

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

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In the Matter of Applications of AT&T)	WT Docket No. 07-153
Inc. and Dobson Communications)	DA No. 07-3404
Corporation for Consent to Transfer)	
Control of Licenses and Authorizations)	
)	

COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”)¹ urges the Commission to consider the impact of the proposed transfer of control of Dobson Communications Corporation (“Dobson”) to AT&T Inc. (“AT&T,” and together with Dobson, the “Applicants”)² on competition in the roaming marketplace. T-Mobile relies heavily on AT&T and Dobson in multiple markets for automatic roaming. The proposed transaction would materially change the landscape of the automatic roaming marketplace, thereby requiring a close review by the Commission. Specifically, T-Mobile urges the Commission to require AT&T to honor Dobson’s existing automatic roaming agreements and, if necessary, condition the grant of the proposed transaction on AT&T’s continued compliance with those agreements. In addition, to protect against anticompetitive conduct, the Commission should condition its approval on AT&T providing automatic roaming services at just and reasonable rates, terms, and conditions to

¹ T-Mobile is one of the major national wireless carriers in the United States, serving over 26 million customers with a network reaching over 280 million people (including roaming and other agreements).

² See FCC Public Notice, *AT&T Inc. and Dobson Communications Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 07-153, DA No. 07-3404 (rel. Jul. 26, 2007).

other compatible carriers in all service areas, regardless of whether the other carriers may have wireless licenses or spectrum usage rights in the same areas.

BACKGROUND

AT&T operates the largest Global System for Mobile Communications (“GSM”) network in the United States. Dobson is the nation’s largest independent rural GSM carrier, operating in 17 states across the country. T-Mobile has entered into voluntary reciprocal automatic roaming agreements with both AT&T and Dobson. These mutually-beneficial agreements have allowed all three carriers to fill in coverage gaps and provide their subscribers with seamless wireless services throughout much of the United States.³ Upon consummation of the proposed transaction, however, the percentage of T-Mobile’s total roaming traffic sent to AT&T would increase from approximately 30 percent to more than 40 percent.

Automatic roaming arrangements are an integral part of the commercial mobile radio service (“CMRS”) marketplace, promoting competition as carriers expand their service areas to meet consumer demand. The Commission has repeatedly recognized that such voluntary roaming arrangements play an important role in providing wireless customers with uninterrupted coverage on a daily basis and in the event of emergencies. In the wake of the

³ Roaming occurs when wireless subscribers travel beyond the service areas of their “home” carrier and utilize the facilities of a “host” carrier to place an outgoing call, receive an incoming call, or continue an in-progress call. *See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 05-265, FCC 07-143, ¶ 5 (rel. Aug. 16, 2007) (“2007 Roaming Order”). The GSM standard is designed to provide efficient and seamless automatic roaming capability so that subscribers need not take any special actions to roam on another carrier’s network. The GSM standard does not support manual roaming, *i.e.*, where the subscriber establishes a relationship with the host carrier directly in the event there is no pre-existing contractual relationship between the subscriber’s home carrier and the host carrier.

merger between AT&T Wireless Services, Inc. (“AT&T Wireless”) and Cingular Wireless Corporation (“Cingular”), the Commission noted that “[e]ven the ‘nationwide’ carriers still have holes in their licensed service areas” and therefore must “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.”⁴ Indeed, as recently as two weeks ago, the Commission concluded that “automatic roaming benefits mobile telephony subscribers by promoting seamless CMRS service around the country and reducing inconsistent coverage and service qualities.”⁵

Roaming agreements, like the ones T-Mobile has with AT&T and Dobson, permit carriers to provide their customers with essential communications capabilities at reasonable prices no matter where they are in the country. Such agreements are particularly important to T-Mobile, the smallest of the national wireless carriers, in ensuring that it can serve its customers throughout the nation, including in rural areas, at reasonable rates.⁶ As T-Mobile previously noted, effective roaming agreements “are essential to T-Mobile’s competitive strategies for retaining existing subscribers and attracting new ones.”⁷ T-Mobile relies heavily on AT&T and Dobson in particular for roaming services.

⁴ *AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, 19 FCC Rcd 21522, 21589 (2004) (“*AT&T Wireless -Cingular Wireless Merger Order*”).

⁵ *2007 Roaming Order* at ¶ 27.

⁶ Although T-Mobile acquired a substantial amount of spectrum in the Advanced Wireless Service auction, that spectrum is not yet available for use because it has to be cleared of government and commercial incumbents.

⁷ See Reply Comments of T-Mobile USA, Inc., WT Docket No. 05-265, at 2 (Jan. 26, 2006).

DISCUSSION

The Commission has recognized that the pro-consumer benefits gained through roaming arrangements can be threatened by transactions between wireless companies. For example, when AT&T's predecessor, Cingular, acquired AT&T Wireless in 2004, the Commission cautioned:

Consumers would be harmed if, as a result of the merger, Cingular's roaming partners pay higher roaming rates that are passed on to their customers, or the roaming partners' customers are no longer able to obtain roaming services in certain markets and they cannot replace that loss with equivalent or superior alternatives.⁸

Although T-Mobile has supported the Commission's "light touch" approach to roaming arrangements, AT&T's proposed acquisition of Dobson raises new concerns about AT&T's increasing ability to adversely affect the roaming market. Thus, while T-Mobile has not favored detailed, prophylactic regulation of automatic roaming arrangements, T-Mobile foresaw the potential need for Commission intervention if the marketplace changed, particularly when such intervention is targeted at individual carriers and disputes.⁹ AT&T's acquisition of Dobson is such a change that warrants scrutiny by the Commission.

T-Mobile's experience with Cingular (now AT&T) after its merger with AT&T Wireless lends credence to these concerns and illustrates how mutually-beneficial roaming arrangements may be jeopardized when one firm gains leverage in the marketplace through transactions like the AT&T-Dobson acquisition. For example, shortly after the Cingular-

⁸ See *AT&T Wireless -Cingular Wireless Merger Order*, 19 FCC Rcd at 21588.

⁹ As one example of targeted Commission intervention, T-Mobile previously suggested strengthening the Commission's Accelerated Docket procedures to help address roaming-related issues. See Letter from Kathleen O'Brien Ham, T-Mobile, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 05-265, at 2-5 (May 31, 2006).

AT&T Wireless merger was consummated, Cingular changed the Mobile Network Codes on all AT&T Wireless facilities to Cingular's. The practical effect of this change was that any T-Mobile subscriber roaming on the former AT&T Wireless network was instead considered to be roaming on the Cingular network, even though Cingular had not officially cancelled T-Mobile's roaming agreement with AT&T Wireless. As a result, T-Mobile was forced to operate under the Cingular agreements, which effectively increased T-Mobile's roaming rates by about 50 percent in those areas previously served by AT&T Wireless.

At the time that the actions described above took place, T-Mobile did not believe that they warranted Commission attention. However, as AT&T continues to grow through acquisitions, T-Mobile and other GSM carriers are becoming increasingly dependent on AT&T to carry their roaming traffic. AT&T's substantial presence and influence in the roaming marketplace will only increase after acquiring Dobson.¹⁰ Coupled with the Commission's recently adopted "home market exclusion" to the new automatic roaming rule,¹¹ AT&T's market position will provide it with significant leverage to deny roaming arrangements in many areas or to force its smaller roaming partners, even another national operator such as T-Mobile, to accept less favorable roaming rates, terms, and conditions.¹²

¹⁰ AT&T's acquisition of Dobson will reduce by one the number of GSM carriers in multiple cellular market areas in which AT&T and Dobson currently operate. *See* Application of AT&T Inc. and Dobson Communications Corporation, Description of Transaction, Public Interest Showing and Related Demonstrations, at 28-30, App. B. The Commission also should further examine whether this reduction in potential roaming partners could have an adverse effect on the wholesale roaming market in those particular markets.

¹¹ Under the home market exclusion, a wireless carrier is not obligated to negotiate in good faith just and reasonable roaming agreements with other technologically compatible carriers that have access to spectrum in the same market. *See 2007 Roaming Order* at ¶¶ 48-50, App. A.

¹² Indeed, T-Mobile is very concerned about the scope of the home market exclusion as defined by the Commission for this very reason.

Consumers should be able to continue to enjoy the same seamless roaming experiences as they did before AT&T's acquisition of Dobson.¹³ Roaming arrangements among carriers generally have functioned well to date, resulting in existing automatic roaming agreements that widely benefit consumers. To maintain these benefits, however, the Commission should require, as a condition of this transaction, that AT&T continue to honor Dobson's existing roaming agreements with T-Mobile and other carriers. Furthermore, to ensure that AT&T cannot use its market position as the largest U.S. GSM operator to act anticompetitively and against the best interests of consumers, the Commission should adopt the condition that AT&T provide automatic roaming services at just and reasonable rates, terms, and conditions to other compatible carriers throughout all of its service areas, regardless of whether the other carriers have wireless licenses or spectrum usage rights in those areas.¹⁴

CONCLUSION

AT&T's continued growth through the proposed transaction significantly changes the landscape of the GSM automatic roaming marketplace. T-Mobile urges the Commission to inspect closely AT&T's proposed acquisition of Dobson for any adverse effects it may have on the automatic roaming market. In particular, the Commission should require AT&T to

¹³ See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 15047, 15052-54 (2005) (noting that multiple parties raised roaming concerns in prior wireless merger proceedings).

¹⁴ A carrier similarly should be able to bring a Section 208 complaint against AT&T in the event it refuses to negotiate in good faith just and reasonable roaming agreements with another technologically compatible carrier that may have a wireless license or spectrum usage rights in the same area.

honor Dobson's existing roaming agreements with other carriers and to provide automatic roaming services at just and reasonable rates, terms, and conditions to other carriers.

Respectfully submitted,

/s/ Thomas J. Sugrue _____
Thomas J. Sugrue
Vice President Government Affairs

Kathleen O'Brien Ham
Managing Director, Federal Regulatory Affairs

Sara F. Leibman
Director, Federal Regulatory Affairs

Patrick T. Welsh
Senior Corporate Counsel, Federal Regulatory Affairs

T-MOBILE USA, INC.
401 Ninth Street, N.W.
Suite 550
Washington, D.C. 20004
(202) 654-5900

August 27, 2007

dc-502147