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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Telecommunications Carriers Eligible to)	WC Docket No. 09-197
Receive Universal Service Support)	
)	
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))	

PETITION FOR FORBEARANCE OF
NTCH, INC.

FILED/ACCEPTED

MAR - 5 2010

Federal Communications Commission
Office of the Secretary

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Summary

NTCH, Inc. (“NTCH”), on behalf of itself and its affiliated operating entity in Alabama and Tennessee, NTCH-West Tenn, Inc. (collectively, “NTCH”), respectfully submits this Petition for Forbearance from the application of the definition of “service area” contained in 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b) (collectively, “Section 214(e)(5)”). NTCH requests forbearance from Section 214(e)(5) for the purpose of designation as a Lifeline-only eligible telecommunications carrier (“ETC”) under its concurrently-filed Petition for Limited Designation as an Eligible Telecommunications Carrier in the States of Alabama and Tennessee.

As discussed herein, NTCH’s request meets the three prerequisites for forbearance set out in section 10 of the Communications Act of 1934 (the “Act”).¹ First, in this circumstance, application of the Section 214(e)(5) definition of “service area” is not necessary to ensure that NTCH’s charges and practices—or the classifications and regulations governing its service—are just, reasonable, and nondiscriminatory. Here, application of Section 214(e)(5) would not promote the purposes either of the provision itself or of the Lifeline program generally. In fact, it would undermine these statutory goals.

Second, enforcement of Section 214(e)(5) definition of “service area” is not necessary to protect consumers. Rather, enforcement will harm consumers by discouraging supported service in the requested areas. In contrast, grant of the forbearance request will benefit consumers in those areas by fostering competition among alternative providers and service plans. NTCH’s service plans are particularly advantageous for low income customers, as they provide unlimited minutes, fixed low monthly costs, and no long-term commitment or credit check.

¹ 47 U.S.C. § 160.

Forbearance will therefore also further the Commission's goals of increasing participation in the Lifeline Program.

Third, forbearance is in the public interest. By expanding the reach of the Lifeline program and offering service under terms that allow increased numbers of low income consumers to participate, NTCH's service will help to ensure that all citizens have access to essential telecommunications services, which is the core goal of the Universal Service Fund.

Contents

I. BACKGROUND.....1

 A. NTCH.....1

II. FORBEARANCE STANDARD2

III. DISCUSSION.....3

 A. Just and Reasonable3

 B. Consumer Protection.....6

 C. Public Interest7

IV. ANTI-DRUG ABUSE CERTIFICATION9

V. CONCLUSION.....9

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I. BACKGROUND

A. NTCH

NTCH, under the brand name ClearTalk, provides mobile wireless voice service on a short-term, low-cost basis. It provides this service over its cutting-edge 3G network, which uses a third less power than traditional installations and delivers enhanced signal strength and coverage. By using “software-defined” base stations,² NTCH is able to extend the networks of other carriers into remote and rural areas, increasing reliability as well as capacity to those who need it most. This technology is easily upgraded as the industry develops. NTCH’s basic voice service is currently less than \$30 per month, with unlimited anytime minutes, no credit check, no deposit, and no annual contract.

NTCH has been building mobile networks in underserved areas of the country since 1999. In the past ten years, NTCH has built wireless networks in 17 different markets and

² For detailed technical information, please see our technical pdf, “Detailed Technical Information,” <http://www.cleartalk.net/cleartalk/info/cttech.pdf> (last visited March 5, 2010).

constructed or acquired over 300 telecommunication sites. Its markets include or have included Colorado (Grand Junction), Idaho (Pocatello, Twin Falls, Idaho Falls), Tennessee (Jackson, Dyersburg), Alabama (Florence), Arizona (Yuma), California (El Centro) and Florida (Jacksonville). In just the last three years, NTCH has built over 250 communication sites and is today one of the largest tower owners in the US. Its network has expanded not only through the growth of its own network but through roaming agreements with larger carriers. In the future, NTCH will continue to identify and reach out to unserved and underserved markets, where affordable service can provide much-needed voice options for consumers.

II. FORBEARANCE STANDARD

Section 10(a) of the Act provides that “the Commission shall forbear from applying any regulation or provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications carriers, in any or some of its or their geographic markets,” if the Commission determines that three conditions are satisfied:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.³

In making the public interest determination required by section 10(a)(3), the Commission must consider “whether forbearance . . . will promote competitive market conditions.”⁴ A

³ 47 U.S.C. § 160(a).

⁴ 47 U.S.C. § 160(b).

finding that forbearance will promote competition among providers of telecommunications services may be the basis for forbearance. Forbearance is required only when all three factors of the analysis are met.⁵

III. DISCUSSION

B. Just and Reasonable

A provision or regulation is “necessary” when there is a strong connection between the requirement and the regulatory goal.⁶ Section 10(a)(1) requires the Commission to consider whether enforcement of the service area definition of Section 214(e)(5) for a Lifeline-only carrier is “necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and not unjustly or unreasonably discriminatory.”⁷ In this context, the service area definition is not necessary to further the goals of the Lifeline program, and in fact frustrates the broader goal of ensuring that all citizens, including low-income consumers, have access to telecommunications services.

Universal service has been a fundamental goal of U.S. telecommunications policy for more than seventy-five years.⁸ Pursuant to section 254 of the Act,⁹ the Commission established the Low Income program to ensure access to telecommunications services for all consumers,

⁵ *Id.*

⁶ See *TracFone Wireless, Inc.*, Order, 24 FCC Rcd 4180, 4185, ¶ 11 (2008) (citing *CTIA v. FCC*, 330 F.3d 502, 512 (2003)).

⁷ 47 U.S.C. § 160(a).

⁸ 47 U.S.C. § 151 (“to make available, so far as possible, to *all people* of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and communication service with adequate facilities at reasonable rates”) (emphasis added).

⁹ 47 U.S.C. § 254(b).

including low income consumers.¹⁰ The Lifeline program, a component of the Low Income program, is designed to reduce the monthly cost of telecommunications services by providing qualifying low income consumers with service discounts.¹¹ Noting that the Low Income program remains underutilized, the Commission has made it a priority to increase participation in the program.¹²

Section 214(e)(5) requires that if an application for ETC status includes the study area of a rural telephone company in its requested designated service area, the applicant must either seek designation for the entire study area or request redefinition to a smaller area. If asked to redefine a portion of a rural study area, the Commission must take into account the recommendations of the Federal-State Joint Board before approving the new service area.¹³ This statutory structure makes clear that the purpose behind Section 214(e)(5) is the same as the concerns articulated in the Federal-State Joint Board's recommendations—once the Joint Board's concerns are met, the statute allows redefinition.

The concerns of the Federal-State Joint Board with respect to rural service areas are: 1) “cream-skimming” by competitors serving only the lower-cost portions of an incumbent’s territory yet receiving support calculated based on higher-cost areas; 2) the “different competitive footing” afforded rural telephone companies by the Act; and 3) the calculation of costs based on the embedded costs of the entire study area, to avoid imposing any additional

¹⁰ 47 U.S.C. § 254(b)(3) (requiring the Commission and the Joint Board to base universal service policies in part on access to telecommunications services by low income consumers).

¹¹ See 47 C.F.R. §54.400 *et seq.* (Subpart E).

¹² See *Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8305 (2004) (“*Lifeline and Link-Up Order*”).

¹³ 47 U.S.C. § 214(e)(5).

administrative burden on rural telephone companies.¹⁴ As the following discussion will make clear, granting NTCH's Petition for Forbearance will further the statutory goals of sections 254 and 214 with no detriment to the purpose of Section 214(e)(5).

First, the risk of cream-skimming is nonexistent in this case, because reimbursement of the Lifeline program is not based on the embedded cost of providing service but is calculated on a per-consumer basis, following the guidelines contained in the Commission's rules.¹⁵ Therefore, it is not possible for a competitive carrier to serve only the lower-cost portions of an incumbent's territory while seeking support calculated on the basis of higher-cost areas.

Second, designating an ETC for Lifeline-only service for only a portion of the incumbent rural carrier's study area will not place the incumbent carrier in a different competitive position than if the competitive carrier were authorized to provide Lifeline throughout its service area, again, because support is not calculated based on embedded costs of providing service throughout the incumbent's study area.

Third, there is no additional administrative burden placed on the incumbent carrier by a Lifeline-only competitor operating in part of its study area because Lifeline reimbursement does not require the incumbent carrier to calculate its costs differently—in fact, it does not require the incumbent to calculate costs at all.

Furthermore, if the instant Petition is denied, it will actually impede greater utilization of Lifeline services. NTCH's business plan targets consumers who are not adequately provided for by mainstream or prepaid carriers. Its service is tailored to these customers: fixed monthly

¹⁴ *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87 (1996), ¶ 172.

¹⁵ 47 C.F.R. § 54.403.

payments, no credit check, and no long-term contract. If approved, NTCH would therefore be able to provide a vital service to many Americans who might not otherwise be able afford or qualify for it, furthering the goals and increasing the reach of the Lifeline program by packaging supported services in a plan that accommodates the needs of low income consumers.

For these reasons, a request for redefinition by a Lifeline-only carrier would be an expensive, time-consuming, and pointless ritual. The required cream-skimming analysis, even if performed, cannot provide a meaningful conclusion in this context. For these reasons, the requirement of the first prong of section 10(a) is met. Section 214(e)(5) is in no way necessary to ensure that NTCH's charges and practices are just and reasonable.

C. Consumer Protection

Section 10(a)(2) requires that the Commission consider whether the service area definition of Section 214(e)(5), applied to a Lifeline-only carrier, is necessary for the protection of consumers. As noted above, forbearance from this provision will actually benefit consumers by introducing a competitive Lifeline provider into the designated service areas. In particular, NTCH's service offerings are beneficial to consumers because they provide an alternative arrangement to credit checks, long-term contracts, and potentially unexpected charges.

Furthermore, NTCH does not seek forbearance from any of the consumer protection provisions of sections 54.101 and 54.201, such as access to emergency services, access to operator services, directory assistance, toll limitation, and applicable consumer protection and service quality standards. NTCH's commitment to these provisions is described fully in the concurrent Petition for Designation as an Eligible Telecommunications Carrier, including its

adoption of the CTIA Consumer Code for Wireless Service.¹⁶ NTCH places great emphasis on public safety and the quality of service to its customers.

D. Public Interest

Section 10(a)(3) requires the Commission to consider whether enforcement of Section 214(e)(5) for a wireless carrier that seeks only Lifeline support is in the public interest. Here, as discussed above, the express public interest in access to telecommunications service for low-income consumers can be promoted without any detrimental effect on rural telephone companies by forbearance from Section 214(e)(5).

Conversely, forbearance from the application of Section 214(e)(5) against a Lifeline-only ETC applicant will expand the accessibility of, and therefore the participation in, the Lifeline program. The Lifeline program remains underutilized. In recent years, only about one-third of households eligible for low-income assistance subscribed to the program.¹⁷ The Commission has noted that “there is more we can do to make telephone service affordable for more low-income households” and to expand Lifeline participation in particular.¹⁸ In pursuit of this goal, the Commission has adopted expanded eligibility criteria and outreach guidelines for federal default states in an effort to increase participation.¹⁹ It has also sought comment on “how best to provide support through the Lifeline and Link-Up programs to more low-income individuals and

¹⁶ http://files.ctia.org/pdf/The_Code.pdf.

¹⁷ *Virgin Mobile USA LP Petition for Forbearance and Petition for Designation as an Eligible Telecommunications Carrier*, Order, 24 FCC Rcd 3381 (2009).

¹⁸ *Lifeline and Link-Up*, *supra* note 12, at 8305 (stating that at the time of the order only a third of eligible households participated in the Lifeline program).

¹⁹ *Lifeline and Link-Up Order*, *supra* note 12, at 8305, para. 1.

families.”²⁰ Approving NTCH for the Lifeline program would therefore promote the public interest by enabling more consumers to participate in the program through service offerings that are tailored to meet the specific needs and situation of low income customers.

A public interest determination under section 10 also requires the Commission to consider whether forbearance will promote competitive market conditions.²¹ A finding that forbearance will promote competition among carriers may be the basis for forbearance. Here, such a finding is easy to make. In forbearing to apply Section 214(e)(5) to NTCH, the Commission would allow a new Lifeline provider to enter the market in the designated areas, which would then compete with the incumbent and existing competitive carriers. In this Petition we have described how NTCH’s services and facilities differ from those of other carriers, and the unique services that it can provide low income consumers. This competition will further the public interest by “spur[ring] innovation amongst carriers in their Lifeline offerings, expanding the choice of Lifeline products for eligible consumers.”²² As a spokesperson for AT&T Wireless commented upon NTCH’s entry to the Jacksonville, Florida, market: "Customers always win when they have a choice in their wireless providers. Wireless is growing as an industry, and you have to look after everyone's needs." ²³

In conclusion, the public interest analysis in this case clearly indicates that forbearance from Section 214(e)(5) would promote the statutory goals of the Universal Service Fund in

²⁰ *The Wireline Competition Bureau Seeks to Refresh the Record on Lifeline and Link-Up*, Public Notice, 22 FCC Rcd 4872 (Mar. 12, 2007); *Lifeline and Link-up Order* at 8305.

²¹ 47 U.S.C. § 160(b).

²² *TracFone Order*, *supra* n.11, ¶ 19.

²³ See Urvaksh Karkaria, *Option to Prepaid Cell Arrives*, THE FLORIDA TIMES-UNION, Aug. 21, 2007, http://jacksonville.com/tu-online/stories/082107/bus_193024365.shtml (last visited March 4, 2010).

general and the Lifeline Program in particular, without affecting the function and purpose of Section 214(e)(5).²⁴ Furthermore, forbearance would enhance competition among carriers. Therefore, the public interest would be served by granting NTCH's Petition for Forbearance from Section 214(e)(5) for ETC designation as a Lifeline-only carrier.

IV. ANTI-DRUG ABUSE CERTIFICATION

NTCH certifies that no party to this Petition is subject to denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

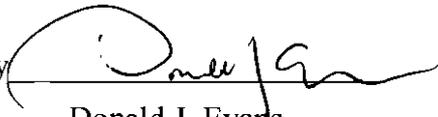
²⁴ NTCH also notes that forbearance as proposed in this Petition will not affect the recent growth of high-cost disbursements.

V. CONCLUSION

As NTCH has demonstrated above, grant of this Petition for Forbearance from Section 214(e)(5) for ETC designation as a Lifeline-only carrier is consistent with the Act, Commission rules, and the public interest. Accordingly, NTCH respectfully requests that the Commission grant this Petition expeditiously.

Respectfully submitted,

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