



Michael Goggin
General Attorney

AT&T Services, Inc.
1120 20th St. NW, Suite 1000
Washington, D.C. 20036
Phone 202 457-2055
Fax 202 457-3074

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:

AT&T Mobility LLP (“AT&T”) submits this letter in response to a letter dated November 24, 2014 from counsel for Worldcall Interconnect, Inc. (“WCX”) regarding the complaint proceeding that WCX has commenced before the Enforcement Bureau relating to its efforts to negotiate a data roaming agreement with AT&T. That proceeding is currently ongoing, and this letter is being submitted solely for the purpose of correcting certain misstatements made by WCX in its letter since WCX seems committed to litigating its complaint in the rulemaking proceeding as well.

Contrary to WCX’s claim, AT&T has never told “the Enforcement Bureau that WCX’s complaint should be dismissed because it should be a rulemaking before the full Commission.” As AT&T has made clear in this proceeding, disputes regarding the terms and conditions of data roaming agreements should be resolved, in the first instance, by good faith negotiations between the parties and, if that fails, by a complaint proceeding based on the rules that the Commission has established in the *Data Roaming Order*.¹ While WCX has properly availed itself of that process, it is asking the Enforcement Bureau to adopt positions that are at odds with the *Data Roaming Order*, which is inappropriate in an enforcement proceeding.

For example, WCX’s argument that it should be permitted to provide access to AT&T’s network without any effective limits is not consistent with the common understanding of roaming, nor with the *Data Roaming Order* which makes clear that roaming is not a means by which a wireless provider can “piggyback” on the serving provider’s network to build its business.² But that

¹ See Opposition of AT&T, at 9-10 (July 10, 2014).

² In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, 26 FCC Rcd. 5411, ¶ 21 (2011) (“*Data Roaming Order*”) (“the relatively high price of roaming compared to providing facilities-based service will often be sufficient to counterbalance the incentive to ‘piggy back’ on another carrier’s network”); *id.* ¶ 34 (“we provide that the data roaming obligation does not create mandatory resale obligations”); *id.* ¶ 41 n.122 (“As we have stated in the past, however, roaming arrangements cannot be used as a backdoor way to create *de facto* mandatory resale obligations”); *id.* ¶ 88 (holding that data roaming obligations may not be used by requesting providers “as a backdoor way to create *de facto* mandatory resale obligations”).

is exactly what WCX is seeking to do via its complaint. Similarly, there is no merit to WCX's claim that the presumption, set forth in the *Data Roaming Order*, regarding arm's length agreements negotiated in the commercial marketplace has no application beyond the parties to those agreements. Indeed, such an interpretation would render the presumption meaningless. The principal reason a complaint proceeding is commenced is because the parties to that proceeding were unable to reach an agreement. In such circumstances, it is completely logical to look to the commercial marketplace and to agreements negotiated in that marketplace between other parties to identify commercially reasonable terms and conditions. It also follows that if the parties to those agreements were able to agree, the terms and conditions to which they agreed are presumptively commercially reasonable. That does not mean that the presumption can never be rebutted, but that presumption certainly exists.

Moreover, WCX's insistence that any roaming rate in excess of retail rates be deemed "per se" unreasonable is a plain and simple demand for price cap regulation that is contrary to the Commission's *Data Roaming Order* and foreclosed by the Communications Act. As the Commission has previously concluded on more than one occasion, the retail rates on which WCX bases its proposed rates simply are not appropriate for use in the data roaming context,³ and any retail rate-based regulation would undermine the Commission's efforts to foster facility-based competition.⁴

There is also no merit to WCX's contention that AT&T is seeking to hide information regarding its data roaming agreements from either the Commission or WCX. In fact, AT&T has already provided detailed information regarding its data roaming agreements in the complaint proceeding, including information concerning rates and usage for both its LTE and other roaming agreements. AT&T has also disclosed information regarding the terms and conditions of those agreements, and provided copies of the draft agreements that it uses as a starting point for its negotiations. In AT&T's view, this information is sufficient for resolution of the complaint proceeding and clearly demonstrates that AT&T's proposal to WCX is commercially reasonable. Further, the presentation of this information on a redacted basis (*i.e.*, the names of the other parties to the agreements have not been revealed) strikes a reasonable balance between the need for this information and confidentiality considerations.

As AT&T has explained in the complaint proceeding, AT&T's data roaming agreements are highly confidential and are subject to contractual provisions which limit their disclosure in the absence of a Commission order.⁵ AT&T has also made clear that it will produce those agreements in the WCX complaint proceeding, if the Commission concludes that the production of such documents is necessary and requires their production, so long as (i) the agreements are designated as Highly Confidential under the protective order that has already been negotiated

³ See *Data Roaming Order*, ¶¶ 21, 51; *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, 22 FCC Rcd. 15817, ¶¶ 36-40 (2007) (specifically rejecting cap "based on some benchmark of retail rates"); see also *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, 25 FCC Rcd. 4181, ¶ 32 n.90 (2010) (fact that "roaming rates [are] much higher than retail rates" would preserve investment incentives) (emphasis added).

⁴ See, e.g., *Data Roaming Order*, ¶¶ 1, 9.

⁵ See AT&T Mobility LLC's Objections to Interrogatories, *In the Matter of Worldcall Interconnect, Inc. v. AT&T Mobility LLC*, File No. EB-14-MD-011, at 6 (Nov. 5, 2014); Opposition to Motion to Strike, *In the Matter of Worldcall Interconnect, Inc. v. AT&T Mobility LLC*, File No. EB-14-MD-011, at 6-7 (Nov. 21, 2014) ("Opposition to Motion to Strike").

and entered in that proceeding and (ii) AT&T is able to provide appropriate notice to its counterparties consistent with the terms of its data roaming agreements.⁶ Contrary to WCX's speculation, if the full agreements are produced in the complaint proceeding, they will only confirm both the commercial reasonableness of the rates AT&T has proposed in the complaint proceeding and the unreasonableness of WCX's proposal.

Finally, AT&T wishes once again to stress that disputes regarding the commercial reasonableness of data roaming proposals should be resolved via the Commission's complaint procedures, not via petitions for declaratory ruling. As is evident from the record that has been developed to date in WCX's complaint proceeding, these cases are factually intense and involve highly confidential business information. Further, the Commission has already provided adequate guidance in the *Data Roaming Order* regarding the factors to be used in assessing commercial reasonableness. What now needs to occur is the application of the governing rules to a fully developed factual record. In AT&T's view, that can only occur in the context of a complaint proceeding like the one currently pending between WCX and AT&T, and AT&T is committed to moving forward with that process. Other carriers, such as T-Mobile, complaining of their inability to strike a deal with AT&T, should likewise avail themselves of this process.

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

Sincerely,

Michael P. Goggin

⁶ See *Opposition to Motion to Strike*, at n.31.