

**Before the  
United States Department of Justice**

In the Matter of )  
)  
United States of America v. AT&T )  
Inc. and Dobson Communications )  
Corporation, U.S. District Court for )  
the District of Columbia Case No. )  
1:07-cv-01952; Proposed Final )  
Judgment and Competitive Impact )  
Statement )

**COMMENTS OF MID-TEX CELLULAR, LTD.**

Mid-Tex Cellular, Ltd. (“Mid-Tex”), by its attorneys, and pursuant to the Notice published November 19, 2007 in the *Federal Register* (Vol. 72, No. 222), hereby submits its comments on the proposed settlement in the above-captioned U.S. District Court proceeding. In its Competitive Impact Statement (“CIS”) filed by the Antitrust Division of the U.S. Department of Justice (“Department”) in that proceeding, the Department concluded that AT&T Inc.’s (“AT&T”) proposed acquisition of Dobson Communications Corporation (“Dobson”) will likely substantially lessen competition, in violation of Section 7 of the Clayton Act, in the provision of mobile wireless telecommunications services in the Texas RSA-9 (CMA 660) market (“Texas RSA-9”), among other markets.<sup>1</sup> The Department filed a proposed Final Judgment which requires AT&T to divest its interest in Mid-Tex. For the reasons stated in its petition opposing the transfer of control of Dobson’s wireless radio licenses to AT&T, filed with the Federal

---

<sup>1</sup> *United States v. AT&T Inc. and Dobson Communications Corporation; Proposed Final Judgment and Competitive Impact Statement*, 72 Fed. Reg. 65060 (Department of Justice Antitrust Division Nov. 19, 2007).

Communications Commission on August 27, 2007 (“Petition”)<sup>2</sup>, Mid-Tex, with one exception, supports the proposed Final Judgment as it relates to the proposed divestiture of AT&T’s interest in Mid-Tex.<sup>3</sup> For the same reasons as well as those stated below, Mid-Tex urges the Department to require the divestiture of a portion of AT&T’s remaining interests in Texas RSA-9.<sup>4</sup>

**I. The Department Should Require AT&T To Divest a Portion of its Wireless Interests *Throughout* Texas RSA-9.**

Specifically, Mid-Tex requests that the Department require AT&T to divest either: (1) the A band license for the Texas RSA-9 market held by Dobson Cellular Systems, Inc., a wholly owned subsidiary of Dobson; or (2) its ownership interests in Texas 9B1 Limited Partnership, the Cellular B Block licensee in the partitioned Texas 9B1 market, *and* the license for the partitioned Texas 9B4 market held by AT&T Mobility Texas, LLC, a wholly owned subsidiary of AT&T. As discussed below, for the same reasons the Department has found divestiture of AT&T’s interests in Mid-Tex to be necessary, the further divestiture of AT&T’s interests in the Texas 9 RSA is also necessary.

The proposed Final Judgment requires the divestiture of AT&T’s minority interest in Mid-Tex. The Department found that, without such divestiture, the merged AT&T “would likely have the ability and incentive to coordinate the activities of the wholly-

---

<sup>2</sup> A copy of the Petition was submitted to the Department by letter dated August 29, 2007.

<sup>3</sup> As discussed in Section II *infra*, Mid-Tex opposes a ten year restriction on AT&T reacquiring *any* ownership interest in Mid-Tex.

<sup>4</sup> Mid-Tex’s position herein is not intended to address and should not be construed as its concurrence that the actions taken or proposed herein resolve all anti-competitive issues resulting from AT&T’s actions in Texas RSA-9.

owned Dobson wireless business and the business in which it has a minority stake, and/or undermine the ability of the latter to compete against the former” and that “[s]uch activity would likely result in a significant lessening of competition.” in violation of Section 7 of the Clayton Act.<sup>5</sup> The Department reached this conclusion based on its finding that in Texas RSA-9 the businesses in which AT&T and Dobson have an interest collectively account for in excess of 70 percent of subscribers and that AT&T has significant rights under the Mid-Tex partnership agreement to control core business decisions, obtain critical confidential competitive information, and share in profits at a rate significantly greater than the equity ownership share upon a sale of the partnership.<sup>6</sup>

In the partitioned Texas 9B1 market, the businesses in which AT&T and Dobson have an interest collectively account for well in excess of 70 percent of subscribers<sup>7</sup>, and, as the sole general partner in Texas RSA 9B1 Limited Partnership, AT&T has a controlling interest in that entity.<sup>8</sup> In the partitioned Texas 9B4 market, AT&T and Dobson collectively account for well in excess of 70 percent of subscribers.<sup>9</sup>

---

<sup>5</sup> Department of Justice Complaint in the above-captioned proceeding (“Complaint”) at par. 22; Competitive Impact Statement (“CIS”), 72 Fed. Reg. at 65072. The Department found that in Texas RSA-9 “the merged firm will have the incentive and ability to increase prices, diminish the quality or quantity of services provided, and refrain from or delay making investments in network improvements.” 72 Fed. Reg. at 65072.

<sup>6</sup> *Id.* at pars. 21-22.

<sup>7</sup> By Mid-Tex’s estimation, Dobson and the AT&T controlled Texas RSA 9B1 Limited Partnership serve 90-95% of wireless subscribers in the partitioned Texas RSA 9B1 market.

<sup>8</sup> See FCC Ownership Disclosure Information for the Wireless Telecommunications Services (FCC Form 602) filed by Texas RSA 9B1 Limited Partnership on February 26, 2007. New Cingular Wireless PCS (“NCW PCS”) holds a one percent general partnership interest in Texas RSA 9B1 Limited Partnership. *Id.* at Exhibit 1. NCW PCS is a wholly owned subsidiary of Cingular Wireless II, LLC, which has two members: AT&T Mobility LLC f/k/a Cingular Wireless LLC (“AT&T Mobility”) (57%) and New

The Department recognizes that in Texas RSA-9, “either Dobson or the business in which AT&T has a minority interest has the largest share and the other firm is a particularly strong and important competitor in all, or a large part, of the RSA.” Due to the combined market share throughout the RSA, the Department should treat the remainder of Texas RSA-9 as it has already decided to treat Texas RSA-9B2, and require AT&T to divest a portion of its remaining interests in the market. To allow AT&T to retain wireless interests it holds outright or through a controlling general partnership interest, while requiring it to divest minority, yet controlling, limited partnership interests is inconsistent and without justifiable basis.<sup>10</sup>

**II. AT&T Should Not be Prohibited From Reacquiring a Non-Controlling Interest in Mid-Tex.**

Although Mid-Tex supports the Department’s decision to condition merger approval on AT&T’s divestiture of its interest in Mid-Tex in Texas 9B2, Mid-Tex opposes the proposed condition that AT&T be barred from reacquiring any part of its interest in Mid-Tex during the proposed ten year term of the Final Judgment. The Department’s rationale for the divestiture requirement in Texas 9B2 is AT&T’s ability to control Mid-Tex through rights granted to it under the partnership agreement. If AT&T

---

Cingular Wireless Services, Inc. (“NCWS”) (43%). *Id.* NCWS is a direct wholly owned subsidiary of AT&T Mobility, which, in turn, is an indirect wholly owned subsidiary of AT&T. SWBW B-Band Development LLC (“SWBW”), a wholly owned subsidiary of NCW PCS, holds a 43.1449% limited partnership interest in Texas RSA 9B1 Limited Partnership. *Id.*

<sup>9</sup> As discussed above, the B Block cellular license is held by AT&T Mobility Texas, LLC, a wholly owned subsidiary of AT&T. By Mid-Tex’s estimation, Dobson and AT&T serve 90-95% of wireless subscribers in the partitioned Texas RSA 9B4 market.

<sup>10</sup> Conversely, if divestiture is not required in the remainder of Texas RSA-9, it should not be required in Texas RSA 9B2. The entire market should be treated consistently.

wishes to reinvest in Mid-Tex as a truly passive investor within the ten year effective period of the Final Judgment, it should not be prohibited from doing so. Such a prohibition will harm only Mid-Tex and not competition in Texas 9B2. Such reacquisition of divestiture assets should not be permitted, however, absent Department review of the amended limited partnership agreement, to enable the Department to ensure that AT&T has not regained rights to control core business decisions, obtain critical confidential competitive information, and share in profits at a rate significantly greater than the equity ownership share upon a sale of the partnership.<sup>11</sup>

---

<sup>11</sup> In addition, if market conditions change during the ten year effective period such that the Department is able to determine that AT&T control of Mid-Tex would no longer threaten competition, AT&T should then be permitted to acquire a controlling interest in Mid-Tex.

**III. Conclusion**

For the foregoing reasons, Mid-Tex respectfully requests that the Department require the additional divestitures discussed herein, and permit AT&T to reacquire a limited interest in Mid-Tex as discussed herein. Should the Department have any questions regarding the matters addressed herein, please communicate directly with the undersigned.

Respectfully submitted,

**MID-TEX CELLULAR, LTD.**



Michael R. Bennet  
Bennet & Bennet, PLLC  
4350 East West Highway  
Suite 201  
Bethesda, MD 20814  
202-371-1500

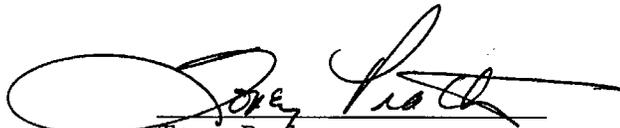
January 18, 2008

cc: Hillary Burchuk

**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 Comments of Mid-Tex Cellular Ltd. I have personal knowledge of the facts set forth therein, and believe them to be true and correct.

  
Toney Prather

1/11/08  
Date

U:\Docs2\Clients\Mid-Tex Cellular, LTD\AT&T Dobson  
TC\DOJcomments7.n16mb.doc