

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Reexamination of Roaming Obligations of) WT Docket No. 05-265
Commercial Mobile Radio Service Providers and)
Other Providers of Mobile Data Services)

OPPOSITION OF NTCA – THE RURAL BROADBAND ASSOCIATION

NTCA – The Rural Broadband Association (“NTCA”)¹ hereby opposes the Applications for Review filed by AT&T² and Verizon³ in the above-captioned proceeding. NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers and broadband providers and many also hold spectrum and provide wireless services. NTCA filed comments and participated in *ex parte* meetings in support of T-Mobile’s Petition for Expedited Declaratory Ruling and is therefore a proper party to this proceeding.⁴ NTCA urges the Federal Communications Commission (“Commission”) to deny AT&T and Verizon’s Applications for Review.

The Commission’s rules require facilities-based providers of commercial mobile data services to offer data roaming arrangements on commercially reasonable terms and conditions,

¹ NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and/or long distance services as well.

² Application for Review of AT&T, WT Docket No. 05-265 (filed Jan. 16, 2015) (“AT&T Application”).

³ Verizon Application for Review, WT Docket No. 05-265 (filed Jan. 20, 2015) (“Verizon Application”).

⁴ See, Comments of NTCA – The Rural Broadband Association on Petition for Expedited Declaratory Ruling of T-Mobile USA, Inc, WT Docket No. 05-265 (filed June 10, 2014). See also, Reply Comments of NTCA – The Rural Broadband Association (filed August 20, 2010).

certain to certain limitations.⁵ T-Mobile USA, Inc. (“T-Mobile”) sought much needed guidance from the Wireless Telecommunications Bureau (the “Bureau”) to determine whether the terms of any given data roaming agreement would meet the “commercially reasonable” standard adopted in the *Data Roaming Order*.⁶ The collective wireless industry, other than AT&T and Verizon, agreed that such guidance was necessary to ensure that consumers and facilities-based providers offering a competitive alternative to AT&T and Verizon would continue to have access to nationwide mobile data services. In December, 2014, the Bureau acted upon the T-Mobile petition and provided clarifications with respect to what might be considered “commercially reasonable” under the Commission’s pre-existing rules.⁷ AT&T and Verizon challenge the Bureau’s action on procedural grounds, characterizing it is a substantive rule change rather than a clarification.

The data roaming rule permits consideration of the totality of the facts to determine whether a roaming agreement meets the standard of commercially reasonable. In the *Data Roaming Order*, the Commission listed seventeen factors that it would take into account in applying the commercial reasonableness standard; the Commission expressly noted that the factors “may” be considered, and emphasized that the factors listed are neither exclusive nor

⁵ See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, *Second Report and Order*, 26 FCC Rcd 5411 ¶¶ 1-2 (“*Data Roaming Order*”) *aff’d sub nom. Cellco Partnership v. FCC*, 700 F.3d 534 (D.C. Cir 2012).

⁶ Petition for Expedited Declaratory Ruling of T-Mobile USA, Inc., WT Docket No. 05-265 (filed May 27, 2014). (“T-Mobile Petition”)

⁷ Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers of Mobile Data Services, WT Docket No. 05-265, *Declaratory Ruling* (WTB Dec. 18, 2014). (“*Declaratory Ruling*”)

exhaustive.⁸ After learning of the continued difficulties the industry faces when negotiating roaming agreements, the Bureau correctly determined that it should lessen ambiguity in the application of the standard and permit a complaining party to offer evidence in its individual case as to whether proffered roaming rates are substantially in excess of other rates.

The *Data Roaming Order* granted the Bureau authority to “resolve any disputes arising out of the data roaming rule”⁹ and specifically invited carriers to file petitions for declaratory ruling with the Bureau if additional guidance or resolution of issues was necessary.¹⁰ The Bureau’s Declaratory Ruling merely makes clear that parties may offer evidence of whether roaming rates are in line with retail rates, international rates, and/or MVNO /resale rates as part of the totality of circumstances to be considered when evaluating the reasonableness of roaming rates, terms and conditions. There was no change to the underlying rules.

The purpose of the *Data Roaming Order* was to create an environment where all mobile wireless operators, regardless of size and location, are able to enter into commercially reasonable data roaming agreements. Unfortunately, that goal has not been realized. In its *Declaratory Ruling*, the Bureau responded to complaints and studies in the record that demonstrate that the wholesale roaming marketplace remains unchanged and is no more competitive than it was when the Commission adopted the *Data Roaming Order*.¹¹ There is empirical and anecdotal evidence

⁸ *Data Roaming Order* ¶¶ 75, 82, 86, 87.

⁹ *Data Roaming Order*, ¶ 97

¹⁰ *Id.* ¶ 75.

¹¹ See e.g., *Ex Partes* in WT Docket No 05-265 of Information Age Economics (filed February 19, 2014); Leap Wireless International and Cricket Communications (filed January 23, 2013); the Rural Telecommunications Group (“RTG”) and NTCA (filed November 9, 2012); RTG (filed March 9, 2011).

showing that the wholesale roaming rates offered by the largest mobile wireless operators are predatory and anticompetitive in nature and have no relation to what the largest operators' own retail customers are paying.

NTCA's members are small, rural mobile wireless providers that operate in discrete areas, typically unserved or underserved by AT&T and Verizon. These small providers do not, and in fact cannot, offer a national or regional footprint, but their rural consumers, like most mobile wireless consumers, rely on mobile data and expect to be able to use their devices for mobile data service wherever they are. Small providers must rely on data roaming to offer their customers reliable, competitive coverage. However, the market for data roaming is not competitive. Despite the Commission's *Data Roaming Order*, the industry's small and rural operators are still hampered by the actions of the nation's largest carriers. Consolidation in the wireless market has led to fewer potential roaming partners and increasingly unequal bargaining positions.¹² The guidance offered by the Bureau addressed an ambiguity that was being distorted by the two largest mobile wireless providers to the detriment of consumers and every other wireless provider in the marketplace. The Bureau merely made it clear to all parties what specific additional facts could be relevant in examining the totality of circumstances to determine the commercial reasonableness of a roaming agreement. The arguments against the clarification made by those who benefit from and take advantage of lingering ambiguity should be dismissed.

¹² The nation's two largest wireless providers account for approximately 67% of all wireless revenue and have extensive spectrum holdings. See *Implementation of Section 65002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions Wire Respect to Mobile Wireless, Including Commercial Mobile Services, Sixteenth Report*, 28 FCC Rcd. 3700 ¶¶ 52,118 (2013).

CONCLUSION

For the foregoing reasons, NTCA opposes the applications for review of AT&T and Verizon and respectfully requests that the Commission deny these applications.

Respectfully submitted,



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