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October 14, 2014

Marlene H. Dortch
Secretary
Federal Communication Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WT Docket. 05-265, DA 14-798, *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*

Dear Secretary Dortch:

The Maine Public Utilities Commission (MPUC), joined by the Maine Office of the Public Advocate (OPA), writes today to encourage the Commission to take the opportunity presented by the pending *Petition For Expedited Declaratory Ruling* filed by T-Mobile in this proceeding, to act to clarify the meaning of the term "commercially reasonable" as it relates to the requirement that wireless carriers negotiate data roaming agreements with one another. In our view, the ambiguity that presently exists regarding the meaning of "commercially reasonable" needlessly impedes effective competition in the rural, wireless services marketplace.

The FCC could resolve this impediment by evaluating relevant evidence and establishing benchmarks, "most-favored nation" obligations, or other requirements meant to give meaning to the term "commercially reasonable." Relevant evidence might include, for instance, inquiry into whether there are material disparities in the price term contained in data roaming agreements between carriers that do not compete in the relevant local market (such as where one party is an international carrier) and the price term in data roaming agreements offered to direct competitors.

Like many other states, Maine's telecommunications market has seen dramatic changes over the past two decades. There are presently five major wireless providers where in the not too distant past there were only two. Preservation, and growth, of the competitive wireless marketplace is especially important to consumers residing in rural parts of the state. We encourage the FCC to examine available geographic data to determine whether the apparent inability of T-Mobile to offer robust wireless data services to its customers in Maine reflects difficulties in negotiation over data roaming agreements, which might be resolved by clear guidance from the FCC regarding what constitutes commercially reasonable terms.

Currently, policymakers in Maine are actively considering the extent to which it is necessary to continue the statutory requirement that Provider of Last Resort (POLR) telephone service be offered throughout all areas of the state and, also, how best to deploy the Maine Universal Service Fund in connection with the POLR obligations that may remain. Also under evaluation is the possibility that increased adoption by customers of advanced technologies, such as wireless

broadband service, might diminish reliance on POTS service to satisfy universal service goals. In this regard, it is critically important that consumer choice in the wireless broadband market not be permitted to contract.

With Maine's extremely varied population density, geography, and terrain, data roaming agreements are necessary in order for customers to have real choice between carriers that are able to offer reasonable coverage. This is especially so in the case of T-Mobile, which relies heavily upon AT&T's GSM network as a "must-have" resource in Maine, and which would likely find it uneconomical to build out facilities that are suitable to provide broadband coverage in Maine – a state whose population ranks 41st in the country and whose population density ranks 38th.

Although we do not propose any particular definition or formula, we urge that the Commission flesh out the "commercially reasonable" standard so that it is both meaningful and enforceable. Despite actions previously undertaken by the FCC to encourage commercially reasonable data roaming contracts, it appears to us that the vagueness of the "commercially reasonable" standard may be lending itself to protracted negotiations that do not lead to beneficial results for Maine's consumers. We believe that this proceeding presents the Commission with a suitable, and timely, vehicle for providing some teeth to the clear policy goals that it established in 2011 in its Data Roaming Order.

Sincerely,



Thomas L. Welch
Chairman



David P. Littell
Commissioner



Mark Vannoy
Commissioner



Timothy Schneider
Public Advocate