STATEMENT OF
COMMISSIONER MICHAEL J. COPPS
CONCURRING IN PART, DISSENTING IN PART

Re: Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-153.

In this proceeding I vote (in the closest of calls) to concur in the underlying transaction, and to dissent (no close call at all) from a significant portion of the competitive analysis the Commission employs to justify its decision. The changed analysis is so unwarranted that I came within an inch of dissenting to the entire item.

Since the Commission's short-sighted decision a few years ago to eliminate the CMRS spectrum aggregation limit, we have seen a wave of consolidation among wireless incumbents and a general drawing down on the storehouse of wireless competition that industry investment and wise FCC policy throughout the 1990s created. I continue to have concerns about ever-increasing concentration in the wireless sector. In this specific transaction, the Order allows an independent wireless company largely focused on serving rural America to be acquired by one of the two leading wireless companies – companies that are owned in whole or in part by the leading wireline telephone companies. In terms of intermodal competition, the order is silent, despite the reality that a parent company may be more than a little reluctant to employ its spectrum holdings to put competitive pressure on – or cannibalize existing revenue from – its wireline offerings. In terms of intramodal competition, I fear this concentration could have important effects on the availability of roaming services and the choices consumers have. The Order does condition the transaction on divestitures of business units in four markets in which, post-transaction, there would be fewer than three facilities-based providers. I would prefer our remedies to be more extensive, and I am convinced that our statutory obligation to ensure that mergers are in the public interest provides ample authority for the Commission to go further than it did. Nevertheless, I ultimately concur in today's decision because this transaction can serve the public interest by making upgraded networks, services and products available more quickly to many of Dobson's rural customers.

I must dissent, however, to the order's dramatic change to the initial spectrum screen used in our case-by-case competitive analysis of wireless transactions in the post-spectrum cap world. When we moved away from the spectrum cap's bright-line test, the Commission committed to employing a multi-factor, case-by-case analysis that insured, among other things, that the Commission took a hard look at markets in which a merged entity would have excessive spectrum holdings. Up until today's decision, the initial spectrum screen flagged for more detailed Commission review any market in which the merged entity would hold 70 megahertz, which represents approximately one-third of the existing 200 megahertz of spectrum suitable for mobile telephony purposes. This initial screen recognizes that spectrum is a publicly owned resource and is both a critical market input and significant barrier to entry. It is therefore not surprising that Congress gave the Commission very specific responsibilities to promote competition, the efficient and intensive use of spectrum, and diverse control of spectrum by a wide variety of entities. Today's decision appears to ignore those Congressional directives, however, and radically inflates the screen to 95 megahertz – in essence, finding that there is nothing *per se* problematic from a competitive standpoint with a single entity holding up to 94 megahertz of spectrum in a given market. This sets a truly dangerous precedent.

In the Commission's rush to increase the screen's denominator to 280 megahertz by including 80 megahertz of commercial 700 MHz spectrum, we utterly fail to address the reality that the majority of this spectrum is quite possibly years away from being a part of any real numerator. Competition and, more importantly, consumers are put at risk by this type of sloppy math. The order concludes that the 700 MHz spectrum is available on a nationwide basis and that a potential competitor can make a significant market impact by using this 700 MHz spectrum to discipline the mobile telephony market in "less than a year and a half." Unfortunately, this conclusion fails to overcome the troubling facts that (1) the auction and licensing process for the majority of the 700 MHz spectrum has yet to occur, and as a result, we have no

idea who will be the relevant licensees (the identity of which could be highly important to the maintenance of competition); (2) it is an assumption based on faith to conclude that all of this spectrum will be immediately useful for the purposes envisioned herein on February 17, 2009; and, (3) it is not entirely clear when equipment will be readily available for mobile telephony purposes in the 700 MHz band. Moreover, the Order ignores evidence in the record that even the 18 megahertz of 700 MHz spectrum previously auctioned and licensed currently is not able to impact the market. One of the petitioners, a current 700 MHz licensee, argues that its 700 MHz license does not create any near-term prospects to discipline the mobile telephony market, due largely to the current unavailability of 700 MHz equipment. Even the Applicants do not request the order's drastic departure from the existing spectrum screen. Finally, the encouragement of a competitive wireless environment must include factors other than simply juggling numerators and denominators; it must take into account the practical realities of the marketplace. The only clear formula I see at work here is a formula for more wireless industry consolidation.

The Commission should not pretend to examine markets in which a merged entity would have an excessive amount of mobile telephony spectrum, while it hides its head in the sand by prematurely bumping up the spectrum screen to preclude such review. I would have preferred that we wait and see how the mobile telephony market develops before we included the 700 MHz spectrum in our initial spectrum screen, and AWS and BRS in the competitive analysis. I am particularly troubled by the fact that the order breaks with precedent at a time when the Commission has pending before it several other significant wireless transactions in addition to petitions for reconsideration of the 700 MHz Second Report and Order raising the issue of whether some type of spectrum aggregation limits are necessary in the 700 MHz band in order to meet our Congressional directives. Frankly, this new methodology—if it goes uncorrected—does more to dissuade me from future approvals of transactions than it does to encourage me.

Finally, I also express concerns about AT&T's commitment to subject itself to an interim cap on the high-cost universal service support the company receives as a competitive eligible telecommunications carrier (CETC). As I explained in my partial dissent to the recent ALLTEL-Atlantis transaction and in my dissent to the Joint Board's recommendation (in May of this year) for a general CETC cap, piecemeal Universal Service Fund (USF) reform is actually counter-productive to the far more important goal of rationally implementing comprehensive reform, particularly when the Joint Board currently is working hard to provide the Commission a recommendation on broader reform.