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December 14, 2006

REDACTED – FOR PUBLIC INSPECTION

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Applications for the Assignment of Licenses from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C., and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communication, Inc. (WT Docket No. 06-114).

Dear Ms. Dortch:

On behalf of General Communication, Inc. ("GCI"), in accordance with the instructions in the Protective Order in the above-referenced docket, we are filing herewith the attached redacted letter to Barry Ohlson.

Please contact the undersigned, or Thomas Gutierrez at (703) 584-8662, should you have any questions regarding this matter.

Sincerely,



Michael L. Lazarus
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: (via email) Fred Campbell, Office of Chairman Martin
Aaron Goldberger, Office of Commissioner Tate
Angela Giancarlo, Office of Commissioner McDowell
John Branscome, Office of Commissioner Copps
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December 14, 2006

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December 14, 2006

REDACTED – FOR PUBLIC INSPECTION

Barry Ohlson
Office of Commissioner Adelstein
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Applications for the Assignment of Licenses from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C., and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communication, Inc. (WT Docket No. 06-114).

Dear Barry:

General Communication, Inc (“GCI”), hereby responds to the December 12, 2006, *ex parte* filing¹ by MTA Communications, Inc. d/b/a MTA Wireless (“MTA”) which forwarded excerpts from prior MTA filings purporting to analyze the joint venture relationship between GCI and Dobson Cellular Systems, Inc. (“Dobson”).

As has been demonstrated in earlier submissions in this proceeding made by GCI, Alaska DigiTel, LLC and Denali PCS, LLC (collectively, the “Applicants”), the MTA “analysis” of the GCI/Dobson relationship is inaccurate and unreliable. In order to give you the complete picture, we are filing herewith excerpts from the pertinent filings made by the Applicants in this proceeding which serve to rebut and correct the misstatements by MTA.²

At this point there have been ample submissions upon which a decision on the pending applications can be made. The Commission is at risk of allowing its processes to be used by MTA to obstruct, impede and delay a transaction which it is opposing based upon its own private competitive interests. We ask the Commission not to allow this long-pending application to remain ungranted into the new year.

¹ Letter from Stefan Lopatkiewicz, Counsel for MTA to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 06-114 (filed December 4, 2006). (“MTA Filing”).

² Specifically, we are filing relevant excerpts from the Applicants' "Joint Opposition to MTA Wireless Supplemental Comments" filed August 8 (pp. 15 to 23), "Joint Response to September 6, 2006 submission of MTA Wireless and AES Wireless filed September 13, 2006 (pp. 15 to 20) and Letter of Carl W. Northrop to Marlene H. Dortch dated September 15, 2006. (Cover letter).

December 14, 2006

Page 2

Please contact the undersigned, or Thomas Gutierrez at (703) 584-8662, should you have any questions regarding this matter.

Sincerely,

/s/ Carl W. Northrop

Carl W. Northrop
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Applications for the Assignment of Licenses)	WC Docket No. 06-114
from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C.)	
and Transfer of Control of Interests in Alaska)	
DigiTel, L.L.C. to General Communication, Inc.)	
)	
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JOINT OPPOSITION TO MTA WIRELESS' SUPPLEMENTAL COMMENTS

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August 8, 2006

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SUMMARY

General Communication, Inc. (“GCI”), Alaska DigiTel LLC (“DigiTel”) and Denali PCS LLC (collectively, the “Applicants”) are responding to the Supplementary Comments (the “Supplement”) filed by MTA Communications, Inc. d/b/a MTA Wireless in this proceeding. The Applicants’ response demonstrates that MTA Wireless still has failed to raise any substantive issue meriting denial of the proposed assignment and transfer applications. Rather, the MTA Supplement reinforces the view that MTA Wireless is merely intent upon delaying action on the applications for competitive purposes.

Despite having taken an inordinate period of time to file its Supplement, MTA Wireless has failed to uncover any aspect of the proposed transaction that poses public interest concerns. MTA Wireless has failed to demonstrate that the transaction documents vest in GCI control over the soon-to-be reorganized DigiTel. Nor has MTA Wireless demonstrated that GCI would be legally barred from controlling DigiTel if that was in fact the effect of the transaction. MTA Wireless also has failed to offer any cogent support for its novel theory that spectrum owned and/or controlled by Dobson should be attributed to the Applicants in the competitive analysis.

The conclusion the Commission must reach is that MTA Wireless has failed to show that a grant of the applications would be inconsistent with the public interest. The combined spectrum to be held by the Applicants does not exceed the concentration thresholds allowed in prior cases. In the meantime, another 90 MHz of Advanced Wireless Service (“AWS”) spectrum is now coming on line, and MTA Wireless is a

qualified bidder in the AWS auction. Thus, the completely unjustified claim made by MTA Wireless that the Applicants will have too great a concentration of spectrum in Alaska has been even further undermined by the AWS allocation.

The Commission must dismiss the MTA Wireless objection promptly, and grant the subject applications.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
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Applications for the Assignment of Licenses) WC Docket No. 06-114
from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C.)
and Transfer of Control of Interest in Alaska)
DigiTel, L.L.C. to General Communication, Inc.)
)
)

JOINT OPPOSITION TO MTA WIRELESS' SUPPLEMENTAL COMMENTS

General Communication, Inc. ("GCI"), Denali PCS, L.L.C. ("Denali") and Alaska DigiTel, L.L.C. ("DigiTel" and, collectively with GCI and Denali, the "Applicants"), by their attorneys, jointly respond to the Supplementary Comments of MTA Communications, Inc. d/b/a MTA Wireless in Support of Petition to Deny Applications (the "MTA Supplement") filed on July 24, 2006, in the above-captioned proceeding. As is set forth in detail below, the MTA Supplement is completely lacking in substantive merit. All MTA Wireless has managed to do by filing its supplement is confirm the oft-expressed view of the Applicants that MTA Wireless's primary motive here is to delay action upon the captioned applications for anti-competitive purposes.¹ Consequently,

¹ The fact that MTA Wireless is intent upon delaying action on the applications is evidenced by the total disregard it has shown for proper procedure in this application proceeding. MTA Wireless delayed filing its supplement well beyond any reasonable timeframe, *See* Letter from Carl Northrop to Erin McGrath on July 13, 2005, and has further disregarded proper procedure by adopting a "tag team" approach with ACS Wireless, Inc. ("ACS") by commenting on the grossly
(continued...)

In sum, despite the long time MTA Wireless took to review the Applicant's transaction documents, MTA Wireless has failed to point out any aspects of the Agreements that should be of concern to the Commission.⁴²

III. GCI'S AGREEMENTS WITH DOBSON DEMONSTRATE A RELATIONSHIP IN WHICH DOBSON MAINTAINS COMPLETE AND UNQUALIFIED INDEPENDENCE FROM GCI

The MTA Supplement continues to advance the unprecedented theory that spectrum which is owned and/or controlled by Dobson must be attributed to the Applicants. MTA Wireless continues to neglect to cite any legal precedent for its novel proposition that Dobson spectrum should be attributed to the Applicants simply because GCI has a resale agreement with Dobson. This is not simply an oversight, but rather reflects the fact that no legal precedent exists for this outrageous assertion.⁴³ The Commission's spectrum aggregation analysis is intended to assess the level and extent of facility-based competition in the market and the Commission never has taken resale arrangements into consideration in its spectrum aggregation assessments. This

⁴² MTA Wireless mentions the fact that the Reorganization Agreement was not formally executed by the parties until shortly before it was filed with the Commission. MTA Supplement, note 4. This fact is readily explained and raises no adverse inferences. The parties' relationship initially was governed by a detailed Memorandum of Understanding ("MOU"), and the definitive Reorganization Agreement was in process when the FCC applications were filed. Since the reorganization could not take place prior to FCC approval, there was no urgency in getting the definitive agreement signed. However, when the Commission asked to see the transaction documents, the parties took the occasion to formally execute the Reorganization Agreement. Notably, the final document conforms to the business deal as set forth in the MOU (which also has been filed with the Commission), and with the description of the transaction set forth in the FCC application. Under these circumstances, the timing of the execution of the Reorganization Agreement is not an issue.

⁴³ See Joint Opposition at 10-13.

transaction provides a perfect example of why spectrum available to a party under a resale arrangement should not count against it in the competitive analysis. The Commission should encourage resellers who have established a customer base to become effective facility-based service providers because, in doing so, they will be in a better position to exert competitive pressure on the retail market.⁴⁴ Counting resold spectrum against an applicant would completely undermine this useful market development by which resellers often become network service providers in their own right.

A. The Distribution Agreement Between GCI and Dobson is a Standard Reseller Agreement

MTA Wireless attempts to support its claim that Dobson's spectrum should be attributable to GCI by cutting and pasting isolated provisions from agreements between Dobson and GCI in order to demonstrate a "close cooperative relationship between competitors."⁴⁵ However, it is because the reseller does not own and control the underlying network facilities, and is beholden to the underlying carrier in all critical aspects of service deployment (service area, pricing, features, functionality) that reseller agreements typically contain general cooperation provisions designed to give the reseller notice of network changes and input on certain operational aspects of the business. These provisions do not alter the stark reality that the reseller exercises no "control." Simply stated, MTA Wireless is completely unsuccessful in its attempt to convert the resale

⁴⁴ A reseller has difficulty competing on price, because its cost of service is dictated by the wholesale rate of the incumbent whose service is being resold, and has difficulty competing on the quality and breadth of service, since the nature and scope of the underlying network is controlled by the underlying facility based carrier.

⁴⁵ MTA Supplement at 9.

agreement between GCI and Dobson, dated _____ (“Distribution Agreement”),
into some sort of unholy competitive alliance. MTA Wireless has not demonstrated in
any respect why the Commission should take the unprecedented step of attributing all of
Dobson’s spectrum to GCI, or that the Distribution Agreement is anything other than a
common reseller arrangement.

The quotations used by MTA Wireless from the Distribution Agreement reveal
nothing more than an arms-length working relationship between the parties

In sum, it is clear that the non-exclusive Distribution Agreement between GCI and Dobson is nothing out of the ordinary. The Commission's rules on spectrum allocation should continue to focus on facilities-based competitors, as demonstrated by prior precedent.⁵⁹

B. The Spectrum Under the Long-Term *De Facto* Spectrum Transfer Lease Arrangement is Clearly Attributable to Dobson Under Commission Rules

Having demonstrated above that spectrum owned and controlled by Dobson should not be attributed to GCI in assessing the competitive impact of this transaction, the final issue is how the spectrum leased by GCI to Dobson under the long term *de facto* transfer lease should be handled. Analysis reveals that MTA Wireless has failed to make any point about this lease that alters the core fact that - - as is contemplated by the Commission's *de facto* transfer leasing rules - - Dobson exercises day-to-day control over the network facilities operated on this leased spectrum. Consequently, this spectrum should be attributed to Dobson, not to GCI, in the competitive analysis. The Applicants note, however, that attributing this spectrum to GCI still would not cause the combined spectrum licensed to GCI, DigiTel and Denali to exceed the 70 MHz threshold.

⁵⁹ *Western Wireless Corporation*, 20 FCC Rcd. 13,053 (2005).

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
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Applications for the Assignment of Licenses from)
Denali PCS, L.C.V. to Alaska DigiTel, L.L.C. and) WC Docket No. 06-114
Transfer of Control of Interest in Alaska DigiTel,)
L.L.C. to General Communications, Inc.)

**JOINT RESPONSE TO SEPTEMBER 6, 2006 SUBMISSIONS
OF MTA WIRELESS AND ACS WIRELESS**

**ALASKA DIGITEL, LLC
DENALI PCS, LLC**

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September 13, 2006

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SUMMARY

Alaska DigiTel, LLC (“DigiTel”), Denali PCS, LLC (“Denali”) and General Communication, Inc. (“GCF”) (collectively, the “Applicants”) are submitting their joint response to the latest filings by MTA Communications, Inc. (“MTA Wireless”) and ACS Wireless, Inc. (“ACS Wireless”) (collectively, the “Commenters”) in the captioned proceeding.

Despite the inordinate amount of time they have taken, and the extraordinary number of documents they have reviewed, the Commenters have failed to raise any serious public interest issue that would justify the denial or designation for hearing of the applications. MTA Wireless has used its latest pleading opportunity to repeat arguments that have been fully answered by the Applicants. ACS Wireless merely parrots claims that already have been aired by MTA Wireless. All the filings have managed to do is reinforce the Applicants’ concerns that the Commenters are only interested in delaying action on the applications in order to protect their own private competitive interests.

Contrary to the claims of the Commenters, the proposed transaction has obvious public interest benefits. The infusion of capital into DigiTel will enhance its ability to compete against the two most dominant wireless carriers in the market: ACS Wireless and Dobson Communications (“Dobson”). Thus, the transaction is pro-competitive.

The Commenters have failed completely in their efforts to claim that the proposed transaction will result in an undue concentration of either spectrum, subscribers or market power. The Applicants show that the combined spectrum held and/or controlled by the Applicants is below the 70 MHz screen the Commission uses to ascertain whether transactions merit

heightened scrutiny. The Applicants also demonstrate that an analysis of the pre-and-post transaction HHIs gives rise to no concerns.

The claims by MTA Wireless and ACS Wireless that GCI will exercise *de facto* control over DigiTel after the transaction closes are shown to be incorrect as a matter of fact and as a matter of law. In any event, there is no legal barrier to GCI owning or controlling DigiTel, so the debate on the control issue is largely academic.

The Applicants' reply dismantles the radical theory advanced by the Commenters that spectrum owned and controlled by Dobson should be attributed to the Applicants in the competitive analysis. Precedent clearly establishes that only spectrum held or controlled by the Applicants counts toward the 70 MHz screen. The reply further establishes that the GCI resale arrangement with Dobson raises no competitive concerns.

The ACS Wireless claim that the transaction will adversely affect the wholesale transport or roaming markets is shown to be based upon pure speculation. Commission precedent indicates that idle, unsupported conjecture does not provide a basis for denying an application or launching an investigation.

Finally, the reply demonstrates that the ACS Wireless request that the Applicants be required to produce more documents and that Alaska carriers be obligated to produce more subscriber data, are transparent attempts to delay the proceeding, and must be denied.

The applications must be granted forthwith.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
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Denali PCS, L.C.V. to Alaska DigiTel, L.L.C. and) WT Docket No. 06-114
Transfer of Control of Interest in Alaska DigiTel,)
L.L.C. to General Communications, Inc.)

**JOINT RESPONSE TO SEPTEMBER 6, 2006 SUBMISSIONS
OF MTA WIRELESS AND ACS WIRELESS**

Alaska DigiTel, LLC (“DigiTel”), Denali PCS, LLC (“Denali”), and General Communications, Inc. (“GCI”) (collectively, DigiTel, Denali and GCI are the “Applicants”), by their attorneys, jointly respond to three of the latest pleadings filed in the above-captioned proceeding by MTA Communications, Inc. d/b/a MTA Wireless (“MTA Wireless”) and ACS Wireless, Inc. (“ACS Wireless”). *See* MTA Communications, Inc. d/b/a MTA Wireless Reply to Applicants’ Filings, WT Docket No. 06-114 (Sept. 6, 2006) (“MTA Reply”); Supplemental Comments of ACS Wireless, Inc., WT Docket No. 06-114 (Sept. 6, 2006) (“ACS Supplement”); ACSW’s Request that the Commission Ask for a Limited, Supplemental Production of Documents for Purposes of Its Public Interest and Competitive Effects Analyses, WT Docket No. 06-114 (Sept. 6, 2006) (“ACS Document Request”).

I. Introduction

This licensing case was transformed from a petition-to-deny proceeding under §309(d) of the Communications Act of 1934, as amended (“Act”), that was restricted under § 1.1208 of the

C. There Is No Need for an Evidentiary Hearing to Determine Whether There Will Be a Substantial Transfer of Control

The Commenters argue halfheartedly that the issue of whether GCI will exercise *de facto* control over DigiTel should be resolved in an evidentiary hearing. *See* MTA Reply at 11; ACS Supplement at 35-36. MTA Wireless cites *Ellis Thompson* to support its bare assertion that “substantial and material questions” have been presented regarding the issue of DigiTel’s control. *See* MTA Reply at 11. But as MTA Wireless recognizes, there is a difference between applying the *Intermountain Microwave* criteria to determine the “actual control” of an operating carrier and applying the criteria to predict “*future de facto* control.” *Id.* at 12 n.23.

In *Ellis Thompson*, the Commission looked at the evidence of how an operating cellular carrier was controlled under the *Intermountain Microwave* test and found a “pattern of circumstances” that raised a substantial and material question for resolution in hearing. *See* 9 FCC Rcd at 7142. To warrant an evidentiary hearing under § 309(d) of the Act, “a showing of *de facto* control must rely on facts and events that have occurred and not speculation as to what might occur in the future.” *American Mobile Radio Corp.*, 16 FCC Rcd 21431, 21436 (2001). The speculative musings of the Commenters as to what GCI might do if the proposed transaction is consummated do not suffice to carry their burden under § 309(d)(1) of the Act to present a substantial and material question of fact necessitating a hearing. *See* 47 U.S.C. § 309(d)(1).

III. MTA Wireless and ACS Wireless Fail to Justify Attributing The Dobson Spectrum to GCI

ACS Wireless’s arguments regarding the agreements between Dobson and GCI bring

nothing new to this proceeding.³⁰ For the most part, the ACS Wireless arguments concerning Dobson merely parrot points made by MTA Wireless in its MTA Supplement, which the Applicants have already answered.³¹ ACS Wireless cites nothing that contradicts the Applicant’s showing that the reseller agreement with Dobson is not unlike other such agreements in the wireless marketplace. Indeed, ACS Wireless expressly admits what GCI has said along -- and what the Commission has recognized in not including resellers in any spectrum aggregation analysis -- that resellers are unable to compete effectively on price.³²

The Applicants repeatedly have demonstrated that the combined spectrum holdings of GCI, DigiTel and Denali fall comfortably below the Commission’s 70 MHz screen, and well below the spectrum holdings approved in other transactions. *See* Joint Opposition to MTA Wireless at 2-3. Consequently, the Commenters have been forced to argue that spectrum licensed to Dobson must be attributed to the Applicants. Notably, in the face of uncontrovertible evidence provided by the Applicants that GCI does not exercise any degree of control over Dobson, the Dobson spectrum or the Dobson system, the Commenters have been forced to recast their argument. In what must be viewed as a major fatal concession, MTA Wireless now indicates that it “has not attempted to claim that GCI is in a position to ‘control’ the largest wireless carrier in the Alaska market [Dobson].” MTA Reply at 22. Its latest claim is that GCI is in a position to engage in “coordinated interaction” with Dobson. *Id.* at 23. Of course, it offers no concrete examples of what that interaction might be, and no evidence that such

³⁰ Compare MTA Wireless Supplement, Section B to ACS Supplement, Section II (A)(2).

³¹ See Joint Opposition to MTA Wireless at 15-24;

³² ACS Supplement, p. 10.

coordinated interaction has occurred or will occur. Similarly, rather than claiming that GCI exerts any measure of control over the Dobson spectrum, ACS Wireless merely contends that the reseller arrangement serves to “align” the interests of GCI and Dobson. ACS Supplement at 12.

Significantly, the Applicants strenuously deny that the reseller agreement between GCI and Dobson serves to align their interests in any anti-competitive manner. GCI and Dobson have a common interest in seeing that the Dobson system coverage is adequate, reliable and able to meet unsatisfied needs for service. They also have a common interest in seeing that the customer interface is suitable, and that the billing is timely and accurate.

The pro-competitive result of GCI’s ability to resell Dobson’s service points out the key fallacy in the Commenters’ position on the Dobson agreement: they have failed to allege or identify any harm to consumers or to the public from the GCI/Dobson relationship. This is why they have been unable to locate any Commission precedent indicating that the unremarkable contractual arrangements between GCI and Dobson justify the unprecedented action of attributing the Dobson spectrum to GCI, DigiTel and Denali in the course of the competitive analysis.

As the Applicants have demonstrated, the Commission’s spectrum aggregation analysis is “intended to assess the level and extent of facility-based competition in the market.” Joint Opposition to MTA Wireless at 15.

³³ GCI has mitigated this limitation to the extent it could by reserving the right to bundle wireless services with other GCI services and to set the bundle price.

³⁴ See Distribution Agreement at Art. III, 2(a)(ii).

³⁵ ACS Supplement, p. 11

It is, therefore, pure speculation by the Commenters that GCI and Dobson will enter into any kind of sale agreement in the future.³⁸ It is, of course, well settled in the law that “sheer speculation ... provides no basis for denying or investigating the Applications.” *Minnesota PCS Limited Partnership*, 17 FCC Rcd 126, 132 (WTB 2002).

Moreover, if GCI were to contract to purchase Dobson’s Alaska assets at any point in the future, the transaction would be subject to prior FCC approval. ACS Wireless, and any other interested party, would then have the opportunity to make their voices heard and file comments concerning any such transaction. The analysis concerning the current GCI, Denali and DigiTel transaction must focus on the merits of this transaction, as any future transaction will be analyzed on its own merits. Consequently, any conjecture concerning future acquisitions by GCI is only that – speculation, and should not be used by the Commission to conduct its analysis concerning this transaction.

In sum, the Commenters – despite additional time – have proved to be unable to make any persuasive arguments that the agreements between GCI and Dobson are out of the ordinary or that they give rise to competitive concerns. The Commission should not abandon its long standing precedent by attributing Dobson’s spectrum to GCI.

IV. The Commenters Have Failed to Demonstrate Any Undue Concentration

³⁶ Distribution Agreement at Art. II, 1(a).

³⁸ *Id.*

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September 15, 2006

57029-000001

REDACTED – FOR PUBLIC INSPECTION

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Ms. Dortch:

Attached, please find a letter of intent ("LOI") that GCI entered into with Dobson in July of 2004. Due to an internal oversight (that was just discovered on September 13), this document was not previously identified in response to the FCC's General Information Request.

This LOI does not in its own right constitute a "resale/wholesale and spectrum leasing agreement(s) between GCI and Dobson" which is what the Commission asked GCI to produce in its General Information Request of June 9, 2006. Nevertheless, since the LOI makes reference to the Dobson/GCI Distribution Agreement that was earlier filed with the Commission, the LOI is being filed by GCI out of an abundance of caution and in the interest of full disclosure.

GCI seeks confidential treatment of the LOI.

Marlene H. Dortch
September 15, 2006
Page 2

Based upon the foregoing, the only significance of this LOI is that the absence of progress between Dobson and GCI on the topics referenced in the LOI serves to completely undermine the MTA Wireless and ACS Wireless allegation that GCI and Dobson have an out-of-the-ordinary cooperative relationship or that the two are engaged in "coordinated interaction." The failure to date of GCI and Dobson to reach mutual agreement on *any* of the areas mentioned in the LOI after more than two years verifies the fact that the two companies are acting independently and on an arms length basis. Dobson and GCI are competitors and, contrary to the assertions of MTA Wireless and ACS Wireless, they are not acting in concert under the Distribution Agreement as if their interests are aligned competitively.

Kindly refer any questions in connection with this matter to the undersigned.

Sincerely,



Carl W. Northrop
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

CWN:s

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