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November 11, 2014

EX PARTE VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

**Re: Roaming Obligations of Commercial Mobile Radio Service Providers,
WT Docket 05-265**

Dear Ms. Dortch:

On November 7, 2014, Jeanine Poltronieri, Michael Goggin and the undersigned, representing AT&T, met with Roger Sherman, Jim Schlichting, Michael Janson, Gloria Sheu, Garnet Hanley and Kate Matraves of the Wireless Telecommunications Bureau to discuss the above captioned matter. Ms. Matraves joined by telephone.

We expressed the view that the Commission's 2011 roaming order struck the proper balance between ensuring that data roaming is widely available and the need to maintain incentives for build-out. The weight of evidence in the docket proves that the data roaming market is working, including for LTE roaming agreements. Data roaming agreements are now commonly available from the four national carriers. AT&T has negotiated eight LTE-based data roaming agreements, including some with carriers who have not yet deployed LTE but who want the surety of an established agreement, and expects to complete additional LTE roaming agreements by year end. Data roaming rates are also falling, as is demonstrated by the rates T-Mobile itself has presented in the record. For example, the rate that T-Mobile is paying to AT&T is more than 70% less than it was three years ago.

Next, and consistent with the data coverage map available on T-Mobile's website as presented at the meeting, we noted that T-Mobile roams almost exclusively in rural markets -- markets where T-Mobile has spectrum that it has declined to build out. The deployment of wireless broadband networks in rural markets is more economically challenging than urban wireless network builds. Nonetheless, carriers including AT&T, Verizon with its rural partnership program and Sprint with its roaming Hub, are finding

innovative and strategic market-based approaches that address rural build and roaming. Commission policies should seek to encourage such approaches, not undermine them through the type of roaming rate regulation that T-Mobile is seeking. We further argued that, given the challenges of rural network deployment, it is reasonable to see higher rates for rural roaming than for urban roaming. Thus the comparisons T-Mobile makes to roaming rates by urban carriers on urban networks are irrelevant.

We also discussed the fact that AT&T is a net payor of roaming expense – it buys more data roaming than it sells both on a megabyte basis and on a dollar basis. AT&T also roams mostly through agreements with rural carriers that supplement AT&T's network build in rural markets. Consistent with the attached presentation, for 2013 and 2014 AT&T's roaming expense on a per megabyte basis exceeded that incurred by T-Mobile. The average data roaming rate paid by AT&T in 2013 (42¢/MB) was more than the average data roaming rate paid by T-Mobile in 2013 (30¢/MB). For 2014, the average rate paid by AT&T thru August (27¢/MB) is higher than T-Mobile's projected average expense (18¢/MB). This is clear evidence that T-Mobile is paying commercially reasonable rates and that the relief requested by T-Mobile in its Petition should be rejected.

Finally, the parties discussed the legal risks associated with the relief that T-Mobile requests. The FCC properly found in its roaming orders that arm's-length roaming agreements that have not been challenged should be presumed commercially reasonable, and included this presumption among the 17-factor "commercial reasonableness" test for data roaming. The Commission also found that the "extent and nature" of the requesting carrier build-out is relevant, as the purpose of the roaming rules is to continue to incent build-out and to avoid allowing carriers to "piggy-back" on their competitors' investments. Thus, the "extent and nature" of the requesting carrier's build-out is also included as one of the factors in determining "commercial reasonableness."

In addition, in its past roaming orders, the Commission expressly rejected using retail mobile service rates as a "benchmark" for roaming rates, as T-Mobile proposes. Therefore, the relief T-Mobile requests would require that the Commission reject its past findings and revise the 17-factor test to delete at least two factors and add price-benchmarking. In other words, T-Mobile asks not for a clarification of the FCC's data roaming order, but a contradiction of it. This would require rule-making.

Moreover, to remove the "extent and nature" of build-out from the list of factors, as T-Mobile suggests, would serve to tilt the balance in the Commission's order to disfavor build-out. In addition, to require that roaming rates be "benchmarked" in relation to retail or resale rates, as T-Mobile requests, would be to establish de facto, common carrier rate regulation. The FCC data roaming order was upheld by the DC Circuit explicitly because the Court found that the rules leave "substantial room for individualized bargaining and discrimination in terms" and are thus not prohibited common carrier regulation.

Ms. Marlene H. Dortch
November 11, 2014
Page 3 of 3

Finally, the FCC's data roaming rules provide a remedy for any carrier who complains that they are unable to obtain data roaming on "commercially reasonable" terms—the carrier may file a complaint with the Commission for adjudication. T-Mobile has not availed itself of this process. Indeed, T-Mobile's request for "clarification" of the data roaming rules is a tacit admission that the terms they have been offered *are* commercially reasonable. T-Mobile simply seeks to have the Commission change the rules to afford it a more favorable outcome than mere commercial reasonableness.

In accordance with Commission rules, this letter is being filed electronically with your office for inclusion in the public record.

Sincerely,

A handwritten signature in black ink, appearing to be 'JM', with a long horizontal line extending to the right.

Joan Marsh

cc: Roger Sherman
Jim Schlichting
Michael Janson
Gloria Sheu
Garnet Hanley
Kate Matraves



T-MOBILE'S PETITION SEEKS THE REGULATION OF ROAMING RATES IN RURAL AMERICA

T-Mobile Is Seeking Price Regulation of Data Roaming

“Legere said the FCC understands that the competition T-Mobile is bringing is inherently good. ‘Maybe there’ll be a potentially preferential ruling in Washington associated with roaming prices,’ he said.”

CommDaily, 10/29/14

AT&T Buys More Data Roaming Than It Sells

- AT&T is a **NET PAYOR** of data roaming charges in arm’s length agreements. From January through August 2014:
 - AT&T bought nearly 50 million more megabytes of data roaming than it sold.
 - AT&T bought 32% more megabytes of data roaming than it sold.
 - AT&T paid \$10.5 million more in data roaming expense than it collected in data roaming revenue.

AT&T Pays More for Data Roaming Than T-Mobile

Data Roaming Expense 2013 –

- T-Mobile’s asserted average 2013 data roaming expense: 30¢/MB
- AT&T’s average 2013 data roaming expense for arm’s length agreements: 42¢/MB

Data Roaming Expense 2014 –

- T-Mobile’s projected average 2014 data roaming expense: 18¢/MB
- AT&T’s average data roaming expense for arm’s length agreements from January through August 2014: 27¢/MB