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

In the Matter of	)	
	)	
AT&T Wireless Services, Inc. and	)	
Cingular Wireless Corporation	)	WT Docket No. 04-70
Seek FCC Consent to Transfer Control of	)	
Licenses and Authorizations	)	
	)	

To: The Commission

COMMENTS OF DOBSON COMMUNICATIONS CORPORATION ON PETITIONS TO DENY AND INFORMAL OBJECTIONS

Dobson Communications Corporation ("Dobson") hereby provides comments with respect to several of the arguments raised by the petitions to deny and informal objections filed in opposition to the above-captioned applications ("Transfer Applications").[1] For the reasons discussed herein, Dobson strongly disagrees with many of the claims of those who have urged the Federal Communications Commission ("Commission") to find that this merger is not in the public interest. To the contrary, approval of the Transfer Applications should create a healthier combined company that can better serve the needs of its customer base, enhancing the resulting entity's ability to deliver advanced services to many consumers.

Suggestions that consumers will be harmed by the grant of these Transfer Applications ignore the numerous sources of competition faced by carriers in the wireless industry, going well

[1] Petitions to deny or informal objections were filed by the following eight parties (the "Petitioners"): Consumers Federation of America and Consumers Union ("CFA/CU"); Thrifty Call, Inc. ("Thrifty"); Cellular Emergency Alert Services association ("CEASa"); AW Acquisition Corp. *et al.* ("Agents"); Richard Giandomenico; Donald R. Newcomb; Craig Paul; and Andrew J. Shepherd. Two parties filed supporting comments — the Communications Workers Association of America ("CWA") and United States Cellular Corporation ("USCC").

beyond the national facilities-based carriers; the consolidation of these carriers simply will not have a material impact on the well-recognized high level of competition in the CMRS marketplace.[2] To the contrary, allowing market forces to work toward a more appropriate level of industry consolidation only serves to promote the health of the industry.

I. Wireless Carriers May Require As Much As 80 MHz of Spectrum to Deploy Advanced Services on a Competitive Basis.

Several Petitioners claim that Cingular Wireless LLC ("Cingular") does not need 80 MHz of spectrum to serve its existing customer base and to deploy 3G services, and thus Cingular should not be allowed to obtain such large blocks as a result of the merger.[3] These petitioners simply do not accept the showing that Cingular made in its Public Interest Statement which demonstrates the necessity for as much as 80 MHz to "provide a full menu of competitive voice and data services."[4] As described in its Public Interest Statement, Cingular, much like Dobson and several other wireless carriers, is currently transitioning its network from analog and TDMA to GSM. Given the need simultaneously to serve three networks, "[t]he post-merger company would require approximately 50 MHz of spectrum (assuming both carriers are currently using 25

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[2] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Eighth Report*, 18 FCC Rcd 14783, 14812 (2003) ("*Eighth CMRS Competition Report*") ("Continued downward price trends, the continued expansion of mobile networks into new and existing markets, high rates of investment, and churn rates of about 30%, when considered together with the other metrics, demonstrate a high level of competition for mobile telephone consumers."); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Seventh Report*, 17 FCC Rcd 12985, 13003 (2002) ("Some of the key metrics reported by mobile telephone operators, such as subscriber growth, average monthly usage per subscriber, and average revenue per subscriber ... demonstrate a high level of competition for most consumers.").

[3] Newcomb Comment at 1 (arguing that Cingular should be permitted to hold no more than 60 MHz in urban areas); Paul Comment at 1 (arguing that Cingular should be required to divest the spectrum, and then the spectrum should be "re-auctioned to wireless service providers who would provide competition to incumbent wireless carriers").

[4] Description of Transaction, Public Interest Statement and Waiver Request of Cingular Wireless Corporation, FCC Form 603, Exhibit 1, WT Docket No. 04-70, at 19 (filed Mar. 18, 2004) ("Cingular Public Interest Statement").

MHz or more to serve their separate customer bases) to simultaneously serve the combined customer base with analog, TDMA, and GSM/GPRS/EDGE services";[5] once the networks are fully combined, deployment of 3G could require an additional three 10 MHz blocks in order to have adequate download speeds and provide a competitive, viable 3G service.[6]

Dobson is well aware of the spectrum constraints associated with a transition from a TDMA-based network to GSM, complicated by the need concurrently to introduce more advanced 3G services. Dobson must, and will, implement these advanced services to meet our commitment to assuring that wireless consumers in its rural and non-metropolitan markets have access to the same high-level, advanced services as are available to consumers in urban markets. Through our experience, Dobson can confirm the validity of the statements in the Transfer Applications that as much as 80 MHz is needed.

As Cingular recognized in its Public Interest Statement, Verizon Wireless and Sprint already have deployed, or will soon deploy, 3G services.[7] Furthermore, wireless carriers also are facing competition from Wi-Fi networks in the data services market. This competition will only increase as Wi-Fi becomes more prolific and is combined with voice over Internet protocol ("VoIP") to provide a wireless VoIP product. Permitting Cingular to retain up to 80 MHz of spectrum should not be viewed as reducing competition for voice services; to the contrary, the public will be benefited because customers of the combined company will have access to quality

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[5] *Id.* at 19.

[6] *Id.* at 18. ("To deploy UMTS, a carrier must set aside a *minimum* of 10 MHz of dedicated spectrum (5 MHz uplink paired with 5 MHz downlink). Because UMTS requires all customers in a sector to share the download bandwidth, a UMTS base station (prior to the introduction of [High Speed Downlink Packet Access] that is capable of providing 384 kbps download speed to users at the outer boundary of service (up to 2 Mbps to close-in users)) will only provide 38.4 kbps to 10 simultaneous users per sector. Thus, additional UMTS channels will be needed to maintain adequate download speed as more subscribers demand access to 3G services.").

[7] *Id.* at 17.

voice and data services that simply wouldn't be possible from either AWS or Cingular acting only on their own spectrum. The same will be true as Dobson and other carriers are faced with spectrum needs that mirror those advanced by Cingular here.

II. The Commission Should Grant Cingular's RSA Waiver Request.

Cingular has requested a waiver of the RSA cellular cross-interest rule as it applies to 11 RSAs. As Dobson has previously argued to the Commission, the cellular cross-interest rule is an unnecessary impediment to industry flexibility, and has no place as an outright bar to certain transactions.[8]

The instant transaction provides clear evidence that the rule is not needed. Cingular is required to request a waiver of cellular cross-interest rule for RSA markets. Yet the Commission uses the same bases to analyze the waiver request as it uses to assess the acquisition's competitive impact as a whole. Simply stated, the RSA cellular cross-interest rule is unnecessary, and requiring waivers imposes an unnecessary burden on the approval process.

In this case, moreover, Cingular has more than adequately demonstrated that the transaction will not adversely affect competition – and thus a waiver is justified in the 11 RSAs where both Cingular and AWS provide cellular service – because numerous competitive choices will remain in each of the RSA overlap areas after the merger.[9] One petitioner argues, however, that the public interest would be served by maintaining the cellular duopolies,[10] and another argues that the waiver request should be denied absent "proof" that customers in these 11 RSAs

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[8] *See* Comments of Dobson Communications Corporation in WT Docket No. 02-381 at 10-13 (filed Dec. 29, 2003); Reply to Sprint PCS Opposition of Dobson Communications Corporation, Western Wireless Corporation, and Rural Cellular Corporation in WT Docket No. 01-14 at 1-7 (filed Apr. 18, 2002); Petition for Reconsideration of Dobson Communications Corporation, Western Wireless Corporation and Rural Cellular Corporation in WT Docket No. 01-14 at 7-10 (filed Feb. 13, 2002)

[9] *See* Cingular Public Interest Statement at 48-57.

[10] Shepherd Petition at 1-2.

"will have access to native, facilities based, coverage of at least two carriers."[11] Neither Petitioner appears to have taken the time to assess the state of competition in the rural markets. If they had done so, they would have recognized that their objections lack foundation in fact.

As Dobson has noted in the past, there is little difference today in the competitive environment between urban and rural markets, both in terms of service choices and pricing plans.[12] Competition in rural markets has evolved rapidly as nationwide wireless carriers have extended their footprints into rural areas by building-out their own networks and by establishing roaming and affiliation arrangements,[13] and expanded the reach of their advertising distribution across the nation. Rural residents today are well informed about the wireless service choices available in urban markets, and they demand these same choices in rural markets. As a result, the services and rates offered to customers in rural markets are not in any meaningful way different from those provided to customers in urban markets.

But the inverse is true as well. Cellular carriers such as Cingular and AWS compete not only with other national carriers, but also with regional or rural/non-metropolitan carriers like Dobson. Moreover, as Cingular noted in its Public Interest Statement, it also faces competition from MVNOs or resellers.[14] While many areas do not have enough population or population density to support four or more facilities based competitors, even in those few areas where post-

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[11] Newcomb Comment at 1.

[12] *See, e.g.*, Comments of Dobson Communications Corporation in *Notice of Inquiry Regarding Spectrum-Based Services to Rural Areas*, WT Docket No. 02-381, at 2, 4-10 (filed Feb. 3, 2003); *cited in the FCC's Eighth CMRS Competition Report,* 18 FCC Rcd 14835 & n.386.

[13] Dobson has multi-year roaming agreements with both Cingular and AT&T Wireless Services, Inc. In light of our past relationships and our strategic position as a leading service provider in rural and non-metropolitan areas, Dobson expects that these roaming relationships will be unaffected by the transaction. Petitioners' suggestions to the contrary are without merit.

[14] See Cingular Public Interest Statement at 38. Cingular also noted that in the future, wireless carriers may face competition from wireless VoIP providers.

merger Cingular may be one of only two or three facilities based providers with ubiquitous coverage, it will be constrained by the presence of national and regional competitors from charging unreasonable rates.

Simply stated, in a national market, distinctions should not be made between rural and urban areas. Dobson therefore urges the Commission to grant Cingular's RSA waiver requests.

III. Conclusion.

The wireless sector is the most competitive sector in the telecommunications industry. In many markets, six or more strong competitors are fighting for the few new available subscribers, and in an industry that is capital intensive, as systems must be upgraded to offer the newest technological advances, there are simply too many competitors. Indeed, the recent telecom slump reflects Wall Street's concerns about the general profitability of the sector, and until the industry shows some signs of health, critical capital will not readily flow. The lack of capital hits particularly hard on smaller carriers, including those like Dobson which are focusing their efforts primarily on the challenge of bringing advanced wireless services to rural and non-metropolitan areas with fewer subscribers and less population density.[15] Consumers have benefited, and will continue to benefit, from the high level of competition that exists and will continue to exist even after the subject merger is consummated. More importantly, consumers

[15] Dobson and other rural carriers compete for financing along with everybody else, including the nationwide carriers. The fact that capital markets do not view rural wireless as distinct from the rest of the wireless industry is another indication that a single nationwide market for wireless has evolved.

can achieve even greater benefits if capital is available to the remaining participants for use in expanding and upgrading service offerings to the most current technological features. Permitting the parties to consummate the merger as contemplated will promote competition and achieve real public interest benefits. The Commission should reject arguments to the contrary.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Pervenia P. Brown, hereby certify that copies of the foregoing "Comments of Dobson Communications Corporation on Petitions to Deny and Informal Objections" were served this 13th day of May, 2003, as follows:

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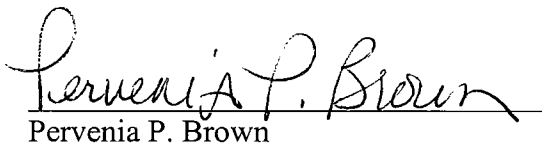

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