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November 13, 2014

**VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

**Notice of Ex Parte Presentation**

**WT Docket No. 05-265, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services***

**GN Docket No. 14-28, *Protecting and Promoting the Open Internet***

Dear Ms. Dortch:

On November 10, 2014, T-Mobile USA, Inc. (“T-Mobile”) representatives Dave Miller, Executive Vice President and General Counsel; Kathleen Ham, Vice President, Federal Regulatory; Luisa Lancetti, Chief Counsel, Law and Policy, Federal Regulatory; and the undersigned met with Jonathan Sallet and Stephanie Weiner of the Office of General Counsel to discuss the above-referenced proceedings.

T-Mobile discussed the Petition for Expedited Declaratory Ruling<sup>1/</sup> and its request for FCC action to provide guidance regarding whether the terms of a given data roaming agreement or proposal meet the “commercially reasonable” standard adopted in the FCC’s 2011 *Data Roaming Order*.<sup>2/</sup> Action is needed now, as T-Mobile and other carriers are negotiating new data roaming agreements – many of which are replacing legacy agreements negotiated prior to the release of the *Data Roaming Order*. Notably, many of these new agreements will also include 4G/LTE data roaming for the first time, and guidance is essential for carriers to expedite

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<sup>1/</sup> See Petition 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 Seeks Comment on Petition for Expedited Declaratory Ruling Filed by T-Mobile USA, Inc. Regarding Data Roaming Obligations*, Public Notice, 29 FCC Rcd. 6035 (2014).

<sup>2/</sup> See *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).

negotiations and reach timely agreements regarding commercially reasonable roaming terms for new technologies.

T-Mobile briefly discussed the changed circumstances since the *Data Roaming Order* was adopted. T-Mobile confirmed that it is not seeking the regulation of rates. Instead, it requests a ruling well within the Commission's authority and which was, in fact, anticipated in the *Data Roaming Order*.<sup>3/</sup> Adoption of the requested benchmarks – as relevant factors in the determination of what is a commercially reasonable rate – will help provide necessary clarity for individualized negotiations and address certain practices that the “must-have” carriers have undertaken to stall contract negotiations and force other carriers to accept commercially unreasonable data roaming rates, terms, and conditions.<sup>4/</sup>

With respect to the Open Internet proceeding, T-Mobile urged the Commission to maintain the appropriate “light touch” approach to regulating mobile broadband services, which has been so successful in protecting an open Internet and promoting innovation, investment, and competition. The wireless industry represents one of the greatest American success stories of our time. Since adoption of the flexible 2010 rules, Americans' mobile data usage has increased more than 700 percent, smartphone speeds have increased eightfold, and more Internet apps have been made available than in any other three year period in history. Carrier investment in mobile broadband networks has also been enormous. New mobile rules must not impose rigid requirements that would undermine the continued growth and success of the mobile Internet ecosystem. Indeed, as T-Mobile CEO John Legere recently tweeted, “[l]ike it or not, regulation can stifle innovation and the #uncarrier is all about changing this broken industry!”<sup>5/</sup>

During our meeting, we discussed the need for new mobile rules to appropriately recognize the differences between fixed and mobile broadband services. In addition to technical and operational differences, the FCC must recognize the importance of protecting customer choices and mobile broadband providers' ability to differentiate in the highly competitive mobile broadband marketplace. T-Mobile pointed to the fact that an important part of its current ability to differentiate itself in the marketplace is by offering truly unlimited data plans, which are extremely popular with its customers. In addition, T-Mobile referenced its Music Freedom program as a further example of an innovative, customer- and competition-friendly program.<sup>6/</sup> Under Music Freedom, Simple Choice customers can stream music on their devices without that

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<sup>3/</sup> See T-Mobile Data Roaming Petition at 1, 23-27. T-Mobile's request would not alter the discretion of carriers to engage in individualized negotiations, and would not require carriers to “serve all comers indiscriminately on the same or standardized terms.” See *Cellco P'ship*, 700 F.3d at 548-549. Nothing in T-Mobile's requested clarification would prescribe a roaming rate for any particular negotiation.

<sup>4/</sup> See T-Mobile Data Roaming Petition at 10.

<sup>5/</sup> See Phil Goldstein, *T-Mobile's Legere Opposes Reclassifying Broadband Under Title II in Net Neutrality Debate*, FIERCEWIRELESS (Nov. 11, 2014), [http://www.fiercewireless.com/story/t-mobiles-legere-opposes-reclassifying-broadband-under-title-ii-net-neutral/2014-11-11?utm\\_medium=nl&utm\\_source=internal](http://www.fiercewireless.com/story/t-mobiles-legere-opposes-reclassifying-broadband-under-title-ii-net-neutral/2014-11-11?utm_medium=nl&utm_source=internal).

<sup>6/</sup> See Reply Comments of T-Mobile USA, Inc., GN Docket Nos. 14-28, 10-127, at 17 (filed Sept. 15, 2014).

usage counting against their high-speed data allotments. All lawful music streaming services can participate, services are not charged to participate, and the music streaming traffic is not treated differently on the network. The Commission should reject any suggestion that such pro-consumer offerings should be restricted – or that such offerings even raise net neutrality concerns.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, an electronic copy of this letter is being filed for inclusion in the above-referenced dockets. A copy of this letter is also being provided to the Commission personnel who attended the meeting.

Respectfully submitted,

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cc: (each electronically)  
Jonathan Sallet  
Stephanie Weiner