

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

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|------------------------------------------|---|-----------------------|
| In the Matter of |) | |
| |) | |
| NTCH, Inc., |) | EB Docket No. 14-212 |
| |) | File No. EB-13-MD-006 |
| Complainant, |) | |
| |) | |
| v. |) | |
| |) | |
| Cellco Partnership dba Verizon Wireless, |) | |
| |) | |
| Defendant. |) | |

OPPOSITION OF VERIZON WIRELESS

Verizon Wireless (“Verizon”) opposes the April 3, 2015 letter¹ submitted by NTCH in the above-captioned proceeding. The letter requests (1) a further ruling and explanation of the basis for the Enforcement Bureau’s (the “Bureau’s”) decision to deny discovery into Verizon’s roaming “costs”; and (2) reconsideration of the Bureau’s decision to deny discovery of international roaming rate information.² The Bureau indicated that it would treat the NTCH Discovery Letter Request as a motion under Section 1.727 of the Commission’s rules.³ The Discovery Letter Request should be denied because it is procedurally deficient and because the Bureau’s Discovery Ruling was correct on the merits.

¹ Letter from Donald J. Evans, Counsel for NTCH, Inc., to Rosemary McEnery, Deputy Chief, Market Disputes Resolution Division, EB Docket No. 14-212, File No. EB-13-MD-006 (Apr. 3, 2015) (“Discovery Letter Request”).

² Letter from Rosemary McEnery, Deputy Chief, Market Disputes Resolution Division to Donald J. Evans and Jonathan R. Markman, Counsel to Complainants, and Andre J. Lachance and Tamara Preiss, Counsel to Defendant, EB Docket No. 14-212; File No. EB-13-MD-006 (Apr. 2, 2015) (“Discovery Ruling”).

³ 47 C.F.R. § 1.727.

DISCUSSION

1. The Discovery Letter Request is procedurally deficient. The letter is only a few sentences long and fails to comply with virtually all of the requirements of a motion under Section 1.727. That rule requires parties filing motions to “state[e] with particularity the grounds and authority therefor. . . .”⁴ The Discovery Letter Request does neither.

The Discovery Letter Request is also improper in that it seeks reconsideration of the Bureau’s decision to deny discovery of international roaming rate information. Commission rules prohibit requests for reconsideration of interlocutory actions, and the Discovery Request should be denied accordingly.⁵

2. The Discovery Letter Request should also be denied because the provisions of the Discovery Ruling it challenges were correct on the merits. The Bureau properly denied NTCH’s request for discovery of cost information. In both the voice and data roaming contexts, the Commission explicitly held that it would determine whether rates offered are just and reasonable, or commercially reasonable, based on market forces rather than on prescriptive forms of rate regulation such as endless inquiries into a carrier’s roaming “costs.”

In its Answer, Verizon explained that the Commission adopted a regime whereby voice roaming rates are determined by *negotiations* between carriers based on competitive market forces.⁶ The Commission specifically rejected requests to regulate roaming rates based on cost, to prescribe benchmarks tied to the rates for other services, or otherwise to impose any rate caps. The Commission also found that “regulation to reduce roaming rates has the potential to deter

⁴ 47 C.F.R. § 1.727(a).

⁵ 47 C.F.R. §1.106(a)(1).

⁶ Legal Analysis of Verizon Wireless, EB Docket No. 14-212; File No. EB-13-MD-006 (Aug. 4, 2014) (“Verizon Legal Analysis”) at 2-5; 9-12.

investment in network deployment by impairing buildout incentives facing both small and large carriers.”⁷

Likewise, in the data roaming context, the Commission rejected the use of cost information to determine whether offered data roaming rates are commercially reasonable.⁸ In the *Data Roaming Order*, the Commission specifically rejected requests to impose prescriptive rate regulation on data roaming,⁹ instead choosing to allow providers to “negotiate different terms and conditions on an individualized basis, *including prices*, with different parties.”¹⁰ The Bureau is bound by those holdings, which compelled the Bureau’s Discovery Ruling denying NTCH’s request for discovery of Verizon’s cost information.

The Bureau also correctly denied NTCH’s request for discovery of international roaming rate information. NTCH did not make clear at any point in the proceeding (including at the March 24 discovery conference) until a conversation with Bureau staff on Monday, March 30, that it intended for its first interrogatory to be a request for both domestic and international roaming rate information. The Bureau and Verizon properly and reasonably interpreted NTCH’s request for roaming rates in its first interrogatory as a request for *domestic* roaming rate information only, because NTCH has a very small facilities-based footprint in just one State.

The term “roaming,” as used in NTCH’s first interrogatory, is commonly considered to refer only to domestic roaming. The voice and data roaming rules and orders, for example,

⁷ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817, 15833 (2007) ¶ 40 (“*Automatic Roaming Order*”).

⁸ Verizon Legal Analysis at 20.

⁹ *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, 5423 ¶ 21 (2011) (“*Data Roaming Order*”).

¹⁰ *Id.* at 5445 ¶ 68 (emphasis added).

require commercial mobile radio service and commercial mobile data service providers, respectively, to offer automatic roaming to other facilities-based providers of such services.¹¹ The duty to offer roaming is understood to apply to requests from domestic providers only. Similarly, in T-Mobile’s recent petition for declaratory ruling, it asked the Commission to consider the rates for other services to determine whether an offered data roaming rate is commercially reasonable – and in doing so, it referred to international and domestic roaming as distinct services.¹² In granting the petition, the Wireless Bureau likewise treated international roaming services as separate from domestic roaming services.¹³ Finally, in this proceeding, NTCH itself has acknowledged the need to distinguish between international roaming rates and domestic roaming rates when referring to these services.¹⁴

Moreover, even if the Bureau were to interpret NTCH’s first interrogatory as a request for international roaming rates, denying discovery of international roaming rate information would be appropriate. Commission rules require the moving party to explain in its discovery

¹¹ See 47 C.F.R. § 20.12 (d) and (e); *Automatic Roaming Order*, 22 FCC Rcd at 15818, ¶ 1 (stating that the voice roaming obligation to provide automatic roaming applies to requests from “other carriers,” not other domestic carriers); *Data Roaming Order*, 26 FCC Rcd at 5411, ¶ 1 (stating that the data roaming obligation applies to requests from other facilities-based providers of commercial mobile data services, not other domestic facilities-based providers of such services).

¹² Petition for Expedited Declaratory Ruling of T-Mobile, USA, Inc., WT Docket No. 05-265 (May 27, 2014) at ii.

¹³ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Declaratory Ruling, 29 FCC Rcd 15483, 15486, ¶ 9 (permitting “a complaining party to adduce evidence in any individual case as to whether proffered roaming rates are substantially in excess of retail rates, international rates, and MVNO/resale rates, as well as a comparison of proffered roaming rates to domestic roaming rates as charged by other providers.”).

¹⁴ See Letter from Donald J. Evans, Counsel for NTCH, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, EB Docket No. 14-212, File No. EB-13-MD-006 (Sept. 30, 2014).

request why the information sought is necessary to the resolution of the dispute.¹⁵ NTCH has never attempted to meet this requirement. Nowhere in its request for interrogatories did NTCH explain why international roaming rate information is necessary. And nowhere in its complaint did NTCH argue or even mention that international roaming rates are relevant to a decision about whether Verizon's offered roaming rates are reasonable in this case.

Finally, in the event the Bureau changes course and orders discovery of international roaming rates (which it should not do), Verizon would need to amend its Answer. Virtually all of the factual discussion by Verizon in its Statement of Facts and companion Legal Analysis refers only to domestic CDMA roaming agreements.

* * *

For these reasons, the Bureau should deny the Discovery Letter Request.

Respectfully submitted,

/s/

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April 10, 2015

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¹⁵ 47 C.F.R. § 1.729 (b).

Certificate of Service

I hereby certify that on this 10th day of April a copy of the foregoing “Opposition of Verizon Wireless” in EB Docket 14-212 was sent by US Mail to the following party:

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/s/

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