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August 4, 2014

ACCEPTED/FILED

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

AUG - 4 2014

Federal Communications Commission  
Office of the Secretary

Re: *NTCH, Inc. v. Cellco Partnership d/b/a Verizon Wireless*,  
File No. EB-13-MD-006

Dear Ms. Dortch:

Enclosed is Verizon's Answer in the above-captioned proceeding.

Sincerely,

A handwritten signature in black ink that reads "Andre J. Lachance". The signature is fluid and cursive.

Andre J. Lachance

Enclosures

cc: Donald J. Evans (via courier)  
Rosemary McEnery (via email and hand delivery)  
Lia Royle (via email and hand delivery)

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# TAB A

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
NTCH, Inc.,	)	File No. EB-13-MD-006
	)	
Complainant	)	
	)	
v.	)	
	)	
Cellco Partnership dba Verizon Wireless,	)	
	)	
Defendant	)	

**VERIZON WIRELESS ANSWER**

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August 4, 2014

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Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
NTCH, Inc.,	)	File No. EB-13-MD-006
	)	
Complainant	)	
	)	
v.	)	
	)	
Cellco Partnership dba Verizon Wireless,	)	
	)	
Defendant	)	

**VERIZON WIRELESS ANSWER**

Pursuant to Section 1.724 of the Commission’s rules, 47 C.F.R. § 1.724, Cellco Partnership d/b/a Verizon Wireless (“Verizon” or “Defendant”) hereby answers the Formal Complaint of NTCH, Inc. (“NTCH” or “Complainant”) as follows:

**I. ALLEGATIONS REGARDING THE PARTIES**

1. Defendant admits that the Complainant is NTCH, Inc. Defendant avers that it lacks information sufficient to admit or deny whether Complainant is a Delaware corporation. Defendant avers that it lacks information sufficient to admit or deny whether Complainant is headquartered at 5594 S. Ft. Apache Rd., Suite 100, Las Vegas, NV 89148. Defendant notes that, based upon information provided in the Formal Complaint Intake Form (FCC 485) served with the Complaint, that NTCH’s address appears to be 319 West Yakima Avenue, Yakima, WA, 98902. Defendant avers that it lacks information sufficient to admit or deny the remaining allegations in the paragraph.

2. Defendant admits.

3. Defendant admits.

**II. ALLEGATIONS REGARDING BACKGROUND**

4. Defendant admits that the Federal Communications Commission’s (“Commission”) Report and Order, *An Inquiry into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems*, CC Docket No. 79-318, is published at 86 FCC 2d 469 (1981). Defendant avers that the Commission’s Report and Order in CC Docket No. 79-318 speaks for itself and on that basis denies the allegations in paragraph 4. Defendant avers further that the allegations in paragraph 4 contain speculation and conjecture regarding the Commission’s motivation in issuing that order and on that basis denies the allegations in paragraph 4.

5. Defendant admits that the Commission’s Report and Order and Further Notice of Proposed Rulemaking, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, is published at 22 FCC Rcd 15817 (2007). Defendant avers that the Commission’s Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 05-265 speaks for itself and on that basis denies the allegations in paragraph 5. Defendant avers further that the allegations in paragraph 5 contain speculation and conjecture regarding the conduct of unidentified “wireline-affiliated carriers” over an indeterminate period of “two decades” and on that basis denies the allegations in paragraph 5.

6. Defendant avers that the Commission’s Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 05-265 speaks for itself and on that basis denies the allegations in paragraph 6. Defendant admits that the Commission’s Order on Reconsideration and Second Further Notice of Proposed Rulemaking, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, is published at 25 FCC Rcd 4181 (2010). Defendant avers that the Commission’s Order on Reconsideration and Second Further Notice of Proposed Rulemaking in WT Docket No. 05-265 speaks for itself and on that

basis denies the allegations in paragraph 6. Defendant avers further that the remaining allegations in paragraph 6 contain speculation and conjecture regarding the Commission's motivation in issuing these orders and on that basis denies the allegations in paragraph 6.

7. Defendant admits that the Commission's Second Report and Order, *Interconnection and Resale Obligations*, CC Docket No. 94-54, is published at 11 FCC Rcd 9462 (1996). Defendant avers that the Commission's Second Report and Order speaks for itself and on that basis denies the allegations in paragraph 7.

8. Defendant admits that the Commission's Second Report and Order, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, is published at 26 FCC Rcd 5411 (2011). Defendant avers that the Commission's Second Report and Order in WT Docket No. 05-265 speaks for itself and on that basis denies the allegations in paragraph 8. Defendant avers further that the allegations in paragraph 8 contain speculation and conjecture regarding the Commission's motivation in issuing that order and on that basis denies the allegations in paragraph 8. Defendant avers further that the remaining allegations in paragraph 8 contain legal argument and conclusion that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 8.

9. Defendant avers that the allegations in paragraph 9 contain speculation and conjecture regarding the state of the wireless industry, the state of the Commission's roaming regulation, and the relative business incentives of carriers to provide roaming service and on that basis denies the allegations in paragraph 9. Defendant denies that it has been increasingly reluctant to make roaming available to other carriers. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] Defendant avers further that the remaining allegations in paragraph 9 contain legal argument and conclusion that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 9.

### III. ALLEGATIONS REGARDING MARKET DOMINANCE BY VZW

10. Defendant admits that the Commission’s Memorandum Opinion and Order and Declaratory Ruling, *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox, TMI, LLC for Consent to Assign AWS-1 Licenses*, WT Docket Nos. 12-4 and 12-175, which approved with conditions Verizon’s acquisition of spectrum from SpectrumCo, T-Mobile, and Leap, is published at 27 FCC Rcd 10698 (2012). Defendant avers that the Commission’s Memorandum Opinion and Order and Declaratory Ruling in WT Docket Nos. 12-4 and 12-175 speaks for itself and on that basis denies the allegations in paragraph 10.

11. Defendant admits that parties, including NTCH, filed pleadings with the Commission opposing the proposed acquisition of spectrum from SpectrumCo, T-Mobile, and Leap in WT Docket Nos. 12-4 and 12-175. Defendant admits further that paragraph 11 of the Complaint correctly quotes a portion of the Commission’s Memorandum Opinion and Order and Declaratory Ruling in WT Docket Nos. 12-4 and 12-175. Defendant avers that the documents filed in WT Docket Nos. 12-4 and 12-175 and the Memorandum Opinion and Order and Declaratory Ruling in that proceeding speak for themselves and on that basis denies the allegations in paragraph 11.

12. Defendant avers that the Commission’s Memorandum Opinion and Order and Declaratory Ruling in WT Docket Nos. 12-4 and 12-175 speaks for itself and on that basis denies the allegations in paragraph 12. Defendant admits that Sprint offers CDMA service on a national basis. Defendant denies that Complainant cannot rely on roaming services provided by Sprint or

other CDMA-based carriers. Defendant further avers that the remaining allegations in paragraph 12 contain speculation and conjecture and on that basis denies the remaining allegations in paragraph 12.

13. Defendant denies that Complainant cannot rely on roaming services provided by Sprint outside of NTCH's own coverage area. Defendant avers that the remaining allegations in paragraph 13 contain speculation and conjecture about Sprint's network and statements about ineffective hand-offs between the Sprint and NTCH networks and on that basis denies the allegations in paragraph 13. Defendant lacks information sufficient to admit or deny the remaining allegations in paragraph 13.

14. Defendant avers that the allegations in paragraph 14 contain speculation and conjecture about the market for wireless handsets and on that basis denies the allegations in paragraph 14. Defendant avers that the Memorandum Opinion and Order and Declaratory Ruling in WT Docket Nos. 12-4 and 12-175 speaks for itself and on that basis denies the allegations in paragraph 14. Defendant further avers that the documents filed in WT Docket Nos. 12-4 and 12-175 and the Memorandum Opinion and Order and Declaratory Ruling in that proceeding speak for themselves and on that basis denies the allegations paragraph 14.

15. Defendant denies that NTCH has no viable roaming alternatives to Verizon. Defendant denies that it does not have incentive to enter into roaming agreements with other carriers. Defendant further avers that the allegations in paragraph 15 contain speculation and conjecture regarding Verizon's position in the roaming market and Verizon's business incentives to enter into roaming agreements and on that basis denies the allegations in paragraph 15. Defendant further avers that 47 C.F.R. § 20.12 speaks for itself and on that basis denies the

allegations in paragraph 15. Defendant denies the entirety of NTCH's characterization of its LTE in Rural America program.

16. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] Defendant avers that the remaining allegations in paragraph 16 contain speculation and conjecture regarding the business plans and practices of wireless carriers and MVNOs and on that basis denies the allegations in paragraph 16.

17. Defendant avers that the allegations in paragraph 17 contain speculation and conjecture regarding what a wireless carrier may charge its customers and what a wireless carrier must be able to offer in order to compete and on that basis denies the allegations in paragraph 17. Defendant further avers that 47 C.F.R. § 20.12 speaks for itself and on that basis denies the allegations in paragraph 17. Defendant denies that the Commission has provided no guidance regarding what constitutes just and reasonable and non-discriminatory rates, terms and conditions for roaming. Defendant denies that its existing and offered terms and conditions for roaming are financially unsustainable for other wireless carriers. Defendant avers that the remaining allegations in paragraph 17 contain legal argument and conclusions that do not require a response. If they do require a response, Defendant denies the remaining allegations in paragraph 17.

#### **IV. ALLEGATIONS REGARDING THE NEGOTIATIONS BETWEEN THE PARTIES**

18. Defendant admits, based on Item 1 of Exhibit A to the Complaint (pages 00001-00050), that NTCH and Verizon entered into a roaming agreement effective May 16, 2006 and that this agreement specifies roaming rates applicable to NTCH customers. Defendant avers that that agreement speaks for itself, and for that reason denies the allegations in paragraph 15

concerning the nature of the agreement. Defendant denies that its offered roaming rates are so financially burdensome to NTCH as to preclude NTCH customers from roaming on Verizon's network. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] Defendant lacks information sufficient to admit or deny the allegations regarding AT&T's roaming rates and AT&T's rates with Straight Talk. Defendant avers that the remaining allegations in paragraph 18 contain speculation and conjecture and on that basis denies the remaining allegations in paragraph 18.

19. Defendant admits, based upon the documents contained in Items 3 and 4 of Exhibit A to the Complaint (pages 00052-00116), that NTCH and Verizon engaged in discussions relating to a new roaming agreement. Defendant avers that the written communications between NTCH and Verizon speak for themselves and on that basis denies the allegations in paragraph 19. By way of further response, Defendant avers that on November 22, 2013, it presented NTCH with a proposal for new roaming rates of [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] A copy of that offer is appended hereto as Exhibit 4. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] Defendant avers that on December 9, 2013, it presented

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<sup>1</sup> EVDO is an acronym for Evolution - Data Optimized.

NTCH a new offer for roaming rates for [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED] [END

CONFIDENTIAL] A copy of that offer is appended hereto as Exhibit 5. Admits, based upon the documents contained in Items 3.a-5.c of Exhibit A to the Complaint and Exhibits 1-6 hereto, that NTCH and Verizon engaged in discussions relating to a new roaming agreement.

Defendant avers that the remaining allegations in paragraph 19 contain speculation and conjecture and on that basis denies the remaining allegations in paragraph 19.

20. Admits based on Exhibits 7-9 hereto and Items 5.b-5.c of Exhibit A to the Complaint that NTCH and Verizon engaged in discussions in the context of Commission staff-requested mediation from January 2014 through April 11, 2014. Defendant further Admits that in those discussions, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END

CONFIDENTIAL] Defendant admits that it countered with an offer of [BEGIN

CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL].

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

**V. ALLEGATIONS THAT VERIZON’S ROAMING RATES ARE UNJUST AND UNREASONABLE**

21. Defendant admits that Complainant correctly quotes a portion of section 201 of the Communications Act of 1934, as amended, 47 U.S.C. § 201. Defendant avers that 47 U.S.C. § 201 speaks for itself.

22. Defendant admits that the Commission’s Report and Order and Further Notice of Proposed Rulemaking, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, is published at 22 FCC Rcd 15817 (2007). Defendant admits further that Complainant correctly quotes a portion of the Commission’s Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 05-265. Defendant avers that this order speaks for itself and on that basis denies the allegations in paragraph 22.

23. Defendant admits that the Commission’s Memorandum Opinion and Order, *General Communications, Inc. v. Alascom, Inc.* is published at 4 FCC Rcd 7304 (1988). Defendant admits further that Complainant correctly quotes a portion of that Memorandum Opinion and Order. Defendant avers that this order speaks for itself and on that basis denies the allegations in paragraph 23.

24. Defendant admits that the Commission’s Order on Reconsideration in *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High Cost Universal Service Support, Developing a Unified Interrelated Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, *et al.*, is published at 26 FCC Rcd 17663 (2011). Defendant admits further that Complainant correctly quotes a portion of that Order on Reconsideration. Defendant avers that the Order on

Reconsideration, WC Docket Nos. 10-90, *et al.*, speaks for itself and on that basis denies the allegations in paragraph 24. Defendant avers further that the allegations in paragraph 24 contain legal argument and conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 24.

25. Defendant avers that the first sentence in paragraph 25 contains legal argument and conclusions that do not require a response. If it does require a response, Defendant denies the allegations. Defendant lacks information sufficient to admit or deny that a company doing business as Straight Talk offered, through Walmart, a 30-day pre-paid service card for unlimited wireless voice, text, and web access for \$45.00. **[BEGIN CONFIDENTIAL]** [REDACTED]  
[REDACTED] **[END CONFIDENTIAL]** Defendant lacks information sufficient to admit or deny the remaining allegations in paragraph 25.

26. **[BEGIN CONFIDENTIAL]** [REDACTED]  
[REDACTED]  
[REDACTED] **[END CONFIDENTIAL]** Defendant avers further that paragraph 26 contains legal argument and conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 26.

27. Defendant admits that the financial figures in Exhibit R of the Complaint attributed to Verizon are referenced in the 2013 Annual Report of Verizon Communications Inc. Defendant lacks information sufficient to admit or deny the estimate of Verizon's ARPU in Exhibit F. Defendant avers that the allegations in paragraph 27 contain speculation and conjecture regarding Verizon's cost of service and on this basis denies the allegations in

paragraph 27. Defendant denies that [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] Defendant avers further that paragraph 27 contains legal argument and conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 27.

28. Defendant denies that [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] Defendant avers that the remaining allegations in paragraph 28 contain speculation and conjecture regarding [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] Defendant avers that the remaining allegations in paragraph 28 contain speculation and conjecture and on this basis denies the remaining allegations in paragraph 28.

29. Defendant admits that an MVNO purchases wireless services from a facilities-based carrier in order to resell that service to the public. [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] Defendant [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] Defendant denies that an MVNO arrangement is (or is effectively) a nationwide roaming agreement with no home area. Defendant avers that the remaining allegations in paragraph 29 contain speculation and conjecture and on this basis denies the allegations in paragraph 29. By way of further response, Defendant avers that the allegations in paragraph 29 contain legal argument and conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 29.

30. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END

CONFIDENTIAL] Defendant avers that the remaining allegations in paragraph 30 contain legal argument and conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 30.

**VI. ALLEGATIONS THAT VERIZON'S ROAMING RATES ARE UNREASONABLY DISCRIMINATORY**

31. Defendant admits that the Complaint correctly quotes a portion of section 202 of the Communications Act of 1934, as amended, 47 U.S.C. § 202, at paragraph 31. Defendant avers that 47 U.S.C. § 202 speaks for itself.

32. Defendant admits that the Commission's Second Report and Order in *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, is published at 9 FCC Rcd 1411 (1994). Defendant avers that the Second Report and Order in GN Docket No. 93-252 speaks for itself and on that basis denies the allegations in paragraph 32. Defendant admits further that Complainant correctly quotes a portion of section 211 of the Communications Act of 1934, as amended, 47 U.S.C. § 211, at paragraph 32. Defendant admits that on November 22, 2013, NTCH filed a Petition to Rescind Forbearance in GN Docket No. 93-252. Defendant avers that Verizon filed an opposition to this petition on December 2, 2013.

33. Defendant admits that it offers roaming rates and terms to other carriers. Defendant denies that it characterizes roaming rates as MVNO rates. [BEGIN

CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] Defendant

denies that an MVNO arrangement is effectively a nationwide roaming agreement with no home

area. Defendant avers that the remaining allegations in paragraph 33 contain speculation and conjecture and on this basis denies the allegations in paragraph 33. Defendant also avers that the remaining allegations in paragraph 33 contain legal argument and conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 33.

34. Defendant admits that its charges for roaming and MVNOs are ordinarily not available for public inspection. Defendant avers that the Second Report and Order in GN Docket No. 93-252 speaks for itself and on that basis denies the allegations in paragraph 34. Defendant avers that the allegations in paragraph 34 contain legal argument and conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 34. Defendant further avers that the allegations in paragraph 34 contain speculation and conjecture and on this basis denies the allegations in paragraph 34.

35. Defendant admits, based on the document titled “Declaration of Eric Steinmann” attached to the Complaint, that Eric Steinmann has the title of Director of Development for NTCH. Defendant avers that it lacks information sufficient to admit or deny whether Mr. Steinmann sits on the board of another carrier. Defendant further admits that the Rural Carrier Association and Rural Telecommunications Group jointly submitted a letter in WT Docket No. 05-265 on November 12, 2010. Defendant avers that the remaining allegations in paragraph 35 contain speculation and conjecture and on this basis denies the allegations in paragraph 35.

36. Defendant admits that its charges for roaming and MVNOs are ordinarily not available for public inspection. Defendant avers that the remaining allegations in paragraph 36 contain speculation and conjecture and on this basis denies the allegations in paragraph 36.

**VII. ALLEGATIONS THAT VERIZON'S BROADBAND ROAMING RATES ARE NOT OFFERED ON COMMERCIALLY REASONABLE TERMS AND CONDITIONS**

37. Defendant admits that the Commission's Second Report and Order, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, is published at 26 FCC Rcd 5411 (2011). Defendant avers that this Second Report and Order speaks for itself and on this basis denies the allegations in paragraph 37. Defendant avers further that the allegations in paragraph 37 contain legal argument and conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 37.

38. Defendant avers that the Second Report and Order in WT Docket No. 05-265 speaks for itself and on this basis denies the allegations in paragraph 38. Defendant further that the allegations in paragraph 38 contain legal argument and conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 38.

39. Defendant admits that the Commission's Second Report and Order in *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, is published at 9 FCC Rcd 1411 (1994). Defendant admits further that paragraph 39 of the Complaint correctly quotes a portion of section 20.3 of the Commission's rules, 47 C.F.R. § 20.3. Defendant avers that this Second Report and Order and 47 C.F.R. § 20.3 speak for themselves and on this basis denies the remaining allegations in paragraph 39.

40. Defendant admits that paragraph 40 of the Complaint correctly quotes a section of the Commission's Second Report and Order in *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, 9 FCC

Rcd 1411 (1994). Defendant avers that this Second Report and Order speaks for itself and on this basis denies the remaining allegations in paragraph 40.

41. Defendant admits that the Commission’s Declaratory Ruling in *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, is published at 22 FCC Rcd 5901 (2007). Defendant avers that this Declaratory Ruling speaks for itself and on this basis denies the allegations in paragraph 41. Defendant notes that paragraph 41 refers to a previously uncited “2011 Order” which Defendant presumes is the Second Report and Order in WT Docket No. 05-265. Defendant avers that section 20.3 of the Commission’s rules, 47 C.F.R. § 20.3, and the Second Report and Order in WT Docket No. 05-265 speak for themselves and on this basis denies the remaining allegations in paragraph 41.

42. Defendant avers that section 20.3 of the Commission’s rules, 47 C.F.R. § 20.3, and the Declaratory Ruling in WT Docket No. 07-53 speak for themselves and on this basis denies the allegations in paragraph 42. Defendant admits that paragraph 42 of the Complaint correctly quotes a part of section 332(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 332(c)(1). Defendant avers that section 332(c)(1) of the Act and the Second Report and Order in GN Docket 93-252 speak for themselves and on this basis denies the allegations in paragraph 42. Defendant avers further that the remaining allegations in paragraph 42 contain legal argument and conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 42.

43. [38/43]<sup>3</sup> Defendant avers that section 20.3 of the Commission’s rules, 47 C.F.R. § 20.3, and the Second Report and Order in WT Docket No. 05-265 speak for themselves and on this basis denies the allegations in paragraph 38/43. Defendant avers further that the remaining allegations in paragraph 38/43 contain legal argument and conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 38/43.

44. [39/44] Defendant avers that the Second Report and Order in WT Docket No. 05-265 speaks for itself and on this basis denies the allegations in paragraph 39/44. Defendant avers further that the remaining allegations in paragraph 39/44 contain legal argument and conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 39/44.

45. [40/45] Defendant avers that the Second Report and Order in WT Docket No. 05-265 speaks for itself and on this basis denies the allegations in paragraph 40/45. Defendant avers further that the allegations in paragraph 40/45 contain legal argument and conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 40/45.

46. [41/46] Defendant avers that paragraph 41/46 contains allegations regarding NTCH’s own motivation, network and business plans. Defendant thus lacks information sufficient to admit or deny the allegations in paragraph 41/46.

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<sup>3</sup> Verizon notes that the paragraphs in the Complaint are mis-numbered. After paragraph 42, the next numbered paragraph is number 38 and subsequent paragraphs are numbered in sequence from 39 to 61. To avoid confusion, therefore, when referring to paragraphs starting with the second paragraph 38 on page 21 of the Complaint (which should be paragraph 43), Verizon will refer to these mis-numbered paragraphs stating both the way they are actually numbered and the way they should be numbered. Thus, the second paragraph number 38 will be referred to as “paragraph 38/43” with that designation provided at the opening of the corresponding paragraph in this Answer.

47. [42/47] Defendant admits that the Verizon service plan advertisement at Exhibit N of the Complaint describes data usage and pricing options for prepaid customers' one-time LTE usage offered as of the time of the Complaint. Defendant admits that Verizon's most recent data roaming offer to NTCH was [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL], and that it offered a rate of [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] Defendant avers that the

remaining allegations in paragraph 42/47 contain speculation and conjecture regarding rates Verizon charges to prepaid and/or wholesale customers and on Verizon's internal costs and on this basis denies the remaining allegations in paragraph 42/47. By way of further response, Defendant avers that it has offered data roaming service to NTCH at rates that [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

48. [43/48] Defendant admits that Exhibit P of the Complaint is an Ex Parte letter filed on behalf of Youghioghny Communications, LLC ("Youghioghny") in WT Docket No. 05-265 on February 6, 2014. Defendant avers that the remaining allegations in paragraph 43/48 contain speculation and conjecture regarding rates [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] on Verizon's internal costs, and on the internal costs of Youghioghny, and on this basis denies the allegations in paragraph 43/48. Defendant avers further that the remaining allegations in paragraph 43/48 contain legal argument and conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 43/48.

49. [44/49] Defendant avers that the Second Report and Order in WT Docket No. 05-265 speaks for itself and on this basis denies the allegations in paragraph 44/49. Defendant denies that its offered terms and conditions are tantamount to a refusal to offer an agreement. Defendant denies that NTCH is not seeking to roam where it has existing licenses. Defendant further avers that it lacks information sufficient to admit or deny whether NTCH seeks roaming where there is technical incompatibility with Verizon's data interface. Defendant denies that its current or offered roaming rates impair NTCH's ability to compete as a facilities-based carrier. Defendant avers further that the remaining allegations in paragraph 44/49 are speculation and conjecture and legal conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 44/49.

#### **VIII. COMPLAINANT'S PRAYER FOR RELIEF**

Defendant avers that paragraphs 45/50 through 54/59 represent Complaint's prayer for relief and no response from Defendants is required. To the extent a response is required, Defendant denies the allegations in paragraphs 45/50 through 54/59 for the reasons set forth in the attached Legal Analysis.

#### **IX. OTHER REQUIREMENTS OF SECTIONS 1.721 OF THE RULES**

Defendant avers that the remaining statements in paragraphs 55/60 through 56/61 of the Complaint relate to the Commission's procedural requirements for formal complaints and no response from Defendant is required. Defendant notes that the facts over which Robert Strobel has personal knowledge are correctly described in the attached Information Designation. To the extent required, Defendant thus denies the statement in Paragraph 51/56(ii) of the Complaint that Mr. Strobel is the successor to Mr. Pocher. Defendant further denies that Mr. Strobel has personal knowledge of any negotiations other than exchanges of letters and emails in his role as lawyer, conversations he had with Mr. Evans and his participation in calls regarding a potential

wholesale/MVNO relationship or has information about the rates beyond the knowing the rates offered.

**GENERAL DENIAL**

Any allegation not specifically admitted herein is denied.

### AFFIRMATIVE DEFENSES

**First Affirmative Defense.** Section 1.721(a)(5) requires NTCH to include a complete statement of facts which, if proven true, would demonstrate that Verizon's offered roaming rates are unjust and unreasonable, unreasonably discriminatory, and commercially unreasonable. 47 C.F.R. § 1.721(a)(6). As demonstrated in the attached Legal Analysis, even if all of the factual allegations were true, nearly all of them are irrelevant to NTCH's claims, and the few arguably relevant facts averred in the Complaint do not demonstrate that Verizon's offered rates are unjust and unreasonable, unreasonably discriminatory, or commercially unreasonable.

**Second Affirmative Defense.** NTCH's claims are barred for failure to state a cause of action. In a formal complaint proceeding pursuant to section 208 of the Act, the complainant has the burden of establishing a violation of the Act. *See* 47 C.F.R. § 1.720(b); *American Message Centers v. FCC*, 50 F.3d 35, 41 (D.C. Cir. 1995) (citing *Amendment of Rules Governing Procedures To Be Followed Where Formal Complaints are filed Against Common Carriers*, 3 FCC Rcd 1806, 1806 (1988)); *Hi-Tech Furnace Systems, Inc. v. FCC*, 224 F.3d 781, 787 (D.C. Cir. 2000) (affirming the Commission's decision to impose the burden of proof on the complainant); *Aeronautical Radio, Inc. v. F.C.C.*, 642 F.2d 1221, 1235 n.34 (D.C. Cir. 1980), *cert. denied*, 451 U.S. 920 (1981). A formal complaint must allege and prove each and every element of the purported violation(s) of the Communications Act, or Commission rule or order that underpins the complaint. As demonstrated in the attached Legal Analysis, the Complaint fails to meet this preliminary hurdle and must be dismissed under 47 C.F.R. § 1.728(a).

**Third Affirmative Defense.** NTCH's request that the Commission require Verizon to make its roaming rates publicly available, *see* Complaint ¶ 53/58, is not appropriately the subject

of this formal complaint. This matter is the subject of NTCH's Petition to Rescind Forbearance in GN Docket No. 93-252 and should be resolved in that context.

**Fourth Affirmative Defense.** NTCH's requests that the Commission require Verizon to charge no more than a given rate for voice and data roaming during the pendency of the complaint. *See* Complaint ¶¶ 50/55 and 51/56. The Commission reviews requests for interim injunctive relief on a case-by-case basis, and requires that Complainant include the legal basis for such relief in its Complaint. *See Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497, 22571 ¶ 169 (1997). As demonstrated in the attached Legal Analysis, Complainant's only cited basis for this request is contrary to the Second Report and Order in WT Docket No. 05-265. Legal Analysis §§ III.B-C. Complainant provides no other legal basis for the requested interim relief and the Commission should reject these requests.

**Fifth Affirmative Defense.** Defendant presently has insufficient knowledge or information upon which to form a belief whether there may be additional, as yet unstated, defenses and reserves the right to assert additional defenses in the event that such defenses are appropriate.

**OTHER REQUIREMENTS OF 47 C.F.R. § 1.724**

**Findings of Fact and Conclusions of Law.** Bureau staff have waived this requirement.

**Legal Analysis.** Verizon's Legal analysis required by section 1.724(c) is attached.

**Information Designation.** The information designation required by section 1.724(f) is attached.

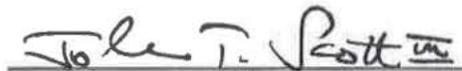
**Affidavits, Documents and Tangible Things.** Affidavits and other information in Verizon's possession, custody, or control, upon which it relies to support the facts alleged and legal arguments made in this Answer, are attached at Exhibits 1-10 and the Trent Declaration. 47 C.F.R. § 1.724(g).

**Settlement Certification.** Bureau staff have waived this requirement.

**REQUEST FOR RELIEF**

WHEREFORE, Verizon requests that the Commission dismiss NTCH's Complaint with prejudice.

Respectfully submitted,



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August 4, 2014

# TAB B

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

In the Matter of )  
 )  
NTCH, Inc., ) File No. EB-13-MD-006  
 )  
Complainant )  
 )  
v. )  
 )  
Cellco Partnership d/b/a Verizon Wireless )  
 )  
Defendant )

STATEMENT OF FACTS OF VERIZON WIRELESS

I. HISTORY OF NEGOTIATIONS

NTCH has had a voice roaming agreement with Verizon since May 16, 2006, with a roaming rate of [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL] In the autumn of 2011, NTCH initiated negotiations for a new roaming agreement.<sup>2</sup> During a conference call on October 17, 2011, NTCH proposed roaming rates of [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] NTCH followed up with a written offer dated October 18, 2011 containing the same rates, as well as an

<sup>1</sup> Complaint ¶ 18. See Intercarrier Roamer Service Agreement between NTCH Inc. and Cellco Partnership, Attachment D, Intercarrier Roamer Service Rates (May 16, 2006) (Exh. A.1. to Complaint).

<sup>2</sup> Complaint ¶ 19.

alternative proposal of [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]<sup>4</sup> [END CONFIDENTIAL]

Verizon responded on November 9, 2011 with a counter-offer of [BEGIN

CONFIDENTIAL] [REDACTED]

[REDACTED]<sup>5</sup> [END CONFIDENTIAL]

NTCH sent an email on November 11, 2011 requesting further reductions, and threatening to “present the matter to the FCC for review” unless agreement could be reached.<sup>6</sup> Verizon wrote to NTCH on November 18, 2011, stating that it believed its counter was commercially reasonable and invited a further offer from NTCH.<sup>7</sup> On November 23, 2011, Verizon received a

<sup>3</sup> NTCH uses the term “gigabit” in this and other correspondence relating to its rate offers. Most retail offers stated in terms of GB of data, actually refer to *gigabytes* rather than gigabits. Since NTCH’s requests for data roaming pricing refer to retail offers from various providers, they likely intended the unit of measurement to be per gigabyte rather than per gigabit. There are 8 gigabits in a gigabyte. Therefore, if NTCH’s request of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Data roaming agreements are typically are priced per megabyte. For this reason, Verizon’s data roaming rate offers are stated in terms of per megabyte (or “MB”). A rate of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

<sup>4</sup> Letter from Adilia Aguilar, Chief Financial Officer, NTCH, Inc., to Michael Pocher, Manager, Roamer Services, Verizon Wireless (Oct. 18, 2011) (Exh. A.3.a to Complaint). See Declaration of Joseph Trent ¶ 4 (Aug. 1, 2014) (“Trent Decl.”).

<sup>5</sup> Letter from Michael Pocher, Manager, Roamer Services, Verizon Wireless, to Adilia Aguilar, Chief Financial Officer, NTCH, Inc. (Nov. 9, 2011) (Exh. A.3.b to Complaint). “1x” and “EVDO” (originally “Evolution - Data Optimized,” and sometimes spelled as “EvDO”) are 3G CDMA digital wireless broadband standards.

<sup>6</sup> Email from Donald J. Evans, Counsel to NTCH, Inc., to Michael Pocher, Manager, Roamer Services, Verizon Wireless (Nov. 11, 2011) (Exh. A.3 to Complaint).

<sup>7</sup> Letter from Michael Pocher, Manager, Roamer Services, Verizon Wireless, to Adilia Aguilar, Chief Financial Officer, NTCH, Inc. (Nov. 18, 2011) (Exh. A.3.c to Complaint).

letter from NTCH arguing that Verizon’s counter-offer was out of line with pre-paid retail rates and repeated its previous offer.<sup>8</sup> On December 2, 2011, Verizon wrote to NTCH reiterating that its counter was commercially reasonable, noting that NTCH had not made another proposal, and repeating its willingness to consider an updated proposal and continue negotiations.<sup>9</sup>

NTCH did not respond to Verizon’s counter-offer for nearly six months. Finally, “after a long hiatus,”<sup>10</sup> on May 23, 2012, NTCH sent an email and letter to Verizon again complaining that Verizon’s counter-offer was too high and requesting a new rate lower than its previous offer reflecting what it claimed was [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL] NTCH stated that if Verizon did not offer vastly reduced roaming rates by June 4, 2012, “we would like to proceed as quickly as possible to get the complaint machinery in motion. . . .”<sup>11</sup> Verizon has no roaming agreement with any other carrier with rates as low as those proposed by NTCH.<sup>12</sup>

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<sup>8</sup> Letter from Adilia Aguilar, Chief Financial Officer, NTCH, to Michael Pocher, Manager Roamer Services, Verizon Wireless (Nov. 23, 2011) (Exh. 1 to Answer).

<sup>9</sup> Letter from Joseph A. Trent, Director, Intercarrier Services, Verizon Wireless, to Adilia Aguilar, Chief Financial Officer, NTCH, Inc. (Dec. 2, 2011) (Exh. A.3.d to Complaint).

<sup>10</sup> Email from Donald J. Evans, Counsel to NTCH, Inc., to Michael Pocher, Manager, Roamer Services, Verizon Wireless (May 23, 2012) (Exh. A.3 to Complaint).

<sup>11</sup> Letter from Donald J. Evans, Counsel to NTCH, Inc., to Joseph A. Trent, Director, Intercarrier Services, Verizon Wireless, at 2 (May 23, 2012) (Exh. A.3.e to Complaint).

<sup>12</sup> Trent Decl. ¶ 6.

Verizon sent an email to NTCH on June 1, 2012, proposing new, lower rates of [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]<sup>13</sup> [END CONFIDENTIAL]

NTCH did not respond for three months. On September 6, 2012, NTCH wrote to Verizon referencing NTCH's written alternative offer of October 18, 2011 (but without mentioning the date of that offer) and Verizon's November 9, 2011 counter-offer (but failing to mention the better offer Verizon had made on June 1, 2012), and threatened litigation if Verizon did not respond by September 13.<sup>14</sup> On September 13, Verizon responded in a letter to NTCH, pointing out that NTCH had ignored the June 1 offer and seeking a response to that proposal.<sup>15</sup>

A month and a half later, on November 1, 2012, NTCH wrote to Verizon proposing, once again, a voice airtime rate of [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>13</sup> Email from Joseph A. Trent, Director, Intercarrier Services, Verizon Wireless, to Adilia Aguilar, Chief Financial Officer, NTCH, Inc. (June 1, 2012) (Exh. A.3.f to Complaint); Trent Decl. ¶ 7.

<sup>14</sup> Letter from Donald J. Evans, Counsel to NTCH, Inc., to John T. Scott, VP & Deputy General Counsel, Verizon Wireless (Sept. 6, 2012) (Exh. A.3.g to Complaint).

<sup>15</sup> Letter from John T. Scott, VP & Deputy General Counsel, Verizon Wireless, to Donald J. Evans, Counsel to NTCH, Inc. (Sept. 13, 2012) (Exh. 2 to Answer).

[REDACTED]<sup>16</sup> [END CONFIDENTIAL] On November 9, 2012, Verizon responded in a letter to NTCH stating that, with the exception of the minor concession for in-market voice roaming, NTCH had failed to move from its previous offers and that Verizon’s latest offer was reasonable. Verizon also made an initial offer of [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>17</sup> [END CONFIDENTIAL]

On November 30, 2012, NTCH contacted Verizon, stating that the parties appeared to have reached an impasse, that NTCH had spoken to Commission staff about the matter, and that Commission staff wanted to meet with the parties to learn more about the dispute and explore settlement possibilities. On December 6, 2012, NTCH followed up in a letter to Verizon asserting that the failure to reach a roaming agreement was negatively affecting an existing agreement for NTCH’s purchase of 700 MHz of spectrum from Verizon, a “handshake deal” for NTCH’s sale of AWS spectrum to Verizon, and “closure” on NTCH’s petition for reconsideration of the Commission’s approval of Verizon’s acquisition of AWS-1 spectrum

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<sup>16</sup> Letter from Donald J. Evans, Counsel to NTCH, Inc., to John T. Scott, VP & Deputy General Counsel, Verizon Wireless, at 1 (Nov. 1, 2012) (Exh. A.3.h to Complaint).

<sup>17</sup> Letter from Robert O. Strobel, Assistant General Counsel, Procurement, Legal & External Affairs Department, Verizon Wireless, to Donald J. Evans, Counsel to NTCH, Inc. (Nov. 9, 2012) (Exh. A.3.i to Complaint). Trent Decl. ¶¶ 9-10.

licenses from SpectrumCo.<sup>18</sup> NTCH offered to withdraw its petition for reconsideration if the parties could reach an acceptable roaming agreement. NTCH repeated its previous rate proposals but included a [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]<sup>19</sup> [END CONFIDENTIAL]

On December 21, 2012, Verizon responded in a letter to NTCH, rejecting any linkage between the roaming negotiations and any unrelated matters. Verizon repeated that its last offer was reasonable, noting that NTCH not only had not materially moved from its initial position but now was also requesting an onerous new [BEGIN CONFIDENTIAL] [REDACTED]<sup>20</sup> [END CONFIDENTIAL]

On January 25, 2013, Verizon and NTCH participated in a meeting with Enforcement Bureau staff. The parties agreed that negotiations had stalled due to a fundamental disagreement regarding the pricing of roaming rates, and the staff indicated that such a dispute probably would have to be resolved through the filing of a complaint. At that meeting, NTCH also expressed interest in becoming a mobile virtual network operator (“MVNO”).<sup>21</sup>

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<sup>18</sup> Letter from Donald J. Evans, Counsel to NTCH, Inc., to Robert O. Strobel, Assistant General Counsel, Procurement, Legal & External Affairs Department, Verizon Wireless, at 1 (Dec. 6, 2012) (Exh. A.3.j to Complaint).

<sup>19</sup> *Id.* at 2.

<sup>20</sup> Letter from Robert O. Strobel, Assistant General Counsel, Procurement, Legal & External Affairs Department, Verizon Wireless, to Donald J. Evans, Counsel to NTCH, Inc. (Dec. 21, 2012) (Exh. A.3.k to Complaint).

<sup>21</sup> *See* Trent Decl. ¶ 11.



In response to NTCH's October 23 letter, Verizon wrote to NTCH on November 12, 2013, pointing out that, as NTCH had continued to "widen[] the gulf between" the parties by making successive demands for reduced rates, Verizon had attempted to compromise by offering reduced rates.<sup>25</sup> Verizon noted that its offers were fully consistent with the criteria established in the *Roaming Orders* and that, based on those criteria, Verizon could not accept the new lower rate structure proposed by NTCH in its October 23 letter.<sup>26</sup>

Verizon received a copy of NTCH's original formal complaint on November 22, 2013. That same day, prior to its receipt of the Complaint, Verizon made another offer to NTCH, proposing rates of [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] Verizon concluded by urging NTCH "to seriously consider this offer, which represents a significant, good faith effort to leave NTCH with absolutely no doubt the rates we have been offering are commercially reasonable and entirely consistent with the market and the factors the Commission identified [in the *Roaming Orders*] as

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<sup>25</sup> Letter from Robert O. Strobel, Assistant General Counsel, Procurement, Legal & External Affairs Department, Verizon Wireless, to Donald J. Evans, Counsel to NTCH, Inc., at 1 (Nov. 12, 2013) (Exh. A.4.a to Complaint).

<sup>26</sup> *Id.* at 2.

relevant to judging a rate offer.”<sup>27</sup> In an additional attempt to reach agreement, Verizon followed up in a letter dated December 9, 2013, urging NTCH to consider its November 22 proposals along with reduced LTE data roaming rates of [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]  
[REDACTED]<sup>28</sup> [END

CONFIDENTIAL] NTCH rejected these offers by email on December 10, 2013.<sup>29</sup>

On December 11, 2013, the parties met by phone with Commission Enforcement Bureau Staff and agreed to try to resolve the roaming dispute through FCC staff-assisted mediation and to hold the complaint proceeding in abeyance pending mediation. That agreement and process was memorialized in a letter to the parties on December 18, 2013.<sup>30</sup> Through answers to questions posed by Commission staff in the mediation process, NTCH acknowledged [BEGIN CONFIDENTIAL] [REDACTED]

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<sup>27</sup> Letter from Robert O. Strobel, Assistant General Counsel, Procurement, Legal & External Affairs Department, Verizon Wireless, to Donald J. Evans, Counsel to NTCH, Inc. (Nov. 22, 2013) (Exh. 4 to Answer).

<sup>28</sup> Letter from Robert O. Strobel, Assistant General Counsel, Procurement, Legal & External Affairs Department, Verizon Wireless, to Donald J. Evans, Counsel to NTCH, Inc. (Dec. 9, 2012) (Exh. 5 to Answer).

<sup>29</sup> Email from Donald J. Evans, Counsel to NTCH, Inc. to Robert O. Strobel, Assistant General Counsel, Procurement, Legal & External Affairs Department, Verizon Wireless (Dec. 10, 2013) (Exh. 6 to Answer).

<sup>30</sup> Letter from Rosemary McEnery, Acting Chief, Market Disputes Resolution Division, to Donald J. Evans and Jonathan R. Markman, Counsel to NTCH, and Andre J. Lachance and Tamara Preiss, Verizon (Dec. 18, 2013) (Exh. 7 to Answer).

<sup>31</sup> Response from NTCH to mediation questions posed by Commission staff (Jan. 6, 2014) (Exh. 8 to Answer).

[REDACTED]  
[REDACTED]<sup>33</sup> [END  
CONFIDENTIAL]

On March 6, 2014, the parties met with Commission staff at the FCC offices in Washington, D.C. to mediate the dispute. At that meeting, NTCH stated it would be willing to settle the dispute at [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]  
[REDACTED]<sup>34</sup> [END CONFIDENTIAL] On March 14, 2014, Verizon countered with an offer of [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]  
[REDACTED]<sup>35</sup>  
[END CONFIDENTIAL] NTCH rejected this offer by email on March 21, 2014.<sup>36</sup> On April 17, 2014, pursuant to a request made by NTCH, Commission staff sent a letter to the parties terminating the mediation, stating that the proceeding was no longer in abeyance, and advising

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<sup>32</sup> Email from Donald J. Evans, Counsel to NTCH, Inc. to Rosemary McEnery, Acting Chief, Market Disputes Resolution Division, Andre J. Lachance and other Verizon representatives (Feb. 18, 2014) (Exh. 9 to Answer).

<sup>33</sup> *Id.*

<sup>34</sup> Trent Decl. ¶ 15.

<sup>35</sup> See email from Donald J. Evans, Counsel to NTCH to Eric Steinmann, NTCH (Mar. 14, 2014) (memorializing a conversation between Mr. Evans and Andre J. Lachance, Counsel to Verizon) (Exh. 5.b. to Complaint).

<sup>36</sup> Email from Donald J. Evans, Counsel to NTCH to Andre J. Lachance, Counsel to Verizon (Mar. 21, 2014) (Exh. 5.c. to Complaint).

NTCH of how its complaint would need to be amended to bring it into compliance with Commission rules.<sup>37</sup> NTCH filed its amended complaint on July 2, 2014.

## II. COMPARISON OF OFFERS WITH VERIZON'S EXISTING ROAMING RATES

Verizon currently has active CDMA roaming agreements with [BEGIN

CONFIDENTIAL] [REDACTED]

[REDACTED]<sup>38</sup> [END CONFIDENTIAL] The chart below compares the weighted average<sup>39</sup> charges per unit paid to Verizon for voice, toll, 1x and EVDO data roaming under the rates set forth in those agreements against Verizon's current offer to NTCH and NTCH's most recent offer to Verizon as reflected in the amended complaint.<sup>40</sup> It

<sup>37</sup> Letter from Lia Royle, Market Disputes Resolution Division to Donald J. Evans and Jonathan R. Markman, Counsel to NTCH, and Andre J. Lachance and Tamara Preiss, Verizon (Apr. 17, 2014) (Exh. 10 to Answer).

<sup>38</sup> Trent Decl. ¶ 16. Where the total agreements reflected is less than [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] that is because not every agreement includes inbound traffic in each service category. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

<sup>39</sup> Weighted averages are the average rates paid for all roaming traffic under these agreements. Weighted averages, as opposed to arithmetic averages (determining the average rates by adding up rate figure in all agreements then dividing by the number of agreements), are a better representation of the average price paid per unit of roaming traffic. The weighted averages are based on year-to-date roaming data calculated as of June 2014.

<sup>40</sup> In the complaint, NTCH states the relief it seeks is voice roaming at [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Complaint at ¶ 47/52. Verizon notes that the paragraphs in the Complaint are mis-numbered. After paragraph 42, the next numbered paragraph is number 38 and subsequent paragraphs are numbered in sequence from 39 to 61. To avoid confusion, therefore, when referring to paragraphs starting



As the chart shows, the rates that Verizon has offered to NTCH for voice roaming are [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] the weighted average rates set out in Verizon’s other roaming agreements, but also [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] the specific rates set forth in the vast majority of those agreements. In particular:

- **Voice Airtime.** The voice airtime roaming rate that Verizon offered to NTCH is [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] In contrast, NTCH’s proposed rate is [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]
- **Domestic Toll.** Verizon’s offer (which matches NTCH’s proposal) is [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]
- **1x Data.** Verizon’s offer for 1x data is [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] NTCH’s proposal is [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]
- **EVDO Data.** Verizon’s offer is [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] NTCH’s offer is [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

Although LTE rates are not addressed in the chart, the rate that it has offered to NTCH – [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>43</sup> [END CONFIDENTIAL]

These same findings hold when Verizon's offers to NTCH are compared to the rates paid to Verizon in the 20 most recent rate changes. Among these rate changes, the weighted average voice airtime rate is [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>44</sup> [END CONFIDENTIAL]

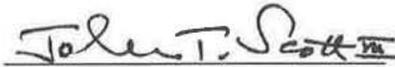
The rates that Verizon has offered to NTCH are also [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED] [END CONFIDENTIAL] it pays under the agreements it has with the 20 carriers with which the balance of traffic is most in favor of the roaming partner, meaning Verizon sends the roaming partner more roaming traffic than the roaming partner sends Verizon. These are the agreements where Verizon has the greatest incentive to lower the rates. The weighted average voice airtime rate Verizon pays under those agreements is [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED]  
[REDACTED]

<sup>43</sup> Trent Decl. ¶ 21. These facts hold true for both the preferred and non-preferred LTE data rates proposed by Verizon. The chart does not address LTE data rates, because Verizon [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED] [END CONFIDENTIAL]

<sup>44</sup> *Id.* ¶ 19.

<sup>45</sup> [END CONFIDENTIAL]

Respectfully submitted,



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August 4, 2014

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<sup>45</sup> *Id.* ¶ 20.

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Redacted – For Public Inspection

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

In the Matter of )  
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NTCH, Inc., ) File No. EB-13-MD-006  
 )  
Complainant )  
 )  
v. )  
 )  
Cellco Partnership dba Verizon Wireless, )  
 )  
Defendant )

**LEGAL ANALYSIS OF VERIZON WIRELESS**

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August 4, 2014

Redacted

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

In the Matter of )  
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NTCH, Inc., ) File No. EB-13-MD-006  
 )  
Complainant )  
 )  
v. )  
 )  
Cellco Partnership dba Verizon Wireless, )  
 )  
Defendant )

**LEGAL ANALYSIS OF VERIZON WIRELESS**

NTCH’s complaint is baseless and must be denied. The voice and data roaming rates that Verizon offered to NTCH are well within the range of prevailing market rates and are therefore reasonable on their face under the Commission’s rules and orders. Those rates not only are well within the range of rates that other carriers have agreed to pay Verizon in voluntarily negotiated agreements, they also are well within the range of rates that *Verizon pays* to other carriers.

In this complaint proceeding NTCH yet again insists that the Commission should modify its roaming orders and set new standards to evaluate the reasonableness of negotiated rate offers – or in the alternative vacate those orders and more directly regulate roaming rates. Neither is permissible. Even if the Commission were inclined to reverse course now – which it should not do because its predictions about a well-functioning roaming market have proven correct – the Commission can only modify its roaming rules and standards in a rulemaking proceeding.

Specifically, NTCH asks the Commission to find that voice and data roaming rates must be tethered to cost, or capped at rates offered to mobile virtual network operators (“MVNOs”) or

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the host carrier's retail rates. NTCH and others made these same arguments in the rulemakings that led to the Commission's roaming orders, and the Commission rejected them for good reason. Below-market rates set at the levels NTCH seeks would harm consumers and would substantially diminish incentives for NTCH to build networks in areas where it holds spectrum rights. NTCH's latest attempt to resurrect arguments here that the Commission previously rejected is legally foreclosed – and NTCH's arguments are still wrong.

NTCH cannot prevail. The Complaint should be dismissed.

**I. THE VOICE ROAMING RATES OFFERED BY VERIZON TO NTCH ARE REASONABLE ON THEIR FACE AND CONSISTENT WITH THE VOICE ROAMING ORDERS.**

**A. The Rates Offered by Verizon Are well within the Range of Rates in other Voluntarily Negotiated Roaming Agreements.**

The voice roaming rates that Verizon offered to NTCH are reasonable on their face because they are well within the range of rates that other carriers have agreed to pay Verizon in voluntarily negotiated agreements, as well as within the range of rates that Verizon pays to others.

In the *Voice Roaming Orders*,<sup>1</sup> the Commission adopted a regulatory regime whereby roaming rates would “be freely determined through negotiations between the carriers based on competitive market forces.”<sup>2</sup> The *Voice Roaming Orders* expressly recognized that “competitive market forces” would necessarily result in a range of *different* rates and terms, reflecting the particular facts of each individual negotiation. Such negotiations, it held, would “result in a

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<sup>1</sup> *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 (2007) (“*Automatic Roaming Order*”); *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 25 FCC Rcd 4181 (2010) (“*Home Roaming Order*”) (collectively “*Voice Roaming Orders*”).

<sup>2</sup> *Automatic Roaming Order*, 22 FCC Rcd at 15824 ¶ 18.

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variety of just and reasonable pricing plans and service offerings.”<sup>3</sup> The Commission concluded that, given the role played by individualized circumstances, “it is likely that automatic roaming rates will reasonably vary.”<sup>4</sup>

In the proceedings leading up to those *Orders*, a number of parties – including NTCH -- argued that the Commission should adopt rules that tie roaming rates either to cost or to the rates for other services such as the host carrier’s retail or wholesale rates.<sup>5</sup> Although voice roaming is subject to Title II of the Communications Act, the Commission rejected all of those arguments and expressly declined “to impose a price cap or any other form of rate regulation on the fees carriers pay each other when one carrier’s customer roams on another carrier’s network.”<sup>6</sup> And in doing so, it rejected arguments that voice roaming rates should be tied to the rates for other services or that a carrier’s retail voice rates are a defacto “cap” on its roaming rates.<sup>7</sup> The Commission reasoned:

Absent a finding that the existing level and structure of roaming rates harm consumers, regulation of rates for automatic roaming service is not warranted. Because we are not persuaded that the existing level and structure of roaming

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<sup>3</sup> *Automatic Roaming Order*, 22 FCC Rcd at 15831 ¶ 35.

<sup>4</sup> *Id.* at 15834 ¶ 44.

<sup>5</sup> See Comments of NTCH, Inc., WT Docket No. 05-265, at 6 (filed Nov. 28, 2005) (arguing that the Commission should require national wireless providers to “offer minutes for roaming at no more than the price they offer minutes to MVNO partners”); Comments of Leap Wireless International, Inc., WT Docket No. 05-265, at 17 (filed Nov. 28, 2005) (arguing that “the Commission should prohibit a facilities-based carrier from demanding rates for automatic roaming that exceed that carrier’s average retail revenue per minute for that area”); Comments of SouthernLINC Wireless, WT Docket No. 05-265, at 49 (filed Nov. 28, 2005) (proposing that the Commission establish a presumption that a carrier’s rates in a region are unreasonable if they exceed the lowest prevailing per-minute retail rates that it charges its own subscribers in that region).

<sup>6</sup> *Automatic Roaming Order* at 15832 ¶ 37.

<sup>7</sup> *Id.* at 15832 ¶ 36 [citation omitted].

rates negotiated between carriers harm consumers of mobile telephony services, we do not need to address the argument that the state of competition in the intermediate product market is such as to warrant rate regulation.<sup>8</sup>

These findings, taken together, establish a regulatory regime for voice roaming whereby:

(1) roaming rates are established by negotiation; (2) negotiations produce a “variety” or range of just and reasonable rates; and (3) rate caps, benchmarks, or any other form of rate regulation do not apply.

In addition, the Commission concluded that a key consideration in determining whether a rate offer is a reasonable market-based rate are the roaming rates voluntarily agreed to in the market by the carriers involved. The Commission emphasized the need to determine “whether the carriers involved have had previous roaming arrangements with similar terms.”<sup>9</sup> This is only logical, because, as the Commission recognized, voluntarily negotiated rates will take into account all of the various factors that the carriers themselves consider to be relevant and are a better barometer of reasonableness than any regulatorily-prescribed rates.<sup>10</sup>

Under the regime adopted by the Commission, the rates offered to NTCH are reasonable on their face because they are well within the range of rates voluntarily agreed to by a wide array of voice providers in the marketplace. Verizon has entered into [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] voluntarily negotiated voice roaming agreements with other carriers that establish the rates those other carriers pay to Verizon and that Verizon pays to other

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<sup>8</sup> *Id.* at 15832 ¶ 38.

<sup>9</sup> *Home Roaming Order*, 25 FCC Rcd at 4200-01 ¶ 39.

<sup>10</sup> *See, e.g., Automatic Roaming Order*, 22 FCC Rcd at 15832 ¶ 38 (“we find that consumers are protected from being harmed by the level and structure of roaming rates negotiated between carriers.”).

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carriers.<sup>11</sup> As the Commission anticipated, those agreements reflect a range of market-based rates that the parties considered reasonable. As described in the Statement of Facts, the rates Verizon offered NTCH are well within the range of rates it has in place with other roaming partners.<sup>12</sup> And those rates not only are well within the range of rates that other carriers have agreed to pay to Verizon, they also are well within the range of rates that Verizon has agreed to pay to others, including where the balance of traffic flows from Verizon to those other carriers.<sup>13</sup> In fact, in an effort to reach an agreement amicably, Verizon offered NTCH rates that in some instances are [BEGIN CONFIDENTIAL] [REDACTED].<sup>14</sup> [END CONFIDENTIAL] Under these circumstances, Verizon's rate offer on its face is lawful under the *Voice Roaming Orders*.

**B. The Other Factors Set Forth by the Commission to Evaluate Voice Roaming Rates Reinforce the Reasonableness of Verizon's Offer.**

While the range of voice roaming rates reflected in voluntarily negotiated agreements is the key (in this case dispositive) factor in evaluating the reasonableness of voice roaming rates, the other factors cited by the Commission as potentially relevant reinforce that conclusion.<sup>15</sup> NTCH wholly disregards these factors, but several warrant brief mention.

*Consumers and competitors in NTCH's markets have benefitted from market-based, negotiated roaming rates.* As discussed above, the Commission has concluded that there is no need to regulate roaming rates because there is no indication consumers are being harmed by

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<sup>11</sup> Statement of Facts at 11-12.

<sup>12</sup> *Id.* at 11-15.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Home Roaming Order*, 25 FCC Rcd at 4200-01 ¶ 39.

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prevailing market rates. That is equally true in the only two markets that NTCH actually serves – Columbia, South Carolina; and Jackson, Tennessee. (Complaint ¶ 1) Indeed, in both of these markets there is a large number of carriers competing aggressively, using their own facilities and negotiated roaming arrangements where they lack them. There is no question that consumers in these markets are benefiting from an array of options.

Apart from NTCH, consumers in these South Carolina and Tennessee markets have a choice between *five* other facilities-based providers in addition to at least one MVNO. All four of the national facilities-based wireless carriers – AT&T, Sprint, T-Mobile, and Verizon -- serve the two markets in which NTCH offers facilities-based service.<sup>16</sup> And in these markets, all four carriers offer unlimited voice and text mobile service pursuant to the same nationwide pricing plans that these carriers offer to any other domestic customer. These plans include nationwide roaming, which presumably rely upon market-based roaming rates determined through negotiations. In addition, in NTCH's South Carolina market Cricket offers facilities-based service pursuant to its nationwide pricing plans, and in Tennessee SI Wireless/MobileNet offers facilities-based service.<sup>17</sup> MVNOs Boost Mobile, Net 10, Straight Talk, and Page Plus serve NTCH's South Carolina market, and Virgin Mobile serves NTCH's Tennessee market.<sup>18</sup> These carriers offer unlimited voice and text plans with rates starting between \$30 to \$45.<sup>19</sup>

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<sup>16</sup> These facts were confirmed by visiting the carrier websites and entering zip code 29201 for Columbia, SC and 38301 for Jackson, TN.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *See, e.g.,* [www.mymobilenation.com](http://www.mymobilenation.com) (offering unlimited talk and text in Jackson, TN for \$30 per month); [www.sprint.com/landings/prepaid](http://www.sprint.com/landings/prepaid) (offering prepaid talk and text for \$45 per month).

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*NTCH would have no incentive to build out if Verizon offered below-market roaming rates.* The reasonableness of relying on rates within the range that prevails in the marketplace is further reinforced by the Commission’s emphasis on the need to preserve incentives to invest in network buildout. In adopting the *Voice Roaming Orders*, the Commission found that “regulation to reduce roaming rates has the potential to deter investment in network deployment by impairing buildout incentives facing both small and large carriers.”<sup>20</sup> This finding reflects the Commission’s view that voluntarily negotiated market-based rates provide the appropriate incentives to invest in building networks.

A review of the Commission’s ULS database reveals that NTCH and its subsidiaries hold 33 CMRS spectrum licenses and/or leases in 17 states across the country.<sup>21</sup> NTCH has held almost half of these spectrum assets since 2010 or before, yet it only currently provides facilities-based service in at most two markets. (Complaint ¶ 1) And NTCH recently acknowledged that [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED]<sup>22</sup> [END CONFIDENTIAL] As the Commission previously found, relying on rates within the range that prevails in the marketplace will best preserve incentives to build out, while allowing NTCH to obtain nationwide roaming at below-market rates would deter NTCH from building networks in these areas.

*NTCH has roaming alternatives to Verizon.* As discussed above, Verizon has offered NTCH roaming rates consistent with, and in some cases better than, other voluntarily negotiated

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<sup>20</sup> *Automatic Roaming Order*, 22 FCC Red at 15833 ¶ 40.

<sup>21</sup> See Attachment A.

<sup>22</sup> Email from Donald J. Evans, Counsel to NTCH, Inc. to Rosemary McEnery, Acting Chief, Market Disputes Resolution Division, Andre J. Lachance and other Verizon representatives (Feb. 18, 2014) (Exh. 9 to Answer).

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roaming rates. Nevertheless, if NTCH chooses not to accept Verizon's offer, it has alternatives to meet its roaming needs, further reinforcing the reasonableness of relying on the range of rates that prevail in the marketplace. Verizon has active CDMA roaming agreements with [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] carriers.<sup>23</sup> One of these carriers, Sprint, provides nationwide coverage and service, and the others provide regional and/or rural coverage and service. All of these carriers are technologically compatible, viable roaming alternatives for NTCH in the geographic areas they serve. Moreover, the Competitive Carrier Association ("CCA") recently announced the launch of a Data Access Hub, a nationwide roaming alliance in which Sprint has joined that enables rural carriers and carriers that primarily serve urban areas roaming access to each other's networks.<sup>24</sup>

NTCH, however, focuses only on Sprint, claiming it is not a "realistic" roaming partner. (Complaint ¶¶ 12-13) Sprint is, in fact, a viable alternative nationwide roaming partner. NTCH has acknowledged [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]<sup>25</sup> [END CONFIDENTIAL] Many other carriers rely on the Sprint network for roaming – [BEGIN CONFIDENTIAL] [REDACTED]<sup>26</sup> [END CONFIDENTIAL] Sprint is itself the third-largest provider of mobile voice service. At the end of the first quarter of 2014, Sprint had

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<sup>23</sup> Statement of Facts at 11; Trent Decl. ¶ 16.

<sup>24</sup> Marguerite Reardon, *Sprint to join rural operators in nationwide roaming hub*, CNET (Mar. 26, 2014), available at <http://www.cnet.com/news/sprint-to-join-rural-operators-in-nationwide-roaming-hub/> ("CNET Sprint Roaming Hub article").

<sup>25</sup> See Exh. 8 and Exh. 9 to Answer.

<sup>26</sup> Trent Decl. ¶ 16.

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almost 54 million subscribers on its network.<sup>27</sup> NTCH even admits that “Sprint offers CDMA service on a national basis.” (Complaint ¶ 12)

**C. NTCH’s Arguments Were Previously Rejected by the Commission and Are Legally Foreclosed Here.**

It is well-established that the complainant has the burden of establishing a violation of the Act.<sup>28</sup> NTCH has failed to meet its burden of proof. Rather than address the findings in the *Voice Roaming Orders* or the factors set forth by the Commission for evaluating rate offers, it rehashes arguments previously rejected by the Commission, claiming that rates must be cost-based or tied to benchmarks based on the rates for other non-roaming services such as the wholesale rates offered to MVNOs. (Complaint ¶¶ 23, 25-30, 33-36) Its arguments must be rejected.

**1. NTCH’s Arguments that Voice Roaming Rates Must Be Based on Costs or Other Benchmarks Were Rejected by the *Voice Roaming Orders*.**

As discussed above, the Commission adopted a regime whereby voice roaming rates are determined by negotiations between carriers based on competitive market forces. It specifically rejected requests to regulate roaming rates based on cost, benchmarks tied to the rates for other services or to otherwise prescribe any rate caps.<sup>29</sup> Finally, it found that “regulation to reduce

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<sup>27</sup> Sprint Reports Results for the Quarter Ended March 31, 2014 (Apr. 29, 2014), available at <http://newsroom.sprint.com/news-releases/sprint-reports-results-for-the-quarter-ended-march-31-2014.htm>.

<sup>28</sup> See 47 C.F.R. § 1.720; *American Message Centers v. FCC*, 50 F.3d 35, 41 (D.C. Cir. 1995) (citing *Amendment of Rules Governing Procedures to be Followed Where Formal Complaints are Filed Against Common Carriers*, 3 FCC Rcd 1806, 1806 (1988)); *Hi-Tech Furnace Systems, Inc. v. FCC*, 224 F.3d 781, 787 (D.C. Cir. 2000) (affirming the Commission’s decision to impose the burden of proof on the complainant); *Aeronautical Radio, Inc. v. F.C.C.*, 642 F.2d 1221, 1235 n.34 (D.C. Cir. 1980), cert. denied, 451 U.S. 976 (1981).

<sup>29</sup> See Section I.A., *supra*.

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roaming rates has the potential to deter investment in network deployment by impairing buildout incentives facing both small and large carriers.”<sup>30</sup> NTCH simply ignores all of this and tries to resurrect arguments previously rejected by the Commission that rates should be based on cost or the rates for other non-roaming services. Those arguments are foreclosed in the context of this complaint proceeding and NTCH’s claims to the contrary are baseless.<sup>31</sup>

NTCH cites to a single case to support its cost-plus rate-setting approach for voice roaming. (Complaint ¶ 23) But even that case offers it no help. *General Communication, Inc. v. Alascom, Inc.* addressed questions referred by a federal district court arising from an antitrust case brought by General Communication, Inc. (“GCI”), a satellite carrier, against Alascom, an incumbent LEC and long distance carrier in Alaska. NTCH indicates that the Commission held that “[the] obligation to set just and reasonable rates, under Section 201(b) of the Communications Act, is to target its rates to recover a reasonable rate of return.”<sup>32</sup> But NTCH’s selective quotation is badly misleading: The decision is not making a general statement regarding 201(b), as indicated, but rather a specific statement about the obligations of *Alascom*, a carrier governed by rate of return regulation. This point is made clear by the full quotation:

Our rate integration policy indirectly provides Alascom with the AT&T return for MTS and WATS services, but we have not taken any action that directly establishes a rate of return for Alascom interstate private line services. Thus, *Alascom*’s obligation to set

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<sup>30</sup> *Automatic Roaming Order*, 22 FCC Rcd at 15833 ¶ 40.

<sup>31</sup> See, e.g., *FCC v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317, (Sup. Ct. 2012) (“*FCC v. Fox*”); *Comcast Cable Communications, LLC v. FCC*, 717 F.3d 982, 1006 (D.C. Cir. 2013) (“*Comcast v. FCC*”) (“the FCC must amend [rules] pursuant to notice-and-comment rulemaking, not by fiat in an adjudicatory action in which a party had no prior notice of the rule that the Commission seeks to enforce.”).

<sup>32</sup> *GCI*, 4 FCC Rcd at [no page numbers in LEXIS] ¶ 37 (modification in original; emphasis added).

just and reasonable rates, under Section 201(b) of the Communications Act, is to target its rates to recover a reasonable rate of return.<sup>33</sup>

NTCH's request to base roaming rates on incremental costs is even more far afield. NTCH quotes language from the *USF/ICC Transformation Order* regarding a "hypothetical calculation of the cost of voice service on a next generation network providing a full range of voice, video, and data services," which found that "the incremental cost of delivering an average customer's total volume of voice service could be as low as ... \$0.0000001 per minute."<sup>34</sup> NTCH asserts that "[w]hile these costs were estimated in the context of landline networks, the incremental cost for a minute of cellular voice traffic is likely to be in a similar range," and that this "suggests" that Verizon should carry NTCH's voice traffic on a bill-and-keep basis – i.e., at no charge. (Complaint ¶ 24)

In addition to the fact that NTCH's argument is flatly contrary to the Commission's decision that voice roaming rates should not be regulated based on cost – incremental or otherwise – NTCH's incremental cost argument simply misunderstands basic pricing principles. Incremental costs, by definition, reflect only the additional ("incremental") costs associated with an additional minute of traffic, ignoring entirely the fixed costs associated with the provision of service. Thus, under NTCH's proposed incremental-cost framework, host providers would be responsible for covering all of their (very substantial) fixed costs, whereas roamers would be responsible only for the cost of additional traffic. This approach directly contradicts the Commission's finding that "regulation to reduce roaming rates has the potential to deter

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<sup>33</sup> *Id.* (emphasis added).

<sup>34</sup> Complaint ¶ 24 (quoting *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17911 ¶ 752 (2011) ("*USF/ICC Transformation Order*") (mis-cited in Complaint as 26 FCC Rcd 17633 (2011)).

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investment in network deployment,<sup>35</sup> and would all but eliminate incentives to construct facilities.

**2. NTCH’s Argument that Voice Roaming Rates Must be based on Rates for Other Non-Roaming Services Such as MVNO Rates Was Rejected by the *Voice Roaming Orders* and Is Baseless.**

NTCH also claims that voice roaming rates must be based on the prices that Verizon charges for other non-roaming services – namely the prices charged to MVNOs who resell Verizon’s service – and that failure to do so is unreasonably discriminatory. Again, NTCH is merely attempting to resurrect an argument that it previously raised and that was rejected by the Commission. NTCH previously argued that the Commission should require national wireless providers to make roaming available at rates no more than the rates they charge MVNOs.<sup>36</sup> The Commission declined to do so, and instead expressly rejected arguments that roaming rates should be capped at any particular level such as wholesale rates or retail rates.<sup>37</sup> NTCH cannot now re-litigate that decision in the context of a complaint proceeding.<sup>38</sup>

Moreover, in addition to the fact that its argument was previously rejected, NTCH is simply wrong – and it has not even begun to carry its burden to make a prima facie case. The complainant has the evidentiary burden of establishing that the services are like and that

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<sup>35</sup> *Automatic Roaming Order*, 22 FCC Rcd at 15833 ¶ 40.

<sup>36</sup> Comments of NTCH, Inc., WT Docket No. 05-265, at 6 (filed Nov. 28, 2005)

<sup>37</sup> See Section I.A., *supra*; *Automatic Roaming Order*, 22 FCC Rcd at 15832 ¶ 37 (“We decline to impose a price cap or other form of rate regulation on the fees carriers pay each other when one carrier’s customer roams on another carrier’s network.”).

<sup>38</sup> See, e.g., *FCC v. Fox*, 132 S. Ct. at 2317; *Comcast v. FCC*, 717 F.3d at 1006.

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discriminatory pricing or treatment exists.<sup>39</sup> Because roaming is not “like” wholesale service to MVNOs, NTCH’s discrimination claim cannot be predicated on wholesale rates charged to MVNOs. Moreover, the roaming rates that Verizon has offered to NTCH are well within the range of rates for other roaming partners and therefore reasonable and nondiscriminatory.<sup>40</sup>

As an initial matter, the roaming orders themselves view roaming and MVNO offerings as unlike. In the *Automatic Roaming Order*, the Commission expressly decided “not ... to resurrect CMRS resale obligations,” which is precisely what the effect would be of setting roaming rates at the same level as MVNO rates.<sup>41</sup> It further stated that “automatic roaming obligations can not be used as a backdoor way to create *de facto* mandatory resale obligations or virtual reseller networks.”<sup>42</sup> If the Commission viewed roaming and resale as functionally equivalent, or “like” services, there would be no reason to distinguish one from the other in this manner.

Contrary to NTCH’s claim that MVNO arrangements “effectively mimic roaming arrangements,” (Complaint ¶ 28) the rates for each respond to different market factors.<sup>43</sup> And roaming and MVNO services are not “like” because of functional differences between the

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<sup>39</sup> See *Ad Hoc Telecommunications Users Comm. v. FCC*, 680 F.2d 790, 795-98 (D. C. Cir. 1982); *Jacqueline Orloff, Complainant, v. Vodafone AirTouch Licenses LLC, d/b/a Verizon Wireless, and New Par, Defendants*, 17 FCC Rcd 8987, 8994 ¶ 14 (2002). See also *Competitive Telecommunications Ass’n v. FCC*, 998 F.2d 1058, 1061 (D.C. Cir.1993); *MCI Telecommunications Corp. v. FCC*, 917 F.2d 30, 39 (D.C. Cir. 1990).

<sup>40</sup> Statement of Facts at 11-15.

<sup>41</sup> *Automatic Roaming Order*, 22 FCC Rcd at 15836 ¶ 51.

<sup>42</sup> *Id.*

<sup>43</sup> Reply Comments of Verizon Wireless, WT Docket No. 05-265, at 18 (filed Jan. 26, 2006) (explaining that the prices for roaming, wholesale, and retail services are based on a mix of varying considerations, and that the prices for each vary accordingly).

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services. For example, roaming enables the customers of one carrier to obtain service from another carrier when leaving the area covered by the home carrier network. MVNO providers do not have their own networks and rely on resale service to provide service to customers everywhere. Roaming is provided and billed on an individual call basis, whereas resale service is provided and billed in bulk. Roaming service also offers far less predictability with respect to demand.

**II. THE RATES OFFERED BY VERIZON TO NTCH FOR DATA ROAMING ALSO ARE COMMERCIALY REASONABLE ON THEIR FACE.**

NTCH's claim that the data roaming rates offered by Verizon are unreasonable is even weaker than its voice roaming allegations. The data roaming rates Verizon offered are lawful on their face and easily satisfy the Commission's "commercially reasonable" standard outside of Title II because they are within the range of rates other carriers pay Verizon and that Verizon pays others.

**A. Verizon's Data Roaming Rate Offer Is Commercially Reasonable.**

In the *Data Roaming Order*, the Commission required wireless providers to negotiate in good faith over terms and conditions for data roaming that are "commercially reasonable."<sup>44</sup> Here, Verizon has done precisely that.

The Commission based its *Data Roaming Order* on its authority under Title III,<sup>45</sup> and emphasized, as it told the D.C. Circuit in defending the data roaming rules, "the [*Data Roaming*

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<sup>44</sup> *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd 5411, 5411 ¶ 1, 5423-30 ¶¶ 23-36 (2011) ("*Data Roaming Order*").

<sup>45</sup> *See, e.g., Data Roaming Order*, 26 FCC Rcd at 5447 ¶ 70. *See also Cellco Partnership v. FCC*, 700 F.3d 534, 543-44 (D.C. Cir. 2012) ("*Cellco*") (concluding that Title III authorizes the Commission to promulgate the data roaming rule).

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*Order*] does not impose a common-carriage obligation.”<sup>46</sup> The court agreed, stating in its decision that “the Commission ... may not rely on Title II to regulate mobile data.”<sup>47</sup> Instead, the Commission set forth a standard requiring only that a wireless provider offer to negotiate based on terms that are “commercially reasonable.”<sup>48</sup> That standard, it noted, “will allow individualized service agreements and will not require providers to serve all comers indifferently on the same terms and conditions.”<sup>49</sup>

The Commission stated that “the standard of commercial reasonableness is one that we expect to accommodate a variety of terms and conditions in data roaming. . . .”<sup>50</sup> Ultimately, the only terms and conditions identified by the Commission that would violate the commercial reasonableness requirement were those that “unreasonably restrain[] trade”<sup>51</sup> or those that “are so unreasonable as to be tantamount to a refusal to offer a data roaming arrangement.”<sup>52</sup>

As in the voice roaming proceeding, a number of parties – including NTCH – asked the Commission to adopt rules linking data roaming rates to rates for other non-roaming services, particularly the host carrier’s own retail rates.<sup>53</sup> The Commission rejected these and other

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<sup>46</sup> Brief for Federal Communications Commission at 18-19, *Cellco*, 700 F.3d 534 (D.C. Cir. 2012) (No. 11-1355) (“FCC Brief”).

<sup>47</sup> *Cellco*, 700 F.3d at 538.

<sup>48</sup> *Data Roaming Order*, 26 FCC Rcd at 5411 ¶ 1, 5423-30 ¶¶ 23-36.

<sup>49</sup> *Id.* at 5445 ¶ 68.

<sup>50</sup> *Id.* at 5451 ¶ 81.

<sup>51</sup> *Id.* at 5433 ¶ 44, 5452 ¶ 85.

<sup>52</sup> *Id.* at 5453 ¶ 86.

<sup>53</sup> Comments of Brighthouse Networks, WT Docket No. 05-265 (June 14, 2010), at 13-14 (arguing that the Commission should adopt the use of “retail yield” – defined as average revenue for a unit of a *particular* data service divided by average usage for the data service -- as an

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requests to prescribe specific rates or standards, and did not include the host carrier's own retail, wholesale, or other rates in the list of factors for determining whether a roaming rate offered is commercially reasonable.<sup>54</sup>

[H]ost providers will be paid for providing data roaming service, and we adopt a general requirement of commercial reasonableness for all roaming terms and conditions, including rates, *rather than a more prescriptive regulation of rates requested by some commenters*. This will give host providers appropriate discretion in the structure and level of such rates that they offer.<sup>55</sup>

These findings, establish a regulatory regime for commercially reasonable data roaming providing that (1) data roaming rates are established by individualized negotiation; (2) the standard accommodates a “variety” of terms and conditions; (3) roaming rates with one party do not have to be shared with other similarly-situated parties; (4) prescriptive forms of rate regulation do not apply; and (5) terms and conditions that unreasonably restrain trade or that are tantamount to a refusal to offer data roaming are prohibited.

Moreover, the Commission here again recognized that a key factor in determining whether particular rates offered in a negotiation are commercially reasonable would be the rates agreed to in voluntarily negotiated arrangements. The Commission emphasized the need to determine “whether the providers involved have had any previous roaming arrangements with

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evaluative criterion for determining if rates are reasonable); Comments of NTCH, Inc., WT Docket No. 05-265 (June 14, 2010), at 5 (arguing that the Commission should adopt a benchmark for reasonable data roaming rates set at the prevailing market rates for data services); Reply Comments of SouthernLINC Wireless, WT Docket No. 05-265 (July 12, 2010), at 27-28 (arguing that data roaming rates should be compared to the rates the host carrier charges its own retail subscribers for data services).

<sup>54</sup> See *Data Roaming Order*, 26 FCC Red at 5452-53 ¶¶ 85-87 (discussing the commercially reasonable standard and providing a list of factors to be considered in analyzing terms against this standard).

<sup>55</sup> *Id.* at 5423 ¶ 21. (Emphasis added)

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similar terms.”<sup>56</sup> Indeed, where rates offered in negotiations are within the range of rates agreed to by others, they are on their face within the range that the marketplace has recognized as commercially reasonable. As described in the Statement of Facts, the rates Verizon offered NTCH are well within the range of rates it has in place with other roaming partners, and for some data roaming rate categories, Verizon’s rate offer is [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [REDACTED]<sup>57</sup> [END CONFIDENTIAL] As such, Verizon’s data roaming rate offer to NTCH on its face is reasonable under the *Data Roaming Order*.

**B. The Other Factors Set Forth by the Commission to Evaluate Data Roaming Rates Reinforce that Verizon’s Offer Is Commercially Reasonable.**

While data roaming rates reflected in other voluntarily negotiated agreements is the key (in this case dispositive) factor in evaluating the commercial reasonableness of data roaming rates, the other factors cited by the Commission as potentially relevant further reinforce that conclusion.<sup>58</sup> While NTCH largely disregards these factors, several warrant brief mention.

*Consumers and competitors in NTCH’s markets have benefitted from market-based, negotiated roaming rates.* As discussed above, the Commission elected not to regulate data roaming rates, but rather rely on individualized negotiations to establish the rates for data roaming, saying “[t]his will give host providers appropriate discretion in the structure and level of such rates that they offer.”<sup>59</sup> This finding means that consumers benefit from the “existing

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<sup>56</sup> *Id.* at 5453 ¶ 86.

<sup>57</sup> Statement of Facts at 11-15.

<sup>58</sup> *Data Roaming Order*, 26 FCC Rcd at 5452-53 ¶ 86.

<sup>59</sup> Section II.A., *supra*; *Data Roaming Order*, 26 FCC Rcd at 5423 ¶ 21.

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level and structure of roaming rates negotiated between carriers.”<sup>60</sup> Consumers of wireless broadband services are protected because of the large number of carriers competing aggressively where they have deployed facilities and on data roaming agreements to provide service where they lack them. And as discussed above, the two markets in which NTCH provides service are also served by an array of other providers, including all four nationwide carriers, one other facilities-based competitor, and at least one reseller.<sup>61</sup> These carriers offer nationwide pricing that includes unlimited talk and text plans and data at rates starting between \$39.95 to \$50.<sup>62</sup>

*NTCH would have no incentive to build out if Verizon offered below-market roaming rates.* As with voice roaming, the reasonableness of relying on rates within the range that prevails in the marketplace is further reinforced by the Commission’s emphasis on the need to preserve incentives to invest in network buildout. In the data roaming context, the Commission was particularly concerned that rates for data roaming were not set so low as to deter broadband network deployment by would-be roamers and their host carriers. It found that “there are procompetitive benefits that flow from providers differentiating themselves on the basis of coverage in their licensed service areas, including in rural and remote areas,”<sup>63</sup> and cited as a “potential cost” of a data-roaming requirement “the possibility that requesting providers will substitute roaming for investment in coverage and accordingly under-invest in deploying new

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<sup>60</sup> See *Automatic Roaming Order*, 22 FCC Rcd at 15832 ¶ 38.

<sup>61</sup> See Section I.B., *supra*.

<sup>62</sup> See, e.g., <https://www.pagepluscellular.com/plans/> (offering unlimited talk and text and 1 GB of data per month for \$39.95); <http://www.sprint.com/landings/unlimitedplans/> (offering unlimited talk, text and data for \$50.00 per month).

<sup>63</sup> *Data Roaming Order*, 26 FCC Rcd at 5422 ¶ 21.

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infrastructure.”<sup>64</sup> In short, the Commission expressly designed the data roaming regime to permit price levels and other terms that would “preserve providers’ incentive to invest in their networks.”<sup>65</sup> This finding reflects the Commission’s view that voluntarily negotiated market-based rates provide the appropriate incentives to invest in building networks. The commercially reasonable, market-based rates offered by Verizon preserve investment incentives. The below-market rates NTCH seeks, however, would leave it little or no incentive to roll out facilities-based broadband service.

*NTCH has roaming alternatives to Verizon.* As discussed above, Verizon has offered NTCH roaming rates consistent with, and in some cases better than, other voluntarily negotiated roaming rates. Nevertheless, as with voice roaming, if NTCH chooses not to accept Verizon’s offer, it has alternatives to meet its data roaming needs, further reinforcing the reasonableness of relying on the range of rates that prevail in the marketplace. Data roaming is included in [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] CDMA roaming agreements.<sup>66</sup> Sprint [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED]<sup>67</sup> [END CONFIDENTIAL] provides nationwide coverage and service for data, and the others provide regional and/or rural coverage and service. Sprint is also part of the Small Market Alliance for Rural Transformation (“SMART”). Under this alliance, Sprint will provide rural wireless service providers with spectrum, national reach on Sprint’s

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<sup>64</sup> *Id.* at 5429 ¶ 34.

<sup>65</sup> *Id.* at 5429 ¶ 33.

<sup>66</sup> Statement of Facts at 12; Trent Decl. ¶ 16.

<sup>67</sup> Trent Decl. ¶ 16.

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network, and access to the Sprint device ecosystem.<sup>68</sup> This program both bolsters the reach of Sprint’s network and provides a nationwide data roaming option to NTCH. Moreover, CCA’s “Data Access Hub” is another data roaming option for NTCH.<sup>69</sup> All of these carriers are technologically compatible, viable data roaming alternatives for NTCH in the geographic areas they serve.

**C. NTCH’s Arguments Were Previously Rejected by the Commission and Are Legally Foreclosed Here.**

As it did in the voice roaming context, NTCH claims that Verizon’s proposed rates are tantamount to a refusal to offer data roaming because they exceed its estimate of Verizon’s costs and because they exceed rates allegedly offered by Verizon to an MVNO. (Complaint at ¶ 44/49) NTCH again is raising arguments that were rejected by the Commission. As discussed above, in the *Data Roaming Order* the Commission specifically rejected requests to impose prescriptive rate regulation on data roaming,<sup>70</sup> instead choosing to allow providers to “negotiate different terms and conditions on an individualized basis, *including prices*, with different parties.”<sup>71</sup> NTCH ignores these findings and tries to resurrect arguments previously rejected by the Commission that rates should be based on cost or the rates for other non-roaming services. Those arguments are foreclosed in the context of this complaint proceeding and NTCH’s claims to the contrary are baseless.<sup>72</sup>

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<sup>68</sup> See <http://www.netamericaalliance.com/smart>.

<sup>69</sup> See, Section I.B., *supra* (discussing the Data Access Hub in conjunction with the same voice roaming factor).

<sup>70</sup> Section II.A., *supra*; *Data Roaming Order*, 26 FCC Rcd at 5423 ¶ 21.

<sup>71</sup> *Id.* at 5445 ¶ 68. (Emphasis added)

<sup>72</sup> See, e.g., *FCC v. Fox*, 132 S. Ct. at 2317; *Comcast v. FCC*, 717 F.3d at 1006.

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**III. NTCH’S PROPOSED REMEDIES ARE UNLAWFUL AND WOULD REQUIRE A RULEMAKING.**

Finally, just as NTCH’s substantive arguments are baseless and foreclosed in the context of this complaint proceeding, so too are NTCH’s proposed remedies. The Commission has already refused to adopt the approaches NTCH advocates, and the Commission cannot reverse course in the context of this complaint proceeding.<sup>73</sup>

**A. The Commission Cannot Grant NTCH’s Request to Classify Data Roaming as a Title II Service.**

NTCH asks the Commission to adopt an order “classifying mobile data services as “Interconnected Services” under Section 20.3 of the Rules, and therefore subject to the common carrier rules of Title II, or, alternatively, finding that data roaming is pure data transmission and therefore constitutes a telecommunications service subject to Title II of the Act.” (Complaint ¶ 48/53) The Commission has previously determined and conceded in the *Data Roaming Order* that wireless internet service both *is* an “information service” and *is not* a “commercial mobile service.”<sup>74</sup> Accordingly the Commission based its data roaming requirements not on Sections 201 or 202 (or any other Title II provisions) but rather on authority found under Title III.<sup>75</sup> As the Commission told the D.C. Circuit in defending the data roaming rules, “the [*Data Roaming Order*] does not impose a common-carriage obligation.”<sup>76</sup> The court agreed. NTCH’s request

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<sup>73</sup> *Id.*

<sup>74</sup> *Cellco*, 700 F.3d at 538.

<sup>75</sup> *See, e.g., Data Roaming Order*, 26 FCC Rcd at 5447 ¶ 70. *See also Cellco* 700 F.3d at 543-44 (concluding that Title III authorizes the Commission to promulgate the data roaming rule).

<sup>76</sup> FCC Brief at 18-19.

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asks the Commission to reconsider and reverse findings made in the *Data Roaming Order*, something it cannot do in the context of this complaint proceeding.<sup>77</sup>

**B. The Commission Should Refuse to Impose Interim Rates During the Pendency of the Complaint.**

NTCH asks the Commission to direct Verizon to provision data roaming to NTCH, while this matter is pending, for [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] or some other reasonable [rate] level determined by the Commission.” NTCH contends that this request is consistent with “[p]aragraph 80 of the *Data Roaming Order*. (Complaint ¶ 50/55) That is wrong. Paragraph 80 authorized Commission staff, “if requested and in appropriate circumstances,” to “order the host provider to provide data roaming on *its* proffered terms” – that is, the terms the *host* has offered – “during the pendency of the dispute, subject to possible true-up once the roaming agreement is in place.”<sup>78</sup> Here, NTCH seeks interim rates not on the terms Verizon has offered, but rather on the terms that *NTCH* has offered. NTCH has not provided any legal basis for the Commission to impose interim injunctive relief.

**C. The Commission Should Refuse to Impose A “Most Favored Nation” Requirement.**

NTCH also asks the Commission to direct Verizon to charge it “no more for voice, SMS, text and long distance than it charges its most favored MVNOs or roaming partners” during the pendency of the Complaint. (Complaint ¶ 51/56) It fails to provide any support for this request, and it neglects to mention that the Commission has already rejected this approach as well. In the *Automatic Roaming Order*, the Commission refused to mandate “most-favored nation” treatment

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<sup>77</sup> See, e.g., *FCC v. Fox*, 132 S. Ct. at 2317; *Comcast v. FCC*, 717 F.3d at 1006.

<sup>78</sup> *Data Roaming Order*, 26 FCC Rcd at 5450-51 ¶ 80 (emphasis added).

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of any sort, much less benchmarked to MVNO rates, finding that to do so “would distort competitive market conditions, resulting in unjust and unreasonable practices and discriminatory treatments.”<sup>79</sup> In the *Data Roaming Order*, the Commission found that “the rule we adopt will allow individualized service agreements and *will not require providers to serve all comers indifferently on the same terms and conditions.*”<sup>80</sup> NTCH’s request for most favored nation treatment cannot be squared with this finding.

**D. The Commission Should Refuse to Make Verizon’s Roaming Agreements Publicly Available.**

NTCH asks the Commission to “require[] that [Verizon] make its roaming rates publicly available.” (Complaint ¶ 53/58) It provides no legal support whatsoever for this demand, and fails yet again to recognize that the Commission has expressly rejected its proposed approach. The Commission decided in 1994 to eliminate the requirement to file contracts as applied to wireless carriers.<sup>81</sup> In the *Automatic Roaming Order*, the Commission considered and rejected arguments that it should impose a filing requirement for roaming agreements,<sup>82</sup> noting that a filing requirement could have negative effects on the roaming market.<sup>83</sup> The *Data Roaming Order* likewise emphasized that it was not “impos[ing] any ... obligation on providers of mobile data services to publicly disclose the rates, terms, and conditions of their roaming agreements.”<sup>84</sup>

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<sup>79</sup> *Automatic Roaming Order*, 22 FCC Rcd at 15834 ¶ 44.

<sup>80</sup> *Data Roaming Order*, 26 FCC Rcd at 5445 ¶ 68. (Emphasis added)

<sup>81</sup> *Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1480 ¶ 181 (1994) (“*CMRS Second Report & Order*”).

<sup>82</sup> *Automatic Roaming Order*, 22 FCC Rcd at 15839-40 ¶ 62.

<sup>83</sup> *Id.*, citing *CMRS Second Report & Order*, 9 FCC Rcd at 1478-80 ¶¶ 175-79.

<sup>84</sup> *Data Roaming Order*, 26 FCC Rcd at 5444-46 ¶ 68.

## Redacted – For Public Inspection

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In any event, this proceeding is not the appropriate forum for addressing this issue. The same day NTCH filed its Amended Complaint, it re-filed a petition it originally filed last fall asking the Commission to reverse its forbearance from Section 211 with regard to roaming agreements.<sup>85</sup> Verizon has filed an Opposition in response to this Petition,<sup>86</sup> and the Commission recently issued a Public Notice seeking comment on the Petition.<sup>87</sup> NTCH's request can only be addressed, if at all, in a rulemaking should the Commission decide to initiate one. It cannot be addressed in the context of this complaint proceeding.<sup>88</sup>

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<sup>85</sup> NTCH, Inc., Petition to Rescind Forbearance and Initiate Rulemaking, GN Docket No. 93-252 (filed Jul. 2, 2014) ("Petition").

<sup>86</sup> See Opposition of Verizon, *Petition to Rescind Forbearance from Application of Section 211 of the Communications Act* (filed July 11, 2014).

<sup>87</sup> *Wireless Telecommunications Bureau Seeks Comment on Petition Filed by NTCH, Inc. to Rescind Forbearance and Initiate Rulemaking to Make Inter-Provider Roaming Rates Available*, Public Notice, RM 14-105, WT Docket No. 05-265 (July 14, 2014).

<sup>88</sup> See, e.g., *FCC v. Fox*, 132 S. Ct. at 2317; *Comcast v. FCC*, 717 F.3d at 1006.

**CONCLUSION**

For these reasons, the Commission should deny NTCH's Complaint.

Respectfully submitted,



Michael E. Glover  
*Of Counsel*

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(202) 515-2400

*Attorneys for Verizon Wireless*

August 4, 2014

# **ATTACHMENT A**

**NTCH SPECTRUM HOLDINGS, JULY 2014\***

<b>Licensee Name</b>	<b>Radio Service</b>	<b>Market</b>	<b>Call Sign</b>	<b>Date Acquired</b>
NTCH, Inc.	700	CMA558 - New Mexico 6-Lincoln	WQJQ781	4/16/2013
NTCH, Inc.	AWS-1	BEA168 - Pendleton, OR-WA	WQGD631	6/10/2009
NTCH, Inc.	AWS-1	CMA390 - Idaho 3-Lemhi	WQGD540	6/10/2009
NTCH, Inc.	PCS	BTA003 - Abilene, TX	WPOJ705	9/23/2013
NTCH, Inc.	PCS	BTA049 - Blytheville, AR	WPUR879	11/2001 (consummation notice is missing from ULS - exact date is unclear)
NTCH, Inc.	PCS	BTA120 - Dyersburg-Union City, TN	KNLNF462	4/9/2002
NTCH, Inc.	PCS	BTA211 - Jackson, TN	KNLNF464	4/9/2002
NTCH, Inc.	PCS	BTA191 - Hobbs, NM	KNLNF568	5/13/2014
NTCH, Inc.	PCS	BTA486 - Yuma, AZ	KNLNG840	12/30/2013
NTCH, Inc.	PCS	BTA477 - Willmar-Marshall, MN	KNLH437	3/7/2014
NTCH, Inc.	PCS	BTA277 - Mankato-Fairmont, MN	WPOJ812	3/7/2014
NTCH, Inc.	PCS	BTA481 - Worthington, MN	WPOJ816	3/7/2014
NTCH, Inc.	PCS	BTA085 - Cleveland, TN	WPTF725	11/10/2006
NTCH, Inc.	PCS	BTA290 - Memphis, TN	WQBT349	3/3/2005
NTCH, Inc.	PCS	BTA261 - Longview, WA	WQCS388	5/14/2010
WGH Comm.	AWS-1	CMA570 - North Carolina 6-Chatham	WQGD556	6/10/2009
WGH Comm.	AWS-1	BEA022 - Fayetteville, NC	WQGD590	6/10/2009
WGH Comm.	AWS-1	BEA024 - Columbia, SC	WQGD591	8/31/2009
WGH Comm.	AWS-1	BEA041 - Greenville, Spartanburg, SC	WQGD600	6/10/2009

WGH Comm.	AWS-1	BEA157 - El Paso, TX-NM	WQGD630	6/10/2009
WGH Comm.	PCS	BTA090 - Columbia, MO	WQGH653	1/5/2010
WGH Comm.	700	CMA161 - Lubbock, TX	WQJQ734	4/16/2013
WGH Comm.	700	CMA188 - Amarillo, TX	WQJQ735	4/16/2013
WGH Comm.	700	CMA234 - Athens, GA	WQJQ744	4/16/2013
WGH Comm.	700	CMA255 - Odessa, TX	WQJQ748	4/16/2013
WGH Comm.	700	CMA281 - Laredo, TX	WQJQ750	4/16/2013
WGH Comm.	700	CMA295 - Midland, TX	WQJQ752	4/16/2013
WGH Comm.	700	CMA362 - Florida 3-Hardee	WQJQ758	4/16/2013
WGH Comm.	700	CMA469 - Maryland 3-Frederick	WQJQ770	4/16/2013
WGH Comm.	700	CMA545 - Nevada 3-Storey	WQJQ778	4/16/2013
WGH Comm.	PCS	BTA091 - Columbia, SC	L000011256	leased pending close of acquisition from TMO
WGH Comm.	PCS	BTA335 - Orangeburg, SC	L000011257	leased pending close of acquisition from TMO
WGH Comm.	PCS	BTA436 - Sumter, SC	L000011258	leased pending close of acquisition from TMO

Source: FCC ULS

\*Some listed spectrum holdings are pending transfers to other entities

# TAB D



1300 I Street, N.W.  
Suite 400-West  
Washington, D.C. 20005  
Phone: (202) 515-2400  
Fax: (202) 289-6781

August 4, 2014

**CONFIDENTIAL MATERIAL ENCLOSED**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Re: **NTCH, Inc. v. Celco Partnership d/b/a Verizon Wireless**  
**File No. EB-13-MD-006**  
**Verizon Answer and Request for Confidential Treatment**

Dear Ms. Dortch:

Enclosed are the Answer, Opposition to Interrogatories, and Interrogatories of Celco Partnership d/b/a Verizon Wireless (“Verizon” or “Defendant”) in the above-captioned proceeding.

Verizon hereby requests confidential treatment of documents and information provided in and with the attached Answer and associated Legal Analysis and Exhibits, Declaration, and Statement of Facts. The instant request seeks confidential treatment of these materials pursuant to Sections 0.457(d)(2), 0.457(g)(3), 0.459 and 1.731 of the Commission’s Rules, 47 C.F.R. §§ 0.457(d)(2), 0.457(g)(3), 0.459, 1.731. Accordingly, these materials may be used and disclosed solely in accordance with the limitations and procedures of 47 C.F.R. §§ 1.731(b)-(e).

The documents and information for which Verizon seeks confidentiality fall squarely within the requirements of Section 0.459 of the Commission’s rules, and disclosure of this information would result in competitive harm to Verizon. In support of this request, Verizon provides the following information pursuant to Sections 0.457(d)(2) and 0.459(b) of the Commission’s Rules.

1. Extent of Nondisclosure Requested. Verizon is requesting confidential treatment for all documents marked as “Confidential” well as information designated “[BEGIN CONFIDENTIAL]” and “[END CONFIDENTIAL],” in the Answer and the associated Legal Analysis and Exhibits, Declaration, and Statement of Facts. The documents and information subject to this request generally relate to commercial negotiations and arrangements between Verizon and NTCH, Inc. (“NTCH” or “Complainant”), and to commercial arrangements between Verizon and other entities, that are subject to non-disclosure agreements or that Verizon does not otherwise disclose publicly. It also relates to information and

documents relating to mediation that Bureau staff ordered Verizon and NTCH to treat as confidential.

2. Proceeding/Reason for Submission. Verizon is submitting the enclosed information pursuant to Sections 1.724 and 1.729 of the Rules, 47 C.F.R. §§ 1.724, 1.729, and in accordance with the Enforcement Bureau's July 9, 2014 letter to Verizon and NTCH, as part of Verizon's Answer to NTCH's formal complaint in the above-referenced proceeding.
3. Nature of Confidential Information. The information contains commercially sensitive information that may be withheld from public disclosure under FOIA Exemption 4. The Commission has long recognized that, for purposes of Exemption 4, "records are 'commercial' as long as the submitter has a commercial interest in them." *Robert J. Butler*, 6 FCC Rcd 5414, 5415 (1991), citing *Public Citizen Health Research Group v. F.D.A.*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); *American Airlines v. National Mediation Board*, 588 F.2d 863, 868 (2d Cir. 1978). The information is clearly "commercial"<sup>1</sup> in nature. It includes information relating to Verizon's roaming pricing and agreements, wholesale relationships, Verizon's business practices and methods, and commercially sensitive and confidential agreements with Defendant and other parties. Further, the documents are plainly "confidential" in that they "would customarily not be released to the public."<sup>2</sup> Courts have elaborated that material "is 'confidential' . . . if disclosure of the information is likely to have *either* of the following effects: (1) to impair the government's ability to obtain necessary information in the future; *or* (2) to cause substantial harm to the competitive position of the person from whom the information was obtained."<sup>3</sup> Both of these considerations plainly apply in this instance, as further explained in point (5) below. The enclosed information also includes information and documents relating to mediation that Bureau staff ordered Verizon to treat as confidential.
4. Competitiveness of Market. The commercial information provided derives from and relates to Verizon Wireless' provision of mobile wireless services and thus "concerns a service "that is subject to competition," 47 C.F.R. § 0.459(b)(4). *See, e.g., Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 28 FCC Rcd 3700 (2013).

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<sup>1</sup> *See Board of Trade v. Commodity Futures Trading Comm'n*, 627 F.2d 392, 403 & n.78 (D.C. Cir. 1980) (courts have given the terms "commercial" and "financial," as used in Section 552(b)(4), their ordinary meanings).

<sup>2</sup> *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 873 (D.C. Cir. 1992), *cert. denied*, 113 S. Ct. 1579 (1993).

<sup>3</sup> *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 764, 770 (D.C. Cir. 1974) (footnote omitted) (emphasis added); *see also Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992), *cert. denied*, 113 S. Ct. 1579 (1993).

5. Harm from Disclosure. The commercial information in the enclosed response is confidential because its release would likely cause competitive harm to Verizon. The information is clearly “commercial”<sup>4</sup> in nature. Further, the documents are plainly “confidential” in that they “would customarily not be released to the public.”<sup>5</sup> Further, evidence revealing “[a]ctual competition and the likelihood of substantial competitive injury” is sufficient to bring commercial information within the realm of confidentiality.<sup>6</sup> The Commission has recognized that disclosure of information relating to pricing, costs, business practices and methods and related information to competitors can cause competitive harm, and is thus competitively sensitive and subject to Exemption 4.<sup>7</sup> Bureau staff have ordered that information and documents related to the mediation process be treated as confidential. And finally, the Commission has expressly declined to require public disclosure of this information.<sup>8</sup>
6. Measures Taken to Prevent Unauthorized Disclosure. Verizon treats the documents and information subject to this request as confidential and subject to non-disclosure agreements, and does not publicly disclose this information. Verizon also limits the internal circulation of this information to only those with a need-to-know.
7. Public Availability and Previous Disclosure to Third Parties. The documents for which confidentiality is sought are not made available to the public and have not been disclosed to parties other than NTCH. Documents disclosed to NTCH have been subject to non-disclosure agreements and the Bureau’s order that information exchanged during mediation not be disclosed.
8. Requested Duration of Nondisclosure. The enclosed information should never be released for public inspection, as it contains commercially sensitive, confidential information, the release of which could adversely affect Verizon’s competitive position.

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<sup>4</sup> See *Board of Trade v. Commodity Futures Trading Comm’n*, 627 F.2d 392, 403 & n.78 (D.C. Cir. 1980) (courts have given the terms “commercial” and “financial,” as used in Section 552(b)(4), their ordinary meanings).

<sup>5</sup> *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 873 (D.C. Cir. 1992), *cert. denied*, 113 S. Ct. 1579 (1993) (citing the Senate Committee Report).

<sup>6</sup> *Public Citizen Health Research Group*, 704 F.2d at 1291, quoting *Gulf & Western Industries v. U.S.*, 615 F.2d 527, 530 (D.C. Cir. 1979).

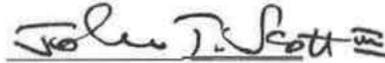
<sup>7</sup> See, e.g., *Josh Wein, Warren Communications News, Request for Inspection of Records*, Memorandum Opinion and Order, 24 FCC Rcd 12347, 12352-53 (2009).

<sup>8</sup> *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd 5411, ¶ 68 (2011) (data roaming rule does not require public disclosure of rates, terms and conditions of roaming agreements).

For the foregoing reasons, Verizon Wireless respectfully requests that the Commission withhold these documents and information from public inspection, subject to the safeguards of section 1.731 of the Rules.

Should you need additional information with regard to this request, please contact the undersigned at (202) 515-2412.

Respectfully submitted,



John T. Scott, III  
Christopher M. Miller  
Andre J. Lachance  
Robert G. Morse

*Attorneys for Verizon Wireless*

Michael E. Glover  
Of Counsel

Enclosure

cc: Donald Evans (by hand delivery)  
Rosemary McEnery (by email and hand delivery)  
Lia Royle (by email and hand delivery)

# TAB E

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

In the Matter of	)	
	)	
NTCH, Inc.,	)	File No. EB-13-MD-006
	)	
Complainant	)	
	)	
v.	)	
	)	
Cellco Partnership dba Verizon Wireless	)	
	)	
Defendant	)	

**INFORMATION DESIGNATION OF VERIZON WIRELESS**

Pursuant to Section 1.724(f), Verizon Wireless submits this information designation.

**I. PERSONS WITH KNOWLEDGE**

The following Verizon and Verizon Wireless employees have firsthand knowledge of the facts alleged in the Complaint:

1. Name: Joseph A. Trent  
Address: One Verizon Way, Basking Ridge, NJ 07920  
Position: Director-Financial Planning and Analysis, Verizon Wireless  
Description of facts within this person's knowledge: The roaming offers made to NTCH, the FCC mediation session on March 6, 2014, and the comparison of the rates offered to NTCH to the rates agreed to with other roaming partners.
  
2. Name: Michael J. Pocher  
Address: One Verizon Way, Basking Ridge, NJ 07920  
Position: Associate Director- Financial Planning & Development, Verizon Wireless  
Description of facts within this person's knowledge: The negotiations with NTCH, and the comparison of the rates offered to NTCH to the rates agreed to with other roaming partners.
  
3. Name: Robert O. Strobel  
Address: One Verizon Way, Basking Ridge, NJ 07920  
Position: Assistant General Counsel, Verizon Wireless

Description of facts within this person's knowledge: The written offers transmitted to NTCH counsel Don Evans, conversations with NTCH regarding wholesale/MVNO opportunities, conversations with Don Evans, and the FCC mediation session on March 6, 2014.

4. Name: Donald J. Manley  
Address: 200 Allegheny Dr., Warrendale, PA 15086  
Position: Director-Marketing, Verizon Wireless  
Description of facts within this person's knowledge: The conversations with NTCH regarding wholesale/MVNO opportunities.
5. Name: Andre J. Lachance  
Address: 1300 I Street, NW, Suite 400 West, Washington D.C. 20005  
Position: Assistant General Counsel, Verizon  
Description of facts within this person's knowledge: The written offers transmitted to NTCH counsel Don Evans, conversations with Don Evans regarding the filing of the formal complaint and offers made by Verizon Wireless, and the FCC mediation session on March 6, 2014.
6. Name: John T. Scott  
Address: 1300 I Street, NW, Suite 400 West, Washington D.C. 20005  
Position: Vice President & Deputy General Counsel, Verizon  
Description of facts within this person's knowledge: September 13, 2012 written response to NTCH's September 6, 2012 letter.

## **II. DESCRIPTION OF DOCUMENTS, DATA COMPILATIONS AND TANGIBLE THINGS**

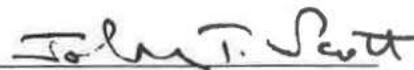
Attached is a table listing documents, data compilations, and tangible things, excluding documents, data compilations, and tangible things attached to the Complaint by NTCH, in Verizon Wireless' possession custody or control that have relevance to the facts alleged in the complaint.

## **III. DESCRIPTION OF THE MANNER OF IDENTIFICATION OF PERSONS WITH KNOWLEDGE AND RELEVANT DOCUMENTS, DATA COMPILATIONS, AND TANGIBLE THINGS.**

Verizon Wireless identified all persons with information and designated all documents, data compilations, and tangible things as being relevant to this dispute as follows: Robert Strobel, Assistant General Counsel, Verizon Wireless, contacted individuals in Financial

Planning and Development with firsthand knowledge relevant to the facts of the Complaint. These individuals identified documents and other records in their possession relevant to the facts set forth in the complaint. Andre J. Lachance, Assistant General Counsel, Verizon, identified persons in Verizon Public Policy, Law and Security with firsthand knowledge relevant to the facts of the Complaint. These individuals identified documents and other records in their possession relevant to the facts set forth in the complaint.

Respectfully submitted,



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*Attorneys for Verizon Wireless*

Michael E. Glover  
*Of Counsel*

August 4, 2014

<b>Date</b>	<b>Author or Other Source/Recipient</b>	<b>Physical Location</b>	<b>Description of Relevance</b>
11/23/2011	Adilia Aguilar, NTCH	Exhibit 1 to Answer	Counter offer made by NTCH to Verizon
11/13/2012	John T. Scott, Verizon	Exhibit 2 to Answer	Response by Verizon to September 6, 2012 letter from NTCH
2/14/2013	Donald H. Manley, Verizon Wireless	Exhibit 3 to Answer	Email to NTCH with contact information for an aggregator
11/22/2013	Robert O. Strobel, Verizon Wireless	Exhibit 4 to Answer	Amended rate offer from Verizon Wireless for voice, toll, 1x data, EVDO data, and SMS
12/9/2013	Robert O. Strobel, Verizon Wireless	Exhibit 5 to Answer	Amended rate offer from Verizon Wireless for LTE data
12/10/2013	Donald Evans, Counsel to NTCH	Exhibit 6 to Answer	Email from NTCH to Verizon Wireless rejecting Verizon Wireless November 22, 2013 and December 9, 2013 rate offers
12/18/2013	Rosemary McEnery, FCC	Exhibit 7 to Answer	Letter memorializing December 11, 2013 phone conference where parties agreed to mediation.
1/6/2014	Donald Evans, Counsel to NTCH	Exhibit 8 to Answer	NTCH response to questions from FCC.
2/18/2014	Donald Evans, Counsel to NTCH	Exhibit 9 to Answer	Email from NTCH clarifying where it provides facilities-based service.
4/17/2014	Lia Royle, FCC	Exhibit 10 to Answer	Letter stating the proceeding is no longer in abeyance and instructing NTCH how its complaint would need to be amended.

**TAB F**

**REDACTED**

# TAB G

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

In the Matter of )  
 )  
NTCH, Inc., ) File No. EB-13-MD-006  
 )  
Complainant )  
 )  
v. )  
 )  
Cellco Partnership dba Verizon Wireless )  
 )  
Defendant )

DECLARATION OF JOSEPH A. TRENT

I, Joseph A. Trent, hereby declare as follows:

1. My name is Joseph A. Trent and I am Director-Financial Planning and Analysis. I have been employed by Verizon for 8 years and have been working in the wireless industry for 19 years. My responsibilities include negotiation of roaming agreements.
2. This declaration is intended to support the facts set forth in the Legal Analysis of Verizon Wireless in the above-referenced proceeding. The Legal Analysis opposes NTCH's claims that Verizon's offered voice roaming rates are unjust and unreasonably discriminatory and data roaming rates are commercially unreasonable. I have reviewed and approve the facts set forth in the Legal Analysis of Verizon Wireless.
3. In my role negotiating roaming agreements for Verizon, I am knowledgeable about the negotiations with NTCH. In addition, I am knowledgeable about the rates in our roaming agreements and how those rates compare to the rates offered to NTCH.
4. Negotiations with NTCH commenced during a conference call on October 17, 2011, when NTCH proposed roaming rates of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] NTCH followed with a written offer dated October 18, 2011 containing the same rates, as well as an alternative proposal of [BEGIN

**CONFIDENTIAL** [REDACTED] **[END CONFIDENTIAL]**

5. Verizon's initial November 9, 2011 counterproposal was **[BEGIN CONFIDENTIAL]**  
[REDACTED] **[END CONFIDENTIAL]**
6. NTCH's counterproposal came nearly 6 months later, on May 23, 2012, and contained and an even lower **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** Verizon has no roaming agreement with any other carrier with rates as low as those proposed by NTCH.
7. Verizon responded on June 1, 2012, offering rates of **[BEGIN CONFIDENTIAL]**  
[REDACTED] **[END CONFIDENTIAL]**
8. NTCH did not respond for three months. On September 6, 2012, NTCH wrote and threatened litigation if Verizon did not respond by September 13, but did not respond to our June 1, 2012 offer. On September 13, Verizon responded to NTCH, noting it had not responded to the June 1 offer and seeking a response to that proposal.
9. On November 1, 2012, NTCH wrote to Verizon and again proposed **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** Verizon responded on November 9, 2012 and provided an initial offer of **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]**
10. NTCH never responded to our LTE offer.
11. At a January 25, 2013 meeting with Enforcement Bureau staff, NTCH expressed interest in becoming a mobile virtual network operator and Verizon's wholesale staff thereafter discussed that possibility with NTCH. When NTCH indicated the volume requirements

<sup>1</sup> NTCH referred to gigabit. I believe this to be an error and that NTCH intended GigaByte. I have provided conversions to Megabytes based on this assumption.

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would be too stringent to make the effort worthwhile, Verizon put NTCH in touch with an aggregator.

12. Eventually, in an October 29, 2013 letter, NTCH informed Verizon it intended to file a complaint and further lowered its roaming demands stating “that reasonable roaming rates should not exceed [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]
13. On November 22, 2013, prior to receiving the original Complaint, Verizon made another offer to NTCH, proposing rates of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]
14. Verizon followed with a December 9, 2013 letter in which it offered reduced rates for LTE data roaming of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]
15. At a March 6, 2014 meeting with Commission staff to mediate the dispute, NTCH stated [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]
16. Verizon currently has active CDMA roaming agreements with [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]
17. Based on the Active Agreements, or a subset thereof for those service categories that are not included in every Active Agreement, the weighted average charges per unit paid to Verizon are as follows: [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] The weighted average charges paid by Verizon for each category are as follows: [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

Redacted - For Public Inspection

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18. The number of Active Agreements with rates paid by others to Verizon that are equal to or greater than Verizon's offer in each category (based on the offer for when Verizon is preferred) is as follows: **[BEGIN CONFIDENTIAL]** [REDACTED]

**[END CONFIDENTIAL]**

19. The weighted average rates paid to Verizon based on Verizon's 20 most recent rate changes are as follows: **[BEGIN CONFIDENTIAL]** [REDACTED]

**[END CONFIDENTIAL]**

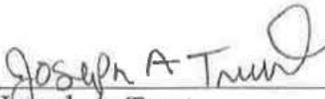
20. The weighted average rates that Verizon pays for roaming based on agreements Verizon has with the 20 carriers with which the balance of traffic is most in favor of the roaming partner (meaning Verizon sends the roaming partner more traffic than the roaming partner sends Verizon) is as follows: **[BEGIN CONFIDENTIAL]** [REDACTED]

**[END CONFIDENTIAL]**

21. With respect to LTE, **[BEGIN CONFIDENTIAL]** [REDACTED]

**[END CONFIDENTIAL]**

22. I declare under penalty of perjury that the statements made are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Joseph A. Trent

Executed on August 4, 2014

# TAB H

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
NTCH, Inc.,	)	File No. EB-13-MD-006
	)	
Complainant	)	
	)	
v.	)	
	)	
Cellco Partnership dba Verizon Wireless,	)	
	)	
Defendant	)	

**VERIZON WIRELESS OPPOSITION TO INTERROGATORIES**

Cellco Partnership dba Verizon Wireless (“Verizon” or “Defendant”) hereby opposes the request for interrogatories of NTCH, Inc. (“NTCH” or “Complainant”) as follows:

**GENERAL OPPOSITION TO INTERROGATORIES**

1. *No Discovery of Verizon Information is Warranted.* Section 1.729 of the rules does not allow discovery as a matter of right, *see* 47 C.F.R. § 1.729(d), and no further discovery from Verizon is warranted here. The Verizon-related documents and information provided in the Complaint, Answer, Statement of Facts, Trent Declaration and Legal Analysis have already “disclose[d] all [Verizon] information that is relevant to the resolution” of this matter, *see Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497, 22549 ¶ 118 (1997) (“*Formal Complaints Order*”), and as demonstrated below the remaining information Complainant requests is irrelevant to the Commission’s resolution of the dispute.

2. ***Cost and MVNO Information Is Not Relevant.*** Section 1.729(b) requires that Complainant explain why the requested information is “necessary to the resolution of the dispute ....” 47 C.F.R. § 1.729(b). For the reasons described in Verizon’s Legal Analysis, Defendant’s interrogatories concerning Verizon’s costs of service and rates charged to MVNOs are irrelevant to the material facts in dispute and are unnecessary to the resolution of the dispute. *See* Legal Analysis §§ I.A, I.C and II.C. The Commission has already held under the more liberal discovery rules prior to 1997 that where the reasonableness of rates is not dependent on a particular cost factor, such information is not relevant and is not appropriate for discovery.<sup>1</sup> That same rationale applies with equal force under the current rules. *See Formal Complaints Order*, 12 FCC Rcd at 22549 ¶ 117 (disclosing party is “obligat[ed] to identify all information *that is relevant to the facts in dispute*” (emphasis added)). Defendant specifically opposes the second sentence of Interrogatory 3, and Interrogatories 4, 5, 6, 7, 8, and 9 in their entirety for that reason and the Commission should deny them.

3. ***Information on LTE in Rural America Participants is Not Relevant.*** Defendant further opposes all the Interrogatories insofar as they relate to roaming arrangements with service providers participating in Verizon’s LTE in Rural America (LRA) program. LRA participants lease spectrum from Verizon and utilize Verizon core network facilities for LTE data traffic, and are not comparable to the commercial and technical arrangements with NTCH and other non-

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<sup>1</sup> *See Western Union Corp. v. Southern Bell Tel. and Tel. Co. et al.*, 5 FCC Rcd 4853, 4855 (1990) (private line rates “in order to be just and reasonable [need not] be based on physical routing characteristics or on the cost of the actual facilities used to provide service to a particular customer”), *further proceedings sub. nom. New Valley Corp. v. Pacific Bell*, 8 FCC Rcd 8126, 8127, 8128 n.24 (CCB 1993) (denying interrogatories as irrelevant that “attempt to elicit information regarding the costs incurred by PacBell” because Commission “has consistently rejected the view that the reasonableness of a private line rate must be based on the costs of the actual facilities used to provide service to a particular customer private line rates.”), *aff’d on review* 15 FCC Rcd 5128, 5138 (2000) (“the information that would have been obtained by the interrogatories at issue is irrelevant”).

LRA participants. Thus, Defendant's roaming arrangements with LRA participants are not relevant to the material facts in this proceeding.

4. ***Information on Transitional Roaming Agreements Is Not Relevant.*** Defendant opposes all the Interrogatories insofar as they relate to its existing or proffered transitional roaming agreements ("Transitional Agreements"). Transitional Agreements are entered into in order to facilitate clearing spectrum to be transferred in connection with spectrum transactions by providing an alternative network on a temporary basis for the customers of the party vacating the spectrum. Thus, Defendant's Transitional Agreements are not relevant to the material facts in this proceeding.

5. ***There Is No Valid Basis for Document Production.*** Defendant opposes Complainant's request to produce documents relating to the Interrogatories. Defendant opposes the request for documents in its entirety as Complainant has not provided any valid explanation of why the documents are "necessary to the resolution of the dispute" under 47 C.F.R. § 1.729(b). Complainant's explanation that "[s]uch production will permit the Complainant to test and substantiate" Defendant's responses to the interrogatories was specifically considered and rejected as a valid basis for requiring discovery when the Commission adopted section 1.729 of the rules. *See Formal Complaints Order*, 12 FCC Rcd at 22549, ¶ 118 (rejecting "argu[ments] that discovery is needed to verify the accuracy of initial disclosures"). The documents provided in the Complaint, Answer, Statement of Facts and Trent Declaration are sufficient for resolution of the dispute, consistent with the "fact-based pleading" design of the Commission's rules. *See id.* at 22529 ¶¶ 70-71. Defendant further opposes Complainant's document request because even if any of Interrogatories 1 through 9 seek necessary and relevant information, documents are not

necessary to provide responsive information for any of them. This request is overly broad and the burdens it imposes would outweigh Complainant's need for discovery.

6. ***The Request Exceeds the Ten Interrogatory Limit.*** Defendant opposes the request for Interrogatories as Complainant has exceeded the ten interrogatory limit of 47 C.F.R. § 1.729(a). Interrogatory 3 consists of two interrogatories, and the document request is thus an eleventh interrogatory.

#### **OPPOSITION TO SPECIFIC INTERROGATORIES**

7. ***Interrogatory 1.*** This interrogatory uses the undefined term “internet service provider (ISP).” Defendant assumes for purposes of this Opposition that “ISP” means facilities-based mobile wireless service providers offering a data service subject to 47 C.F.R. § 20.12. Defendant opposes Interrogatory 1 because the Verizon-related documents and information provided in the Complaint, Answer, Statement of Facts, Trent Declaration and Legal Analysis are sufficient “to ensure the development of a complete record” such that further discovery from Verizon is not necessary. *See Formal Complaints Order*, 12 FCC Rcd at 22549 ¶ 117. Defendant further opposes this Interrogatory for the reasons described in the General Opposition.

8. ***Interrogatory 2.*** Defendant opposes Interrogatory 2 because the Verizon-related documents and information provided in the Complaint, Answer, Statement of Facts, Trent Declaration and Legal Analysis are sufficient “to ensure the development of a complete record” such that further discovery from Verizon is not necessary. *See id.* Defendant further opposes this Interrogatory as irrelevant and immaterial because it relates to rates offered as part of negotiations rather than agreed-upon rates. The former, by definition, are neither “charges ... in connection with the use of common carrier lines of communication” under sections 201 and 202 of the Act, nor “terms and conditions” of service under sections 20.12(d) and (e) of the rules. 47

U.S.C. §§ 201-202; 47 C.F.R. §§ 20.12(d)-(e). Defendant further opposes this Interrogatory for the reasons described in the General Opposition.

9. **Interrogatory 3.** Defendant opposes the first sentence of Interrogatory 3 because the Verizon-related documents and information provided in the Complaint, Answer, Statement of Facts, Trent Declaration and Legal Analysis are sufficient “to ensure the development of a complete record” such that further discovery from Verizon is not necessary. *See Formal Complaints Order*, 12 FCC Rcd at 22549 ¶ 117. Defendant opposes the second sentence of Interrogatory 3 insofar as complainant has not treated it as a separate Interrogatory under 47 C.F.R. § 1.729(a). Also, for the reasons described in Verizon’s Legal Analysis the information sought in the second sentence of Interrogatory 3 is neither relevant to the material facts in the proceeding nor necessary to the resolution of the dispute. Legal Analysis §§ I.A, I.C and II.C. Defendant further opposes this Interrogatory for the reasons described in the General Opposition.

10. **Interrogatory 4.** For the reasons described in Verizon’s Legal Analysis, Interrogatory 4 is neither relevant to the material facts in the proceeding nor necessary to the resolution of the dispute. Legal Analysis §§ I.A, I.C and II.C. Defendant therefore opposes this Interrogatory in its entirety. Defendant further opposes this Interrogatory for the reasons described in the General Opposition.

11. **Interrogatory 5.** For the reasons described in Verizon’s Legal Analysis, Interrogatory 5 is neither relevant to the material facts in the proceeding nor necessary to the resolution of the dispute. Legal Analysis §§ I.A, I.C and II.C. Verizon therefore opposes this Interrogatory in its entirety. Defendant further opposes this Interrogatory for the reasons described in the General Opposition.

12. **Interrogatory 6.** For the reasons described in Verizon's Legal Analysis, Interrogatory 6 is neither relevant to the material facts in the proceeding nor necessary to the resolution of the dispute. Legal Analysis §§ I.A, I.C and II.C. Verizon therefore opposes this Interrogatory in its entirety. Defendant further opposes this Interrogatory for the reasons described in the General Opposition.

13. **Interrogatory 7.** For the reasons described in Verizon's Legal Analysis, Interrogatory 7 is neither relevant to the material facts in the proceeding nor necessary to the resolution of the dispute. Legal Analysis §§ I.A, I.C and II.C. Verizon therefore opposes this Interrogatory in its entirety. Defendant further opposes this Interrogatory for the reasons described in the General Opposition.

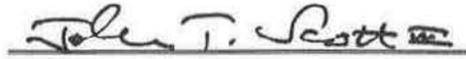
14. **Interrogatory 8.** For the reasons described in Verizon's Legal Analysis, Interrogatory 8 is neither relevant to the material facts in the proceeding nor necessary to the resolution of the dispute. Legal Analysis §§ I.A, I.C and II.C. Verizon therefore opposes this Interrogatory in its entirety. Defendant further opposes this Interrogatory for the reasons described in the General Opposition.

15. **Interrogatory 9.** Defendant opposes Interrogatory 9 in its entirety as it relates back to Interrogatories 1-8, all of which Verizon opposes. Defendant further opposes this Interrogatory for the reasons described in the General Opposition.

16. **Document Request.** Complainant's request for documents is appropriately considered an eleventh interrogatory in excess of the 10 interrogatory limit of 47 C.F.R. § 1.729(a). Defendant opposes this Interrogatory in its entirety as it relates back to Interrogatories

1-9, all of which Verizon opposes. Defendant further opposes this Interrogatory for the reasons described in the General Opposition.

Respectfully submitted,

A handwritten signature in black ink that reads "John T. Scott III". The signature is written in a cursive style and is underlined with a single horizontal line.

Michael E. Glover  
Of Counsel

John T. Scott, III  
Christopher M. Miller  
Andre J. Lachance  
Robert G. Morse  
1300 I Street, N.W.  
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Washington, DC 20005  
(202) 515-2400

*Attorneys for Verizon Wireless*

August 4, 2014

# TAB I

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
NTCH, Inc.,	)	File No. EB-13-MD-006
	)	
Complainant	)	
	)	
v.	)	
	)	
Cellco Partnership dba Verizon Wireless,	)	
	)	
Defendant	)	

**VERIZON WIRELESS INTERROGATORIES**

Pursuant to Section 1.729 of the Commission’s rules, 47 C.F.R. § 1.729, Cellco Partnership dba Verizon Wireless (“Verizon”) requests that the Commission direct NTCH, Inc. (“NTCH”) to respond to the following Interrogatories:

1. Identify each wireless carrier with whom NTCH has a roaming agreement in which NTCH pays or is charged voice, toll, SMS or data roaming rates that are higher than the rates that are requested in NTCH’s Prayer for Relief, *see* Complaint, ¶ 47/52, together with the rate NTCH pays to or is charged by each wireless carrier, with charges for voice, toll, SMS, and data roaming listed separately. For purposes of this Interrogatory, “wireless carrier” means any entity subject to the automatic roaming obligations of 47 C.F.R. § 20.12.
  
2. Identify all spectrum licenses that NTCH and the affiliates in which it has a controlling interest hold, including when those licenses were acquired, the population covered by each license and, for each license, whether the licensee is providing facilities-based wireless service.

## VERIZON'S EXPLANATION FOR INTERROGATORIES

1. The requested information directly relates to whether roaming rates are just and reasonable under sections 201 and 202 of the Act and commercially reasonable under 47 C.F.R. § 20.12. *See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 25 FCC Rcd 4181, 4194 ¶ 25 (2010) (“*Home Roaming Order*”); *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd 5411, 5452-53 ¶ 86 (2011) (“*Data Roaming Order*”). Company-specific information such as this is generally considered competitively sensitive and is not publicly available.

2. The requested information is directly relevant to the merits of Complainant’s allegations that NTCH is not seeking to roam where it has existing licenses. Complaint ¶ 44/49. Information concerning the extent of a wireless service provider’s spectrum holdings and deployment of facilities-based service also directly relates to whether roaming rates are just and reasonable under sections 201 and 202 of the Act and commercially reasonable under 47 C.F.R. § 20.12. *See Home Roaming Order*, 25 FCC Rcd at 4194 ¶ 25; *Data Roaming Order*, 26 FCC

Rcd at 5452-53 ¶ 86. License-specific information such as this is generally considered competitively sensitive and is not publicly available.

Respectfully submitted,

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style and is underlined with a horizontal line.

Michael E. Glover  
Of Counsel

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(202) 515-2400

*Attorneys for Verizon Wireless*

August 4, 2014

# TAB J

**Certificate of Service**

I hereby certify that on this 4<sup>th</sup> day of August copies of the foregoing "Answer of Verizon Wireless" in File No. EB-13-MD-006 were sent to the following parties:

Donald J. Evans  
Fletcher, Heald & Hildreth, P.L.C.  
1300 N. 17<sup>th</sup> Street – Suite 1100  
Arlington, VA 22207  
*Counsel for NTCH, Inc.*  
(sent via hand delivery)

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Lia Royle  
Market Disputes Resolution Division  
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Washington, DC 20554  
lia.royle@fcc.gov  
(sent via email and hand delivery)

  
\_\_\_\_\_  
Sarah E. Trosch