



Competitive Carriers Association
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July 20, 2016

BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: NOTICE OF EX PARTE

GN Docket No. 14-28: *Protecting and Promoting the Open Internet*

WT Docket No. 05-265: *Roaming Obligations of Commercial Mobile Radio Service Providers*

Dear Ms. Dortch:

Now that the U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) has released its decision in *United States Telecom Association, et al v. Federal Communications Commission and United States of America*,¹ the Federal Communications Commission (“FCC” or “Commission”) should initiate its promised proceeding to explore how mobile data roaming should be treated in light of the decision. This landmark decision, upholding the Commission’s *2015 Open Internet Order* (“*2015 Order*”), will affect several policy issues moving forward, including data roaming obligations as applied to broadband Internet access service (“BIAS”) providers. Competitive Carriers Association (“CCA”)² ardently supports ensuring that all carriers, have access to just, reasonable and nondiscriminatory data roaming agreements, particularly with the two dominant nationwide carriers, AT&T and Verizon. This is essential to promoting competition and providing consumers with the ubiquitous mobile broadband services that they deserve and demand. For these reasons, the Commission should immediately begin a review of its data roaming policies pursuant to its *2015 Order*.

As we know, the D.C. Circuit validated the Commission’s *2015 Order* by upholding the FCC’s reclassifications of both fixed and mobile broadband as Title II services, and its decision to forbear from applying portions of the Communications Act to broadband services. In the *2015 Order*, the FCC recognized that reclassification of a mobile BIAS service as commercial mobile radio

¹ *U.S. Telecom Ass’n, et al. v. Fed. Comm’n’s Comm’n and U.S.*, No. 15-1063, June 14, 2016 (D.C. Cir.).

² CCA is the nation’s leading association for competitive wireless providers and stakeholders across the United States, and its membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents approximately 200 associate members including vendors and suppliers that provide products and services throughout the mobile communications supply chain.

services (“CMRS”) may potentially affect a mobile BIAS provider’s roaming obligations.³ However, the FCC retained for the time being the roaming obligations applicable to mobile BIAS that applied prior to reclassification, and thus forbore from the application of the CMRS roaming rule to mobile BIAS providers, conditioned on such providers continuing to be subject to the obligations, process, and remedies under the current data roaming rule.⁴ At the same time, the Commission explicitly committed to “commence in the near term a separate proceeding to revisit the data roaming obligations of MBIAS providers” in light of the reclassification of mobile broadband Internet access services as a telecommunications service.⁵ Now that the *2015 Order* has been upheld, therefore, CCA urges the Commission to act on its commitment and immediately initiate a proceeding on mobile roaming obligations as applied to BIAS providers. This type of proceeding to facilitate data roaming policies is critical to foster competitive arrangements and spur network development and deployment as the industry moves toward next generation technologies.

Further, the FCC must settle stagnant roaming complaints with clear guidance for carriers, including special attention to those that have been pending for multiple years,⁶ and commit to act on future complaints in a timely manner. For example, the Commission recently denied NTCH, Inc.’s (“NTCH”) formal complaint against Cellco Partnership (“Verizon”). The complaint (filed in July 2014) alleged that Verizon was charging unreasonable voice and data roaming rates.⁷ In denying NTCH’s complaint, the Enforcement Bureau did not provide clear direction as to what factors moving forward would constitute reasonable data roaming arrangements.⁸ Competitive carriers need certainty to enter into just and reasonable data roaming agreements, which extend their physical infrastructure networks and broadband deployments and facilitate greater competitive opportunities in the wireless ecosystem.

³ *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, FN Docket No. 14-28 ¶¶ 523, 525 (2015) (“*2015 Order*”).

⁴ *See id.* ¶ 526.

⁵ *Id.*

⁶ *See* Comments of Competitive Carriers Association, WT Docket No. 16-137 at 32-33 (filed May 31, 2016); *see also* Federal Communications Commission, Enforcement Bureau, Market Disputes Resolution Division Pending Complaints (last updated June 21, 2016), *available at* <http://transition.fcc.gov/eb/mdrd/compl.html>.

⁷ *In the Matter of NTCH, Inc. v. Cellco Partnership d/ b/a Verizon Wireless*, Order, EB Docket No. 14-212 (rel. June 30, 2016) (“*Enforcement Bureau Order*”).

⁸ *See id.* ¶ 16. With regard to data roaming rates, the Commission focused on a comparison of Verizon’s rates in this case, compared to data roaming arrangements with other carriers. While the FCC found that Verizon’s data roaming rate was “well within the range of rates in Verizon’s other arrangements,” the Commission failed to adequately account for preexisting inflation of these rates as a result of Verizon’s market power and scale.

It is now timely for the Commission to explore how mobile data roaming should be treated in light of the D.C. Circuit's decision upholding the *2015 Order*. This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's Rules. Please do not hesitate to contact me with any questions or concerns.

Respectfully submitted,

/s/ Rebecca Murphy Thompson

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