

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of Applications of)	
)	
AT&T Inc. (“AT&T”) and)	WT Docket No. 07-153
)	(DA 07-3404)
DOBSON COMMUNICATIONS)	
CORPORATION (“Dobson”))	
)	
For consent to transfer of control of licenses,)	
authorizations and <i>de facto</i> transfer spectrum leases)	
held by Dobson and its subsidiaries from Dobson CC)	
Limited Partnership to AT&T, including the application)	File No. 0003092370
for transfer of control of Station KNKA455, <i>et al.</i> ,)	
licensed to American Cellular Corporation)	

To: Secretary, Federal Communications Commission

Attn: Chief, Wireless Telecommunications Bureau

**REPLY TO JOINT OPPOSITION OF AT&T INC.
AND DOBSON COMMUNICATIONS CORPORATION**

East Kentucky Network, LLC (“EKN”), by its attorney, hereby replies to the “Joint Opposition of AT&T Inc. and Dobson Communications Corporation to Petitions to Deny and Reply to Comments” (“Opposition”) submitted with regard to the captioned applications.¹

I. Any Public Interest Benefits from the Merger are Not Diminished by Divestiture of a Cellular License in CMA450

AT&T and Dobson (“Applicants”) claim that consumers will benefit from the proposed merger and, while that conclusion could be debated, it is more to the point to observe that none of the perceived benefits is dependent upon approval for AT&T to hold both cellular licenses, with a total of 90 MHz of cellular and PCS spectrum, in the Kentucky 8 – Mason Rural Service

¹ This Reply is timely filed in accordance with the 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 07-3404), released July 26, 2007.

Area (“CMA450”). Applicants claim that consumers will benefit from a greater geographic footprint, but in CMA450, where both AT&T and Dobson hold cellular and PCS licenses, no coverage benefit is achievable with 90 MHz that cannot be realized after divestiture of a 25 MHz cellular license.

In a 2004 decision the Commission eliminated the cellular cross-interest rule for rural markets but stated that every proposal for acquisition of a second cellular license in a rural market would be subject to a case-by-case review. The Commission observed at the time “...that a concentration of interests between the two cellular licensees in rural areas would more likely result in a significant reduction of competition than an aggregation of additional CMRS spectrum by such licensees.”² As EKN has shown in its petition, competition will in fact be negatively impacted not only in CMA450 but in nearby rural markets if AT&T is permitted to acquire the second cellular license in this rural market.³ Whatever the public benefits may be from this merger certainly a reduction in competition in eastern Kentucky rural markets is not one of them.

II. Build-out of a Second High-Quality Network in CMA450, Preferably One that is CDMA, Will Promote Competition

EKN’s plea for a high quality CDMA network in CMA450 as a means to allow CDMA customers in nearby markets to receive service in CMA450 is answered by Applicants with an observation that “...the purported lack of CDMA roaming options in CMA450 is the result of business decisions by the various carriers operating in the CMA and is not a consequence of the merger.” (Opposition at 6) That fact that technology choices are business decisions is not disputed by EKN, but the absence of a robust CDMA network in CMA450 is well documented by the Declaration of Paul Delong who conducted a CDMA service availability test and

² *Report and Order* in WT Docket No. 02-381, 19 FCC Rcd 19078 at 19118 (2004) (“Cellular Cross-Interest Decision”).

³ See EKN’s petition at pp. 2-4 and pp. 7-14.

concluded that “[o]ut of the 830 mile drive test in CMA450, I found that only 50 miles had reliable CDMA service.”⁴

The fact that competition in the region is negatively impacted by the absence of a robust CDMA network in CMA450 is confirmed in the Declaration of Gerald Robinette:

The absence of CDMA coverage on the roads that lead to and from MSU [Morehead State University] is a problem for those individuals. As a result, those individuals often will not consider subscribing to EKN’s CDMA service even though EKN provides a high quality of service in its license areas. This situation impedes consumer choice and of course it is very bad for EKN in that it unfairly places EKN at a serious competitive disadvantage compared to GSM-based service providers.⁵

EKN recognizes that the Commission is not to be placed in the role of determining carriers’ technology choices but, at the same time, the Commission may take official notice of the fact that technology choices may in some instances impact the competitive balance in a market. And where parties approach the Commission with a proposal to allow one company to hold both cellular licenses in a rural market, the Commission’s task is to evaluate the prospect of a “significant reduction of competition”⁶ consistent with the Commission’s obligation to fulfill its “...statutory mandates to promote competition, ensure diversity of license holdings, and manage the spectrum resource in the public interest.”⁷ EKN’s petition provides a record of facts, largely undisputed by the Applicants, which shows that a cellular cross-interest by in CMA450 would have serious anticompetitive effects not only in CMA450 but in adjoining rural markets of eastern Kentucky.

4 See EKN petition, Declaration of Paul Delong at para. 6.

5 See EKN petition, Declaration of Gerald Robinette at para 8.

6 Cellular Cross-Interest Decision at 19118.

7 Cellular Cross-Interest Decision at 19117, fn omitted.

III. EKN's CMA450 700 MHz License Does Not Improve the Competitive Landscape

In a corrective statement to EKN's petition, EKN added that it acquired in FCC Auction No. 44 a 700 MHz license for CMA450 and that EKN continues to hold that license under the call sign WPWV281.⁸ Unfortunately, that 700 MHz license offers EKN no relief from the competitive problems in the market and region because (1) handsets using 700 MHz spectrum for voice services that are compatible with CDMA cellular and PCS systems are not readily available to wireless services providers; and (2) even if handsets using 700 MHz frequencies become available for EKN's CDMA voice service offering, there are co-channel television incumbents within interference range that preclude EKN from using the 700 MHz spectrum throughout CMA450.⁹ Consequently, there is no near-term prospect for improvement of the competitive circumstances in the region as a result of EKN's purchase of a 700 MHz license.¹⁰

IV. Conclusion

The Commission has all necessary authority to order divestiture of a cellular license in CMA450 as a condition of the proposed merger. EKN requests that the Commission recognize the threat to competition to result if AT&T is permitted to hold 90 MHz of spectrum, including two cellular licenses in CMA450, and respond by ordering the divestiture of one cellular license as a condition to approval of the merger. The Commission should not allow AT&T to gain so

⁸ See "Errata to Petition to Condition Approval or to Deny" filed by EKN on September 10, 2007.

⁹ See the attached Declaration of Ali Kuzehkanani, Consulting Engineer. The broadcasters would be required to abandon use of the spectrum after February 17, 2009 under the current Digital TV transition deadline.

¹⁰ However, the fact that EKN holds a license in CMA450 offers further support for its claim of legal standing to be heard on matters of competition in CMA450. Applicants' claim, in footnote 16 of the Opposition, that EKN lacks standing is grounded on the narrow premise that EKN held no license in the market. EKN sincerely regrets its oversight in not including a reference to its 700 MHz license when the petition was filed, an oversight precipitated by EKN's inability to make use of that license in connection with its CDMA services.

significant an advantage over all other competitors in a market area or a region. There is more than ample precedent for such a condition.¹¹

As requested in EKN's petition, the above-captioned application should be denied unless divestiture of a cellular license for CMA450 is required as a condition of approval.

Respectfully submitted,

EAST KENTUCKY NETWORK, LLC

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September 13, 2007

¹¹ Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc., *Memorandum Opinion and Order*, paras. 14-15 (Oct. 2, 2006).