

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

|                              |   |                       |
|------------------------------|---|-----------------------|
| In the Matter of             | ) |                       |
|                              | ) |                       |
| WORLDCALL INTERCONNECT, INC. | ) |                       |
| a/k/a EVOLVE BROADBAND,      | ) |                       |
| Complainant                  | ) | File No. EB-14-MD-011 |
|                              | ) |                       |
| v.                           | ) |                       |
|                              | ) |                       |
| AT&T MOBILITY LLC,           | ) |                       |
| Defendant                    | ) |                       |

**NOTICE OF FILING**

On December 18, 2014, the Commission released an Agreed Order directing, among other things, that AT&T Mobility LLC (“AT&T”) (i) notify its counterparties that Worldcall Interconnect, Inc. (“WCX”) had requested production of AT&T’s data roaming agreements and (ii) file in this proceeding copies of any emails submitted in response to that notification. On December 26, 2014, AT&T received the attached emails objecting to the production of the data roaming agreements identified in the email. Consistent with its obligation under the Agreed Order, AT&T is submitting this Notice of Filing attaching the two emails it received.

Dated: December 29, 2014

Respectfully submitted,

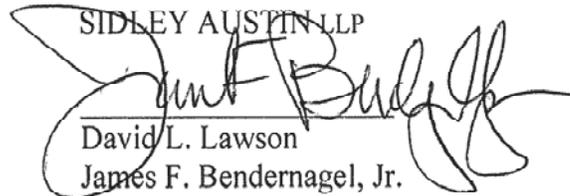
AT&T MOBILITY LLC

Steve Klimacek  
Kelly Romich  
1025 Lenox Park Blvd.  
Atlanta, GA 30319  
Telephone: (404) 986-9174

AT&T INC.

Michael P. Goggin  
1120 20<sup>th</sup> Street, N.W.  
Washington, D.C. 20036  
Telephone: (202) 457-2055

SIDLEY AUSTIN LLP

A large, stylized handwritten signature in black ink, appearing to read "James F. Bendernagel, Jr.", is written over a horizontal line.

David L. Lawson  
James F. Bendernagel, Jr.

Paul Zidlicky  
Thomas E. Ross  
1501 K Street, N.W.  
Washington, D.C. 20005  
Telephone: (202) 736-8000

# **ATTACHMENTS**

**From:** David Kaufman  
**Sent:** Friday, December 26, 2014 10:30 AM  
**To:** Lisa Boehley; 'lisa.saks@fcc.gov'; 'sandra.gray-fields@fcc.gov'  
**Cc:** 'jlbendernagel@sidley.com'; 'henry@dotlaw.com'; 'Douglas Minster'; Lou Tomasetti  
**Subject:** Worldcall Interconnect, Inc. v. AT&T Mobility LLC, File No. EB-14-MD-011

Dear Ms. Boehley & Ms. Saks:

This is in reference to that certain "Agreed Order", released December 18, 2014 in the above-referenced proceeding ("Order"). Pursuant to Paragraph 6.b of the Order, this Objection is being filed on behalf of Commnet Wireless, LLC ("Commnet"). Commnet is a counterparty to a roaming agreement with AT&T Mobility LLC ("AT&T"), specifically, that certain "Master Domestic GSM Roaming Agreement dated as of January 22, 2013, as amended" between Commnet and AT&T ("Commnet Agreement").

Commnet hereby objects to the production of the Commnet Agreement. The basis for Commnet's objection is set forth in the attached pdf document, which is incorporated into this e-mail by reference. This Objection is timely filed within five business days of December 18, 2014, as there was an intervening holiday.

Please direct any questions or correspondence concerning this matter to the undersigned.

David J. Kaufman  
Rini O'Neil, PC  
1200 New Hampshire Ave. NW, 6<sup>th</sup> Floor  
Washington, DC 20036  
**202-955-5516 work**  
202-997-0025 cell

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The shareholders of WCX are also the shareholders of another company named Worldcall, Inc. (“Worldcall”).<sup>1</sup> Worldcall, in turn, holds four 700 MHz B-block authorizations, two for Puerto Rico and two for the US Virgin Islands (“USVI”). Worldcall is selling the two Puerto Rico authorizations to AT&T (*see* FCC File No. 0006447466), but has not (yet) succeeded in convincing AT&T to purchase either the USVI or the TX-16 licenses. The instant complaint appears to be part of the shareholders’ strategy for forcing such a sale.

Via its two USVI licenses, Worldcall will be<sup>2</sup> a direct competitor with Commnet’s 100% affiliate in the USVI, Choice Communications, LLC (“Choice”).<sup>3</sup> It appears that Outside Counsel for WCX (McCullough/Henry, PC) serves in the same capacity for Worldcall. Because Commnet does not have access to the identity of WCX’s Outside Consultant, Commnet does not know whether the same is true of such Outside Consultant and must therefore assume such is the case.

Unlike WCX, with its single unbuilt 700 MHz license, Commnet and its affiliates operate in multiple markets across the United States, which means that the volumes of traffic are many times higher than would ever be the case for WCX. Unlike WCX, with its single unbuilt license, Commnet has a track record stretching back to the last century of providing incoming AT&T roamers with the highest-quality voice and data services. Also, Commnet and its affiliates across

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<sup>1</sup> In violation of the Commission’s disclosure rules and the instructions to Form 602, WCX’s Form 602 on file in ULS, File No. 0005379472, does not mention the ownership interests of any of these WCX shareholders in Worldcall, but a review of Worldcall’s ownership confirms it.

<sup>2</sup> We say “will be”, because Worldcall has not yet constructed any of its 700 MHz licenses.

<sup>3</sup> Each of Commnet and Choice is a 100% subsidiary of Atlantic Tele-Network, Inc. (“ATN”). Choice provides wireless voice and data services throughout the USVI under the following FCC authorizations, among others: Lease No. L000002456, Lease No. 000003571, and call signs WQCY880, WQUT992, B491 and WPOJ804.

the United States operate CMA, GSM and LTE facilities, but, importantly, all of Commnet's retail operations are CDMA or CDMA/LTE; Commnet has no GSM subscribers. As a result, *Commnet/Choice subscribers do not roam onto the facilities of AT&T*. Roaming, whether voice or data, is a one-way street, where AT&T subscribers roam onto Commnet networks, but not *vice versa*.

### **THE COMMNET AGREEMENT IS IRRELEVANT**

WCX is only entitled to the Commnet Agreement if it is a “matter that is relevant to any party's claim or defense”. See Federal Rules of Civil Procedure (“FRCP”), Rule 26(b)(1).<sup>4</sup>

Patently, WCX (assuming its motives are valid), is seeking to find out what kind of data roaming rates that AT&T provides to similarly-situated smaller wireless carriers. But Commnet is not similarly situated to WCX. In fact, Commnet and WCX are so dissimilar that the Commnet Agreement would not lead to any relevant information in this proceeding.

First, the Commnet Agreement addresses *both* voice traffic and data traffic. With only its single 700 MHz license, Worldcall is not in position to be a voice traffic provider, and the portion of the Commnet Agreement addressed to voice roaming is irrelevant. Second, because any global agreement addressing both voice and data necessarily includes compromises in one area or both, it says nothing about what would be an appropriate or reasonable rate for either voice or data standing alone.

Third, because WCX wants a data roaming agreement in order to enable WCX's subscribers to roam beyond TX-16 (*i.e.*, to roam onto the AT&T network), the Commnet

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<sup>4</sup> Although the Commission is not bound by the FRCP, they nonetheless provide valuable guidance in an area such as this.

Agreement (which addresses the opposite direction, AT&T subscribers roaming onto Commnet networks) has no probative value in this proceeding.

### **THE DAMAGE TO COMMNET FROM ANY DISCLOSURE WOULD BE HUGE**

As noted, except for two licenses where a sale to AT&T is already pending, all of Worldcall's 700 MHz licenses are for the USVI, where Worldcall would be competing directly with Choice for local subscribers. Any confidential information, such as the Commnet Agreement, which enables Worldcall to calculate the revenues which AT&T pays to Choice's parent, and thereby that parent's wherewithal to support Choice in its competition with Worldcall, will injure Choice and the entire ATN family. Any confidential information, such as the Commnet Agreement, which provides insight into one-sided roaming agreements (and thereby potentially into what Choice might be paying to CDMA carriers Sprint or Verizon for handling Choice subscribers when they leave the USVI) will injure Choice and the entire ATN family.

Even if WCX's Outside Counsel honors the letter of the Protective Order by declining to provide the contents of the Commnet Agreement to the Worldcall/WCX principals, counsel will inevitably provide advice and guidance to Worldcall respecting Worldcall's USVI operations using the facts gained via Counsel's review of the Commnet Agreement. ("I can't tell you precisely why I am so advising you, but you need to hold out for xxx in your USVI roaming negotiations", or "You should assume that if you set up a retail offering as you propose here, Choice will respond with yyy".) Indeed, given the duty that an attorney has to his client, WCX's Outside Counsel may be obligated to provide such guidance to the Worldcall principals when they are working on USVI matters.

## CONCLUSION

In deciding whether to require the production of Highly Confidential information belonging, as here, to a third person not a party to litigation, a forum necessarily has to balance the competing interests of the party seeking disclosure and the non-party seeking to maintain the confidentiality of its information. Where, as here, the information is of limited or no use to the party seeking disclosure in the litigation, but that information is useful *for competitive purposes* against the non-party in other geographic areas, disclosure should not be allowed. Accordingly, Commnet here requests that the Commission deny the request for production of the Commnet Agreement.

Respectfully submitted,  
**COMMNET WIRELESS, LLC**

December 26, 2014

Rini O'Neil, PC  
1200 New Hampshire Ave. NW, Suite 600  
Washington, DC 20036

By: \_\_\_\_\_/s/\_\_\_\_\_  
David J. Kaufman, Its Attorney  
202-955-5516  
dkaufman@rinioneil.com



**From:** David Kaufman [<mailto:dkaufman@telecommediatechlaw.com>]  
**Sent:** Friday, December 26, 2014 10:33 AM  
**To:** [lisa.saks@fcc.gov](mailto:lisa.saks@fcc.gov); Lisa Boehley  
**Cc:** Bendernagel, James F.; Lou Tomasetti; Douglas Minster; [henry@dotlaw.biz](mailto:henry@dotlaw.biz); [henry@dotlaw.bizon](mailto:henry@dotlaw.bizon)  
**Subject:** FW: Worldcall Interconnect, Inc. v. AT&T Mobility LLC, File No. EB-14-MD-011

This time to [henry@dotlaw.biz](mailto:henry@dotlaw.biz) and to [henry@dotlaw.bizon](mailto:henry@dotlaw.bizon)

David J. Kaufman  
202-955-5516 off.  
202-997-0025 cell

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Respectfully submitted,  
**COMMNET WIRELESS, LLC**

December 26, 2014

Rini O'Neil, PC  
1200 New Hampshire Ave. NW, Suite 600  
Washington, DC 20036

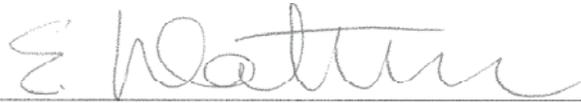
By: \_\_\_\_\_/s/\_\_\_\_\_  
David J. Kaufman, Its Attorney  
202-955-5516  
dkaufman@rinioneil.com

**CERTIFICATE OF SERVICE**

I hereby certify that on December 29, 2014, I caused the foregoing Notice of Filing to be served on Complainant and provided to the Enforcement Bureau via electronic mail.

W. Scott McCollough  
Matthew A. Henry  
McCullough Henry PC  
1250 South Capital of Texas Highway  
Building 2, Suite 235  
West Lake Hills, TX 78746

Lisa Saks  
Lisa Boehley  
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