

BRIEF FOR APPELLEE

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15-1145

NTCH, INC.,

APPELLANT,

v.

FEDERAL COMMUNICATIONS COMMISSION,

APPELLEE.

ON APPEAL FROM AN ORDER OF THE FEDERAL
COMMUNICATIONS COMMISSION

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

1. Parties.

The appellant is NTCH, Inc. The appellee is the Federal Communications Commission. All parties that appeared before the agency are listed in the briefs of appellant.

2. Rulings under review.

Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses, 27 FCC Rcd 10698 (2012) (JA___), *recon. denied*, 30 FCC Rcd 3953 (2015) (JA___).

3. Related cases.

This case has not previously been before this Court or any other court. We are aware of no pending cases related to this one.

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
GLOSSARY	viii
JURISDICTION.....	1
QUESTIONS PRESENTED.....	2
STATUTES AND REGULATIONS	2
COUNTERSTATEMENT	3
I. STATUTORY AND REGULATORY BACKGROUND.....	3
A. The Foreign Ownership Provisions of the Communications Act.....	3
B. Foreign Ownership of Verizon Wireless.....	5
C. The 2012 Foreign Ownership Forbearance Order	7
II. THE <i>ORDERS</i> ON REVIEW	10
A. The Initial <i>Order</i>	10
1. The Data Roaming Issue	11
2. The Foreign Ownership Issue	13
B. The <i>Reconsideration Order</i>	15
SUMMARY OF ARGUMENT	18
STANDARD OF REVIEW	21
ARGUMENT	22
I. THE COURT LACKS JURISDICTION TO CONSIDER NTCH’S CLAIMS CONCERNING FOREIGN OWNERSHIP OF VERIZON WIRELESS	22
A. NTCH’s Challenge to the Forbearance Grant Is Not Before this Court and Lacks Merit in any Event.....	23

- 1. NTCH’s Claims Are Non-Justiciable23
- 2. The Commission Complied with Its Own Procedures
in Granting Forbearance.....26
- B. The Court Lacks Jurisdiction to Consider NTCH’s
Demand that the Commission Initiate Enforcement
Action against Verizon Wireless.....28
 - 1. NTCH Lacks Standing28
 - 2. The Commission’s Decision Is Unreviewable.....32
 - 3. The Decision Was Reasonable.....34
- C. NTCH Is Judicially Estopped from Challenging
Vodafone’s Prior Interest in Verizon Wireless36
- II. THE ROAMING CONDITIONS ARE REASONABLE.....39
- CONCLUSION45

TABLE OF AUTHORITIES

CASES

<i>Am. Family Life Assurance Co. of Columbus v. FCC</i> , 129 F.3d 625 (D.C. Cir. 1997).....	24
<i>Arkansas AFL-CIO v. FCC</i> , 11 F.3d 1430 (8th Cir. 1993).....	28
<i>Auer v. Robbins</i> , 519 U.S. 452 (1997)	22, 27
<i>Beehive Tel. Co. Inc. v. FCC</i> , 180 F.3d 314 (D.C. Cir. 1999).....	17
<i>Branton v. FCC</i> , 993 F.2d 906 (D.C. Cir. 1993)	31
<i>Cellco P’ship v. FCC</i> , 700 F.3d 534 (D.C. Cir. 2012).....	12
<i>Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.</i> , 467 U.S. 837 (1984)	21
<i>Church of Scientology of Cal. v. United States</i> , 506 U.S. 9 (1992)	23
<i>City of Arlington, Texas v. FCC</i> , 133 S. Ct. 1863 (2013)	21
<i>County of Los Angeles v. Davis</i> , 440 U.S. 625 (1979)	23
<i>Daimler Trucks North America LLC v. EPA</i> , 745 F.3d 1212 (D.C. Cir. 2013)	30
<i>DaimlerChrysler Corp. v. Cuno</i> , 547 U.S. 332 (2006)	29
<i>Dickson v. Sec’y of Defense</i> , 68 F.3d 1396 (D.C. Cir. 1995).....	33
<i>Fort Sumter Tours, Inc. v. Babbitt</i> , 202 F.3d 349 (D.C. Cir. 2000).....	33
<i>Fresno Mobile Radio, Inc. v. FCC</i> , 165 F.3d 965 (D.C. Cir. 1999).....	41, 42, 44
<i>Global Crossing Telecomms., Inc. v. FCC</i> , 259 F.3d 740 (D.C. Cir. 2001).....	21
* <i>Heckler v. Chaney</i> , 470 U.S. 821 (1985)	20, 33

<i>Illinois Pub. Telecomms. Ass’n v. FCC</i> , 752 F.3d 1018 (D.C. Cir. 2014).....	32
<i>King v. Herbert J. Thomas Memorial Hosp.</i> , 159 F.3d 192 (4th Cir. 1998).....	36
<i>Klamath Water Users Ass’n v. FERC</i> , 534 F.3d 735 (D.C. Cir. 2008).....	29
<i>Larson v. U.S. Navy</i> , 525 F.3d 1 (D.C. Cir. 2008).....	23
<i>Louisiana Pub. Serv. Comm’n v. FERC</i> , 551 F.3d 1042 (D.C. Cir. 2008).....	25
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992).....	29
<i>MCI Worldcom Network Servs., Inc. v. FCC</i> , 274 F.3d 542 (D.C. Cir. 2001)	22
<i>Mills v. Green</i> , 159 U.S. 651 (1895).....	23
<i>Moses v. Howard Univ. Hosp.</i> , 606 F.3d 789 (D.C. Cir. 2010).....	37
<i>Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.</i> , 463 U.S. 29 (1983).....	21
<i>Munsell v. Dept. of Agriculture</i> , 509 F.3d 572 (D.C. Cir. 2007).....	24
<i>Nat’l Tel. Co-op. Ass’n v. FCC</i> , 563 F.3d 536 (D.C. Cir. 2009).....	21
<i>Nat’l Wrestling Coaches Ass’n v. Dept. of Educ.</i> , 366 F.3d 930 (D.C. Cir. 2004)	31
<i>New Hampshire v. Maine</i> , 532 U.S. 742 (2001)	36, 37
<i>New York State Dept. of Law v. FCC</i> , 984 F.2d 1209 (D.C. Cir. 1993).....	33
<i>Patent Office Prof. Ass’n v. FLRA</i> , 37 Fed. Appx. 540 (2002)	25
<i>Radiofone, Inc. v. FCC</i> , 759 F.2d 936 (D.C. Cir. 1985).....	24
<i>Rural Cellular Ass’n v. FCC</i> , 588 F.3d 1095 (D.C. Cir. 2009).....	40, 44

<i>Rural Cellular Ass'n v. FCC</i> , 685 F.3d 1083 (D.C. Cir. 2012).....	22, 28
<i>Simon v. Safelite Glass Corp.</i> , 128 F.3d 68 (2d Cir. 1997).....	36
<i>Spectrum Five LLC v. FCC</i> , 758 F.3d 254 (D.C. Cir. 2014).....	29
<i>Steel Co. v. Citizens for a Better Environment</i> , 523 U.S. 83 (1998)	32
<i>Sw. Bell Tel. Co. v. FCC</i> , 116 F.3d 593 (D.C. Cir. 1997).....	1
<i>Talk Am., Inc. v. Mich. Bell Tel. Co.</i> , 131 S. Ct. 2254 (2011)	22
<i>Ted W. Austin, Jr.</i> , 30 FCC Rcd 3486 (2015)	31
<i>Time Warner Entertainment Co. v. FCC</i> , 144 F.3d 75 (D.C. Cir. 1998).....	25
<i>US West, Inc. v. FCC</i> , 778 F.2d 23 (D.C. Cir. 1985).....	25
STATUTES	
5 U.S.C. § 701(a)(2)	32
5 U.S.C. § 706(2)(A).....	21
47 U.S.C. § 160	7
47 U.S.C. § 160(a)(1)-(3)	7
47 U.S.C. § 201	8, 42
47 U.S.C. § 202	8, 42
47 U.S.C. § 214	6
47 U.S.C. § 309(d)(1).....	17
47 U.S.C. § 310	6
47 U.S.C. § 310(a).....	3
47 U.S.C. § 310(b).....	3, 13, 15, 39
* 47 U.S.C. § 310(b)(3).....	2, 4, 5, 7, 8, 14, 16, 18, 23, 26, 27, 37, 38
* 47 U.S.C. § 310(b)(4).....	4, 5, 6, 7, 8, 9, 14, 19
47 U.S.C. § 310(d).....	3

47 U.S.C. § 312	32
47 U.S.C. § 312(a).....	33
47 U.S.C. § 312(a)(1).....	35
47 U.S.C. § 312(a)(7).....	24
47 U.S.C. § 402(b)(6).....	2
47 U.S.C. § 402(c).....	30
47 U.S.C. § 405(a).....	42

REGULATIONS

47 C.F.R. § 1.106(c).....	17
47 C.F.R. § 1.990(a)(1).....	9
47 C.F.R. § 1.2109(c).....	30
47 C.F.R. § 1.2109(d).....	31
47 C.F.R. § 20.12(d).....	42
47 C.F.R. § 24.5	11

ADMINISTRATIVE DECISIONS

<i>Algreg Cellular Engineering</i> , 12 FCC Rcd 8148 (1986)	35
<i>Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems</i> , 17 FCC Rcd 23193 (2002)	10
<i>Applications of Vodafone AirTouch, Plc and Bell Atlantic Corporation for Consent to Transfer of Control or Assignment of Licenses and Authorizations</i> , 15 FCC Rcd 16507 (WTB & Int’l Bur. 2000).....	6, 7, 15, 17
<i>Bravo Cellular</i> , 14 FCC Rcd 18525 (1999).....	36
<i>Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993</i> , 29 FCC Rcd 15311 (WTB 2014)	43

	<i>KOZN(FM)</i> , 1986 WL 292498 (1986)	35
	<i>Mario Laredo</i> , 11 FCC Rcd 18010 (1996).....	35
	Public Notice, C and F Block Broadband PCS Auction Closes, 16 FCC Rcd 2339 (2001).....	30
*	<i>Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services</i> , 26 FCC Rcd 5411 (2011)	12, 13, 39, 40, 41, 43
	<i>Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended</i> , 103 F.C.C.2d 511 (1985)	4
*	<i>Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as amended</i> , 27 FCC Rcd 9832 (2012)	4, 5, 7, 8, 9, 14, 15, 16, 19, 23, 26, 27

OTHER AUTHORITIES

	76 Fed. Reg. 63561 (Oct. 13, 2011)	40
	<i>NTCH, Inc., Complainant v. Cellco P'ship dba Verizon Wireless, Defendant</i> , EB Docket No. 14- 212.	41

* *Cases and other authorities principally relied upon are marked with asterisks.*

GLOSSARY

AWS	Advanced Wireless Service
CDMA	Code Division Multiple Access
FCC	Federal Communications Commission
GSM	Global System for Mobiles
LTE	Long Term Evolution standard
MHz	Megahertz
PCS	Personal Communications Services
VoLTE	Voice over LTE

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JURISDICTION

The Federal Communications Commission (“FCC” or “Commission”) released its Order on August 23, 2012. *See Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses*, 27 FCC Rcd 10698 (2012) (JA____) (“Order”). Appellant NTCH, Inc. (“NTCH”) sought administrative reconsideration, thereby tolling the period within which NTCH was required to seek judicial review. *E.g., Sw. Bell Tel. Co. v. FCC*, 116 F.3d 593, 596-97 (D.C. Cir. 1997). The Commission denied NTCH’s petition for

reconsideration on April 16, 2015. *See Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses*, 30 FCC Rcd 3953 (2015) (JA____) (“*Reconsideration Order*”). NTCH timely filed its notice of appeal in this Court on May 18, 2015. The Court has jurisdiction to review both the *Order* and the *Reconsideration Order* under 47 U.S.C. § 402(b)(6).

QUESTIONS PRESENTED

1. Whether the Court has jurisdiction to consider NTCH’s challenge to the Commission’s grant of forbearance from the foreign ownership limit in section 310(b)(3) of the Communications Act, 47 U.S.C. § 310(b)(3), to Verizon Wireless;
2. Whether the Court has jurisdiction to consider the Commission’s decision not to initiate a license revocation proceeding against Verizon Wireless, and if it does, whether it should decline to exercise its jurisdiction under the doctrine of judicial estoppel; and
3. Whether the data roaming conditions in the *Order* are reasonable.

STATUTES AND REGULATIONS

The pertinent statutory provisions and regulations are set forth in the addendum to this brief.

COUNTERSTATEMENT

I. STATUTORY AND REGULATORY BACKGROUND

A. The Foreign Ownership Provisions of the Communications Act

Section 310(d) of the Communications Act, 47 U.S.C. § 310(d), provides that no radio license, including common carrier radio licenses, shall be “transferred, assigned, or disposed of in any manner” without an “application to the [Federal Communications] Commission and upon [a] finding by the Commission that the public interest, convenience, and necessity will be served thereby.”

In ruling on radio station license transfer applications, the Commission must take account of the Act’s restrictions on the ability of foreign entities to hold ownership interests in FCC licensees.

Section 310(a) of the Act prohibits radio licenses from being “granted to or held by any foreign government or the representative thereof.” 47 U.S.C. § 310(a). In addition, section 310(b), 47 U.S.C. § 310(b), provides that “[n]o broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by”:

- (1) any alien or the representative of any alien;
- (2) any corporation organized under the laws of any foreign government;

(3) any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country;

(4) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

The Commission has interpreted section 310(b)(4) to apply where a foreign government, individual, or entity holds interests in a U.S.-organized entity that itself *controls* a licensee, and section 310(b)(3) where a foreign government, individual, or entity holds interests in a licensee through an intervening U.S.-organized entity that itself *does not control* the licensee. *See Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as amended*, 27 FCC Rcd 9832, 9835 (¶ 7) (2012) (“*Forbearance Order*”); *Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended*, 103 F.C.C.2d 511, 520-24 & nn.51-52 (1985).

Where section 310(b)(4) applies, foreign ownership of a licensee's controlling U.S. parent cannot exceed 25 percent of the parent's equity and/or voting interests unless the Commission, in its discretion, determines that higher levels of foreign ownership would not be inconsistent with the public interest. *See Forbearance Order*, 27 FCC Rcd at 9834 (¶ 7). By contrast, section 310(b)(3) imposes a strict 20 percent limit on equity and voting interests held by foreign governments, individuals, and entities in U.S. radio station licenses. *See id.* at 9834 (¶ 6).

B. Foreign Ownership of Verizon Wireless

In 1999, Bell Atlantic, a U.S. corporation offering mobile wireless service through its subsidiary Cellco Partnership, and Vodafone, a U.K. corporation offering mobile wireless service through its U.S.-organized subsidiary AirTouch Communications, entered into a "U.S. Wireless Alliance Agreement." *Applications of Vodafone AirTouch, Plc and Bell Atlantic Corporation for Consent to Transfer of Control or Assignment of Licenses and Authorizations*, 15 FCC Rcd 16507, 16508-10 (¶¶ 1-8) (WTB & Int'l

Bur. 2000) (“*Vodafone-Bell Atlantic Order*”).¹ Pursuant to that agreement, Bell Atlantic and Vodafone would assign their respective wireless licenses to Cellco, which required preapproval by the Commission under sections 214 and 310 of the Act, 47 U.S.C. §§ 214, 310. *Id.* at 16510 (¶ 9).

After issuing public notice and seeking comment on those applications, the FCC’s Wireless Telecommunications Bureau and International Bureau, on delegated authority, found that under section 310(b)(4), “the public interest would be served” by allowing Cellco “to be indirectly owned by Vodafone in an amount up to 65.1 percent.” *Id.* at 16514 (¶ 19). The bureaus conditioned their consent on compliance by Vodafone and Bell Atlantic with a voluntary agreement negotiated between those parties and several Executive Branch agencies concerning national security, law enforcement, and public safety issues. *Id.* at 16520-21 (¶¶ 34-37); 16523 (Appendix A). The bureaus also clarified that Cellco “would need additional Commission authority under

¹ This joint venture, which required Vodafone and Bell Atlantic to assign their U.S. wireless licenses to Cellco, involved two stages. After completion of the first stage, Bell Atlantic (the predecessor in interest to Verizon), would hold a 34.9 percent general partnership interest in Cellco, and Vodafone would hold the remaining 65.1 percent interest through its U.S. subsidiaries. *See Vodafone-Bell Atlantic Order*, 15 FCC Rcd at 16510, 16514 (¶¶ 8, 19). At the completion of the second stage, Bell Atlantic’s equity share would rise to 55 percent and Vodafone’s would drop to 45 percent. *See id.* at 16510 (¶ 8). Cellco now does business as Verizon Wireless.

section 310(b)(4) before Vodafone could increase its investment above authorized levels,” and that “[a]dditional authority also would be required before any other foreign entity or entities acquire, in the aggregate, a greater-than-25 percent indirect interest” in Cellco. *Id.* at 16514 (¶ 19).

C. The 2012 Foreign Ownership Forbearance Order

In August 2012, the Commission issued an order forbearing under section 10 of the Act, 47 U.S.C. § 160,² from applying section 310(b)(3)’s strict 20 percent limit on foreign ownership to the class of common carrier licensees in which foreign interests in the licensee are held through U.S.-organized entities that do not control the licensee. *See Forbearance Order*, 27 FCC Rcd at 9832-33 (¶ 1). Forbearance for that class of common carriers is conditioned on satisfaction of the same type of public interest review employed by the Commission under section 310(b)(4). *Id.* This approach, the Commission explained, “ensures that all ‘indirect’ foreign interests, whether held through a U.S.-organized entity that controls a common carrier

² Section 10(a) of the Act provides that the Commission shall forbear from applying any provision or rule “to a telecommunications carrier or telecommunications service, or class [thereof]” if the Commission finds that: (1) enforcement is not necessary to ensure that charges and practices are just, reasonable and non-discriminatory, (2) enforcement “is not necessary for the protection of consumers,” and (3) forbearance “is consistent with the public interest.” 47 U.S.C. § 160(a)(1)-(3).

licensee, or through a U.S.-organized entity that does not control the licensee, are treated under the same Commission policies and procedures.” *Id.* at 9837 (¶ 10 n.27).

The Commission found that forbearance from the foreign ownership restriction in section 310(b)(3) satisfied the requirements of section 10. The record showed “no evidence that ... foreign ownership..., in and of itself,” influences “[a common] carrier’s compliance with the requirements of sections 201 and 202 of the Act that charges, practices, classifications, and regulations be just and reasonable and not unjustly or unreasonably discriminatory.” *Forbearance Order*, 27 FCC Rcd at 9832 (¶ 15) (citing 47 U.S.C. §§ 201, 202). The Commission further found that it could “assess any potential harms to consumers” by providing notice and seeking comment on a common carrier’s request to exceed the foreign ownership limit in section 310(b)(3). *See id.* at 9840 (¶ 17). It concluded that forbearance would serve the public interest “for the same reasons that the public interest is served when [the Commission] allows, under section 310(b)(4), greater than 25 percent foreign ownership in a U.S.-organized entity that *does control* the licensee under otherwise identical circumstances.” *Id.* at 9840-41 (¶ 19).

Licenses subject to section 310(b)(3) forbearance must comply with the same policies and procedures that govern approval of foreign interests

under section 310(b)(4). *See id.* at 9842 (¶ 26). Accordingly, a common carrier licensee in the class covered by the *Forbearance Order* must “obtain Commission approval (by filing a petition for declaratory ruling or similar request) *before* foreign ownership of the licensee exceeds 20 percent of its equity and/or voting interests.” *Id.* at 9837, 9843 (¶¶ 10, 28); 47 C.F.R. § 1.990(a)(1). The Commission will place the petition on notice for public comment and forward the petition to the Executive Branch agencies for review. *Forbearance Order*, 27 FCC Rcd at 9844 (¶ 30). Following conclusion of this process, the Commission will issue a declaratory ruling as to whether the proposed foreign ownership is in the public interest. *Id.* In making that determination, the Commission relies on the same public interest test that it employs under section 310(b)(4). *Id.* at 9843-44 (¶¶ 27-29).

II. THE ORDERS ON REVIEW

A. The Initial Order

In late 2011, the Commission received multiple applications seeking to assign a number of Advanced Wireless Service-1 (“AWS-1”)³ licenses to Cellco Partnership d/b/a Verizon Wireless. This included 122 AWS-1 licenses from SpectrumCo, a joint venture among subsidiaries of several cable companies,⁴ and 30 AWS-1 licenses from Cox TMI Wireless, a subsidiary of Cox Communications, Inc., one of the largest cable companies in the U.S. (collectively, the “Cable Companies”). *See Order* ¶ 1 (JA___). The Commission also received an application to assign a significant number

³ Advanced Wireless Service (“AWS”) is the collective term the Commission uses for fixed and mobile terrestrial wireless services using bandwidth that is sufficient for the provision of a variety of applications, including those using voice and data (such as internet browsing, message services, and full-motion video) content. In 2002, the Commission allocated 90 MHz of spectrum for AWS in the 1710-1755 and 2110-2155 MHz spectrum range. These spectrum bands are known as AWS-1. *See Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, 17 FCC Rcd 23193 (2002).

⁴ At the time, SpectrumCo was a joint venture among subsidiaries of Comcast Corp., Time Warner Cable, Inc., and Bright House Networks, LLC. *Order* ¶ 12 (JA___).

of AWS-1 licenses, as well as certain Personal Communications Service⁵ licenses, from Leap Wireless International Inc.,⁶ to Verizon Wireless. *Id.*

The Commission found that the proposed transfer of spectrum from the Cable Companies and Leap to Verizon Wireless “would have some important public interest benefits.” *Id.* ¶ 107 (JA____). Because the Cable Companies and Leap “[we]re not utilizing the spectrum” and “appear[ed] unlikely to do so,” the Commission concluded that use of “currently fallow spectrum” by Verizon Wireless would help “meet the rapidly growing public demand for mobile broadband capacity.” *Id.*

1. The Data Roaming Issue

In addition to their public interest benefits, the Commission found that the Cable Company and Leap license assignments raised public interest concerns. The Commission explained that Verizon Wireless’s spectrum holdings, both overall and in the AWS-1 band, could foreclose rival carriers

⁵ The term Personal Communications Services (“PCS”) refers primarily to those wireless services that are licensed for operation in the 1850 to 1990 MHz band. First auctioned in 1994 to enable service providers to offer then-emerging digital voice technologies, PCS licenses may be used for a broad range of mobile and ancillary fixed communications services provided to individuals and business. 47 C.F.R. § 24.5.

⁶ Leap is a “wireless communications carrier offering low-cost unlimited digital services under the ‘Cricket’ brand at flat monthly rates without fixed-term contracts.” *Order* ¶ 11 (JA____).

from acquiring additional spectrum to upgrade and expand their networks for mobile broadband services. *Order* ¶¶ 73-76 (JA____-____). The Commission also found that “[t]he transfer of AWS-1 spectrum to Verizon Wireless would place it in the hands of a nationwide provider that has little incentive” to negotiate data roaming agreements. *Id.* ¶ 84 (JA____).⁷ Having recently held that data roaming arrangements are “critical” for “consumers to have a competitive choice” among “providers offering nationwide access to commercial mobile data services,” the Commission predicted that the proposed license assignments would harm competition. *Id.* (citing *Data Roaming Order*, 26 FCC Rcd at 5419 (¶ 15)).

The Commission’s public interest concerns were mitigated by Verizon Wireless’s divestiture of 47 AWS-1 licenses to T-Mobile, the fourth-largest wireless carrier in the United States. *Id.* ¶¶ 19, 117-18 (JA____, ____). The

⁷ “Roaming occurs when wireless subscribers travel outside the range of their own carrier’s network and use another carrier’s network infrastructure to make a call.” *Cellco P’ship v. FCC*, 700 F.3d 534, 537 (D.C. Cir. 2012). In 2011, the Commission adopted a “data roaming” rule, upheld by this Court in *Cellco*, requiring providers of commercial mobile-data services to offer to negotiate data roaming agreements with other providers on “commercially reasonable terms and conditions.” *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, 26 FCC Rcd 5411 (2011) (“*Data Roaming Order*”); 47 C.F.R. § 20.12(e)(1).

Commission found that transfer of those licenses – which included a number of licenses that Verizon Wireless proposed to acquire from the Cable Companies and Leap, *id.* ¶ 19 (JA___) – would reduce Verizon Wireless’s spectrum holdings and, correspondingly, reduce its ability to foreclose rivals or raise their costs. *Id.* ¶ 118 (JA___). The Commission also found that the transfer of AWS-1 spectrum to T-Mobile would enable T-Mobile to further develop its mobile broadband network so it could serve as a roaming alternative to the largest two providers (*i.e.*, Verizon Wireless and AT&T Wireless). *Id.* ¶ 120 (JA___).

To further mitigate its concerns about data roaming, the Commission conditioned its consent on Verizon Wireless’s agreement to comply with the recently adopted data roaming rule. *Id.* ¶ 121 (JA___). Verizon Wireless agreed to comply with that rule for a period of five years, irrespective of the outcome of its then-pending (ultimately unsuccessful) judicial challenge to the *Data Roaming Order*. *Id.* See n.7, above. The Commission found that with these and other conditions, “the transactions as a whole are consistent with the public interest.” *Order* ¶ 6; *see id.* ¶ 182 (JA___, ___).

2. The Foreign Ownership Issue

The Commission, in the same *Order*, examined the applications under the foreign ownership provisions of section 310(b). At the time, 55 percent

of Verizon Wireless was indirectly owned by Verizon, with the remaining 45 percent indirectly owned by Vodafone. *Order* ¶ 173 (JA____). After the transactions, Verizon Wireless would hold the common carrier licenses assigned by Leap and the Cable Companies. The Commission concluded that the transactions were subject to section 310(b)(3) because Vodafone, through its U.S.-organized subsidiaries, would hold a non-controlling interest in Verizon Wireless, the license holder. *Id.* ¶ 174 (JA____).

Applying the recently adopted *Forbearance Order*, the Commission “f[ound] that Vodafone’s interests in Verizon Wireless are in the public interest.” *Id.* ¶ 177 (JA____). The Commission relied on Verizon Wireless’s representation that it “[wa]s not aware of any changes to the aggregate foreign ownership of Verizon and Vodafone that are inconsistent with the requirements set forth in the *Vodafone-Bell Atlantic Order*,” which had previously held that Vodafone’s interest in Verizon Wireless satisfied the section 310(b)(4) public interest standard. *Id.* ¶ 175 (JA____). The Commission further noted that “[n]o commenters have identified any basis for rebutting the *Vodafone-Bell Atlantic* analysis, which identified no competitive concerns with respect to the foreign ownership of Verizon Wireless.” *Id.* The Commission conditioned its ruling on Verizon Wireless’s continued compliance with the terms of the voluntary agreement between

Verizon, Verizon Wireless, and Vodafone discussed in the *Bell Atlantic-Vodafone Order*, 15 FCC Rcd at 16523 (Appendix A). *See id.* ¶ 176 (JA____).

B. The Reconsideration Order

NTCH timely filed a petition for reconsideration of the *Order*, challenging the Commission’s reliance on the *Forbearance Order* to find that the transfer of AWS-1 licenses to Verizon Wireless would not violate the foreign ownership restrictions in section 310(b) of the Act.

The Commission dismissed NTCH’s petition as moot.

Reconsideration Order ¶¶ 2, 4, 14 (JA____, ____, ____). Since release of the *Order*, the Commission noted, Verizon Communications, Inc., had acquired Vodafone’s remaining interest in Verizon Wireless. *Id.* ¶ 2 (JA____). Consequently, the “Vodafone interest in Verizon Wireless that [wa]s the subject of NTCH’s challenge in its petition for reconsideration no longer exists.” *Id.*

The Commission “separate[ly] and independent[ly]” denied NTCH’s petition on the merits. *Id.* ¶ 4 (JA____). The Commission found “unpersuasive” NTCH’s argument that it lacked an opportunity to comment on Vodafone’s interest in Verizon Wireless because the Commission failed to issue the public notice required by the *Forbearance Order*. *Id.* ¶¶ 8-9 (JA____-____). The Commission explained that it had “provided NTCH with

a number of opportunities in these dockets to ‘raise material concerns’ about Vodafone’s 45 percent ownership of Verizon Wireless,” yet NTCH’s “petitions to deny did not even refer to this question.” *Id.* ¶ 9 (JA___) (citing *Order* ¶¶ 20-27 (JA___ - ___) (describing public notices seeking comment on the assignment and transfer applications)).

The Commission also found that NTCH “misunderst[ood]” the Commission’s new approach to section 310(b)(3). *Reconsideration Order* ¶ 10 (JA___). In the *Forbearance Order*, the Commission forbore from the strict 20 percent foreign ownership limit in section 310(b)(3) for “an entire class of common carriers,” which avoided the need for “‘each common carrier to individually seek forbearance.’” *Id.* Thus, following the *Forbearance Order*, “the only question in this proceeding was whether Vodafone’s 45 percent interest in Verizon Wireless satisfied the same ‘public interest’ standard [the Commission] appl[ies] under section 310(b)(4).” *Id.* ¶ 11 (JA___). Given that the Commission, in prior decisions, had found that Vodafone’s current stake in Verizon Wireless was not inconsistent with the public interest under section 310(b)(4), the *Forbearance Order* “did not require ... Verizon Wireless [to] resubmit that identical showing for further comment[] under the same public interest standard ... the Commission had already applied.” *Id.*

The Commission then “dismiss[ed] or alternatively den[ied]” a variety of claims related to NTCH’s assertion that “[s]ince 2000, Vodafone’s ownership interest has plainly and indisputably fallen within the flat prohibition of Section 310(b)(3).” *Id.* ¶ 12 (JA___) (citing NTCH Petition for Reconsideration at 6 (JA___)). The Commission held that section 309(d)(1) of the Act, 47 U.S.C. § 309(d)(1), “grants standing to parties in interest to address the applications at issue, not other unrelated ones” like those that pre-dated this proceeding. *Id.* The Commission further held that NTCH’s argument was time-barred because NTCH “advanced no reason why it could not have raised this claim” prior to its petition for reconsideration. *Id.* (citing 47 C.F.R. § 1.106(c)).⁸

Finally, the Commission rejected NTCH’s demand that it revoke the licenses Verizon Wireless acquired between the *Vodafone-Bell Atlantic Order* and the *Order* on review. *Id.* ¶ 13 (JA___). The Commission explained that “Verizon Wireless ha[d] provided the [agency] with ‘full knowledge that

⁸ Pursuant to Rule 1.106(c), 47 C.F.R. § 1.106(c), the Commission may grant a “petition for reconsideration which relies on facts or arguments not previously presented” only if such facts have changed since, or could not through ordinary diligence have been learned prior to, the petitioner’s last opportunity to present such matters, or if the Commission determines that consideration of such facts “is required in the public interest.” *See Beehive Tel. Co. Inc. v. FCC*, 180 F.3d 314, 320 (D.C. Cir. 1999).

Vodafone held the interests” at issue prior to “each of its proposed acquisitions” – a fact that “NTCH recognize[d].” *Id.* (citing NTCH Reply to Opposition for Petition for Reconsideration at 6 (JA___)). The Commission therefore found that NTCH “ha[d] advanced no basis” to question Verizon Wireless’s “basic qualifications to remain a Commission licensee.” *Id.* The Commission also took notice that NTCH “ha[d] filed and successfully obtained Commission approval of its own applications to assign licenses to Verizon Wireless, premised on representations that this prior Vodafone interest was consistent with the Commission’s rules, it had no bearing on Verizon Wireless’s legal qualifications, and such assignment of licenses to Verizon Wireless was in the public interest.” *Id.*; *see id.* ¶ 9 (JA___).

SUMMARY OF ARGUMENT

1. NTCH’s challenge to the Commission’s grant of section 310(b)(3) forbearance to Verizon Wireless is non-justiciable. Before NTCH sought judicial review of the *Order*, Verizon bought out Vodafone’s interest in Verizon Wireless. Thus, the Commission could not reconsider the forbearance grant on remand, and NTCH’s claim is moot. Nor can the Court consider NTCH’s argument that the Commission granted forbearance retroactively. That claim relies on language in the *Order* concerning licenses

that were not at issue in the administrative proceeding below. This Court lacks jurisdiction to review such non-controlling *dicta*.

Regardless, NTCH provides no basis to second-guess the Commission's compliance with the procedures in the *Forbearance Order*. The assignment applications, which described Vodafone's 45-percent interest in Verizon Wireless, were placed on public notice and the public had opportunity to comment. No party, including NTCH, raised concerns about Verizon Wireless's foreign ownership structure prior to the *Order*. Moreover, because Verizon Wireless fell within the class covered by the *Forbearance Order*, the Commission was only required to determine whether the public interest requirement in section 310(b)(4) was satisfied with respect to Vodafone's stake in Verizon. Having already determined that this standard was met, the Commission reasonably held that Verizon Wireless was not required to make that showing again.

2. The Court also lacks jurisdiction to consider NTCH's demand that the Commission initiate a proceeding to revoke Verizon Wireless's licenses. NTCH claims it has been injured by Verizon Wireless's dominance of the data roaming market. But it is sheer speculation that revocation of Verizon Wireless's licenses could redress NTCH's injury and it therefore lacks standing to assert that claim. Moreover, an agency's exercise of prosecutorial

discretion is generally unreviewable. *See Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985). Here, where there was no evidence that Verizon Wireless misrepresented its foreign ownership structure, the Commission reasonably exercised that discretion in declining to initiate a license revocation proceeding.

3. Were the Court to find jurisdiction to consider NTCH's various foreign ownership arguments, it should decline to exercise it, because those arguments are barred by the doctrine of judicial estoppel. Prior to seeking judicial review of the *Order*, NTCH attested that Verizon Wireless was qualified to hold FCC licenses in an effort to garner Commission consent to its own assignment of licenses to Verizon Wireless. Because NTCH prevailed before the Commission on the argument that Vodafone's stake in Verizon Wireless did not raise any legal or public interest concerns, it should be estopped from arguing the opposite here.

4. Finally, the data roaming conditions in the *Order* are neither arbitrary nor capricious. The Commission reasonably predicted that continued enforcement of the newly adopted data roaming rule would mitigate any harm to the data roaming market caused by the transactions. NTCH provides no evidence that the rule was not working as intended.

STANDARD OF REVIEW

NTCH bears a heavy burden to establish that the *Order* on review is “arbitrary, capricious [or] an abuse of discretion.” 5 U.S.C. § 706(2)(A). Under this “highly deferential” standard, this Court presumes the validity of agency action. *E.g., Nat’l Tel. Co-op. Ass’n v. FCC*, 563 F.3d 536, 541 (D.C. Cir. 2009). The Court must affirm unless the Commission failed to consider relevant factors or made a clear error in judgment. *E.g., Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Insofar as NTCH challenges the Commission’s interpretation of section 310(b)(3) – a provision of the agency’s organic statute – the Court applies the framework of *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). *E.g., City of Arlington, Texas v. FCC*, 133 S. Ct. 1863, 1868 (2013). Under *Chevron*, the Court must first determine “whether Congress has directly spoken to the precise question at issue” and, if so, “give effect to the unambiguously expressed intent of Congress.” 467 U.S. at 842-43. When “the statute is silent or ambiguous” on the relevant issue, however, the Court should defer to the Commission’s “permissible construction of the statute.” *Id.* at 843; *see Global Crossing Telecomms., Inc. v. FCC*, 259 F.3d 740, 744 (D.C. Cir. 2001).

Similarly, this Court gives a “high level of deference” to the Commission’s interpretation of its own orders and regulations. *MCI Worldcom Network Servs., Inc. v. FCC*, 274 F.3d 542, 548 (D.C. Cir. 2001); *see Auer v. Robbins*, 519 U.S. 452, 461 (1997). The Court accepts the agency’s interpretation “unless [it] is plainly erroneous or inconsistent with the regulations or there is any other reason to suspect that the interpretation does not reflect the agency’s fair and considered judgment on the matter in question.” *Rural Cellular Ass’n v. FCC*, 685 F.3d 1083, 1093 (D.C. Cir. 2012) (quoting *Talk Am., Inc. v. Mich. Bell Tel. Co.*, 131 S. Ct. 2254, 2261 (2011) (internal quotation marks, citations, and alteration omitted)).

ARGUMENT

I. THE COURT LACKS JURISDICTION TO CONSIDER NTCH’S CLAIMS CONCERNING FOREIGN OWNERSHIP OF VERIZON WIRELESS

NTCH has not established that the relief it seeks from this Court will redress the injury it claims. Even if it had made that showing, the Court lacks authority to order the relief requested by NTCH – initiation of a license revocation proceeding against Verizon Wireless – because an agency’s exercise of prosecutorial discretion is unreviewable. Regardless, the Court should decline to consider NTCH’s various foreign ownership arguments, because they are barred by the doctrine of judicial estoppel.

A. NTCH's Challenge to the Forbearance Grant Is Not Before this Court and Lacks Merit in any Event

1. NTCH's Claims Are Non-Justiciable

NTCH's argument that the Commission misapplied the *Forbearance Order* is moot. *See* Br. 32-39. "[A] case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979).

"Federal courts lack jurisdiction to decide moot cases because their constitutional authority extends only to actual cases or controversies."

Larson v. U.S. Navy, 525 F.3d 1, 4 (D.C. Cir. 2008). Consequently, "if an event occurs while a case is pending on appeal that makes it impossible for the court to grant 'any effectual relief whatever' to a prevailing party," the appeal must be dismissed." *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)).

After the Commission released the *Order*, but before NTCH sought judicial review, Verizon bought out Vodafone's interest in Verizon Wireless. *Reconsideration Order* ¶ 2 (JA___). Thus, even if the Court were to find that the FCC erred in granting forbearance, reconsideration of that grant on remand could make no difference to NTCH, because Verizon Wireless is no longer subject to the foreign ownership restrictions in section 310(b)(3). Because "a favorable ruling by this court ... will not affect [NTCH's] rights"

NTCH's claim must be dismissed as moot. *Munsell v. Dept. of Agriculture*, 509 F.3d 572, 583 (D.C. Cir. 2007) (sale of meat processor's plant mooted his challenge to USDA investigatory proceedings).⁹

The Court also lacks jurisdiction to consider whether the Commission granted forbearance retroactively, *see* Br. 37-39, because that issue is not ripe.

NTCH's argument relies on the following language:

We note that our action today removes any uncertainty as to whether the current foreign ownership of Verizon Wireless, as a common carrier licensee, complies with our foreign ownership policies. We find that Verizon Wireless is qualified under the foreign ownership provisions of Section 310(b) of the Communications Act to hold, in its own right, its current common carrier licenses and the common carrier licenses it is being assigned in the application being approved today.

Order ¶ 177 (JA___).

This Court has explained that “unless an issue is squarely presented in a case, any discussion of the question in the opinion (*dicta*) is only a preliminary view and therefore not to be given precedential weight.” *Time*

⁹ *See also Am. Family Life Assurance Co. of Columbus v. FCC*, 129 F.3d 625, 627-30 (D.C. Cir. 1997) (sale of petitioner's television stations mooted its challenge to FCC order finding petitioner violated 47 U.S.C. § 312(a)(7)'s reasonable access requirement); *Radiofone, Inc. v. FCC*, 759 F.2d 936, 938 (D.C. Cir. 1985) (petitioner's challenge to FCC's regulatory classification of a competitor was mooted when competitor ceased operating).

Warner Entertainment Co. v. FCC, 144 F.3d 75, 79 (D.C. Cir. 1998); *see also US West, Inc. v. FCC*, 778 F.2d 23, 28 (D.C. Cir. 1985) (alternate basis of jurisdiction discussed in order but not relied upon by agency was *dicta* not ripe for judicial review). To be sure, the Commission in paragraph 177 of the *Order* (JA____) acknowledged its finding that “Vodafone’s interests in Verizon Wireless are in the public interest” necessarily applies to any of Verizon Wireless’s licenses (including its existing licenses) held under the same foreign ownership structure. However, the only licenses actually at issue in the administrative proceeding below were those that Verizon Wireless sought to acquire from the Cable Companies, Leap, and T-Mobile. *See Order* ¶¶ 1, 16-19, 183-92 (JA____, ____-____, ____-____); *Reconsideration Order* ¶¶ 12-13 (JA__-____). Any reference to Verizon Wireless’s “current common carrier licenses” therefore is non-controlling *dicta* that this Court lacks jurisdiction to review. *See Louisiana Pub. Serv. Comm’n v. FERC*, 551 F.3d 1042, 1046 (D.C. Cir. 2008) (Court lacked Article III jurisdiction because petitioner could not “point to some relief that FERC either granted or failed to grant in a proceeding where such relief was at issue”); *US West*, 778 F.2d at 28 (same); *Patent Office Prof. Ass’n v. FLRA*, 37 Fed. Appx. 540, 542 (2002) (“The challenged [agency] *dicta* can have no direct and binding effect..., and thus cannot ... confer jurisdiction on this court.”).

2. The Commission Complied with Its Own Procedures in Granting Forbearance

In any event, NTCA's argument that the Commission failed to follow the procedures in the *Forbearance Order* is baseless. See Br. 35-37.

Pursuant to the *Forbearance Order*, a common carrier licensee in the class covered by that order must “file a petition for declaratory ruling *or similar request* seeking Commission approval *before* foreign ownership in the subject licensee exceeds” the 20 percent foreign ownership restriction in section 310(b)(3). *Forbearance Order*, 27 FCC Rcd at 9837, 9843 (¶¶ 10, 28) (emphasis added). Verizon Wireless satisfied that requirement. Each of its applications to acquire licenses from the Cable Companies, Leap, and T-Mobile described its foreign ownership structure (including Vodafone's interest in Verizon Wireless) and asked the Commission to find that the transactions were in the public interest.¹⁰ NTCH does not explain why those requests are not “similar” to a petition for declaratory ruling. The

¹⁰ See File No. 0004993617, FCC Form 603, Ex. 1 at 3 & Ex. 2 (filed Dec. 16, 2011) (“*SpectrumCo Application*”) (JA____, ____-____); File No. 0004996680, FCC Form 603, Ex. 1 at 3-4 & Ex. 2 (filed Dec. 21, 2011) (“*Cox Application*”); File Nos. 0004942973, 0004942992, 0004949596, and 0004949598, FCC Form 603, Ex. 1 at 3-4 & Ex. 2 (filed Nov. 23, 2011) (“*Leap Applications*”) (JA____-____, ____-____).

Commission's reasonable determination that they were is entitled to deference. *See Auer*, 519 U.S. at 461.

The applications also were placed on public notice and the public had opportunity to comment, as required by the *Forbearance Order*, 27 FCC Rcd at 9844 (¶ 30). *See Order* ¶¶ 20-27 (JA____-____). Notwithstanding that the Commission "provided NTCH with a number of opportunities ... to 'raise material concerns' about Vodafone's 45 percent ownership of Verizon Wireless," NTCH's "petitions to deny did not even refer to this question." *Reconsideration Order* ¶ 9 (JA____); *see, e.g.*, NTCH Petition to Deny (JA____-____).

NTCH offhandedly claims that the Commission was required but failed to "undertake a *de novo* forbearance analysis under Section 10 of the Act." Br. 36. NTCH misreads the *Forbearance Order*. The Commission in that order exercised its section 10 authority "to forbear for an entire class of common carriers." *Reconsideration Order* ¶ 10 (JA____). This "avoided the need for 'each common carrier to individually seek forbearance'" from the foreign ownership limit in section 310(b)(3). *Id.* (quoting *Forbearance Order*, 27 FCC Rcd at 9842 n.54).

Verizon Wireless fell within the class covered by the *Forbearance Order*, so "the only question" before the Commission "was whether

Vodafone's 45 percent interest in Verizon Wireless satisfied" the "public interest' standard ... under Section 310(b)(4)." *Reconsideration Order* ¶ 11 (JA___). Having "already determined ... that Vodafone's 45 percent interest satisfied" that standard, the Commission reasonably held that the *Forbearance Order* "did not require" Verizon Wireless to "resubmit that identical showing for further comment." *Id.*; *see Order* ¶ 175 (JA___). That approach was reasonable. *Cf. Rural Cellular Ass'n v. FCC*, 685 F.3d 1083 (D.C. Cir. 2011) (FCC was not required to repeat its reasoning and could instead rely on explanation in an earlier order); *Arkansas AFL-CIO v. FCC*, 11 F.3d 1430, 1442 (8th Cir. 1993) (FCC is "not require[d]" to "engage in endless repetitions of its reasoning" such that citation of a prior judicial decision "sufficed to identify the reasoning behind its decision").

B. The Court Lacks Jurisdiction to Consider NTCH's Demand that the Commission Initiate Enforcement Action against Verizon Wireless

1. NTCH Lacks Standing

NTCH also lacks standing to demand that the Commission initiate a proceeding to revoke Verizon Wireless's pre-existing licenses. *See* Br. 29-31, 39-44.

In order to invoke the jurisdiction of a federal court, a party must have standing. To satisfy the "irreducible constitutional minimum of standing,"

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992), the petitioner must make a three-part showing: (1) that it suffers an injury that is actual or “certainly impending;” *id.* at 561, 564 n.2; (2) that the injury is fairly traceable to the challenged action; and (3) that a favorable decision on the merits will likely redress the injury. *See id.* at 560-61; *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006).¹¹

“To satisfy the redressability requirement” of Article III standing, NTCH “must demonstrate ‘that it is likely as opposed to merely speculative that [its] injury will be redressed by a favorable decision of the court.’” *Spectrum Five LLC v. FCC*, 758 F.3d 254, 261 (D.C. Cir. 2014) (quoting *Klamath Water Users Ass’n v. FERC*, 534 F.3d 735, 738 (D.C. Cir. 2008)).

NTCH claims it has been injured by Verizon Wireless’s dominance of the data roaming market and that its injury would be redressed if the Commission revoked some of Verizon Wireless’s licenses. Br. 29-31. It is unclear how revocation would help NTCH. But “[e]ven assuming”

¹¹ NTCH argues that “[b]ecause [it] clearly has standing to challenge one aspect of the FCC’s decision” (the data roaming conditions), “it has standing to challenge all aspects of the entire [Order].” Br. 26. Not so. The cases cited in NTCH’s brief only provide that where one of several issues presented becomes moot, a court may review the remaining live issues – they do not confer jurisdiction on the Court to consider issues that the appellant otherwise lacks standing to raise. *See id.*

revocation of Verizon Wireless's licenses "could qualify as redress" to NTCH, "the prospect of such relief ... is unduly speculative." *Daimler Trucks North America LLC v. EPA*, 745 F.3d 1212, 1217 (D.C. Cir. 2013).¹²

In the first instance, it is unlikely that the Commission would revoke Verizon Wireless's licenses. Where, as here, there is no evidence that the licensee misrepresented its foreign ownership status, the Commission typically allows the licensee to cure its foreign ownership problem. *See pp.* 34-36, below.

There also is no assurance that the Commission would re-auction Verizon Wireless's licenses if revoked. *See Br.* 29-31. For example, where an auction winner is "found unqualified to be a licensee," the Commission "may either re-auction the license(s) to existing or new applicants *or* offer it to the other highest bidders (in descending order) at their final bids." *See* 47 C.F.R. § 1.2109(c) (emphasis added).

Nor is it certain that small wireless carriers (and not Verizon Wireless) would win those licenses if auctioned. *See Br.* 30. To be sure, Rule

¹² Insofar as NTCH views itself as a "frustrated bidder" in Auction 35, *see Br.* 29-30, it was required to file notice of appeal with the Court within thirty days of the public notice announcing the winning bidders. *See Public Notice, C and F Block Broadband PCS Auction Closes*, 16 FCC Rcd 2339 (2001); 47 U.S.C. § 402(c). Its failure to do so does not confer standing on NTCH in this case.

1.2109(d), 47 C.F.R. § 1.2109(d), provides the Commission discretion to, *inter alia*, “prohibit[]” bidders “from participating in future auctions” if they are found to violate the agency’s rules “in connection with their participation in the competitive bidding process.” However, in exercising that discretion, the Commission has allowed licensees to bid on licenses at auction after default. *See, e.g., Ted W. Austin, Jr.*, 30 FCC Rcd 3486, 3492 (¶ 12 n.49) (2015). Accordingly, there is some likelihood that Verizon Wireless would reacquire at least a portion of its licenses.

Finally, NTCH cannot establish that other wireless providers “will behave any differently” with respect to roaming if the Commission did revoke and re-auction Verizon Wireless’s licenses. *Nat’l Wrestling Coaches Ass’n v. Dept. of Educ.*, 366 F.3d 930, 939 (D.C. Cir. 2004); *see Branton v. FCC*, 993 F.2d 906, 911 (D.C. Cir. 1993). NTCH claims that between 2000 and 2012, “Verizon [Wireless] was granted at least 1800 common carrier licenses in violation of the strict prohibitions of Section 310(b)(3).” Br. 13. NTCH provides no support for that “estimate[.]” *Id.* But even assuming *arguendo* that many Verizon Wireless licenses might be revoked, it is impossible to know whether, as NTCH claims, Br. 30, the resulting “dispersal of th[at] spectrum” would produce “multiple competitive sources of

roaming,” when roaming would become available, on what terms, and the extent to which such offerings would provide any benefit to NTCH.

In sum, NTCH has “offer[ed] nothing beyond sheer speculation to support [its] bank-shot approach” to redressability, and its claim therefore must be dismissed.¹³ *Illinois Pub. Telecomms. Ass’n v. FCC*, 752 F.3d 1018, 1027 (D.C. Cir. 2014).

2. The Commission’s Decision Is Unreviewable

Were the Court to find that NTCH has standing, it still lacks jurisdiction to consider NTCH’s demand, Br. 39-44, that the Commission conduct a license revocation hearing under 47 U.S.C. § 312.

The Administrative Procedure Act expressly provides that no judicial review is available of an “agency action [that] is committed to agency discretion by law.” 5 U.S.C. § 701(a)(2). This ban on judicial review is

¹³ NTCH contends that “[e]ven if revocation were not called for, the Commission might well be justified in imposing a significant fine on Verizon [Wireless].” Br. 43. NTCH makes no attempt to explain how forfeitures paid to the federal government would redress the injury it has allegedly suffered as a result of Verizon Wireless’s purportedly excessive roaming rates. *See* Br. 29-31. NTCH therefore lacks standing to press this claim. *See Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 106, (1998) (no standing where plaintiff “seeks not remediation of its own injury” but rather general “vindication of the rule of law”); *Illinois Pub. Telecomms Ass’n*, 752 F.3d at 1027 (“forfeit[ure of] money to the Government ... would do nothing to redress the injury” caused by “excessive rates charged” to payphone companies).

jurisdictional. *See Fort Sumter Tours, Inc. v. Babbitt*, 202 F.3d 349, 357 (D.C. Cir. 2000).

“[A]n agency’s decision not to prosecute or enforce ... is a decision generally committed to the agency’s absolute discretion.” *Chaney*, 470 U.S. at 831-32. That general rule “may be rebutted where the substantive statute has provided guidelines for the agency to follow in exercising its enforcement powers.” *Id.* at 833. But nothing in the Act required the Commission to initiate a license revocation proceeding against Verizon Wireless.

Section 312(a) provides “[t]he Commission *may* revoke any station license or construction permit” based on a number of acts delineated therein. 47 U.S.C. § 312(a) (emphasis added). “When” as here “a statute uses a permissive term such as ‘may’ rather than a mandatory term such as ‘shall,’ this choice of language suggests that Congress intends to confer some discretion on the agency.” *Dickson v. Sec’y of Defense*, 68 F.3d 1396, 1401 (D.C. Cir. 1995). It follows that “the discretionary language of” section 312(a) does not “provide sufficient guidelines to rebut the presumption of nonreviewability.” *New York State Dept. of Law v. FCC*, 984 F.2d 1209, 1217 (D.C. Cir. 1993).

3. The Decision Was Reasonable

In any event, the Commission found “no basis” for NTCH’s request that the Commission revoke Verizon Wireless’s licenses. *Reconsideration Order* ¶ 13 (JA____).

In denying NTCH’s request, the Commission explained that “Verizon Wireless ha[d] provided the Commission with ‘full knowledge that Vodafone held the interests’ at issue,” and “ha[d] done so in advance of each of its proposed acquisitions.” *Reconsideration Order* ¶ 13 (JA____) (quoting NTCH Reply to Opposition for Petition for Reconsideration at 6 (JA____)). As but one example, Verizon Wireless’s application to acquire the Cable Company licenses stated the following:

The Applicant, Cellco Partnership d/b/a Verizon Wireless (“Cellco”), is ultimately owned and controlled by Verizon Communications Inc. (“Verizon”) and Vodafone Group Plc (“Vodafone”). Verizon, a Delaware corporation, owns 55% of Cellco; Vodafone, a company organized under the laws of the United Kingdom, owns 45%. The instant transaction would not result in any change of either *de jure* or *de facto* control in Cellco. Vodafone’s interest in Cellco, and its qualifications (as a foreign corporation) to hold indirect ownership interests in common carrier licenses have been previously authorized by the FCC under the Communications Act. Neither Vodafone nor any of its foreign subsidiaries hold any direct ownership interests in any common carrier licenses. No new foreign ownership issues are raised by this filing.

Since the Commission approved the foreign ownership of Cellco Partnership as outlined above in this exhibit, there have been no changes in that foreign ownership.

SpectrumCo Application, Ex. 2 (JA___) (citations omitted). The Cox and Leap applications included identical language. *See Cox Application*, Ex. 2 (JA___); *Leap Applications*, Ex. 2 (JA___, ___, ___).

Because there was no evidence that Verizon Wireless misrepresented its foreign ownership structure, the Commission reasonably found no basis to initiate a license revocation proceeding against Verizon Wireless. *See Reconsideration Order* ¶ 13 (JA___). That fact easily distinguishes the FCC's decision here from the Commission decisions discussed in NTCH's brief. *See* Br. 41-42. In those orders, the Commission initiated revocation proceedings against licensees that were found to have misrepresented their foreign ownership status, in violation of the prohibition against making "false statements" in 47 U.S.C. § 312(a)(1).¹⁴ By contrast, where a licensee's section 310(b) violation was not made in bad faith, the Commission has

¹⁴ *See Mario Laredo*, 11 FCC Rcd 18010, 18011 (¶ 7) (1996) (demanding licensee show cause why his construction permit should not be revoked due to a "substantial question of fact as to whether [the licensee]" – a citizen of Mexico – "made misrepresentations ... when he claimed United States citizenship"); *KOZN(FM)*, 1986 WL 292498 (¶ 4) (1986) (demanding licensee show cause why his license should not be revoked after "admit[ing] that he intentionally misrepresented ... that he was a United States citizen when, in fact, he was a citizen of Canada"); *Algreg Cellular Engineering*, 12 FCC Rcd 8148, 8172-81 (¶¶ 57-79) (1986) (concluding that "the public interest would not be served by revoking [the license for the] initial Section 310(b) violation," but revoking the license for lack of candor).

provided the licensee an opportunity to cure its foreign ownership problem. *See Bravo Cellular*, 14 FCC Rcd 18525, 18535 (¶ 16) (1999) (distinguishing cases). Because Verizon Wireless had already done so, *see Reconsideration Order* ¶ 2 (JA___), the Commission reasonably followed that same approach here, *id.* ¶ 13 (JA___).

**C. NTCH Is Judicially Estopped from Challenging
Vodafone's Prior Interest in Verizon Wireless**

Furthermore, the Court should decline to consider NTCH's various foreign ownership arguments, *see* Br. 32-44, because they are barred by the doctrine of judicial estoppel. That doctrine provides that "where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position." *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001). This doctrine applies where the prior statement was made in an administrative proceeding. *See Simon v. Safelite Glass Corp.*, 128 F.3d 68, 72 (2d Cir. 1997) (cataloguing cases); *King v. Herbert J. Thomas Memorial Hosp.*, 159 F.3d 192, 196 (4th Cir. 1998).

"[I]n deciding whether to apply judicial estoppel," the Court "should answer" "three questions": "(1) Is a party's later position clearly inconsistent with its earlier position? (2) Has the party succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an

inconsistent position in a later proceeding would create the perception that either the first or the second court was misled? (3) Will the party seeking to assert an inconsistent position derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped?” *Moses v. Howard Univ. Hosp.*, 606 F.3d 789, 798 (D.C. Cir. 2010) (citing *Maine*, 532 U.S. at 750-51). In this case, the answer to all three questions is “yes.”

First, in an effort to garner Commission consent to its own assignment of licenses to Verizon Wireless, NTCH attested that Verizon Wireless had the legal qualifications to hold and control FCC licenses, and that assignment of its licenses to Verizon Wireless would be in the public interest. *See Reconsideration Order* ¶¶ 9, 13 (JA ___, ___). At the time, Vodafone held a 45 percent stake in Verizon Wireless, which NTCH acknowledged in its application.¹⁵ That position clearly is inconsistent with NTCH’s assertion here that the same foreign ownership structure violated section 310(b)(3) of the Act. *See* Br. 22-43. Moreover, while NTCH now asserts that Verizon Wireless was required to “go through the [forbearance] process anew” before

¹⁵ NTCH, in a joint filing with Verizon Wireless, asserted that Verizon Wireless’s “legal qualifications to hold and control FCC licenses and to consummate the transaction are matters of public record” and grant “will serve the public interest.” *See* File No. 0005573976, FCC Form 603, Ex. 1 (filed Jan. 4, 2013); *see also id.*, Ex. 4 (describing Vodafone’s interest in Verizon Wireless) (JA ___, ___-___).

acquiring any wireless licenses, Br. 37, NTCH assigned its own licenses to Verizon Wireless notwithstanding the latter's failure to request section 310(b)(3) forbearance from the Commission.

Second, based on the representations in its application, NTCH persuaded the Commission to consent to assignment of its licenses to Verizon Wireless. *See Reconsideration Order* ¶ 13 (JA___). A finding by this Court that Verizon Wireless's foreign ownership structure violated section 310(b)(3) would create the perception that the Commission had been misled by NTCH's prior contrary representations.

Third, NTCH would derive an unfair advantage by reason of its inconsistent positions before the Commission and the Court, which, if credited, would permit NTCH simultaneously to assign its own licenses to Verizon Wireless while challenging the assignment of licenses held by the Cable Companies, Leap, and T-Mobile to Verizon Wireless.

This case, in short, presents a textbook circumstance for the application of judicial estoppel. Because NTCH prevailed before the Commission on the argument that Vodafone's stake in Verizon Wireless did not raise any legal or

public interest concerns, it should be estopped from arguing the opposite here.¹⁶

II. THE ROAMING CONDITIONS ARE REASONABLE

Apart from its foreign ownership arguments, NTCH claims that certain data roaming conditions in the *Order* are arbitrary and capricious because they “d[id] nothing to remediate the harms” caused by the transactions. Br. 45. That argument is baseless.

1. The Commission conditioned its consent to assignment of the Cable Company, Leap, and T-Mobile licenses to Verizon Wireless on the latter’s agreement to comply with the newly adopted data roaming rule even if the *Data Roaming Order* were struck down by a court. *Order* ¶ 121 (JA___). The Commission reasonably found this condition necessary to “ensur[e]” that Verizon Wireless “continues to be required to offer data roaming on commercially reasonable terms and conditions ... regardless” of Verizon

¹⁶ NTCH cannot assert that it merely relied on the *Order*’s finding that Verizon Wireless’s foreign ownership structure did not violate section 310(b) of the Act. NTCH’s assignment application asserted that Verizon Wireless was qualified to hold Commission licenses, without reservation or qualification. *See* n.15, above. NTCH cannot use the *Order* for its own advantage while seeking to overturn it through administrative reconsideration and judicial review.

Wireless's then-pending challenge to the *Data Roaming Order*. *Id.* ¶ 120 (JA___).

NTCH contends that “concession” by Verizon Wireless “was worthless” because “the rule[] had not been effective ... in coercing Verizon [Wireless] into offering reasonable roaming rates.” Br. 45; *id.* 20. The *Order* made no such finding. *See id.* Rather, the *Order* only discussed the Commission’s “previous[]” finding in the *Data Roaming Order* “that providers ha[d] experienced difficulty *in the past* negotiating broadband data roaming arrangements” – *i.e.*, the very problem the data roaming rule was designed to solve. *Order* ¶ 120 (JA___) (emphasis added) (citing *Data Roaming Order*, 26 FCC Rcd at 5424-27 (¶¶ 24-27)); *see also id.* ¶ 84 & n.207 (JA___). Indeed, when the Commission adopted the *Order*, the data roaming rule had been in effect for less than a year, so it was too soon to know whether the rule was working as intended. *See* 76 Fed. Reg. 63561 (Oct. 13, 2011). NTCH thus offers no basis to question the Commission’s prediction that adherence to that rule would mitigate any harm to the data roaming market caused by the transactions. *See Rural Cellular Ass’n v. FCC*, 588 F.3d 1095, 1107 (D.C. Cir. 2009) (“the reasonableness of an agency’s decision” is judged “on the basis of the record before the agency at the time it

made its decision”) (citing *Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965, 971 (D.C. Cir. 1999)).

NTCH also mischaracterizes the data roaming rule as “toothless.” Br. 45. Not so. The *Data Roaming Order* established a specific complaint process to ensure that the rule is enforceable, *see Data Roaming Order*, 26 FCC Rcd at 5449-53 (¶¶ 74-87), and NTCH is availing itself of that mechanism in a pending proceeding before the FCC’s Enforcement Bureau. *See NTCH, Inc., Complainant v. Cellco P’ship dba Verizon Wireless, Defendant*, EB Docket No. 14-212.

2. The Commission further found that the transfer of AWS-1 spectrum from Verizon Wireless to T-Mobile would enable T-Mobile to serve as a roaming alternative to the largest two providers – one of which is Verizon Wireless. *Order* ¶ 120 (JA____). NTCH asserts this condition provides “no remedy at all” because CDMA carriers like NTCH cannot roam on T-Mobile’s network, which uses an incompatible technology (GSM) for wireless voice traffic.¹⁷ Br. 4, 47. That argument is not before the Court because NTCH did not first present it to the Commission. *See Fresno Mobile*

¹⁷ CDMA (“Code Division Multiple Access”) and GSM (“Global System for Mobiles”) are the two major digital radio systems that traditionally have been used in mobile phones. AT&T Wireless and T-Mobile use GSM; Verizon Wireless and Sprint use CDMA.

Radio, 165 F.3d at 972; 47 U.S.C. § 405(a) (providing that the filing of petition for reconsideration with the FCC is a “condition precedent to judicial review” of any “questions of fact or law upon which the Commission ... has been afforded no opportunity to pass”).

It also is irrelevant. The divestiture of spectrum to T-Mobile addressed providers’ “difficulties ... obtaining broadband data roaming arrangements” from Verizon Wireless, *Order* ¶ 84 (JA___); *see id.* ¶¶ 120-22 (JA___-___), not roaming for voice traffic.¹⁸ Br. 4. Further, even if the benefits of the divestiture were limited, so were the potential harms. While the Commission identified the loss of a potential alternative source of roaming as a concrete harm, *Order* ¶ 84 (JA___), there is no basis in the record to conclude (and NTCH does not allege) that an alternative provider would support both GSM and CDMA roaming.

¹⁸ Section 20.12(d) of the Commission’s rules, 47 C.F.R. § 20.12(d), provides that wireless carriers must offer voice roaming agreements to other carriers on a just, reasonable, and non-discriminatory basis pursuant to sections 201 and 202 of the Act.

Regardless, the transfers would, the Commission concluded, “promote the deployment of T-Mobile’s [Long Term Evolution (“LTE”)] network,”¹⁹ which will benefit CDMA providers like NTCH. *Order* ¶ 120 (JA___). A wireless customer can roam on an LTE network with an LTE-capable handset, irrespective of the system used to provide wireless voice calls (*i.e.*, CDMA or GSM). Thus, a wireless provider with networks that support LTE and CDMA (like NTCH) can obtain LTE roaming from a wireless provider whose networks support LTE and GSM (like T-Mobile).²⁰ Further, as wireless providers increasingly deploy Voice over LTE (“VoLTE”), that

¹⁹ LTE is a standard for wireless mobile communication of both high-speed data and voice. The Commission recently found that mobile technologies are “now converging on LTE, as all of the major service providers are deploying or planning to deploy LTE technology.” In particular, T-Mobile’s upgrade to LTE was expected to be substantially complete by the middle of 2015. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, 29 FCC Rcd 15311, 15340, 15400, 15404 (¶¶ 58, 182, 187) (WTB 2014).

²⁰ *See, e.g., Data Roaming Order*, 26 FCC Rcd at 5433-34 (¶ 46) (explaining that “requesting providers that operate on different bands or technologies than the host might achieve technological compatibility by providing subscribers with multi-band and multi-mode user devices”); Information Age Economics Petition to Condition or Otherwise Deny at 8 (JA___) (asserting that “AWS-capable LTE devices with CDMA included ... offer the possibility of roaming for LTE customers of small CDMA operators onto T-Mobile’s LTE network as an alternative to [Verizon Wireless]”).

standard will provide a means for CDMA carriers like NTCH to obtain voice roaming support on LTE networks as well.

3. In reviewing radio license transfers, including common carrier radio license transfers, the Commission “employ[s] a balancing test” that “weigh[s] any potential public interest harms ... against any potential public interest benefits.” *Order* ¶ 28 (JA___). The Commission reasonably found in this case that the roaming commitment and the spectrum transfer to T-Mobile “mitigate[d] the public interest harms ... sufficiently to address [its] concerns” and pass the public interest test. *Order* ¶ 121 (JA___); *see id.* ¶¶ 6, 184 (JA___, ___). “The Commission enjoys broad discretion when conducting exactly this type of balancing.” *Rural Cellular Ass’n*, 588 F.3d at 1103 (citing *Fresno Mobile Radio*, 165 F.3d at 971).

CONCLUSION

NTCH's appeal should be dismissed and otherwise denied.

Respectfully submitted,

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November 9, 2015

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NTCH, INC.,

APPELLANT,

v.

FEDERAL COMMUNICATIONS COMMISSION,

APPELLEE.

No. 15-1145

CERTIFICATE OF COMPLIANCE

Pursuant to the requirements of Fed. R. App. P. 32(a)(7), I hereby certify that the accompanying Brief for Appellee in the captioned case contains 9,283 words.

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November 9, 2015

Statutory and Regulatory Appendix

5 U.S.C. § 701	1
5 U.S.C. § 706	3
47 U.S.C. § 160	4
47 U.S.C. § 201	6
47 U.S.C. § 202	7
47 U.S.C. § 308	8
47 U.S.C. § 310	10
47 U.S.C. § 402	12
47 U.S.C. § 405	15
47 C.F.R. § 1.106	17
47 C.F.R. § 1.990	22
47 C.F.R. § 1.2109	27
47 C.F.R. § 20.12	29
47 C.F.R. § 24.5	32

United States Code Annotated

Title 5. Government Organization and Employees (Refs & Annos)

Part I. The Agencies Generally

Chapter 7. Judicial Review (Refs & Annos)

5 U.S.C.A. § 701

§ 701. Application; definitions

Effective: January 4, 2011

[Currentness](#)

(a) This chapter applies, according to the provisions thereof, except to the extent that--

- (1) statutes preclude judicial review; or
- (2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter--

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include--

- (A) the Congress;
- (B) the courts of the United States;
- (C) the governments of the territories or possessions of the United States;
- (D) the government of the District of Columbia;
- (E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;
- (F) courts martial and military commissions;
- (G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; subchapter II of chapter 471 of title 49; or sections 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix; and

(2) “person”, “rule”, “order”, “license”, “sanction”, “relief”, and “agency action” have the meanings given them by section 551 of this title.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 392; Pub.L. 103-272, § 5(a), July 5, 1994, 108 Stat. 1373; Pub.L. 111-350, § 5(a)(3), Jan. 4, 2011, 124 Stat. 3841.)

5 U.S.C.A. § 701, 5 USCA § 701

Current through P.L. 114-61 (excluding P.L. 114-52, 114-54, 114-59, and 114-60) approved 10-7-2015

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§ 706. Scope of review, 5 USCA § 706

United States Code Annotated
Title 5. Government Organization and Employees (Refs & Annos)
Part I. The Agencies Generally
Chapter 7. Judicial Review (Refs & Annos)

5 U.S.C.A. § 706

§ 706. Scope of review

Currentness

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be--
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;
 - (E) unsupported by substantial evidence in a case subject to [sections 556](#) and [557](#) of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
 - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

5 U.S.C.A. § 706, 5 USCA § 706

Current through P.L. 114-61 (excluding P.L. 114-52, 114-54, 114-59, and 114-60) approved 10-7-2015

§ 160. Competition in provision of telecommunications service, 47 USCA § 160

United States Code Annotated

Title 47. Telecommunications (Refs & Annos)

Chapter 5. Wire or Radio Communication (Refs & Annos)

Subchapter I. General Provisions (Refs & Annos)

47 U.S.C.A. § 160

§ 160. Competition in provision of telecommunications service

Effective: February 8, 1996

[Currentness](#)

(a) Regulatory flexibility

Notwithstanding [section 332\(c\)\(1\)\(A\)](#) of this title, the Commission shall forbear from applying any regulation or any provision of this chapter to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that--

- (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.

(b) Competitive effect to be weighed

In making the determination under subsection (a)(3) of this section, the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.

(c) Petition for forbearance

Any telecommunications carrier, or class of telecommunications carriers, may submit a petition to the Commission requesting that the Commission exercise the authority granted under this section with respect to that carrier or those carriers, or any service offered by that carrier or carriers. Any such petition shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance under subsection (a) of this section within one year after the Commission receives it, unless the one-year period is extended by the Commission. The Commission may extend the initial one-year period by an additional 90 days if the Commission finds that an extension is necessary to meet the requirements of subsection (a) of this section. The Commission may grant or deny a petition in whole or in part and shall explain its decision in writing.

§ 160. Competition in provision of telecommunications service, 47 USCA § 160

(d) Limitation

Except as provided in [section 251\(f\)](#) of this title, the Commission may not forbear from applying the requirements of [section 251\(c\)](#) or [271](#) of this title under subsection (a) of this section until it determines that those requirements have been fully implemented.

(e) State enforcement after commission forbearance

A State commission may not continue to apply or enforce any provision of this chapter that the Commission has determined to forbear from applying under subsection (a) of this section.

CREDIT(S)

(June 19, 1934, c. 652, Title I, § 10, as added [Pub.L. 104-104, Title IV, § 401](#), Feb. 8, 1996, 110 Stat. 128.)

47 U.S.C.A. § 160, 47 USCA § 160

Current through P.L. 114-61 (excluding P.L. 114-52, 114-54, 114-59, and 114-60) approved 10-7-2015

§ 201. Service and charges, 47 USCA § 201

United States Code Annotated

Title 47. Telecommunications (Refs & Annos)

Chapter 5. Wire or Radio Communication (Refs & Annos)

Subchapter II. Common Carriers (Refs & Annos)

Part I. Common Carrier Regulation

47 U.S.C.A. § 201

§ 201. Service and charges

Currentness

(a) It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.

(b) All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful: *Provided*, That communications by wire or radio subject to this chapter may be classified into day, night, repeated, unrepeated, letter, commercial, press, Government, and such other classes as the Commission may decide to be just and reasonable, and different charges may be made for the different classes of communications: *Provided further*, That nothing in this chapter or in any other provision of law shall be construed to prevent a common carrier subject to this chapter from entering into or operating under any contract with any common carrier not subject to this chapter, for the exchange of their services, if the Commission is of the opinion that such contract is not contrary to the public interest: *Provided further*, That nothing in this chapter or in any other provision of law shall prevent a common carrier subject to this chapter from furnishing reports of positions of ships at sea to newspapers of general circulation, either at a nominal charge or without charge, provided the name of such common carrier is displayed along with such ship position reports. The Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter.

CREDIT(S)

(June 19, 1934, c. 652, Title II, § 201, 48 Stat. 1070; May 31, 1938, c. 296, 52 Stat. 588.)

47 U.S.C.A. § 201, 47 USCA § 201

Current through P.L. 114-61 (excluding P.L. 114-52, 114-54, 114-59, and 114-60) approved 10-7-2015

§ 202. Discriminations and preferences, 47 USCA § 202

United States Code Annotated

Title 47. Telecommunications (Refs & Annos)

Chapter 5. Wire or Radio Communication (Refs & Annos)

Subchapter II. Common Carriers (Refs & Annos)

Part I. Common Carrier Regulation

47 U.S.C.A. § 202

§ 202. Discriminations and preferences

Currentness

(a) Charges, services, etc.

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

(b) Charges or services included

Charges or services, whenever referred to in this chapter, include charges for, or services in connection with, the use of common carrier lines of communication, whether derived from wire or radio facilities, in chain broadcasting or incidental to radio communication of any kind.

(c) Penalty

Any carrier who knowingly violates the provisions of this section shall forfeit to the United States the sum of \$6,000 for each such offense and \$300 for each and every day of the continuance of such offense.

CREDIT(S)

(June 19, 1934, c. 652, Title II, § 202, 48 Stat. 1070; Pub.L. 86-751, Sept. 13, 1960, 74 Stat. 888; [Pub.L. 101-239, Title III, § 3002\(a\)](#), Dec. 19, 1989, 103 Stat. 2131.)

47 U.S.C.A. § 202, 47 USCA § 202

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§ 308. Requirements for license, 47 USCA § 308

United States Code Annotated

Title 47. Telecommunications (Refs & Annos)

Chapter 5. Wire or Radio Communication (Refs & Annos)

Subchapter III. Special Provisions Relating to Radio (Refs & Annos)

Part I. General Provisions

47 U.S.C.A. § 308

§ 308. Requirements for license

Effective: February 8, 1996

[Currentness](#)

(a) Writing; exceptions

The Commission may grant construction permits and station licenses, or modifications or renewals thereof, only upon written application therefor received by it: *Provided*, That (1) in cases of emergency found by the Commission involving danger to life or property or due to damage to equipment, or (2) during a national emergency proclaimed by the President or declared by the Congress and during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or security or otherwise in furtherance of the war effort, or (3) in cases of emergency where the Commission finds, in the nonbroadcast services, that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission may grant construction permits and station licenses, or modifications or renewals thereof, during the emergency so found by the Commission or during the continuance of any such national emergency or war, in such manner and upon such terms and conditions as the Commission shall by regulation prescribe, and without the filing of a formal application, but no authorization so granted shall continue in effect beyond the period of the emergency or war requiring it: *Provided further*, That the Commission may issue by cable, telegraph, or radio a permit for the operation of a station on a vessel of the United States at sea, effective in lieu of a license until said vessel shall return to a port of the continental United States.

(b) Conditions

All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station; the ownership and location of the proposed station and of the stations, if any, with which it is proposed to communicate; the frequencies and the power desired to be used; the hours of the day or other periods of time during which it is proposed to operate the station; the purposes for which the station is to be used; and such other information as it may require. The Commission, at any time after the filing of such original application and during the term of any such license, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked. Such application and/or such statement of fact shall be signed by the applicant and/or licensee in any manner or form, including by electronic means, as the Commission may prescribe by regulation.

(c) Commercial communication

The Commission in granting any license for a station intended or used for commercial communication between the United States or any Territory or possession, continental or insular, subject to the jurisdiction of the United States, and any foreign country, may impose any terms, conditions, or restrictions authorized to be imposed with respect to submarine-cable licenses by [section 35](#) of this title.

§ 308. Requirements for license, 47 USCA § 308

(d) Summary of complaints

Each applicant for the renewal of a commercial or noncommercial television license shall attach as an exhibit to the application a summary of written comments and suggestions received from the public and maintained by the licensee (in accordance with Commission regulations) that comment on the applicant's programming, if any, and that are characterized by the commentator as constituting violent programming.

CREDIT(S)

(June 19, 1934, c. 652, Title III, § 308, 48 Stat. 1084; July 16, 1952, c. 879, § 6, 66 Stat. 714; Pub.L. 87-444, § 3, Apr. 27, 1962, 76 Stat. 63; [Pub.L. 102-538, Title II, § 204\(b\)](#), Oct. 27, 1992, 106 Stat. 3543; [Pub.L. 103-414, Title III, § 303\(a\)\(15\)](#), Oct. 25, 1994, 108 Stat. 4295; [Pub.L. 104-104, Title II, § 204\(b\)](#), Feb. 8, 1996, 110 Stat. 113.)

47 U.S.C.A. § 308, 47 USCA § 308

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§ 310. License ownership restrictions, 47 USCA § 310

United States Code Annotated

Title 47. Telecommunications (Refs & Annos)

Chapter 5. Wire or Radio Communication (Refs & Annos)

Subchapter III. Special Provisions Relating to Radio (Refs & Annos)

Part I. General Provisions

47 U.S.C.A. § 310

§ 310. License ownership restrictions

Effective: February 8, 1996

[Currentness](#)

(a) Grant to or holding by foreign government or representative

The station license required under this chapter shall not be granted to or held by any foreign government or the representative thereof.

(b) Grant to or holding by alien or representative, foreign corporation, etc.

No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by--

(1) any alien or the representative of any alien;

(2) any corporation organized under the laws of any foreign government;

(3) any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country;

(4) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

(c) Authorization for aliens licensed by foreign governments; multilateral or bilateral agreement to which United States and foreign country are parties as prerequisite

In addition to amateur station licenses which the Commission may issue to aliens pursuant to this chapter, the Commission may issue authorizations, under such conditions and terms as it may prescribe, to permit an alien licensed by his government as an amateur radio operator to operate his amateur radio station licensed by his government in the United States, its possessions, and the Commonwealth of Puerto Rico provided there is in effect a multilateral or bilateral agreement, to which the United States and the alien's government are parties, for such operation on a reciprocal basis by United States amateur radio operators. Other

§ 310. License ownership restrictions, 47 USCA § 310

provisions of this chapter and of subchapter II of chapter 5, and chapter 7, of Title 5 shall not be applicable to any request or application for or modification, suspension, or cancellation of any such authorization.

(d) Assignment and transfer of construction permit or station license

No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby. Any such application shall be disposed of as if the proposed transferee or assignee were making application under [section 308](#) of this title for the permit or license in question; but in acting thereon the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.

(e) Administration of regional concentration rules for broadcast stations

(1) In the case of any broadcast station, and any ownership interest therein, which is excluded from the regional concentration rules by reason of the savings provision for existing facilities provided by the First Report and Order adopted March 9, 1977 (docket No. 20548; [42 Fed. Reg. 16145](#)), the exclusion shall not terminate solely by reason of changes made in the technical facilities of the station to improve its service.

(2) For purposes of this subsection, the term “regional concentration rules” means the provisions of [sections 73.35](#), [73.240](#), and [73.636](#) of [title 47, Code of Federal Regulations](#) (as in effect June 1, 1983), which prohibit any party from directly or indirectly owning, operating, or controlling three broadcast stations in one or several services where any two of such stations are within 100 miles of the third (measured city-to-city), and where there is a primary service contour overlap of any of the stations.

CREDIT(S)

(June 19, 1934, c. 652, Title III, § 310, 48 Stat. 1086; July 16, 1952, c. 879, § 8, 66 Stat. 716; Pub.L. 85-817, § 2, Aug. 28, 1958, 72 Stat. 981; Pub.L. 88-313, § 2, May 28, 1964, 78 Stat. 202; Pub.L. 92-81, § 2, Aug. 10, 1971, 85 Stat. 302; [Pub.L. 93-505](#), § 2, Nov. 30, 1974, 88 Stat. 1576; [Pub.L. 98-214](#), § 7, Dec. 8, 1983, 97 Stat. 1469; [Pub.L. 101-396](#), § 8(b), Sept. 28, 1990, 104 Stat. 850; [Pub.L. 104-104, Title IV, § 403\(k\)](#), Feb. 8, 1996, 110 Stat. 131.)

47 U.S.C.A. § 310, 47 USCA § 310

Current through P.L. 114-61 (excluding P.L. 114-52, 114-54, 114-59, and 114-60) approved 10-7-2015

§ 402. Judicial review of Commission's orders and decisions, 47 USCA § 402

United States Code Annotated

Title 47. Telecommunications (Refs & Annos)

Chapter 5. Wire or Radio Communication (Refs & Annos)

Subchapter IV. Procedural and Administrative Provisions

47 U.S.C.A. § 402

§ 402. Judicial review of Commission's orders and decisions

Effective: October 8, 2010

[Currentness](#)

(a) Procedure

Any proceeding to enjoin, set aside, annul, or suspend any order of the Commission under this chapter (except those appealable under subsection (b) of this section) shall be brought as provided by and in the manner prescribed in chapter 158 of Title 28.

(b) Right to appeal

Appeals may be taken from decisions and orders of the Commission to the United States Court of Appeals for the District of Columbia in any of the following cases:

- (1) By any applicant for a construction permit or station license, whose application is denied by the Commission.
- (2) By any applicant for the renewal or modification of any such instrument of authorization whose application is denied by the Commission.
- (3) By any party to an application for authority to transfer, assign, or dispose of any such instrument of authorization, or any rights thereunder, whose application is denied by the Commission.
- (4) By any applicant for the permit required by [section 325](#) of this title whose application has been denied by the Commission, or by any permittee under said section whose permit has been revoked by the Commission.
- (5) By the holder of any construction permit or station license which has been modified or revoked by the Commission.
- (6) By any other person who is aggrieved or whose interests are adversely affected by any order of the Commission granting or denying any application described in paragraphs (1), (2), (3), (4), and (9) of this subsection.
- (7) By any person upon whom an order to cease and desist has been served under [section 312](#) of this title.
- (8) By any radio operator whose license has been suspended by the Commission.

§ 402. Judicial review of Commission's orders and decisions, 47 USCA § 402

(9) By any applicant for authority to provide interLATA services under [section 271](#) of this title whose application is denied by the Commission.

(10) By any person who is aggrieved or whose interests are adversely affected by a determination made by the Commission under [section 618\(a\)\(3\)](#) of this title.

(c) Filing notice of appeal; contents; jurisdiction; temporary orders

Such appeal shall be taken by filing a notice of appeal with the court within thirty days from the date upon which public notice is given of the decision or order complained of. Such notice of appeal shall contain a concise statement of the nature of the proceedings as to which the appeal is taken; a concise statement of the reasons on which the appellant intends to rely, separately stated and numbered; and proof of service of a true copy of said notice and statement upon the Commission. Upon filing of such notice, the court shall have jurisdiction of the proceedings and of the questions determined therein and shall have power, by order, directed to the Commission or any other party to the appeal, to grant such temporary relief as it may deem just and proper. Orders granting temporary relief may be either affirmative or negative in their scope and application so as to permit either the maintenance of the status quo in the matter in which the appeal is taken or the restoration of a position or status terminated or adversely affected by the order appealed from and shall, unless otherwise ordered by the court, be effective pending hearing and determination of said appeal and compliance by the Commission with the final judgment of the court rendered in said appeal.

(d) Notice to interested parties; filing of record

Upon the filing of any such notice of appeal the appellant shall, not later than five days after the filing of such notice, notify each person shown by the records of the Commission to be interested in said appeal of the filing and pendency of the same. The Commission shall file with the court the record upon which the order complained of was entered, as provided in [section 2112 of Title 28](#).

(e) Intervention

Within thirty days after the filing of any such appeal any interested person may intervene and participate in the proceedings had upon said appeal by filing with the court a notice of intention to intervene and a verified statement showing the nature of the interest of such party, together with proof of service of true copies of said notice and statement, both upon appellant and upon the Commission. Any person who would be aggrieved or whose interest would be adversely affected by a reversal or modification of the order of the Commission complained of shall be considered an interested party.

(f) Records and briefs

The record and briefs upon which any such appeal shall be heard and determined by the court shall contain such information and material, and shall be prepared within such time and in such manner as the court may by rule prescribe.

(g) Time of hearing; procedure

The court shall hear and determine the appeal upon the record before it in the manner prescribed by [section 706 of Title 5](#).

§ 402. Judicial review of Commission's orders and decisions, 47 USCA § 402

(h) Remand

In the event that the court shall render a decision and enter an order reversing the order of the Commission, it shall remand the case to the Commission to carry out the judgment of the court and it shall be the duty of the Commission, in the absence of the proceedings to review such judgment, to forthwith give effect thereto, and unless otherwise ordered by the court, to do so upon the basis of the proceedings already had and the record upon which said appeal was heard and determined.

(i) Judgment for costs

The court may, in its discretion, enter judgment for costs in favor of or against an appellant, or other interested parties intervening in said appeal, but not against the Commission, depending upon the nature of the issues involved upon said appeal and the outcome thereof.

(j) Finality of decision; review by Supreme Court

The court's judgment shall be final, subject, however, to review by the Supreme Court of the United States upon writ of certiorari on petition therefor under [section 1254 of Title 28](#), by the appellant, by the Commission, or by any interested party intervening in the appeal, or by certification by the court pursuant to the provisions of that section.

CREDIT(S)

(June 19, 1934, c. 652, Title IV, § 402, 48 Stat. 1093; May 20, 1937, c. 229, §§ 11-13, 50 Stat. 197; May 24, 1949, c. 139, § 132, 63 Stat. 108; July 16, 1952, c. 879, § 14, 66 Stat. 718; Pub.L. 85-791, § 12, Aug. 28, 1958, 72 Stat. 945; [Pub. L. 97-259, Title I, §§ 121, 127\(b\)](#), Sept. 13, 1982, 96 Stat. 1097, 1099; [Pub.L. 98-620, Title IV, § 402\(50\)](#), Nov. 8, 1984, 98 Stat. 3361; [Pub.L. 104-104, Title I, § 151\(b\)](#), Feb. 8, 1996, 110 Stat. 107; [Pub.L. 111-260, Title I, § 104\(d\)](#), Oct. 8, 2010, 124 Stat. 2762.)

47 U.S.C.A. § 402, 47 USCA § 402

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United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter IV. Procedural and Administrative Provisions

47 U.S.C.A. § 405

§ 405. Petition for reconsideration; procedure; disposition; time of filing; additional evidence; time for disposition of petition for reconsideration of order concluding hearing or investigation; appeal of order

Currentness

(a) After an order, decision, report, or action has been made or taken in any proceeding by the Commission, or by any designated authority within the Commission pursuant to a delegation under [section 155\(c\)\(1\)](#) of this title, any party thereto, or any other person aggrieved or whose interests are adversely affected thereby, may petition for reconsideration only to the authority making or taking the order, decision, report, or action; and it shall be lawful for such authority, whether it be the Commission or other authority designated under [section 155\(c\)\(1\)](#) of this title, in its discretion, to grant such a reconsideration if sufficient reason therefor be made to appear. A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of. No such application shall excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. The filing of a petition for reconsideration shall not be a condition precedent to judicial review of any such order, decision, report, or action, except where the party seeking such review (1) was not a party to the proceedings resulting in such order, decision, report, or action, or (2) relies on questions of fact or law upon which the Commission, or designated authority within the Commission, has been afforded no opportunity to pass. The Commission, or designated authority within the Commission, shall enter an order, with a concise statement of the reasons therefor, denying a petition for reconsideration or granting such petition, in whole or in part, and ordering such further proceedings as may be appropriate: *Provided*, That in any case where such petition relates to an instrument of authorization granted without a hearing, the Commission, or designated authority within the Commission, shall take such action within ninety days of the filing of such petition. Reconsiderations shall be governed by such general rules as the Commission may establish, except that no evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission or designated authority within the Commission believes should have been taken in the original proceeding shall be taken on any reconsideration. The time within which a petition for review must be filed in a proceeding to which [section 402\(a\)](#) of this title applies, or within which an appeal must be taken under [section 402\(b\)](#) of this title in any case, shall be computed from the date upon which the Commission gives public notice of the order, decision, report, or action complained of.

(b)(1) Within 90 days after receiving a petition for reconsideration of an order concluding a hearing under [section 204\(a\)](#) of this title or concluding an investigation under [section 208\(b\)](#) of this title, the Commission shall issue an order granting or denying such petition.

(2) Any order issued under paragraph (1) shall be a final order and may be appealed under [section 402\(a\)](#) of this title.

CREDIT(S)

(June 19, 1934, c. 652, Title IV, § 405, 48 Stat. 1095; July 16, 1952, c. 879, § 15, 66 Stat. 720; Pub.L. 86-752, § 4(c), Sept. 13, 1960, 74 Stat. 892; Pub.L. 87-192, § 3, Aug. 31, 1961, 75 Stat. 421; [Pub. L. 97-259, Title I, §§ 122](#), 127(c), Sept. 13, 1982, 96 Stat. 1097, 1099; [Pub.L. 100-594](#), § 8(d), Nov. 3, 1988, 102 Stat. 3023.)

47 U.S.C.A. § 405, 47 USCA § 405

Current through P.L. 114-61 (excluding P.L. 114-52, 114-54, 114-59, and 114-60) approved 10-7-2015

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§ 1.106 Petitions for reconsideration in non-rulemaking proceedings., 47 C.F.R. § 1.106

Code of Federal Regulations**Title 47. Telecommunication****Chapter I. Federal Communications Commission (Refs & Annos)****Subchapter A. General****Part 1. Practice and Procedure (Refs & Annos)****Subpart A. General Rules of Practice and Procedure (Refs & Annos)****Reconsideration and Review of Actions Taken by the Commission and Pursuant to Delegated Authority; Effective Dates and Finality Dates of Actions****47 C.F.R. § 1.106****§ 1.106 Petitions for reconsideration in non-rulemaking proceedings.****Effective: June 1, 2011****Currentness**

(a)(1) Except as provided in paragraphs (b)(3) and (p) of this section, petitions requesting reconsideration of a final Commission action in non-rulemaking proceedings will be acted on by the Commission. Petitions requesting reconsideration of other final actions taken pursuant to delegated authority will be acted on by the designated authority or referred by such authority to the Commission. A petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as, the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding. Petitions for reconsideration of other interlocutory actions will not be entertained. (For provisions governing reconsideration of Commission action in notice and comment rulemaking proceedings, see [§ 1.429](#). This § 1.106 does not govern reconsideration of such actions.)

(2) Within the period allowed for filing a petition for reconsideration, any party to the proceeding may request the presiding officer to certify to the Commission the question as to whether, on policy in effect at the time of designation or adopted since designation, and undisputed facts, a hearing should be held. If the presiding officer finds that there is substantial doubt, on established policy and undisputed facts, that a hearing should be held, he will certify the policy question to the Commission with a statement to that effect. No appeal may be filed from an order denying such a request. See also, [§§ 1.229](#) and [1.251](#).

(b)(1) Subject to the limitations set forth in paragraph (b)(2) of this section, any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority, may file a petition requesting reconsideration of the action taken. If the petition is filed by a person who is not a party to the proceeding, it shall state with particularity the manner in which the person's interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding.

(2) Where the Commission has denied an application for review, a petition for reconsideration will be entertained only if one or more of the following circumstances are present:

(i) The petition relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission; or

§ 1.106 Petitions for reconsideration in non-rulemaking proceedings., 47 C.F.R. § 1.106

(ii) The petition relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity.

(3) A petition for reconsideration of an order denying an application for review which fails to rely on new facts or changed circumstances may be dismissed by the staff as repetitious.

(c) In the case of any order other than an order denying an application for review, a petition for reconsideration which relies on facts or arguments not previously presented to the Commission or to the designated authority may be granted only under the following circumstances:

(1) The facts or arguments fall within one or more of the categories set forth in § 1.106(b)(2); or

(2) The Commission or the designated authority determines that consideration of the facts or arguments relied on is required in the public interest.

(d)(1) A petition for reconsideration shall state with particularity the respects in which petitioner believes the action taken by the Commission or the designated authority should be changed. The petition shall state specifically the form of relief sought and, subject to this requirement, may contain alternative requests.

(2) A petition for reconsideration of a decision that sets forth formal findings of fact and conclusions of law shall also cite the findings and/or conclusions which petitioner believes to be erroneous, and shall state with particularity the respects in which he believes such findings and/or conclusions should be changed. The petition may request that additional findings of fact and/or conclusions of law be made.

(e) Where a petition for reconsideration is based upon a claim of electrical interference, under appropriate rules in this chapter, to an existing station or a station for which a construction permit is outstanding, such petition, in addition to meeting the other requirements of this section, must be accompanied by an affidavit of a qualified radio engineer. Such affidavit shall show, either by following the procedures set forth in this chapter for determining interference in the absence of measurements, or by actual measurements made in accordance with the methods prescribed in this chapter, that electrical interference will be caused to the station within its normally protected contour.

(f) The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action, as that date is defined in § 1.4(b) of these rules, and shall be served upon parties to the proceeding. The petition for reconsideration shall not exceed 25 double spaced typewritten pages. No supplement or addition to a petition for reconsideration which has not been acted upon by the Commission or by the designated authority, filed after expiration of the 30 day period, will be considered except upon leave granted upon a separate pleading for leave to file, which shall state the grounds therefor.

(g) Oppositions to a petition for reconsideration shall be filed within 10 days after the petition is filed, and shall be served upon petitioner and parties to the proceeding. Oppositions shall not exceed 25 double spaced typewritten pages.

§ 1.106 Petitions for reconsideration in non-rulemaking proceedings., 47 C.F.R. § 1.106

(h) Petitioner may reply to oppositions within seven days after the last day for filing oppositions, and any such reply shall be served upon parties to the proceeding. Replies shall not exceed 10 double spaced typewritten pages, and shall be limited to matters raised in the opposition.

(i) Petitions for reconsideration, oppositions, and replies shall conform to the requirements of §§ 1.49, 1.51, and 1.52 and shall be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554, by mail, by commercial courier, by hand, or by electronic submission through the Commission's Electronic Comment Filing System or other electronic filing system (such as ULS). Petitions submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed. Parties filing in electronic form need only submit one copy.

(j) The Commission or designated authority may grant the petition for reconsideration in whole or in part or may deny or dismiss the petition. Its order will contain a concise statement of the reasons for the action taken. Where the petition for reconsideration relates to an instrument of authorization granted without hearing, the Commission or designated authority will take such action within 90 days after the petition is filed.

(k)(1) If the Commission or the designated authority grants the petition for reconsideration in whole or in part, it may, in its decision:

(i) Simultaneously reverse or modify the order from which reconsideration is sought;

(ii) Remand the matter to a bureau or other Commission personnel for such further proceedings, including rehearing, as may be appropriate; or

(iii) Order such other proceedings as may be necessary or appropriate.

(2) If the Commission or designated authority initiates further proceedings, a ruling on the merits of the matter will be deferred pending completion of such proceedings. Following completion of such further proceedings, the Commission or designated authority may affirm, reverse, or modify its original order, or it may set aside the order and remand the matter for such further proceedings, including rehearing, as may be appropriate.

(3) Any order disposing of a petition for reconsideration which reverses or modifies the original order is subject to the same provisions with respect to reconsideration as the original order. In no event, however, shall a ruling which denies a petition for reconsideration be considered a modification of the original order. A petition for reconsideration of an order which has been previously denied on reconsideration may be dismissed by the staff as repetitious.

Note: For purposes of this section, the word "order" refers to that portion of its action wherein the Commission announces its judgment. This should be distinguished from the "memorandum opinion" or other material which often accompany and explain the order.

(l) No evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission or the designated authority believes should have been taken in the original proceeding shall be taken on any rehearing ordered pursuant to the provisions of this section.

§ 1.106 Petitions for reconsideration in non-rulemaking proceedings., 47 C.F.R. § 1.106

(m) The filing of a petition for reconsideration is not a condition precedent to judicial review of any action taken by the Commission or by the designated authority, except where the person seeking such review was not a party to the proceeding resulting in the action, or relies on questions of fact or law upon which the Commission or designated authority has been afforded no opportunity to pass. (See § 1.115(c).) Persons in those categories who meet the requirements of this section may qualify to seek judicial review by filing a petition for reconsideration.

(n) Without special order of the Commission, the filing of a petition for reconsideration shall not excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof. However, upon good cause shown, the Commission will stay the effectiveness of its order or requirement pending a decision on the petition for reconsideration. (This paragraph applies only to actions of the Commission en banc. For provisions applicable to actions under delegated authority, see § 1.102.)

(o) Petitions for reconsideration of licensing actions, as well as oppositions and replies thereto, that are filed with respect to the Wireless Radio Services, may be filed electronically via ULS.

(p) Petitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s). Examples include, but are not limited to, petitions that:

- (1) Fail to identify any material error, omission, or reason warranting reconsideration;
- (2) Rely on facts or arguments which have not previously been presented to the Commission and which do not meet the requirements of paragraphs (b)(2), (b)(3), or (c) of this section;
- (3) Rely on arguments that have been fully considered and rejected by the Commission within the same proceeding;
- (4) Fail to state with particularity the respects in which petitioner believes the action taken should be changed as required by paragraph (d) of this section;
- (5) Relate to matters outside the scope of the order for which reconsideration is sought;
- (6) Omit information required by these rules to be included with a petition for reconsideration, such as the affidavit required by paragraph (e) of this section (relating to electrical interference);
- (7) Fail to comply with the procedural requirements set forth in paragraphs (f) and (i) of this section;
- (8) relate to an order for which reconsideration has been previously denied on similar grounds, except for petitions which could be granted under paragraph (c) of this section; or
- (9) Are untimely.

§ 1.106 Petitions for reconsideration in non-rulemaking proceedings., 47 C.F.R. § 1.106

(Authority: Secs. 4, 303, 307, 405, 48 Stat., as amended, 1066, 1082, 1083, 1095; [47 U.S.C. 154, 303, 307, 405](#))

Credits

[[28 FR 12415](#), Nov. 22, 1963, as amended at [37 FR 7507](#), April 15, 1972; [41 FR 1287](#), Jan. 7, 1976; [44 FR 60294](#), Oct. 19, 1979; [46 FR 18556](#), March 25, 1981; [62 FR 4170](#), Jan. 29, 1997; [63 FR 68920](#), Dec. 14, 1998; [76 FR 24391](#), May 2, 2011]

SOURCE: [28 FR 12415](#), Nov. 22, 1963; [56 FR 57598](#), Nov. 13, 1991; [57 FR 187](#), Jan. 3, 1992; [58 FR 27473](#), May 10, 1993; [59 FR 22985](#), May 4, 1994; [61 FR 45618](#), Aug. 29, 1996; [61 FR 46561](#), Sept. 4, 1996; [61 FR 52899](#), Oct. 9, 1996; [62 FR 37422](#), July 11, 1997; [63 FR 67429](#), Dec. 7, 1998; [63 FR 71036](#), Dec. 23, 1998; [64 FR 63251](#), Nov. 19, 1999; [65 FR 10720](#), Feb. 29, 2000; [65 FR 19684](#), April 12, 2000; [65 FR 31281](#), May 17, 2000; [69 FR 77938](#), Dec. 29, 2004; [71 FR 26251](#), May 4, 2006; [74 FR 39227](#), Aug. 6, 2009; [75 FR 9797](#), March 4, 2010; [76 FR 43203](#), July 20, 2011; [77 FR 71137](#), Nov. 29, 2012; [78 FR 10100](#), Feb. 13, 2013; [78 FR 15622](#), March 12, 2013; [78 FR 41321](#), July 10, 2013; [78 FR 50254](#), Aug. 16, 2013; [79 FR 48528](#), Aug. 15, 2014; [80 FR 1268](#), Jan. 8, 2015, unless otherwise noted.

AUTHORITY: [15 U.S.C. 79, et seq.](#); [47 U.S.C. 151, 154\(i\), 154\(j\), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.](#)

Notes of Decisions (41)

Current through Oct. 29, 2015; [80 FR 66779](#).

§ 1.990 Citizenship and filing requirements under the..., 47 C.F.R. § 1.990

Code of Federal Regulations

Title 47. Telecommunication

Chapter I. Federal Communications Commission (Refs & Annos)

Subchapter A. General

Part 1. Practice and Procedure (Refs & Annos)

Subpart F. Wireless Radio Services Applications and Proceedings (Refs & Annos)

Foreign Ownership of Common Carrier, Aeronautical en Route, and Aeronautical Fixed Radio Station Licensees (Refs & Annos)

47 C.F.R. § 1.990

§ 1.990 Citizenship and filing requirements under the Communications Act of 1934.

Effective: August 9, 2013

Currentness

These rules establish the requirements and conditions for obtaining the Commission's prior approval of foreign ownership in common carrier, aeronautical en route, and aeronautical fixed radio station licensees and common carrier spectrum lessees that would exceed the 25 percent benchmark in section 310(b)(4) of the Communications Act of 1934, as amended ([47 U.S.C. 310\(b\)\(4\)](#)). These rules also establish the requirements and conditions for obtaining the Commission's prior approval of foreign ownership in common carrier (but not aeronautical en route or aeronautical fixed) radio station licensees and spectrum lessees that would exceed the 20 percent limit in section 310(b)(3) of the Act ([47 U.S.C. 310\(b\)\(3\)](#)).

(a)(1) A common carrier, aeronautical en route or aeronautical fixed radio station licensee or common carrier spectrum lessee shall file a petition for declaratory ruling to obtain Commission approval under section 310(b)(4) of the Act, and obtain such approval, before the aggregate foreign ownership of any controlling, U.S.-organized parent company exceeds, directly and/or indirectly, 25 percent of the U.S. parent's equity interests and/or 25 percent of its voting interests. An applicant for a common carrier, aeronautical en route or aeronautical fixed radio station license or common carrier spectrum leasing arrangement shall file the petition for declaratory ruling required by this paragraph at the same time that it files its application.

Note to paragraph (a)(1): Paragraph (a)(1) of this section implements the Commission's foreign ownership policies under section 310(b)(4) of the Act ([47 U.S.C. 310\(b\)\(4\)](#)), for common carrier, aeronautical en route, and aeronautical fixed radio station licensees and common carrier spectrum lessees. It applies to foreign equity and/or voting interests that are held, or would be held, directly and/or indirectly in a U.S.-organized entity that itself directly or indirectly controls a common carrier, aeronautical en route, or aeronautical fixed radio station licensee or common carrier spectrum lessee. A foreign individual or entity that seeks to hold a controlling interest in such a licensee or spectrum lessee must hold its controlling interest indirectly, in a U.S.-organized entity that itself directly or indirectly controls the licensee or spectrum lessee. Such controlling interests are subject to [section 310\(b\)\(4\)](#) and the requirements of paragraph (a)(1) of this section. The Commission assesses foreign ownership interests subject to [section 310\(b\)\(4\)](#) separately from foreign ownership interests subject to [section 310\(b\)\(3\)](#).

(2) A common carrier radio station licensee or spectrum lessee shall file a petition for declaratory ruling to obtain approval under the Commission's [section 310\(b\)\(3\)](#) forbearance approach, and obtain such approval, before aggregate foreign ownership, held through one or more intervening U.S.-organized entities that hold non-controlling equity and/or voting interests in the licensee, along with any foreign interests held directly in the licensee or spectrum lessee, exceeds 20 percent of its equity interests and/or 20 percent of its voting interests. An applicant for a common carrier radio station license or spectrum leasing arrangement shall file the petition for declaratory ruling required by this paragraph at the same time that it files its application. Foreign interests held directly in a licensee or spectrum lessee, or other than through U.S.-organized

§ 1.990 Citizenship and filing requirements under the..., 47 C.F.R. § 1.990

entities that hold non-controlling equity and/or voting interests in the licensee or spectrum lessee, shall not be permitted to exceed 20 percent.

Note to paragraph (a)(2): Paragraph (a)(2) of this section implements the Commission's [section 310\(b\)\(3\)](#) forbearance approach adopted in the First Report and Order in IB Docket No. 11–133, [FCC 12–93 \(released August 17, 2012\)](#), [77 FR 50628 \(Aug. 22, 2012\)](#). The [section 310\(b\)\(3\)](#) forbearance approach applies only to foreign equity and voting interests that are held, or would be held, in a common carrier licensee or spectrum lessee through one or more intervening U.S.-organized entities that do not control the licensee or spectrum lessee. Foreign equity and/or voting interests that are held, or would be held, directly in a licensee or spectrum lessee, or indirectly other than through an intervening U.S.-organized entity, are not subject to the Commission's [section 310\(b\)\(3\)](#) forbearance approach and shall not be permitted to exceed the 20 percent limit in [section 310\(b\)\(3\)](#) of the Act ([47 U.S.C. 310\(b\)\(3\)](#)).

Example 1. U.S.-organized Corporation A is preparing an application to acquire a common carrier radio license by assignment from another licensee. U.S.-organized Corporation A is wholly owned and controlled by U.S.-organized Corporation B. U.S.-organized Corporation B is 51 percent owned and controlled by U.S.-organized Corporation C, which is, in turn, wholly owned and controlled by foreign-organized Corporation D. The remaining non-controlling 49 percent equity and voting interests in U.S.-organized Corporation B are held by U.S.-organized Corporation X, which is, in turn, wholly owned and controlled by U.S. citizens. Paragraph (a)(1) of this section requires that U.S.-organized Corporation A file a petition for declaratory ruling to obtain Commission approval of the 51 percent foreign ownership of its controlling, U.S.-organized parent, Corporation B, by foreign-organized Corporation D, which exceeds the 25 percent benchmark in [section 310\(b\)\(4\)](#) of the Act for both equity interests and voting interests. Corporation A is also required to identify and request specific approval in its petition for any foreign individual or entity, or “group,” as defined in paragraph (d) of this section, that holds directly and/or indirectly more than five percent of Corporation B's total outstanding capital stock (equity) and/or voting stock, or a controlling interest in Corporation B, unless the foreign investment is exempt under [§ 1.991\(i\)\(3\)](#).

Example 2. U.S.-organized Corporation A is preparing an application to acquire a common carrier radio license by assignment from another licensee. U.S.-organized Corporation A is 51 percent owned and controlled by U.S.-organized Corporation B, which is, in turn, wholly owned and controlled by U.S. citizens. The remaining non-controlling 49 percent equity and voting interests in U.S.-organized Corporation A are held by U.S.-organized Corporation X, which is, in turn, wholly owned and controlled by foreign-organized Corporation Y. Paragraph (a)(2) of this section requires that U.S.-organized Corporation A file a petition for declaratory ruling to obtain Commission approval of the non-controlling 49 percent foreign ownership of U.S.-organized Corporation A by foreign-organized Corporation Y through U.S.-organized Corporation X, which exceeds the 20 percent limit in [section 310\(b\)\(3\)](#) of the Act for both equity interests and voting interests. U.S.-organized Corporation A is also required to identify and request specific approval in its petition for any foreign individual or entity, or “group,” as defined in paragraph (d) of this section, that holds an equity and/or voting interest in foreign-organized Corporation Y that, when multiplied by 49 percent, would exceed five percent of U.S.-organized Corporation A's equity and/or voting interests, unless the foreign investment is exempt under [§ 1.991\(i\)\(3\)](#).

Example 3. U.S.-organized Corporation A is preparing an application to acquire a common carrier radio license by assignment from another licensee. U.S.-organized Corporation A is 51 percent owned and controlled by U.S.-organized Corporation B, which is, in turn, wholly owned and controlled by foreign-organized Corporation C. The remaining non-controlling 49 percent equity and voting interests in U.S.-organized Corporation A are held by U.S.-organized Corporation X, which is, in turn, wholly owned and controlled by foreign-organized Corporation Y. Paragraphs (a)(1) and (2) of this section require that U.S.-organized Corporation A file a petition for declaratory ruling to obtain Commission approval of foreign-organized Corporation C's 100 percent ownership interest in U.S.-organized parent, Corporation B, and of foreign-organized Corporation Y's non-controlling, 49 percent foreign ownership interest in U.S.-organized Corporation A through U.S.-organized Corporation X, which exceed the 25 percent benchmark and 20 percent limit in [sections 310\(b\)\(4\)](#) and [310\(b\)\(3\)](#) of the Act, respectively, for both equity interests and voting interests. U.S.-organized Corporation A's petition also must identify and request specific approval for ownership

§ 1.990 Citizenship and filing requirements under the..., 47 C.F.R. § 1.990

interests held by any foreign individual, entity, or “group,” as defined in paragraph (d) of this section, to the extent required by § 1.991(i).

(b) The petition for declaratory ruling required by paragraph (a) of this section shall be filed electronically on the Internet through the International Bureau Filing System (IBFS). For information on filing your petition through IBFS, see part 1, subpart Y and the IBFS homepage at <http://www.fcc.gov/ib>.

(c)(1) Each applicant, licensee, or spectrum lessee filing a petition for declaratory ruling required by paragraph (a) of this section shall certify to the information contained in the petition in accordance with the provisions of § 1.16 and the requirements of this paragraph. The certification shall include a statement that the applicant, licensee and/or spectrum lessee has calculated the ownership interests disclosed in its petition based upon its review of the Commission's rules and that the interests disclosed satisfy each of the pertinent standards and criteria set forth in the rules.

(2) Multiple applicants and/or licensees shall file jointly the petition for declaratory ruling required by paragraph (a) of this section where the entities are under common control and contemporaneously hold, or are contemporaneously filing applications for, common carrier licenses, common carrier spectrum leasing arrangements, or aeronautical en route or aeronautical fixed radio station licenses. Where joint petitioners have different responses to the information required by § 1.991, such information should be set out separately for each joint petitioner, except as otherwise permitted in § 1.991(h)(2).

(i) Each joint petitioner shall certify to the information contained in the petition in accordance with the provisions of § 1.16 of this part with respect to the information that is pertinent to that petitioner. Alternatively, the controlling parent of the joint petitioners may certify to the information contained in the petition.

(ii) Where the petition is being filed in connection with an application for consent to transfer control of licenses or spectrum leasing arrangements, the transferee or its ultimate controlling parent may file the petition on behalf of the licensees or spectrum lessees that would be acquired as a result of the proposed transfer of control and certify to the information contained in the petition.

(3) Multiple applicants and licensees shall not be permitted to file a petition for declaratory ruling jointly unless they are under common control.

(d) The following definitions shall apply to this section and §§ 1.991 through 1.994.

(1) Aeronautical radio licenses refers to aeronautical en route and aeronautical fixed radio station licenses only. It does not refer to other types of aeronautical radio station licenses.

(2) Affiliate refers to any entity that is under common control with a licensee, defined by reference to the holder, directly and/or indirectly, of more than 50 percent of total voting power, where no other individual or entity has de facto control.

(3) Control includes actual working control in whatever manner exercised and is not limited to majority stock ownership. Control also includes direct or indirect control, such as through intervening subsidiaries.

§ 1.990 Citizenship and filing requirements under the..., 47 C.F.R. § 1.990

(4) Entity includes a partnership, association, estate, trust, corporation, limited liability company, governmental authority or other organization.

(5) Group refers to two or more individuals or entities that have agreed to act together for the purpose of acquiring, holding, voting, or disposing of their equity and/or voting interests in the relevant licensee, controlling U.S. parent, or entity holding a direct and/or indirect equity and/or voting interest in the licensee or U.S. parent.

(6) Individual refers to a natural person as distinguished from a partnership, association, corporation, or other organization.

(7) Licensee as used in §§ 1.990 through 1.994 of this part includes a spectrum lessee as defined in § 1.9003.

(8) Privately held company refers to a U.S.- or foreign-organized company that has not issued a class of equity securities for which beneficial ownership reporting is required by security holders and other beneficial owners under section 13(d) or 13(g) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a et seq. (Exchange Act), and corresponding Exchange Act Rule 13d-1, 17 CFR 240.13d-1, or a substantially comparable foreign law or regulation.

(9) Public company refers to a U.S.- or foreign-organized company that has issued a class of equity securities for which beneficial ownership reporting is required by security holders and other beneficial owners under section 13(d) or 13(g) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a et seq. (Exchange Act) and corresponding Exchange Act Rule 13d-1, 17 CFR 240.13d-1, or a substantially comparable foreign law or regulation.

(10) Subsidiary refers to any entity in which a licensee owns or controls, directly and/or indirectly, more than 50 percent of the total voting power of the outstanding voting stock of the entity, where no other individual or entity has de facto control.

(11) Voting stock refers to an entity's corporate stock, partnership or membership interests, or other equivalents of corporate stock that, under ordinary circumstances, entitles the holders thereof to elect the entity's board of directors, management committee, or other equivalent of a corporate board of directors.

(12) Would hold as used in §§ 1.990 through 1.994 includes equity and/or voting interests that an individual or entity proposes to hold in an applicant, licensee, or spectrum lessee, or their controlling U.S. parent, upon consummation of any transactions described in the petition for declaratory ruling filed under § 1.990(a)(1) or (2) of this part.

SOURCE: 56 FR 57598, Nov. 13, 1991; 57 FR 187, Jan. 3, 1992; 58 FR 27473, May 10, 1993; 59 FR 22985, May 4, 1994; 61 FR 45618, Aug. 29, 1996; 61 FR 46561, Sept. 4, 1996; 61 FR 52899, Oct. 9, 1996; 62 FR 37422, July 11, 1997; 63 FR 67429, Dec. 7, 1998; 63 FR 68920, Dec. 14, 1998; 63 FR 71036, Dec. 23, 1998; 64 FR 63251, Nov. 19, 1999; 65 FR 10720, Feb. 29, 2000; 65 FR 19684, April 12, 2000; 65 FR 31281, May 17, 2000; 69 FR 77938, Dec. 29, 2004; 70 FR 61058, Oct. 20, 2005; 71 FR 26251, May 4, 2006; 74 FR 39227, Aug. 6, 2009; 75 FR 9797, March 4, 2010; 76 FR 43203, July 20, 2011; 77 FR 71137, Nov. 29, 2012; 78 FR 10100, Feb. 13, 2013; 78 FR 15622, March 12, 2013; 78 FR 41321, July 10, 2013; 78 FR 44028, July 23, 2013; 78 FR 50254, Aug. 16, 2013; 79 FR 48528, Aug. 15, 2014; 80 FR 1268, Jan. 8, 2015, unless otherwise noted.

AUTHORITY: 15 U.S.C. 79, et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

§ 1.990 Citizenship and filing requirements under the..., 47 C.F.R. § 1.990

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§ 1.2109 License grant, denial, default, and disqualification., 47 C.F.R. § 1.2109

Code of Federal Regulations**Title 47. Telecommunication****Chapter I. Federal Communications Commission (Refs & Annos)****Subchapter A. General****Part 1. Practice and Procedure (Refs & Annos)****Subpart Q. Competitive Bidding Proceedings (Refs & Annos)****General Procedures****47 C.F.R. § 1.2109****§ 1.2109 License grant, denial, default, and disqualification.****Currentness**

(a) Unless otherwise specified by public notice, auction winners are required to pay the balance of their winning bids in a lump sum within ten (10) business days following the release of a public notice establishing the payment deadline. If a winning bidder fails to pay the balance of its winning bids in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline, provided that it also pays a late fee equal to five percent of the amount due. When a winning bidder fails to pay the balance of its winning bid by the late payment deadline, it is considered to be in default on its license(s) and subject to the applicable default payments. Licenses will be awarded upon the full and timely payment of winning bids and any applicable late fees.

(b) If a winning bidder withdraws its bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within ten (10) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default payment specified in §§ 1.2104(g)(2) or 1.2104(g)(3), whichever is applicable. In such event, the Commission, at its discretion, may either re-auction the license(s) to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. If the license(s) is offered to the other highest bidders (in descending order), the down payment obligations set forth in § 1.2107(b) will apply. However, in combinatorial bidding auctions, the Commission will only re-auction the license(s) to existing or new applicants. The Commission will not offer the package or licenses to the next highest bidder.

(c) A winning bidder who is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted, its application will be dismissed, and it will be liable for the payment set forth in §§ 1.2104(g)(2) or 1.2104(g)(3), whichever is applicable. In such event, the Commission may either re-auction the license(s) to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. However, in combinatorial bidding auctions, the Commission will only re-auction the license(s) to existing or new applicants. The Commission will not offer the package or licenses to the next highest bidder.

(d) Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.

Credits

[62 FR 13544, March 21, 1997; 63 FR 2343, Jan. 15, 1998; 68 FR 42996, July 21, 2003]

§ 1.2109 License grant, denial, default, and disqualification., 47 C.F.R. § 1.2109

SOURCE: [56 FR 57598](#), Nov. 13, 1991; [57 FR 187](#), Jan. 3, 1992; [58 FR 27473](#), May 10, 1993; [59 FR 22985](#), May 4, 1994; [59 FR 44293](#), Aug. 26, 1994; [61 FR 45618](#), Aug. 29, 1996; [61 FR 46561](#), Sept. 4, 1996; [61 FR 52899](#), Oct. 9, 1996; [62 FR 37422](#), July 11, 1997; [63 FR 67429](#), Dec. 7, 1998; [63 FR 71036](#), Dec. 23, 1998; [64 FR 63251](#), Nov. 19, 1999; [65 FR 10720](#), Feb. 29, 2000; [65 FR 19684](#), April 12, 2000; [65 FR 31281](#), May 17, 2000; [69 FR 77938](#), Dec. 29, 2004; [71 FR 26251](#), May 4, 2006; [74 FR 39227](#), Aug. 6, 2009; [75 FR 9797](#), March 4, 2010; [76 FR 43203](#), July 20, 2011; [77 FR 71137](#), Nov. 29, 2012; [78 FR 10100](#), Feb. 13, 2013; [78 FR 15622](#), March 12, 2013; [78 FR 41321](#), July 10, 2013; [78 FR 50254](#), Aug. 16, 2013; [79 FR 48528](#), Aug. 15, 2014; [80 FR 1268](#), Jan. 8, 2015, unless otherwise noted.

AUTHORITY: [15 U.S.C. 79](#), et seq.; [47 U.S.C. 151](#), [154\(i\)](#), [154\(j\)](#), [155](#), [157](#), [160](#), [201](#), [225](#), [227](#), [303](#), [309](#), [332](#), [1403](#), [1404](#), [1451](#), [1452](#), and [1455](#).

Notes of Decisions (27)

Current through Oct. 29, 2015; 80 FR 66779.

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§ 20.12 Resale and roaming., 47 C.F.R. § 20.12

Code of Federal Regulations

Title 47. Telecommunication

Chapter I. Federal Communications Commission (Refs & Annos)

Subchapter B. Common Carrier Services

Part 20. Commercial Mobile Services (Refs & Annos)

47 C.F.R. § 20.12

§ 20.12 Resale and roaming.

Effective: October 13, 2011

[Currentness](#)

(a)(1) Scope of Manual Roaming and Resale. Paragraph (c) of this section is applicable to providers of Broadband Personal Communications Services (part 24, subpart E of this chapter), Cellular Radio Telephone Service (part 22, subpart H of this chapter), and specialized Mobile Radio Services in the 800 MHz and 900 MHz bands (included in part 90, subpart S of this chapter) if such providers offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to re-use frequencies and accomplish seamless hand-offs of subscriber calls. The scope of paragraph (b) of this section, concerning the resale rule, is further limited so as to exclude from the requirements of that paragraph those Broadband Personal Communications Services C, D, E, and F block licensees that do not own and control and are not owned and controlled by firms also holding cellular A or B block licenses.

(2) Scope of Automatic Roaming. Paragraph (d) of this section is applicable to CMRS carriers if such carriers offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the carrier to re-use frequencies and accomplish seamless hand-offs of subscriber calls. Paragraph (d) of this section is also applicable to the provision of push-to-talk and text-messaging service by CMRS carriers.

(3) Scope of Offering Roaming Arrangements for Commercial Mobile Data Services. Paragraph (e) of this section is applicable to all facilities-based providers of commercial mobile data services.

(b) Resale. The resale rule is applicable as follows:

(1) Each carrier subject to paragraph (b) of this section shall not restrict the resale of its services, unless the carrier demonstrates that the restriction is reasonable.

(2) The resale requirement shall not apply to customer premises equipment, whether or not it is bundled with services subject to the resale requirement in this paragraph.

(3) This paragraph shall cease to be effective five years after the last group of initial licenses for broadband PCS spectrum in the 1850–1910 and the 1930–1990 MHz bands is awarded; i.e., at the close of November 24, 2002.

§ 20.12 Resale and roaming., 47 C.F.R. § 20.12

(c) Manual Roaming. Each carrier subject to paragraph (a)(1) of this section must provide mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to paragraph (a)(1) of this section, including roamers, while such subscribers are located within any portion of the licensee's licensed service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee's base stations.

(d) Automatic Roaming. Upon a reasonable request, it shall be the duty of each host carrier subject to paragraph (a)(2) of this section to provide automatic roaming to any technologically compatible, facilities-based CMRS carrier on reasonable and not unreasonably discriminatory terms and conditions, pursuant to Sections 201 and 202 of the Communications Act, [47 U.S.C. 201](#) and [202](#). The Commission shall presume that a request by a technologically compatible CMRS carrier for automatic roaming is reasonable pursuant to Sections 201 and 202 of the Communications Act, [47 U.S.C. 201](#) and [202](#). This presumption may be rebutted on a case by case basis. The Commission will resolve automatic roaming disputes on a case-by-case basis, taking into consideration the totality of the circumstances presented in each case.

(e) Offering Roaming Arrangements for Commercial Mobile Data Services.

(1) A facilities-based provider of commercial mobile data services is required to offer roaming arrangements to other such providers on commercially reasonable terms and conditions, subject to the following limitations:

(i) Providers may negotiate the terms of their roaming arrangements on an individualized basis;

(ii) It is reasonable for a provider not to offer a data roaming arrangement to a requesting provider that is not technologically compatible;

(iii) It is reasonable for a provider not to offer a data roaming arrangement where it is not technically feasible to provide roaming for the particular data service for which roaming is requested and any changes to the host provider's network necessary to accommodate roaming for such data service are not economically reasonable;

(iv) It is reasonable for a provider to condition the effectiveness of a roaming arrangement on the requesting provider's provision of mobile data service to its own subscribers using a generation of wireless technology comparable to the technology on which the requesting provider seeks to roam.

(2) A party alleging a violation of this section may file a formal or informal complaint pursuant to the procedures in §§ [1.716](#) through [1.718](#), [1.720](#), [1.721](#), and [1.723](#) through [1.735](#) of this chapter, which sections are incorporated herein. For purposes of § 20.12(e), references to a "carrier" or "common carrier" in the formal and informal complaint procedures incorporated herein will mean a provider of commercial mobile data services. The Commission will resolve such disputes on a case-by-case basis, taking into consideration the totality of the circumstances presented in each case. The remedy of damages shall not be available in connection with any complaint alleging a violation of this section. Whether the appropriate procedural vehicle for a dispute is a complaint under this paragraph or a petition for declaratory ruling under § [1.2](#) of this chapter may vary depending on the circumstances of each case.

§ 20.12 Resale and roaming., 47 C.F.R. § 20.12

Credits

[[61 FR 38402](#), July 24, 1996; [61 FR 43981](#), Aug. 27, 1996; [64 FR 61027](#), Nov. 9, 1999; [65 FR 58482](#), Sept. 29, 2000; [72 FR 50074](#), Aug. 30, 2007; [75 FR 22276](#), April 28, 2010; [76 FR 26220](#), May 6, 2011; [76 FR 63561](#), Oct. 13, 2011]

SOURCE: [59 FR 18495](#), April 19, 1994; [61 FR 45619](#), Aug. 29, 1996; [63 FR 43040](#), Aug. 11, 1998; [65 FR 19685](#), April 12, 2000; [69 FR 77938](#), Dec. 29, 2004; [70 FR 16145](#), March 30, 2005; [76 FR 26220](#), May 6, 2011; [78 FR 21559](#), April 11, 2013; [78 FR 32178](#), May 29, 2013; [79 FR 55381](#), Sept. 16, 2014; [80 FR 11838](#), March 4, 2015, unless otherwise noted.

AUTHORITY: [47 U.S.C. 151](#), [152\(a\)](#), [154\(i\)](#), [157](#), [160](#), [201](#), [214](#), [222](#), [251\(e\)](#), [301](#), [302](#), [303](#), [303\(b\)](#), [303\(r\)](#), [307](#), [307\(a\)](#), [309](#), [309\(j\)\(3\)](#), [316](#), [316\(a\)](#), [332](#), [615](#), [615a](#), [615b](#), [615c](#).

[Notes of Decisions \(13\)](#)

Current through Oct. 29, 2015; [80 FR 66779](#).

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§ 24.5 Terms and definitions., 47 C.F.R. § 24.5

Code of Federal Regulations

Title 47. Telecommunication

Chapter I. Federal Communications Commission (Refs & Annos)

Subchapter B. Common Carrier Services

Part 24. Personal Communications Services (Refs & Annos)

Subpart A. General Information

47 C.F.R. § 24.5

§ 24.5 Terms and definitions.

Currentness

Assigned Frequency. The center of the frequency band assigned to a station.

Authorized Bandwidth. The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

Average Terrain. The average elevation of terrain between 3 and 16 kilometers from the antenna site.

Base Station. A land station in the land mobile service.

Broadband PCS. PCS services operating in the 1850–1890 MHz, 1930–1970 MHz, 2130–2150 MHz, and 2180–2200 MHz bands.

Effective Radiated Power (e.r.p.) (in a given direction). The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

Equivalent Isotropically Radiated Power (e.i.r.p.). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna.

Fixed Service. A radiocommunication service between specified fixed points.

Fixed Station. A station in the fixed service.

Land Mobile Service. A mobile service between base stations and land mobile stations, or between land mobile stations.

Land Mobile Station. A mobile station in the land mobile service capable of surface movement within the geographic limits of a country or continent.

Land Station. A station in the mobile service not intended to be used while in motion.

Mobile Service. A radiocommunication service between mobile and land stations, or between mobile stations.

Mobile Station. A station in the mobile service intended to be used while in motion or during halts at unspecified points.

Narrowband PCS. PCS services operating in the 901–902 MHz, 930–931 MHz, and 940–941 MHz bands.

§ 24.5 Terms and definitions., 47 C.F.R. § 24.5

National Geodetic Reference System (NGRS): The name given to all geodetic control data contained in the National Geodetic Survey (NGS) data base. (Source: National Geodetic Survey, U.S. Department of Commerce)

PCS Relocator. A PCS entity that pays to relocate a fixed microwave link from its existing 2 GHz facility to other media or other fixed channels.

Personal Communications Services (PCS). Radio communications that encompass mobile and ancillary fixed communication that provide services to individuals and businesses and can be integrated with a variety of competing networks.

Universal Licensing System. The Universal Licensing System (ULS) is the consolidated database, application filing system, and processing system for all Wireless Radio Services. ULS supports electronic filing of all applications and related documents by applicants and licensees in the Wireless Radio Services, and provides public access to licensing information.

UTAM. The Unlicensed PCS Ad Hoc Committee for 2 GHz Microwave Transition and Management, which coordinates relocation in the 1910–1930 MHz band.

Voluntarily Relocating Microwave Incumbent. A microwave incumbent that voluntarily relocates its licensed facilities to other media or fixed channels.

Credits

[[61 FR 29691](#), June 12, 1996; [62 FR 12757](#), March 18, 1997; [63 FR 68952](#), Dec. 14, 1998]

SOURCE: [59 FR 18499](#), April 19, 1994; [59 FR 26602](#), May 23, 1994; [59 FR 26747](#), May 24, 1994; [59 FR 46199](#), Sept. 7, 1994; [61 FR 29691](#), June 12, 1996, unless otherwise noted.

AUTHORITY: [47 U.S.C. 154](#), [301](#), [302](#), [303](#), [309](#) and [332](#).

Current through Oct. 29, 2015; 80 FR 66779.

15-1145

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

NTCH, INC.,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee.

CERTIFICATE OF SERVICE

I, Maureen K. Flood, hereby certify that on November 9, 2015, I electronically filed the foregoing Brief for Appellee with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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