

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of the Joint Application of)
)
Cavalier Telephone Corp.,)
Transferor,)
)
Cavalier Telephone, LLC,)
Cavalier Telephone Mid-Atlantic, LLC,)
Talk America, Inc.,)
Talk America of Virginia, Inc.,)
LDMI Telecommunications, Inc.,)
Network Telephone Corp.,)
The Other Phone Company, Inc., and)
Intellifiber Networks, Inc.,)
Licensees,)
)
and) WC Docket No. 10-192
)
PAETEC Holding Corp.,)
Transferee,)
)
For Grant of Authority Pursuant to)
Section 214 of the Communications Act of 1934,)
as amended, and Sections 63.04 and 63.24 of the)
Commission’s Rules to Complete a Transfer of)
Indirect Majority Ownership of the Cavalier)
Licensees to PAETEC Holding Corp.)
)

REPLY TO COMMENTS

PAETEC Holding Corp. (“PAETEC”), Cavalier Telephone Corp. (“Cavalier”), Cavalier Telephone, LLC (“CavTel”), Cavalier Telephone Mid-Atlantic, LLC (“CavTel-MA”), Talk America, Inc. (“TA”), Talk America of Virginia, Inc. (“TA-VA”), LDMI Telecommunications, Inc. (“LDMI”), Network Telephone Corp. (“NTC”), The Other Phone Company, Inc. (“TOPC”), and Intellifiber Networks, Inc. (“Intellifiber”) (collectively,

“Applicants”), by their undersigned counsel, hereby reply to the comments filed by Mr. Cliff Hancuff on October 9, 2010 in WC Docket No. 10-192 (“Comments”). In his Comments, Mr. Hancuff, a former employee of CavTel, recites a long history of correspondence and litigation before the Equal Employment Opportunity Commission (“EEOC”) regarding the termination of his employment in March 2008 and certain employee health care benefits that he alleges should flow from his employment at CavTel. None of these issues is relevant, let alone material, to the transfer of control of Cavalier to PAETEC that is the subject of the Application.

All of the allegations set forth in the Comments have to do with employment disputes, none of which are remotely related to the types of public interest considerations relevant and material to the Commission’s review of transfers of control. The FCC has repeatedly refused to consider issues related to employment and other private disputes raised in the context of an assignment or transfer of control proceeding and repeatedly holds that such matters should be settled by the appropriate court or other authority since the “Commission has neither the authority or competence to adjudicate private disputes.” *See WHOA-TV and Park of Montgomery II, Inc. for Assignment of License of WHOA-TV, Montgomery, AL, et al.*, Memorandum Opinion and Order, 11 FCC Rcd 20041, ¶ 4 (1996); *see also Applications of AT&T Inc. and Cellco Partnership For Consent to Assign or Transfer of Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, Memorandum Opinion and Order, 25 FCC Rcd 8704 at 139, n. 484 (finding that the Commission has repeatedly declined to delay approval of a transaction since it does not involve itself in private contractual disputes).

Moreover, as Mr. Hancuff acknowledges several times throughout his Comments, his allegations have already been raised at the EEOC. The FCC has repeatedly found that the EEOC is the proper agency to consider and resolve employment related disputes. For example, the FCC does not consider pending employment discrimination proceedings in the context of its review of an application for transfer of control of a licensed entity, and has stated in response to protests based upon such matters has stated that “[i]t is our general policy that individual complaints of employment discrimination should be resolved in the first instance by the EEOC or other government agency and/or court established to enforce anti-discrimination laws... [and] the Commission will take cognizance of any final determination....” *Pacific and Southern Company, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 8503, ¶ 6 (1996); *see also CBS, Inc.*, Memorandum Opinion and Order, 59 FCC 2d 1127 (1976) (holding *inter alia* that it is not the FCC’s responsibility to evaluate employee discrimination disputes).

Here, Mr. Hancuff has already taken his allegations to the proper forum, and the EEOC has considered – and rejected – his employment-related allegations, stating that “based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes.” (Dismissal and Notice of Rights, EEOC Charge No. 438-2008-01993, July 29, 2010.) There is no basis whatsoever for the Commission to consider or second guess that decision, particularly since the private dispute is in no way relevant or material to whether the acquisition of Cavalier and its operating subsidiaries by PAETEC is in the public interest. Applicants submit that the public interest showing in their Application is clear and unequivocal, and urge that Mr. Hancuff’s attempt to delay the

Commission's review – and therefore the realization of those benefits – should be promptly dismissed.

Respectfully submitted,

/s/ Brad E. Mutschelknaus

/s/ Jean L. Kiddoo

Brad E. Mutschelknaus
Melissa S. Conway
KELLEY DRYE & WARREN LLP
3050 K Street, N.W.
Washington, DC 20007
Tel: (202) 342-8539
Fax: (202) 342-8451

Jean L. Kiddoo
Brett P. Ferenchak
BINGHAM MCCUTCHEN LLP
2020 K Street, N.W.
Washington, DC 20006-1806
Tel: (202) 373-6000
Fax: (202) 373-6001

Counsel for Applicants

October 15, 2010