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May 02, 2011

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: WC Docket No. 09-197, *NTCH, Inc. Petition for Forbearance from 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b)*

Dear Ms. Dortch:

On behalf of NTCH, Inc., pursuant to Section 1.1206(b)(1) of the Commission's Rules, I am electronically filing this written *ex parte* communication in the above-referenced docket to respond to the "Opposition of California Rural ILECs to Requests for Forbearance from Rural 'Service Area' Requirements in 47 U.S.C. Section 214(e)(5) and 47 C.F.R. Section 54.207 by NTCH, Inc. and Cricket Communications," filed April 20, 2011 (the "Opposition"). The Opposition is untimely, procedurally unfair, and raises no new substantive matters. Furthermore, because NTCH does not seek ETC designation in California, the California Rural ILECs have no direct interest in this proceeding. Therefore, the Opposition should be dismissed.

Oppositions and comments on NTCH's Petitions were due *more than a year ago*, on April 14, 2010.[1] Clearly, the California Rural ILECs have had more than ample time to participate in this proceeding. In fact, the one-year statutory deadline for Commission action on a forbearance petition passed on March 5, 2011, although extended for 90 days (to June 3, 2011), as permitted by the statute, to allow the Commission time to fully examine the requested forbearance.[2]

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[1] *Comment Sought on NTCH, Inc.'s Petition for Limited Designation as an Eligible Telecommunications Carrier in Alabama and Tennessee and Petition for Forbearance from Eligible Telecommunications Carrier Service Area Requirement*, Public Notice, 25 FCC Rcd 2569 (2010) ("Public Notice"). Reply comments were due April 29, 2010. *Id*.

[2] 47 U.S.C. § 160(c); *NTCH, Inc.*, Order,

Accordingly, NTCH's Petitions are now in the "final period," during which several important steps occur: additional consultations among the Commissioners' offices and between the Commissioners' offices and the Bureau staff; circulation of a draft order; establishment of a quiet period; and voting of the order.[3] In the case of a complex forbearance petition, the Bureau will circulate the draft order no later than 28 days prior to the statutory deadline—*i.e.* in the next week or two.[4] Introducing an opposition at this stage not violates the pleading cycle deadlines but places an unnecessary and unfair burden on both Commission staff and Petitioners to respond within a very short remaining statutory time frame.

Despite this, the only justification offered by the California Rural ILECs is that they *did not know* about the Petitions. This explanation ignores not only the Commission's foundational principles regarding public notice[5] but also the practical reality that the California Rural ILECs were actively engaged in this issue from at least March 23, 2010. On that date, the group filed a protest against Cricket's application for ETC status with the California Public Utilities Commission.[6] Later that year, representatives from two of the California Rural ILEC member companies, Kerman Telephone Company and Foresthill Telephone Company, traveled to Washington, D.C. to meet with 8th Floor and Wireline Competition Bureau staff on Universal Service Fund issues on September 15, 2010.[7] These actions illustrate what is plain in any case—that an organized group of more than a dozen regulated telecommunications carriers, represented by counsel and active before the California PUC and the Commission, can reasonably be expected to follow developments in an area of evident concern to them. Since NTCH's Petitions were filed in the same FCC docket as most other ETC designation matters, there is no reason to grant any special leniency here on the basis that all of the companies purportedly overlooked the matter.

The California Rural ILECs do not introduce any new information or issues into this proceeding. The issues they raise, including all three prongs of the *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87 (1996), ¶ 12, were directly addressed by NTCH's Petition and have been under review by the Commission for more than a year. While NTCH will not elaborate on substantive issues here (for the reasons given above), it observes that the fact that the some rural ILECs may lose Lifeline customers to competition is not novel, unique to this situation, against the Commission's rules, or against the public interest. That regulatory balance has been carefully considered, both in the statute and the Commission's

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[3] *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, Report and Order, 24 FCC Rcd 9543 (2009), ¶ 32.

[4] *Id*. ¶ 33.

[5] NTCH's Petitions were put on public notice March 15, 2010. Public Notice, *supra* note 1.

[6] Public Utilities Commission of the State of California, Resolution T-17266 (2010), at 5 (approving the request of Cricket Communications Inc. (U-3076-C) for limited eligible telecommunications Carrier (ETC) designation in California).

[7] Sebastian Corporation and Sierra Telephone, Notice of *Ex Parte*, Dockets WC 10-90, GN 09-51, and WC 05-337 (filed Sept. 21, 2010).

rules.[8] When Congress first adopted the rural redefinition requirement, "the focus was on participation by ETCs in the Commission's high-cost program and the need to encourage ETCs to invest in infrastructure to cover new areas and reduce the risk of cream skimming."[9] The study area requirement does not operate to insulate rural carriers from all forms of fair competition and never has. Furthermore, the pending Petitions present no more threat to rural ILECs in this respect than previous designations of wireless resellers under the *TracFone* and *Virgin Mobile* line of cases.[10] In fact, facilities-based carriers have even less ability to lure Lifeline customers away than resellers, as their authorized service areas are limited by their Commission authorizations.

In short, the issues raised by the Opposition have been raised and addressed in this proceeding. The delay of rehashing them now, under threat of a statutory deadline, would unnecessarily prejudice Petitioners, who have adhered to the Commission's procedural rules. Whether inadvertent or not, the effect of the California Rural ILECs' late-filed opposition is to attempt to ambush a proceeding at a very late stage. And in balancing the equities, because the California Rural ILECs will not be affected by outcome in this proceeding, they have no direct stake in the matter.

Accordingly, the opposition should be dismissed as untimely and NTCH's Petitions granted under the forbearance procedures now underway.

Please do not hesitate to contact me with any further questions.

Respectfully submitted,

/s/

Donald J. Evans
Christine E. Goepp
Counsel for NTCH, Inc.

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[8] Most recently, for example, the Commission observed that "low-income households now benefit from a number of competitive offerings." *Lifeline and Link Up Reform and Modernization*, Notice of Proposed Rulemaking, 26 FCC Rcd 2770, fn. 177 (2011).

[9] *Id*. ¶ 303.

[10] *See, e.g.*, *TracFone Wireless, Inc.*, Order, 24 FCC Rcd 4180 (2008); *Virgin Mobile USA LP*, Order, 24 FCC Rcd 3381 (2009).