

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

In the Matter of)	
)	
Telecommunications Carriers Eligible to)	
Receive Universal Service Support)	WC Docket No. 09-197
)	
Petition of NTCH, Inc. for Forbearance)	
Pursuant to 47 U.S.C. § 160(c) from)	
47 U.S.C. § 214(e)(5) and 47 C.F.R.)	
§ 54.207(b))	

REPLY COMMENTS OF NTCH, INC.

NTCH, Inc. (“NTCH”) submits these reply comments in the above-captioned docket to address comments regarding NTCH’s pending petition for forbearance from the service area requirements of 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b). Because forbearance will bring tangible, immediate benefits to low income consumers in rural study areas, NTCH urges the Commission to make provision for Lifeline-only service in these areas as soon as possible.

Two parties oppose NTCH’s petition: the California Rural ILECs (“California RLECs”) (*ex parte* filed July 15, 2011; comments filed April 25 and July 28, 2011) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) (*ex parte* filed August 5, 2011). Both NTCH and Cricket Communications, Inc. (who has a similar petition for forbearance pending) have submitted *ex parte* responses to the California RLECs April 25, 2011 comments (filed May 2, 2011 and April 29, 2011, respectively). TracFone Wireless, Inc. filed comments supporting NTCH’s petition on July 29, 2011. NTCH’s reply

comments focus primarily on arguments made by the California RLECs, which are echoed by OPASTCO.

The California RLECs fail to present any legally or logically compelling reason why NTCH's petition should not be granted. The factual premise of their argument is that wireless competition will draw customers away from RLECs, causing RLECs to fold, leaving customers without any phone service at all in areas where wireless doesn't reach. The solution, their reasoning goes, is to allow states to take this effect into account when deciding whether or not to grant redefinition requests for Lifeline-only applicants.

This argument cannot withstand scrutiny. First, the California RLECs conflate redefinition with designation of eligible telecommunications carriers (ETCs). None of the competitive "harms" they describe are relieved by the redefinition process, except to the extent that process delays or prevents actual *designation* of competitive ETCs. For example, the RLECs describe how lack of pricing flexibility makes it hard to compete with wireless providers (p. 4). This situation, if true, would have the same result whether a wireless provider competes through redefinition or through forbearance, and would in fact have the most detrimental effect when the wireless provider serves the RLEC's entire study area, which requires neither forbearance nor redefinition.

Contrary to the California RLECs' fear that forbearance would "strip the state commissions of the ability to consider the localized competitive and consumer impacts of Lifeline ETC designation . . ." forbearance would leave that ability fully intact. In fact, as Cricket points out in its *ex parte*, states would retain an *obligation* under Section 214(e)(3) to find that designating an additional ETC in a rural area would serve the public interest, including any consideration of competitiveness factors. (P. 3).

For states that do not perform their own ETC designations, the redefinition process is not intended to function as a proxy veto power over FCC designation, as the California RLECs imply. Rather, Commission practice and precedent make abundantly clear that the purpose of the redefinition procedure is to prevent competitive harm to RLECs *by creamskimming*.¹ Since the California RLECs appear to concede that creamskimming is not a concern here,² they instead attempt to read into the statute a broad protection for RLECs against *any* USF-supported competition. Such a conclusion ignores the clear balance that was struck in the statute: give consumers the benefit of competition while avoiding potential abuses of the high cost reimbursement system.

The California RLECs not only attempt to extract a broad protectionist theory from the statute, they ignore the consumer harm that is likely to result. The RLECs' fear of a "mass migration" to wireless service (p. 5) is especially telling: it speaks directly to the public interest issue that is at the core of NTCH's forbearance request. If consumers are so dissatisfied with their local service that a "mass migration" is likely, is the solution to deprive them of the option by squelching competition? Although the California RLECs complain that "NTCH focuses on the advantages of its services for Lifeline customers" (p. 5), we would argue that the interests of consumers are not a side issue; they are the entire purpose of the Lifeline program.

The three prerequisites for forbearance under Section 10 of the Communications Act, 47 U.S.C. § 160, are: (1) enforcement is not necessary to ensure that a carrier's charges and

¹ See *Virginia Cellular, LLC*, Memorandum Opinion and Order, 19 FCC Rcd 1563 (2004), at ¶ 42.

² We discount a brief statement in the California RLEC comments, p. 1, to the effect that wireless ETCs serve only the populous, lower-cost areas but do not serve the high-cost, remote areas of those same territories. NTCH, like all ETC applicants, commits to serving its entire authorized service area.

practices are just, reasonable, and nondiscriminatory; (2) enforcement is not necessary for the protection of consumers; and (3) forbearance is consistent with the public interest. There are no additional factors, such as proving that enforcement is burdensome or “overly time-consuming” (California RLECs comments at 7). When enforcement is wholly unnecessary, as here, even a slightly burdensome requirement would meet the standard. In any case, here the burden is not slight: NTCH has laid out specific facts showing how expensive and time-consuming the redefinition process can be.

Because NTCH has demonstrated each of these points in its petition, forbearance is not only justified, it is required. *See* TracFone Comments at 5. Grant of its request will enable NTCH to provide service under extremely consumer-friendly, reasonable, and nondiscriminatory terms and fixed low monthly rates, promote the public interest by fostering competition and extending the reach of the Lifeline program, and benefit consumers by increasing choice of service providers and plans to include a low cost option on a cutting edge network. Therefore, NTCH’s petition fits squarely within the forbearance standard and should be granted without delay.

Respectfully submitted,

NTCH, INC.

By _____ /s/_____

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