Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Worldcall Interconnect, Inc.	)	Proceeding No. 14-221
a/k/a Evolve Broadband,	)	Bureau ID No. EB-14-MD-011
Complainant	)	
	)	
v.	)	
	)	
AT&T Mobility LLC,	)	
Defendant	)	

ORDER ON REVIEW

Adopted: Sept. 6, 2017 **Released: Sept. 7, 2017**

By the Commission:

1. This Order denies an Application for Review filed by Worldcall Interconnect, Inc. (WCX),[1] which requests reversal of an order issued by the Enforcement Bureau's Market Disputes Resolution Division on September 22, 2016.[2] The *Division Order* adopted the holding in an earlier *Interim Order*[3] that denied portions of a formal complaint that WCX filed against AT&T Mobility LLC (AT&T) alleging violations of the Commission's roaming rules and orders.[4] The *Interim Order* addressed two key disputed issues: (a) the scope of AT&T's obligation to offer data roaming; and (b) the reasonableness of AT&T's proposed data roaming rates. Applying Section 20.12(e) of the Commission's rules, the *Interim Order* concluded that AT&T is not obligated to offer data roaming to WCX in all areas that WCX had requested, and that WCX failed to meet its burden of showing that AT&T's proposed data roaming rates are commercially unreasonable.[5]

[1] Application for Review of Worldcall Interconnect, EB-14-MD-011 (filed Oct. 24, 2016) (Application for Review or AFR).

[2] *Worldcall Interconnect v. AT&T Mobility*, Order, 31 FCC Rcd 10531 (EB 2016) (*Division Order* or *Order*). The Enforcement Bureau's Market Disputes Resolution Division is referred to here as "the Division."

[3] *Worldcall Interconnect v. AT&T Mobility*, Order, 31 FCC Rcd 3527 (EB 2016) (*Interim Order*). At Worldcall's request, the Division issued a letter ruling clarifying certain aspects of the *Interim Order*. *Worldcall Interconnect v. AT&T Mobility*, EB-14-MD-011, Letter Order, 2016 WL 3459145 (EB June 22, 2016).

[4] Second Amended Complaint, EB-14-MD-011 (filed Nov. 6, 2014) (Compl. or Complaint). WCX filed its original complaint on September 8, 2014, and filed amended complaints on October 1 and November 6, 2014.

[5] *Interim Order*, 31 FCC Rcd at 3532-41, paras. 12-28 & n.32; 47 CFR § 20.12(e). The *Interim Order* directed the parties to resume negotiating a roaming agreement and to report to Commission staff on the progress of their negotiations. *Interim Order* at 3541, para. 29. The parties did so and ultimately reported that they had "executed a roaming agreement, which resolves the remaining issues consistent with the *Interim Order*." Sixth Joint Status Report, EB-14-MD-011 at 1 (filed Aug. 22, 2016). The parties indicated that they had entered into a roaming agreement with the expectation that the rulings in the *Interim Order* would be included in a dispositive order to enable a party to seek administrative reconsideration or review of those rulings. *Division Order*, 31 FCC Rcd at 10531-32, para. 2. Accordingly, on September 22, 2016, the Division issued the *Order* under review, which incorporated and adopted in their entirety the rulings set forth in the *Interim Order*. *Id.*, 31 FCC Rcd at 10532, para. 2.

2. Upon careful review of the Application for Review and the entire record of this proceeding, we affirm the Division's decision to apply Section 20.12(e) to this rate dispute, and its holding that WCX failed to demonstrate that AT&T's proposed data roaming rates are commercially unreasonable under Section 20.12(e). Our ruling is based on the reasons provided by the Division and those set forth below.

3. In its Application for Review, WCX contends that the Division erred in finding that the data roaming rule in Section 20.12(e) alone governs the parties' rate dispute. We note that [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][6] In the proceedings below, the parties raised no disagreement over rates for GSM-enabled voice roaming [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][7] Nevertheless, WCX claims the Division should have also determined whether AT&T's roaming terms satisfied the "just and reasonable" standard under Section 20.12(d).[8]

4. We disagree. Whether Section 20.12(d) or Section 20.12(e) is applicable turns on whether the service that the host (AT&T) will provide is subject to subsection (d) or (e).[9] The record here shows that WCX requested roaming using AT&T's mobile broadband Internet access service, which is subject to Section 20.12(e).[10] WCX concedes that Section 20.12(e) applies to "data services like mobile

[6] Voice roaming rates are typically priced per minute of voice calling. *See Interim Order*, 31 FCC Rcd at 3535 & n.49 [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] and citing rule § 1.732(b)'s instruction that any claims "previously made but not reflected in the briefs will be deemed abandoned").

[7] WCX concedes that [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL], AFR at 11, and that WCX chose to not dispute the GSM voice rate that AT&T proposed. *Id.* at 12; *see also* Reply in Support of Application for Review (AFR Reply) at 2 ("WCX does not need AT&T's 'VoLTE roaming service'") & n.11 ("WCX chose to not [raise] . . . a challenge to AT&T's GSM related automatic roaming prices.").

[8] AFR at 5-13.

[9] *See* 47 CFR § 20.12(d) ("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 . . .") (emphasis added). Section 20.12(a)(2), in turn, specifies that paragraph (d) covers "CMRS carriers if such carriers offer real-time, two-way switched voice or data service that is interconnected with the public switched network" or if they provide push-to-talk or text messaging services. 47 CFR § 20.12(a)(2).

[10] S*ee Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Second Report and Order, 26 FCC Rcd 5411, para. 1 (2011) (*Data Roaming Order*); *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817, 15839, para. 60 (2007) (*CMRS Roaming Order*). In 2014, when WCX filed its complaint, the data roaming rule in 20.12(e) applied to mobile broadband Internet access service. In 2015, the Commission decided in the *Title II Order* to continue to apply the data roaming rule to mobile broadband Internet access services, subject to further rulemaking proceedings. These facts affirm that the mobile broadband Internet access service WCX seeks was subject to data roaming requirements in 20.12(e) under the old rules, and continues to be governed by the same. *See Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5778, 5757-58, paras. 388, 526 (2015) (*Title II Order*), *aff'd*, *United States Telecom Ass'n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016), *reh'g en banc denied*, No. 15-1063, 2017 WL 1541517, at *1 (D.C. Cir. May 1, 2017); *see also* AFR at 3 & n.13 (noting that, per the determinations in the *Title II Order*, this case is "being handled under the old rules and definitions"). Whether this case is adjudicated under the pre-*Title II Order* definitions of interconnected and public switched network or not, the data roaming rules apply because the Commission conditionally forbore from applying the automatic roaming rules to mobile broadband Internet access service to the extent the *Title II Order* "potentially" altered the scope of that rule's reach.

wireless broadband Internet access,"[11] that its Complaint alleged a violation of that rule, and that the effect of the *Division Order* was, in its view, to limit its ability to offer "mobile broadband Internet access" to its customers.[12] The roaming service that WCX is purchasing – use of AT&T's mobile broadband Internet access service – is subject to Section 20.12(e).

5. Focusing on the wrong side of the bargain, WCX erroneously contends that its roaming request is governed by Section 20.12(d) because of capabilities WCX will offer its customers (such as switched voice service).[13] Importantly, WCX concedes that, when its customers use WCX's voice or other services while roaming on AT&T's network, "[t]o AT&T it will be no different than when WCX's customer is surfing the web or receiving an e-mail."[14]

6. The text, structure, history, and purpose of Section 20.12 demonstrate that WCX is wrong. Section 20.12(d) establishes that the obligation set forth for CMRS roaming is only an obligation "for CMRS carriers."[15] At the time the rule was promulgated, and at all times relevant to this dispute, the obligations imposed under the CMRS roaming rule were thus intended to apply to a host carrier only "insofar as such person is engaged" in the provision of CMRS, text messaging, and push-to-talk.[16] These, and these alone, are "the services covered by" Section 20.12(d).[17] The "complementary" provisions of Section 20.12(d) and Section 20.12(e) that WCX references are complementary *obligations* imposed on AT&T based on the nature of its offerings, not complementary rights of WCX based on how it chooses to use the roaming services it has purchased. WCX requests only a mobile broadband Internet access service from AT&T. Accordingly, Section 20.12(e) governs WCX's roaming requests.

7. This result does not exempt LTE networks from the CMRS rule.[18] Nothing about our ruling here implies, much less requires, that if a host provider offers "real-time, two-way switched voice" service over its LTE network, such roaming service offered by the host provider will not be subject to the CMRS roaming rule in Section 20.12(d).

8. We also affirm the Division's ruling that WCX failed to demonstrate that AT&T's proposed rates are commercially unreasonable under Section 20.12(e). We reject WCX's argument that the Division erred by excluding AT&T's "strategic agreements" from its assessment of AT&T's proposed data roaming rates.[19] As the Division explained, the so-called "strategic agreements" AT&T produced in this proceeding "include rates and terms that address a broader set of rights, such as [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] that are not directly related to roaming" and were distinguishable from the stand-alone roaming agreement

[11] AFR at 10 (emphasis omitted); *see also id*. at 8.

[12] *Id.* at 5, 8-9.

[13] *See id.* at 8-10; *id*. at 12 & n.48 (arguing for different roaming rates based on "the application the user runs on an LTE network"); AFR Reply at 2 & n.5.

[14] Compl. at 271-72 (offering WCX's legal analysis). *See* AFR at 12; AFR Reply at 2 ("AT&T activities do not vary and AT&T will not know what the user is doing").

[15] *See* 47 CFR § 20.12(a)(2); *CMRS Roaming Order*, 22 FCC Rcd 15817, 15829, para. 29; *Data Roaming Order*, 26 FCC Rcd 5411, 5413, para. 4.

[16] *See* 47 U.S.C. § 332(c)(1)(A); *see also CMRS Roaming Order*, 22 FCC Rcd at 15827-28, para. 26 ("if a CMRS provider offers automatic roaming, it triggers its common carrier obligations *with respect to the provisioning of that service* under the Communications Act") (emphasis added); *id*. at 15831, para. 33.

[17] *Data Roaming Order*, 26 FCC Rcd at 5413, para. 4. *See supra* note 10.

[18] *See* AFR at iii (asserting that the result of this interpretation would be that "LTE networks . . . will only be subject to the commercial mobile data service roaming rule.").

[19] *Id.* at 14.

WCX sought from AT&T.[20] The Division therefore evaluated the strategic agreements in this record and properly concluded that such agreements "are not useful proxies in determining the commercial reasonableness of rates included in a proposed agreement that covers only roaming."[21] Because we find that the Division properly analyzed the relevance of AT&T's strategic agreements, and because WCX provides no basis for us to reconsider the Division's conclusions, we affirm the Division's decision to exclude AT&T's "strategic agreements" in its assessment of commercial reasonableness.

9. WCX also argues that the Division's use of AT&T's "oldest and most expensive pre-*Data Roaming Order* agreements[,]" created "an inflated representation of AT&T's data roaming rates as a benchmark for commercial reasonableness."[22] This argument misrepresents the Division's analysis and lacks merit for several reasons. [BEGIN CONFIDENTIAL] [redacted][23] [END CONFIDENTIAL] Accordingly, we find that the Division properly analyzed the roaming rate evidence presented.

[20] *Interim Order*, 31 FCC Rcd at 3538, para. 24.

[21] *Id.*

[22] AFR at 14.

[23] Supplemental Declaration of Jonathan Orszag, App. B, Tbl. B-2 (July 24, 2015).

[24] *Interim Order*, 31 FCC Rcd at 3536, n.60. WCX has not challenged this point.

[25] *Interim Order*, 31 FCC Rcd at 3536, para. 22. We also find that the Division properly analyzed WCX's arguments with respect to the significance of [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] (*see id.* at 3538, para. 25), and its arguments regarding the retail rates. *See id.* at 3539, para. 26 & nn. 77-78. And we reject WCX's attempt to bolster its challenge to the Division's ruling by citing data on retail rates contained in reports, issued by the Wireless Bureau, that WCX never introduced in the record before the Division. *See* AFR at 19-21. The Commission's rules make clear that "[n]o application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass." 47 CFR § 1.115(c). Likewise, we reject WCX's argument, first raised in the AFR, that AT&T's proposed data roaming rates amount to a restraint of trade. This challenge to AT&T's rates was not asserted in WCX's briefs to the Division; rather, WCX's arguments concerning an alleged restraint of trade were addressed to a disputed contract term not challenged in the AFR. *See* Worldcall Interconnect, Inc. Initial Merits Brief, EB-14-MD-011 at 19 (Aug. 10, 2015); Reply Brief of Worldcall Interconnect, Inc., EB-14-MD-011 at 2, 4, 6 (Sept. 14, 2015) (discussing contract terms that denied roaming to subscribers who did not receive facilities-based service from WCX).

10. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 208, 301, 303, 304, 309, 316, and 332 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 208, 301, 303, 304, 309, 316, and 332, and Sections 1.115, 1.720-1.735, and 20.12 of the Commission's rules, that the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary