

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

In the Matter of
Applications to Assign Licenses from Alpine-
Michigan E, LLC, Debtor-in-Possession, Alpine-
Michigan F, LLC, Debtor-in-Possession, and RFB
Cellular, Inc., Debtor-in-Possession, to Dobson
Cellular Systems, Inc.
File Nos. 0001885064, 0001885147, and
0001882409
and
Notifications of Spectrum Manager Leases
between Alpine-Michigan E, LLC, Debtor-in-
Possession, Alpine-Michigan F, LLC, Debtor-in-
Possession, RFB Cellular, Inc., Debtor-in-
Possession, and Dobson Cellular Systems, Inc.
File Nos. 0001889423, 0001888451, and
0001889361

ORDER

Adopted: May 25, 2005

Released: May 25, 2005

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us applications ("Applications") seeking consent to assign Personal Communications Services ("PCS"), cellular, and ancillary microwave licenses ("Licenses") from Alpine-Michigan E, LLC, Debtor-in-Possession, Alpine-Michigan F, LLC, Debtor-in-Possession, and RFB Cellular, Inc., Debtor-in-Possession (the "Debtors"), to Dobson Cellular Systems, Inc. ("Dobson") (collectively with the Debtors, the "Applicants").<sup>1</sup> We also have before us notifications of spectrum manager leases ("Lease Notifications") entered into by the Debtors and Dobson.<sup>2</sup> As discussed below, we

<sup>1</sup> Application Assigning Licenses from Alpine-Michigan E, LLC, Debtor-in-Possession, to Dobson Cellular Systems, Inc., File No. 0001885064 (filed Oct. 1, 2004; amended Dec. 22, 2004); Application Assigning Licenses from Alpine-Michigan F, LLC, Debtor-in-Possession, to Dobson Cellular Systems, Inc., File No. 0001885147 (filed Oct. 1, 2004; amended Dec. 22, 2004); Application Assigning Licenses from RFB Cellular, Inc., Debtor-in-Possession, to Dobson Cellular Systems, Inc., File No. 0001882409 (filed Oct. 1, 2004; amended Dec. 22, 2004) ("Applications").

<sup>2</sup> Notification of Spectrum Manager Lease between Dobson Cellular Systems, Inc. and RFB Cellular, Inc., Debtor-in-Possession, File No. 0001889361 (filed Oct. 1, 2004, amended Dec. 29, 2004); Notification of Spectrum Manager Lease between Dobson Cellular Systems, Inc. and Alpine-Michigan E, LLC, Debtor-in-Possession, File No.

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conclude that the Request for Commission Action and Supplement to Petition to Deny (“Petition”)<sup>3</sup> filed by Alpine PCS, Inc. and Alpine Operating, LLC (“Alpine Petitioners”) is procedurally defective as filed against the Applications. We also conclude, pursuant to our review under Section 310(d) of the Communications Act of 1934, as amended (“Communications Act”), that approval of the Applications will serve the public interest, convenience, and necessity.<sup>4</sup> We therefore dismiss the Petition and grant the Applications.

## II. BACKGROUND

2. On August 5, 2003, Alpine-Michigan E, LLC, Alpine-Michigan F, LLC, and RFB Cellular, Inc. (collectively, “Alpine Licensees”), along with other licensees controlled by Robert F. Broz (“Broz”), filed voluntary petitions for bankruptcy relief under Chapter 11 of the Bankruptcy Code (“Chapter 11”),<sup>5</sup> in the United States Bankruptcy Court Central District of California, Northern Division (“Bankruptcy Court”).<sup>6</sup> Pursuant to the Commission’s rules,<sup>7</sup> involuntary applications were filed on September 4, 2003 to assign the Licenses from the Alpine Licensees to the Debtors.<sup>8</sup> The Commission granted these involuntary applications on October 1, 2003.<sup>9</sup> On January 5, 2004, the Bankruptcy Court ordered relief from the Chapter 11 automatic stay to permit the creditors of the Debtor to pursue the appointment of a receiver in state court.<sup>10</sup> Certain creditor banks filed a receivership action in the Circuit Court for the County of Otsego, Michigan (“Michigan Court”) and, on February 3, 2004, the Michigan Court entered an order approving the request of the lenders to appoint William B. Calcutt (“Calcutt”) as the receiver with respect to the stock or membership interests of the Debtors (as well as certain other related debtors) that were previously controlled by Broz.<sup>11</sup> The Debtor manually filed involuntary applications, dated March 3, 2004, reporting the transfer of control of the Licenses to Calcutt, as Receiver.<sup>12</sup> The Alpine Petitioners

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0001889423 (filed Oct. 1, 2004, amended Dec. 29, 2004); Notification of Spectrum Manager Lease between Dobson Cellular Systems, Inc. and Alpine-Michigan F, LLC, Debtor-in-Possession, File No. 0001889451 (filed Oct. 1, 2004, amended Dec. 29, 2004, Feb. 4, 2005) (“Lease Notifications”).

<sup>3</sup> Request for Commission Action and Supplement to Petition to Deny, filed by Alpine PCS, Inc. and Alpine Operating, LLC (Jan. 31, 2005) (“Petition”).

<sup>4</sup> 47 U.S.C. § 310(d).

<sup>5</sup> 11 U.S.C. §§ 1101 *et seq.*

<sup>6</sup> Application Assigning Licenses from Alpine–Michigan E, LLC to Alpine–Michigan E, LLC, Debtor-in-Possession, File No. 0001440082 (filed Sept. 4, 2003); Application Assigning Licenses from Alpine–Michigan F, LLC to Alpine–Michigan F, LLC, Debtor-in-Possession, File No. 0001440104 (filed Sept. 4, 2003); Application Assigning Licenses from RFB Cellular, Inc. to RFB Cellular, Inc., Debtor-in-Possession, File No. 0001440130 (filed Sept. 4, 2003) (“DIP Applications”).

<sup>7</sup> 47 C.F.R. §§ 1.948(c)(2), (g), 24.839(a)(4).

<sup>8</sup> *See* DIP Applications at 1.

<sup>9</sup> Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Report No. 1631 (rel. Oct. 8, 2003).

<sup>10</sup> In re: Robert F. Broz, No. ND 03-12189-RR (Bankr. Ct. Cent. D. Ca. Jan. 8, 2004); Motion to Strike at 3.

<sup>11</sup> *See* CoBank, ACB v. RFB Cellular, Inc., et al., Order Appointing Receiver, File No. 03-0334-CH, at 2 (Cir. Ct. Cty Otsego Feb. 3, 2004), *available at* Applications, Exhibit A, at 1; Petition at 2.

<sup>12</sup> *See* Application of Alpine–Michigan E, LLC, Debtor-in-Possession, File No. 0001653360 (filed Mar. 4, 2004, amended June 29, 2004); Application of Alpine–Michigan F, LLC, Debtor-in-Possession, File No. 0001653396 (filed Mar. 4, 2004); Application of RFB Cellular, Inc., Debtor-in-Possession, File No. 0001689365 (filed Mar. 19, 2004, amended Mar. 22, 2005) (collectively, “Applications”). One application has a filing date of March 19, 2004. *See* Application of RFB Cellular, Inc., Debtor-in-Possession, ULS File No. 0001689365 (filed Mar. 19, 2004). The

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filed a Petition to Deny and a Supplement to Petition to Deny, dated May 5, 2004 and May 18, 2004, respectively, requesting that the subject Applications transferring control of the Debtors from Broz to Calcutt be denied or designated for hearing.<sup>13</sup> Specifically, the May 5, 2004 Petition and May 18, 2004 Supplement raise questions regarding the Debtors' and Calcutt's qualifications to be a licensee.<sup>14</sup>

3. On September 22, 2004, the Debtors and Dobson entered into a spectrum manager leasing agreement, pursuant to section 1.9020 of the Commission's rules.<sup>15</sup> The parties filed Lease Notifications of these spectrum manager leases on October 1, 2004.<sup>16</sup> However, the spectrum lease agreement would only become effective upon Bankruptcy Court approval of the sale of the Debtors' assets to Dobson. The Applicants received Bankruptcy Court approval on December 16, 2004,<sup>17</sup> and they disclosed that they closed the sale of the tangible network assets on December 28, 2004.<sup>18</sup>

4. On October 1, 2004, the Applicants filed the subject Applications seeking consent to assign the Licenses from the Debtors to Dobson. The Applications appeared on public notice as accepted for filing, with a fourteen-day comment period, on December 8, 2004 and December 15, 2004.<sup>19</sup> On January 31, 2005, the Alpine Petitioners filed a Petition requesting that the Applications assigning Licenses from the Debtors to Dobson be denied.<sup>20</sup> Furthermore, they request that the Commission "enforce its rules and the Communications Act with respect to the unauthorized transfer of control" that purportedly occurred in connection with the implementation of the spectrum manager lease between the Debtors and Dobson.<sup>21</sup> Specifically, in regard to the Lease Notifications, the Alpine Petitioners request that "the [Commission] ought to investigate this transaction, notify the Bankruptcy Court that it is illegal and in violation of the Communications Act and the FCC's rules, and order Dobson to return Debtor's FCC-regulated PCS networks to the *status quo ante*."<sup>22</sup> The Alpine Petitioners allege that Dobson "has assumed unauthorized *de facto* control of Debtors' licenses under the guise of a spectrum manager lease agreement."<sup>23</sup> Furthermore, the Alpine Petitioners refer to and attach the May 5, 2004 Petition, which raises questions regarding the transferee's qualifications, filed against the application transferring control of the licenses

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filing date of the RFB Cellular DIP application is listed in ULS as March 19, 2004, because the RFB Cellular application was returned to the Debtors by Mellon Bank. See Applications to Transfer Control of Licenses from Robert F. Broz to William B. Calcutt, *Order*, DA 05-1316 (rel. May 13, 2005) ("May 13, 2005 Order").

<sup>13</sup> Petition to Deny, filed by Alpine PCS, Inc. and Alpine Operating, LLC, at 2 (May 5, 2004) ("May 5, 2004 Petition"); Supplement to Petition to Deny, filed by Alpine PCS, Inc. and Alpine Operating, LLC, at 1 (May 18, 2004) ("May 18, 2004 Supplement").

<sup>14</sup> See May 13, 2005 Order at 1.

<sup>15</sup> 47 C.F.R. § 1.9020.

<sup>16</sup> Petition at 3.

<sup>17</sup> Applications at Exhibit 4 (amended Dec. 22, 2004).

<sup>18</sup> Petition at 3-4.

<sup>19</sup> Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and De Facto Transfer Lease Applications Accepted for Filing, *Public Notice*, Report No. 2011 (rel. Dec. 8, 2004); Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and De Facto Transfer Lease Applications Accepted for Filing, *Public Notice*, Report No. 2017 (rel. Dec. 15, 2004) ("Accepted for Filing PNs").

<sup>20</sup> Petition at 2.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 5.

<sup>23</sup> *Id.* at 2.

from Broz to Calcutt.<sup>24</sup> In response, the Applicants filed a Joint Opposition, dated February 9, 2005,<sup>25</sup> and a letter, dated March 11, 2005.<sup>26</sup>

### III. PROCEDURAL ISSUES

5. The Applicants argue that the Petition should be dismissed as an untimely petition to deny.<sup>27</sup> As stated above, the Applications were placed on public notice on December 8, 2004 and December 15, 2004.<sup>28</sup> Pursuant to our streamlined approval process for license assignments and transfers of control, all petitions to deny had to be filed within fourteen days from the release of this public notice.<sup>29</sup> Thus, the public notices established that all petitions to deny the Applications had to be filed by December 22, 2004 and December 29, 2004, respectively.<sup>30</sup> The Commission routinely dismisses untimely petitions to deny.<sup>31</sup> Furthermore, the Alpine Petitioners did not provide any explanation as to why they were unable to file in a timely manner. We therefore dismiss the Petition as being improperly filed. Moreover, as discussed below, even if we were to ignore the procedural defect and address the Petition on the merits, the Alpine Petitioners fail to raise any arguments that would warrant denying the Applications.<sup>32</sup>

### IV. SECTION 310(d) APPLICATION

#### A. Public Interest Determination in Accordance with Section 310(d)

6. In considering an application for the transfer of control of licenses, the Commission must determine, pursuant to Section 310(d) of the Communications Act, whether the Applicants have demonstrated that the proposed transfer of control of licenses will serve the public interest, convenience,

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<sup>24</sup> *Id.* at 1, 3, Attachment A.

<sup>25</sup> Joint Opposition of RFB Cellular, Inc., Debtor-in-Possession, Alpine-Michigan E, LLC, Debtor-in-Possession, Alpine-Michigan F, LLC, Debtor-in-Possession, and Dobson Cellular Systems, Inc., filed by Cricket Licensee (Reauction), Inc. and Alpine-Fresno C, LLC (Feb. 9, 2004) (“Joint Opposition”).

<sup>26</sup> Letter from Lawrence J. Movshin and Christine M. Crowe, Attorneys for Dobson Cellular Systems, Inc., and John R. Wilner, Attorney for RFB Cellular, Inc., Debtor-in-Possession, Alpine-Michigan E, LLC, Debtor-in-Possession, and Alpine-Michigan F, LLC, Debtor-in-Possession, to John B. Muleta, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Mar. 11, 2005).

<sup>27</sup> Joint Opposition at 3 n.3. The Applicants further argue that the Petition fails to establish that Alpine has standing to challenge the assignment, pursuant to section 1.939(d) of the Commission’s rules. 47 C.F.R. § 1.939(d).

<sup>28</sup> *See* Accepted for Filing PNs at 1.

<sup>29</sup> *See* Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Report and Order and Further Notice and Proposed Rulemaking*, 18 FCC Rcd. 20,604, 20,683 ¶ 197 (2003).

<sup>30</sup> *See* Accepted for Filing PNs at 1, 3.

<sup>31</sup> *See, e.g.*, i2Way Request for Declaratory Ruling, *Memorandum Opinion and Order*, 18 FCC Rcd. 6293, 6298-99 ¶ 12 (Pol’y & Rules Br., Comm. Wireless Div., WTB 2004); Global Crossing LTD. (Debtor-in-Possession), Transferor, and GC Acquisition Limited, Transferee, IB Docket No. 02-286, *Order and Authorization*, 18 FCC Rcd. 20301, 20344 n.214 (IB, WTB, WCB 2003) (“*Global Crossing Order*”); Minnesota PCS Limited Partnership, *Order*, 17 FCC Rcd. 126, 127-28 ¶ 5 (Comm. Wireless Div., WTB 2002); Nextel License Holdings 4, Inc., *Order*, 17 FCC Rcd. 7028, 7033 ¶ 13 (Pol’y & Rules Br., Comm. Wireless Div., WTB 2002); Preferred Communications Systems, Inc., *Order*, 14 FCC Rcd. 20648, 20649 ¶ 3 (Pol’y & Rules Br., Comm. Wireless Div., WTB; Pol’y & Rules Br., Pub. Safety & Private Wireless Div., WTB 1999).

<sup>32</sup> Our discussion of the merits of the Petition and Supplement to Petition is in the alternative to, and does not constitute a waiver of, our procedural dismissal. *See BDPSC v. FCC*, 351 F.3d 1177, 1182-1183 (D.C. Cir. 2003).

and necessity.<sup>33</sup> The legal standards that govern our public interest analysis require that we weigh the potential public interest harms of the proposed transaction against the potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest.<sup>34</sup> In applying our public interest test, we must assess whether the proposed transaction complies with the specific provisions of the Communications Act, the Commission's rules, and federal communications policy.<sup>35</sup> Our public interest analysis considers the likely competitive effects of the proposed transaction and whether such transfers raise significant anticompetitive concerns.<sup>36</sup> In addition, we consider the efficiencies and other public interest benefits that are likely to result from the proposed transfer of control of the licenses.<sup>37</sup>

7. As a threshold matter, the Commission must determine whether the parties meet the requisite qualifications to hold and transfer licenses under Section 310(d) of the Act and the Commission's rules.<sup>38</sup> As a general rule, the Commission does not re-evaluate the qualifications of transferors unless issues related to basic qualifications have been designated for hearing by the Commission or have been

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<sup>33</sup> 47 U.S.C. § 310(d).

<sup>34</sup> See, e.g., Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd. 21522, 21543 ¶ 40 (2004) (“*Cingular-AT&T Wireless Order*”); Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in-Possession, to Subsidiaries of Cingular Wireless LLC, WT Docket 03-217, *Memorandum Opinion and Order*, 19 FCC Rcd. 2570, 2580-81 ¶ 24 (2004) (“*Cingular-NextWave Order*”); General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, MB Docket No. 03-124, *Memorandum Opinion and Order*, 19 FCC Rcd. 473, 483 ¶ 15 (2004) (“*GM-News Corp. Order*”); WorldCom, Inc. and Its Subsidiaries (Debtors-in-Possession), Transferor, and MCI, Inc., Transferee, WC Docket No. 02-215, *Memorandum Opinion and Order*, 18 FCC Rcd. 26484, 26492 ¶ 12 (2003) (“*WorldCom Order*”); VoiceStream Wireless Corporation, PowerTel, Inc., Transferors, and Deutsche Telekom AG, Transferee, IB Docket No. 00-187, *Memorandum Opinion and Order*, 16 FCC Rcd. 9779, 9789 ¶ 17 (2001) (“*Deutsche Telekom-VoiceStream Order*”); Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, CC Docket No. 98-184, *Memorandum Opinion and Order*, 15 FCC Rcd. 14032, 14046 ¶ 22 (2000) (“*Bell Atlantic-GTE Order*”); Applications to Assign Wireless Licenses from WorldCom Inc. (Debtor-in-Possession) to Nextel Spectrum Acquisition Corp., WT Docket No. 03-203, *Memorandum Opinion and Order*, 19 FCC Rcd. 6232, 6241 ¶ 23 (WTB, MB 2004) (“*Nextel-WorldCom Order*”); Global Crossing LTD. (Debtor-in-Possession), Transferor, and GC Acquisition Limited, Transferee, IB Docket No. 02-286, *Order and Authorization*, 18 FCC Rcd. 20301, 20315 ¶ 17 (IB, WTB, WCB 2003) (“*Global Crossing Order*”).

<sup>35</sup> See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21542-43 ¶ 40; *Cingular-NextWave Order*, 19 FCC Rcd. at 2581 ¶ 24; *GM-News Corp. Order*, 19 FCC Rcd. at 484 ¶ 16; *Nextel-WorldCom Order*, 19 FCC Rcd. at 6241 ¶ 23; Applications of TeleCorp PCS, Inc., Tritel, Inc., and Indus, Inc., WT Docket No. 00-130, *Memorandum Opinion and Order*, 16 FCC Rcd. 3716, 3721-22 ¶ 12 (WTB 2000) (“*TeleCorp-Tritel Order*”).

<sup>36</sup> See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21544-45 ¶ 42; *Cingular-NextWave Order*, 19 FCC Rcd. at 2581 ¶ 24; *WorldCom Order*, 18 FCC Rcd. at 26492 ¶ 12; *Nextel-WorldCom Order*, 19 FCC Rcd. at 6241 ¶ 23; *Global Crossing Order*, 18 FCC Rcd. at 20315-16 ¶ 17.

<sup>37</sup> See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21544 ¶¶ 40-41; *Cingular-NextWave Order*, 19 FCC Rcd. at 2581 ¶ 24; *WorldCom Order*, 18 FCC Rcd. at 26492-93 ¶ 12; *Nextel-WorldCom Order*, 19 FCC Rcd. at 6241-42 ¶ 23; *Global Crossing Order*, 18 FCC Rcd. at 20316 ¶ 17.

<sup>38</sup> See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21546 ¶ 44; *Cingular-NextWave Order*, 19 FCC Rcd. at 2581 ¶ 25; *GM-News Corp. Order*, 19 FCC Rcd. at 485 ¶ 18; *WorldCom Order*, 18 FCC Rcd. at 26493 at ¶ 13; *Deutsche Telekom-VoiceStream Order*, 16 FCC Rcd. at 9790 ¶ 19; *Nextel-WorldCom Order*, 19 FCC Rcd. at 6242 at ¶ 24; *Global Crossing Order*, 18 FCC Rcd. at 20316 ¶ 18; Northcoast Communications, LLC and Cellco Partnership d/b/a Verizon Wireless, WT Docket No. 03-19, *Memorandum Opinion and Order*, 18 FCC Rcd. 6490, 6492 ¶ 5 (CWD 2003) (“*Verizon-Northcoast Order*”).

sufficiently raised in petitions to warrant the designation of a hearing.<sup>39</sup> As a required part of our public interest analysis, however, Section 310(d) requires the Commission to consider whether the proposed assignee or transferee is qualified to hold Commission licenses.<sup>40</sup> When evaluating the qualifications of a potential licensee, the Commission previously has stated that it will review allegations of misconduct directly before it,<sup>41</sup> as well as conduct that takes place outside of the Commission.<sup>42</sup>

## B. Qualifications of Assignor and Assignee

8. As stated above, the Commission normally does not re-evaluate the qualifications of an assignor. Here, the qualifications of the assignor have been challenged in the Petition by the Alpine petitioners and in a related proceeding. The Alpine Petitioners attach the May 5, 2004 Petition filed against the applications to transfer control of the Debtor from Broz to Calcutt. We have addressed and disposed of the issues raised in the May 5, 2004 Petition in a prior order,<sup>43</sup> and accordingly these arguments are moot. In addition, the Alpine Petitioners allege that Calcutt does not have the authority to authorize the sale of the Licenses to Dobson, because the Commission had not ruled on the applications transferring control of the licenses held by the Debtors to Calcutt.<sup>44</sup> The May 13, 2005 Order found Calcutt to be qualified to be a Commission transferee and granted the applications transferring the licenses to Calcutt, as the court-appointed receiver. Thus, this argument likewise is moot.

9. In this proceeding, no issues have been raised with respect to the basic qualifications of Dobson, as assignee. Thus, we find no reason to reevaluate the qualifications of Dobson at this time.

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<sup>39</sup> See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21546 ¶ 44; *Cingular-NextWave Order*, 19 FCC Rcd. at 2581-82 ¶ 25; *GM-News Corp. Order*, 19 FCC Rcd. at 485 ¶ 18; *WorldCom Order*, 18 FCC Rcd. at 26493-94 ¶ 13; *Deutsche Telekom-VoiceStream Order*, 16 FCC Rcd. at 9790 ¶ 19; Applications of SBC Communications Inc. and BellSouth Corporation, WT Docket No. 00-81, *Memorandum Opinion and Order*, 15 FCC Rcd. 25459, 25465 ¶ 14 (2000) (“*SBC-BellSouth Order*”); *Nextel-WorldCom Order*, 19 FCC Rcd. at 6242 at ¶ 24; *Global Crossing Order* 18 FCC Rcd. at 20316 ¶ 18; *Verizon-Northcoast Order*, 18 FCC Rcd. at 6492 ¶ 5; *TeleCorp-Tritel Order*, 18 FCC Rcd. at 6492 ¶ 5. See also Stephen F. Sewell, *Assignments and Transfers of Control of FCC Authorizations under Section 310(d) of the Communications Act of 1934*, 43 FED. COMM. L.J. 277, 339-40 (1991). The policy of not approving assignments or transfers when issues regarding the licensee’s basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. See *id.*

<sup>40</sup> See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21546 ¶ 44; *Cingular-NextWave Order*, 19 FCC Rcd. at 2582 ¶ 25; *GM-News Corp. Order*, 19 FCC Rcd. at 485 ¶ 18; *WorldCom Order*, 18 FCC Rcd. at 26494 ¶ 13; *SBC-BellSouth Order*, 15 FCC Rcd. at 25465 ¶ 14; *Bell Atlantic-GTE Order*, 15 FCC Rcd. at 14227 ¶ 429; *Nextel-WorldCom Order*, 19 FCC Rcd. at 6242 at ¶ 24.

<sup>41</sup> See *WorldCom Order*, 18 FCC Rcd. at 26494 ¶ 13. The Commission will consider any violation of any provision of the Act, or of the Commission’s rules or policies, as predictive of an applicant’s future truthfulness and reliability and, thus, as having a bearing on an applicant’s character qualifications. *Bell Atlantic-GTE Order*, 15 FCC Rcd. at 14227-28, ¶ 429; Policy Regarding Character Qualifications In Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, Gen. Docket No. 81-500, *Report, Order and Policy Statement*, 102 F.C.C.2d 1179, 1209-10 ¶ 57 (1986), *modified*, 5 FCC Rcd. 3252 (1990), *recon. granted in part*, 6 FCC Rcd. 3448 (1991), *modified in part*, 7 FCC Rcd. 6564 (1992).

<sup>42</sup> See *WorldCom Order*, 18 FCC Rcd. at 26494 ¶ 13. The Commission previously has determined that in its review of character issues, it will consider forms of adjudicated, non-Commission related misconduct that include: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition. See, e.g., *Bell Atlantic-GTE Merger Order*, 15 FCC Rcd. at 14227-28 ¶ 429.

<sup>43</sup> May 15, 2005 Order at 7-12 ¶¶ 9-23. Although the Petition does not refer to those allegations raised in the May 18, 2004 Supplement, those allegations are also resolved in the May 15, 2005 Order.

<sup>44</sup> Petition at 11.

### C. Competitive Analysis

10. When evaluating the likely competitive effects and public interest benefits of a proposed transaction, the Commission performs a case-by-case review of the transaction in order to fulfill the Commission's statutory mandate to promote and enhance competition in the relevant market, ensure diversity of license holdings, accelerate private sector deployment of advanced services, and manage the spectrum in the public interest.<sup>45</sup> In this case, we analyze the effects of the transaction on the mobile telephony services product market. We define the mobile telephony services product market as consisting of all commercially available two-way, mobile voice and data services providing access to the public switched telephone network via terrestrial systems.<sup>46</sup> These services are currently provided by cellular, broadband PCS, and Specialized Mobile Radio licensees.<sup>47</sup>

11. In this transaction, Dobson proposes to acquire 10 MHz of PCS spectrum in the following Michigan Basic Trading Areas ("BTAs"): Traverse City (BTA446), Mt. Pleasant (BTA307), Alpena (BTA011), Escanaba (BTA132), Petoskey (BTA345), Saginaw-Bay City (BTA390), and Sault St. Marie (BTA409).<sup>48</sup> Dobson will also acquire 25 MHz of cellular spectrum in two markets: Michigan 4-Cheboygan (CMA475) and Michigan 2-Ager (CMA473).<sup>49</sup> Dobson currently holds spectrum in almost all of the counties comprising these markets, and is obtaining either 10 MHz or 35 MHz of spectrum in the counties in each of these markets. Post-transaction, Dobson will hold 65 MHz in the Alpena BTA, 35 MHz in the Escanaba BTA, 20 MHz in the Mt. Pleasant BTA, 60 MHz in the Petoskey BTA, between 10 MHz and 45 MHz in the Saginaw-Bay City BTA, 65 MHz in the Sault St. Marie BTA, and 50 MHz in the Traverse City BTA.<sup>50</sup>

12. The Applicants state that this transaction is in the public interest, because it will allow Dobson "to enhance and expand its mobile radio service throughout most of the State's northern and western regions, including many rural areas that it is not currently authorized to serve."<sup>51</sup> The Applicants further argue that, in the markets in which Dobson already holds spectrum, this transaction will allow Dobson "to

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<sup>45</sup> See *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21544 ¶ 41; *GM-News Corp. Order*, 19 FCC Rcd. at 483-84 ¶ 16; *Nextel-WorldCom Order*, 19 FCC Rcd. at 6244 ¶ 29; see also 2000 Biennial Regulatory Review Spectrum Aggregation Limits For Commercial Mobile Radio Services, *Report and Order*, 16 FCC Rcd. 22668, 22696 ¶ 55 (2001) (citing 47 U.S.C. §§ 301, 303, 309(j), 310(d)).

<sup>46</sup> See *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21553-64 ¶¶ 60-94; *Cingular-NextWave Order*, 19 FCC Rcd. at 2583 ¶ 29; CenturyTel Wireless, Inc. and CenturyTel, Inc., WT Docket No. 02-325, *Memorandum Opinion and Order*, 18 FCC Rcd. 1260, 1263 ¶ 10 (2003) ("*CenturyTel Order*"); Applications of Chadmoore Wireless Group, Inc. and Various Subsidiaries of Nextel Communications, Inc., WT Docket No. 01-193, *Memorandum Opinion and Order*, 16 FCC Rcd. 21,105, 21,110 ¶ 14 (2001) ("*Nextel-Chadmoore Order*"); see also 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, WT Docket No. 04-111, *Ninth Report*, 19 FCC Rcd. 20597, 20611-12 ¶¶ 31-33 (2004) ("*Ninth Annual CMRS Competition Report*").

<sup>47</sup> See *Ninth Annual CMRS Competition Report* 19 FCC Rcd. at 20611-12, 20632 ¶ 33, 86; *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21553 ¶ 60; *Cingular-NextWave Order*, 19 FCC Rcd. at 2584 ¶ 29; *CenturyTel Order*, 18 FCC Rcd. at 1263 ¶ 10; *Nextel-Chadmoore Order*, 16 FCC Rcd. at 21110 ¶ 14.

<sup>48</sup> See Applications, Exhibit 2, at 1.

<sup>49</sup> See *id.* All of the counties comprising these CMAs are contained within the markets in which Dobson is obtaining PCS spectrum, except for Alger County, Michigan. See Applications, Exhibit 3, at 2-3.

<sup>50</sup> See Applications, Exhibit 3, at 2-3. Dobson will be acquiring 25 MHz of cellular spectrum in Alger County, Michigan. See *id.* at 2.

<sup>51</sup> Applications, Exhibit 1, at 4. Dobson will be expanding its footprint into three counties, Delta, Schoolcraft, and Alger Counties. Applications, Exhibit 1, at 4 n.15.

further its deployment of advanced wireless services in rural areas of Michigan.”<sup>52</sup> In assessing the competitive situation, we did not find evidence of competitive harms for any relevant geographic market.<sup>53</sup> Therefore, on balance, we find that the proposed transaction is in the public interest as it will allow Dobson to expand its footprint into new counties and enhance its offerings in those areas in which it already provides service.

#### D. Spectrum Manager Lease Notifications

13. The Alpine Petitioners allege that the spectrum manager lease between Dobson and the Debtors violates the Communications Act and the Commission’s rules, and created an unauthorized transfer of control.<sup>54</sup> Specifically, they allege that the Applicants failed to report that (1) the Debtors’ physical assets and FCC-licensed radio stations were turned over to Dobson, (2) Dobson has unfettered use of all of Dobson’s station facilities and equipment, (3) the Debtors’ employees became Dobson employees, (4) and Dobson “assumed full control . . . over Debtors’ customers,” (5) Dobson has responsibility for the payment of expenses arising out of the licensed operation, and (6) all revenue generated by the networks has accrued to Dobson.<sup>55</sup> Ultimately, the Alpine Petitioners request that “the [Commission] ought to investigate this transaction, notify the Bankruptcy Court that it is illegal and in violation of the Communications Act and the FCC’s rules, and order Dobson to return Debtor’s FCC-regulated PCS networks to the *status quo ante*.”<sup>56</sup>

14. The Alpine Petitioners further state that Dobson introduced the spectrum manager leases as a way to expedite the transaction without having to wait for Commission approval.<sup>57</sup> Additionally, they state that the Applicants agreed that Dobson would buy the “non-regulated assets” for approximately \$23 million, reserving \$6 million for the Commission licenses.<sup>58</sup> Furthermore, the Alpine Petitioners argue that this unauthorized transfer of control led “a more valuable bid (by Verizon Wireless) for the Debtors’ assets to be rejected, thus directly harming Alpine (a creditor) and Debtors’ shareholders. . . .”<sup>59</sup> They further claim that the “Bankruptcy Court evidently relied on Dobson’s assertions that this type of transaction was lawful. . . .”<sup>60</sup> As stated below, we find that the Alpine Petitioners have failed to provide any evidence in support of their various allegations that the Debtors and Dobson have violated the Commission’s rules.

15. The Alpine Petitioners’ arguments fail to take into account the new standard explicitly adopted by the Commission in the Secondary Markets Proceeding for determining whether a licensee in a spectrum manager leasing arrangement continues to exercise both *de jure* and *de facto* control over the spectrum.<sup>61</sup>

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<sup>52</sup> *Id.* at 4.

<sup>53</sup> See *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21562-21563 ¶¶ 86-89.

<sup>54</sup> Petition at 2.

<sup>55</sup> *Id.* at 4.

<sup>56</sup> *Id.* at 5.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 6.

<sup>61</sup> See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd. 20,604 (2003), Erratum, 18 FCC Rcd 24817 (2003), *modified and recon. granted in part, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd. 19078 (2004); 47 C.F.R. §§ 1.9010, 1.9020.



Moreover, the Alpine Petitioners' arguments regarding the unauthorized transfer of control of the FCC-issued licenses are associated explicitly with the Lease Notifications filed by Debtors and Dobson. We find nothing in Petitioners' arguments that bars our action on the Applications in light of the remaining findings we make. However, we will further explore the claims made by the Alpine Petitioners with respect to the Lease Notifications, and are taking no action on the Lease Notifications at this time.

#### **E. Legal Authority of the Receiver**

16. The Alpine Petitioners also allege that Calcutt, as receiver, was not acknowledged to be the controlling entity with respect to the Debtors' Commission licenses when Calcutt entered into the agreement to lease the licenses to Dobson.<sup>62</sup> They further argue that, because the Commission has not acted on the applications transferring control of the Debtors from Broz to Calcutt, "the licenses remain as a matter of law, under the exclusive control of . . . Broz."<sup>63</sup> Thus, according to the Alpine Petitioners, Calcutt does not have the authority to file the applications.<sup>64</sup> The Alpine Petitioners, however, ignore the fact that the filing and processing of an involuntary application – such as the transfer of control of the Debtors from Broz to Calcutt – is intended to reflect an event that has already occurred pursuant to, for example, the order of a court with appropriate jurisdiction.

17. The Alpine Petitioners further state that the Commission cannot act on the assignment applications until it determines whether Calcutt has control over the Debtors' licenses.<sup>65</sup> The Commission made such a determination in its May 13, 2005 Order; therefore, this argument is moot. Furthermore, they allege that Calcutt and Dobson did not have the Commission's approval to "consummate the sale of Debtor[s'] assets on December 28, 2004."<sup>66</sup> We find that Broz is mistaken. The December 28, 2004 sale of assets consisted solely of facilities and other non-Commission regulated assets. The December 28, 2004 sale did not include the licensed spectrum, which is regulated by the Commission and the transfer of control or assignment of which must be approved by the Commission prior to the consummation of any transaction.<sup>67</sup>

#### **V. CONCLUSION**

18. We find that the Petition filed by the Alpine Petitioners is procedurally defective with respect to the Applications; however, even if it were appropriately filed, the Alpine Petitioners, as discussed in the May 13, 2005 Order, have failed to raise a substantial and material question of fact that a grant of the subject involuntary transfer application would not serve the public interest. Specifically, they have failed to raise any valid argument that the Debtors do not have the requisite qualifications to be a Commission licensee or assignor or that Calcutt, as receiver, lacked the requisite legal authority to enter into the transaction reflected in the Applications. Furthermore, we find the assignment of the Licenses to be in the public interest, convenience, and necessity.

#### **VI. ORDERING CLAUSES**

19. Accordingly, IT IS ORDERED that, pursuant to sections 1.933(d) and 1.939(a) of the Commission's Rules, 47 C.F.R. §§ 1.933(d), 1.939(a), the Request for Commission Action and

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<sup>62</sup> Petition at 11.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 11-12.

<sup>66</sup> *Id.* at 12.

<sup>67</sup> *See* 47 U.S.C. § 310(d).

Supplement to Petition to Deny filed by Alpine PCS, Inc. and Alpine Operating, LLC is DISMISSED with respect to the Applications.

20. IT IS FURTHER ORDERED that, pursuant to the authority granted in Sections 4(i), 309(j), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(j), 310(d), the Applications, dated October 1, 2004, seeking approval for the assignment of licenses from Alpine-Michigan E, LLC, Debtor-in-Possession, Alpine-Michigan F, LLC, Debtor-in-Possession, and RFB Cellular, Inc., Debtor-in-Possession, to Dobson Cellular Systems, Inc. are GRANTED, conditioned upon full payment of any required unjust enrichment payments on or before the consummation date, pursuant to section 1.2111 of the Commission's rules, 47 C.F.R. § 1.2111.

21. These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Katherine M. Harris  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau