape.

Auction No. 58 was also a far simpler auction than Auction No. 73. Auction No. 58 involved the re-auctioning of some 200 licenses for individual BTAs. Except for licenses in the U.S. Pacific Territories, the licenses covered no more than 15 MHz and most involved only 10

[38] *Id.* *80 ¶ 259.

[39] *Id.*

[40] *In re Applications of AT&T Wireless Servs., Inc. & Cingular Wireless Corp. for Consent to Transfer of Control of Licenses & Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd. 21522, 21598-99 ¶ 200 (2004).

MHz.[41] In contrast, Auction No. 73 involves 62 MHz of spectrum across the entire United States and its territories, more than 1000 licenses, license areas of different geographic size, licenses with significant differences in the amount of spectrum, packaged bidding, and unique conditions imposed on specific license blocks, among other complexities not present in Auction No. 58. Implementing and monitoring a spectrum limitation in Auction No. 58 was relatively simple and straightforward; implementing and monitoring a spectrum cap in Auction No. 73 will be far more complex and will have far greater impact on the auction. AT&T's ability to bid for larger geographic areas will be imperiled as will its ability to employ package bids or bid against other package bids. Constraining AT&T's ability to bid on licenses covering larger areas will also adversely affect smaller carriers which probably will bid on CMA licenses, since AT&T could be forced to bid on those smaller licenses to meet its spectrum needs. Given the substantial differences between the two auctions, the differences in the scope of the transactions, and the Commission's carefully considered and in-depth evaluation of the question whether to limit eligibility to participate in the Auction, the Commission should not now reverse itself and constrain AT&T's ability to participate in Auction No. 73. Rather, it should reject Mid-Tex's broad-brush effort to constrain AT&T's participation in Auction No. 73 and stay with its well-reasoned conclusions.

D. The Commission Should Not Require Relinquishment of USF Support

The Commission should reject Mid-Tex's request that the Commission prohibit AT&T from acquiring Dobson's Eligible Telecommunications Carrier ("ETC") status in Texas

[41] *See Broadband PCS Spectrum Auction Scheduled for Jan. 12, 2005*, Public Notice, 19 FCC Rcd. 18190, App. A (2004).

RSA 9B2.[42] Mid-Tex's request is inconsistent with the Commission's current rules which apply industry wide and permit AT&T to acquire Dobson's ETC status.

If Mid-Tex believes such industry-wide rules are unfair, then it should raise these issues in the pending universal service reform proceedings before the Joint Board and the Commission.[43] It is simply inappropriate to try to address Mid-Tex's industry-wide concerns in a merger proceeding that implicates only a single carrier. Further, Mid-Tex has not articulated any merger-related factor which might conceivably warrant the Commission treating AT&T's merger with Dobson uniquely.

Moreover, there is no question that AT&T is entitled to acquire Dobson's ETC status, and Mid-Tex admits as much, noting that "[b]ased on Commission precedent, once merged, AT&T as the acquiring entity will be eligible to receive universal service support merely based

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[42] Mid-Tex Petition at 10-12.

[43] *See In re High-Cost Universal Serv. Support*, WC Dkt No. 05-337, CC Dkt No. 96-45, Notice of Proposed Rulemaking, FCC 07-88, 2007 WL 1427727 (rel. May 14, 2007); *Fed.-State Joint Bd. on Universal Serv. Seeks Comment on Long Term, Comprehensive High-Cost Universal Serv. Reform*, WC Dkt No. 05-337, CC Dkt No. 96-45, Public Notice, FCC 07J-2, 2007 WL 1288122 (Joint Bd. on Universal Serv. rel. May 1, 2007); *Fed.-State Joint Bd. on Universal Serv. Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Serv. Support*, Public Notice, 21 FCC Rcd. 9292 (Joint Bd. on Universal Serv. 2006); *In re Comprehensive Review of Universal Serv. Fund Mgmt, Admin., & Oversight*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd. 11308 (2005).

In these proceedings, AT&T has argued that the universal service rules should be reformed to eliminate the artificial link between wireline costs and wireless support. *See* Letter of Robert W. Quinn, AT&T, to Hon. Deborah Taylor Tate, Fed. Chair, Fed.-State Joint Bd. on Universal Serv., FCC, and Hon. Ray Baum, State Chair, Fed.-State Joint Bd. on Universal Serv., Oregon Public Serv. Comm'n, at 4-5, 8-10 (dated Mar. 22, 2007). At the same time, AT&T also has argued that USF reform should include a recognition that certain aspects of the support mechanism for large, non-rural incumbent LECs – particularly the averaging of costs on a statewide basis in determining support needs – cannot be justified and should be conformed to the current rural mechanism. *See, e.g.*, Comments of AT&T Inc. to Using Auctions to Determine High-Cost Universal Serv. Support, Fed.-State Joint Bd. on Universal Serv., in WC Dkt No. 05-337, at 13 (Oct. 10, 2006); Comments of AT&T Inc. to High-Cost Universal Serv. Support, Fed.-State Joint Bd. on Universal Serv., in WC Dkt No. 05-337 & CC Dkt No. 96-45, at 15-18 (Mar. 27, 2006). While AT&T supports such reforms, it is inappropriate for the Commission to consider these reforms or any other deviation from its current rules in this merger proceeding.

on Dobson's ETC status."[44] Under the Commission's current rules, the amount of support that wireless ETCs receive is equal to the amount of per-line support received by the underlying incumbent LEC.[45] The size, identity, or costs of the wireless ETC have no bearing on the amount of support that the wireless ETC receives.[46]

Mid-Tex's reliance on Section 54.305 of the Commission's Rules for its proposed condition is misplaced since those rules apply only to ILEC exchanges that are eligible for support.[47] Nevertheless, Mid-Tex notes that the rule was "designed to discourage carriers from purchasing wireline exchanges solely to garner more high cost support," and argues that the FCC should apply "the same analysis to wireless carriers."[48] Mid-Tex ignores the fact that Section 54.305 was intended to address a problem in the wireline industry that is not an issue in the wireless industry. The "problem" the rule is designed to solve only arises as a result of the very different support mechanisms that apply to rural and non-rural incumbent LECs. The rule was imposed to avoid creating an incentive for non-rural carriers (which are generally entitled to less support) to sell high-cost exchanges to rural carriers (which are generally entitled to greater support).[49] Because all wireless ETCs receive the same amount of support for serving a given area, this rule – and its rationale – simply have no relevance in the wireless context. Thus,

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[44] Mid-Tex Petition at 10.

[45] 47 C.F.R. § 54.307(a)(1).

[46] *See id*.; *see also In re Matter of Fed.-State Joint Bd. on Universal Serv.*, Report and Order, 12 FCC Rcd. 8776, 8932-34 ¶¶ 287-90, 8944-45 ¶ 312 (1997) (subsequent history omitted) (adopting the rule, and specifically rejecting cost as a basis for the determination of support).

[47] 47 C.F.R. 54.305(b).

[48] Mid-Tex Petition at 10.

[49] *Fed.-State Joint Bd. on Universal Service*, 12 FCC Rcd at 8942-43 ¶ 308.

Mid-Tex's request that the Commission impose similar requirements on AT&T's wireless business should be rejected.[50]

IV. CONCLUSION

For the foregoing reasons, the Commission should dismiss or deny the filings made in opposition to the merger of AT&T and Dobson. Applicants have demonstrated that the proposed merger serves the public interest, convenience, and necessity. Accordingly, the Commission should expeditiously grant, without conditions, the applications to transfer control of Dobson's FCC authorizations to AT&T.

[50] In the Public Interest Statement, Applicants stated that they planned to initiate only one state commission review of the transaction, in West Virginia. PIS at 38-39. Subsequently, Applicants decided – out of an abundance of caution – to apply to the Arizona Corporation Commission ("ACC") for a limited waiver of the ACC's Affiliated Interests Rules, Ariz. Admin Code § 14-2-801, or, in the alternative, for an expedited review and approval of the merger without a hearing. *In re the Notice of Intent by AT&T Inc. Pursuant to A.A.C. R14-2-803 or, Alternatively, Its Verified Application for a Ltd. Waiver of the Comm'n's Affiliated Interests Rules Pursuant to A.A.C. R14-2-806*, Notice of Intent and Application for Limited Waiver (Ariz. Corp. Comm'n Aug. 1, 2007). As with the West Virginia proceeding, AT&T filed the Arizona application while preserving its jurisdictional arguments, including, among others, that state review of the transaction is preempted by Section 332(c)(3) of the Communications Act, 47 U.S.C. § 332(c)(3).

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CERTIFICATE OF SERVICE

I hereby certify that on this sixth day of September, 2007, I caused true and correct copies of the foregoing Joint Opposition of AT&T Inc. and Dobson Communications Corporation to Petitions to Deny and Reply to Comments to be served by electronic mail, first class mail, postage prepaid, or hand delivery upon:

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