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November 14, 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 13, 2014, the undersigned met with Renee Gregory from Chairman Wheeler's office to discuss the above captioned proceeding.

I 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, I 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.

I 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.

I also discussed the legal risks associated with the relief that T-Mobile requests. 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.

I further noted that 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.

Finally, in response to claims by T-Mobile that AT&T is refusing to negotiate a LTE roaming agreement in good faith, be advised that T-Mobile first requested a new LTE agreement on June 10, 2014, and on July 2, 2014, AT&T offered to provide LTE roaming on commercially reasonable terms. The parties have and continue to exchange offers and counter-offers in good faith since that time. Specifically, AT&T has proposed commercially reasonable LTE roaming rates to T-Mobile that are less than the \$0.18/MB that T-Mobile has estimated it will pay on average this year for data roaming.

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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', followed by a horizontal line extending to the right.

Joan Marsh

cc: Renee Gregory



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