

August 13, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Written Ex Parte Communication

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

Dear Ms. Dortch:

In its *ex parte* letter submitted months after the end of the relevant pleading cycle, Mobile Future rallies to the defense of its members AT&T Services, Inc. (“AT&T”) and Verizon to belatedly criticize the *Declaratory Ruling* adopted by the Wireless Telecommunications Bureau (“Bureau”) in the above-referenced proceeding.^{1/} Mobile Future’s letter fundamentally mischaracterizes the *Declaratory Ruling* and the *Data Roaming Order* and is another misguided attempt to erect further roadblocks for carriers seeking commercially reasonable data roaming agreements with dominant providers.^{2/} T-Mobile USA, Inc. (“T-Mobile”)^{3/} urges the Commission to reject that effort and to support the pro-competitive and pro-consumer roaming obligations bolstered by the *Declaratory Ruling*. Indeed, rather than taking a step backward, as suggested by Mobile Future, the Commission should instead move forward with its plans to

^{1/} See Letter from Jonathan Spalter, Chairman, *et al.*, Mobile Future, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed July 22, 2015) (“Mobile Future Letter”); *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Declaratory Ruling, 29 FCC Rcd. 15483 (2014) (“*Declaratory Ruling*”); see also *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 (2011) (“*Data Roaming Order*”), *aff’d sub nom. Cellco P’ship v. FCC*, 700 F.3d 534 (D.C. Cir. 2012).

^{2/} Mobile Future and American Rural are not quite the populist entities they represent themselves to be. AT&T and Verizon fund Mobile Future’s operations and appear to largely shape its advocacy, and the head of Mobile Future is the CEO of American Rural. Mobile Future instead has incentives to selectively report data that promotes the interests of the nation’s largest carriers rather than provide an impartial analysis of the actual state of rural wireless network deployment and competition. The Commission must look past Mobile Future’s claims for what they really are – baseless attacks on behalf of AT&T and Verizon.

^{3/} T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

revisit the issue of data roaming in the context of mobile broadband Internet access service to ensure a competitive roaming marketplace.^{4/}

The Declaratory Ruling is Fully Consistent with the Data Roaming Order and Does Not Amount to Rate Regulation.

T-Mobile agrees with Mobile Future on one thing: the *Data Roaming Order* was carefully tailored to advance “competition among multiple providers in the industry” and to afford host providers appropriate discretion in individually negotiating rates, terms, and conditions without imposing “prescriptive regulation of rates.”^{5/} Nothing in the *Declaratory Ruling* disturbs that careful balance of competing priorities. The *Declaratory Ruling* imposes no new rules; instead, it provides greater clarity regarding the factors that the FCC may view as relevant when determining whether proffered terms and conditions for data roaming are commercially reasonable.^{6/} Also, fully consistent with the non-exclusive factors for assessing commercial reasonableness cited in the *Data Roaming Order*, the economic benchmarks identified in the *Declaratory Ruling* are not prescriptive. Rather, individualized negotiations are preserved and the assessment of commercial reasonableness is conducted on a case-by-case, totality of the circumstances basis.^{7/} The *Declaratory Ruling*’s economic benchmarks are also consistent with Commission precedent, including with regard to the probative value of retail rates.^{8/}

Mobile Future argues that the *Declaratory Ruling*’s endorsement of the economic benchmarks diminishes providers’ incentives to reduce the benchmark rates.^{9/} Mobile Future again misses the point. As the *Declaratory Ruling* makes clear, the economic benchmarks are neither a cap nor a floor for data roaming rates.^{10/} As T-Mobile has previously explained, the benchmarks are intended to be analytical guideposts for the Commission and the parties to assess the commercial reasonableness of the rates, terms, and conditions associated with a particular, individualized negotiation or dispute.^{11/}

^{4/} See *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd. 5601, ¶¶ 523-526 (2015).

^{5/} Mobile Future Letter at 1-2.

^{6/} See Opposition of T-Mobile USA, Inc. to Applications for Review, WT Docket No. 05-265, at i-ii, 11 (filed Feb. 4, 2015) (“T-Mobile Opposition”).

^{7/} See T-Mobile Opposition at 3-4, 11. This individualized approach also continues to permit rural carriers (about which Mobile Future appears to be concerned) the flexibility to justify the type of roaming rates they offer. See Mobile Future Letter at 4.

^{8/} See T-Mobile Opposition at 4-5.

^{9/} See Mobile Future Letter at 2-3.

^{10/} See T-Mobile Opposition at 4-5.

^{11/} See Reply Comments of T-Mobile USA, Inc., WT Docket No. 05-265, at 10-15 (filed Aug. 20, 2014).

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Mobile Future's argument is also fundamentally illogical. A carrier would only keep the benchmark rates high if it did not otherwise need to roam, *i.e.*, if it were a net host provider. As the record reflects, T-Mobile and virtually every other carrier aside from AT&T and Verizon rely on data roaming to meaningfully compete against the Big Two. Most of the industry, therefore, has no incentive to keep benchmark rates artificially high. And if any carrier, particularly AT&T or Verizon, were found to be manipulating benchmark rates for purposes of inflating data roaming rates, the Commission would have a duty to investigate those practices.

The Declaratory Ruling Does Not Undermine Investment Incentives.

Mobile Future claims that some requesting carriers have used the data roaming rules to rely on host providers' network investment, or to "piggyback," rather than deploy their own networks.^{12/} But the *Declaratory Ruling* in no way "tilts the scales" away from investment. The scales remain precisely where they were set by the *Data Roaming Order*, and Mobile Future is in fact attacking the balance struck in the *Data Roaming Order* itself.^{13/} The *Data Roaming Order* firmly established a carrier's roaming rights, even in areas where it has not yet built out. And the Commission has routinely emphasized the importance of competitive access to roaming and refused to permit carriers to deny roaming or charge unreasonably high roaming rates merely because an otherwise built-out carrier has not yet built in a particular area.^{14/} Mobile Future's challenge to the fundamental underpinnings of the *Data Roaming Order* should be firmly rejected.

Finally, even if the challenge were timely, Mobile Future's investment arguments are without merit. Mobile Future's examples of carriers relying on roaming instead of buildout far pre-date the *Declaratory Ruling*.^{15/} Mobile Future's arguments also fail to recognize the very legitimate reasons why carriers may choose not to build in a particular area – for example, build out may not be feasible due to the lack of important low-band spectrum, the timing of spectrum acquisition and the status of spectrum clearing, the lack of necessary bandwidth, access to towers, state and local regulations, interference concerns, and the availability of funds that have

^{12/} See Mobile Future Letter at 2.

^{13/} Mobile Future argues that growth in rural populations served by three or more carriers slowed in the period between adoption of the *Data Roaming Order* and the release of the *Declaratory Ruling*; again, this argument is an attack on the *Data Roaming Order* and is unrelated to the *Declaratory Ruling*. Mobile Future also neglects to mention that the reduction in the number of carriers is due in large part to its members' aggressive acquisition of other carriers – marketplace consolidation that has reduced roaming competition.

^{14/} See T-Mobile Opposition at 9.

^{15/} See, *e.g.*, Mobile Future Letter at 2; see also Letter from Charles W. McKee, Vice President, Government Affairs, Federal & State Regulatory, *et al.*, Sprint, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265, at 1-2 (filed Aug. 4, 2015) ("Sprint Letter").

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been diverted to other expenses such as roaming costs.^{16/} Furthermore, there may be areas of the country with such low population densities that buildout by an additional carrier is simply not economically viable.^{17/}

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Pursuant to Section 1.1206 of the Commission's rules, an electronic copy of this letter is being filed for inclusion in the above-referenced docket. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

/s/ Russell H. Fox

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Robert G. Kidwell
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^{16/} See Letter from Trey Hanbury, Hogan Lovells US LLP, Counsel to T-Mobile, to Ms. Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 and WT Docket No. 12-269, at 2, 5 (filed Apr. 23, 2015) ("T-Mobile April 23 Letter"); Letter from Neville Ray, Chief Technology Officer, T-Mobile, to Tom Wheeler, Chairman, FCC, GN Docket No. 12-268 and WT Docket No. 12-269, at 2, 4 (filed June 2, 2015) ("Neville Ray Letter"); Sprint Letter at 3-4. As T-Mobile has explained and the Commission has recognized, the availability of low-band spectrum is central to buildout, particularly in rural areas, because low-band frequencies have certain propagation characteristics that largely determine whether, when, how, and where wireless carriers can cost-effectively deploy broadband services. See T-Mobile April 23 Letter at 2-3, 5-7; Neville Ray Letter at 1, 4; Reply Comments of T-Mobile USA, Inc., WT Docket No. 15-125, at 12-13 (filed June 14, 2015); see also Sprint Letter at 2-3.

^{17/} See *Data Roaming Order* n.51.