

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Dobson Cellular Systems, Inc. and	)	
American Cellular Corporation	)	
Petition For Designation as an	)	
Eligible Telecommunications	)	
Carrier In the State of New York	)	

**COMMENTS OF THE  
CTIA – THE WIRELESS ASSOCIATION™**

CTIA – The Wireless Association™ ("CTIA")<sup>1</sup> hereby submits its comments in the above captioned proceeding in support of the Petition for Eligible Telecommunications Carrier ("ETC") designation in the State of New York filed by Dobson Cellular Systems, Inc. and American Cellular Corporation (collectively, "Dobson").<sup>2</sup>

**INTRODUCTION**

On May 10, 2004, Dobson filed an application ("Dobson Petition") seeking ETC designation in those portions of rural local exchange carrier ("LEC") study areas in New York

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<sup>1</sup> CTIA – The Wireless Association™ (formally known as the Cellular Telecommunications & Internet Association) is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>2</sup> *See Parties Are Invited to Comment on Petitions for Eligible Telecommunications Carrier Designations*, Public Notice, CC Docket No. 96-45, DA 04-1445 (rel. May 21, 2004); *see also Parties Are Invited to Comment on Petitions for Eligible Telecommunications Carrier Designations*, 69 Fed. Reg. 32351-52 (June 9, 2004) (setting June 21, 2004, comment date). According to the Petition, the Dobson request for designation as an Eligible Telecommunications Carrier covers specified areas in the State of New York served by Dobson.

that Dobson is not licensed to serve in their entirety and thus must be redefined. Consistent with CTIA's position in earlier comments, CTIA supports Dobson's Petition, which demonstrates that Dobson meets the requirements for designation as an ETC. Section 214(e)(6) provides for ETC designation of carriers not subject to state commission jurisdiction. Specifically, Section 214(e)(6) states, in relevant part:

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the 2 requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable federal and State law.<sup>3</sup>

Since Dobson is a commercial mobile radio service ("CMRS") provider not subject to the authority of the New York Public Service Commission ("New York Commission"), the FCC has the authority to grant ETC status to Dobson pursuant to 47 U.S.C. § 214(e)(6).

## DISCUSSION

### A. **Dobson Is Not Subject To the Jurisdiction of the New York Public Service Commission**

### B.

Pursuant to Section 214(e)(6), the Commission shall designate as an ETC a common carrier providing telephone exchange service and exchange access service that is not subject to the jurisdiction of a State commission, so long as the carrier otherwise meets the Act's requirements. The Commission has held that, for this purpose: "[M]any CMRS providers (specifically cellular, broadband PCS and covered SMR) also provide telephone exchange service and exchange access as defined by the 1996 Act."<sup>4</sup> The Commission has also stated that

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<sup>3</sup> 47 U.S.C. § 214(e)(6). *See also Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, Public Notice*, 12 FCC Rcd 22947 (1997).

<sup>4</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15,499, 15,998-999, at

a carrier may demonstrate that it “is not subject to the jurisdiction of a state commission” by providing an “affirmative statement” from the state commission or a court of competent jurisdiction that the state lacks jurisdiction to perform the designation.<sup>5</sup> In this case, the New York Department of Public Service (“NY DPS”) has previously issued an affirmative statement that the New York Public Service Commission lacks jurisdiction over ETC designations for CMRS carriers.<sup>6</sup> Specifically, the NY DPS has stated that “a CMRS provider ... would not be subject to the application of the [New York Public Service Law], and consequently the jurisdiction of the New York Public Service Commission, for the purposes of making the Eligible Telecommunications Carrier designation.”<sup>7</sup>

**B. Dobson Offers All Of the Services Supported by Universal Service Support Mechanisms**

Dobson addressed the nine services and functionalities identified in the Commission’s rules, 47 C.F.R. §54.101(a), that are the core services to be offered by an ETC and supported by federal universal service support mechanisms.<sup>8</sup> Dobson’s universal service offering will be provided in its requested service area in New York primarily over its

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¶1012 (1996). *See also id.* at ¶1004 (“Congress recognized that some CMRS providers offer telephone exchange and exchange access services”).

<sup>5</sup> *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12264 (2000).

<sup>6</sup> *See* NPCR, Inc. d/b/a Nextel Partners, Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, Attachment 2 (filed April 3, 2003) (attaching copy of letter from Elizabeth H. Liebschutz, Assistant Counsel, New York Department of Public Service, noting NY PSC’s lack of jurisdiction over CMRS carriers).

<sup>7</sup> *Id.*

<sup>8</sup> *See* Dobson Petition at 5-9.

existing cellular network infrastructure and spectrum, including the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used to serve existing mobile cellular service subscribers.<sup>9</sup> Dobson further states that it will advertise its new universal service offering to ensure that consumers within the designated service areas in New York are aware of the service.<sup>10</sup> Accordingly, Dobson has satisfied the requirements of Sections 254 and 214(e)(1)(A) of the Communications Act of 1934 and Section 54.101(a) of the Commission's rules regarding ETC eligibility.

### **C. Designating Dobson as an ETC Will Advance The Public Interest**

CTIA agrees with Dobson that grant of Dobson's Petition will serve the public interest by bringing the benefits of competition to an underserved marketplace.<sup>11</sup> In addition, designation of CMRS providers, such as Dobson, is consistent with the principal goals of the universal service program and provides unique benefits associated with wireless service, such as mobility, to consumers.

It is now well established that wireless carriers can bring significant benefits to the universal service program. One of the principal goals of the Telecommunications Act of 1996 was to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."<sup>12</sup> In granting ETC status to CMRS carriers, the Commission has found that "[d]esignation of competitive ETCs promotes

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<sup>9</sup> *See id.* at 9.

<sup>10</sup> *See id.* at 9-10.

<sup>11</sup> *See id.* at 19-31.

<sup>12</sup> Telecommunications Act of 1996, Public Law No. 104-104, 100 Stat. 56 (1996).

competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”<sup>13</sup>

The Commission has also found that CMRS ETC designations provide substantial benefits to “consumers in cases where they do not have access to a wireline telephone.”<sup>14</sup> In the *Virginia Cellular Order*, the Commission stated that “the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations.”<sup>15</sup> Furthermore, the Commission also recognized the critical public safety role that wireless services can play in rural and insular areas by noting that “the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.”<sup>16</sup>

In this case, Dobson has committed to use available federal high-cost support for its intended purposes – the construction, maintenance and upgrading of facilities serving the high-costs and rural areas for which support is intended. In addition, Dobson has also committed to comply with all provisions of CTIA’s Code of Conduct for Wireless Services, maintain essential

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<sup>13</sup> *Western Wireless Corporation, Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 48, 55 (2000) (hereinafter “*Wyoming Order*”), *aff’d*, 16 FCC Rcd 19144, 19151 (2001).

<sup>14</sup> *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338, at ¶ 29 (2004) (hereinafter “*Virginia Cellular Order*”).

<sup>15</sup> *Id.*

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

telecommunications services in times of emergency, and provide service to all potential customers within its requested ETC service area upon reasonable request.<sup>17</sup>

Because section 54.315 of the Commission’s rules provides rural telephone companies ample opportunities to target support to only the highest-cost lowest-density portions of a study area, CTIA does not believe it is appropriate for the Commission to use “cream skimming” concerns as grounds for denying ETC petitions.<sup>18</sup> CTIA also does not believe it is appropriate to penalize CMRS providers when their licensed service areas do not happen to follow the contours of rural telephone company study area boundaries – especially when wireless licensed service area boundaries typically are determined by the FCC. Even if it was appropriate for the Commission to consider “cream skimming” as a grounds for denying ETC designations, there is no evidence here that Dobson is attempting to “cream skim” by only proposing ETC designation for the lowest-cost highest-density exchanges in a rural telephone company study area with highly variable population densities.<sup>19</sup> Accordingly, designating Dobson as an ETC in covered areas in the State of New York would serve the public interest by increasing the availability of new, competitively-priced services and technologies in New York communities.

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<sup>17</sup> Dobson Petition at 27-30.

<sup>18</sup> See 47 C.F.R. § 54.315.

<sup>19</sup> See Dobson Petition at 16-17; see also *Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 04-37, at para. 32 (2004).

## CONCLUSION

For the foregoing reasons, the Commission should exercise its authority to grant ETC status to Dobson for its requested service territories in the State of New York.

Respectfully submitted,

    /s/ Michael Altschul

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