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May 27, 2010

Via Electronic Filing

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 May 26, 2010 the undersigned counsel to NEP Cellcorp., Inc. (“NEP”) spoke by telephone to Paul E. Murray, John Leibovitz and Stuart Benjamin concerning NEP’s November 30, 2009 request (“Request”) for Federal Communications Commission (“FCC” or “Commission”) assistance in freeing up licensed but unused spectrum in Susquehanna County, Pennsylvania.¹

I reminded the FCC that in its Request, NEP, a licensee and operator of a PCS network in Susquehanna County, apprised you of its difficulty in acquiring additional spectrum to meet the needs of its rural customers and roamers travelling in Susquehanna County. In its Request, NEP explained that, with the exception of spectrum licensed to Spotlight Media Corp., Inc. (“Spotlight”), all licensed PCS spectrum in Susquehanna County is currently being utilized to provide service, and is therefore unavailable to NEP. In its Request, NEP also supplied documentation demonstrating that Spotlight, having met its buildout requirements, faced no legal impediment to continuing to warehouse its spectrum in Susquehanna County, and NEP reported on Spotlight’s rejection of various attempts by NEP throughout 2009 to negotiate a lease or sale of Spotlights’ Susquehanna County spectrum on rates and terms that would have been extremely favorable to Spotlight.

¹ Letter to Ruth Milkman, Chief, Wireless Telecommunications Bureau, from Caressa D. Bennet and Daryl A. Zakov, Counsel for NEP Cellcorp., Inc., November 30, 2009.

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I informed the FCC that since the submission of NEP's Request last fall, a number of developments have occurred. Earlier this year, NEP commissioned another engineering study to determine whether Spotlight's spectrum in Susquehanna County remains unutilized. Based on measurements taken on February 19, 2010 by Falcon Wireless Group, Inc.,² Spotlight is not transmitting on its PCS spectrum in any portion of Susquehanna County. In addition, no "bleed over" coverage was detected from Spotlight sites in surrounding counties. Spotlight does not market Blue Wireless service in Susquehanna County, nor does it maintain any retail presence, or sell through independent resellers or dealers, in the county.

I noted that on March 16, 2010, the FCC issued its National Broadband Plan (Plan), in which it stated that the FCC's secondary market policies and rules have not entirely alleviated the Commission's "concern that existing licensees may not fully utilize or plan to utilize the entire spectrum assigned to them."³ Recognizing that "a substantial amount of spectrum may be underused, especially in rural areas," the Plan urged the FCC to "consider a more systematic set of incentives, both positive and negative, to ensure productive use of spectrum to address broadband gaps in underserved areas."⁴

The relief requested by NEP exemplifies the type of innovative approach to freeing up unutilized spectrum in rural areas that was envisioned by the Commission in its Plan. By mandating that Spotlight utilize its PCS spectrum in Susquehanna County within one year and, if it does not, reclaiming the spectrum to be made available to parties who actually intend to use it, the Bureau will provide exactly the type of incentive contemplated by the Plan "to ensure productive use of spectrum to address broadband gaps in underserved areas." At a minimum, Bureau initiation of a mediation with NEP and Spotlight to encourage Spotlight to sell or lease to NEP spectrum which it has no intent to use, will incentivize Spotlight to at least consider the public interest and private financial benefits of ensuring that its licensed spectrum is actually used to benefit the public.

NEP continues to have an urgent need for additional spectrum in Susquehanna County. NEP has exhausted every means of leasing or buying spectrum from licensed carriers in Susquehanna County and every practical technical engineering measure to maximize the utility of NEP's existing PCS spectrum. Absent the relief requested by NEP in its Request, NEP's customers and roamers in Susquehanna County will be unable to obtain NEP 3G mobile broadband voice and data services at either UMTS or HSPA. Without the ability to offer such services, NEP will remain hard pressed to effectively compete and may be forced to exit the market, to the substantial detriment of all customers of commercial mobile wireless service in Susquehanna County.

² A copy of the Falcon Wireless Group Final Report of spectrum usage analysis by Blue Wireless is attached hereto. While Spotlight is the licensee, its wireless service is marketed as "Blue Wireless" in the Binghamton, New York BTA.

³ *Connecting America: The National Broadband Plan*, rel. March 16, 2010, at p. 83.

⁴ *Id.*

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

Respectfully submitted,

By: */s/ Caressa D. Bennet*

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cc (via U.S. Mail and Email):

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