



August 5, 2011

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Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Written *Ex Parte* Presentation

**Re: WC Docket No. 09-197 – Cricket Communications and NTCH, Inc. Petitions for
Forbearance from the Eligible Telecommunications Carrier Service Area
Requirement**

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)¹ hereby submits this *ex parte* letter to express opposition to the forbearance petitions filed by Cricket Communications, Inc. (Cricket) and NTCH, Inc. (NTCH) in WC Docket No. 09-197. Specifically, Cricket and NTCH request that the FCC forbear from the requirements of 47 U.S.C. § 214(e)(5) and the related service territory redefinition process under 47 C.F.R. Section 54.207.² These forbearance requests would side-step an important part of the eligible telecommunications carrier (ETC) designation review that state commissions conduct for rural telephone companies. The FCC should deny these requests, and continue to uphold its existing service area redefinition process as the means through which prospective ETCs can request deviations from the rural service area requirement.

The Cricket and NTCH petitions are not in the public interest, and would remove a process that is important for the protection of consumers in rural areas. Therefore, the petitions cannot satisfy the "consumer protection" and "public interest" prongs of the forbearance standard under 47 U.S.C. §§ 160(a)(2) and 160(a)(3). Even where an ETC applicant is only seeking federal Lifeline funding, its failure to serve the entirety of a rural service territory can be damaging to the viability of affected rural carriers, and therefore, harmful to consumers. Many of OPASTCO's members serve extraordinarily remote, high-cost areas and, as carriers of last resort

¹ OPASTCO is a national trade association representing approximately 460 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 3 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

² Cricket and NTCH are both requesting designation as ETCs in various locations to obtain access to federal Lifeline funding. Cricket petitioned for forbearance from the rural "service area" requirement on June 21, 2010. NTCH submitted a revised petition for forbearance on June 20, 2011. The FCC invited comment on the recent NTCH petition in Public Notice DA 11-1140, issued on June 29, 2011.

(COLRs), they commit to serving the entirety of their designated service areas. Only small portions of some of these areas coincide with the coverage footprints of some wireless carriers. Where wireless ETC applicants seek to provide Lifeline-subsidized service to only certain localized portions of a rural telephone company's study area, revenue streams for those rural COLRs can be diminished, thereby compromising their ability to serve the customers in the most hard-to-reach portions of their service territories. At least if a prospective ETC were prepared to serve the whole service territory, customers would still have access to at least one voice-service provider.

The FCC should not trump the states' authority to resolve the issues surrounding ETC requests in rural telephone company service areas. For many years, state commissions have been evaluating proposed deviations from the service area requirement in the context of service area redefinition requests filed pursuant to 47 C.F.R. § 54.207. State commissions are permitted to consider whether such redefinition is in the public interest, and redefinition is only final once approved by both the relevant state commission and the FCC. As discussed above, proposals to serve only portions of rural telephone company service areas can have significant impacts on rural consumers and on rural COLRs, and the state commissions should not be preempted from considering those impacts. The FCC should continue to trust that the states will make reasonable decisions regarding redefinition requests based on a consideration of the relevant public interest factors.

OPASTCO hereby offers its support to the parties who oppose the Cricket and NTCH petitions. The FCC should reject these forbearance requests, and uphold the current process for wireless ETC applicants to seek redefinition of rural service areas through the state commissions.

Respectfully submitted,

**ORGANIZATION FOR THE
PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES**

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