
**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Applications for the Transfer of Control of) WT Docket No. 05-50
Licenses and Authorizations From)
Western Wireless Corporation To)
ALLTEL Corporation)

To: The Commission

**JOINT OPPOSITION TO PETITIONS
TO DENY AND COMMENTS**

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SUMMARY

The merger of Western Wireless Corporation with ALLTEL Corporation will serve the public interest. As demonstrated in the Transfer Applications, the transaction will help create a stronger regional wireless carrier that can be a far more formidable competitor against the nationwide carriers. The transaction also will:

- Enable the combined company to deliver more services more broadly than either company could on a stand-alone basis;
- Create more value for consumers and a more viable competitor by substantially expanding the coverage of each of the companies; and
- Achieve economies of scale and scope that will enhance the combined company's ability to compete more effectively.

Furthermore, these benefits can be achieved without any significant adverse impact on competition, because the markets served by the Applicants are largely complementary, and substantial competition will remain in the limited overlap areas. Accordingly, the Transfer Applications should be approved promptly.

This conclusion is supported by the lack of substantive opposition filed against the Transfer Applications. Dobson Cellular Systems, Inc. and American Cellular Corporation ("Dobson"), Lamar County Cellular ("Lamar County"), and the Rural Telecommunications Group, Inc. ("RTG") filed Petitions to Deny or Comments in Opposition to the Transfer Applications. United States Cellular Corporation ("USCC") filed comments which do not oppose ALLTEL's acquisition of Western, but rather ask the Commission to use this transaction as the platform for adopting a general policy in support of voice and data roaming by small, mid-sized and rural wireless carriers. These parties, however, fail to meet their evidentiary burden to allege facts, supported by affidavits based on personal knowledge, that a grant would be *prima facie* inconsistent with the public interest. Moreover, none of the parties demonstrated that they have standing as required by Section 309(d) of the Act. These filings should therefore be summarily dismissed.

Lamar County, RTG, and USCC raise baseless allegations that the merger will harm competition in the roaming market. The arguments are nothing more than an attempt to use this proceeding to obtain industry-wide rule changes with regard to roaming requirements. These purely speculative arguments ignore the richly dynamic, competitive nature of the wireless industry. The reality is that the merger will make the combined company a better roaming partner and a stronger roaming competitor.

Dobson alleges that approval of the transaction will improperly diminish the value of the Cellular One brand, but presents no evidence or support for this allegation. The Commission, however, has long held that it will not address private contractual matters of this nature and there is no reason to take a different approach in this merger.

In sum, all of the arguments raised in opposition to the merger are not supported by sound legal reasoning based upon the facts and are precisely the kind of arguments the Commission has long recognized to be outside the scope of proper merger reviews. Therefore,

the Commission should summarily reject these baseless arguments. No legitimate interest is served by delaying or expanding this proceeding to accommodate such claims. The Applicants therefore respectfully request that the Commission dismiss or deny the aforementioned Petitions to Deny and Comments filed in this proceeding approve the Transfer Applications expeditiously.

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JOINT OPPOSITION TO PETITIONS TO DENY AND COMMENTS

ALLTEL Corporation (“ALLTEL”) and Western Wireless Corporation (“Western”) (jointly the “Applicants”) hereby oppose the petitions to deny and comments that have been filed against the above-captioned applications (the “Transfer Applications”).¹ As discussed below, the few filings opposing ALLTEL’s acquisition of Western provide no basis to question or contradict Applicants’ showing in their Transfer Applications that the proposed transaction will serve the public interest. The Objecting Parties merely are improperly attempting to use this proceeding as a means to obtain industry-wide rule changes or to resolve a private contractual matter. Neither goal is an appropriate basis for opposing the instant merger. In light of the strong showing in the Transfer Applications that the merger will produce significant public interest benefits without countervailing risks to competition, and the lack of meaningful opposition, the Commission should expeditiously grant the above-captioned transfer of control applications.

¹ Petitions to Deny or Comments in Opposition were filed by the following: Dobson Cellular Systems, Inc. and American Cellular Corporation (jointly “Dobson”); Lamar County Cellular (“Lamar County”); and the Rural Telecommunications Group, Inc. (“RTG”). United States Cellular Corporation (“USCC”) filed comments which do not expressly oppose ALLTEL’s acquisition of Western, but rather ask the Commission to use this transaction as the platform for adopting a general policy in support of voice and data roaming by small, mid-sized and rural wireless carriers. These parties are collectively referred to herein as the “Objecting Parties.”

I. THE PROPOSED TRANSACTION WILL SERVE THE PUBLIC INTEREST

The Applicants established in their Transfer Applications that the transaction will yield significant public interest benefits. Most notably, the transaction will help create a stronger regional wireless carrier that can be a far more formidable competitor against the nationwide carriers. Consumers are demanding nationwide service and, therefore, transactions that expand a carrier's coverage area serve the public interest.²

The instant merger also will enable the combined company to deliver more services more broadly than either company could on a stand-alone basis. For example, the transaction will create economies of scope and scale, which will enable the combined company to roll-out advanced broadband wireless services more quickly than would be possible by the Applicants individually. Moreover, by substantially enlarging ALLTEL's footprint, the transaction reduces ALLTEL's reliance on roaming agreements in many new markets. As a result, the Applicants will be able to offer a better product to consumers, which will enhance the ability of the combined company to compete more effectively against the larger nationwide CMRS providers.

These benefits can be achieved without any significant adverse impact on competition, because the markets served by the Applicants are largely complementary, and substantial competition will remain in the limited overlap areas. Given the clear public interest benefits of the merger, only three parties opposed the transaction, Dobson, Lamar County, and RTG. These parties, however, utterly fail to meet their evidentiary burden to allege facts, supported by affidavits based on personal knowledge, that a grant would be *prima facie* inconsistent with the

² See *Applications of Voicestream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act*, IB Docket No. 00-187, *Memorandum Opinion and Order*, 16 F.C.C.R. 9779, 9844-45 (2001).

public interest.³ Instead, the Objecting Parties offer only speculation regarding potential harms that might arise if the proposed transaction goes forward. For example, Lamar County admits that it has roaming agreements with Western, but is concerned that it “*may* lose its roaming coverage that was previously provided by” Western if ALLTEL chose not to honor the existing agreements.⁴ RTG suggests that “market consolidation *might* cause larger carriers to engage in discriminatory acts.”⁵ Dobson asserts that “ALLTEL *could* simply refuse to re-license the Cellular One brand” or “*could* degrade the Cellular One brand by re-licensing to weak carriers.”⁶ These speculative allegations are insufficient to establish a *prima facie* case under Section 309(d), let alone justify a denial of the Transfer Applications or a grant subject to conditions.

II. THE TRANSACTION WILL NOT ADVERSELY AFFECT THE ROAMING MARKET

In virtually identical pleadings, RTG and Lamar County argue that the proposed transaction will cause competitive harm because ALLTEL will “have many anticompetitive opportunities and incentives.”⁷ More specifically, these petitioners assert that approval of the transaction might enable ALLTEL to engage in anticompetitive roaming practices.⁸ Both parties, therefore, urge the Commission to deny the Transfer Applications or, at minimum,

³ 47 U.S.C. § 309(d); see *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988). Petitioners “bear[] the burden of pleading sufficient facts to establish a *prima facie* case and these facts must be supported by an affidavit from persons with personal knowledge.” *Nextband Communications, LLC, Order on Reconsideration*, 14 F.C.C.R. 7647, 7650 (PSPWD/WTB 1999)(citing 47 U.S.C. § 309(d)(2); 47 C.F.R. § 1.2108(b)(emphasis in original)); see also *Bell Atlantic New Zealand Holdings, Inc.*, IB Docket No. 03-115, *Order and Authorization*, 18 F.C.C.R. 23140, 23161 (IB/WCB/WTB 2003). While Lamar County’s Petition to Deny does include a declaration generally verifying the truth and accuracy of the petition, this declaration is insufficient to meet Lamar County’s evidentiary burden. The “allegation of ultimate, conclusionary facts or more general allegations on information and belief, supported by general affidavits . . . are not sufficient” to establish a *prima facie* case under the first prong of the Section 309(d) analysis. *Gencom, Inc. v. FCC*, 832 F.2d 171, 180 n.11 (D.C. Cir. 1987).

⁴ Petition of Lamar County Cellular to Deny, WT Docket No. 05-50, at 9 (filed Mar. 9, 2005)(emphasis supplied)(“Lamar County Petition to Deny”).

⁵ Comments in Opposition of the Rural Telecommunications Group, WT Docket No. 05-50, at 9 (filed Mar. 9, 2005)(emphasis supplied)(“RTG Comments in Opposition”).

⁶ Petition of Dobson Cellular Systems, Inc., and American Cellular Corporation to Deny, WT Docket No. 05-50, at 3 (filed Mar. 9, 2005)(“Dobson Petition to Deny”)(emphasis supplied).

⁷ RTG Comments in Opposition at 6-8; Lamar County Petition to Deny at 6-8.

⁸ RTG Comments in Opposition at 8-9; Lamar County Petition to Deny at 8-10.

“condition the proposed merger to require that ALLTEL allow roaming access to the merged network by all carriers at rates no less favorable than it has been charging WWC since the merger was announced.”⁹

USCC raises a similar, speculative concern, asserting “that [ALLTEL] could at some time in the future refuse to sign roaming agreements with regional, mid-sized and rural carriers on reasonable terms, which would effectively preclude customers of those carriers from roaming in the markets of the national carriers.”¹⁰ USCC therefore urges the Commission (1) to require ALLTEL to “continue to make [its] facilities available to the customers of regional, small and mid-sized carriers for voice and data roaming,”¹¹ and (2) to declare as policy that it will “[make] [v]igorous use of the anti-discrimination provisions of Sections 201 and 202 ... perhaps coupled with a limited requirement to conduct good faith roaming negotiations.”¹²

As demonstrated below, the petitions filed by RTG, USCC, and Lamar County are procedurally and substantively without merit and should be dismissed.

A. RTG, USCC and Lamar County Improperly Urge the Commission to Address Generally Applicable Roaming Issues in the Context of the Transfer Applications

As a threshold matter, RTG, USCC, and Lamar County are improperly attempting to use this merger as a vehicle for raising an industry-wide issue. For example, USCC seeks “a separate FCC statement of policy that the national carriers must enter into automatic roaming agreements with small, mid-sized, and regional carriers on reasonable terms and conditions....”¹³

Lamar and RTG take this one step further, asking the Commission to impose a condition that

⁹ RTG Comments in Opposition at 9; Lamar County Petition to Deny at 10.

¹⁰ Comments of the United States Cellular Corporation, WT Docket No. 05-50, at 3 (filed Mar. 9, 2005)(“USCC Comments”).

¹¹ *Id.* at 1.

¹² *Id.* at 5.

¹³ *Id.* at 8.

would require the merged company to offer automatic roaming agreements to **all** carriers at the same rates currently contained in the ALLTEL/Western roaming agreement.¹⁴

These requests are not, however, merger specific. Lamar, RTG, and USCC, in effect, are attacking collaterally Section 20.12 of the Commission's rules, which requires carriers to provide only manual roaming capability.¹⁵ As the Supreme Court has recognized, "rulemaking is generally 'better, fairer, and [a] more effective' method of implementing a new industry-wide policy than is the uneven application of conditions in isolated [adjudicatory] proceedings."¹⁶ Indeed, as recently as November 2004, RTG acknowledged that "*the FCC's statutory and public interest merger review is not, and should not be, the proper administrative vehicle for examining automatic roaming.*"¹⁷ The appropriate forum for RTG, USCC and Lamar County to address their concern – assuming they can develop evidence of a market failure sufficient to justify the Commission establishing a mandatory roaming requirement – is through the pending rulemaking, not this merger review proceeding.¹⁸ In this regard, however, and as discussed herein, the

¹⁴ *Id.* (emphasis supplied). These parties claim that without such a condition, they could lose revenue. RTG Comments at 9; Lamar County Petition to Deny at 9. The Commission already has held that its analysis of roaming is limited to harm to consumers, not "effects on mobile telephony such as a reduction in the roaming revenues" a carrier may receive. *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 F.C.C.R. 21522, 21588 (2004) ("Cingular Order").

¹⁵ 47 C.F.R. § 20.12. Notably, when the Commission last considered automatic roaming, it declined to impose an automatic roaming obligation on broadband PCS and cellular carriers in an environment far less competitive than today's. See *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11 F.C.C.R. 9462, 9467-71 (1996). In its pending *Automatic Roaming NPRM*, the Commission tentatively concluded that market forces should generally govern automatic roaming arrangements. See *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket No. 00-193, *Notice of Proposed Rulemaking* 15 F.C.C.R. 21628, 21635 (2000) ("Automatic Roaming NPRM").

¹⁶ *Community Television of Southern California v. Gottfried*, 459 U.S. 498, 511 (1983); accord *Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Co., Memorandum Opinion and Order*, 12 F.C.C.R. 22280, 22288 (1997) ("Matters affecting the industry as a whole and misdeeds whose occurrence is based upon mere speculation are better considered in rulemakings than in specific licensing proceedings. In the latter, they may serve only to complicate and delay transactions that will benefit the public.") (citation omitted).

¹⁷ Petition of Rural Telecommunications Group, Inc. for Commission Action, WT Docket No. 00-193, at 3 (filed Nov. 1, 2004) (emphasis supplied).

¹⁸ That is particularly true where, as here, there is a pending rulemaking proceeding addressing roaming issues. See *Automatic Roaming NPRM*, 15 F.C.C.R. at 21628; see also *Implementation of Section 6002(b) of the*

Objecting Parties have offered no evidence that either Western or ALLTEL have engaged in unduly discriminatory roaming practices or that the merger would enhance the incentive for ALLTEL/Western to do so, if the merger were approved.¹⁹

For these reasons, the Commission should deny the petitions filed by RTG, USCC, and Lamar County.

B. The Transaction Will Improve the Roaming Market for Small and Medium-Sized Carriers

Moreover, even if the Commission were inclined to revisit the current rule, the record in this proceeding would not support such action. The fundamental premise of RTG's, USCC's, and Lamar County's concerns is that the proposed acquisition of Western by ALLTEL will result in harmful concentration in the wireless market which will enable the merged entity to engage in anticompetitive roaming practices.²⁰ In particular, Lamar County and RTG assert, without evidentiary support, that "[t]he two-to-one reduction in analog carriers in many markets will result in a significant adverse effect on the roaming market."²¹

These arguments, however, are baseless. First, not one of these petitioners has pointed to any evidence that Western or ALLTEL has denied or will deny roaming arrangements – nor can they. In fact, Lamar County admits that it has roaming agreements with Western, which would

Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, WT Docket No. 04-38, *Notice of Inquiry*, 19 F.C.C.R. 5608, 5627-28 (2004).

¹⁹ In the *Automatic Roaming NPRM*, the Commission tentatively concluded that: "We do not believe we should adopt any automatic roaming rule unless it is clear that providers' current practices are unreasonably hindering the operation of the market to the detriment of consumers." *Automatic Roaming NPRM*, 15 F.C.C.R. at 21635; see also *Federal Communications Commission 2002 Biennial Regulatory Review*, WT Docket No. 02-310, GC Docket No. 02-390, *Staff Report of the Wireless Telecommunications Bureau*, 18 F.C.C.R. 4243, 4286 (2002) ("Market forces are working to make roaming services, in particular automatic roaming, widely available and increasingly less expensive."); *Information for Part 90 Licensees, Public Notice*, 11 F.C.C.R. 9267, 9271 (1996) ("the Commission acknowledges that once the broadband PCS licensees have built out their networks, market forces should eliminate the need for any roaming regulations.").

²⁰ See Lamar County Petition to Deny at 6; RTG Comments in Opposition at 6; USCC Comments at 4.

²¹ RTG Comments in Opposition at 8; Lamar County Petition to Deny at 9.

give it contractual rights going forward.²² Similarly, USCC concedes “that its previous negotiations with ALLTEL and Western Wireless have not reflected any . . . anticompetitive practices, particularly with respect to voice services.”²³

Second, the Commission recently rejected nearly identical arguments in the context of the Cingular/AWS merger. There, the Commission found no evidence that the alleged “two-to-one reduction in analog carriers will result in a significant adverse effect on the roaming market.”²⁴ Notably, the Commission found that “[t]he transactions costs of attempting to impose and enforce a higher roaming price on a roaming partner in one CMA . . . when that CMA is near other CMAs in which [the carrier] is *not* the only analog carrier are likely to be too high to be worth the trouble, particularly” where there is a history of negotiating larger-scale, reciprocal roaming agreements.²⁵ Moreover, the Commission emphasized:

[e]ven the “nationwide” carriers still have holes in their licensed service areas, however, and therefore have a strong incentive to enter into roaming agreements with other carriers in order to fill in coverage gaps, compete on the basis of coverage, and thereby meet growing consumer demand for nationwide single-rate calling plans. . . . [C]arriers offering a single-rate price plan have a strong incentive to negotiate to lower roaming rates they pay to other carriers. Conversely, competition and the need to generate revenues prevent nationwide carriers from refusing to enter into roaming agreements with smaller local and regional carriers or raising the roaming rates they charge other carriers above competitive levels.²⁶

²² See Lamar County Petition to Deny at 9.

²³ USCC Comments at 4.

²⁴ *Cingular Order*, 19 F.C.C.R. at 21590.

²⁵ *Id.* (emphasis in original).

²⁶ *Id.* at 21589-90.

The Commission's analysis in the *Cingular Order* is equally applicable to the instant transaction and justifies the summary rejection of arguments alleging that the reduction in the number of analog carriers will adversely affect the roaming market.²⁷

USCC alleges that the instant merger would create roaming problems because ALLTEL would be transformed into a national CDMA carrier.²⁸ In rejecting roaming concerns raised by opponents to the Cingular transaction, however, the Commission concluded:

As a benchmark for evaluating the potential competitive effects of the merger with respect to the provision of roaming services, we note that currently there are two nationwide CDMA carriers (Verizon Wireless and Sprint), plus a number of regional and local carriers that use CDMA as their digital standard. We have heard no complaints from CDMA carriers or seen other evidence to indicate that the availability and pricing of roaming services have been less favorable for CDMA carriers than for GSM carriers. Based on this comparison, we conclude that the continued presence of two nationwide GSM carriers in conjunction with the existence of other regional and local GSM carriers should be sufficient to ensure the availability of GSM roaming services at competitive rates.

This analysis disposes of USCC's argument. The Commission cannot conclude that an increase in the number of nationwide CDMA carriers from 2 to 3 (under USCC's theory) will create roaming problems when it has already determined that a reduction in the number of nationwide GSM carriers from 3 to 2 would not adversely impact roaming.

²⁷ Lamar and RTG also claim that undue market concentration will be created because the combined company will hold "70 MHz or more" of spectrum in many markets. RTG Comments in Opposition at 7; Lamar Petition at 8. This claim is meritless. The Applicants will not hold more than 70 MHz in any market and will reach 70 MHz only in four CMAs. In this regard, the Commission has indicated that "a market may contain more than three viable competitors even where one entity controls [70 MHz] of spectrum, because many carriers are competing successfully with far lower amounts of bandwidth today." *Cingular Order*, 19 F.C.C.R. at 21566. The Transfer Applications provided a detailed analysis of competition in each of the four CMAs where the combined company would hold 70 MHz demonstrating that competition would remain vibrant in these markets post-merger. Thus, the proposed transaction will not create the spectrum concentration concerns alleged by RTG, USCC, and Lamar County.

²⁸ See USCC Comments at 2-5.

USCC's characterization of the combined companies as "national" notwithstanding, even a cursory glance at Applicants' combined coverage areas, with sparse coverage on the East and West coasts and in other major metropolitan areas, reveals that the merged entity faces many of the same roaming challenges as other regional and smaller carriers in terms of offering its customers genuinely nationwide service plans. In short, ALLTEL would have no incentive to impose unreasonably high rates or exclude other carriers from roaming arrangements. In order to offer nationwide rate plans, ALLTEL will need to enter into reciprocal roaming arrangements with large and small carriers alike. Moreover, ALLTEL will have even greater incentive to seek low roaming rates to ensure that its own payments to other roaming partners are minimized. The Transfer Applications support this basic conclusion. Therein, the Applicants demonstrated how the proposed transaction has the potential to benefit not only ALLTEL and Western's existing subscribers, but also wireless customers of other carriers who will be able to obtain roaming services in ALLTEL's expanded footprint.

Finally, RTG and Lamar County speak broadly of purported unlawful discriminatory practices, "such as charging rural carriers roaming premiums, leveraging increased subscriber share to exact discriminatory roaming rates, or favoring one another in 'sweetheart' roaming agreements."²⁹ Again, however, neither party has presented any evidence of unlawful discriminatory practices by Western, ALLTEL or any other service provider. Even assuming *arguendo* that they could develop such evidence, their relief would be through Sections 201 and 202 of the Act, which prohibit *unreasonable* practices and *unreasonable* discrimination in rates – not through denial of the Transfer Applications or a conditional grant.

²⁹ Lamar County Petition to Deny at 9; RTG Comments in Opposition at 9.

C. RTG and Lamar County are not Entitled to Additional Information

RTG and Lamar County also allege that the Transfer Applications do not provide enough information to permit a sufficient analysis of the proposed transaction.³⁰ Specifically, these petitioners object to the fact that the Transfer Applications did not include spectrum aggregation information for those markets where the merged entity's proposed ownership will be less than ten percent.³¹ RTG and Lamar County both admit, however, that the Commission's rules do not require ALLTEL and Western to disclose this information³² and their argument, therefore, is patently absurd. RTG and Lamar County's dispute is not with the proposed transaction, but with the Commission's rules relating to the application process. As such, their remedy is through the rulemaking process – not through denial of the Transfer Applications.

III. THE COMMISSION SHOULD SUMMARILY DISMISS DOBSON'S PETITION TO DENY

Dobson urges the Commission to condition the proposed transaction by requiring Western to divest the Cellular One Group (owner of the Cellular One and related trademarks) prior to closing.³³ Dobson argues further that the Commission should direct Western to divest to “a buyer who has the economic incentive to promote and develop the brand.”³⁴ Finally, Dobson argues that loss of the Cellular One brand will “result in greater concentration among wireless competitors in rural markets” thereby harming rural consumers.³⁵ Dobson's arguments should be summarily dismissed.

The Applicants do not accept Dobson's fundamental premise that any action taken by ALLTEL regarding the Cellular One brand will necessarily devalue Dobson's interests in that

³⁰ See RTG Comments in Opposition at 4; Lamar County Petition to Deny at 4.

³¹ *Id.*

³² *Id.*

³³ See Dobson Petition to Deny at 2.

³⁴ *Id.*

³⁵ *Id.* at 6.

brand. Nevertheless, this issue is simply irrelevant to the instant merger review proceeding. Dobson admits that the “legal relationships between Cellular One Group . . . and Dobson and other wireless carriers operating under the Cellular One brand” are governed by the License Agreement between Cellular One Group and Dobson Cellular Systems, Inc. (the “License Agreement”).³⁶ Dobson alleges, however, that ALLTEL does not have an economic incentive to promote and protect the Cellular One brand.³⁷ In Dobson’s view, therefore, divestiture of the Cellular One brand is necessary to save Dobson the trouble of monitoring ALLTEL’s actions in order to protect its interests under the License Agreement.³⁸ This is clearly a matter of state contract law, and the Commission has consistently and appropriately found that it has no jurisdiction over such matters.³⁹

Moreover, by urging the Commission to specify the type of entity to whom divestiture should be made, Dobson is asking the Commission essentially to maintain the specific competitive balance established in the License Agreement between the merged entity and other carriers that utilize the Cellular One brand. The courts have long recognized, however, that “equalization of competition is not itself a sufficient basis for Commission action.”⁴⁰ For

³⁶ Dobson Petition to Deny at 3-4.

³⁷ *Id.* at 4.

³⁸ *Id.*

³⁹ *Sonderling Broadcasting Co., Memorandum Opinion and Order*, 46 Rad. Reg. 2d (P&F) 889, 894 (1979) (“The Commission has consistently taken the position that it is not the proper forum for the resolution of private contractual disputes and that such matters are appropriately left to the courts or other forums which have the jurisdiction to resolve them.”)(citation omitted); *see also Applications of Centel Corporation and Sprint Corporation, Memorandum Opinion and Order*, 8 F.C.C.R. 1829, 1831 (CCB 1993)(“Centel Order”)(“[T]he alleged violation of the partnership agreements amounts to a contractual dispute . . . and, therefore, a matter for resolution by a private cause of action, rather than resolution by the Commission. The Commission has repeatedly stated that it is not the proper forum for the resolution of private contractual disputes, noting that these matters are appropriately left to the courts or to other fora that have the jurisdiction to resolve them.”)(citation omitted); *Listeners’ Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987); *John R. Kingsbery, Memorandum Opinion and Order*, 71 F.C.C.2d 1173, 1174 (1979); *Transfer Application of Cellular, Inc. and Pacific Telecom, Memorandum Opinion and Order*, 8 F.C.C.R. 5091, 5092 (CCB 1993); *Jackson Cellular Telephone Co., Memorandum Opinion and Order*, 5 F.C.C.R. 96, 97 (CCB 1990); *Rodney A. McDaniel, Order on Reconsideration*, 4 F.C.C.R. 1736 (1989); *Mid-Missouri Telephone Co., Inc., Order*, 14 F.C.C.R. 18613, 18615 (WTB 1999).

⁴⁰ *W.U. Tel. Co. v. FCC*, 665 F.2d 1112, 1122 (D.C. Cir. 1981).

example, in *SBC Communications Inc. v. FCC*, SBC and BellSouth, as competing cellular telephone companies, appealed a Commission order approving AT&T's acquisition of McCaw Cellular.⁴¹ The Court flatly rejected BellSouth's argument that the FCC gave inadequate consideration to the competitive impacts of the merger, stating:

BellSouth gives us no reason to doubt the Commission's conclusion; it argues in effect that the BOCs' welfare should have been paramount in the Commission's analysis. The Commission is not at liberty, however, to subordinate the public interest to the interest of "equalizing competition among competitors."⁴²

Finally, Dobson's effort to equate the loss of the Cellular One brand with the loss of a competitor is non-sensical. The fact is that a brand is just that; it is not a service provider. Dobson has provided no evidence that the Cellular One brand is unique in the current competitive environment. Therefore, regardless of whether ALLTEL decides to discontinue use of the Cellular One brand, that decision has absolutely no bearing on the number of competitors or the degree of competition in any given market. In sum, Dobson has not established a basis upon which the Transfer Applications can be denied.

IV. THE OBJECTING PARTIES LACK STANDING

In addition to their failure to raise any substantive grounds to delay or condition the merger, the Objecting Parties have failed to satisfy the threshold requirement that each party must show by affidavit or declaration that it is a "party in interest" under Section 309(d) of the Communications Act of 1934, as amended.⁴³ The Objecting Parties were required by law to present "specific allegations of fact sufficient to demonstrate that grant of the challenged assignment applications would cause the petitioner to suffer a direct injury" and they "must

⁴¹ See *SBC Communications Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995).

⁴² *Id.* at 1491 (citations omitted).

⁴³ See 47 U.S.C. § 309(d)(1).

establish that it is likely, as opposed to merely speculative, that the alleged injury would be prevented or redressed if these . . . applications are denied.”⁴⁴

RTG provides no affidavit or declaration showing that it will suffer a direct injury if the transaction is approved. Rather, RTG asserts that it is a trade association representing independent wireless carriers and wireless carriers that are affiliated with rural telephone companies and that its members serve markets currently served by Western and ALLTEL.⁴⁵ RTG, however, does not specify the particular members or markets in which such competition allegedly occurs. Consequently, RTG’s unsupported assertions do not begin to satisfy the requirements for demonstrating “associational standing.”⁴⁶ RTG tries to evade this fatal flaw by styling its filing as “Comments in Opposition” rather than as a Petition to Deny. The caption, however, does not change the nature of RTG’s filing or alter RTG’s standing in this matter. Indeed, RTG’s filing makes clear that the group “petitions the Federal Communications Commission . . . to deny” the above-referenced applications.⁴⁷

It appears that Lamar County claims standing based on its competition with the Applicants “in parts of Texas” and speculation that “the transaction will create the opportunity

⁴⁴ *Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in-Possession, to subsidiaries of Cingular Wireless LLC*, WT Docket No. 03-217, *Memorandum Opinion and Order*, 19 F.C.C.R. 2570, 2580 (2004)(citations omitted); *see also Alaska Native Wireless, Order*, 18 F.C.C.R. 11640, 11644 (2003). Comments objecting to an application also do not meet this standard and constitute only an informal objection. *See Knox Broadcasting, Inc., Memorandum Opinion and Order*, 12 F.C.C.R. 3337, 3338 (1997); *see also Infinity Holdings Corp., Memorandum Opinion and Order*, 11 F.C.C.R. 17813, 17816 n.10 (1996); *National Broadcasting Co., Memorandum Opinion and Order*, 11 F.C.C.R. 10779, 10779 (1996).

⁴⁵ *See* RTG Comments in Opposition at 1 n.1.

⁴⁶ *Friends of the Earth, Inc., Memorandum Opinion and Order*, 18 F.C.C.R. 23622, 23623 (2003)(citing *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1977)). Associational standing requires an organization to supply affidavits from one or more individual members demonstrating that such members will in fact be adversely affected by grant of the application, and the organization must be qualified to represent the interests of such members. *See United States Telecommunications Ass’n v. FCC*, 359 F.3d 554, 593-94 (D.C. Cir. 2004)(citing *Hunt*, 432 U.S. at 344-45; *Sierra Club v. EPA*, 292 F.3d 895, 899-901 (D.C. Cir. 2002); *Fund Democracy, LLC v. SEC*, 278 F.3d 21, 25-26 (D.C. Cir. 2002); *American Legal Foundation v. FCC*, 808 F.2d 84, 89-90 (D.C. Cir. 1987)).

⁴⁷ RTG Comments in Opposition at 1.

for ALLTEL to engage in anticompetitive roaming practices.”⁴⁸ Lamar County’s allegations of harm, however, are nothing more than rank speculation. Specifically, Lamar County argues that the transaction *may* harm it because ALLTEL will “have many anticompetitive opportunities and incentives.”⁴⁹ Lamar County also asserts that it *might* be harmed because ALLTEL *might* choose not to honor the existing roaming agreements with Western and *might* otherwise discriminate against Lamar County with regard to any new roaming agreements.⁵⁰ Lamar County’s claims that approval of the instant transaction might encourage anticompetitive conduct simply invite the Commission “to presume illegal activities” on the part of the merged entity, and are insufficient to confer standing.⁵¹

Dobson, like RTG, fails to provide a supporting affidavit or declaration showing how it will suffer direct injury from the proposed transaction. Dobson appears to claim standing based upon the fact that it licenses the Cellular One brand in certain markets where it does not compete with Western. In Dobson’s view, the combined entity would have the ability and incentive to destroy the Cellular One brand because ALLTEL does not intend to use the brand and, thus, could either not re-license it or re-license it to a weak carrier.⁵² Dobson’s claim is insufficient to confer standing.

⁴⁸ Lamar County Petition to Deny at 1.

⁴⁹ *Id.* at 7 (emphasis supplied).

⁵⁰ *Id.* at 9 (emphasis supplied).

⁵¹ See *Metromedia Co., Memorandum Opinion and Order*, 7 F.C.C.R. 714, 715 (1992)(finding allegations that licensee “will no longer be afforded the favorable roamer rates that it is now receiving” to be “speculative at best and it is by no means clear that the Commission would remedy a change in roamer rates in any event.”), *aff’d on review* 8 F.C.C.R. 870 (1993), *aff’d sub nom. Telephone and Data Systems, Inc. v. FCC*, 19 F.3d 42, 47-48 (1994)(allegation that grant of transfer of control application would force petitioner “to lower the rates it charges to roamers... amounts to nothing more than ‘unadorned speculation.’”(citations omitted); *GTE Mobilnet of Houston Limited Partnership, Memorandum Opinion and Order*, 2 F.C.C.R. 4156, 4156-57 (1987)(objections based on “a certain fear that [assignee] will fail to enter into timely and suitable resale and roamer arrangements with [petitioner] in” particular markets are premature and insufficient to impose conditions on license); *Mobile Communications Corp. of America and Bellsouth Corp., Memorandum Opinion and Order*, 2 F.C.C.R. 5902, 5902 (1987)(status as “signatory to roaming agreements with” systems subject to transfer of control applications is insufficient to confer standing to oppose the applications).

⁵² See Dobson Petition to Deny at 2-3.

Dobson is not alleging that approval of the transaction would in any way terminate its authority to utilize the Cellular One brand in its own markets. Rather, Dobson simply suggests that *possible* future actions *that might be* taken by the merged entity in markets where Dobson does not market the Cellular One brand, might adversely affect the value of that brand in its own markets. As above, this claim falls far short of showing a direct and cognizable injury to Dobson that would result from approval of the transaction.

CONCLUSION

For the foregoing reasons, the Commission should dismiss and/or deny the Petitions to Deny filed by Lamar County and Dobson, as well as the Comments filed by RTG and USCC and promptly grant the Transfer Applications without the conditions requested by these parties.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I, Pervenia Brown, hereby certify that the foregoing Joint Opposition to Petitions to Deny and Comments was served this 21st day of March 2005 by depositing true copies thereof with the United States Postal Service, first class postage prepaid, addressed to the following:

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