ORIGINAL

Before the
Federal Communications Commission

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

REPLY OF DOBSON CELLULAR SYSTEMS, INC. AND AMERICAN CELLULAR CORPORATION

Dobson Cellular Systems, Inc. and American Cellular Corporation ("Dobson")[1] hereby submit their Reply to the Joint Opposition To Petitions To Deny And Comments (the "Opposition") of Western Wireless Corporation ("Western Wireless") by ALLTEL Corporation ("ALLTEL") (collectively, the "Merger Parties") in the captioned proceeding. The Opposition responds to, *inter alia*, Dobson's Petition to Deny, which urges the Commission to condition any approval of the proposed acquisition (the "Merger") of Western Wireless by ALLTEL on the prior divestiture by Western Wireless of the Celllular One Goup, which includes the Cellular One brand.

Dobson Has Standing

Notwithstanding the Merger Parties' claim that Dobson would not suffer harm cognizable to confer standing, see Opp. 17-18, Dobson's Petition to Deny sets forth two specific harms that Dobson will suffer. First, ALLTEL would, absent an FCC-ordered divestiture, own the Cellular

[1] Dobson Cellular Systems, Inc. and American Cellular Corporation are subsidiaries of Dobson Communications Corporation.

One brand and would have the incentive and ability to destroy the brand. Second, shortly after closing the Merger, ALLTEL will re-brand the Western Wireless properties away from the Cellular One brand and to ALLTEL's brand, which will result in an immediate 41% shrinkage of the population covered by the Cellular One brand.

The facts are not in dispute. The Opposition does not deny that ALLTEL would (absent the requested remedy) have the incentive and ability to destroy the Cellular One brand, or that ALLTEL will re-brand Western Wireless properties. Indeed, the Opposition seems to confirm that "ALLTEL does not intend to use the [Cellular One] brand" (Opp. 17). The foregoing two harms that will be suffered by Dobson, the factual basis of which has been confirmed by the Opposition, are direct, concrete and cognizable. Dobson has standing to submit its Petition to Deny.

The Opposition Side-Steps Dobson's Showings Of Harm To Competition

The Opposition does not squarely address Dobson's showings of competitive harm but instead advances several related arguments. The Commission should reject the following arguments suggested by the Opposition: *first*, that this is a matter of private contract because a contract is involved (see Opp. 14); *second*, that because Dobson seeks the standard remedy of divestiture to a party with the economic incentive to put the asset to competitive use, Dobson is seeking the "equalization of competition" (see Opp. 14-15); and, *third*, that a brand is not important to competition because a brand is not a carrier (see Opp. 15).

First, the Opposition seizes on the fact of a contract between Dobson and the Cellular One Group (the "License Agreement") in order to suggest that the FCC should not get involved in what the Merger Parties seek to characterize as a private contract dispute between Dobson and

ALLTEL (Opp. 14). The unremarkable fact that legal relationships between Dobson and the Cellular One Group are governed by contract does not remove the anticompetitive harm of the Merger. Indeed, Dobson pointed out that enforcement of the License Agreement will not redress the anticompetitive harm, see Pet. Den. 4 ("[s]ignificantly, because of the substantial latitude conferred on the Licensor, ALLTEL likely could destroy the Cellular One brand without breaching the License Agreement"). The Opposition fails to address Dobson's points that: (i) enforcement of the contract will not fully remedy the Merger's anticompetitive harm, and (ii) the effective remedy is for the FCC to exercise its public interest authority by ordering a divestiture.

Next, the Opposition claims that, "by urging the Commission to specify the type of entity to whom divestiture should be made, Dobson is asking the Commission to essentially maintain the specific competitive balance established in the License Agreement," which the Opposition labels as "equalization of competition" (Opp. 14). In its Petition to Deny, Dobson urges the Commission to condition its Merger Approval on "the sale of the Cellular One brand to a buyer who has the economic incentive to promote and develop the brand" (Pet. Den. 2). What the Merger Parties overlook is that Dobson has asked for a standard remedy. When ordering a divestiture, competition authorities generally seek to have the divested asset sold to a party that is likely to make competitive use of the asset.[2] The purpose of the FCC's divestiture order would be defeated if ALLTEL were permitted to sell to a party lacking the economic incentive to promote and develop the brand. Dobson simply seeks to ensure that the divestiture successfully preserves competition.

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[2] U.S. Dep't of Justice, Antitrust Division, *Antitrust Division Policy Guide to Merger Remedies*, at IV.D. (Oct. 2004) ("the [Antitrust] Division must be certain that the purchaser has the incentive to use the divestiture assets to compete in the relevant market"), available at www.usdoj.gov/atr/public/guidelines/205108.htm.

Finally, the Commission should reject the Merger Parties' efforts to minimize the importance of brands to competition, see Opp. 15. The Opposition has not rebutted Dobson's showings that the Commission recognizes brands as important to wireless competition and that this recognition parallels that of antitrust authorities and the courts in ordering the divestiture of brands pursuant to a merger, see Pet. Den. 5-6 (citing United States v. Interstate Bakeries Corporation and Continental Baking Company, 1996 U.S. Dist. LEXIS 19734; 1996-1 Trade Cas. (CCH) P71,271 (N.D. Il. 1996)). Loss or degradation of a brand may lead to loss of competitors and will immediately lead to a reduction of competition.[3]

The Opposition Fails To Show That Divestiture Would Reduce Public Interest Benefits From The Merger

Perhaps the most surprising aspect of the Opposition is that the Merger Parties are objecting to a divestiture of the Cellular One brand. The Opposition confirms that "ALLTEL does not intend to use the [Cellular One] brand" (Opp. 7). One is left wondering why the Merger Parties oppose a divestiture that would raise cash and dispose of an asset that is useless to ALLTEL, except where used for anticompetitive purpose. In any event, the Merger Parties have not claimed that there would be a reduction of the public interest benefits that are asserted to flow from the Merger, nor harm to the Merged Parties, as a result of an FCC-ordered divestiture. This clarifies the Commission's cost/benefit analysis: there is no asserted public interest harm or reduction of benefit from a divestiture, and there are demonstrated benefits in the form of preservation of a brand that is important to competition.

[3] The Merger Parties do not deny that loss of the Cellular One brand would also harm fifteen other, smaller rural carriers, see Pet. Den. 4.

WHEREFORE, the Commission should grant Dobson's Petition to Deny and condition approval of the Merger on the prior divestiture of the Cellular One Group to a party with an economic interest in promoting the Cellular One brand.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Dawn Sylvester, hereby certify that the foregoing Reply was served this 28th 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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