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October 5, 2006

VIA ELECTRONIC FILING
Marlene H. Dortch, Secretary
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

Re: *Ex Parte Presentation*
CC Docket No. 94-102

Dear Ms. Dortch:

Dobson Cellular Systems, Inc. ("Dobson"), by its counsel, respectfully submits the following update to its Request for Limited Waiver (the "Waiver") of the E911 rule requiring 95 percent ALI-capable handset penetration by December 31, 2005. 47 C.F.R. § 20.18(g)(1)(v). As demonstrated in the Waiver, the public interest will not be served by a strict application of the rule to Dobson's unique circumstances.

Dobson is a GSM-based carrier offering a network-based E911 solution in 16 states serving approximately 1.6 million customers. As a general matter, it is not a CDMA-based carrier and therefore it does not deploy an E911 handset-based solution. Dobson acquired the assets of a bankrupt, northern Michigan Tier III CDMA carrier (including approximately 25,000 customers) in December 2004 and quickly began to deploy a GSM overlay. Dobson completed the overlay in July 2005 and immediately launched a marketing campaign to migrate the legacy CDMA customers to the GSM network. By December 2005, approximately half of the customer base remained on the CDMA system. Rather than shutting down the CDMA network at year's end – leaving these subscribers without service but eliminating any need for Dobson to file a waiver – the company filed a technology conversion, transactional waiver and continued aggressive marketing efforts to migrate customers in an orderly way. Dobson ultimately turned down the CDMA network on June 30, 2006 after successfully migrating more than 23,000 customers from the legacy network.

The *only* reason Dobson was compelled to file a waiver in the first place is because of the type of carrier it is – a GSM-based carrier with 1.6 million customers. If the bankrupt carrier had continued to operate or if another Tier III carrier (whether CDMA- or GSM-based) had acquired its assets, either provider most likely would have obtained an extension of the December 31, 2005 compliance deadline pursuant to the 911 ENHANCE Act's Tier III relief standard – and likely for a period longer than the six months requested by Dobson. Alternatively, if a Tier I or

Tier II CDMA-based carrier had acquired the assets, the 25,000 legacy customers would not have materially impacted the larger carrier's compliance with the 95 percent rule. Unable to avail itself of either scenario, Dobson was forced to file the waiver even though it had an E911 Phase II solution in place (the GSM overlay system with a network-based solution) and was merely operating the legacy CDMA system on a short-term basis to avoid turning down service to thousands of customers in this rural market – a result Dobson did not believe would best serve the public interest.

Moreover, application of the rule here would set a precedent that would significantly disadvantage Dobson as it competes against other providers to acquire smaller carriers with lesser, non-compliant systems. In future acquisitions, Dobson – because of its size and technology – would be forced to internalize FCC enforcement costs that nationwide or super-regional CDMA-based carriers (or even smaller Tier III carriers) do not need to incorporate, resulting in a real and significant competitive disadvantage. While either Dobson or the other bidding carriers must invest to make systems compliant, only Dobson will have to take into account enforcement costs. This problem will be particularly acute in the context of acquisitions out of bankruptcy, where bidders have no way to indemnify against future costs. The Commission's E911 policies should not cause such marketplace distortions, especially where – as here – the carrier worked diligently and deployed an E911 solution by December 31, 2005.

Dobson also emphasizes here that it engaged in aggressive build-out and marketing campaigns to achieve compliance with E911 requirements by migrating legacy customers to the GSM network. A summary of Dobson's actions follows:

- *December 2004* – Acquired the assets of the bankrupt Tier III carrier. Sent letters to all legacy customers notifying them of the acquisition and the upcoming conversion to GSM network, resulting in "a larger Michigan home coverage area," "a network with improved call clarity," and "a dynamic new array of handsets, products and services."[1] Began selling only ALI-capable CDMA handsets in its retail stores in the market. Began GSM overlay process.

- *July 2005* – GSM overlay completed and operational. Launched marketing campaign to convert legacy customers to GSM network. Sent mailing to all subscribers, offering a Motorola V180 flip phone for $0.99 or $50.00 off select phones with a two-year agreement, plus unlimited nights and weekend minutes, unlimited incoming text messages, unlimited mobile-to-mobile calling, free roaming and long distance, one month of free data services, and national plans starting at $40.[2] Also, called *every* legacy subscriber account and either talked to customer or left message about the new network, additional coverage, and attractive offers. As Dobson previously noted in the record, these rural northern Michigan markets are vacation spots and a

[1] *See* Attachment 1.
[2] *See* Attachment 2.

large number of legacy customers make use of their service only during the summer. Dobson succeeded in migrating almost one-third of the legacy customer base during the summer of 2005. Dobson continued its aggressive marketing campaign and made attractive GSM upgrade offers for the remainder of 2005 and into 2006. As of December 31, 2005, approximately half of the legacy subscribers had migrated off the CDMA network.

- *March 2006* – Sent letters to all legacy customers offering to double subscriber's minutes for life and a free Motorola V190 flip phone with a new two-year agreement.[3] Provided option to upgrade to GSM through a toll number call. Again called every legacy subscriber account and either talked to customer or left message. As of April 30, 2006, Dobson had migrated approximately 18,000 customers off the CDMA network.

- *May 2006* – Sent letters to all legacy customers informing them that their CDMA handsets do not transmit E911 Phase II location information and notifying them that current CDMA service may be interrupted after June 18, 2006.[4] The letter advertised a free Nokia 6010 or LG 1500 with no contract requirement, or a Motorola Razr for $49.99 with a one-year agreement, and offered the double-your-minutes-for-life offer on GSM plans starting as low as $20/month. Provided upgrade through toll number or by visiting retail stores. Again called every remaining legacy subscriber account and either talked to customer or left message.

- *June 2006* – Sent letters to all remaining legacy customers with same notification and offers introduced in May, including the free phone with no contract offer.[5] Again called every remaining legacy subscriber account and either talked to customer or left message. As a result of the May and June letters, almost 5,000 legacy customers migrated off the CDMA network during the late spring and early summer of 2006.

- *June 18-30, 2006* – "Hot-lined" calls made on legacy CDMA handsets – that is, if a customer attempted to make a call on a legacy phone, the call was first directed to a customer service agent who informed the customer that the CDMA network would be turned down June 30 and highlighted the attractive GSM upgrade offers.

- *June 30, 2006* – Turned down the CDMA network, having successfully migrated more than 23,000 of the original 25,000 customers from the CDMA network.

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[3] *See* Attachment 3.
[4] *See* Attachment 4.
[5] *See* Attachment 5.

For the reasons discussed above, waiver is warranted. If you have any questions, please contact the undersigned.

Respectfully Submitted,

/s/ Lawrence J. Movshin
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