

**PUBLIC VERSION**

**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 31, 2014, AT&T received the attached email objecting to the production of the data roaming agreement identified in the email. Consistent with its obligation under the Agreed Order, AT&T is submitting this Notice of Filing attaching the email it received.

Dated: January 2, 2015

Respectfully submitted,

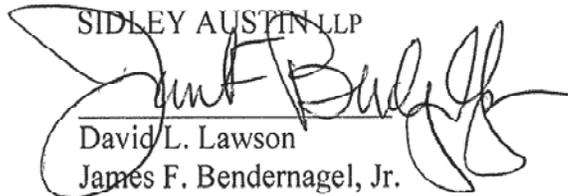
AT&T MOBILITY LLC

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 the printed name and extends to the right.

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

# **ATTACHMENT**

**From:** [Tim Welch](#)

**Sent:** Wednesday, December 31, 2014 1:49 PM

**To:** [Lisa Boehley](#) ; [Lisa Saks](#) ; [Sandra Gray-Fields](#) ; [Jim Bendernagel](#) ; [Matthew Henry](#)

**Cc:** [Tim Welch](#)

**Subject:** Worldcall Interconnect, Inc. v. AT&T Mobility LLC, File No. EB-14-MD-011

Good afternoon,

On behalf of Sagebrush Cellular, Inc. please find attached Sagebrush's Objection (highly confidential and public redacted copies) to WCX's request that AT&T produce a copy of the July 12, 2013 Master Roaming Agreement By and Between AT&T Mobility LLC Sagebrush Cellular. Sagebrush views the roaming agreement as highly confidential and considers that release of the roaming agreement would damage its position in the market. It is my understanding that AT&T will handle the filing of the attached documents with the Commission.

Timothy E. Welch

Hill & Welch

1025 Connecticut Ave., NW #1000

Washington, D.C. 20036

202-857-1470 (office)

202-321-1448 (cell - preferred)

301-622-2864 (fax)

**PUBLIC VERSION  
CONFIDENTIAL MATERIAL REDACTED**

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

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

**OBJECTION TO PRODUCTION OF ROAMING AGREEMENT**

Sagebrush Cellular, Inc. (Sagebrush), by its attorney, pursuant to the Commission staff's December 18, 2014 *Agreed Order* entered in the captioned case, hereby objects to the production of its roaming agreement with AT&T Mobility LLC (AT&T) as sought by Complainant Worldcall Interconnect, Inc. (WCX). In support whereof, the following is respectfully submitted.

**Calculation of Deadline to File an Objection**

1) Sagebrush received AT&T's notification regarding WCX's roaming agreement document production request on Monday December 22, 2014. The *Agreed Order* provides Sagebrush with five (5) business days upon receipt of notice of WCX's document request to file an objection. In calculating the objection filing deadline, consideration is given to two additional intervening Federal Holidays in addition to the intervening weekend holidays, Christmas (Thursday December 25), and the day after Christmas (Friday December 26) which President Obama declared a Federal Holiday by Executive Order. Accordingly, Sagebrush's objection is timely if filed by December 31, 2014. <http://www.whitehouse.gov/the-press-office/2014/12/06/executive-order-closing-executive-departments-and-agencies-federal-gover>

**Totality of the Circumstances Underlying the Sagebrush/AT&T Roaming Agreement**

2) There is no Commission rule which requires the filing of roaming agreements with the

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Commission nor is there a rule which requires carriers to provide copies of roaming agreements to other carriers upon request. Accordingly, while WCX's generally stated document production request seeks production of the Sagebrush/AT&T roaming agreement, AT&T is not legally obligated to provide that agreement to WCX.

3) [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] In contrast, WCX's market area for WQJZ320<sup>3</sup> is not only seven times more densely populated compared to Sagebrush's market area, WCX's market situated amidst three of the largest cities in the United States: Houston (4th largest US city), San Antonio (7th largest US city), and Austin (11<sup>th</sup> largest US city), Texas.<sup>4</sup>

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<sup>1</sup> [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[END HIGHLY CONFIDENTIAL]

<sup>2</sup> [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[END HIGHLY CONFIDENTIAL]

<sup>3</sup> WCX's market consists of the following thirteen Texas Counties: Austin, Bastrop, Burleson, Caldwell, Colorado, Fayette, Gonzales, Jackson, Lavaca, Lee, Matagorda, Washington, and Wharton. These counties have a total 2010 US Census population of 384,726 persons spread over approximately 10,934 sq. miles for a population density of 35 persons sq./mile.

<sup>4</sup> [http://en.wikipedia.org/wiki/List\\_of\\_United\\_States\\_cities\\_by\\_population](http://en.wikipedia.org/wiki/List_of_United_States_cities_by_population)  
These three Texas cities form a triangle with approximately 3 hour drives between Houston/San Antonio and Houston/Austin and a 1.25 hour drive between San Antonio/Austin.

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WCX's market situation is not even remotely comparable to Sagebrush's market situation and the Sagebrush/AT&T roaming agreement cannot serve as a reasonable proxy of a commercially reasonable roaming agreement in the context of the WCX/AT&T relationship.

4) Moreover, Sagebrush's roaming agreement with AT&T is unique. [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END HIGHLY

CONFIDENTIAL] These matters have no bearing on WCX's effort to establish a standardized roaming rate in its defined market area.

5) Regarding the data roaming rate issue at the heart of WCX's complaint, while AT&T must provide commercially reasonable automatic roaming to WCX, the Commission's automatic data roaming "rule expressly permits providers to adapt roaming agreements to 'individualized circumstances without having to hold themselves out to serve all comers indiscriminately on the same or standardized terms.'" *Cellco Partnership v. FCC*, 700 F.3d 534, 548 (D.C. Cir. 2012) citing *Reexamination of Roaming Obligations (Data Roaming Order)*, 26 F.C.C.R. at 5411, 5433 ¶ 45 (FCC 2011). The Commission must allow individualized roaming contract negotiation so that data roaming does not become a common carrier service and "in implementing the rule and resolving disputes that arise in the negotiation of roaming agreements, the Commission would thus do well to ensure that the discretion carved out in the rule's text remains carved out in fact." *Cellco Partnership v. FCC*, 700 F.3d at 549.

6) The Sagebrush/AT&T roaming agreement was the product of arms length negotiation

covering several years and it contains a confidentiality clause.<sup>5</sup> WCX's generalized document production request interferes with that negotiated contract clause, and the Sagebrush/AT&T roaming relationship, by seeking to reduce the Sagebrush/AT&T roaming agreement to nothing more than a tool to be used to assist WCX in determining an industry-wide roaming pricing standard. WCX's "prayer for relief" indicates that WCX's goal in the complaint proceeding is to ascertain and apply a "Prevailing Industry Retail Rate." WCX Roaming Complaint at 44. WCX's attempt to obtain the Sagebrush/AT&T roaming agreement for this improper common carrier purpose must be denied.

7) Even if ascertainment and application of an industrial roaming rate were a proper purpose, Sagebrush's and WCX's markets, and Sagebrush's and WCX's relationships to AT&T, are not reasonably similar and production of the Sagebrush/AT&T roaming agreement would not further WCX's goal of determining a reasonable commercial roaming rate. Accordingly, WCX's document production request must be denied.

8) As a final matter, on December 18, 2014 the WTB issued a *Declaratory Ruling*, DA 14-1865, which determined that parties negotiating roaming agreements can consider prices found in other roaming agreements to help ascertain commercial reasonableness. *Id.*, at ¶¶ 9, 14. It is Sagebrush's understanding that AT&T has provided WCX with a summary of AT&T roaming rates, but that WCX does not believe AT&T's proffer. However, the *Declaratory Ruling* does not require submission to complainants of confidential roaming agreement contracts and a proffered rate information summary would comply with the requirements of the *Declaratory Ruling* and would

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<sup>5</sup> Because each market is different, and because each roaming agreement is negotiated in the context of the market areas at issue in the context of the roaming agreement under negotiation, Sagebrush did not seek, and was not provided with, copies of any roaming agreement which AT&T might have had in place at the time the Sagebrush/AT&T roaming agreement was negotiated.

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provide WCX with the information it seeks.<sup>6</sup> WCX has not presented any argument justifying interference with the Sagebrush/AT&T roaming relationship.<sup>7</sup> The Sagebrush/ AT&T roaming agreement is the product of several relationships, in a very different market place, and Sagebrush's circumstances have no bearing upon WCX, or its market, or its relationship with AT&T.

9) Notwithstanding the foregoing, provided that WCX does not seek more than [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] (the Sagebrush/AT&T roaming rates provisions), Sagebrush does not object to AT&T releasing that roaming rate information to WCX, on a "highly confidential" basis while maintaining the confidentiality of all other portions of the Sagebrush/AT&T roaming agreement, in the event that AT&T chooses to release that information to WCX under the protections afforded in the captioned complaint proceeding regarding the handling of confidential information. Sagebrush objects to the release of all other portions of the Sagebrush/AT&T roaming agreement for the reasons stated above.

10) Sagebrush's limited consent regarding a portion of the Sagebrush/AT&T roaming agreement is not to be construed broadly as a waiver of the confidentiality of the remainder of the Sagebrush/AT&T roaming agreement. To the extent that WCX argues that Sagebrush's limited

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<sup>6</sup> If the *Declaratory Ruling* had required submission of roaming contracts such a rule would be invalid for being adopted by the staff rather than the Commissioners and because the document production requirement was not cleared by the OMB in violation of the Paperwork Reduction Act of 1995. *See e.g.* 44 U.S.C. § 3507(a) (an agency shall not collect information "unless in advance of the adoption or revision of the collection of information" the agency follows procedures and obtains OMB Director approval); 44 U.S.C. § 3512(b), *Saco River Cellular v. FCC*, 133 F.3d 25 (D.C. Cir. 1998) (PRA acts as a complete defense and bar).

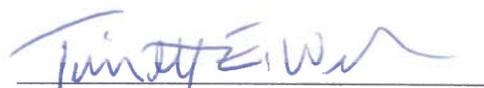
<sup>7</sup> WCX recognizes the value of confidentiality in the roaming agreement context: portions of WCX's roaming complaint have been submitted to the Commission confidentially and the public, including Sagebrush, cannot ascertain what information WCX is imparting to the Federal regulator of roaming arrangements in its effort to establish a standardized "Prevailing Industry Retail Rate" roaming rate rule. Commission rulemaking proceedings are required to be open and publicly noticed and neither of these conditions are present in the captioned complaint proceeding.

consent operates as a general waiver, or to the extent that the Commission construes Sagebrush's limited consent in such a manner, then Sagebrush revokes its limited consent and asserts its confidentiality right regarding all portions of the AT&T/Sagebrush roaming agreement and AT&T is not authorized to release any portion of the Sagebrush/AT&T roaming agreement.

WHEREFORE, in view of the information presented herein, it is respectfully submitted that the Commission should sustain Sagebrush's objection to WCX's roaming agreement document production request.

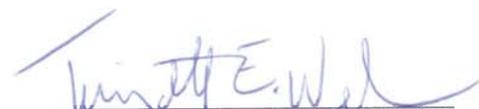
Hill & Welch  
1000 Connecticut Ave., NW #1025  
Washington, D.C. 20036  
202-321-1448  
301-622-2864 (FAX)  
December 31, 2014

Respectfully Submitted,  
SAGEBRUSH CELLULAR, INC.

  
\_\_\_\_\_  
Timothy E. Welch

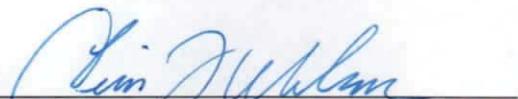
I hereby certify that as directed in the December 18, 2014 *Agreed Order* I have this 31<sup>st</sup> day of December 2014 delivered copies of the instant *Objection* via e-mail to:

Lisa Boehley–Lisa.Boehley@fcc.gov  
Lisa Saks–Lisa.Saks@fcc.gov  
Sandra Gray-Fields–Sandra.Gray-Fields@fcc.gov  
James Bendernagel–jbendernagel@sidley.com  
Matthew Henry–henry@dotlaw.bizon

  
\_\_\_\_\_  
Timothy E. Welch

## DECLARATION

I hereby certify under penalty of perjury that I have reviewed the foregoing OBJECTION TO PRODUCTION OF ROAMING AGREEMENT, that I have personal knowledge of the contents and negotiation of the Sagebrush/AT&T roaming agreement, the relevant market area, and that the factual statements contained within the OBJECTION TO PRODUCTION OF ROAMING AGREEMENT are true and correct to the best of my knowledge information and belief.



Tim Wilson, Director, Wireless Business  
Development, Sagebrush Cellular, Inc.

December 29, 2014

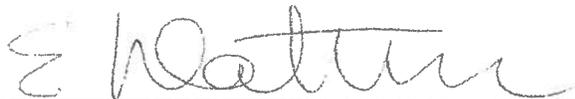
## CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2015, I caused the foregoing Notice of Filing to be served on Complainant and provided to the Commission as indicated below.

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554  
*Via Hand Delivery – Highly Confidential Version Only*

W. Scott McCollough  
Matthew A. Henry  
McCullough Henry PC  
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Building 2, Suite 235  
West Lake Hills, TX 78746  
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Lisa Boehley  
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