

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
AT&T Inc. and Plateau Wireless Seek FCC)	WT Docket No. 14-144
Consent to the Assignment of Advanced)	
Wireless Services, Cellular, Lower 700 MHz,)	
and Microwave Licenses, and International)	
Section 214 Authorizations from Plateau)	
Wireless to AT&T Inc.)	

T-MOBILE USA, INC. PETITION FOR CONDITIONS

T-Mobile USA, Inc. (“T-Mobile”)^{1/} submits this Petition in response to the September 8, 2014 Public Notice issued by the Commission’s Wireless Telecommunications Bureau (“Bureau”) seeking comment on the applications submitted by AT&T, Inc. (“AT&T”) and E.N.M.R. Telephone Cooperative, Plateau Telecommunications, Inc., New Mexico RSA 4 East Limited Partnership, and Texas RSA 3 Limited Partnership (collectively “Plateau”) for consent to the assignment of certain licenses from Plateau to AT&T.^{2/} Because this transaction will result in the termination of roaming arrangements currently in place between Plateau and T-Mobile – to the ultimate detriment of wireless consumers – T-Mobile respectfully requests that the Bureau condition its approval, if granted, on AT&T’s adherence to Plateau’s current roaming agreement with T-Mobile, including Plateau’s practice of permitting T-Mobile to roam in areas comprised of one or a few cell sites, for a period of five years.^{3/}

^{1/} T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

^{2/} See *AT&T Inc. and Plateau Wireless Seek FCC Consent to the Assignment of Advanced Wireless Services, Cellular, Lower 700 MHz, and Microwave Licenses, and International Section 214 Authorizations from Plateau Wireless to AT&T Inc.*, Public Notice, DA 14-1287, WT Docket No. 14-144 (rel. Sept. 8, 2014) (“*Public Notice*”).

^{3/} While T-Mobile and others have written separately asking that the Commission conduct a thorough and robust review of this and other transactions in which AT&T would exceed 45 megahertz of

I. BACKGROUND AND INTRODUCTION

On July 14, 2014, AT&T and Plateau submitted applications seeking consent to assign Advanced Wireless Services (“AWS-1”), cellular, Lower 700 MHz C Block, and common carrier fixed point-to-point licenses from Plateau to AT&T as part of the sale of Plateau’s mobile wireless business to AT&T. As the applicants explained, Plateau uses GSM-based technology to operate in three cellular market areas in certain largely rural parts of New Mexico and Texas.^{4/}

T-Mobile has a long-standing roaming agreement with Plateau that allows T-Mobile to roam in discrete locations throughout Plateau’s licensed areas where T-Mobile does not have network coverage.^{5/} Under that agreement, Plateau has permitted T-Mobile to roam in areas comprised of one, or a few, cell sites. If AT&T acquires Plateau, AT&T will become the only option for GSM roaming in the former Plateau markets and T-Mobile will be required to adhere to the terms of AT&T’s expansive and inflexible roaming agreements which generally do not permit roaming over limited geographic areas.

In T-Mobile’s experience, its arrangements with small, regional carriers such as Plateau are superior both in price and terms and conditions to AT&T’s roaming agreements. In fact, it has been T-Mobile’s experience that once AT&T acquires a former T-Mobile roaming partner like Plateau, it integrates the acquired areas into its existing network and under its existing

spectrum below 1 GHz, this Petition for Conditions is limited to the transaction’s impact on roaming. *See* Letter from Kathleen O’Brien Ham, Vice President, Federal Regulatory Affairs, T-Mobile USA, Inc., *et al.*, to Tom Wheeler, Chairman, FCC, WT Docket No. 12-269 (dated Oct. 9, 2014).

^{4/} *See* Description of Transaction and Public Interest Statement, at 1, *attached to* ULS File No. 000636669 (filed July 14, 2014) (“Public Interest Statement”).

^{5/} As T-Mobile has explained, there are a variety of reasons why a mobile provider may decide not to build out, even where it has spectrum, including that zoning limitations may exist, it may be uneconomic to build out, or the wireless provider may never recover its investment if it attempts to deploy network infrastructure, particularly in rural and less densely populated areas. *See* Petition for Expedited Declaratory Ruling of T-Mobile USA, Inc., WT Docket No. 05-265, at 2-3 (filed May 27, 2014) (“T-Mobile Data Roaming Petition”); Reply Comments of T-Mobile USA, Inc., WT Docket No. 05-265, at 16 (filed Aug. 20, 2014) (“T-Mobile Data Roaming Reply”).

network architecture in a manner that produces unfavorable results for T-Mobile. In this case, that will likely mean T-Mobile will lose its ability to have roaming in only the limited geographic areas covered by its roaming agreement with Plateau, resulting in either significant and unnecessary home roaming by T-Mobile or the complete denial of T-Mobile's ability to roam in the areas covered by the Plateau agreement. Consequently, by refusing to honor the Plateau roaming agreement and forcing T-Mobile to adopt AT&T's usual roaming policies and procedures in full, T-Mobile's customers may lose coverage or full system capabilities in the parts of the Plateau coverage area where they could formerly roam. As noted below, this result is consistent with AT&T's past practices when it acquires other systems.

To alleviate these potential harms, and consistent with its practice in other cases where acquisitions resulted in the elimination of an important roaming partner, the Commission should require AT&T to adhere to Plateau's roaming agreement with T-Mobile, including Plateau's practice of permitting roaming in areas comprised of one or a few cell sites, for a period of five years in order to protect T-Mobile and its customers from the effects of AT&T's acquisition of Plateau.

II. COMMENTS

A. The Transaction Jeopardizes T-Mobile's Roaming Ability.

AT&T's integration of small, regional carriers into its network has resulted in roaming practices that disadvantage the acquired party's existing roaming partners, and grant of this transaction threatens to produce the same result. As T-Mobile recently highlighted in the data roaming proceeding, AT&T is currently the only GSM roaming partner available to T-Mobile in

17 entire states and portions of many others.^{6/} If AT&T acquires Plateau, it will be the only GSM roaming option in areas where T-Mobile currently roams on Plateau's network.

As AT&T informed the Commission, if its transaction with Plateau is approved, AT&T will not assume Plateau's roaming agreements.^{7/} While AT&T has offered, on an interim basis, to make service on the Plateau network available under existing roaming agreements, it will ultimately integrate the Plateau sites into its existing network.^{8/} The effect of that integration will be to discourage T-Mobile roaming in Plateau's coverage area, harming T-Mobile customers and preventing T-Mobile from effectively competing with AT&T in the New Mexico and Texas markets where both offer service.

In many roaming arrangements, parties mutually agree to open or restrict roaming based on location area codes ("LACs"), which are geographical groupings of one or more cellular sites. Ideally, these areas can be appropriately geographically limited to areas in which the requesting provider is not otherwise built out and thus requires roaming in order to provide the seamless coverage that customers have come to expect. In Plateau's case, this has resulted in a T-Mobile roaming footprint comprised of one or a few cell sites. But AT&T's integration of acquired sites into its existing LACs produces exactly the opposite result. It has been T-Mobile's experience that AT&T integrates acquired sites into expansive LACs that include both rural and urban areas. AT&T frequently has refused reasonable requests by T-Mobile to reconfigure the LACs to limit roaming to the footprint of the acquired cell sites or to only those areas where T-Mobile does not have a network. This produces negative results for T-Mobile's customers because, based on the

^{6/} See T-Mobile Data Roaming Reply at 21.

^{7/} Response of AT&T Inc. to the General Information Request Dated September 22, 2014 at 15, *attached to* Letter from Scott Feira, Counsel, AT&T Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 14-144 (dated Oct. 6, 2014).

^{8/} *Id.*

increased costs of roaming in the area covered by the acquisition, T-Mobile is either required to drop roaming with AT&T altogether – leaving customers with no service – or T-Mobile must limit customers’ system access in order to avoid exorbitant roaming costs.

A case in point is AT&T’s 2013 acquisition of Commnet cell sites in central Idaho. T-Mobile previously relied on Commnet’s central Idaho network for roaming in areas outside of T-Mobile’s footprint. When AT&T acquired Commnet’s sites, it announced plans to integrate the former Commnet sites into existing AT&T LACs in a manner that would effectively terminate T-Mobile’s customers’ ability to roam on the former Commnet network. In particular, AT&T is adding the sites to three expansive AT&T LACs that include areas where T-Mobile had network, along with areas where T-Mobile previously had relied on Commnet for roaming. AT&T rejected T-Mobile’s requests to reconfigure the LACs to reduce T-Mobile in-market roaming. T-Mobile requested that AT&T open one of the LACs to T-Mobile roaming so that it could restore coverage to Tamarack and McCall, ID, even though this would also result in T-Mobile in-market roaming. AT&T denied this request, citing generalized concerns regarding congestion, and did not suggest an alternative proposal that would be acceptable. As a result, AT&T is in the process of shutting down roaming for T-Mobile customers in the entire central Idaho area.

Another example of how AT&T uses its acquisition of former T-Mobile roaming partners to disrupt roaming occurred last year when AT&T acquired a network from Bug Tussel, a small carrier operating in remote Door County, Wisconsin.^{9/} After the acquisition, AT&T merged the acquired market into its Green Bay market area where T-Mobile has its own network. AT&T then refused to reconfigure the LAC to allow T-Mobile to roam only on the former Bug Tussel

^{9/} Because both the Commnet and the Bug Tussel transactions involved only the sale of network assets, no FCC approval was required for AT&T to complete these transactions. Consequently, T-Mobile was unable to bring to the Commission’s attention the potential adverse impact on roaming associated with elimination of a T-Mobile roaming partner.

sites. Rather, AT&T offered T-Mobile only one option to restore roaming in Door County – open all of the AT&T Green Bay market area to roaming even though this would result in significant and costly roaming in areas where T-Mobile has network – resulting in either loss of coverage or limitations on system use for T-Mobile customers. While T-Mobile ultimately chose to take service throughout this larger area and risk diminished customer experience, it took months for AT&T to agree to this arrangement, meaning that T-Mobile customers were without roaming service altogether during the key summer months in this resort area.^{10/}

T-Mobile expects that, without Commission intervention, AT&T's integration of Plateau will similarly result in the disruption or termination of roaming because instead of permitting T-Mobile to specify roaming in areas comprised of one or a few cell sites, it will insist that T-Mobile roam throughout LACs that are typically comprised of 25 cell sites. A five year continuation of the T-Mobile/Plateau agreement would serve a number of purposes. First, it would provide T-Mobile with additional time to address with AT&T roamer-related issues created by the transaction. Second, while those discussions are ongoing and if T-Mobile does not reach a satisfactory agreement with AT&T, it would shield T-Mobile and its customers from immediate harms associated with AT&T's acquisition of Plateau and AT&T's implementation of its standard roaming practices – including requiring carriers to roam in expansive areas that include home network. Finally, it would provide T-Mobile with a timeframe in which to explore site and construction solutions to mitigate the impact of Plateau's exodus from the market. If T-Mobile is instead forced to accede to AT&T's inflexible integration plans and pay for roaming in areas where it already has coverage, it will fall victim to AT&T's raising rivals'

^{10/} Among the reasons that AT&T cited in its negotiations for roaming in this area was the high level of traffic it alleged would occur, taxing its network. In fact, the level of traffic has been modest, suggesting that AT&T's actual motives were to simply deny roaming.

costs strategy and incur additional roaming expenses that will ultimately result in a diminished customer roaming experience.^{11/} This result harms competition and is not in the public interest.

B. The Commission Should Condition Approval of the Transaction.

Although AT&T's Public Interest statement in this transaction states broadly that the transaction will "unambiguously serve[] the public interest" because Plateau and its customers will benefit from AT&T's roaming reach and reduction in roaming costs,^{12/} the applicants fail to address the impact on Plateau's current roaming partners and their customers. The Commission, however, has recognized the importance of roaming for all wireless carriers.^{13/} Accordingly, it must examine not only the impact of the transaction on Plateau's customers, but also on the customers of Plateau's roaming partners.

Ensuring that roaming partners are not harmed in a transaction is consistent with past Commission practice. Specifically, the Commission has recognized that roaming agreements may be subject to termination, leaving roaming partners harmed, and has required parties to honor sellers' roaming agreements. For instance, when AT&T acquired licenses from Centennial Communications Corp. ("Centennial"), commenters raised concerns that the transaction would put AT&T in a position to extend its anticompetitive roaming practices into the acquired carrier's coverage area, including dictating terms and prices to the remaining

^{11/} As T-Mobile explained in the data roaming proceeding, dominant carriers with market power over roaming (such as AT&T) have both the incentive and the ability to raise rivals' costs through imposition of commercially unreasonable rates and terms, thereby inducing the requesting provider to raise its retail prices or compromise its service quality. *See* T-Mobile Data Roaming Petition at 12-13; T-Mobile Data Roaming Reply at 16, 18-19.

^{12/} *See* Public Interest Statement at 4-7; *see also* Public Notice at 1-2.

^{13/} *See, e.g., Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd. 5411, ¶ 15 (2011) ("Data Roaming Order"), *aff'd sub nom. Cellco P'ship v. FCC*, 700 F.3d 534 (D.C. Cir. 2012).

roaming partners.^{14/} The Commission therefore conditioned its consent to the transaction by requiring AT&T to honor Centennial’s existing roaming agreements with other carriers on the date the merger closed for the full term of those agreements, notwithstanding termination for convenience or change of control provisions in those agreements. The Commission also imposed a condition that AT&T permit providers with fewer than 10 million subscribers to retain a Centennial roaming agreement for four years, or the length of the agreement (whichever was longer).^{15/} The Commission determined that the four-year period was sufficient for carriers “to resolve any roaming-related issues created specifically by the transaction.”^{16/}

Similarly, when ALLTEL Corporation (“ALLTEL”) merged with Verizon Wireless, the Commission conditioned its approval on the voluntary commitment made by Verizon Wireless to honor ALLTEL’s existing roaming contracts with other carriers; provide regional, small, and/or rural carriers that were roaming partners with ALLTEL the option of continuing their existing agreements; and provide regional, small, and/or rural carriers that had preexisting roaming contracts with both Verizon Wireless and ALLTEL the choice of which contract would govern the ongoing roaming relationship.^{17/} The FCC also imposed Verizon Wireless’s voluntary commitment that it would not adjust upward rates set forth in ALLTEL’s existing agreements for

^{14/} See *Applications of AT&T Inc. and Centennial Communications Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Memorandum Opinion and Order, 24 FCC Rcd. 13915, ¶¶ 122-125 (2009) (“*AT&T/Centennial MO&O*”). The Wireless Telecommunications Bureau recently determined that AT&T is no longer required to comply with certain of the conditions included in the *AT&T/Centennial MO&O*, which were unrelated to roaming and thus do not impact the discussion here. See Letter from Roger C. Sherman, Chief, Wireless Telecommunications Bureau, FCC, to Joan Marsh, Vice President – Federal Regulatory, AT&T Services, Inc., DA 14-1399, WT Docket No. 08-246 (dated Sept. 26, 2014).

^{15/} *AT&T/Centennial MO&O* ¶¶ 129-130.

^{16/} *Id.* ¶ 130.

^{17/} See *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements*, Memorandum Opinion and Order and Declaratory Ruling, ¶¶ 178-179 (“*Verizon Wireless/ALLTEL MO&O*”).

the full term of the agreement or four years (whichever was longer).^{18/} As with the AT&T/Centennial merger, the conditions were imposed notwithstanding any change of control or termination for convenience provisions that would otherwise give Verizon Wireless the right to accelerate the termination of such agreement.

To ensure that T-Mobile and its customers are not harmed by AT&T's acquisition of Plateau, the Commission should – if it consents to the applications – require that AT&T provide roaming on the same terms as Plateau, including by permitting T-Mobile to continue to roam in areas comprised of one or a few cell sites. Allowing AT&T to terminate the Plateau roaming agreement and impose its own would subject T-Mobile and its customers to disruption in roaming in those areas now covered by Plateau's network. Consequently, T-Mobile will be faced with higher roaming costs and its customers may suffer a loss of coverage or diminution in service quality in areas where they formerly could roam and enjoy a full network experience. By conditioning approval of the transaction as requested here, the Commission will serve the public interest by ensuring that T-Mobile's customers continue to have uninterrupted wireless service in areas now covered by Plateau's network and have a meaningful choice of wireless providers. Therefore, the FCC should, consistent with its past precedent, ensure that T-Mobile and its subscribers are not subject to transaction-specific harms associated with the proposed transaction by requiring AT&T to abide by the terms of the Plateau roaming agreement, including by permitting T-Mobile to continue to roam in areas comprised of one or a few cell sites, for a period of not less than five years.

^{18/} *Id.* ¶ 178.

III. CONCLUSION

This transaction has the potential to harm T-Mobile and its customers by allowing AT&T to disrupt or terminate T-Mobile roaming on networks formerly owned by Plateau. The Commission can alleviate these harms by conditioning consent of the merger – if granted – on AT&T honoring Plateau’s roaming agreement with T-Mobile, including Plateau’s practice of permitting T-Mobile to roam in areas defined by one or a few cell sites, for a period of five years. In particular, any Bureau Order approving the transaction should include the following condition:

Grant of the applications is conditioned on AT&T’s agreement to honor Plateau’s existing agreement with T-Mobile to obtain roaming services on Plateau’s network, pursuant to the rates, terms and conditions contained in Plateau’s roaming agreement including, but not limited to Plateau’s practice of permitting T-Mobile to roam in areas defined by one or a few cell sites, on the date that the AT&T/Plateau transaction closes for a period of five years thereafter, notwithstanding any change of control or termination for convenience provisions in those agreements.

Such action is in the public interest and would serve to ensure that T-Mobile and its customers are not harmed by increased roaming costs or, worse, deprived of existing wireless coverage as a result of approval of the transaction.

Respectfully submitted,

/s/ Andrew W. Levin

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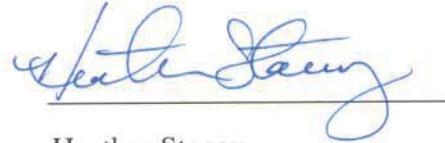
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October 17, 2014

DECLARATION

I, Heather Stacey, Director of Business Development at T-Mobile USA, Inc., have read the foregoing "T-Mobile USA, Inc. Petition for Conditions," and hereby declare, under penalty of perjury, that the factual information contained herein is true and correct to the best of my knowledge, information, and belief.



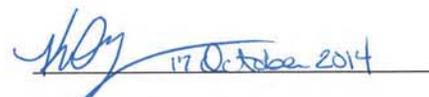
Heather Stacey

October 17, 2014

CERTIFICATE OF SERVICE

I, Kara D. Romagnino, do hereby certify that on this 17th day of October 2014, a true and correct copy of the foregoing “T-Mobile USA, Inc. Petition for Conditions” was served on the following via first class mail, unless otherwise noted.

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17 October 2014

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