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May 16, 2013

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Ms. Marlene Dortch
Secretary
Federal Communication Commission
445 12th St. SW
Washington, DC 20554

Re: WC DOCKET NO. 12-4
Verizon-SpectrumCo Transaction
Summary of *Ex Parte* Meeting

Dear Ms. Dortch:

This letter summarizes for the record an *ex parte* meeting yesterday at the Commission's offices between myself and Jonathan Markman, both representing NTCH, Inc., and the persons copied at the end of this letter. The purpose of the meeting was to discuss with the Commission our position on the validity of spectrum licenses granted to Verizon Wireless (Verizon), given its violation of the rules governing foreign ownership.

I pointed out that the Commission's recent Second Report and Order in IB Docket No. 11-133 resolved two issues that had been raised in the written pleadings on the pending Petition for Reconsideration. First, the Commission made it clear that a foreign ownership determination under Section 310(b)(4) of the Act is different from a forbearance action under Section 310(b)(4), and that the grant of the latter does not act as a grant of the former. See Paragraph 133 of Second Report and Order Second, the Report and Order again declared that the Commission must grant forbearance before a company exceeds the prescribed foreign ownership levels. *Ibid.* at Para. 29. The public must have the opportunity to review and comment on the proposed 310(b)(3) forbearance action -- an opportunity which was not provided in the instant transaction. The Commission thus rejected two key arguments put forth by Verizon Wireless.

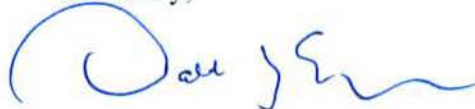
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We considered whether there are any remedies short of rescission of the particular approval of the application at issue here and revocation of all other Celco Partnership licenses granted since 2000. Since forbearance is by its nature forward-looking (as determined by the DC Circuit) and tailored to the particular circumstances at the time forbearance is granted, the Commission cannot retroactively fix Celco Partnership's unlawful acquisition of licenses other than by rescinding the SpectrumCo (and related applications) and revoking the affected Celco Partnership applications.

We also noted that the Section 310(b)(3) process should not be treated as a pro forma matter involving meaningless hoop jumping. Here there are legitimate issues about whether the basic wireless telecommunications infrastructure of the United States is becoming overly dominated by foreign-owned companies to the detriment of the public interest, particularly in view of SoftBank's pending acquisition of Sprint. While not noted at the meeting, foreign-owned T-Mobile's acquisition of MetroPCS exacerbates the problem. In addition, the fact that Celco Partnership has acquired and held these licenses in violation of the Act is not only a matter to be considered in connection with any 310(b)(3) petition it may file, but must also be considered negatively in the context of its future and recently granted license renewal applications, many of which have remained in "conditional" grant status since 2010.

I stressed that our concern is ultimately with the increased consolidation of the wireless telecommunications industry and with how that affects NTCH and other small carriers, particularly with respect to roaming rates, interoperability, and access to handsets. I expressed a willingness to work with Verizon Wireless to resolve this in a manner that addresses our concerns, but absent that, urged the staff to act promptly on the pending Petition for Reconsideration because the pendency of the petition leaves a cloud on the existing Celco Partnership licenses. It also prevents the SpectrumCo licenses from being returned to SpectrumCo as required by the law so they can either be put to use by SpectrumCo itself or other less dominant carriers would have an opportunity to acquire them.

Sincerely,



Donald J. Evans
Counsel to NTCH, Inc.

DJE/mmb

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