

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

In the Matter of)	
)	
AT&T INC.)	FRN No. 0005193701
)	File No. EB-08-IH-1273
Parent Company of Licensees of Various)	NAL Acct. No. 200932080021
Authorizations in the Cellular Radiotelephone)	
and Other Wireless Services)	

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and AT&T Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation of AT&T Inc.’s compliance with the terms and conditions contained in *Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd 20295 (2007).

I. DEFINITIONS

2. For purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) “Adopting Order” means an order of the Bureau adopting this Consent Decree.
 - (c) “AT&T” means AT&T Inc. and includes all affiliates and subsidiaries thereof.
 - (d) “*AT&T-Dobson Merger Order*” means *Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd 20295 (2007).
 - (e) “Bureau” means the FCC’s Enforcement Bureau.
 - (f) “Civil Payment” means the amount of money that AT&T has paid or will pay to the United States to terminate DOJ’s investigation of AT&T’s compliance with the DOJ Stipulation and DOJ Final Judgment.
 - (g) “Commission” or “FCC” means the Federal Communications Commission.
 - (h) “Dobson” means Dobson Communications Corporation and includes all affiliates and subsidiaries thereof.
 - (i) “DOJ” means the United States Department of Justice.

- (j) “DOJ Stipulation” means *United States of America v. AT&T Inc. and Dobson Communications Corporation*, Preservation of Assets Stipulation and Order, Case No. 1:07-cv-01952-ESH (entered November 2, 2007).
- (k) “DOJ Final Judgment” means *United States of America v. AT&T Inc. and Dobson Communications Corporation*, Final Judgment, Case No. 1:07-cv-01952-ESH (entered March 20, 2008).
- (l) “DOJ Proposed Final Judgment” means *United States of America v. AT&T Inc. and Dobson Communications Corporation*, Proposed Final Judgment, Case No. 1:07-cv-01952-ESH (filed Oct. 30, 2007), containing the settlement arrangement entered into by AT&T, Dobson, and DOJ to address competitive concerns raised by DOJ regarding the merger of AT&T and Dobson.
- (m) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (n) “Investigation” means the Bureau’s investigation of AT&T’s compliance with the terms and conditions of the *AT&T-Dobson Merger Order*.
- (o) “Parties” means the Bureau and AT&T.
- (p) “Voluntary Contribution” means the amount of money that AT&T has paid or will pay to the United States Treasury to terminate the Investigation.

II. BACKGROUND

3. AT&T is a communications holding company incorporated in the State of Delaware and has its principal offices in Dallas, Texas. AT&T represents that it provides, among other things, wireless service to 74.9 million customers.¹ It holds spectrum licenses in all fifty states, the District of Columbia, Puerto Rico, and the United States Virgin Islands.²

4. On July 13, 2007, AT&T and Dobson filed applications seeking consent to the transfer of control of licenses held by subsidiaries of Dobson to AT&T.³ The Antitrust Division of DOJ reviewed the proposed merger of AT&T and Dobson and concluded that the transaction was likely to result in competitive harm in three geographic markets: Kentucky RSA-6, Madison (CMA448), Kentucky RSA-8, Mason (CMA450), and Oklahoma RSA-5, Roger Mills (CMA600). AT&T and Dobson subsequently entered into a settlement with DOJ designed to address DOJ’s concerns. Specifically, under the terms of the settlement, AT&T and Dobson agreed to divest certain cellular licenses and related operational and

¹ See AT&T, Corporate Profile, <http://www.att.com/gen/investor-relations?pid=5711> (last visited Jan. 7, 2009).

² See *id.*

³ For a complete list of applications, see *AT&T Inc. and Dobson Communications Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations Pleading Cycle Established*, Public Notice, 22 FCC Rcd 13659 (WTB 2007).

network assets (including certain employees, retail sites, and subscribers) in the three markets (“DOJ Divestiture Assets”).⁴

5. The Commission also conducted an analysis of the proposed merger. On November 19, 2007, the Commission also concluded that the merger would likely cause significant competitive harm in the same three markets about which DOJ had expressed concern, plus one additional market: Texas RSA-10, Navarro (CMA661).⁵ Accordingly, the Commission conditioned its approval of the AT&T-Dobson merger on divestiture of the DOJ Divestiture Assets and all spectrum associated therewith in the three markets plus the same categories of assets in the fourth market (collectively, “Divestiture Assets”).⁶

6. To accomplish the divestiture, the Commission required a Management Trustee to be appointed to serve as manager of the Divestiture Assets until these assets were sold to third party purchasers.⁷ During the period in which the Management Trustee was in day-to-day control of the Divestiture Assets, AT&T was to retain *de jure* control and have the sole power to market and dispose of the Divestiture Assets to third party buyers, subject to the Commission's regulatory powers and process with respect to license transfers and assignments and the terms of the agreements contained in the *DOJ Stipulation* and *DOJ Proposed Final Judgment*.⁸

7. The *AT&T-Dobson Merger Order* required that AT&T and the Management Trustee abide by the same provisions relating to the duties of the Management Trustee and the preservation of the Divestiture Assets as those contained in the *DOJ Stipulation*.⁹ Pursuant to the *DOJ Stipulation*, the DOJ Divestiture Assets were to be operated as part of “an independent, ongoing, economically viable and competitive business.”¹⁰ Specifically, the *DOJ Stipulation* required AT&T and the Management Trustee to take all reasonable efforts to preserve the confidentiality of any information necessary for the operation of the DOJ Divestiture Assets including books, records and other competitively sensitive marketing and pricing information.¹¹ Additionally, the *DOJ Stipulation* prohibited AT&T’s employees, except under specific circumstances, from receiving or having access to or using any confidential information

⁴ See *United States of America v. AT&T Inc. and Dobson Communications Corporation*, Complaint, Case No. 1:07-cv-01952-ESH (filed October 30, 2007); *United States of America v. AT&T Inc. and Dobson Communications Corporation*, Preservation of Assets Stipulation and Order, Case No. 1:07-cv-01952-ESH (entered November 2, 2007) (“*DOJ Stipulation*”); *United States of America v. AT&T Inc. and Dobson Communications Corporation*, Proposed Final Judgment, Case No. 1:07-cv-01952-ESH (filed October 30, 2007) (“*DOJ Proposed Final Judgment*”). The *DOJ Proposed Final Judgment* subsequently was entered by the court on March 20, 2008.

⁵ *Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd 20295, 20322-24, ¶¶ 52-57 (“*AT&T-Dobson Merger Order*”).

⁶ *Id.* at 20339, ¶¶ 96-97. Thus, the term “Divestiture Assets” as used herein refers to and encompasses the assets in all four markets, specifically including the DOJ Divestiture Assets, that the Commission required AT&T to divest.

⁷ *Id.* at 20338-39, ¶ 95.

⁸ *Id.* at 20339, ¶ 97.

⁹ *Id.*

¹⁰ *DOJ Stipulation* at ¶ VI. B.

¹¹ See *DOJ Stipulation* at ¶¶ V. E., VI. B.4.

pertaining to the DOJ Divestiture Assets.¹² Since the *DOJ Stipulation* imposed certain requirements and prohibitions on AT&T, and the *AT&T-Dobson Merger Order* specifically incorporated the terms and conditions contained in the *DOJ Stipulation*, it necessarily follows that any violation of the *DOJ Stipulation* would constitute a breach of the *AT&T-Dobson Merger Order* as it pertains to the Divestiture Assets.

8. In March 2008, DOJ and the FCC received information indicating that AT&T employees may have, among other things, accessed and used confidential and competitively-sensitive sales files, in violation of the *DOJ Stipulation* and, hence, the *AT&T-Dobson Merger Order*. The FCC immediately commenced the Investigation in cooperation with DOJ.

9. DOJ and AT&T have entered into a settlement (“DOJ Settlement”) to terminate DOJ’s investigation of AT&T’s compliance with the *DOJ Stipulation* and the *DOJ Final Judgment*.¹³ Pursuant to the DOJ Settlement, without any admission or determination of wrongdoing by AT&T and without any findings or adjudication with respect to any issue of fact or law, AT&T will make a Civil Payment in the total amount of \$2,050,000. The DOJ Settlement has been approved by the United States District Court for the District of Columbia.¹⁴

10. In order to terminate the Bureau’s Investigation, the Parties hereby enter into this Consent Decree, in consideration of the mutual commitments made herein.

II. TERMS OF AGREEMENT

11. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order. AT&T’s decision to enter into this Consent Decree is expressly contingent upon the Bureau’s issuance of an Adopting Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, modification or deletion.

12. **Jurisdiction.** AT&T agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

13. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other final order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission, or the Bureau pursuant to delegated authority, to exercise any rights and remedies attendant to the enforcement of a Commission order.

14. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to

¹² See *DOJ Stipulation* at ¶¶ VI. J., IV. K.

¹³ See *United States of America v. AT&T Inc. and Dobson Communications Corporation*, Stipulation for Entry of Order and Settlement Agreement, Case No. 1:07-cv-01952-ESH (filed January 14, 2009).

¹⁴ *United States of America v. AT&T Inc. and Dobson Communications Corporation*, Order on Petition by Plaintiff United States for an Order to Show Cause Why Defendant AT&T Inc. Should Not Be Found in Civil Contempt, Case No. 1:07-cv-01952-ESH (entered January 14, 2009).

terminate the Investigation. In consideration for the termination of said Investigation, AT&T agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in this Investigation through the Effective Date of the Consent Decree, or the existence of the Consent Decree, to institute, on its own motion, or to recommend to the Commission any new proceeding, formal or informal, or take any action on its own motion against AT&T concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not use the facts developed in this Investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute, on its own motion or in response to a third-party objection, any proceeding, formal or informal, or take any action, on its own motion or in response to a third-party objection, against AT&T with respect to AT&T's qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier or hold Commission authorizations.

15. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act against AT&T for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The adjudication of any such complaint will be based solely on the record developed in that proceeding, and neither the Commission nor the Bureau shall use any facts developed through the Investigation in any such proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by AT&T of the Act, the Commission's rules, or the Adopting Order.

16. **Voluntary Contribution.** AT&T agrees to make, within 30 calendar days of the Effective Date, a Voluntary Contribution to the United States Treasury in the total amount of \$2,380,000 to resolve the Commission's Investigation. If AT&T has, prior thereto, paid in full the Civil Payment pursuant to the DOJ Settlement, then the amount of AT&T's payment of the Voluntary Contribution shall be reduced by the amount of the Civil Payment. The Voluntary Contribution shall be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment shall include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order shall be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail shall be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer shall be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. AT&T shall also send electronic notification to Hillary.DeNigro@fcc.gov and Gary.Schonman@fcc.gov on the date said payment is made.

17. **Waivers.** AT&T waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Order adopting the Consent Decree without change, addition, modification, or deletion. AT&T shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither AT&T nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and AT&T and the Commission shall waive any statutory right to a trial *de novo* with respect to the issuance of the Adopting Order and shall consent to a judgment incorporating the terms of this Consent Decree. AT&T hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

18. **Subsequent Rule or Order.** The Parties agree that if any provision of this Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which AT&T does not expressly consent), that provision shall be superseded by such Commission rule or order.

19. **Invalidity.** The Parties agree that in the event that this Consent Decree is rendered invalid in any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

20. **Successors and Assigns.** AT&T agrees that the terms and conditions of this Consent Decree shall be binding on its successors and assigns.

21. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's rules and orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, AT&T does not admit or deny noncompliance, violation or liability for violating the Act, the Commission's rules or orders in connection with the matters that are the subject of this Consent Decree.

22. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

23. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

24. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

25. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

**FEDERAL COMMUNICATIONS COMMISSION
ENFORCEMENT BUREAU**

By: _____
Kris Anne Monteith, Chief

Date: _____

AT&T INC.

By: _____
Gary Phillips
General Attorney & Associate General Counsel

Date: _____