Federal Communications Commission
Washington, DC 20554

Wireless Telecommunications Bureau	)	
Seeks Updated, Year-End 2011 Data	)	
For Its Sixteenth Report	)	WT Docket No. 11-186
On Mobile Wireless Competition	)	

To: The Commission

COMMENTS OF NTCH, INC.

NTCH, Inc. ("NTCH") submits these comments on the state of competition in the mobile wireless industry. NTCH, a small regional Tier III carrier, has not previously submitted comments in these annual surveys of competition, but the competitive situation has now gotten so dire that it feels constrained to offer its perspective on the situation.

1. Consolidation. In NTCH's view, the degree of consolidation in the wireless industry had already reached alarming levels at least five years ago as a series of middle-sized Tier II carriers like Dobson, Rural Cellular and ALLTel were bought out by the majors. Hopefully a high water mark on consolidation was reached when AT&T and T-Mobile withdrew their application to merge, a merger which would have eliminated a serious and viable national competitor from the scene. Unfazed by the Commission's reaction to that proposal, Verizon quickly placed on the table its own plan to eliminate two other large competitors from the scene – Cox and SpectrumCo. That proceeding remains pending as the Commission investigates the ramifications of Verizon's elimination of incipient competition in the CMRS market along with the planned cessation of competition in the video distribution market between Verizon and the cable companies involved in the deal.

Unfortunately, the current dynamic of the CMRS marketplace is actually *compelling* increased consolidation. At the inception of the cellular industry, the market was characterized by hundreds of small independent carriers on the A block and the fractured Baby Bell companies and GTE on the B block. This industry structure necessitated cooperation and accommodation on matters such as roaming, interference at borders, hand-off, and industry-standard setting. Because the industry was truly diverse marketplace, no one or two players in that market could dictate terms to the rest. As at Woodstock, everybody needed each other for the system to work. That system is now gone.

As Verizon and AT&T have acquired more and more spectrum over broader and broader geographic areas, their need to cooperate with other carriers has waned. Only regulatory obligations require them to engage in roaming at all. Moreover, as the marketplace has become increasingly national in scope, advertising and branding take place increasingly on a national scale. Bulk equipment orders from handset manufacturers command either outright product exclusivity with one carrier (such as the AT&T iPhone deal) or preferred delivery and price terms. Smaller carriers – even fairly large regional carriers – find themselves crippled in getting access to the best and most desired handsets at all, much less on favorable terms. This growing domination of the market by the Big Two feeds upon itself, causing even greater domination to result. This happens when carriers like Dobson, ALLTel, Rural Cellular and many others decide they can no longer compete because the deck is so heavily stacked against them. When they sell out to the Big Two, the problem just worsens for the remaining carriers, so that even large national carriers like T-Mobile have gotten nervous about their ability to survive. What was once a healthy, vibrant and competitive marketplace will very shortly be a two horse show unless the FCC and other regulators vigilantly act to maintain some sort of competitive opportunity for

others. Thus, the single most important number that the Commission needs to grasp in assessing the state of competition today is not minutes of use, or numbers of cell towers, or megabytes per second; rather, it is the number 2: the number of dominant carriers in the market. All the other competitive ills flow from that number.

2. Roaming. As noted above, the economic realities of the roaming market have tilted heavily in favor of the Big Two. Since they no longer "need" other carriers to roam with, they have the luxury of exacting exorbitant roaming rates and unfavorable roaming conditions. The Commission has never questioned the rates charged for roaming. (In the past, because roaming was a mutually beneficial relationship, both parties to a roaming agreement had strong incentives to arrive at reasonable rates; with that dynamic gone, regulatory oversight is needed to correct the competitive imbalance.)

In the course of the proceedings regarding Verizon's proposed acquisition of large spectrum holdings from SpectrumCo and Cox, several commenters, including NTCH, have pointed to the need for a reasonable cap on roaming rates – one which assures Verizon a reasonable return but is also more nearly related to its costs. NTCH suggested that the roaming rate be capped at a level 20% below the wholesale rate offered by Verizon's prepaid resellers. Assuming that Verizon is not selling such services below cost, that level would be an easy and public way to benchmark a standard for a reasonable roaming rate cap, since very similar services are involved. MetroPCS suggested a similar approach but using the roaming rate agreed to by Verizon and the SpectrumCo partners as the benchmark rate, assuming that their rate represented an arm's length agreement between major service providers. Another potential benchmark would be the rate agreed to by Verizon and AT&T when AT&T acquired CDMA properties and had to operate them on a transitional basis for several years. Let the rate that the

Big Two charge each other be the same rate that other smaller carriers pay to roam. Until some reasonable benchmark is established or the Commission acts on a complaint attacking the current levels of roaming rates assessed by the majors, roaming rates will continue to undercut the ability of small carriers to operate economically and ensure ubiquitous service to their customers.

3. Handset contracts. Another major factor inhibiting competition in this market is the wide-spread practice of offering customers "free" or discounted handsets in return for two year contracts. The Commission has long looked askance at bundling as a practice which effectively discourages, if not prevents, customers from changing carriers. NTCH finds that even if customers are allowed to get out of long term service contract by paying a diminishing early termination fee, they are very reluctant to change carriers. This is true even when the other carrier offers demonstrably better service at a lower price. Clearly, the irresistible lure of a "free" phone, coupled with the hassles and expenses associated with getting out of a long term contract, cloud what should be a rational consumer judgment to change carriers. By bundling phones and long term contracts with service, carriers effectively capture their customers against their better judgment. The use of the bundling device permits carriers to get away with charging supra-market rates (even accounting for the revenue needed to offset the cost of the subsidized device). That is why the bundling practice remains a mainstay of marketing strategy by entrenched carriers.

Until the Commission or Congress acts to prohibit either (i) long-term service contracts or (ii) subsidized handsets, the true ability and freedom of consumers to change carriers in order to get the best quality and value will be severely impaired. Abolition of one or the other would have the desired effect since the free phone carrot would likely disappear. Such a reform would not only dramatically improve competition in the handset market (since consumers would

now shop for such devices in the normal way, i.e., on the basis of price, quality and features), but would also dramatically stimulate competition in the service market (since consumers would now evaluate prospective and existing wireless service on the basis of price, quality and features). Though the consumer might not recognize it herself at the outset, elimination of the "free" phone concept would result in very substantial savings and better service quality over the long run.

4. Handset availability. Small carriers continue to experience both a lack of access to new consumer handsets and delays in receiving the handsets they do have access to. Equipment manufacturers do not want to design and manufacture units for firms who can only order in quantities well under five or ten thousand units. By contrast, they happily respond to requests from the larger carriers (not just Verizon and AT&T in this case) because their embedded costs can be spread out. This is not economically surprising, but it does leave small carriers scrambling to procure the latest, most desirable handsets wherever they can be procured and often having to simply admit to customers that they cannot sell them the same phone that Verizon or Sprint can.

Sometimes the situation is even worse: as we saw with the iPhone, AT&T was able to secure exclusive access to the hottest product on the market for the entirety of its initial launch and distribution. Only by being able to commit to a huge volume of sales could a carrier get that exclusive arrangement. Indeed, as Sprint recently found, it requires a very large purchase commitment even to get non-exclusive access to the iPhone. Everyone else is on the outside looking in.

The best solution to this problem is legislative action to prohibit any manufacturing arrangement between manufacturers and telecom service providers that has the effect of denying all carriers access to handsets.

5. Interoperability. Another recurring problem which the Commission just recently formally turned its attention to is the lack of interoperability among different frequency bands. The interoperability issue is key to the future development of competition in the 700 MHz band. As will become clear when the Commission reviews the record in the interoperability docket (WT Docket 12-69), customers of Blocks B through E licenses using Band Class 17 will not be able to roam on the systems of small independent carriers holding Block A licenses. At the same time, handsets for Block A licensees will be delayed or not produced at all due to the perceived lack of volume of orders from the smaller licensees. Consumers owning Band Class 17 handsets will not be able to switch to Band Class A service providers, effectively chaining them to AT&T or Verizon as their service provider. The stratification of Band Classes thus widens the competitive gap between the "haves" and the "have nots" by strongly deterring inter-carrier movement. Unless a single comprehensive Band Class applicable to all Lower (and possibly even all Upper) 700 MHz licenses is mandated or adopted voluntarily, consumers across the entire 700 MHz band will suffer from the inability to roam and the inability to freely change carriers.

The problem is not limited to the 700 MHz band, however. If AWS bands used by the majors are limited to broadband-only use, this will mean that AWS customers of the majors will be unable to get voice service while roaming in markets served by carriers who use AWS to offer both voice and data service. The freedom to change carriers will also be discouraged since the small independent would offer its voice service over AWS. Again, the

majors seem to be erecting structural barriers to roaming and changing service providers to the detriment of full and fair competition.

Conclusion

In sum, the state of competition in the CMRS industry is bad and getting worse. Competition will remain crippled until the FCC takes bold and meaningful steps along the lines outlined above to break the stranglehold which the majors now have on this marketplace.

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