

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

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)	

VERIZON OPPOSITION TO SUPPLEMENTAL DISCOVERY

Verizon, on behalf of Cellco Partnership dba Verizon Wireless (together, “Verizon”), opposes Complainant’s request for supplemental discovery.¹ The Supplemental Discovery Request far exceeds the scope of supplemental discovery authorized by the Enforcement Bureau (“Bureau”) in this case. It also repeats requests previously denied by the Bureau and fails to establish that the information requested is necessary to resolve the case. For these reasons, the Bureau should deny the request in its entirety.

GENERAL OPPOSITION TO SUPPLEMENTAL DISCOVERY

The Request Exceeds the Scope of the Discovery Ruling. The Supplemental Discovery Request far exceeds the Bureau’s directive with respect to supplemental discovery and should be denied for that reason. Commission rules limit the scope of discovery to up to 15 written interrogatories submitted prior to and immediately after the defendant’s answer.² Additional

¹ Supplemental Discovery of NTCH, Inc., EB Docket No. 14-212, File No. EB-13-MD-006 (Jun. 30, 2015) (“Supplemental Discovery Request”).

² 47 C.F.R. § 1.729(a).

discovery may be allowed subject to the Commission’s discretion in light of the needs of a particular case.³ In its letter order dealing with discovery matters, the Bureau ruled that NTCH could file and serve any supplemental discovery requests authorized by that ruling.⁴ The ruling limited the scope of supplemental discovery to two discrete issues. First, the Bureau decided that, after reviewing Verizon’s response to NTCH’s interrogatories, NTCH could “submit a more focused request” for information regarding Verizon’s rationale for differences between roaming rates offered or provided to other carriers and those offered to NTCH.⁵ Second, the Bureau ruled that NTCH could submit a more focused request for information about the individuals who are the source of Verizon’s Response to NTCH’s Interrogatories.⁶ The Supplemental discovery request contains ten interrogatories plus a request for document production. Only one of the interrogatories addresses an issue that falls within the scope of the Bureau’s supplemental discovery ruling, but that interrogatory, as discussed below, is even broader than NTCH’s original request and thus fails to satisfy the Bureau’s directive for a “more focused request.” For this reason, the Bureau should deny the Supplemental Discovery Request in its entirety.

No Additional Discovery Is Warranted. The additional discovery requested by NTCH is not warranted here. The Commission’s complaint rules require fact-based pleading and require documents supporting such facts to be filed with the complaint and answer.⁷ The objective of these requirements is to reduce reliance on the discovery process as the principal means of

³ 47 C.F.R. § 1.729(h).

⁴ 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”), at 4.

⁵ *Id.* at 3.

⁶ *Id.*

⁷ *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, 22508 ¶22 (1997) (“*Complaint Rules Order*”).

building a factual record.⁸ Verizon previously provided NTCH and the Commission the factual information necessary to resolve this complaint in both its answer to the complaint and through the discovery process. No further discovery is needed.

There Is No Valid Basis for Document Production. NTCH's request to produce documents relating to the Interrogatories is inconsistent with prior rulings in this case and should be denied. Requiring Verizon to produce documents underlying the information already filed through discovery would undermine the agreement reached between NTCH and Verizon to limit discovery of roaming rate information to information provided in table format,⁹ and doing so would be inconsistent with the Discovery Ruling, which rejected NTCH's previous document production request.¹⁰ NTCH's explanation that such production "would permit NTCH to apprehend the full particulars of the relevant material with all pertinent and sometimes telling details and without VZW's editorial judgments about what is relevant" was rejected as an invalid basis for discovery when the Commission adopted section 1.729 of the rules.¹¹ Consistent with its earlier ruling and the Commission's discovery rules, the Bureau should deny NTCH's request for document production.

OPPOSITION TO SPECIFIC INTERROGATORIES

1. ***Interrogatory 1 seeking international roaming information.*** In addition to Verizon's general objections, the Bureau should deny this interrogatory because it repeats discovery requests that have twice been denied. The Bureau previously rejected NTCH's request

⁸ *Id.* at 22508 ¶ 22, 225549 ¶ 117.

⁹ *See* Discovery Ruling at 2.

¹⁰ *Id.* at 3.

¹¹ *See* Complaint *Rules Order*, 12 FCC Rcd. at 22549, ¶ 118 (rejecting "argu[ments] that discovery is needed to verify the accuracy of initial disclosures").

to discover international roaming information¹² and denied NTCH's request to reconsider that ruling.¹³ Consistent with those rulings, NTCH's request to discover international roaming information should again be denied.

2. ***Interrogatories 2 and 3 requesting additional reseller rate information.*** In addition to Verizon's general objections, the Bureau should deny these interrogatories on multiple other grounds. First, NTCH fails to establish how more information about resale rates for which it could not qualify is necessary to resolve this complaint. Second, to the extent NTCH is seeking information because it deems Verizon's response to its initial interrogatories inadequate or insufficient, NTCH's remedy under the rules would have been to file a motion to compel within ten days of the service of the response.¹⁴ NTCH cannot attempt to cure its failure to follow the proper procedure through a supplemental discovery request.

3. ***Interrogatory 4 seeking information about rate plans not being offered to new customers.*** In addition to Verizon's general objections, the Bureau should deny this interrogatory on multiple other grounds. First, NTCH fails to establish that information about legacy rate plans no longer offered to customers is necessary to resolve this complaint. Second, to the extent NTCH is seeking information because it deems Verizon's response to its initial interrogatories inadequate or insufficient, NTCH's remedy under the rules would have been to file a motion to compel within ten days of the service of the response.¹⁵ NTCH cannot attempt to cure its failure to follow the proper procedure through a supplemental discovery request.

¹² Discovery Ruling at 2-3, n.7.

¹³ Letter from Rosemary McEnery, Deputy Chief, Market Disputes Resolution Division to Donald J. Evans and Jonathan Markman, Counsel to NTCH, and Andre J. Lachance and Tamara Preiss, Counsel to Verizon Wireless, EB Docket No. 14-212; File No. EB-13-MD-006 (Apr. 17, 2015) ("Discovery Explanation Ruling"), at 2-3.

¹⁴ 47 C.F.R. § 1.729(f).

¹⁵ 47 C.F.R. § 1.729(f).

4. ***Interrogatories 5 and 7 seeking additional volume information for roaming customers.*** In addition to Verizon’s general objections, the Bureau should deny these interrogatories on multiple other grounds. First, these interrogatories seek information about the volume of traffic exchanged between Verizon and its roaming partners that exceeds the information the parties agreed would be provided through discovery and would undermine that agreement.¹⁶ Second, NTCH fails to demonstrate why more granular volume information is necessary to resolve the complaint.

5. ***Interrogatory 6 seeking the rationale for domestic roaming rate differences.*** In addition to Verizon’s general objections, the Bureau should deny this interrogatory on multiple other grounds. First, although the interrogatory seeks information about which the Bureau stated NTCH could seek supplemental discovery, the interrogatory fails to comply with the Bureau’s direction that any such request be “more focused.”¹⁷ NTCH makes no attempt in its new interrogatory to limit or focus its request in any way. Indeed, this interrogatory is actually *less* focused in that it seeks an explanation for any difference in rates to different carriers listed in the domestic roaming chart, not just an explanation of the differences between rates agreed upon with others and those offered to NTCH, as NTCH originally asked.¹⁸ Second, producing the requested information would impose a substantial burden on Verizon, requiring it to re-construct the negotiations that produced each agreement and to attempt to determine why each negotiation resulted in different rates. This burden far outweighs any potential probative value of the requested information. Third, the interrogatory requests information Verizon does not possess. As the Commission acknowledged, roaming agreements arrived at through negotiation are likely

¹⁶ See Discovery Ruling at 2.

¹⁷ *Id.* at 3.

¹⁸ Compare Supplemental Discovery Request at 4, Interrogatory 6 with Interrogatories of NTCH, Inc., EB Docket No. 14-212, File No. EB-13-MD-006 (Jul. 2, 2014) at 4 (Interrogatory 3).

to “result in a variety of just and reasonable pricing plans and service offerings.”¹⁹ Asking Verizon to explain why a negotiation with one carrier resulted in a set of rates different from those with another carrier would, in most cases, require Verizon to speculate why each carrier made decisions during the negotiation that resulted in the agreed to rates.

6. ***Interrogatory 8 seeking information about roaming agreements with Mexican carriers that have MVNO affiliates.*** In addition to Verizon’s general objections, the Bureau should deny this interrogatory on multiple other grounds. First, this interrogatory requests discovery of international roaming information that has twice been denied by the Bureau.²⁰ Second, NTCH fails to demonstrate why roaming terms with one particular international carrier are necessary to resolve the complaint.

7. ***Interrogatory 9 seeking information about strategies to eliminate competition.*** In addition to Verizon’s general objections, the Bureau should deny this interrogatory because it is a fishing expedition and violates Commission policies “preventing the use of discovery as the primary means of determining if a claim exists.”²¹

8. ***Interrogatory 10 seeking information about volume commitments in Verizon’s roaming agreements.*** In addition to Verizon’s general objections, the Bureau should deny this interrogatory on multiple other grounds. First, the interrogatory seeks information about roaming agreement terms that exceeds the information the parties agreed would be provided through discovery and would undermine that agreement.²² Second, NTCH fails to demonstrate why the requested information is necessary to resolve the complaint.

¹⁹ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817, 15831 ¶ 35 (2007)

²⁰ See response to Interrogatory 1, *supra*.

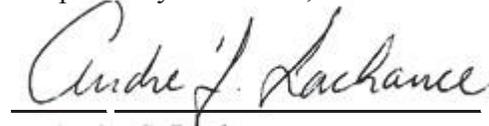
²¹ *Complaint Rules Order*, 12 FCC Rcd. at 22549, ¶ 117.

²² See Discovery Ruling at 2.

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

Respectfully submitted,



A handwritten signature in cursive script that reads "Andre J. Lachance". The signature is written in black ink and is positioned above a solid horizontal line.

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July 10, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of July, 2015, copies of the foregoing Verizon Opposition to Supplemental Discovery were delivered via US mail and email to the following individual:

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/s/
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