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November 30, 2009

Via ECFS

Ms. Ruth Milkman, Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Ex Parte Letter
PCS Spectrum Availability in Susquehanna County, Pennsylvania**

**Fostering Innovation and Investment in the Wireless Communications Market
GN Docket No. 09-157**

**Wireless Competition Docket
WT Docket No. 09-66**

Dear Ms. Milkman:

On behalf of NEP Cellcorp, Inc. ("NEP"), we are writing to seek the FCC's assistance in freeing up licensed but unused spectrum in Susquehanna County, Pennsylvania.

NEP, a subsidiary of The North-Eastern Pennsylvania Telephone Company, operates a commercial wireless GSM/GPRS network in Susquehanna County. In early 2006, NEP entered the wireless marketplace after purchasing from T-Mobile USA, Inc.: (i) a 10 megahertz portion of spectrum (1860-1865 and 1940-1945 MHz) in the entirety of Susquehanna County, Pennsylvania in the New York Metropolitan Trading Area (MTA); and (ii) a 20 megahertz portion of spectrum (1855-1865 and 1935-1945 MHz) in the northern section of Wayne County, Pennsylvania and the northeast section of Lackawanna County, Pennsylvania in the New York MTA, both licensed under call sign WQEW881. At the time, T-Mobile's spectrum was the only market-ready spectrum immediately available for deployment in a commercial mobile operation.

For the last three years, this spectrum has been absolutely crucial in NEP's daily quest to provide quality wireless voice and data coverage to its rural customers and to roamers from other wireless operators traveling in Susquehanna County on Interstate 81, a major thoroughfare which bisects the NEP coverage area. Every practical radio-frequency and network engineering measure has been taken to maximize the utility of NEP's existing PCS spectrum. Unfortunately, due to bandwidth constraints and ever increasing voice and data traffic in Susquehanna County, NEP is in desperate need of additional spectrum.

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Without additional spectrum, NEP will be unable to offer 3G mobile broadband voice and data services at either UMTS or HSPA throughout Susquehanna County to its existing rural customer base. AT&T, Verizon, Sprint and T-Mobile, the other four wireless operators operating in Susquehanna County, only serve along Interstate 81. NEP would like to offer 3G mobile broadband service to its customers beyond Interstate 81 in an effort to provide mobile broadband to those living and working in rural Susquehanna County.

The crux of NEP's problem is that no carrier operating in the PCS, AWS-1 or 700 MHz bands is willing to enter into a spectrum sale or lease with NEP.¹ The unavailability of spectrum in the PCS bands is most pronounced because every PCS licensee in Susquehanna County, Pennsylvania except for one -- Spotlight Media Corp., Inc. ("Spotlight") -- is also a facilities-based network operator using all of its PCS spectrum to serve along Interstate 81.²

Earlier this year, NEP approached Spotlight with an offer to purchase or lease all or a portion of its PCS spectrum in Susquehanna County, all of which is currently sitting fallow.³ This offer included numerous revenue sharing options and the compensation offered for the spectrum was at or above the market rate. NEP remains interested in paying a premium to purchase or lease PCS spectrum in Susquehanna County.

Spotlight's initial response to NEP was that it was not interested in leasing or selling any spectrum, and subsequent inquiries to Spotlight throughout 2009 have fallen on deaf ears. While Spotlight still has until May 13, 2010 to complete its build-out requirements for the Binghamton BTA, there is no guarantee that such coverage will include any use of spectrum in Susquehanna County. Indeed, Spotlight has submitted to the FCC that it has "completed the construction requirements" for the Binghamton BTA without the need to serve any portion of Susquehanna County.⁴

The warehousing by Spotlight of its spectrum in Susquehanna County disserves the public interest. Without access to such spectrum, NEP faces the prospect of diminished quality of service, which in turn could limit the viability and ultimate survivability of NEP's wireless operations. If NEP is unable to acquire spectrum in the short- or mid-term, there is an increased likelihood that it will exit the commercial mobile marketplace, further reducing the number of competitors and limiting the choices available.

NEP is requesting that the Wireless Telecommunications Bureau take immediate action to maximize the utility of commercial mobile radio spectrum already existing in the secondary

¹ A declaration of an officer of NEP attesting to the accuracy of the factual representations made herein is attached hereto. While NEP is open to acquiring AWS-1 or 700 MHz spectrum, the financial costs and time delays associated with network build, core switching modification, and especially handset "seeding" to the customer base makes these two options "last-case" scenarios, even if spectrum were available for purchase or lease.

² A current list of PCS licensees holding spectrum in Susquehanna County is set forth in Attachment A.

³ While Spotlight, a Designated Entity, is the licensee of the lower C-Block PCS bands, the coverage of its wireless service (marketed as "Blue Wireless") in the Binghamton BTA does not extend south beyond the city proper of Binghamton, nor does it approach the border with Pennsylvania or include any part of Susquehanna County.

⁴ Spotlight Media Corporation, Inc. Designated Entity Annual Report (FCC Form 611-T), filed July 24, 2009, at Exhibit 1.

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marketplace so that fallow spectrum may be utilized to offer mobile broadband services. Spectrum “hoarding” by licensees adds no public interest benefit, creates an artificial barrier to market entry, limits marketplace competition, and solidifies the market share dominance of the country’s largest mobile operators. Specifically, NEP urges the Bureau to mandate that Spotlight utilize its PCS spectrum in Susquehanna County within one year and, if it does not, reclaim the spectrum to be made available to parties who actually intend to use it.⁵ Alternatively, NEP requests that the Bureau initiate a mediation with NEP and Spotlight in an attempt to persuade Spotlight to sell or lease, at a mutually agreeable price, spectrum which it has no intention to use.

Should you have any questions or require additional information, please communicate directly with the undersigned.

Respectfully submitted,

/s/ Caressa D. Bennet

Caressa D. Bennet
Daryl A. Zakov
Counsel for NEP Cellcorp., Inc.

cc (via U.S. Mail and Email): Michael Gelfand, President
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⁵ As Commissioner Baker noted in a recent published interview with Telecommunications Reports Daily (November 13, 2009), there is a need to make better use of spectrum and “[n]othing is too small to look at in this area.”

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ATTACHMENT A

<u>Call Sign</u>	<u>Licensee</u>	<u>FRN</u>	<u>Service</u>	<u>Expiration</u>	<u>Market No. and Name</u>	<u>Block</u>
KNLF202	Omnipoint NY MTA License, LLC (T-Mobile)	2145696	CW - PCS	12/14/2014	MTA001 - New York	A
KNLF204	Wirelessco, L.P. (Sprint)	2316545	CW - PCS	6/23/2015	MTA001 - New York	B
KNLG387	New Cingular Wireless PCS, LLC (AT&T)	3291192	CW - PCS	6/27/2017	BTA043 - Binghamton, NY	D
KNLG388	New Cingular Wireless PCS, LLC (AT&T)	3291192	CW - PCS	6/27/2017	BTA043 - Binghamton, NY	E
KNLH240	Cellco Partnership (Verizon)	3290673	CW - PCS	6/27/2017	BTA043 - Binghamton, NY	F
WPSL626	New Cingular Wireless PCS, LLC (AT&T)	3291192	CW - PCS	12/14/2014	MTA001 - New York	A
WPTB337	Cellco Partnership (Verizon)	3290673	CW - PCS	8/22/2011	BTA043 - Binghamton, NY	C
WQCS395	Spotlight Media Corp., Inc.	3762119	CW - PCS	5/13/2015	BTA043 - Binghamton, NY	C
WQEW881	NEP Cellcorp., Inc.	14802284	CW - PCS	12/14/2014	MTA001 - New York	A

EXHIBIT 1 – DE REPORT

New Designated Entity Annual Report

General Information

Approved by OMB
3060-1092

File Number

File Number: **0003910704**

Licensee Information

Licensee FRN

Licensee FRN: **3762119**

Entity Type

Licensee is a(n): **Corporation**

Licensee Name

Licensee Name: **Spotlight Media Corporation, Inc.**
(if entity)

Licensee Name:
(if individual)

Attention To: **Brian Gelfand**

Address

P.O. Box:
Street Address: **4915 Auburn Avenue, Suite 200**
City: **Bethesda**
State: **Maryland**
ZIP Code: **20814**

Phone: **(301)907-2484**
Fax: **(301)907-9021**
Email: **bgelfand@blueunlimited.com**

Demographics (Optional)

Race:
Ethnicity:
Gender:

Contact Information

Contact Name

Name: **Lawrence J Movshin**
Company Name: **Wilkinson Barker Knauer, LLP**
Attention To:

Address

P.O. Box:
 Street Address: **2300 N Street, N.W., Suite 700**
 City: **Washington**
 State: **District of Columbia**
 ZIP Code: **20037**

Phone: **(202)783-4141**
 Fax: **(202)783-5851**
 Email: **Imovshin@wbklaw.com**

Designated Entity Information

Call Sign	Radio Service Code	Initial Grant Date	Bidding Credits	Closed Bidding	Installment Payments
1 WQCS395	CW	05/13/2005		Yes	
2 WQCS396	CW	05/13/2005	Yes		
3 WQCS397	CW	05/13/2005	Yes		
4 WQCS398	CW	05/13/2005	Yes		

Attachments

Type	Description	Date Uploaded
1 Waiver	Exhibit	07/24/2009

Certification Information**Signature**

Name: **Michael C Gelfand**
 Title: **President**

Receipt Date

Receipt Date: **07/24/2009**

SPOTLIGHT MEDIA CORP., INC.
ANNUAL REPORT RELATED TO ELIGIBILITY FOR DESIGNATED ENTITY
BENEFITS

The instant filing covers four broadband PCS licenses held by Spotlight Media Corp., Inc. ("Spotlight"): WQCS395 (Binghamton, NY BTA), WQCS396 (New Haven, CT BTA), WQCS397 (Oil City, PA BTA), and WQCS398 (Scranton, PA BTA).

Agreements and Arrangements that Relate to Spotlight's Eligibility for Designated Entity Benefits

Spotlight has not entered into any agreements or arrangements that could affect its eligibility as a designated entity.

Information Regarding Spotlight's Progress in Meeting the Applicable Construction Requirements for the Licenses

Although the construction deadline is not until 2010, Spotlight has completed the construction requirements for both the Binghamton, NY BTA and the Scranton, PA BTA licenses. Wireless telephony service is available using CMDA technology. Calls are routed via T-1 to a switch located in Buffalo, NY and then to the PSTN by an arrangement with an affiliate, Buffalo-Lake Erie Wireless Systems Co., L.L.C. Spotlight is currently taking the steps necessary to construct a wireless system and meet the applicable construction requirements for the other licenses.

Information Regarding the Services to be Provided Using the Licenses

Spotlight offers mobile voice telephony services using CDMA technology to the residents of Binghamton, NY and Scranton, PA, and plans to offer similar services to the other markets in the near future.

Information Regarding the Number of Subscribers Served in the License Areas

There are approximately 1000 subscribers in both the Binghamton BTA and Scranton BTA at this time.

Designated Entity Status

Spotlight is unaware of any information that would affect its status as a designated entity licensee.

Request for Waiver of Filing Deadline

Spotlight hereby requests a waiver of Section 1.2110(n) of the Commission's rules to permit the filing of the instant Designated Entity Report ("DE Report") after the anniversary date of the grant of the licenses subject to the instant filing.¹ Failure to timely file the DE Report was an inadvertent administrative oversight. While the delay in filing is unfortunate, it is unlikely any party was prejudiced by the short delay. As the instant exhibit demonstrates, Spotlight has maintained its designated entity status throughout the reporting period and has not entered into any agreements that affected its designated entity status. Accordingly, Spotlight respectfully requests that the Commission accept this late-filed DE Report.²

¹ 47 C.F.R. § 1.2110(n).

² 47 C.F.R. § 1.925(b)(3) (Commission may grant a request for waiver if: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.)

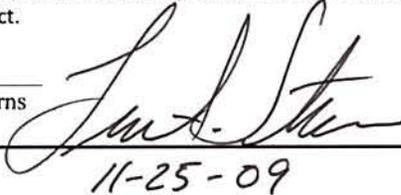
DECLARATION OF TIM STEARNS

I, Tim Stearns, do hereby declare under penalty of perjury the following:

1. I am the Vice President of Operations of NEP Cellcorp., Inc.
2. I have read the foregoing letter. I have personal knowledge of the facts set forth therein and believe them to be true and correct.

Tim Stearns

Date



11-25-09