

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the State)
of Mobile Wireless Competition) WT Docket No. 18-203
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Comments of NTCH, Inc.

NTCH , Inc.(“NTCH”), by its attorneys, hereby offers these comments for consideration by the Commission in connection with its assessment of the state of competition in the mobile wireless marketplace. NTCH has been a mobile wireless licensee and operator for almost 20 years. Until recently it was a medium to small-sized regional CMRS carrier with operations in California, Colorado, Arizona, Idaho, Florida, Tennessee, Mississippi, South Carolina and Georgia. NTCH can report that from its perspective, the state of competition in this industry is bad and getting worse all of the time. There are several drivers for this serious change in the competitive landscape over the last decade.

A. Reduction in Facilities-based Service Providers

Scores of large, medium and small carriers have gone out of business or sold out to larger carriers over the last twenty years. As recently as the mid ‘90s, the wireless marketplace was characterized by a vibrant market of national carriers with telco roots such as the Baby Bells, GTE Mobilnet, Contel Cellular, U.S. Cellular, and Sprint. At the regional level there were a score of non-wireline companies which had accumulated enough spectrum over a large enough area to compete vigorously with the majors: Leap, Cricket, Metro Mobile, McCaw, CellSouth, ATN. The market also had room for a host of smaller carriers, some of which were associated

with small phone companies and some of which were independent non-telco operations like Corr Wireless, NTCH, Pocket Communications, and Flat Wireless. These companies were able to use their roots in their local communities, provide local customer care as opposed to foreign call centers, apply efficiencies in operations passed on through lower prices, and offer better local coverage to address their customers' needs. They survived and in some cases thrived despite the heavy advertising and other numerous advantages held by the majors. That era is rapidly fading. All of the mid-majors except CellSouth (now rebranded as C-Spire) have given up and been bought out by the majors.

This dramatic reduction in competitive players has necessarily changed the landscape. A consumer is far less likely today to find an innovative or personalized service offering or one targeted to the needs of a niche market. National advertising and service offerings require standardization that cannot adjust to local needs. Customer service is handled by someone in India or the Philippines. To the extent that there is competition, the majors have tended to compete on handset deals, quality of service, and coverage rather than on price. For example, none of the current competition is offering the 29 dollar unlimited data, unbundled, no-family-plan rate that NTCH established in 2001 in Tennessee and maintained through 2013 when they suspended operations. The result is that customers like the undersigned are paying more than \$300 per month for family cell service and phone contracts with limited alternatives.

B. Roaming rates

As the number of carriers has diminished and the breadth of coverage by the major carriers has commensurately increased, the economic incentive for reasonable roaming rates between carriers has vanished. The foreseeable consequence of the FCC's failure to secure its

debt in the auctioned C block licenses was that the defaulter in that auction sold out to Verizon, dashing the reasonable expectations of entrepreneurs who bought spectrum in that auction that there would be an ecosystem of other entrepreneurial companies with which to roam. In the expected marketplace where no carrier had ubiquitous coverage and every carrier needed a reasonable roaming rate from other carriers in order to ensure that its own customers would be able to roam, reasonable roaming rates were not an issue. A carrier's own rates had to be reasonable if it wanted to roam on other carriers' networks, and if any carrier was unreasonable, there were always alternatives. That ideal competitive scenario of a plethora of independent players interconnecting and roaming on each other based on reciprocal, competitively established rates is long gone. Because the major carriers now no longer need roaming to survive, they can charge other carriers whatever they wish with the comfort that they will rarely themselves have to pay inflated rates.

This single hurdle has been a major factor in the surrender of numerous carriers to the majors. Leap, Cricket, Metro Mobile and others struggled to overcome the roaming rate hurdle. SpectrumCo, a major potential player on the national scene, ultimately decided to sell its large cache of virgin spectrum to Verizon in part because it was unable to negotiate a reasonable roaming rate. NTCH has largely exited the market in significant part due to the absence of reasonable rates. Flat Wireless has restructured its operations significantly because it was unable to get financially sustainable roaming rates.

In today's world, customers no longer expect to be charged for domestic roaming, so the local carrier must bear the burden of paying the voice and data roaming rates charged by the majors. At a hypothetical data roaming rate of \$120/GB, a customer could easily run up a roaming tab of hundreds of dollars on a single excursion out of his home market. With popular

offerings that provide unlimited data or even a few GBs of data for \$40 or \$45 per month, the local carrier can easily be submerged by these exorbitant rates. With all other inputs to the carrier's expense column being set by competitive market rates or regulated rates like utilities, roaming rates stand out as the single largest uncontrolled and uncontrollable cost element that the small carrier must cover. No business plan that depends on reasonably priced service offerings to consumers can long support these costs, so small carriers keep exiting the market at a rapid pace. The Tier 2 carriers have already disappeared almost completely.

The FCC itself must be deemed to be complicit in this diminution of competition. The Commission has steadfastly refused to compel larger carriers to charge reasonable roaming rates, despite the commandment found in Title II of the Act that rates be reasonable. The Commission's consistent unwillingness to fulfil its basic job of ensuring that common carrier rates are just, reasonable and non-discriminatory represents a major failure of its administrative responsibilities. The handful of roaming complaints brought to it under Section 208 of the Act have languished for years despite the strict five-month deadline set by the Act. The roaming rate complaints the undersigned is familiar with have set out in detail the grossly excessive and completely non-cost-justified rates that are being charged, but the Commission has so far refused to take any effective action to stop these practices. The FCC's failure to address, much less correct, the roaming crisis is a major impediment to better competition. In the indisputably non-competitive roaming market today, firm and forceful regulatory intervention is needed, but the Commission has not stepped up.

The FCC has also not enforced the transparency rules adopted as part of the *Restoring Internet Freedom* Order last year. Those rules require broadband internet service providers to post their rates (including roaming rates) either on the Commission's website or their own. None

of the major carriers has done so, leaving the industry without the “disinfectant” of sunshine which the Commission promised as a preventative measure to discourage unreasonable rates. In NTCH’s judgment and its own experience, the unavailability of reasonable roaming rates is the single most important factor in hindering wireless competition.

C. Auctions

While the Commission has attempted to follow the Congressional policy of fostering ownership of licenses by small business to increase competition, that policy has largely failed. The Commission now grants a maximum of a 25% discount off the auction bid amount, which, it turns out, is not nearly significant enough a discount to really help small businesses. In large part this occurs because spectrum blocs are auctioned in the very large sizes that the biggest carriers prefer rather than the smaller county or even BTA areas that would be affordable by smaller carriers who want to serve specific smaller territories. Until recently, the Commission often allowed the large companies to form phony companies that they controlled to masquerade as small companies so as to get the discounts. The Commission has also brokered backroom deals with large companies to grant build-out extensions in exchange for guaranteed auction bids -- all at the expense of small companies who were then priced out of the spectrum.

It appeared for a while that the Commission was going to address the inaccessibility of auctioned spectrum problem in the context of the new Citizens Broadband Radio Service, which originally promised to make good spectrum available in small local tracts at prices affordable by small businesses who want to just serve local areas. Before that service even got off the ground, however, the major carriers quickly convinced the Commission that they needed very large geographic area and long, renewable license terms, thus safely restoring the tired old *status quo ante* to a service that once had the real potential to be disruptive, to spur previously unimagined

innovations, and to bring an interesting new form of competition to the market. Small carriers thus can neither expand the depth nor the breadth of their coverage due to spectrum constraints. Unless the auction process is revised to significantly improve the chances of small carriers winning spectrum at auction, those smaller enterprises who cannot afford to buy licenses for areas far larger than they need at prices far higher than they can pay will not have access to spectrum. Again, a potentially disruptive source of competition is being frozen from the market.

D. Handsets

An increasingly problematic situation for smaller carriers has presented itself more and more forcefully over the last six or seven years. Wireless carriers must be able to offer reasonably priced handsets to their customers, but these handsets are not readily available. Manufacturers often refuse to sell their handsets in the small lots desired by smaller carriers, while the major players have the market power to ask for – and get – phones manufactured to their specifications and branded with their names, together with volume discounts. The result of this market dynamic is that smaller carriers are often relegated to offering phones which are not the latest models wanted by consumers, which are generic, which may be aftermarket, or which may even bear another carrier's name. In today's world, the latest phone with the newest features is the coin of coolness. The inability to offer cutting edge phones, especially to younger customers, is a significant competitive disadvantage for the small carrier. Something every competitive carrier understands is that without a requirement that handsets be unbundled and offered at non discriminatory prices with standardized settings, competition will never exist for the lowest tier of customers who have no choice but to be effectively stigmatized in our society by the handset they carry.

The movement away from the provision of free or discounted handsets in exchange for long term service agreements might have been expected to help in this regard. A business model could have developed whereby consumers buy their phones from independent phone vendors rather than from the service provider. This might have helped to level the handset playing field by having all phones be purchased like landline phones now are – as a universally and non-discriminatorily available commodity. That model has yet to develop. Instead, major carriers now offer installment purchase plans on phones which as a practical matter tie the customer to the carrier. Competition continues to suffer as a result.

E. Bundled content

A more recent development in the wireless landscape is the bundling of content like football, streaming video, games, etc. with basic telecom service. As the Justice Department recognized in opposing the AT&T-Time Warner merger, the combination of control of important and limited sources of content with control over the pipeline through which that content can be delivered can be crippling to competition. As this model spreads through the major carrier model, smaller carriers will be at a huge competitive disadvantage if they cannot get access to the content that the majors control. NTCH has no problem with desirable content being offered by carriers, but regulators must ensure that competitors have fair and non-discriminatory access to this if competition is to flourish.

F. Field hearings

Competition in the wireless market is in a parlous state. Perhaps because policy makers become captives of the powerful constituencies that relentlessly lobby them here in Washington, something more than a cursory biennial review of the state of competition is needed. NTCH

suggests that the Commissioners schedule a series of field hearings out in the hinterlands. Hearing from real people who struggle from day to day to get access to newer handsets, to acquire the spectrum needed to deliver a high quality signal, and to pay unconscionable roaming rates that dwarf the monthly rates they can charge their subscribers might open their eyes to the obstacles to competition that the diminishing numbers of small carriers must overcome.

G. Conclusion

Competition in the wireless market allowed to be run over by the majors. The Commission can still act to reverse this trend, but it needs to be proactive and vigorous in taking the basic steps necessary to promote and foster competition.

Respectfully submitted,

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