

**Before the
Federal Communications Commission
Washington, DC 20554**

In re Applications of)	
)	
VERIZON WIRELESS and LEAP WIRELESS)	File Nos. 0004942973,
For Consent to the Exchange of Lower 700)	0004942992, 0004952444,
MHz Band, A Block, AWS-1, and Personal)	0004949596, 0004949598
Communications Service Licenses)	
)	
VERIZON WIRELESS and SPECTRUMCO)	File No. 0004993617
LLC for Consent to the Assignment of AWS)	
Licenses)	
)	
VERIZON WIRELESS and COX TMI)	File No. 0004996680
WIRELESS, LLC for Consent to the Assignment)	
of AWS Licenses)	
)	
VERIZON WIRELESS and LEAP WIRELESS)	ULS File Nos. 0004942973,
Seek FCC Consent to the Exchange of Lower 700)	0004942992, 0004952444,
MHz Band, A Block, AWS-1, and Personal)	0004949596, 0004949598
Communications Service Licenses)	

To: The Commission

REPLY OF NTCH, INC.

NTCH, Inc. (“NTCH”) submits this Consolidated Reply to the Oppositions of Verizon Wireless, SpectrumCo, LLC, Cox TMI Wireless, LLC, Leap Wireless International (and its affiliates), Savary Island License B, LLC and Savary Island License A, LLC in connection with the above-referenced applications.

I. The Verizon-Cable Co Deals.

A. Verizon’s Spectrum Needs.

Verizon devotes the lion’s share of its Opposition to demonstrating that it needs additional spectrum to grow bigger and to operate more efficiently. It repeatedly points out that

no opponent of these deals has demonstrated otherwise. These arguments show conclusively that Verizon doesn't get it: no one disputes these points because they are true, and that is precisely what makes these deals objectionable. In Verizon's view, what is good for Verizon is presumptively good for the public. To see the fallacy in this approach, we need only recall that pre-World War II Germany's annexation of all surrounding German-speaking territories permitted it to operate more efficiently, unified the German *Volk*, eliminated artificial boundaries, and gave Germany access to additional resources needed to fuel its further growth. By that measure, the policy of *Anschluss* made perfect sense. The problem is that it was disastrous for the rest of Europe that had to suffer the consequences of this new and improved German *Reich*. The Commission's task here is to look beyond what Verizon needs to increase its own profitability and instead consider what will most benefit the American people.

The nub of NTCH's Opposition and of others as well is that Verizon already uses its dominance of the wireless market generally, and the CDMA market specifically, in ways that impede and stifle competition. In other words, it is *already* too big. The acquisition of the vast new spectrum holdings at stake in this proceeding will exacerbate the problem by removing the real competitive check of potential new competitors (SpectrumCo and Cox) and consolidating in Verizon's hands the scarce resource, spectrum, that other carriers need to compete. All of the trends that Verizon presents so eloquently regarding the dramatic growth of data usage and the consequent need for spectrum apply even more compellingly to other carriers who are struggling to compete with Verizon with far fewer spectrum resources at their disposal.

B. Section 572(c) of the Act.

In its petition to Deny, Public Knowledge pointed astutely to the provisions of Section 572(c) of the Communications Act. That law prohibits local exchange carriers and cable operators from entering into any joint venture or partnership to provide video programming or telecommunications services in the same market. Verizon, Cox and the cable companies who make up SpectrumCo do not dispute that their cross-marketing arrangements constitute a joint venture to provide video programming and telecom services. They have not only created an acknowledged “joint venture” to develop ways of further integrating their service offerings, but have also entered into “agency” agreements pursuant to which they will cross-market each other’s service offerings. The latter agreements constitute a functional joint venture even if not so denominated by the parties.

Verizon’s sole response to this blatant violation of the Communications Act is to insist that Section 572(c) covers only to “local exchange carriers” because it doesn’t explicitly include “affiliates” of local exchange carriers in its prohibition. In Verizon’s view, a local exchange carrier may circumvent the strictures of Section 572(c) by simply creating a subsidiary which is not itself a local exchange carrier and then proceed to engage by that artifice in the various joint marketing services prohibited by the Act. To state this proposition is to refute it. The Congressional prohibition on joint ventures of the type proscribed by Section 572(c) would be rendered absolutely meaningless if a LEC could evade it by simply substituting an affiliated alter ego for itself in the joint venture. The Commission must interpret the Act that it is charged with enforcing in such a way that it makes sense. If “the purported ‘plain meaning’ of a statute’s word or phrase happens to render the statute senseless,” that is evidence of “ambiguity rather than clarity.” *Alarm Indus. Commc’ns Comm.v. FCC*, 131 F.3d 1066, 1068 (D.C. Cir. 1997).

The Commission can and should resolve any ambiguity in the application of the term “local exchange carrier” to declare that it applies to affiliates of local exchange carriers like Verizon Wireless. Any other interpretation would effectively erase Section 572(c) from the U.S. Code.

The fact that Verizon and the cable companies are circumventing a strict prohibition of the Act argues even more strongly that these cross-marketing arrangements must be considered in the context of the overall deal rather than being segregated out, as the applicants seek.

C. Other Competitive Harms.

Verizon breezily brushes off as “irrelevant” the concerns raised by NTCH and others regarding unfair roaming agreements, non-interoperability of Verizon spectrum bands, the unavailability of handsets to competing carriers, and excessive backhaul charges. Again, Verizon is failing to perceive the heart of the danger to the public interest that is posed by the proposed transactions. As noted by NTCH in its original petition, Verizon already holds a dominant position in the CDMA marketplace. Competing CDMA carriers have no realistic options for ubiquitous roaming partners. They have no market power to secure the latest model handsets and are even prevented by exclusive arrangements with manufacturers from obtaining such handsets. They cannot compel or induce equipment manufacturers to make handsets with broad interoperability across the 700 MHz or AWS bands. In all of these cases, Verizon’s size and dominance has created a market failure that directly impedes competition. The acquisitions proposed here will exacerbate all of these problems by making Verizon even more dominant and eliminating a source of potential competition. The concerns raised by smaller Verizon competitors are real, are verifiable, and will be significantly worsened if these transactions are allowed to proceed with the imposition of pro-competitive conditions.

In addition to the above, Verizon's competitors depend for critical backhaul facilities on both the local telephone companies (often Verizon's LEC affiliate) and the cable companies with whom Verizon has entered into a joint venture agreement. While there are a few alternative suppliers for these services, the scope and geographic reach of their offerings is very limited. As a practical matter, the cable company and the LEC are often the *only* sources for fiber to cell sites in a given market. The elimination of competition between cable companies and Verizon thus makes an already bad competitive situation even worse. The non-carrier cable companies have no legal obligation to provide just and reasonable terms of service over their backhaul facilities and, given their new arrangement with Verizon, they now have both the power and strong incentives to prevent Verizon's wireless competitors from being able to enter their markets or expand their services in existing markets. The Commission should not underestimate the invidious nature of this arrangement and the importance of breaking this potential chokehold on a competitive bottleneck.

II. The Verizon-Leap Transactions.

While the transactions between Verizon and the Leap entities do not raise as many concerns as those involving the cable companies, they cannot be viewed in isolation. It is Verizon's acquisition of hundreds of MHz of bandwidth across the United States that represents the looming danger. The over-accumulation of spectrum by a single carrier raises competitive concerns wherever the spectrum comes from. All of the evils that flow from Verizon's size and market dominance are enhanced by the spectrum it is acquiring from Leap, even if that spectrum might not in itself have been enough to sound alarms.

NTCH has no objection to Leap's acquisition of 700 MHz spectrum in Chicago from Verizon, but as we understand it, that acquisition can only occur if Verizon acquires a broad swath of AWS spectrum from Leap in return.

III. Conclusion.

The Oppositions filed by Verizon and its co-applicants not only did not dispel the objections raised by petitioners, they actually confirm their worst fears. The applications should be denied.

Respectfully submitted,

NTCH, INC.

By: _____/s/_____
Donald J. Evans

Fletcher, Heald & Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209
703-812-0400

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Its Attorney

CERTIFICATE OF SERVICE

I, Deborah N. Lunt, a secretary with the law firm of Fletcher, Heald & Hildreth, PLC, hereby state that true copies of the foregoing **REPLY OF NTCH, INC.** sent U.S. mail, postage prepaid, this 26th day of March, 2012, to the following:

Dow Lohnes PLLC
Christina H Burrow , Esq
ATTN Christina H. Burrow
1200 New Hampshire Ave., NW
Washington, DC 20036
Counsel for Cox TMI Wireless, LLC

Cellco Partnership
ATTN Michael Samsok
1300 I Street, NW - Suite 400 West
Washington, DC 20005

SpectrumCo LLC
ATTN David Don
300 New Jersey Avenue, N.W., Suite 700
Washington, DC 20001

Lukas, Nace, Gutierrez & Sachs, LLP
ATTN Thomas Gutierrez
8300 Greensboro Drive, Suite 1200
McLean, VA 22102
*Counsel for Savary island License B, LLC and
Savary Island License A, LLC*

Wiley Rein LLP
ATTN Nancy J. Victory
1776 K Street, NW
Washington, DC 20006
Counsel for CellCo Partnership

Latham & Watkins LLP
Elizabeth R Park, Esq
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004
Counsel for Cricket License Company, LLC

/S/

Deborah N. Lunt