

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

In the Matter of	)	
	)	WT Docket No. 07-153
Applications of AT&T Inc. and	)	
Dobson Communications	)	File Nos. 0003092370
Corporation Seeking FCC Consent to)		0003092375
Transfer Control of Licenses and	)	
Authorizations	)	

To: Wireless Telecommunications Bureau

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

Mid-Tex Cellular Ltd. (“Mid-Tex”), by its attorneys and pursuant to Section 1.939 of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”), hereby replies to the “Joint Opposition of AT&T Inc. and Dobson Communications Corporation to Petitions to Deny and Reply to Comments” (hereinafter, “Opposition”), filed by AT&T Inc. (“AT&T”) and Dobson Communications Corporation (“Dobson”) (sometimes referred to collectively as “AT&T”) on September 6, 2007.

**I. The Excessive Spectrum Holdings and Market Share of the Merged Entity Continue to Require Careful Commission Analysis**

In its Petition to Deny (“Petition”), Mid-Tex demonstrated that the substantial and excessive spectrum holdings of a merged AT&T in the Texas 9B2 Rural Service Area (“Texas 9B2”), and its dominant share in that market, require the Commission to closely scrutinize the competitive impact of the proposed transaction on Texas 9B2, and warrant the denial of consent to the proposed license transfer in Texas 9B2 or the imposition of conditions requiring divestiture by AT&T of excessive spectrum holdings in that market. With respect to the merged AT&T’s spectrum holdings, the Opposition fails to rebut

Mid-Tex's showing that the 100 MHz and 80 MHz of spectrum held by the merged AT&T in Erath<sup>1</sup> and Runnels counties, respectively, meets the Commission's 70 MHz threshold for giving proposed mergers heightened scrutiny.<sup>2</sup>

Moreover, the Opposition wholly ignores the competitive harm that will result from the market concentration of the merged entity. As noted in the petition, Dobson currently holds a dominant 60% market share throughout the Texas 9B2 market, while none of its Texas 9B2 competitors holds more than an 18% market share in any county (with no national competitor holding greater than a 4% market share in four of the six

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<sup>1</sup> The Opposition argues that the combined company's spectrum holdings in Erath County total only 75 MHz because AT&T's 25 MHz cellular B band license in Erath County is outside Texas 9B2 and therefore should not be counted. While AT&T correctly notes that the portion of Erath County covered by this license is outside of Texas 9B2, AT&T fails to mention that it provides service in Texas 9B2 pursuant to an extension agreement with Mid-Tex. *See* FCC Application for Wireless Telecommunications Bureau Radio Services Authorization (FCC Form 601), File No. 0000206883, submitted by Texas RSA 9B1 Limited Partnership on August 17, 2000, at Exhibit 2; FCC Application for Wireless Telecommunications Bureau Radio Services Authorization (FCC Form 601), File No. 0000207659, submitted by Dallas SMSA Limited Partnership on August 18, 2000, at Exhibit 2. Because this license is being used to provide service in Texas 9B2 by virtue of a permissible extension of its service contour, the 25 MHz license must be counted in the merged AT&T's Texas 9B2 spectrum holdings, giving the combined entity a total of 100 MHz of CMRS spectrum in Erath County.

<sup>2</sup> The Opposition attempts to confuse the issue of the merged AT&T's spectrum aggregation by arguing that BRS/EBS spectrum held by Sprint and Clearwire should be counted as CMRS spectrum in Texas 9B2 because Sprint's proposed XOHM service to be provided under a planned network sharing agreement with Clearwire "is expected to reach 100 million POPs by the end of 2008." Opposition at p. 4. Such service is not likely to reach rural parts of the country like Texas 9B2 for at least another five to six years following the conclusion of the transition and likely "self transition" of existing BRS and EBS operators. *See In the Matter of Amendments of Parts 1, 21, 73, 74, and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Band*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) ("BRS/EBS Report and Order"); reconsideration granted in part, denied in part, 21 FCC Rcd 5606 ¶¶ 96-107, 144 (2006) ("BRS/EBS Reconsideration Order"). BRS/EBS is currently used predominantly for fixed applications.

Texas 9B2 counties). This market concentration, in combination with the competitive assets of AT&T's name recognition and marketing strength, and the substantial spectrum holdings of the merged entity, poses a serious threat to competition. The Commission has established as a fundamental tenet of its public interest review that a transaction that creates or enhances significant market power is unlikely to serve the public interest.<sup>3</sup> In a market such as Texas RSA 9B2, where there are two to three nationwide competitors, only one of which is arguably "genuine", and none of which have a sufficiently built out network in the Texas 9B2 market *and* sufficient bandwidth to discipline AT&T post-merger through the ability to attract customers away from AT&T should it attempt to increase price or reduce service, the Commission clearly must subject the proposed merger to the utmost degree of scrutiny. AT&T's public interest assertions provide no basis for ignoring the competitive threat posed by the market conditions that would result in Texas 9B2 from grant of the proposed merger.

**II. The Commission Should Condition Any Grant on Divestiture of Spectrum Holdings in Texas RSA 9B2 in Excess of 70 MHz Upon Grant and After the Completion of Auction 73**

In its Petition, Mid-Tex requested that any grant of the proposed merger contain a condition preventing the merged AT&T from bidding in Auction No. 73 for any licenses in any license area in which the merged entity controls, or has a 10 percent or greater

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<sup>3</sup> See *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, File Nos. 0001656065, et al., WT Docket No. 04-70; and *Applications of Subsidiaries of T-Mobile USA, Inc. and Subsidiaries of Cingular Wireless Corporation For Consent to Assignment and Long-Term De Facto Lease of Licenses*, File Nos. 0001771442, 0001757186, and 0001757204, WT Docket No. 04-254; and *Applications of Triton PCS License Company, LLC, AT&T Wireless PCS, LLC, and Lafayette Communications Company, LLC For Consent to Assignment of Licenses*, File Nos. 0001808915, 0001810164, 0001810683, and 50013CWAA04, WT Docket No. 04-323, Memorandum Opinion and Order, FCC 04-255 at par. 68 (rel. October 26, 2004) ("AT&T/Cingular Merger Order").

interest in, 70 MHz or more of CMRS spectrum.<sup>4</sup> After reviewing the Opposition, Mid-Tex recognizes that such a condition would be overly broad. Rather than precluding AT&T's participation in Auction No. 73, the FCC should simply require that within 12 months of the conclusion of that auction, AT&T divest any spectrum in excess of 70 MHz held in any county in which it has interests in more than 70 MHz of CMRS spectrum. Such a condition will address the anticompetitive concerns raised by an AT&T acquisition of 700 MHz spectrum without preventing AT&T from acquiring and utilizing such spectrum.

### **III. The FCC Must Impose Roaming Conditions on AT&T in the Texas 9B2 Market**

AT&T correctly notes that the FCC's *Roaming Order* failed to address the concerns of small rural carriers who are discriminated against by large wireless carriers who provide deeply discounted wholesale roaming rates to one another.<sup>5</sup> However, AT&T could not be more wrong when it asserts that this concern should be "addressed through further comments or petitions for reconsideration in the rulemaking, not in the form of conditions requested in a specific transfer proceeding."<sup>6</sup> If the Commission approves the Dobson/AT&T merger, AT&T will be the A band cellular licensee in this market. AT&T through its market dominance will also have the ability to set the roaming rates that Mid-Tex is reliant on to provide nationwide service to its customers. If AT&T sets those rates too high, then Mid-Tex will not be able to compete and the market will

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<sup>4</sup> Petition at p. 7. The Petition also requested that the Commission require that the merged AT&T divest spectrum held by the combined entity in excess of 70 MHz in any county in which it has interests in more than 70 MHz of CMRS spectrum, and that any grant of the subject applications be conditioned on the completion of such divestitures.

*Id.*

<sup>5</sup> Opposition at p. 9.

<sup>6</sup> *Id.*

eventually lose another competitor. If AT&T wants to have market dominance, then it must take the responsibility that comes along with it. Since AT&T is unwilling to allow Mid-Tex to enter into a wholesale roaming agreement on the same terms and conditions that it offers large wireless carriers, then the FCC has no choice but to place such a condition on AT&T prior to approving the acquisition of Dobson. The failure of AT&T to voluntarily enter into an equitable roaming agreement with Mid-Tex as a condition to the merger speaks volumes. Accordingly, to avoid the loss of yet another competitor in the market, the FCC must condition its approval of the merger on AT&T offering Mid-Tex the same roaming rates it offers to its preferred larger roaming partners.

**IV. Allowing AT&T to Acquire Dobson's ETC Status is Contrary to the Public Interest**

As Mid-Tex stated in its Petition, the FCC should not allow AT&T to acquire Dobson's Eligible Telecommunications Carrier ("ETC") status in Texas 9B2.<sup>7</sup> AT&T and Dobson provide no rationale in their Opposition why AT&T and its shareholders should automatically be entitled to high cost support when AT&T has never had to promise to use such support to provide universal service rather than to pad its bottom line. AT&T's facile assertion that current FCC rules allow AT&T to receive high cost support at the same levels enjoyed by Dobson evades the real issue of where and how high cost support flowing to AT&T will be used. Based on the Opposition, AT&T provides no assurance that it will spend Dobson's high cost support in Dobson's rural territories.

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<sup>7</sup> Petition at 10.

AT&T and Dobson argue that it is inappropriate to address Mid-Tex's industry-wide concerns in a merger proceeding that implicates only a single carrier. However, that single carrier, AT&T, receives almost two million dollars annually in universal service support and just about anything AT&T does impacts the entire industry. Two million dollars annually has an enormous impact on the fund and more importantly the amount of support that other more deserving carriers receive. Therefore, it is not only appropriate, but necessary, for the FCC to consider the impact of the merger on the high cost universal service fund in the instant proceeding.

AT&T and Dobson are correct that the amount of support that wireless ETCs receive is equal to the amount of per-line support received by the underlying incumbent LEC. Since AT&T and Dobson filed their Joint Opposition, however, the Federal-State Joint Board on Universal Service (Joint Board) announced a change in policy.<sup>8</sup> Specifically, the Joint Board tentatively concluded that it will no longer use the equal support rule to determine universal service support amounts for competitive ETCs. This policy has the support of AT&T.<sup>9</sup> With this policy change in mind, the FCC should start here, in this proceeding, and base the amount of universal service support AT&T receives on its actual need for universal service support rather than on the equal support rule to help curb the growth of the universal service fund (USF).

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<sup>8</sup> *Federal-State Joint Board on Universal Service Statement on Long Term, Comprehensive High-Cost Universal Service Reform*, WC Docket No. 05-337 & CC Docket No 96-45, Public Notice, FCC 07J-3 (September 6, 2007).

<sup>9</sup> *In the Matter of High Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337 & CC Docket No. 96-45, Reply Comments of AT&T Inc. at 3-4 (July 2, 2007) (encouraging the FCC base USF support on a separate "wireless" support mechanism, rather than the identical support rule).

Further, AT&T and Dobson state that Mid-Tex's reliance on Section 54.305 of the FCC's Rules is misplaced because Section 54.305 was intended to address a problem in the wireline industry that is not an issue in the wireless industry.<sup>10</sup> AT&T and Dobson are incorrect. Whether the carrier is a wireline carrier or a wireless carrier, it is a problem when the FCC's rules create incentives for carriers to seek to acquire other carriers with ETC status solely to garner USF support. Accordingly, the FCC should apply the concept behind Section 54.305 to the proposed merger in order to discourage AT&T from acquiring Dobson's licenses in Texas 9B2 solely to receive a windfall of USF support.

For the foregoing reasons and those set forth in the Petition, Mid-Tex requests that the Commission grant the relief requested in the Petition as modified herein.

Respectfully submitted,

**MID-TEX CELLULAR LTD.**

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/s/  
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September 13, 2007

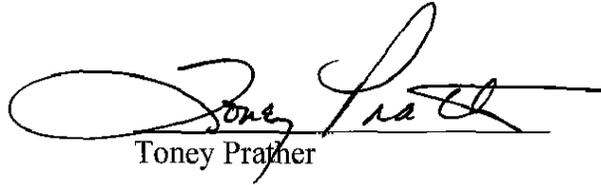
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<sup>10</sup> Joint Opposition at 16.

## DECLARATION OF TONEY PRATHER

I, Toney Prather, do hereby declare under penalty of perjury the following:

1. I am the Manager of, and President of the sole member of the managing general partner of, Mid-Tex Cellular, Ltd.
2. I have read the foregoing "Reply to Joint Opposition of AT&T Inc. and Dobson Communications Corporation to Petition to Deny." I have personal knowledge of the facts set forth therein, and believe them to be true and correct.

  
Toney Prather

9/13/07  
Date

Certificate of Service

I, Linda L. Braboy, with the firm of Bennet & Bennet, PLLC, hereby certify that I have on this 13<sup>th</sup> day of September 2007 caused a copy of the foregoing Reply to Joint Opposition of AT&T Inc. and Dobson Communications Corporation to Petition to Deny to be delivered by first-class mail to the following:

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In addition, courtesy copies of the foregoing Petition to Deny were delivered via e-mail upon the following:

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