



August 27, 2015

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

Re: Ex Parte Letter, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265

Dear Ms. Dortch:

In recent filings in this docket, Sprint and T-Mobile, as well as the trade association advocating for their interests, the Competitive Carriers Association (“CCA”), continue their efforts to gain unfair, undeserved, and unwarranted competitive advantages through rent-seeking and regulatory arbitrage, this time in the form of artificially low data roaming rates.¹ Unable to refute the facts, the companies and CCA mischaracterize the recent filing by Mobile Future² in the docket and detail a litany of excuses for why T-Mobile and Sprint have neither invested in nor built out their networks in rural areas while other companies have. Mobile Future reiterates its support for the Applications for Review³ of the Wireless Telecommunications Bureau’s *Declaratory Ruling*⁴ and urges the Commission to restore the careful balance between promoting consumer access to nationwide mobile data coverage and protecting “incentives for new entrants and incumbent providers to invest in and deploy advanced networks across the country” that the Commission adopted in the *Data Roaming Order* in 2011.⁵

¹ Sprint Ex Parte Letter, WT Docket No. 05-265 (filed Aug. 4, 2015); T-Mobile Ex Parte Letter, WT Docket No. 05-265 (Aug. 13, 2015); Competitive Carriers Associate Ex Parte Letter, WT Docket No. 05-265 (Aug. 17, 2015).

² Mobile Future Ex Parte Letter, WT Docket 05-265 (filed July 22, 2015).

³ Application for Review of AT&T, WT Docket NO. 05-265 (filed Jan. 16, 2015); Application for Review of Verizon, WT Docket No. 05-265 (filed Jan. 20, 2015).

⁴ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Declaratory Ruling, 29 FCC Rcd 15483 (2014) (“Declaratory Ruling”).

⁵ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket NO. 05-265, Report & Order, 26 FCC Rcd 5411 (2011) (“Data Roaming Order”).

Investment in and deployment of advanced networks across the country are the obvious prerequisites to nationwide mobile data coverage, and investment and deployment across the country will need to continue in order to meet the ever-increasing demand for faster mobile networks. Unfortunately, and as Mobile Future previously explained, the *Declaratory Ruling* shifts the careful balance between preserving buildout incentives and providing nationwide coverage adopted in the *Data Roaming Order*. And while Mobile Future agrees with CCA that the United States is the global leader in 4G, it does not follow that buildout in rural areas after 2011 is as robust as possible – nor that the United States is guaranteed to stay in the lead with 5G.

As Mobile Future noted in its July 22 *ex parte* letter, “Growth in rural population served by 3 or more providers slowed significantly – by nearly 75% -- in the roughly two years following the effective date of the *Data Roaming Order*, as compared to the roughly two years before the rules were in effect.”⁶ The underlying data support this statement, contrary to CCA’s assertion.⁷ Between November 2009 and January 2012, the rural population covered by three or more mobile broadband providers increased from 18 million to 34.5 million.⁸ That is an increase of 91 percent in the roughly two years before the effective date of the *Data Roaming Order*. Between January 2012 and January 2014, the rural population covered by three or more mobile broadband providers increased from 34.5 million to 42.6 million.⁹ That is an increase of just over 23 percent in the roughly two years following the effective date of the *Data Roaming Order*, which amounts to a nearly 75 percent reduction in the rate of growth compared to the previous roughly two years.

CCA’s claim that the number of rural POPs covered by three or more mobile broadband providers more than doubled between January 2012 and October 2012 is also inaccurate.¹⁰ The rural population covered by three or more mobile broadband providers increased from 34.5 million in January 2012 to 38.7 million in October 2012.¹¹ That is an increase of just under 12 percent, not “more than double.”

Among their litany of excuses, Sprint and T-Mobile both predictably blame their failure to build out their networks in rural areas on a supposed lack of low band spectrum. On the contrary, what is lacking in our nation’s telecommunications sector has not been low band spectrum. It has

⁶ Mobile Future Ex Parte Letter at 2.

⁷ CCA Ex Parte Letter at 5.

⁸ *Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd 11407, 11596 ¶ 355; *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Sixteenth Report, 28 FCC Rcd 3700, 3946 ¶ 393 (2013) (“16th Report”).

⁹ 16th Report, 28 FCC Rcd at 3946 ¶ 393; *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Seventeenth Report, 29 FCC Rcd 15311, 15431 (2014) (“17th Report”).

¹⁰ CCA Ex Parte Letter at 5.

¹¹ 16th Report, 28 FCC Rcd at 3946 ¶ 393.

been the lack of will or interest by T-Mobile or Sprint to invest in this spectrum or optimize their current spectrum holdings, despite their ample capital resources to do so. Indeed, AT&T made clear earlier in this proceeding that in many cases AT&T's network in rural areas uses the same mid- and high-band spectrum that T-Mobile holds.¹² Sprint of course holds 800 MHz low-band spectrum across the country as a result of its Nextel acquisition but still hasn't built out its network in rural areas.¹³ Moreover, both T-Mobile and Sprint have had multiple opportunities to purchase low-band spectrum either at auction or on the secondary market and have simply chosen not to do so. T-Mobile and Sprint chose not to participate in the 2008 auction of 700 MHz spectrum, and out of the 2,000 low-band spectrum licenses traded on the secondary market between 2007 and mid-2013, T-Mobile bought only one of the licenses and Sprint bought none.¹⁴

Meanwhile, both T-Mobile and Sprint have successfully acquired spectrum on the secondary market and in auctions when they chose to participate. The 2006 AWS-1 auction is the only spectrum auction held during the past 12 years in which all four nationwide operators participated, and T-Mobile acquired more spectrum in that auction (26 percent of all MHz-POPs) than AT&T and Verizon combined (25 percent).¹⁵ T-Mobile recently acquired 700 MHz spectrum covering 190 million POPs,¹⁶ and Sprint has also had success on the secondary market, most notably through its Nextel acquisition.

Moreover, both carriers will have the opportunity to obtain more low-band spectrum in the 600 MHz incentive auction next year, and successfully lobbied the Commission to set aside up to 30 MHz of spectrum in the auction for carriers other than AT&T and Verizon. It remains to be seen whether Sprint and T-Mobile will actually purchase the low-band spectrum they claim they need to serve rural America, with Sprint's CEO Marcelo Claure even suggesting it may decline to participate in the auction altogether.¹⁷ And even if the carriers do prevail at auction, there is no evidence that they will actually build or invest in rural America.

Sprint and T-Mobile's arguments that they lacked certain "head start" advantages are inaccurate and unconvincing. First, Sprint suggests that access charges provide Verizon and AT&T an advantage. But wireless carriers do not collect access charges. If Sprint is suggesting that AT&T and Verizon have resources available from their wireline affiliates, both Sprint and T-Mobile also have considerable resources at their fingertips via their telecom giant parent

¹² Comments of AT&T, WT Docket 05-265 at 4 (filed July 10, 2014).

¹³ *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, Memorandum Opinion and Order, 20 FCC Rcd 13967 (2005).

¹⁴ Leslie M. Marx, *Economic Analysis of Proposals that Would Restrict Participation in the Incentive Auction*, ¶ 41 (Sept. 28, 2013), available at <http://apps.fcc.gov/ecfs/document/view?id=7520944358>.

¹⁵ *FCC Spectrum Auctions and Secondary Market Policies: An Assessment of the Distribution of Spectrum Resources Under the Spectrum Screen*, at ii (Nov. 2013), <http://mobilefuture.org/wp-content/uploads/2013/11/Paper-Distribution-of-Spectrum-Resources.pdf>.

¹⁶ Phil Goldstein, *T-Mobile appears set to bring 700 MHz LTE service to NYC area*, Fierce Wireless (June 1, 2015), <http://www.fiercewireless.com/story/t-mobile-appears-set-bring-700-mhz-lte-service-nyc-area/2015-06-01>.

¹⁷ Phil Goldstein, *T-Mobile only major carrier that seems enthusiastic about 600 MHz auction, as broadcasters are split*, Fierce Wireless (Aug. 6, 2015), <http://www.fiercewireless.com/story/t-mobile-only-major-carrier-seems-enthusiastic-about-600-mhz-auction-broadc/2015-08-06>.

companies, Softbank and Deutsche Telekom, who have market capitalizations in excess of \$70 billion and \$80 billion respectively. Second, Sprint and T-Mobile were free to participate in the Commission's past USF programs and remain free to participate in the new mobility fund and other USF programs. Finally, suggestions that T-Mobile and Sprint are disadvantaged because Verizon and AT&T received cellular spectrum for free while they did not have been thoroughly and repeatedly disproven.¹⁸

In sum, Mobile Future reiterates its support for the Applications for Review filed by AT&T and Verizon urging the Commission to vacate the Bureau's *Declaratory Ruling*. Mobile Future indeed is deeply proud to vigorously represent these and several other innovative national and global technology companies who consistently have "walked their talk" when it comes to investing in our nation's broadband infrastructure and serving America's rural communities. We equally are proud to advocate for the interests of the hundreds of millions of our nation's citizens – in communities both large and small, urban and rural – who have chosen to rely on our members for their mobile broadband needs. Consumers across the nation continue to demand ever-increasing amounts of data at ever-increasing speeds, and *all* mobile broadband providers will need to invest heavily in their networks to meet that demand. At the end of the day, consumers benefit significantly more when carriers actually commit to investing in their networks. The Commission should recognize the patently self-serving pleadings in this docket of Sprint, T-Mobile and CCA for what they are and act to preserve the careful balance between supporting consumer access to nationwide data coverage and protecting incentives for carriers to invest in and deploy advanced networks adopted in the *Data Roaming Order*.

Sincerely,

/s/ Jonathan Spalter
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¹⁸ Mobile Future Letter at 4, GN Docket No. 12-268; WT Docket No. 12-269 (filed May 22, 2015) (noting that AT&T acquired nearly 97 percent of its low-band spectrum holdings at auction or through secondary market transactions and that Verizon similarly paid for the vast majority of its low-band spectrum).