



STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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October 24, 2014

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

Re: WT Docket No. 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 Washington Utilities and Transportation Commission (UTC) submits the following letter in support of the *Petition for Expedited Declaratory Ruling*¹ (Data Roaming Petition) recently filed by T-Mobile USA, Inc. (T-Mobile) concerning additional guidance on appropriate criteria for determining whether terms of data roaming agreements are “commercially reasonable” under the Federal Communications Commission’s (Commission’s) *Data Roaming Order*.² In the Data Roaming Petition, T-Mobile contends that despite the Commission’s effort to promote effective conditions for data roaming arrangements between competing mobile providers, problems continue for some providers in attempting to negotiate and obtain roaming access agreements due, in part, to the relatively unequal bargaining power between such providers and because of ambiguities in the Commission’s commercially reasonable standard.

¹Petition for Expedited Declaratory Ruling of T-Mobile USA, Inc., WT Docket No. 05-265 (filed May 27, 2014) (“T-Mobile Data Roaming Petition”); see also *Wireless Telecommunications Bureau Seek Comment on Petition for Expedited Declaratory Ruling Filed by T-Mobile USA, Inc. Regarding Data Roaming Obligations*, Public Notice, WT Docket No. 05-265, DA 14-798 (rel. June 10, 2014).

²*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, ¶¶ 40-41 (2011) (“Data Roaming Order”), *aff’d sub nom. Cellco P’ship v. FCC*, 700 F.3d 534 (D.C. Cir. 2012).

To facilitate improved prospects for evaluating commercial reasonableness of existing or future data roaming agreements, T-Mobile proposes the Commission adopt four data roaming rate benchmarks: (1) whether a wholesale roaming rate offered to a retail competitor substantially exceeds the relevant retail rate; (2) whether a wholesale roaming rate substantially exceeds roaming rates charged to foreign carriers when their customers roam in the U.S.; (3) whether a wholesale roaming rate substantially exceeds the price for wholesale data service that a seller charges to mobile virtual network operator (MVNO) customers; and (4) how the proposed wholesale roaming rate compares to other competitively negotiated wholesale roaming rates. T-Mobile asserts that incorporation of its proposed benchmarks into the Commission's data roaming rule would give more tangible effect to the policy objectives of the *Data Roaming Order*.

As a result of a number of major telecommunications proceedings, and by virtue of continual inquiries from state legislators, consumers, and others in Washington, the UTC routinely delves into broadband deployment and availability issues on behalf of various constituencies. Based on this experience, the UTC recognizes the importance of widespread availability of high-quality broadband services and consistently has advocated the expansion of such services. Accordingly, the UTC shares the Commission's objective to ensure that public policy on issues such as broadband availability across the nation is accomplished in the most economically feasible and reasonable manner. Promotion of consumer access to broadband service furthers these federal and state policies.

The UTC shares T-Mobile's view that clarification of the Commission's data roaming rule is both necessary and appropriate in order to continue federal and state efforts to promote competition in the local telecommunications market, greater spectrum utilization, and enhanced conditions for broadband deployment particularly in rural areas. Although consumers in the State of Washington benefit greatly from an array of diverse telecommunications and broadband service providers, the fact remains that the vitality of the state's marketplace varies widely according to a variety of topographic, economic, and technological factors that affect the breadth of service offerings available in certain markets.

The UTC realizes and appreciates the value of data roaming among mobile providers and its effect on competitive market conditions. To the extent that competing providers have unequal bargaining power and leverage in securing data roaming agreements, unreasonable economic terms and conditions for such agreements may have a deleterious effect on market conditions and consumers in rural areas of Washington where competitive choices are fewer or even nonexistent. The Commission initially adopted data roaming rules to promote the prospects for seamless nationwide data coverage for mobile consumers. In doing so, the Commission intended that imbalanced data roaming circumstances among competing mobile providers using common technological platforms would benefit from guidance contained in the *Data Roaming Order*.

Marlene H. Dortch
October 24, 2014
Page 3 of 3

Unfortunately, as discussed in T-Mobile's Data Roaming Petition, contemporary experience shows that establishing reasonable terms and conditions for data roaming continues to be thwarted by prolonged contract negotiations scarcely influenced by what currently constitutes the Commission's "commercially reasonable" standard.

Accordingly, the UTC respectfully requests the Commission adopt the proposed clarifications proposed by T-Mobile in order to secure improved conditions for establishment of commercially reasonable data roaming agreements.

Respectfully submitted this th24 day of October, 2014.



Steven V. King
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