

FCC 485
July 1999

Federal Communications Commission
Washington, D. C. 20554

Approved by OMB
3060-0411
Expires 06/30/2002
Avg. Est. Burden for
Respondent: 30 minutes

FORMAL COMPLAINT INTAKE FORM

1. Case Name: NTCH, Inc. v. Cellco Partnership dba Verizon Wireless
2. Complainant's Name, Address, Phone and Facsimile Number, e-mail address (if applicable): NTCH, Inc., 319 West Yakima Ave., Yakima, WA 98902, (949) 300-0030
3. Defendant's Name, Address, Phone and Facsimile Number (to the extent known), e-mail address (if applicable): Cellco Partnership dba Verizon Wireless, 1 Verizon Way, Basking Ridge, NJ 07920, (908) 559-7357
4. Complaint alleges violation of the following provisions of the Communications Act of 1934, as amended: Section 201 and 202 of the Act; Data Roaming Policy pursuant to Section 301 of the Act

Answer (Y)es, (N)o or N/A to the following:

- 5. Complaint conforms to the specifications prescribed by 47 C.F.R. Section 1.734.
- 6. Complaint complies with the pleading requirements of 47 C.F.R. Section 1.720.
- 7. Complaint conforms to the format and content requirements of 47 C.F.R. Section 1.721, including but not limited to:
 - a. Complaint contains a complete and fully supported statement of facts, including a detailed explanation of the manner in which the defendant is alleged to have violated the provisions of the Communications Act of 1934, as amended, or Commission rules or Commission orders.
 - b. Complaint includes proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the Complaint.
 - c. If damages are sought in this Complaint, the Complaint comports with the specifications prescribed by 47 C.F.R. Section 1.722(a), (c).
 - d. Complaint contains a certification that complies with 47 C.F.R. Section 1.721(a)(8), and thus includes, among other statements, a certification that: (1) complainant mailed a certified letter outlining the allegations that formed the basis of the complaint it anticipated filing with the Commission to the defendant carrier; (2) such letter invited a response within a reasonable period of time; and (3) complainant has, in good faith, discussed or attempted to discuss, the possibility of settlement with each defendant prior to the filing of the formal complaint.
 - e. A separate action has been filed with the Commission, any court, or other government agency that is based on the same claim or the same set of facts stated in the Complaint, in whole or in part. If yes, please explain:

 - f. Complaint seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding that is concurrently before the Commission. If yes, please explain:
Complainant requested that conditions be placed on Defendant's roaming charges in its acquisition of SpectrumCo licenses (Docket 12-4). The matter remains before the Commission.
 - g. Complaint includes an information designation that contains:
 - (1) A complete description of each document, data compilation, and tangible thing in the complainant's possession, custody, or control that is relevant to the facts alleged with particularity in the Complaint, including: (a) its date of preparation, mailing, transmittal, or other dissemination, (b) its author, preparer, or other source, (c) its recipient(s) or intended recipient(s), (d) its physical location, and (e) its relevance to the matters contained in the Complaint; and
 - (2) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the Complaint, along with a description of the facts within any such individual's knowledge; and
 - (3) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations, and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information.
 - h. Attached to the Complaint are copies of all affidavits, tariff provisions, written agreements, offers, counter-offers, denials, correspondence, documents, data compilations, and tangible things in the complainant's possession, custody, or control, upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the Complaint.
 - i. Certificate of service is attached.
 - j. Verification of payment of filing fee in accordance with 47 C.F.R. Section 1.1105(1)(c) is attached.
- 8. If complaint is filed pursuant to 47 U.S.C. Section 271(d)(6)(B), complainant indicates therein whether it is willing to waive the 90-day complaint resolution deadline.
- 9. All reported FCC orders relied upon have been properly cited in accordance with 47 C.F.R. Sections 1.14 and 1.720(i).

- Y 10. Copy of Complaint has been served by hand-delivery on either the named defendant or one of the defendant's registered agents for service of process in accordance with 47 C.F.R. Section 1.47 and 47 C.F.R. Section 1.735(d).
- Y 11. If more than ten pages, the Complaint contains a table of contents and summary, as specified in 47 C.F.R. Section 1.49(b) and (c).
- Y 12. The correct number of copies required by 47 C.F.R. Section 1.51(c), if applicable, and 47 C.F.R. Section 1.735(b) have been filed.
- Y 13. Complaint has been properly signed and verified in accordance with 47 C.F.R. Section 1.52 and 47 C.F.R. Section 1.734(c).
- N/A 14. If Complaint is by multiple complainants, it conforms with the requirements of 47 C.F.R. Section 1.723(a).
- N/A 15. If Complaint involves multiple grounds, it complies with the requirements of 47 C.F.R. Section 1.723(b).
- N/A 16. If Complaint is directed against multiple defendants, it complies with the requirements of 47 C.F.R. Section 1.735(a)-(b).
- Y 17. Complaint conforms to the specifications prescribed by 47 C.F.R. Section 1.49.

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

**PLEASE STAMP
AND RETURN
THIS COPY TO
FLETCHER, HEALD & HILDRETH**

In the Matter of)
)
NTCH, Inc. for and on behalf)
of its Operating Subsidiaries,)
)
Complainant,)
)
v.)
)
Cellco Partnership dba Verizon Wireless)
and its Operating Subsidiaries,)
)
Defendant.)

File No. EB-13-MD-006

AMENDED COMPLAINT

ACCEPTED/FILED

JUL - 2 2014

Federal Communications Commission
Office of the Secretary

Donald J. Evans
Jonathan R. Markman
FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street, Suite 1100
Arlington, VA 22209
703-812-0400
Attorneys for NTCH, Inc.

July 2, 2014

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

SUMMARY

The Complaint charges Verizon Wireless with violations of Section 201 and 202 of the Act and violation of the "commercially reasonable" standard set under Title III for data roaming services. The Complaint lays out the background of roaming regulation by the Commission, confirming that voice roaming is a common carrier service subject to Title II requirements. The Complaint also asserts that data roaming must be categorized as a common carrier service under both the definition of "interconnected service" used in Section 20.3 of the rules and by virtue of its nature as "telecommunications" under the Act: the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. The Complaint then details how Verizon Wireless's proffered roaming rates are both unjust and unreasonable in absolute terms, unreasonably discriminatory, and commercially unreasonable. The Complaint seeks appropriate declarations to that effect, a prescription of reasonable and non-discriminatory rates and terms, interim relief while the Complaint is pending, and a requirement that roaming rates charged to different carriers be made publicly available.

A redacted version of the Complaint is being submitted in order to preserve the confidentiality of negotiations between the parties.

TABLE OF CONTENTS

SUMMARY	i
TABLE OF CONTENTS.....	iii
AMENDED COMPLAINT	1
I. The Parties	1
II. Background	2
III. Market Dominance by VZW	4
IV. History of Negotiations Between The Parties.....	8
V. VZW's Roaming Rates Are Not Just and Reasonable	9
VI. VZW's Rates Are Unreasonably Discriminatory.....	15
VII. VZW's Broadband Roaming Rates Do Not Comply with CMRS Rules and	18
Are Not Offered on Commercially Reasonable Terms and Conditions	
VIII. Prayer for Relief	24
IX. Other Requirements of Section 1.721 of the Rules.....	26

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

AMENDED COMPLAINT

To: The Commission

Complainant NTCH, Inc. ("NTCH"), for and on behalf of its Operating Subsidiaries, hereby demonstrates as follows:

I. The Parties

1. Complainant NTCH is a Delaware corporation headquartered at 5594 S. Ft. Apache Rd., Suite 100, Las Vegas, NV 89148. NTCH's phone number is 702-475-5660. Its operating subsidiary PTA-FLA, Inc. provides mobile voice and data service in South Carolina headquartered at 2101 Suite J, Columbia, South Carolina 29201. (803-255-0004). Its operating subsidiary, NTCH-West Tenn, Inc., 1970 N. Highland Ave., Suite E, Jackson, Tennessee 38305 (731-928-2273), provides voice and data service in the Jackson, TN area. NTCH's other operating subsidiary, NTCH-WA, Inc., 319 W Yakima Avenue, Yakima WA 98902, (310-798-7110), has constructed a network and plans to launch mobile service in the state of Washington in the near future

2. Complainants' counsel is Donald J. Evans, 1300 North 17th Street, Suite 1100, Arlington, VA 22209, Phone 703-812-0430.

3. Defendant Cellco Partnership, a Delaware general partnership, and its operating subsidiaries do business under the name Verizon Wireless (VZW). VZW is headquartered at One Verizon Way, Basking Ridge, NJ 07920. Its phone number is 908-559-7357.

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

II. Background

4. The Commission made the provision of roaming services between cellular carriers mandatory from the very inception of the cellular service. *An Inquiry into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems, CC Docket No. 79-318, Report and Order, 86 FCC 2d 469 at ¶ 75 (1981)*. At that time, the cellular marketplace was expected to be characterized by broad diffusion of ownership among the various Regional Bell Operating Companies and Independent Telcos on the one hand and dozens, later hundreds, of non-wireline providers on the other. Because of the diffusion of ownership and the fact that no carrier could offer service directly to its own customers in the large parts of the country that were outside its own licensed territory, it was in the interest of all carriers to have mutually agreeable and reciprocal roaming arrangements that would permit their customers to roam when they were not in their home markets.

5. Over the next two decades, wireline-affiliated carriers argued that they should only be required to provide the minimal bare roaming required by the rules but not the automatic roaming that permitted roaming calls to be completed without the intervention of an operator. The FCC eventually issued a ruling that automatic roaming had to be permitted. *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, 22 FCC Rcd 15817 at ¶¶ 18-35 (2007)*.

6. The Commission also had to address the question of whether roaming had to be provided to competing carriers who were licensed in the same market as the carrier being roamed on. The Commission first excluded "home roaming" from the general

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

roaming obligation, *ibid*, but ultimately concluded that home roaming did have to be provided. *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 25 FCC Rcd 4181 at ¶ 2 (2010).

7. Along the way, the Commission formally declared roaming to be a common carrier service covered by the full panoply of rights and obligations that apply to telecom service offerings under the Communications Act, including Sections 201, 202, 203 and 208. *Interconnection and Resale Obligations, Second Report and Order*, 11 FCC Rcd 9462 at ¶ 10 (1996).

8. More recently, the Commission had to consider whether broadband services offered by cellular-type carriers were subject to the automatic and mandatory roaming rules which applied to voice services. Without ruling that broadband internet access was a telecommunications service, the Commission nevertheless imposed roaming obligations on carriers for such services under a regime similar, but not identical, to the regulations that apply to common carrier offerings. *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, Second Report and Order*, 26 FCC Rcd 5411 at ¶ 67 (2011).

9. The progression of roaming regulation has responded to an evolving industry paradigm where all that was initially needed was a basic roaming requirement to assure roaming among hundreds of independent cellular carriers, to one where two carriers dominate the market. Those two carriers, including the Defendant here, have been increasingly reluctant to make roaming available to other carriers on just,

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

reasonable, and not unreasonably discriminatory terms as their own licensed areas have expanded nationwide and their need for roaming partners has concomitantly diminished.

III. Market Dominance by VZW

10. In evaluating VZW's proposed acquisition of spectrum from SpectrumCo, T-Mobile and Leap in 2012, the Commission had to take a close look at VZW's position in the mobile communications marketplace.¹ The Commission found that as of the summer of 2012, Verizon would have an average of 107.5 MHz of spectrum nationwide, outstripping its other national competitors by a wide margin. *SpectrumCo Order* at ¶ 77. The Commission determined that this level of spectrum aggregation caused significant competitive concerns.

11. In the same vein, several parties, including NTCH, objected to the spectrum acquisition proposed in the SpectrumCo deal, pointing out that the acquisition would reduce the number of potential roaming partners, increase VZW's bargaining power in roaming negotiations, and reduce VZW's incentives to enter into reasonable roaming agreements. The Commission agreed that the "transfer of AWS-1 spectrum to Verizon Wireless would place it in the hands of a nationwide provider that has little incentive to provide the roaming capability necessary for competitors with less than national footprints." *SpectrumCo Order* at ¶ 84.

12. The Commission's finding in SpectrumCo is applicable here as well. VZW is by far the largest CDMA-based carrier in the US. Carriers like NTCH, which

¹ In the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCO LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses, Memorandum Opinion and Order and Declaratory Ruling, FCC 12-95, rel. August 23, 2012. ("SpectrumCo Order").

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

are also CDMA-based, must, of practical necessity, have roaming agreements with VZW. VZW's national footprint far exceeds that of any other CDMA carrier, which means that in many parts of the country there is no realistic alternative to VZW as a roaming partner for NTCH's customers. There is either VZW or nothing. To be sure, Sprint offers CDMA service on a national basis, but its coverage is not as broad or as deep as VZW's, causing calls to never connect and to be dropped more frequently. MetroPCS and Cricket, which provided a viable roaming option in some major markets, gave up as independent operators and merged with T-Mobile and AT&T, respectively. Both are in the process of converting their networks from CDMA to GSM and have become part of national carriers as opposed to competitors of those carriers. In addition, Allied, which operated a good portion of the former ALLTEL CDMA network in South Carolina, has been sold to AT&T. After a brief transition period, its CDMA network will also be converted to GSM. With the loss of Cricket, Allied and MetroPCS, VZW's domination of the CDMA market has become even more suffocating..

13. Sprint's network, though ostensibly national in scope, covers only about half the land area of the VZW network. (A copy of VZW's self-publicized network coverage area is attached as Exhibit B.) In NTCH's Tennessee and Washington markets, for example, Sprint's coverage is equal to or *less* far-reaching than NTCH's own coverage area, so it can provide no assistance to customers who need to roam outside NTCH's home coverage area. In South Carolina, not only is Sprint's coverage area limited (see attached Ex. C),² but calls originating on NTCH or Sprint's network are dropped when a

² Sprint's coverage area in South Carolina was calculated by NTCH to be about 15, 165 sq. miles in South Carolina, about 16,500 sq. miles less than VZW's.

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

customer needs to roam on the other network, and often the call cannot then be easily re-initiated.

14. In addition to reducing the number of roaming partners available for CDMA carriers, the absence of any major CDMA carriers other than VZW who are beginning to use AWS spectrum makes it extremely difficult to develop an industry-wide AWS handset ecosystem. Cricket and MetroPCS were the only large carriers using native CDMA-AWS handsets that could be readily used by other carriers, and they are now exiting the CDMA scene as independent carriers. This severely constrains the availability of AWS handsets to competing carriers. The likelihood that this particular peril would arise was raised in connection with VZW's SpectrumCo acquisition, but the Commission did not at that time appreciate the seriousness of the problem.

15. Because of the enormity and ubiquity of VZW's spectrum holdings, the lack of viable alternatives, and its lack of incentives to roam with other carriers on account of its own nationwide footprint, VZW has near complete dominance of the CDMA roaming market. It has every incentive to make its smaller competitors less attractive to customers by reducing those customers' ability to roam if they do not sign on as VZW customers. Were it not for Section 20.12 of the Commission's rules requiring it to provide roaming, VZW would have no reason to enter into roaming agreements at all and presumably would ordinarily not do so. An exception to this rule is the roaming agreements VZW has with small rural carriers under its LRA program. There it does cooperate with entities that are heavily subsidized to build out very expensive rural areas. In those remote areas where VZW actually needs a roaming partner and the roaming is reciprocal, the RLEC does not need VZW to set a low and reasonable roaming rate.

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

16. Imposing unjust and unreasonable rates is further demonstrated when VZW enters into arrangements with non-facilities based proxies called MVNOs, like Straight Talk, whereby the proxy can undercut the prices of facilities-based carriers in ways that would be transparently predatory and unlawful for the dominant carrier to do directly. This practice -- using a surrogate to undercut competition so as to eliminate such competition -- has come to be known as predatory pricing by proxy. In recent memory, MetroPCS and Cricket were both disruptive facilities-based carriers who drove prices lower by flat rate pricing. They grew their customer bases at a meaningful rate without using the deceptive, post-paid, subsidized phone model of the major carriers. MetroPCS's growth stopped when, among other things, it was undercut by predatory pricing by proxy, ultimately driving it to be bought out by T-Mobile. Cricket was likewise forced to be bought out by AT&T when its business model was destroyed by predatory pricing by proxy. Competition has suffered accordingly.

17. In today's cellular marketplace, it is not competitively feasible for a carrier to charge customers for roaming, as was originally the norm many years ago when roaming charges were in the 25 and 30 cent per minute range. To be competitive, a carrier must offer domestic roaming that is free to its customers, which means that the home carrier must absorb the cost of roaming charges imposed by other carriers. While Section 20.12(d) requires automatic roaming to be provided on reasonable and non-discriminatory terms and conditions, the Commission has nowhere provided guidance as to what constitutes reasonable and non-discriminatory terms. Offering roaming on terms which are financially unsustainable by other carriers under these circumstances has the

same practical effect as not offering roaming at all. This is how VZW has nullified the regulatory obligation to provide roaming.

IV. History of Negotiations Between the Parties

18. NTCH has an existing roaming agreement with VZW that dates back to May 16, 2006. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The toll rate bears

no relationship to rates charged in other contexts for voice service, which are often at or

near zero. NTCH's rate is so high as to make it financially impossible for any NTCH

customer to roam on VZW automatically because the cost to NTCH would be so

excessive. At the same time, NTCH must compete directly against Straight Talk, which

enjoys highly preferred rate structures from VZW and AT&T for roamer-equivalent

traffic which are not offered to other carriers for roaming service.

19. Accordingly, in the fall of 2011, NTCH initiated negotiation of a new roaming agreement with VZW. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

[REDACTED]

20. VZW and NTCH participated in FCC-requested mediation in early 2014. These negotiations, which began January, 2014 and continued through April 11, 2014, did not result in an agreement on any of the outstanding issues.

V. VZW's Roaming Rates Are Not Just and Reasonable

21. Section 201 of the Communications Act establishes what is essentially the First Commandment of telecommunications law:

All charges, practices, classifications, and regulations for and in connection with such communications service [offered by a common carrier], shall be

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

just and reasonable, and any such charge, practice, classification, or regulation that is unjust and unreasonable is hereby declared to be unlawful.

22. Roaming is a common carrier service. *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, 22 FCC Rcd 15817 at ¶ 1 (2007). "When a reasonable request is made by a technologically compatible CMRS carrier, a host CMRS carrier is obligated under Sections 332(c)(1)(B) and 201(a) to provide automatic roaming on a just, reasonable, and non-discriminatory basis to the requesting carrier outside of the requesting carrier's home market."³

23. A just and reasonable rate is one which permits a carrier to recover its costs plus a reasonable rate of return. *See, for example, General Communications, Inc. v. Alascom, Inc.*, 64 RR 2d 1137, 1140, 1144 (1988) ("The Communications Act does not specify a particular method for carriers to use to establish just, reasonable and non-discriminatory charges that do not create any undue preference. These statutory provisions have, however, been interpreted to require generally that carriers establish rates that are cost-related." "[The] obligation to set just and reasonable rates, under Section 201(b) of the Communications Act, is to target its rates to recover a reasonable rate of return.") *Id.*

24. Without access to VZW's internal cost information, information which can only be gained through discovery, NTCH cannot establish at this time the exact rate that VZW could reasonably charge for roaming. However, there are several benchmarks that

³ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 (2007) at 15826 ¶ 23.

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

indicate that VZW's rates are prima facie grossly excessive. First, in the *Transformation Order*,⁴ the Commission explained its decision to move to a bill and keep regime for intercarrier compensation by pointing to the negligible costs of incremental minutes of voice use:

For example, based on a hypothetical calculation of the cost of voice service on a next generation network providing a full range of voice, video, and data services, one study estimated that the incremental cost of delivering an average customer's total volume of voice service could be as low as \$0.000256 per month; on a per minute basis, this incremental cost would translate to a cost of \$0.0000001 per minute.⁵

While these costs were estimated in the context of landline networks, the incremental cost for a minute of cellular voice traffic is likely to be in a similar negligible range. This suggests that, as in the case of other intercarrier compensation, a straight bill and keep arrangement would be just and reasonable. Bill and keep would be a perfectly feasible arrangement for exchanging traffic, as is the case in many current roaming agreements between carriers with substantial pre-paid customer bases. The carriers using bill and keep could either exchange roaming traffic data directly between each other, without the mediation of a third party settlement agency to gain significant cost-savings, or do away with exchanging traffic data on a routine basis entirely. This permits lower prices to be offered to consumers by both carriers.

25. A second measure of the unreasonableness of VZW's rates may be deduced from the rates it charges its MVNO customers. There is a national MVNO

⁴ *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High Cost Universal Service Support, Developing a Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform -- Mobility Fund*, 26 FCC Rcd 17633 at ¶ 1 (2011).

⁵ See Letter from Henry Hultquist, Vice President – Federal Regulatory, AT&T Services, Inc. to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 01-92; WC Docket Nos. 99-68, 05-337, 07-135, at 4 (filed Oct. 13, 2008) (incremental cost of a soft switch is between 0.0010 and 0.00024).

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

(Straight Talk) whose service is offered through Walmart that offers unlimited voice, text and data for \$45.00 per month.⁶ This plan is only one that Straight Talk offers, but because it includes the mix of services a typical NTCH roamer would require (unlimited voice, text and data), and because it mirrors NTCH plans for which we have usage data, we have used that plan as a basis for comparison. Although neither VZW nor Straight Talk have publicly identified which underlying facilities-based carrier the wireless service is procured from, the coverage maps displayed by Straight Talk to depict its coverage areas often track VZW's coverage map precisely. (See, for example, this Straight Talk advertisement.⁷ The map shows a coverage area for Straight Talk that coincides with Verizon's and the designation in the left bottom corner indicates "CDMA-V" denoting a Verizon CDMA network.) (See Exhibit D) Verizon's own corresponding map, attached as Ex. B, shows almost identical coverage.⁸ We can conclude that VZW is one of the network service providers from whom Straight Talk procures service.

26. The rate Straight Talk is charging its own customers (\$45) must be greater than the rate it is being charged by VZW and the other network providers it relies on or it could not have remained in business for more than 8 years.⁹ And VZW is presumed to be charging Straight Talk an amount that is greater than its costs. Of course, if VZW is

⁶https://www.straighttalk.com/wps/portal/home/shop/serviceplans!/ut/p/b1/04_SjzQ2NbG0MDAyNNOP0I_KSyzLTE8syczPS8wB8aPM4l0MvHyNAx09jI18zE0NPAM8nIPdzf0MTByN9b30ozKTcvXKk3PIDPSMLU0NTA2MLA0tzCxNjlxM9MP1o_AaYGCOX4G_mxFUgQEO4GignxvImh3kqKglADmXWzk!/?s=y (See Ex. E).

⁷ http://i.walmartimages.com/i/iff/hmp/fusion/28702-51574_StraightTalk_Verizon_POV_806x335.jpg (See Ex. D).

⁸ <http://vzwmap.verizonwireless.com/dotcom/coveragelocator/?coveragetype=datacoverage4g> (See Ex. B).

⁹ When VZW produces the rates charged to Straight Talk in response to NTCH's discovery requests, the rates charged will not have to be deduced from public information but will be a definitively known quantity.

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

selling MVNO service to Straight Talk at a rate lower than its own costs, this would constitute an antitrust violation of the highest order which would require immediate referral of the matter to the Department of Justice. We have assumed for purposes of our analysis here (pending receipt of actual data from VZW) that VZW is not engaging in that particular conduct.

27. A review of Verizon's own financial statement¹⁰ shows that for its wireless segment it has an operating income percentage of 32%¹¹ and Sales, General and Administrative costs of 29%, yielding an overall cost of service equal to 39% (i.e., 100% minus 32% minus 29%) of its revenue. VZW's ARPU has been reliably reported to be \$55.57 in the 3rd quarter of 2013.¹² VZW's average cost of serving its own wireless customers would then be calculated to be \$21.67 (39% of \$55.57). Adding a 10% profit¹³ would yield \$23.83 per customer. Subject to review of more detailed cost and revenue information to be obtained from VZW through discovery, this indicates a probable amount that Verizon would be charging Straight Talk and should be charging NTCH for the same services.

28. To then derive the costs to VZW of the three components of Straight Talk's unlimited voice, text and data plan, we will apply assumptions about average customer usage of each service component based on known usage patterns from NTCH's own data for similar unlimited services. Typical monthly traffic per smartphone prepaid

¹⁰ See Exhibit R

¹¹ Percentages in this discussion have been rounded to nearest whole number.

¹² <http://www.fiercewireless.com/special-reports/grading-top-us-carriers-third-quarter-2013> Screen shot of pertinent chart attached as Exhibit F

¹³ Given that the FCC has previously established that 8.5% is a reasonable rate of return for rate-of-return carriers, a 10% rate of return here is generous. See, e.g. *In the Matter of Connect America Fund, High-Cost Universal Service Support*, 60 Comm. Reg. 178 (2014) at ¶¶ 106-07.

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

customer on NTCH's network is currently about 1700 minutes of voice, 585 texts, and 1.9 GBs of data. By setting the voice charge per minute equal to the per MB charge for data and leaving SMS to be handled on a bill and keep basis (as is often now the case in roaming agreements between carriers), we can estimate that VZW's charge to Straight Talk for this particular plan is a little under 2/3rds of a cent (\$.00662) per voice minute or MB of data. The sum of 1700 voice minutes x \$.00662 and 1900 MB of data x \$.00662 equals \$23.83, which we estimated to be VZW's cost of service plus a reasonable profit. The conclusion is that Straight Talk is likely, under the guise of being an MVNO, getting the same services being offered to NTCH at [REDACTED] for voice and [REDACTED] [REDACTED] for data being offered to NTCH. There is no reason why these rates charged by VZW to Straight Talk, which are presumed profitable to VZW, would not be at least as remunerative for roaming partners and provide the same return of cost plus a reasonable profit to VZW in that setting.

29. An MVNO arrangement is one where a firm buys wireless services from a facilities-based carrier with the intent of reselling it to the public. That is Straight Talk's arrangement. The reason why such arrangements are relevant here is that the processing of calls or data usage by MVNO customers is functionally very similar to the processing of roaming calls. While there are minor differences due to the way roaming calls are cleared and billed through a clearing house (in some but not all roaming agreements), the process basically involves allowing another entity's traffic to be carried over the facilities-based carrier's existing network without any of the costs to the facilities based carrier associated with advertising for, signing up, billing, providing customer service, or otherwise establishing or maintaining the relationship with an end user. A nationwide

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

MVNO arrangement is therefore effectively a nationwide roaming agreement with no home area and no benefit to the economy or competition that comes with building and operating a home network. The chief difference is that NTCH's customers would not be roaming in the core areas of NTCH's second tier operating cities where NTCH has existing networks, while an MVNO's customers would use more of these busier urban sites.

30. VZW's voice and SMS roaming rates may not justly and reasonably exceed its demonstrated costs, plus a reasonable return. Accordingly, this would justify either a bill and keep regime or, at most, a rate structure not exceeding what it charges MVNOs like Straight Talk.

VI. VZW's Rates are Unreasonably Discriminatory

31. Section 202 of the Act provides:

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communications service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any person, class of persons or locality to any undue or unreasonable prejudice or disadvantage.

32. In its 1994 Second Report and Order in *Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411 (1994), the Commission forbore at Paragraph 181 from requiring CMRS carriers to file their rates and terms with the Commission, as would normally be required by Section 211 of the Act.¹⁴ The Commission reached this

¹⁴ "Every carrier subject to this Act shall file with the Commission copies of all contracts, agreements, or arrangements with other carriers, or with common carriers not subject to the provisions of this Act, in relation to any traffic affected by the provisions of this Act to which it may be a party."

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

conclusion based on its view that, at that time, the cellular marketplace was sufficiently competitive to ensure that inter-carrier contracts would not be used to harm consumers. While that may have been the case in 1994, when there were still a number of RBOCs and hundreds of independent non-wireline and wireline carriers offering cellular service, it is no longer the case now. NTCH therefore filed a petition in November 2013 for the Commission to rescind forbearance with respect to Section 211, thus requiring all roaming rates to either be filed with the Commission or be publicly available at the carriers' web sites.

33. In the meantime, on information and belief, NTCH believes that VZW offers roaming rates and terms to other carriers (including roaming rates characterized as MVNOs) that are unreasonably discriminatory, i.e., that assess lower and more favorable rates than are being charged NTCH without any reasonable grounds for the differential treatment. It is important in this context to examine the entire relationship between the roaming parties, not just the nominal roaming rate, because there may be other valuable consideration being exchanged. Because MVNO arrangements like the Straight Talk contract are in essence nationwide roaming arrangements, but without the need for any "home" territory from which subscribers roam, these can serve as disguised surrogates for preferential roaming charges and must be included in any comparison of roaming rates charged by carriers. Of course, allowing preferential rates for ubiquitous roaming by MVNOs rather than just in areas not covered by a home carrier's own system will logically and necessarily disincent carriers from being facilities-based. The FCC's policy encourages the construction and operation of independent networks to act as facilities-based alternatives to the major carriers. The current VZW pricing policy, if let stand, will

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

inevitably result in the concentration of traffic on fewer and fewer networks to the ultimate detriment of competition.

34. Because such charges are normally concealed by non-disclosure agreements, carriers cannot know whether other similarly situated carriers are being charged different rates. However, in *Regulatory Treatment of Mobile Services, supra*, at Paragraph 120, the Commission expressly directed that such contracts would be available for review via the Section 208 complaint process if violations of section 201 or 202 were found in these contracts. Obviously, unless the contracts are made available for review, neither the Commission nor the public can determine whether violations of Section 202 are occurring. Accordingly, VZW's roaming and MVNO contracts must be made available to NTCH for review for the purposes of this complaint and ultimately made readily available to the public and the Commission to forestall unreasonable discrimination.

35. NTCH's Development Manager, Mr. Steinmann, happens to sit on the board of another carrier, and has therefore become aware in that capacity that the rates VZW charges other carriers for roaming are different from those charged to NTCH without any apparent basis for a distinction. These rate variations are also borne out by, for example, the Ex Parte Comment submitted by the Rural Carrier Association in WT Docket No. 05-265 on November 12, 2010, providing examples of widely varying roaming rates being offered to RCA member companies.¹⁵

¹⁵ See Exhibit O.

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

36. Examination of the rates offered to other carriers will likely reveal similar differences in rates. The fact that VZW requires these rates to be kept confidential should not be permitted to cloak the unreasonable discrimination which is taking place.

VII. VZW's Broadband Roaming Rates are Subject to Common Carrier Regulation, and Are Not Offered on Commercially Reasonable Terms and Conditions

37. The Commission's Second Report and Order in *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, 26 FCC Rcd 5411 (2011) (*Data Roaming Order*), addressed the question of how and whether the provision of data services by carriers would be subject to the regulatory regime applicable to voice roaming. *Data Roaming Order* at ¶¶ 37-55. The Commission there determined that data roaming would be subject to a hybrid regulatory regime which is similar but not identical to the regime applicable to Title II offerings.

38. The data service offered by VZW to its customers -- the kind of data service which NTCH's customers would be seeking to take on a roaming basis -- is actually a telecommunications service which is subject to Title II of the Act and thus to complaints filed under Section 208. NTCH asks the Commission to formally confirm here that data services offered by common carriers to their customers are indeed common carrier offerings subject to Title II of the Act.

39. In 1994, the Commission added Section 20.3 to its Rules in accordance with the Budget Act of 1993's requirement that it adopt a definition of a CRMS as it relates to mobile wireless services. *Second Report and Order*, 9 FCC Rcd 1411 (1994

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

Order). In doing so, it determined that CMRS was any mobile service provided for profit, which is interconnected, and which is available to the public. 47 C.F.R. 20.3 It further defined “interconnected” to mean any service which is “interconnected with the public switched network, or interconnected...through an interconnected service provider, that gives subscribers the capability to communicate to or receive communication from all other users on the public switched network.” *Id.* (Emphasis added)

40. In the *1994 Order*, the Commission looked to the legislative history surrounding Congress’s definition:

The purpose underlying the congressional approach...is to ensure that a mobile service that gives its customers the capability to communicate and receive communication from other users of the public switched network should be treated as a common carriage offering

(*1994 Order* at ¶ 54). The test the Commission set out then was clearly a functional one from the perspective of the end-user: can a subscriber use the service in question to communicate with someone through the public switched network (“PSTN”)? The focus is explicitly not one of the technology or means used; in fact, the Commission noted that subscribers don’t care how their message or voice is conveyed or what has to happen to get it there, only whether they can get their message to its intended recipient. *Id.*

41. In a 2007 Declaratory Ruling, the Commission held that mobile data was not a CMRS service. *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, 22 FCC Rcd 5901 at ¶ 45 (2007). It did not recognize the implications VOIP applications and characterized the apps themselves as the “interconnected service” under the 20.3 definition, not the data service on which the

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

information is carried. *Id.* This result was reaffirmed in passing in a footnote to the 2011 Order. *2011 Order* at fn. 11.

42. This means that in 2007, when the Commission last seriously considered whether mobile data services are a CMRS, neither the iOS (iPhone¹⁶) nor the Android operating systems¹⁷ had yet been announced, and Skype, Viber, and other mobile VOIP apps¹⁸, now used by hundreds of millions worldwide¹⁹, were still years away. The modern smartphone user can now quickly and easily connect to the public switch network using her data plan, which falls neatly within the definition of “interconnected” under 20.3. Smartphones using NTCH’s networks can, and routinely do, connect to the Public Switched Network using these sorts of applications. The Commission, like everyone else, is bound to heed its own rules. Because Section 20.3 explicitly provides that “interconnection” to the PSTN may be accomplished via a third party service provider that is itself connected to the PSTN, the use of a third party data service like Skype to accomplish the interconnection renders the underlying data service CMRS. And CMRS providers, must, by law, be treated as common carriers:

A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this Act.

47 U.S.C., Section 332(c)(1). While the technology might have been difficult to imagine in 1993, this situation is the exact situation that the Commission recognized in its *1994*

¹⁶ <http://arstechnica.com/apple/2012/06/who-needs-an-app-store-five-years-of-iphone/> (See Ex. G).

¹⁷ http://www.openhandsetalliance.com/press_110507.html (See Ex. H).

¹⁸ See: Skype (<http://www.skype.com/en/what-is-skype/>) (See Ex. I); ViberOut (<https://account.viber.com/>) (See Ex. J); Nimbuzz Out (<http://www.nimbuzzout.com/en>) (See Ex. K).

¹⁹ <http://blogs.skype.com/2013/07/01/skype-passes-100m-android-installs-and-launches-redesigned-4-0/> (See Ex. L); <http://www.bloomberg.com/news/2014-03-05/rakuten-ceo-aims-for-2-billion-users-with-viber-message-app-deal.html> (See Ex. M).

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

Order must be treated as common carriage under the CMRS rules. The Commission should recognize that reality, and declare mobile data services which may be employed to provide voice connections to the PSTN to be CMRS.

38. Alternatively, the Commission noted arguments in the *Data Roaming Order* at Para. 70 that the provision of data roaming must be deemed a common carrier service because "during data roaming the host carrier is providing pure data transmission to another carrier." The Commission at that time elected not to decide whether data roaming services provisioned in this manner are or are not telecommunications services. *Id.* This view of data roaming therefore remains an open issue at the Commission level which in the context of this complaint is now ripe for decision. If the Commission does not find data service to be interconnected in the sense meant by Section 20.3 of the rules, NTCH urges the Commission now to find that data roaming is a pure transmission service and therefore is a telecommunications service subject to Title II of the Act.

39. In the meantime, however, the Commission has elected to regulate data roaming under its Title III authority rather than its Title II authority. As permitted by the Commission in the *Data Roaming Order*, parties may seek resolution of data roaming disputes in a single proceeding involving both voice and data.

40. The standard for violations of the *Data Roaming Order* is whether the rates and terms offered by the provider are commercially reasonable, considering the totality of the circumstances. *Data Roaming Order* at ¶ 42. It is unclear how or whether the "just and reasonable standard" applicable to Title II complaints differs from the "commercially reasonable" standard applicable to Title III complaints, but since VZW's

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

proffered data rates and terms are neither just and reasonable *nor* commercially reasonable, the distinction does not matter.

41. At the outset, it should be made clear that NTCH requests only the roaming data services contemplated by the *Data Roaming Order*, *i.e.*, NTCH's operating subsidiaries are or will be facilities-based providers. They seek data roaming service from VZW only where their service is technically compatible with VZW's, where roaming will not require any changes to VZW's network to accommodate the data service requested by NTCH, and they seek only data roaming service that is or will be comparable to their service to their own subscribers. In other words, NTCH's data roaming arrangement with VZW would require and presume technically compatible networks. NTCH expects its data roaming capabilities to evolve and be implemented over time, so current data roaming compatibility would be for 3G operations until LTE network are deployed by both carriers. NTCH would also accept reasonable measures designed to prioritize VZW's service to its own subscribers in the event of network congestion, and vice versa.

42. The rates offered by VZW for data roaming are commercially unreasonable. VZW currently offers data service to the public at a rate as low as \$6.67 per GB per month.²⁰ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁰ See, for example, <http://www.verizonwireless.com/wcms/consumer/shop/prepaid.html> on VZW's website (See Ex. N). There VZW offers prepaid customers three additional GBs of data for an additional \$20 per month or \$6.67 per GB.

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

[REDACTED]

[REDACTED] Given the lower cost of providing data on a wholesale basis, the rate VZW charges high volume prepaid users or wholesalers is presumably even less than \$6.67 per GB. On its face, this huge disparity establishes the commercial unreasonableness of the proffered roaming rates. Without a doubt, the roaming rate must be exceeding costs by an unconscionable margin if it is [REDACTED] times higher than the (presumably profitable) rate Verizon charges its own consumers.

43. Attached hereto as Exhibit P is an analysis of data roaming costs recently submitted to the Commission in the context of AT&T's proposed acquisition of Leap. The commenter (Youghioghney Communications, LLC, whose principal is an experienced wireless provider who recently provided service to over 350,000 customers) calculated the cost to his company of delivering a GB of wireless data. That figure came out to \$2.20 to \$2.40 a GB -- a cost which is obviously considerably higher than VZW's own cost of delivering the same GB on a vastly more macro scale. (VZW's fixed costs would be spread over hundreds of millions of calls and data exchanges rather than the relatively few involved in Youghioghney's operation.) Youghioghney also offered other metrics for determining the cost to a wireless carrier of delivering data, and every metric came in, as one would expect, near or below the \$6.67/GB retail rate offered by VZW to its customers. This analysis provides further support for the proposition that the data rates offered by VZW, which are almost [REDACTED] times its estimated cost, exceed its costs by such a wide margin as to be commercially unreasonable.

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

44. The *Data Roaming Order* identifies at Para. 86 factors the Commission will look at in resolving data disputes. Foremost among these in this case is this criterion: whether the terms and conditions offered by the host provider are so unreasonable as to be tantamount to a refusal to offer a data roaming arrangement. This is clearly the case here. In addition, NTCH is not seeking to roam where it has existing licenses (other than incidentally) or where there is technical incompatibility with VZW's data interface. In addition, NTCH has demonstrated above that VZW's high roaming rates, especially when coupled with the dramatically lower roaming rates offered to Straight Talk, have had the anti-competitive effect of contributing to the demise of Cricket and MetroPCS as independent carriers and have impaired NTCH's own ability to compete as a facilities-based carrier. The anti-competitive intent and effect of these high rates must be considered along with the nearly [REDACTED] profit margin inherent in the rates offered in assessing the "commercial reasonableness" of the rates.

VIII. Prayer for Relief

The premises considered, NTCH seeks the following relief:

45. Expedient action on this complaint, as provided by Para. 77 of the *Data Roaming Order*.

46. A declaration that VZW's proffered roaming rate of [REDACTED] is unjust and unreasonable.

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

47. A prescription of bill and keep for voice roaming or a rate that does not exceed \$.01/minute for voice traffic inclusive of toll, \$6.67 per GB of data, and bill and keep for SMS (assuming that no clearinghouse is involved).

48. A Commission Order classifying mobile data services as “Interconnected Services” under Section 20.3 of the Rules, and therefore subject to the common carrier rules of Title II, or, alternatively, finding that data roaming is pure data transmission and therefore constitutes a telecommunications service subject to Title II of the Act.

49. A finding that the data roaming rates offered by VZW are not commercially reasonable.

50. While this case is pending, per Paragraph 80 of the *Data Roaming Order*, an interim order directing VZW to charge no more for data roaming than \$6.67 per GB or some other reasonable level determined by the Commission.

51. While this case is pending, an order directing VZW to charge NTCH no more for voice, SMS, text and long distance than it charges its most favored MVNOs or roaming partners, absent a showing that the difference is justified by a difference in cost or some other factor.

52. Require cooperation between VZW and NTCH to facilitate seamless roaming hand-offs where technically feasible.

53. A requirement that VZW make its roaming rates publicly available.

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

54. An order forbidding VZW from charging NTCH any more for roaming or imposing more onerous conditions than it imposes on other carriers without a valid and clearly stated justification and without submitting any more favorable rates for other carriers to the Wireline Competition Bureau for review and approval.

IX. Other Requirements of Section 1.721 of the Rules

55. Complainant certifies that it discussed with Defendant the possibility of settling prior to the filing of this complaint. Complainant sent Defendant a certified letter and subsequent emails to Defendant's counsel outlining the allegations that form the basis for this complaint and inviting a response within a reasonable period of time. After the delivery of the original letter, the parties explored various settlement options, none of which proved fruitful. Having discussed and negotiated this matter over the course of nearly two years without resolution, complainant concluded that further discussion would be futile and FCC intervention is necessary.

56. No other action based on the claims raised here has been filed with the Commission or any other court or government agency. In connection with VZW's purchase of SpectrumCo and other licenses (WT Docket No. 12-4), NTCH requested that the Commission impose, among other things, reasonable limits on the rates and terms of roaming that Verizon could offer as a condition of approval of the transaction. The Commission did impose certain roaming conditions in connection with that transaction, but none which resolve or eliminate the fundamental violations of Sections 201 and 202 that are alleged here. The Commission is currently considering a Petition for

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

Reconsideration which NTCH filed with respect to that transaction, but the Petition does not directly relate to the failure to impose roaming conditions.

(i) The NTCH individual having first-hand knowledge of the facts contained herein is Eric Steinmann, NTCH's Development Manager. Mr. Steinmann's business address is c/o Cleartalk, 2101 Main St., Suite J, Columbia, SC 29201. Adilia Aguilar, 319 W. Yakima Ave, Yakima, WA 98902 was involved in several of the negotiation sessions, as was the undersigned, Donald J. Evans, 1300 N 17th St., Arlington, VA 22209. Paul Posner, 1006 Maufrais St., Austin, TX 78703, (210) 387-3146, has information about the costs of delivering a roaming data product. Charles Sizemore, 2101 Suite J, Columbia, South Carolina 29201. (803-255-0004), has information about typical usage volumes for NTCH's pre-paid customers. In addition, Martyn Roetter of MFR Consulting, 144 Beacon Street, Boston, MA 02116-1449, (617) 820-5205 has information about the reasonableness of the rates offered by VZW.

(ii) The individual at VZW having most information about the roaming rates offered to NTCH would be Michael Pocher or his successor, Rob Strobel, an Assistant General Counsel at Verizon Wireless, VC 52S434, One Verizon Way, Basking Ridge, NJ 07920. Messers. Steinmann, Pocher and Strobel have personal knowledge of the roaming negotiations. Other persons within Verizon have information about the basis for the rates offered.

(iii) Pertinent documents in the possession of complainant are the correspondence between the parties on roaming terms, the current roaming agreement between the parties, and publicly advertised rates by the Straight Talk and VZW, and the

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

other documents attached hereto as exhibits. The undersigned counsel has copies of each such document. A sheet listing these documents with pertinent information regarding each is attached as Revised Exhibit A to the Information Designation. In addition to these documents, information about the state of competition in the wireless industry is available from Commission orders, esp. *Sixteenth Report, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Wireless Services*, 28 FCC Rcd 3700 at ¶¶ 59-72 (2013) (note Chart 1, which shows that the industry has been “Highly Concentrated”, and becoming more concentrated, since 2004); *Fifteenth Report, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Wireless Services*, 26 FCC Rcd 9664 ¶¶ 40-54 (2011).

(iv) Because complainant is a small company, the individuals having knowledge of the situation are very limited and known to undersigned counsel. Counsel conducted the information search and determined which individuals had relevant knowledge.

(v) Copies of documents in complainant's possession or control and upon which complainant intends to rely are attached. Evidence regarding Defendant's roaming arrangements with other carriers and its costs of providing service are within Defendant's possession and control and will be demanded in the course of discovery.

(vi) A Formal Complaint Intake Form was attached to Complainant's original Complaint.

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

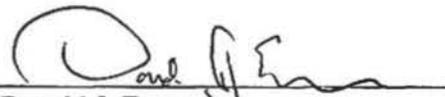
(vii) A declaration under penalty of perjury describing the payment of the pertinent fee and providing complainant's FRN (0005575048) is attached.

(viii) A certificate of service is attached.

(ix) Proposed Findings of Fact and Conclusions of Law are attached.

(x) A declaration addressing the basis for knowledge about matters based on information and belief is attached

NTCH, Inc.

By: 

Donald J. Evans
Jonathan R. Markman

Its Attorneys

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street, Suite 1100
Arlington, VA 22209
703-812-0400

July 2, 2014

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of)	
)	
NTCH, Inc. for and on behalf)	
of its Operating Subsidiaries,)	File No. EB-13-MD-006
)	
Complainant,)	
)	
v.)	
)	
Cellco Partnership dba Verizon Wireless)	
and its Operating Subsidiaries,)	
)	
Defendant.)	
)	

Interrogatories of NTCH, Inc.

NTCH, Inc. (NTCH), by its attorneys and pursuant to Section 1.729(a) of the Commission's rules, hereby propounds this first set of interrogatories to CellCo Partnership dba Verizon Wireless (VZW).

The information to be elicited is within the knowledge of VZW and is not otherwise public. Roaming rates are not required by the Commission to be filed with the Commission or posted publicly (pending action on NTCH's Petition for Rescission of Forbearance), and roaming agreements are typically subject to non-disclosure agreements between the parties. Hence, neither the FCC nor NTCH can know with certainty the terms and conditions of roaming rates offered to different carriers in order to make an assessment of whether the non-discrimination obligations of Section 202 of the Act are being violated. VZW alone has that information.

In addition, the calculus of what constitutes a reasonable rate can be approached from the standpoint of the costs to the carrier of providing the service or the rates being offered by the carrier to others purchasing comparable services. The interrogatories therefore seek information on VZW's costs (which are known only to VZW) and the rates (and assumptions underlying the rates) that are being offered to others. While some comparable rates are publicly available, even the most public rates to individuals or families are frequently opaque as to the rate elements involved, and rates to MVNO's, other wholesalers, enterprise customers, etc. are not publicly known at all. Ascertaining these rates would provide a very useful and necessary measuring stick of whether the rates offered to NTCH for comparable services are just and reasonable or commercially reasonable, and also whether the rates offered to NTCH are unreasonably discriminatory.

DEFINITIONS AND INSTRUCTIONS

1. "VZW" means Defendant Cellco Partnership dba Verizon Wireless, its operating subsidiaries and affiliates, and its attorneys, representatives, agents or anyone acting on behalf of said party.
2. "Identify" or "identification" when used in reference to a person means to state his or her full name, present or last known address, present or last known telephone number and present or last known position and business affiliation.
3. "Identify" or "state," when used in reference to any fact, act, occurrence, transaction, statement, communication, or other matter, means to describe and identify with particularity the facts constituting such matter.
4. "Identify" when used in reference to documents means to identify the documents by each author, sender, addressee, date, subject, recipient, place of recording, and custodian.

5. "Document" means any and all kinds of written or graphic matter of any kind or description, however created, produced or reproduced, whether sent or received or neither, or whether originals, copies or drafts, and both sides thereof, including, but not limited to: letters, papers, books, correspondence, bulletins, circulars, instructions, telegrams, cables, telex messages, memoranda, notes, notations, work papers, transcripts, minutes, reports, recordings or notes of meetings, conferences, telephone or other conversations or interviews, affidavits, statements, summaries, opinions, reports, records, desk calendars, appointment books, diaries, lists, tabulations, advertisements, sketches, drawings, blueprints, engineering plans, catalogs, summaries, sound recordings, computer printouts, data processing input and output, any computer generated documents (whether maintained on a computer system, computer hard drive or computer disk), computer electronic mail, microfilm, videotapes, movies, all other records kept by electronic or mechanical means, photographs and anything similar to the foregoing, however denominated, which are in the possession, custody or control of the person to whom discovery requests are directed.

6. "Person" means all natural persons, partnerships, corporations, and any other kind of association or business or other legal entity.

7. "And" as well as "or" shall be construed either conjunctively or disjunctively, where necessary, to bring within the scope of discovery documents or information which might otherwise be construed to be outside the scope of discovery.

8. The terms "any" and "all" are used interchangeably and are intended to bring within the scope of discovery documents or information which might otherwise be construed to be outside the scope of discovery.

9. You are required to supplement or amend your responses to these interrogatories based on any and all information obtained after the filing of such responses.

Interrogatories

1. For each carrier or internet service provider (ISP) with whom VZW has an existing, effective roaming agreement, identify the carrier or ISP and set forth the prescribed roaming rates for the provision of voice, toll, SMS and data services by VZW to the carrier or ISP (collectively, "Service Categories").

2. For each carrier or ISP to whom VZW has, in the last twelve months, offered to enter into a roaming agreement but an agreement on the offered terms is not in effect, identify the carrier or ISP and the offered rates in the Service Categories.

3. If the roaming rates offered or provided to the other carriers differ from those offered to NTCH, provide the rationale for the different rate. If a difference in cost to VZW was a factor, identify and quantify the cost elements that entered into and justified the differing rates.

4. What is the average cost to VZW of delivering to, from or for a wireless customer (a) a minute of voice service, (b) an SMS message, (c) a minute of toll service, or (d) a GB of data. If the cost of delivering any of these services to, from or for an NTCH customer differs from the average, explain and quantify the difference. "Average cost" means the cost to VZW of delivering the identified unit of communications averaged across VZW's entire network for a quarterly period (not earlier than mid-2013) for which the necessary data is available to VZW.

5. What are the lowest retail and wholesale (including MVNO) rates offered by VZW for the Service Categories?

6. Where VZW's rates have been bundled into packages that include flat rates rather than measured rates, and/or flat rates or measured rates for SMS, toll and data, what is the average monthly volume of each Service Category used by a VZW customer or expected by VZW to be used by a typical customer for rate calculation purposes? Use the most recent calendar quarter for which responsive information is reasonably available.

7. Identify any documents, either publicly filed by VZW or used internally by VZW, that calculate or evidence VZW's costs of providing the Service Categories, the expected returns from the roaming rates offered or agreed to, and/or any other basis on which VZW's roaming rates were developed.

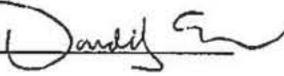
8. Identify and quantify any costs incurred by VZW for the delivery of voice, SMS or data services to roaming partners that are in addition to costs incurred by VZW for delivery of such services to its own customers.

9. Identify the individual or individuals who are the source of the answers to these Interrogatories, who were responsible for developing the roaming rates offered to NTCH, or who otherwise can explain the basis for VZW's proposed roaming rates to NTCH.

Complainant requests that the Commission require VZW under Section 1.729(h) of the rules to produce any documents identified in response to Interrogatory 7 or otherwise bearing upon its responses to the foregoing interrogatories. Such production will permit the Complainant to test and substantiate VZW's responses.

Respectfully submitted,

NTCH, Inc.

By: 

Donald J. Evans

Jonathan R. Markman

July 2, 2014
Fletcher, Heald & Hildreth
1300 N 17th St.
Suite 1100
Arlington, VA 22209

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

In the Matter of)	
)	
NTCH, Inc. for and on behalf)	
of its Operating Subsidiaries)	
)	
Complainant,)	File No. EB-13-MD-006
)	
v.)	
)	
Cellco Partnership dba Verizon Wireless)	
and its Operating Subsidiaries)	
)	
Defendant.)	

DECLARATION OF ERIC STEINMANN

I, Eric Steinmann, Director of Development for NTCH, Inc., hereby declare under penalty of perjury, that I have personal knowledge that the facts set forth below are true and accurate. The statements identified as being made on the basis of information and belief contained herein are made on the basis of my experience in the industry, my analysis of rates offered by other service providers who have agreements with Verizon Wireless, my knowledge of rates from different organizations whose rate structures I am familiar with, filings by the Competitive Carrier Association and the Rural Telecommunications Group in FCC proceedings describing roaming rates charged to unnamed carriers, calculations made from publically available rate information, and my participation in the negotiations between NTCH and Verizon Wireless. I have been unable to ascertain the facts regarding rates offered to other carriers with greater certainty as a result of the nondisclosure agreements required by Verizon Wireless when negotiating its rate agreements with NTCH and its competitors. It is impossible to know the actual rates with certainty because the rates charged are known only to Verizon Wireless and the independent carriers involved, all of whom are subject to Non-Disclosure Agreements regarding their rates.

- "Carriers like NTCH, which are also CDMA-based, must, of practical necessity, have roaming agreements with VZW. VZW's national footprint far exceeds that of any other CDMA carrier, which means that in many parts of the country there is no realistic alternative to VZW as a roaming partner for NTCH's customers. There is either VZW or nothing. To be sure, Sprint offers CDMA service on a national basis, but its coverage is not as broad or as deep as VZW's, causing calls to never connect and to be dropped more frequently. MetroPCS and Cricket, which provided a viable roaming option in some major markets, gave up as independent operators and merged with T-Mobile and AT&T, respectively. Both are in the process of converting their networks from CDMA to GSM and have become part of national carriers as opposed to competitors of those carriers. In addition, Allied, which operated a good portion of the former ALLTEL CDMA network in South Carolina, has been sold to AT&T. After a brief transition period, its CDMA network will also be converted to GSM. With the loss of Cricket, Allied and MetroPCS, VZW's domination of the CDMA market has become even more suffocating." (Paragraph 12)
- "In South Carolina...calls originating on NTCH or Sprint's network are dropped when a customer needs to roam on the other network, and often the call cannot then be easily re-initiated. ." (Paragraph 13)
- "In addition to reducing the number of roaming partners available for CDMA carriers, the absence of any major CDMA carriers other than VZW who use AWS spectrum makes it extremely difficult to develop an industry-wide AWS handset ecosystem. Cricket and MetroPCS were the only large carriers using native CDMA-AWS handsets that could be readily used by other carriers, and they are now exiting the CDMA scene as independent carriers. This severely constrains the availability of AWS handsets to competing carriers. The likelihood that this particular peril would arise was raised in connection

with VZW's SpectrumCo acquisition, but the Commission did not at that time appreciate the seriousness of the problem." (Paragraph 14)

- "Because of the enormity and ubiquity of VZW's spectrum holdings, the lack of viable alternatives, and its lack of incentives to roam with other carriers on account of its own nationwide footprint, VZW has near complete dominance of the CDMA roaming market. It has every incentive to make its smaller competitors less attractive to customers by reducing those customers' ability to roam if they do not sign on as VZW customers. Were it not for Section 20.12 of the Commission's rules requiring it to provide roaming, VZW would have no reason to enter into roaming agreements at all and presumably would ordinarily not do so. An exception to this rule is the roaming agreements VZW has with small rural carriers under its LRA program. There it does cooperate with entities that are heavily subsidized to build out very expensive rural areas. In those remote areas where VZW actually needs a roaming partner and the roaming is reciprocal, the RLEC does not need VZW to set a low and reasonable roaming rate." (Paragraph 15)
- "VZW enters into arrangements with non-facilities based proxies called MVNOs, like Straight Talk, whereby the proxy can undercut the prices of facilities-based carriers in ways that would be transparently predatory and unlawful for the dominant carrier to do directly. This practice -- using a surrogate to undercut competition so as to eliminate such competition -- has come to be known as predatory pricing by proxy. In recent memory, MetroPCS and Cricket were both disruptive facilities-based carriers who drove prices lower by flat rate pricing. They grew their customer bases at a meaningful rate without using the deceptive, post-paid, subsidized phone model of the major carriers. MetroPCS's growth stopped when, among other things, it was undercut by predatory pricing by proxy, ultimately driving it to be bought out by T-Mobile. Cricket was likewise

forced to be bought out by AT&T when its business model was destroyed by predatory pricing by proxy. Competition has suffered accordingly." (Paragraph 16)

- "In today's cellular marketplace, it is not competitively feasible for a carrier to charge customers for roaming, as was originally the norm many years ago when roaming charges were in the 25 and 30 cent per minute range. To be competitive, a carrier must offer domestic roaming that is free to its customers, which means that the home carrier must absorb the cost of roaming charges imposed by other carriers." (Paragraph 17)
- "NTCH has an existing roaming agreement with VZW that dates back to May 16, 2006. The agreement specifies a roaming rate that is [REDACTED]. These rates are grossly out of line with current roaming rates which are [REDACTED]. The toll rate bears no relationship to rates charged in other contexts for voice service, which are [REDACTED]. NTCH's rate is so high as to make it financially impossible for any NTCH customer to roam on VZW automatically because the cost to NTCH would be so excessive." (Paragraph 18)
- "Accordingly, in the fall of 2011, NTCH initiated negotiation of a new roaming agreement with VZW. NTCH pointed to publicly available information regarding the rates that VZW must be offering an MVNO in one of NTCH's service areas as a benchmark for a just and reasonable roaming rate. NTCH also pointed to data in Commission orders indicating that the incremental cost of a voice phone call is on the order of \$.0000001 per minute. *Transformation Order, infra*. The cost of providing roaming service plus a reasonable rate of return would be the basis for a fair roaming rate. While VZW did offer NTCH a rate lower than the existing rate, the parties were not able to agree on an

acceptable rate. Accordingly, the parties terminated negotiations in December, 2011. In May, 2012, NTCH made a revised offer to VZW which VZW rejected. On September 6, 2012, NTCH sent VZW a letter summarizing what the remaining differences were and expressing its intent to pursue the matter in a formal complaint. The parties later had additional discussions in an effort to break the impasse, but again, no agreement was reached. NTCH sent a certified letter to VZW on October 23, 2013 again summarizing the exchange of offers and reiterating its intent to file this complaint. VZW responded on November 12, 2013 again refusing to accept NTCH's proposal, or bring its proposal in line with reasonable terms as discussed herein. On December 9, 2013, Verizon made a new offer, which was rejected by NTCH. In the course of the mediation process overseen by FCC staff, the parties exchanged additional offers and counteroffers (attached hereto to supplement the pre-November, 2013 record of negotiations between the parties already submitted). The counteroffers and offers were rejected by both parties." (Paragraph 19)

- "VZW and NTCH participated in FCC-requested mediation in early 2014. These negotiations, which began on January 2014 and continued through April 11, 2014, did not result in an agreement on any of the remaining terms." (Paragraph 20)
- "Bill and keep would be a perfectly feasible arrangement for exchanging traffic, as is the case in many current roaming agreements between carriers with substantial pre-paid customer bases. The carriers using bill and keep could either exchange roaming traffic data directly between each other, without the mediation of a third party settlement agency to gain significant cost-savings, or do away with exchanging traffic data on a routine basis entirely. This permits lower prices to be offered to consumers, by both carriers." (Paragraph 24)

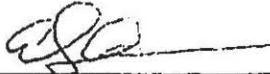
- "A second measure of the unreasonableness of VZW's rates may be deduced from the rates it charges its MVNO customers. There is a national MVNO (Straight Talk) whose service is offered through Walmart that offers unlimited voice, text and data for \$45.00 per month. This plan is only one that Straight Talk offers, but because it includes the mix of services a typical NTCH roamer would require (unlimited voice, text and data), and because it mirrors NTCH plans for which we have usage data, we have used that plan as a basis for comparison. Although neither VZW nor Straight Talk have publicly identified which underlying facilities-based carrier the wireless service is procured from, the coverage maps displayed by Straight Talk to depict its coverage areas often track VZW's coverage map precisely." (Paragraph 25)
- "The rate Straight Talk is charging its own customers (\$45) must be greater than the rate it is being charged by VZW and the other network providers it relies on or it could not have remained in business for more than 8 years. And VZW is presumed to be charging Straight Talk an amount that is greater than its costs. " (Paragraph 26)
- "A review of Verizon's own financial statement shows that for its wireless segment it has an operating income percentage of 32% and Sales, General and Administrative costs of 29%, yielding an overall cost of service equal to 39% (i.e., 100% minus 32% minus 29%) of its revenue. VZW's ARPU has been reliably reported to be \$55.57 in the 3rd quarter of 2013. VZW's average cost of serving its own wireless customers would then be calculated to be \$21.67 (39% of \$55.57). Adding a 10% profit would yield \$23.83 per customer. Subject to review of more detailed cost and revenue information to be obtained from VZW through discovery, this indicates a probable amount that Verizon would be charging Straight Talk and should be charging NTCH for the same services. (Paragraph 27)

- "To then derive the costs to VZW of the three components of Straight Talk's unlimited voice, text and data plan, we will apply assumptions about average customer usage of each service component based on known usage patterns from NTCH's own data for similar unlimited services...By setting the voice charge per minute equal to the per MB charge for data and leaving SMS to be handled on a bill and keep basis (as is often now the case in roaming agreements between carriers), we can estimate that VZW's charge to Straight Talk for this particular plan is a little under 2/3rds of a cent (\$.00662) per voice minute or MB of data. The sum of 1700 voice minutes x \$.00662 and 1900 MB of data x \$.00662 equals \$23.83, which we estimated to be VZW's cost of service plus a reasonable profit. The conclusion is that Straight Talk is likely, under the guise of being an MVNO, getting the same services being offered to NTCH [REDACTED] [REDACTED] the rate for data being offered to NTCH. There is no reason why these rates charged by VZW to Straight Talk, which are presumed profitable to VZW, would not be at least as remunerative for roaming partners and provide the same return of cost plus a reasonable profit to VZW in that setting." (Paragraph 28)
- "An MVNO arrangement is one where a firm buys wireless services from a facilities-based carrier with the intent of reselling it to the public. That is Straight Talk's arrangement. The reason why such arrangements are relevant here is that the processing of calls or data usage by MVNO customers is functionally very similar to the processing of roaming calls. While there are minor differences due to the way roaming calls are cleared and billed through a clearing house (in some but not all roaming agreements), the process basically involves allowing another entity's traffic to be carried over the facilities-based carrier's existing network without any of the costs to the facilities based carrier associated with advertising for, signing up, billing, providing customer service, or otherwise establishing or maintaining the relationship with an end user. A

nationwide MVNO arrangement is therefore effectively a nationwide roaming agreement with no home area and no benefit to the economy or competition that comes with building and operating a home network. The chief difference is that NTCH's customers would not be roaming in the core areas of NTCH's second tier operating cities where NTCH has existing networks, while an MVNO's customers would use more of these busier urban sites." (Paragraph 29)

- "In the meantime, on information and belief, NTCH believes that VZW offers roaming rates and terms to other carriers (including roaming rates characterized as MVNOs) that are unreasonably discriminatory, i.e., that assess lower and more favorable rates than are being charged NTCH without any reasonable grounds for the differential treatment. It is important in this context to examine the entire relationship between the roaming parties, not just the nominal roaming rate, because there may be other valuable consideration being exchanged. Because MVNO arrangements like the Straight Talk contract are in essence nationwide roaming arrangements, but without the need for any "home" territory from which subscribers roam, these can serve as disguised surrogates for preferential roaming charges and must be included in any comparison of roaming rates charged by carriers. Of course, allowing preferential rates for ubiquitous roaming by MVNOs rather than just in areas not covered by a home carrier's own system will logically and necessarily disincent carriers from being facilities-based. The FCC's policy encourages the construction and operation of independent networks to act as facilities-based alternatives to the major carriers. The current VZW pricing policy, if let stand, will inevitably result in the concentration of traffic on fewer and fewer networks to the ultimate detriment of competition." (Paragraph 33)

- "Because such charges are normally concealed by non-disclosure agreements, carriers cannot know whether other similarly situated carriers are being charged different rates." (Paragraph 34)
- "NTCH's Development Manager, Mr. Steinmann, happens to sit on the board of another carrier, and has therefore become aware in that capacity that the rates VZW charges other carriers for roaming are different from those charged to NTCH without any apparent basis for a distinction." (Paragraph 35)
- "Smartphones using NTCH's networks can, and routinely do, connect to the Public Switched Network using these sorts of applications." (Paragraph 42)



Eric Steinmann
Director of Development, NTCH Inc.

July 2, 2014

REDACTED ACCORDING TO NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

**Proposed Findings of Fact
and
Conclusions of Law**

These Proposed Findings of Fact and Conclusions of Law represent draft Findings and Conclusions based upon what Complainant expects to prove through the Complaint process. Some facts will depend on information adduced at hearing which is only available in Respondent's records.

I. Findings of Fact

1. Complainant NTCH is the parent of operating subsidiaries who are and will be offering mobile wireless service on a common carrier basis. NTCH on behalf of itself and its subsidiaries currently has a roaming agreement with Verizon Wireless but has requested a new automatic roaming arrangement.

2. Respondent Verizon Wireless is a common carrier which provides mobile wireless service on a nationwide basis. It advertises and provides wireless service across a substantial portion of the populated areas of the continental United States. It is by far the largest provider of wireless service using the CDMA interface. Unless a roaming customer has access to Verizon Wireless's system, the roaming customer will not be able to complete calls in many portions of the United States. The only other nationwide, facilities-based CDMA wireless provider is Sprint, and Sprint's network is neither as deep or as wide as Verizon Wireless's. Sprint's current and near term LTE service is significantly less available than Verizon Wireless's.

3. Because of the relative ubiquity of Verizon Wireless's facilities, it has no need for roaming with NTCH and therefore no economic incentive to reach a reciprocal roaming agreement with NTCH. Such an arrangement would be solely a result of the regulatory requirement for Verizon Wireless to offer such an arrangement.

4. Representatives of NTCH and Verizon Wireless negotiated a new roaming agreement between September, 2011 and Spring of 2013.

5. NTCH duly advised VZW that the terms that had been offered were unacceptable and that it planned to seek FCC intervention on December 27, 2012. Further negotiations took place in the context of an FCC-sponsored mediation, but the parties were unable to reach agreement. The last terms that VZW offered were summarized in its letter to NTCH's counsel of December 9, 2013 and a phone call of March 14, 2014 in an email to VZW of March 21, 2014. The last terms that NTCH proposed were set forth in a letter from NTCH's counsel of December 6, 2012. Neither party's terms were accepted by the other. Copies or summaries of the offers are attached to the Complaint.

Unjustness and Unreasonableness of Rate

6. Rates for roaming have heretofore been set by negotiation between carriers. The Commission has assumed that market conditions would drive roaming partners to

enter into just and reasonable roaming agreements based on their mutual self interest in being able to roam on each other's networks. Market conditions no longer ensure that such negotiations will result in a reasonable rate because of the market dominance and ubiquity of the VZW network and the disappearance of virtually all alternative CDMA roaming partners.

7. The roaming rate offered by VZW exceeds its costs by [an amount to be determined through discovery]%. The roaming rate offered by VZW also exceeds the rate it offers at least one MVNO. There is no technical reason why the MVNO rate should be less than the rate offered to roaming partners.

8. Under current consumer offerings to customers, it is not practically feasible for carriers to pass through roaming charges incurred by customers when they roam, as was done in the early years of cellular service. When roaming charges are excessive, a customer's home carrier cannot afford to pay those charges because they might well exceed the amount the customer is paying the home carrier. Charging an excessively high roaming rate is therefore the practical equivalent of offering no roaming at all. The home carrier must therefore block its customers' access to high-priced roaming carriers, leaving the customer with the choice of no service at all, spotty service from an alternative CDMA carrier, or the cumbersome process of manually setting up a roaming call with VZW. Customers are suffering from a loss of service due to the practical inaccessibility of VZW's network.

9. The lack of access to roaming on just and reasonable terms puts VZW's competitors at a significant competitive disadvantage because they cannot offer the ubiquitous wireless service that VZW and AT&T can offer based on their nation-wide footprints. VZW's refusal to offer just and reasonable roaming rates contributes to and exacerbates the market dominance that VZW already enjoys.

Unreasonable Discrimination in Rates

10. VZW conceals the roaming rates that it charges other carriers by requiring all rates and rate negotiations to be cloaked in non-disclosure agreements. The Commission does not currently require these rates to be made publicly available. No carrier can know for sure whether other similarly situated carriers are receiving more favorable rates and terms, in violation of the Act.

11. As a result of discovery in this proceeding, it has been established that VZW charges roaming rates to other carriers which vary from ___ to ___ / minute. [Subject to evidence adduced through discovery] There is no cognizable basis for justifying the difference in rates charged to different carriers. In addition, the facts adduced at hearing show that VZW charges at least one MVNO a rate of _____. [Subject to evidence adduced through discovery] There is no cognizable basis for justifying the significant difference in rates charged to MVNOs and roaming partners.

Data Roaming

12. Data roaming has become a significantly more important component in wireless communications than when the cellular service was first introduced. Consumers now expect more than just voice telephony from their cell phone service provider -- they expect internet access, multi-media messaging and other services that require non-voice data service both when at home and when roaming.

13. NTCH is seeking a data roaming agreement for services that it itself provides in its home markets and that are fully technically compatible with VZW's technical system. Provision of data roaming to NTCH would not impose any additional costs on VZW to achieve technical compatibility.

14. The data roaming rate offered by VZW is [REDACTED]. This rate is [REDACTED] times the rate offered by VZW to its own prepaid retail customers and considerably higher than the rate offered to MVNOs. This rate bears no relationship to VZW's actual costs and is so prohibitively high as to effectively preclude its roaming partners from being able to offer data roaming to their customers when roaming on the VZW system. As with excessive voice roaming charges, the high rate also stifles competition by crippling VZW's competitors' ability to offer consumers service that is realistically available when they are outside their home markets.

II. Conclusions of Law

15. Roaming is a common carrier service which must be offered by common carriers at rates that are just, reasonable and not unreasonably discriminatory under Section 201 and 202 of the Communications Act. 47 USC Section 210 and 202. . *Interconnection and Resale Obligations, Second Report and Order*, 11 FCC Rcd 9462 (1996).

16. Data roaming is a service that, when offered by wireless carriers, must be provided on terms that are commercially reasonable, considering the totality of the circumstances. *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, Second Report and Order*, 26 FCC Rcd 5411 (2011). *Data Roaming Order*.

17. A reasonable roaming rate is one which permits the offering carrier to recover its costs of providing the service plus a reasonable return on its investment. *Communications, Inc. v. Alascom, Inc.*, 64 RR 2d 1137, 1140, 1144 (1988) A just rate is one which is not only reasonable but which does not have the effect of crippling competition by undercutting another carrier's ability to offer a viable service to its customers. A rate adopted by a carrier with market power with the intent of destroying competition is unjust.

18. A rate or term is unjustly or unreasonably discriminatory when it differs from a rate offered to another customer or carrier without a valid basis for the distinction.

Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers, 13 FCC Rcd 16857 at 14 (1998); *In the Matter of Competition in the Interstate Interexchange Marketplace*, 5 FCC Rcd 2627 at 137 (1990); *In the Matter of AT&T Communications*, 103 FCC 2d 157 at 15 (1985).

19. The rate offered by VZW to NTCH is unjust and unreasonable. It exceeds its cost of providing service by a wide margin, offering a rate of return far in excess of the 8.75% which the Commission has recently used as a fair rate of return benchmark. It is not necessary at this time on this record to establish the actual costs that VZW incurs in providing voice and data roaming service, but it is clear that the particular rates offered here exceed any level that might be deemed reasonable by reference to charges which VZW imposes on other carriers. The Commission should open a full investigation of the cost structure of VZW for roaming to ensure that a true cost-based rate is being charged to all of VZW's roaming partners.

20. The roaming rate charged by VZW is also unjust because it is intended to stifle competition by leveraging its dominance of the CDMA market to prevent competitors from offering viable roaming opportunities to their customers.

21. The roaming rate offered by VZW is unjustly and unreasonably discriminatory because there is no technical or economic reason why the rate charged to

NTCH should differ dramatically from the rates offered to other carriers or to its own customers. Conduct that unreasonably restrains trade is not reasonable. *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers* 26 F.C.C. Rcd. 5411 at 85 (2011); *Further Forbearance*, 13 FCC Rcd 16857 at 14 (1998).

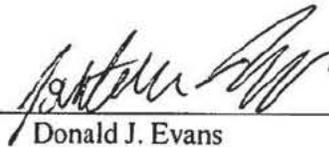
22. The data roaming rate offered by VZW is not commercially reasonable under the totality of the circumstances. As with the voice rate offered by VZW, the data rate is well in excess of its costs as measured by offerings to other carriers, MVNO's and to its own retail customers. The rate offered to NTCH is also higher than that offered to other carriers without any technical or economic basis. Moreover, the rate is kept at an artificially high level to cripple VZW's competitors from offering competitive products to their customers.

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

In the Matter of)	
)	
NTCH, Inc. for and on behalf)	
of its Operating Subsidiaries)	
)	
Complainant,)	File No. EB-13-MD-006
)	
v.)	
)	
Cellco Partnership dba Verizon Wireless)	
and its Operating Subsidiaries)	
)	
Defendant.)	

VERIFICATION OF PAYMENT

I, Jonathan R. Markman, hereby declare under penalty of perjury that, on November 22, 2013, Complainant NTCH, Inc., through its attorneys, submitted, via overnight delivery, a check in the amount of two hundred and ten dollars (\$210.00) along with the above-captioned formal complaint in accordance with 47 C.F.R. 1.721(a)(13). NTCH, Inc.'s FCC Registration Number is 000510391686.



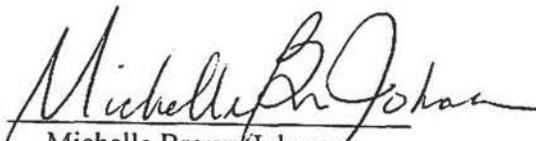
Donald J. Evans
Jonathan R. Markman

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street, Suite 1100
Arlington, VA 22209
(703) 812-0400

CERTIFICATE OF SERVICE

I, Michelle Brown Johnson, do certify that I sent via Federal Express the foregoing formal Complaint and all attachments thereto to be delivered, on this 21st day of July, 2014, addressed to the following (by agreement of the parties):

John T. Scott III
Verizon Wireless
1300 Eye St. NW
Suite 400-West
Washington, DC 20005

By: 
Michelle Brown Johnson

REDACTED ACCORDING TO TERMS OF NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

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

In the Matter of)	
)	
NTCH, Inc. for and on behalf)	
of its Operating Subsidiaries)	
)	
Complainant,)	File No. EB-13-MD-006
)	
v.)	
)	
Cellco Partnership dba Verizon Wireless)	
and its Operating Subsidiaries)	
)	
Defendant.)	

INFORMATION DESIGNATION OF NTCH, INC.

NTCH, Inc., through its attorneys and pursuant to 47 C.F.R. 1.721(a)(10), submits this information designation in connection with the above-captioned formal complaint against Cellco Partnership, dba Verizon Wireless.

I. Persons with Knowledge

a. Adilia Aguilar, Chief Financial Officer, 319 W. Yakima Ave., Yakima, WA 98902

Information in her knowledge: Original roaming negotiation with Verizon Wireless in 2006, participated in most negotiations in 2011-2012.

b. Eric Steinmann, NTCH Development Manager, 10110 Leisure Lane #119, Jacksonville, FL 30256

Information in his knowledge: Directed the roaming negotiations in order to provide a quality product to Cleartalk customers at a price that is competitive, and understands the competitive environment in markets across the country.

c. Donald Evans, Outside counsel for NTCH, 1300 N. 17th St., Suite 1100, Arlington, VA 22209

Information in his knowledge: Participated in 2011-2013 discussions and meeting with Verizon Wireless. General knowledge of industry structure.

REDACTED ACCORDING TO NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

d. Martyn Roetter of MFR Consulting, 144 Beacon Street, Boston, MA 02116-1449

Information in his knowledge: about the reasonableness of the rates offered.

e. Michael Pocher and Rob Strobel, Assistant General Counsels, One Verizon Way, Basking Ridge, NJ 07920

Information in their knowledge: Details of roaming negotiations between Verizon Wireless and NTCH, Inc.

f. Charles Sizemore, 2101 Suite J. Columbia , South Carolina 29201.

Information in his knowledge: Typical usage volumes for NTCH pre-paid customers.

g. Paul Posner, 1006 Maufrais St., Austin, TX 78703.

Information in his knowledge: Information about the costs of delivering a roaming data product.

II. Description of Documents, Data Compilations, and Tangible Things

The above-captioned complaint stems from practices, procedures, and negotiations dealing with roaming agreements. Documents related to these negotiations, bases for calculating Verizon Wireless costs, as well as information indicating preferential treatment given to a NTCH competitor, are described in Exhibit A. The documents include correspondence between the parties, published advertisements, and past contracts. Publicly available information, such as Commission reports, are not included because they are not in the Complainant's possession.

III. Description of the Manner of Identification of Persons with Knowledge and the Relevant Documents, Data Compilations, and Tangible Things

Counsel for NTCH conducted an information search and determined which individuals had knowledge of relevant information and which documents included relevant information.

REDACTED ACCORDING TO NONDISCLOSURE AGREEMENT
AVAILABLE FOR PUBLIC INSPECTION

Exhibit A-R

REDACTED