

Federal Trade Commission
Competition and Consumer Protection in the 21st Century
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Reply Comments of NTCH, Inc.

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These Reply Comments in these proceedings are submitted by NTCH, Inc. (NTCH) in response to the extensive Comments filed by Huawei Technologies Company, Ltd. and Huawei Technologies USA, Inc. (collectively, “Huawei”). Huawei used the platform of this review of the competitive landscape in the United States to challenge recent efforts to limit or prevent Huawei’s access to the US telecommunications equipment market. Huawei touts its competitive prices, its participation in non-US markets, and more generally the competitive benefits of having an additional player in the domestic telecom marketplace. While NTCH cannot dispute the benefits of additional competition as a general principle, NTCH’s own direct experience with Huawei strongly supports the various efforts of the executive branch and the FCC to curb reliance on Huawei equipment.

NTCH’s relationship with Huawei began back in 200. They were Huawei’s first customer in the continental United States. . At that time, NTCH held a number of PCS licenses and was rolling out new cellular networks across the United States. These markets were generally outside the top-100 markets and therefore could not justify the heavy investment in equipment from the other leading telecom network equipment manufacturers such as Lucent, Nokia, and Ericsson. In addition the US government imposed the unfunded mandate of E911, local number portability and CALEA on all carriers at that time. NTCH therefore considered taking a gamble on a then relatively unknown equipment provider and really had no choice as its then equipment provider Lucent Technologies chose to attempt to use the government mandate to extract previously unbudgeted and unaffordable millions of dollars from this carrier . NTCH was also optimistic about the financing offered by Huawei, the represented quality of Huawei’s equipment, and its more attractive price points. In the course of the relationship, NTCH and its

affiliated companies not only agreed to buy Huawei equipment but also agreed to assist Huawei in making a broader entrée into the U.S. market with other carriers. Prior to going down this road and well before any of the recently publicized objections to Chinese telecom equipment, NTCH's management contacted their local congressional representative and explained why they needed to purchase this equipment but that they thought the government was not recognizing the potential misuse of this equipment by a country like China which might want to use it for political purposes. This warning was not heeded by anyone in government at the time.

A. Huawei industrial espionage

In approximately 2003, NTCH's Development Manager and his technical staff were engaged in installing their first shipment of Huawei switch equipment at a tower location near El Centro, CA. (NTCH also handles maintenance of cell site equipment for another company which had existing base station facilities from another vendor, Nortel, at that same tower site.) A group of Huawei installation personnel were there to install their equipment as this tower which was at NTCH's central switch site. At some point, the Huawei personnel were taking a break in the back of the site where the Nortel equipment owned and operated by the other carrier was installed. However, as soon as NTCH personnel responding to a request, opened the locked cabinet room where the other carrier's equipment was installed, the Huawei employees pulled out cameras, shoved their way into the vicinity, and began snapping numerous photographs of the equipment and its installation inside the cabinet. In many years of accessing and working around transmitter sites and cellular facilities, NTCH's Manager had never seen such unusual behavior. The Huawei personnel appeared to be well prepared for this opportunity and made the most of it before NTCH's staff were able to close and lock the door again. It appeared to be an instance of very obvious industrial espionage.

B. Copied equipment

When NTCH opened and examined its original shipment of base station equipment from Huawei, its field personnel (who were well versed in, and knowledgeable about, the various makes and models of cellular transmitters) noticed that the Huawei equipment looked internally almost exactly like Lucent Technologies equipment at that time. It was unusual for equipment from different manufacturers to be configured so similarly; different manufacturers typically have very distinctive styles and looks as to the internal layouts of their boards and transducers. It appeared to NTCH's technicians that the Huawei design had been copied from Lucent and they relayed that opinion to NTCH's management.

C. Deceptive capital structure

NTCH was advised by another Chinese manufacturer of cellular equipment that Huawei employs a scheme to disguise the Chinese state funding of the company and make the company's growth appear organic. The scheme, as best as NTCH can relate, involves the distribution of "bonuses" to their employees. The employees are required to invest this "bonus" money immediately into shares of Huawei. State sponsored banks then lend funds to the company to meet its capital requirements. This all makes it appear to Western analysts that the company is broadly held by private investors, and that lenders are lending at reasonable ratios. According to this account, instead of being a widely held, conventionally financed, publicly traded firm, Huawei is in reality primarily state-funded and closely held. NTCH can identify the individual employee of the other Chinese firm living in the United States who related this to us if requested.

D. Constant breach of contractual obligations

NTCH's longstanding policy has been to incorporate into its contractual arrangements a provision that requires dispute resolution by high level face-to-face meetings between its top management and that of its contractual partners. NTCH's arrangement with Huawei contained such a provision. There came a time when it was discovered that the Huawei telecom equipment, including equipment sold to another carrier by NTCH's affiliate as a distributor, did not comply with US technical and regulatory standards, such as the ability to interconnect with other carriers on a roaming basis. When this defect was discovered, instead of working the issue through between the executives of Huawei and NTCH as required, Huawei simply breached the agreement by contacting the potential American customer and attempting to sell them a different version of the non-compliant equipment themselves. Ultimately NTCH had to sue Huawei at great expense in terms of both time and money to obtain redress but even after a unanimous jury verdict in its favor, NTCH has been unable to collect the damages award from Huawei. Instead, Huawei has retained teams of high priced lawyers to engage in a string of legal maneuvers to delay the required payment. These sharp and dishonest business practices are not, and should not be, the kind of business practices which firms in this country should have to suffer -- especially while agreements that put small U.S. companies on a more equitable basis with their countries are ignored by the Chinese and not enforced by our courts . It does no consumer or business customer any good when non-compliant equipment --even when sold at an attractive price -- does not work, and the seller as a matter of regular course fails to meet its contractual obligations to redress the problems.

E. Influence peddling

The Chinese government which controls Huawei continues to attempt to exert influence over the U.S. government at all levels. As demonstrated by the sudden rescission of the ban on the sale of ZTE products in the United States earlier this year, coupled with the promise and possibly granting of reciprocal benefits to favored U.S. firms, the Chinese government is in a position to, and does, use its governmental powers to further the business interests of the particular companies that it favors, whether due to hidden ownership or otherwise. The policies of the United States should not condone or encourage this kind of state-sponsored intervention in the normal workings of competitive markets. Restrictions on Huawei's ability to operate in the U.S. market should therefore be enforced as aggressively as possible in the interests of truly fair trade.

Respectfully submitted,

NTCH, Inc.

/s/ Donald J. Evans

Its Attorney