November 2, 2016

**VIA ECFS**

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

Re: **NOTICE OF EX PARTE**
**WT Docket No. 05-265:** *Roaming Obligations of Commercial Mobile Radio Service Providers*
**GN Docket No. 14-28:** *Protecting and Promoting the Open Internet*

Dear Ms. Dortch:

In response to the Commission's announcement that it plans to consider a Notice of Proposed Rulemaking ("NPRM") regarding the roaming obligations of Commercial Mobile Service Providers and the regulatory classification of Voice over LTE service at its November Open Meeting,[1] the Rural Wireless Association, Inc. ("RWA")[2] and NTCA – the Rural Broadband Association ("NTCA")[3] (together "the Associations") file this joint *ex parte* regarding data roaming and its impact on mobile broadband competition and public safety.[4]

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[1] Press Release, *FCC Announces Tentative Agenda for November Open Meeting* (Oct. 27, 2016).
[2] RWA is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who serve rural consumers and those consumers traveling to rural America. RWA's members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. RWA's members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. Each of RWA's member companies serves fewer than 100,000 subscribers.
[3] NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and/or long distance services as well.
[4] RWA and NTCA filed joint comments discussing data roaming and network resiliency earlier this year in response to an *ex parte* presentation made by wireless providers AT&T, Sprint, T-Mobile, Verizon (collectively, the "Big Four"), and U.S. Cellular, together with CTIA, in which they discussed a "Wireless Resiliency Cooperative Framework," described as "a voluntary initiative that will enhance coordination and communication to advance wireless service continuity and information sharing during and after emergencies and disasters." *See* Comments of the Rural Wireless Association, Inc. and NTCA – The Rural Broadband Association, *Improving Resiliency, Reliability and Continuity of Mobile Wireless Communications Networks*,

The Commission needs to address issues regarding commercially reasonable, inter-carrier wholesale data roaming rates, and these issues impact the ability of smaller carriers to offer retail nationwide plans at rates competitive with nationwide carriers. Further, the Associations believe that a discussion about whether the Commission should require bilateral roaming between compatible carriers (and whether failure to do so unnecessarily limits consumers' rights to competition) is warranted. The Associations urge the Commission to seek comment on these issues in its forthcoming *NPRM*.

**RURAL WIRELESS CARRIERS' LIMITED ABILITY TO ENTER INTO FUNCTIONAL BILATERAL DATA ROAMING AGREEMENTS NEGATIVELY IMPACTS MOBILE BROADBAND COMPETITION.**

The ability to offer nationwide coverage to subscribers and prospective subscribers is seen as a competitive necessity for facilities-based, domestic mobile wireless providers. There are four nationwide or near-nationwide mobile wireless carriers,[5] and dozens of small, rural and regional mobile wireless carriers in the United States today. The commercial mobile wireless marketplace has matured to the point where nearly all mobile wireless consumers expect to be able to use a mobile wireless device on a nationwide basis without being subject to roaming charges that exceed the allotment included in the customer's retail plan. If a mobile wireless carrier cannot offer the ability to seamlessly roam throughout the United States, then that carrier will be at a severe competitive disadvantage in the eyes of most current and prospective subscribers.

Fortunately, the Commission changed its data roaming rules in 2011 to mandate that carriers be legally obligated to offer mobile wireless data roaming access to all technologically-compatible requesting carriers, at commercially reasonable rates, terms and conditions.[6] Unfortunately, the subsequent reaction to this rule change by the country's Big Four carriers has created an unintended consequence that threatens mobile broadband competition in rural areas. The country's nationwide carriers are often hesitant to enter into bilateral voice and data roaming agreements at commercially reasonable rates, terms and conditions, or enter into bilateral agreements at all. Furthermore, these same carriers often refrain from offering their own

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PS Docket Nos. 13-239 & 11-60 (May 31, 2016) ("*Joint Comments*"); *see also* Letter from Joan Marsh, AT&T, Charles McKee, Sprint, Grant Spellmeyer, US Cellular, Scott Bergman, CTIA, Steve Sharkey, T-Mobile USA, and William H. Johnson, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, PS Docket Nos. 13-239 and 11-60, at 1 (Apr. 27, 2016).

[5] *Policies Regarding Mobile Spectrum Holdings*, Report and Order, WT Docket No. 12-269, GN Docket No. 12-268, at ¶ 24 (rel. June 2, 2014) (stating the number of nationwide facilities-based wireless service providers has decreased by a third from six to four – Verizon Wireless, AT&T, Sprint and T-Mobile).

[6] *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, WT Docket No. 05-265 (rel. Apr. 7, 2011).

subscribers access to rural roaming coverage on small carrier networks (including those operated by RWA members) even when their own coverage is inferior or non-existent.[7]

Rural carrier networks, built with the help of universal service funds, should be made available to the American public in areas that are unserved or underserved by nationwide networks. Further, the lack of bilateral roaming eliminates a source of non-federal revenue that small rural providers could use to offset network costs. This, in turn, renders them more reliant on both state and federal universal service support. A thorough examination of how inter-carrier roaming is managed at the wholesale and retail levels is required in order to understand its impact on competition.

**RURAL WIRELESS CARRIERS' LIMITED ABILITY TO ENTER INTO FUNCTIONAL BILATERAL DATA ROAMING AGREEMENTS COULD ALSO NEGATIVELY IMPACT PUBLIC SAFETY.**

The Associations are also concerned that a lack of functional bilateral roaming agreements between the Big Four and rural wireless carriers could hinder network resiliency and public safety in the event of an emergency. The Big Four carriers often: (1) conduct only *unilateral* testing of roaming functionality where the nationwide carrier is the serving network, even where a bilateral roaming agreement is in place; (2) enter only into *unilateral* agreements under which the rural carrier's subscribers can roam on the nationwide carrier's network, but with no possibility of reciprocal roaming for the nationwide carrier's subscribers on the rural carrier's network; and (3) restrict their customers from accessing rural carriers' networks even in areas where they have no coverage, and even where a bilateral roaming agreement is in place and the requisite testing has been done.

In many cases, nationwide carriers have simply determined that it is better for their respective businesses to do without any coverage in rural areas rather than pay the rural carrier for access to their networks. This financially-motivated decision by the nation's largest carriers to restrict their customers' access to roaming might simply be annoying to their subscribers in most cases. But this decision threatens public safety, not only for large carrier customers who roam into areas where there is no agreement, but also in the event of a natural disaster or emergency that causes debilitating damage to the large carrier's network. It is entirely possible that, in markets where bilateral roaming is theoretically feasible, the nationwide carrier's subscribers will be technically *incapable* of roaming on the rural carrier's network in the event of an emergency or disaster because there is no bilateral agreement in place or the requisite testing has not been done. In such an emergency, an untold number of mobile users (including front-line public safety users) may be unable to communicate in the affected area. The Associations urge the Commission to examine these issues in its *NPRM*.

[7] *See Joint Comments* at pp. 3-8; *see also* Letter from David LaFuria, Counsel for U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 (Feb. 25, 2016) (*U.S. Cellular Ex Parte*), Slide Presentation at p. 14 (noting that "Roaming is no longer a stable revenue source.")

**REQUEST FOR INCLUSION IN FNPRM**

The Associations appreciate the Commission's attention to data roaming issues, and look forward to participating in the forthcoming proceeding. In particular, the Associations urge the Commission to seek comment on the role that data roaming plays in enhancing mobile wireless competition and protecting public safety. RWA urges the Commission to seriously consider the interrelated nature of competition, universal service support, the need for functional bilateral roaming agreements at commercially reasonable rates, and public safety communications. Actions taken (or not taken) on one issue will impact each of the others, particularly in rural areas where there are fewer service options. The Associations stand ready to work with the Commission and other parties as this proceeding moves forward. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed in ECFS. Please do not hesitate to contact the undersigned with any questions.

Respectfully submitted,

By: *<u>/s/ Caressa D. Bennet</u>*

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