

Andre J. Lachance
Assistant General Counsel



September 15, 2015

1300 I Street, NW
Suite 400 West
Washington, DC 20005

Phone 202.515.2439
Fax 202.289.6781
andy.lachance@verizon.com

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

Re: *Flat Wireless, LLC v. Cellco Partnership d/b/a Verizon Wireless*, EB Docket No. 15-147, File No. EB-15-MD-005

Dear Ms. Dortch:

Enclosed is Verizon's Answer in the above-captioned proceeding. Verizon's Legal Analysis is not included with this filing. Under the revised scheduling ruling issued by the Enforcement Bureau ("Bureau") on September 2, 2015, the Legal Analysis will be filed on September 30, 2015. Verizon is also not responding at this time to either the amended interrogatories, filed by Flat on September 1, 2015, or the amended complaint, filed by Flat on September 11, 2015. The motions to accept those filings have not been granted by the Bureau. Verizon reserves the right to respond to each of those filings when and if the motions to accept the filings are granted by the Bureau.

Sincerely,

A handwritten signature in cursive script that reads "Andre J. Lachance".

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TAB A

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CONFIDENTIAL AND HIGHLY CONFIDENTIAL MATERIAL ENCLOSED

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

ATTN: Rosemary McEnery
Deputy Chief
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***Flat Wireless, LLC, Inc. v. Cellco Partnership d/b/a Verizon Wireless***
EB Docket No. 15-147; File No. EB-15-MD-005
Verizon Answer and Request for Confidential Treatment

Dear Ms. Dortch:

Verizon hereby requests confidential treatment of documents and information provided in and with the attached Answer, Statement of Facts, Information Designation, Opposition to Flat's Interrogatories, Verizon's Response to Flat's Interrogatories, Declarations, and Verizon Interrogatories. The instant request seeks confidential treatment of these materials pursuant to the protective order adopted by the Enforcement Bureau,¹ and 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).

¹ Protective Order, EB Docket No. 15-147, File No. EB-15-MD-005 (Aug. 31, 2015).

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" and "Highly Confidential" as well as information designated "[BEGIN CONFIDENTIAL]" and "[END CONFIDENTIAL]" and "[BEGIN HIGHLY CONFIDENTIAL]" and "[END HIGHLY CONFIDENTIAL]," in the Answer and the associated Exhibits, Declarations, and Statement of Facts. The documents and information subject to this request generally relate to commercial negotiations and arrangements between Verizon and Flat Wireless, LLC, Inc. ("Flat" 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.
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 15, 2015 letter to Verizon and Flat and the Enforcement Bureau's September 2, 2015 grant of the parties' Joint Motion to Revise Scheduling Order, as part of Verizon's Answer to Flat'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"² 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."³ 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

²See *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).

³*Critical Mass Energy Project v. NRC*, 975 F.2d 871, 873 (D.C. Cir. 1992), *cert. denied*, 113 S. Ct. 1579 (1993).

person from whom the information was obtained.”⁴ Both of these considerations plainly apply in this instance, as further explained in point (5) below.

4. Competitiveness of Market. The commercial information provided derives from and relates to Verizon’s 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).
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 in nature. Further, the documents are plainly “confidential” in that they “would customarily not be released to the public.”⁵ Further, evidence revealing “[a]ctual competition and the likelihood of substantial competitive injury” is sufficient to bring commercial information within the realm of confidentiality.⁶ 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 4.⁷
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 Flat. Documents disclosed to Flat have been subject to non-disclosure agreements.
8. Requested Duration of Nondisclosure. The enclosed information should never be released for public inspection, as it contains commercially

⁴*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*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).

⁶*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).

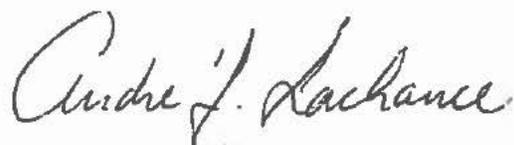
⁷*See, e.g., Josh Wein, Warren Communications News, Request for Inspection of Records*, Memorandum Opinion and Order, 24 FCC Rcd 12347, 12352-53 (2009).

sensitive, confidential information, the release of which could adversely affect Verizon's competitive position.

For the foregoing reasons, Verizon 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) 515-2439.

Respectfully submitted,

A handwritten signature in cursive script that reads "Andre J. Lachance".

Andre J. Lachance
1300 I Street, N.W.
Suite 400 West
Washington, DC 20005
(202) 515-2400

Attorney for Verizon Wireless

TABB

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Flat Wireless, LLC,	)	EB Docket No. 15-147
)	
Complainant	)	File No. EB-15-MD-005
)	
v.)	
)	
Cellco Partnership dba Verizon Wireless,)	
)	
Defendant)	

VERIZON WIRELESS ANSWER

Kathleen M. Grillo
Of Counsel

Christopher M. Miller
Tamara L. Preiss
Andre J. Lachance
1300 I Street, N.W.
Suite 400 West
Washington, DC 20005
(202) 515-2400

Steven G. Bradbury
Dechert LLP
1900 K Street, N.W.
Washington, DC 20006

September 15, 2015

Attorneys for Verizon Wireless

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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Flat Wireless, LLC,	)	EB Docket No. 15-147
)	
Complainant	)	File No. EB-15-MD-005
)	
v.)	
)	
Cellco Partnership dba Verizon Wireless,)	
)	
Defendant)	

VERIZON WIRELESS ANSWER

Under to Section 1.724 of the Commission’s rules, 47 C.F.R. § 1.724, Cellco Partnership dba Verizon Wireless (“Verizon” or “Defendant”) answers the Formal Complaint of Flat Wireless, LLC (“Flat” or “Complainant”) as follows:

I. ALLEGATIONS ABOUT THE PARTIES

1. Defendant admits that the Complainant is Flat Wireless, LLC. Defendant lacks information sufficient to admit or deny whether Complainant is a Texas limited liability company. Defendant lacks information sufficient to admit or deny whether Complainant is headquartered at 5225 S Loop 289, Suite 128, Lubbock, TX 79424. Defendant lacks information sufficient to admit or deny the remaining allegations in the paragraph.
2. Defendant admits.
3. Defendant admits.

II. ALLEGATIONS ABOUT BACKGROUND INFORMATION

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). The Commission's Report and Order in CC Docket No. 79-318 speaks for itself, and on that basis Defendant denies the allegations in paragraph 4. The allegations in paragraph 4 contain speculation and conjecture about the Commission's motivation in issuing that order and on that basis Defendant further 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). 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 Defendant denies the allegations in paragraph 5. The allegations in paragraph 5 contain speculation and conjecture about the conduct of unidentified "wireline-affiliated carriers" over an indeterminate period of "two decades," and on that basis Defendant further denies the allegations in paragraph 5.
6. 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 Defendant 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). 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 Defendant denies the allegations in paragraph 6. The remaining allegations

in paragraph 6 contain speculation and conjecture about the Commission's motivation in issuing these orders, and on that basis Defendant 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). The Commission's Second Report and Order speaks for itself, and on that basis Defendant 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). The Commission's Second Report and Order in WT Docket No. 05-265 speaks for itself, and on that basis Defendant denies the allegations in paragraph 8. The allegations in paragraph 8 contain speculation and conjecture about the Commission's motivation in issuing that order, and on that basis Defendant denies the allegations in paragraph 8. 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 admits that the Commission adopted a Report and Order on Remand, Declaratory Ruling, and Order in GN Docket No. 14-28, *Protecting and Promoting the Open Internet*, on February 26, 2015. The Report and Order on Remand, Declaratory Ruling, and Order in GN Docket No. 14-28 speaks for itself, and on that basis Defendant denies the allegations in paragraph 9. 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.

10. The allegations in paragraph 10 contain speculation and conjecture about the state of the wireless industry, the state of the Commission's roaming regulations, and the relative business incentives of carriers to provide roaming service, and on that basis Defendant denies the allegations in paragraph 10. Defendant denies that it has been increasingly reluctant to make roaming available to other carriers. **[BEGIN CONFIDENTIAL]**

[REDACTED]

[REDACTED] **[END CONFIDENTIAL]** The remaining allegations in paragraph 10 contain legal argument and conclusion that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 10.

III. ALLEGATIONS ABOUT VERIZON'S MARKET POSITION

11. 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, Cox, T-Mobile, and Leap, is published at 27 FCC Rcd 10698 (2012). 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 Defendant denies the allegations in paragraph 11.

12. Defendant admits that parties filed pleadings with the Commission opposing the proposed acquisition of spectrum from SpectrumCo, Cox, T-Mobile, and Leap in WT Docket Nos. 12-4 and 12-175. Defendant admits further that the first quotation in paragraph 12 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 denies that the second quotation in paragraph 12 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. 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 Defendant denies the allegations in paragraph 12.

13. 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 Defendant denies the allegations in paragraph 13. 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. The remaining allegations in paragraph 13 contain speculation and conjecture, and on that basis Defendant denies the remaining allegations in paragraph 13.

14. Defendant denies that Complainant cannot rely on roaming services provided by Sprint outside of Flat's own coverage area. The remaining allegations in paragraph 14 contain speculation and conjecture about Sprint's network and statements about ineffective hand-offs between the Sprint and Flat networks, and on that basis Defendant denies the allegations in paragraph 14. Defendant lacks information sufficient to admit or deny the remaining allegations in paragraph 14.

15. Defendant denies that Flat has no viable roaming alternatives to Verizon. Defendant denies that it does not have incentive to enter into roaming agreements with other carriers. The allegations in paragraph 15 contain speculation and conjecture about Verizon's position in the roaming market and Verizon's business incentives to enter into roaming agreements, and on that basis Defendant denies the allegations in paragraph 15.

Section 20.12 of the Commission's rules speaks for itself, and on that basis Defendant denies the allegations in paragraph 15. Defendant denies the entirety of Flat's characterization of its LTE in Rural America program.

16. **[BEGIN CONFIDENTIAL]** [REDACTED]

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

17. The allegations in paragraph 17 contain speculation and conjecture about 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 Defendant denies the allegations in paragraph 17. Section 20.12 of the Commission's rules speaks for itself, and on that basis Defendant 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. 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 ABOUT THE NEGOTIATIONS BETWEEN THE PARTIES

18. Defendant admits, based on Item 3 of Exhibit A to the Complaint, that Flat and Verizon entered into a roaming agreement, and that this agreement specifies roaming rates applicable to Flat customers. Defendant denies that the roaming agreement dates back to

June 2011. That agreement speaks for itself, and for that reason Defendant denies the allegations in paragraph 15 about the nature of the agreement. Defendant denies that its offered roaming rates are so financially burdensome to Flat as to preclude Flat customers from roaming on Verizon's network. [BEGIN CONFIDENTIAL] [REDACTED]

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

19. Defendant admits, based upon the documents contained in Items 1 and 2 of Exhibit A to the Complaint, that Flat and Verizon discussed a new roaming agreement. Those discussions resulted in a voice roaming rate offer from Verizon to Flat of [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL] The written communications between Flat and Verizon speak for themselves, and on that basis Defendant denies the allegations in paragraph 19. The remaining allegations in paragraph 19 contain speculation and conjecture, and on that basis Defendant denies the remaining allegations in paragraph 19.

V. ALLEGATIONS ABOUT VERIZON'S JUST AND REASONABLE ROAMING RATES

20. Defendant admits that Complainant correctly quotes a portion of section 201 of the Communications Act of 1934, as amended, 47 U.S.C. § 201. Section 201 of the Communications Act speaks for itself.
21. 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. This order speaks for itself, and on that basis Defendant denies the allegations in paragraph 21.

22. 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. This order speaks for itself, and on that basis Defendant denies the allegations in paragraph 22. Defendant denies that the citations to the quotations in footnote 4 to the order in *In the Matter of Rates for Interstate Inmate Calling Services* and the order in *In the Matter of MTS and WATS* are correct. Defendant admits that all other orders and quotations in footnote 4 are correctly cited. The orders and decisions cited in footnote 4 speak for themselves, and on that basis Defendant denies the allegations in footnote 4 to paragraph 22.
23. Paragraph 23 contains legal argument and conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 23. Defendant admits that the Wireless Telecommunications Bureau released a Declaratory Ruling in *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, on December 18, 2014. The Declaratory Ruling speaks for itself, and on that basis Defendant denies the allegations in paragraph 23.

24. Defendant admits that it offers a basic monthly prepaid calling plan with unlimited talk and text and 500 MB of data for \$35 per month. Defendant admits that it offered Flat a voice roaming rate of three cents per minute of use, exclusive of toll charges. The remainder of paragraph 24 contains legal arguments, speculation, conjecture and conclusions that do not require a response. If it does require a response, Defendant denies the allegations.

25. 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]

[REDACTED] [END CONFIDENTIAL] Defendant admits that the coverage map attached to the Complaint at Exhibit B represented Verizon's advertised prepaid coverage map at the time the image was printed. Defendant lacks information sufficient to admit or deny the remaining allegations in paragraph 25.

26. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL] 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. The allegations in paragraph 27 contain speculation and conjecture about Verizon's cost of service, and on this basis Defendant denies the allegations in paragraph 27. 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] The remaining allegations in paragraph 28 contain speculation and conjecture regarding [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] The remaining allegations in paragraph 28 contain speculation and conjecture, and on this basis Defendant 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. The remaining allegations in paragraph 29 contain speculation and conjecture, and on this basis Defendant denies the allegations in paragraph 29. 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] 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 ABOUT VERIZON'S NON-DISCRIMINATORY ROAMING RATES

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. Section 202 of the Communications Act 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). The Second Report and Order in GN Docket No. 93-252 speaks for itself, and on that basis Defendant 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, in footnote 14 of paragraph 32.

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. The remaining allegations in paragraph 33 contain speculation and conjecture, and on this basis Defendant denies the allegations in paragraph 33. 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. The Second Report and Order in GN Docket No. 93-252 speaks for itself and on that basis denies the allegations in paragraph 34. 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. The allegations in paragraph 34 also contain speculation and conjecture, and on this basis Defendant denies the allegations in paragraph 34.
35. Defendant admits that the Rural Cellular Association and Rural Telecommunications Group jointly submitted a letter in WT Docket No. 05-265 on November 12, 2010. The contents of that letter speak for itself. The remaining allegations in paragraph 35 contain speculation and conjecture, and on this basis Defendant denies the allegations in paragraph 35.
36. Defendant admits that its charges for roaming are ordinarily not available for public inspection. Defendant admits that the Complainant correctly quotes a portion of the Net Neutrality Report and Order on Remand, Declaratory Ruling, and Order, *Protecting and Promoting the Open Internet*, 30 FCC Rcd 5601 (2015) in paragraph 36. The *Net Neutrality* order speaks for itself. The allegations in paragraph 36 contain legal argument and conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 36.

37. The allegations in paragraph 37 contain speculation, legal argument, and conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 37.

VII. ALLEGATIONS ABOUT VERIZON'S COMMERCIALY REASONABLE DATA ROAMING RATES, TERMS AND CONDITIONS

38. 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). This Second Report and Order speaks for itself, and on this basis Defendant denies the allegations in paragraph 38. 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, in paragraph 526 of the *Net Neutrality* order, decided to forbear from applying the CMRS roaming rule, 47 C.F.R. § 20.12(d), to mobile broadband internet access services. The allegations in paragraph 39 contain legal argument and conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 39.

40. Defendant admits that the Second Report and Order referenced in paragraph 38, above, applies a standard of commercial reasonableness to offered rates, terms, and conditions for data roaming. The allegations in paragraph 40 contain legal argument and conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 40.

41. Paragraph 41 contains allegations about Flat's own motivation, network, and business plans. Defendant lacks information sufficient to admit or deny the allegations in paragraph 41.

42. Defendant admits that the Verizon service plan advertisement at Exhibit G of the Complaint describes LTE data usage and pricing options for tablets, hotspots, and other data-only network-capable devices (not including smartphones) offered as of the time of the Complaint. Defendant admits that Verizon's most recent data roaming offer to Flat was [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] The remaining allegations in paragraph 42 contain speculation and conjecture and legal conclusions about rates Verizon charges to prepaid and/or wholesale customers and Verizon's internal costs, and on this basis Defendant denies the remaining allegations in paragraph 42. Defendant has offered data roaming to Flat at rates that [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL]
43. Defendant admits that Exhibit I of the Complaint is an *ex parte* letter filed on behalf of Youghioghney Communications, LLC ("Youghioghney") in WT Docket No. 05-265 on February 6, 2014. The remaining allegations in paragraph 43 contain speculation and conjecture about rates Verizon charges to prepaid and/or wholesale customers, on Verizon's internal costs, and on the internal costs of Youghioghney, and on this basis Defendant denies the allegations in paragraph 43. Defendant lacks sufficient knowledge to admit or deny the accuracy of Youghioghney's costs of delivering a GB of wireless data. The remaining allegations in paragraph 43 contain legal argument and conclusions that do not require a response. If they do require a response, Defendant denies the allegations in paragraph 43.
44. The Second Report and Order in WT Docket No. 05-265 speaks for itself, and on this basis Defendant denies the allegations in paragraph 44. Defendant denies that its offered

terms and conditions are tantamount to a refusal to offer an agreement. Defendant denies that Flat is not seeking to roam where it has existing licenses. Defendant lacks information sufficient to admit or deny whether Flat seeks roaming where there is technical incompatibility with Verizon's data interface. Defendant denies that its current or offered roaming rates impair Flat's ability to compete as a facilities-based carrier. The remaining allegations in paragraph 44 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.

VIII. PRAYER FOR RELIEF

Paragraphs 45 through 50 represent Complaint's prayer for relief, and no response from Defendant is required. If a response is required, Defendant denies the allegations in paragraphs 45 through 50 for the reasons set forth in the forthcoming Legal Analysis, which Verizon will file by September 30, 2015.

IX. OTHER REQUIREMENTS OF SECTIONS 1.721 OF THE RULES

The remaining statements in paragraphs 51 and 52 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 Michael Pocher and Robert Strobel have personal knowledge are correctly described in the attached Information Designation. Defendant further denies that Mr. Pocher or Mr. Strobel have personal knowledge of any facts beyond those described in the attached Information Designation.

GENERAL DENIAL

Any allegation not specifically admitted is denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense. Section 1.721(a)(5) requires Flat 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 will be demonstrated in the forthcoming Legal Analysis, even if all of the factual allegations were true, nearly all of them are irrelevant to Flat's claims, and the few arguably relevant facts in the Complaint do not demonstrate that Verizon's offered rates are unjust and unreasonable, unreasonably discriminatory, or commercially unreasonable.

Second Affirmative Defense. Flat's claims are barred for failure to state a cause of action. In a formal complaint proceeding under 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 will be demonstrated in the forthcoming 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. Flat's request that the Commission require Verizon to make its roaming rates publicly available, *see* Complaint ¶ 50, is not appropriately the subject of

this formal complaint. Verizon notes that information exchanged in discovery is subject to the Protective Order.

Fourth Affirmative Defense. Flat fails to provide legal support for its request that the Commission require Verizon to charge no more than [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] for voice roaming during the pendency of the complaint. *See* Complaint ¶ 49. 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 will be demonstrated in the forthcoming Legal Analysis, Complainant's only cited basis for this request is contrary to the Second Report and Order in WT Docket No. 05-265. Complainant provides no other legal basis for the requested interim relief and the Commission should reject these requests.

Fifth Affirmative Defense. Defendant 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) will be filed by September 30, 2015, as set forth in the parties' agreed motion, granted by the Bureau on September 2, 2015.

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. 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 Flat's Complaint with prejudice.

TABC

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of)
)
Flat Wireless, LLC, Inc.) EB Docket No. 15-147
)
Complainant) File No. EB-15-MD-005
)
v.)
)
Cellco Partnership dba Verizon Wireless)
)
Defendant)

STATEMENT OF FACTS OF VERIZON WIRELESS

I. HISTORY OF NEGOTIATIONS

Flat Wireless, LLC, Inc. (“Flat”) and Verizon Wireless (“Verizon”) have a roaming agreement in place that was executed in August, 2011. That agreement provides for [BEGIN

CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

In January, 2015, Flat asked Verizon for a new roaming agreement.³ Negotiations towards a new agreement began immediately but did not result in a new roaming agreement.

¹ Complaint ¶ 18. See Intercarrier Roamer Service Agreement between Flat and Verizon, Attachment D, Intercarrier Roamer Service Rates (August 16, 2011) (Exh. A.3. to Complaint).

² See Declaration of Mike Pocher ¶ 6, attached (“Pocher Decl.”). Although Flat’s Complaint refers to a roaming agreement dating to June 2011, Verizon is not aware of any such agreement. Pocher Decl. ¶5.

³ Complaint ¶ 19; email from Donald J. Evans, Counsel for Flat to Rob Strobel, Deputy Assistant General Counsel, Verizon Wireless (Jan. 21, 2015) (Exh. 1 to Answer).

After an initial conference call, on February 11, 2014, Verizon proposed roaming rates of

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] Flat then countered, stating it could live

with Verizon's proposed data rates, but proposed lower – [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] Verizon soon

countered with a voice proposal of [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] But the next day, in a series of

emails, Flat rejected Verizon's voice proposal and said that it mistook Verizon's per MB data

roaming rate proposal as [BEGIN CONFIDENTIAL] [REDACTED] [END

CONFIDENTIAL], and threatened to file a formal complaint against Verizon.⁷ Flat claimed

it would cost it "\$1,000/month/customer...at least to put them on the Verizon network" at

Verizon's proposed rate.⁸ Verizon responded that its offer was commercially reasonable and

consistent with the rates it was seeing in the marketplace.⁹

⁴ Email from Mike Pocher, Manager, Roamer Services, Verizon Wireless to Kevin Beierschmitt, CEO and President, Flat Wireless (Feb. 11, 2015) (Exh. A.1 to Complaint).

⁵ Email from Kevin Beierschmitt, CEO and President, Flat Wireless to Mike Pocher, Manager, Roamer Services, Verizon Wireless (Feb. 12, 2015) (Exh. A.1 to Complaint).

⁶ Email from Mike Pocher, Manager, Roamer Services, Verizon Wireless to Kevin Beierschmitt, CEO and President, Flat Wireless (Feb. 18, 2015) (Exh. A.1 to Complaint).

⁷ Emails from Kevin Beierschmitt, CEO and President, Flat Wireless to Mike Pocher, Manager, Roamer Services, Verizon Wireless (Feb. 19, 2015, 10:44 am) (Exh. A.1 to Complaint), and (Feb. 19, 3:24 pm) (Exh. 2 to Answer).

⁸ *Id.*

⁹ Email from Mike Pocher, Manager, Roamer Services, Verizon Wireless to Kevin Beierschmitt, CEO and President, Flat Wireless (Feb. 19, 2015) (Exh. A.1 to Complaint).

Flat began the formal complaint process by sending a letter notifying Verizon that Flat intended to file complaint on March 17, 2015.¹⁰ In response, Verizon sent an email reaffirming the company's position that its roaming rate offers were reasonable.¹¹ Flat then filed its formal complaint on June 12, 2015.

At the request of Enforcement Bureau staff, the parties then tried to settle the dispute or narrow the issues to be resolved. As part of those discussions, on July 7, 2015, Verizon offered to settle the dispute by [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL] Counsel for Flat, who also is counsel for NTCH, rejected that offer on July 8, 2015. There have been no further settlement discussions since that time.¹²

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

Verizon has active CDMA roaming agreements with [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] The chart below compares the

¹⁰ Letter from Donald J. Evans, Counsel for Flat, to John T. Scott, Vice President and Deputy General Counsel, Verizon (March 17, 2015) (Exh. A.1 to Complaint).

¹¹ Email from Robert O. Strobel, Assistant General Counsel, Verizon Wireless to Donald J. Evans, Counsel for Flat (Mar. 26, 2015) (Exh. 3 to Answer).

¹² See Declaration of Andre J. Lachance (Sep. 15, 2015).

¹³ Pocher Decl. ¶ 8. 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]

weighted average¹⁴ charges per unit paid to Verizon for voice, toll, 1x and EVDO data roaming under those agreements against Verizon's current offer to Flat and Flat's most recent offer to Verizon as reflected in the amended complaint.¹⁵ It also shows, for each category, the number of existing agreements containing rates greater than or equal to the rates set out in each offer.¹⁶

¹⁴ 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 2015.

¹⁵ In the complaint, Flat states the relief it seeks is voice roaming at [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Complaint at ¶ 47.

¹⁶ Pocher Decl. ¶¶ 8-10.

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

Although LTE rates are not addressed in the chart, the LTE rate Verizon offered to Flat –

[BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]
CONFIDENTIAL]

¹⁷ Pocher Decl. ¶ 11. The chart does not address LTE data rates, because Verizon [BEGIN CONFIDENTIAL] [REDACTED]

Respectfully submitted,

Kathleen M. Grillo
Of Counsel

/s/

Christopher M. Miller
Tamara L. Preiss
Andre J. Lachance
1300 I Street, N.W.
Suite 400 West
Washington, DC 20005
(703) 351-3071

Steven G. Bradbury
Dechert LLP
1900 K Street, N.W.
Washington, DC 20006

September 15, 2015

Attorneys for Verizon Wireless

[END CONFIDENTIAL]

TAB D

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of)	
)	
Flat Wireless, LLC,	)	EB Docket No. 15-147
)	
Complainant	)	File No. EB-13-MD-006
)	
v.)	
)	
Cellco Partnership dba Verizon Wireless)	
)	
Defendant)	

INFORMATION DESIGNATION OF VERIZON WIRELESS

Under Section 1.724(f), Verizon Wireless (“Verizon”) submits this information designation.

I. PERSONS WITH KNOWLEDGE

The following Verizon 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 Flat, and roaming information included in Verizon’s Response to Flat’s Interrogatories.
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 Flat, and roaming information included in Verizon’s response to interrogatories and Statement of Facts.

3. Name: Robert O. Strobel
Address: One Verizon Way, Basking Ridge, NJ 07920
Position: Assistant General Counsel, Verizon
Description of facts within this person's knowledge: The written offers transmitted to Flat counsel Donald J. Evans, and Verizon's responses to Flat's March 17, 2015 letter.
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 wholesale/MVNO rate and term information provided in Verizon's response to interrogatories.
5. Name: Joseph M. Griffin
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 retail rate and term information provided in Verizon's response to interrogatories.
6. Name: Philip E. Junker
Address: One Verizon Way, Basking Ridge, NJ 07920
Position: Executive Director, Business Development and Strategic Planning
Description of facts within this person's knowledge: The LRA roaming rate and term information provided in Verizon's response to interrogatories.
7. 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 responses to Flat's March 17, 2015 letter and conversations with Donald J. Evans regarding the filing of the formal complaint and offers made by Verizon.
8. 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: Receipt of March 14, 2015 letter from Donald J. Evans.

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 Flat, in Verizon's 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 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, 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.

Date	Author or Other Source/Recipient	Physical Location	Description of Relevance
1/21/2015	Donald J. Evans, Counsel for Flat	Exhibit 1 to Answer	Request to start negotiations towards new roaming agreement
2/19/2015	Kevin Beierschmitt, President and CEO of Flat	Exhibit 2 to Answer	Response by Flat to Verizon's rate offer explaining that Flat's previous statements agreeing to Verizon's offered data rates were mistaken
3/26/2015	Robert O. Strobel, Verizon Wireless	Exhibit 3 to Answer	Response to Flat's March 15, 2015 letter

EXHIBIT 1

From: Donald Evans [<mailto:evans@fhhlaw.com>]
Sent: Wednesday, January 21, 2015 1:09 PM
To: Strobel, Rob
Subject: Roaming agreement discussion

Rob – My client Flat Wireless, LLC would like to initiate negotiations regarding its roaming agreement with Verizon Wireless, both for voice and data. The FCC's T-MO decision will hopefully narrow the range of discussion a bit. I have a copy of an NDA that we used back in 2011 for NTCH but I'm not sure whether that is your current model. If you are still requiring NDAs, can we get that process going and then move on to the next steps? Thanks.

Don

Donald J. Evans
Fletcher, Heald and Hildreth
1300 N 17th St.
Arlington, VA 22209
703-812-0430 (office)
202-288-0773 (cell)

EXHIBIT 2

Redacted –for Public Inspection

From: Kevin Beierschmitt [<mailto:kevin@flatwireless.com>]
Sent: Thursday, February 19, 2015 10:44 AM
To: Pocher, Mike J
Subject: RE: Verizon Wireless Rate Proposal - Flat Wireless

Mike, I really appreciate your quick response. As I told you, the best I can live with and have a viable business case is [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] I have ran the number and either option would work for me but that is really as far as I can go.

I am trying to enter into an agreement that gives me a fighting chance of survival in this extremely competitive environment. My counsel has advised me that if I cannot enter into something that makes sense, my best option would be to file a complaint at the FCC to see if they will intervene to help me accomplish my goal.

Please reconsider and let me know. I would like to wrap this up one way or the other as soon as possible. Thanks again. Kevin

EXHIBIT 3

From: Strobel, Rob [<mailto:Rob.Strobel@VerizonWireless.com>]
Sent: Thursday, March 26, 2015 3:32 PM
To: Donald Evans
Cc: Scott, John T
Subject: Flat Wireless

Dear Don:

John Scott asked that I reply to your March 17 letter to him on behalf of Flat Wireless, LLC.

Verizon was disappointed to learn that Flat intended to pursue a formal complaint at a point in the negotiations where its rate demand for data is significantly outside the commercially reasonable range. The difference between Flat's offer and reasonable voice rates is less, but it is still significant.

In contrast, the rates Verizon offered were already solidly within the reasonable range of voice rates and the commercially reasonable range of data rates.

We disagree with Flat's position that voice rates must be cost based and that the Roaming Declaratory Ruling requires data rates to be the same as MVNO or retail rates.

We are always open to further negotiations with Flat but for the reasons stated we will not offer cost based, MVNO or retail rates.

Sincerely,

Rob Strobel

Robert O. Strobel
Assistant General Counsel
Verizon Wireless
VC 52S434
One Verizon Way
Basking Ridge, NJ 07920

Phone: 908-559-7357
Fax: 908-559-7126
E-mail: rob.strobel@verizonwireless.com

The information contained in this message and any attachment may be proprietary, confidential, and privileged or subject to the work product doctrine and thus protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error,

please notify me immediately by replying to this message and deleting it and all copies and backups thereof. Thank you.

This e-mail message and any attachments are being sent by Verizon Wireless Legal Department and are confidential and may be privileged. If you are not the intended recipient, please notify us immediately by replying to this message and destroy all copies of this message and any attachments. Thank you.

TAB E

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

In the Matter of)	
)	
Flat Wireless, LLC,	)	EB Docket No. 15-147
	)	File No. EB-15-MD-005
Complainant)	
)	
v.)	
)	
Cellco Partnership dba Verizon Wireless,)	
)	
Defendant)	

VERIZON WIRELESS OPPOSITION TO INTERROGATORIES

Cellco Partnership dba Verizon Wireless (“Verizon” or “Defendant”) opposes the request for interrogatories of Flat Wireless, LLC (“Flat” or “Complainant”) to the extent that request exceeds the agreement between the parties to produce the same information provided by Defendant in *NTCH v. Cellco Partnership*, EB Docket No. 14-212, File No. EB-13-MD-006 (“NTCH Complaint”).¹ That agreement, which was incorporated into the Notice of Formal Complaint,² says that (1) the parties will produce the same information in response to the Flat Complaint interrogatories as was provided to substantially similar interrogatories in the NTCH Complaint; and (2) the parties preserve the same objections to the Flat Complaint interrogatories

¹ The agreement between the parties (“Discovery Agreement”) is attached to the Notice of Formal Complaint issued by the Enforcement Bureau. *Flat Wireless, LLC v. Cellco Partnership dba Verizon Wireless*, Notice of Formal Complaint, EB Docket No. 15-47, File No. EB-15-MD-005 (Jul. 15, 2015) (“Notice of Formal Complaint”).

² Notice of Formal Complaint, at 2.

that were raised in response to substantially similar NTCH Complaint interrogatories.³

Verizon's general and specific objections to the Flat Complaint interrogatories are as follows:

GENERAL OPPOSITION TO INTERROGATORIES

Discovery of Additional Verizon Information Is Not Warranted. Section 1.729 of the Commission's rules does not allow discovery as a matter of right,⁴ and no further discovery from Verizon is warranted here. The documents and information provided by Verizon in the Complaint, Answer, Statement of Facts, Information Designation, Declarations, Legal Analysis,⁵ and produced under the Discovery Agreement have already "disclose[d] all [Verizon] information that is relevant to the resolution" of this matter,⁶ and as demonstrated below the remaining information Complainant requests is irrelevant to the Commission's resolution of the dispute.

Cost and Information Is Not Relevant. Section 1.729(b) requires that Complainant explain why the requested information is "necessary to the resolution of the dispute"⁷ For the reasons described in Verizon's Legal Analysis, Defendant's interrogatories about Verizon's costs of service are irrelevant to the material facts in dispute and are unnecessary to the

³Discovery Agreement, at 2. Copies of Verizon's objections to NTCH's initial and supplemental interrogatories are attached.

⁴ See 47 C.F.R. § 1.729(d).

⁵ Pursuant to an agreement reached by the parties, Defendant's Legal Analysis will be filed subsequent to this opposition. See Joint Motion to Revise Scheduling Order, EB Docket No. 15-147, File No. EB-15-MD-005 (filed Sep. 1, 2015, granted Sep. 2, 2015). Verizon will include with that Legal Analysis an updated version of this opposition to include citations to the appropriate sections.

⁶ *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) ("Complaint Rules Order").

⁷ 47 C.F.R. § 1.729(b).

resolution of the dispute.⁸ 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.⁹ That same rationale applies with equal force under the even more restrictive current rules.¹⁰ Defendant specifically opposes the second sentence of interrogatory 3, and interrogatories 4, 6, 7, and 8 in their entirety for that reason and the Commission should deny them.

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 because 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.¹¹ The documents provided in the Complaint, Answer, Statement of Facts, Declarations, Information Designation, Legal Analysis, and produced in accordance with the Discovery Agreement are sufficient for resolution of the dispute, consistent with the "fact-based

⁸ Legal Analysis at _____.

⁹ 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").

¹⁰ See *Complaints Rules 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)).

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

pleading” design of the Commission’s rules.¹² Defendant further opposes Complainant’s document request because even if any of Interrogatories 1 through 8 seeks 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 outweigh Complainant’s need, if any, for document discovery.

OPPOSITION TO SPECIFIC INTERROGATORIES

1. *Interrogatory 1 seeking domestic and international roaming rate information.*¹³

Under the Discovery Agreement, Defendant does not object to providing Complainant with the same domestic roaming information Verizon provided in *NTCH v. Cellco Partnership*.¹⁴ Verizon opposes interrogatory 1 to the extent it seeks information beyond that which was agreed to in the Discovery Agreement. In addition to the reasons set forth in the General Opposition, the documents and information provided in the Complaint, Answer, Statement of Facts, Information Designation, Declarations, Legal Analysis, and the information produced pursuant to the Discovery Agreement are sufficient “to ensure the development of a complete record” such that further discovery from Verizon is not necessary.¹⁵

¹² See *id.* at 22529 ¶¶ 70-71.

¹³ 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.

¹⁴ See 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) (“NTCH Discovery Ruling”) at 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 (Jul. 24, 2015) (“NTCH Supplemental Discovery Ruling”) at 3 (ruling with respect to interrogatory 7).

¹⁵ See *Complaints Rules Order*, 12 FCC Rcd at 22549 ¶ 117.

Defendant also opposes interrogatory 1 to the extent it seeks information about international roaming agreements because Complainant has failed to establish why such information is necessary to resolve this Complaint. Defendant does not argue (or even mention) anywhere in the Complaint that international roaming rates are relevant to determining whether Verizon's offered rates are reasonable. The only support offered by Defendant for its international roaming rate request is a citation to the Wireless Bureau's Declaratory Ruling that a complaining party can seek to adduce evidence as to whether offered roaming rates are substantially in excess of international roaming rates.¹⁶ But that ruling only states that a complaining party "would be free to argue that other price-related facts (including, as specifically noted below, prices charged in other contexts) are relevant factors that the Commission should consider in assessing the commercial reasonableness of the price at issue."¹⁷ Here, Defendant has not argued that any rate offered by Verizon is unreasonable because it exceeds any international roaming rate. Also, Defendant has already provided domestic roaming rates which are the most comparable rates and thus the international roaming rates are not necessary to resolution of the dispute. For these reasons, Defendant is not entitled to discovery of international roaming rate information.

2. *Interrogatory 2 seeking information about offered rates that are not in effect.*

In addition to the reasons set forth in the General Opposition, Defendant opposes this interrogatory as irrelevant and immaterial because it relates to rates offered as part of negotiations rather than agreed-upon rates. Offered rates, by definition, are neither "charges ... in connection with the use of common carrier lines of communication" under Sections 201 and

¹⁶ *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 (WTB 2014) ("WTB Declaratory Ruling").

¹⁷ *Id.*, 29 FCC Rcd at 15488 ¶ 15.

202 of the Act, nor “terms and conditions” of service under Sections 20.12(d) and (e) of the rules.¹⁸ Defendant opposes the second sentence of interrogatory 2 insofar as Complainant has not treated it as a separate interrogatory under 47 C.F.R. § 1.729(a).

3. ***Interrogatory 3 seeking information about the rationale for any difference in rates offered to Complainant.*** In addition to the reasons set forth in the General Opposition, Defendant opposes interrogatory 3 because, as set forth in Verizon’s forthcoming 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.

4. ***Interrogatory 4 seeking average cost information for each category of service.*** In addition to the reasons set forth in the General Opposition, Defendant opposes this interrogatory in its entirety because cost information is neither relevant to the material facts in the proceeding nor necessary to the resolution of the dispute.

5. ***Interrogatory 5 seeking information about the lowest retail and wholesale rates offered by Verizon.*** Under the Discovery Agreement, Verizon does not object to this interrogatory to the extent it requests the same information requested and provided in *NTCH v. Cellco Partnership*. Verizon opposes interrogatory 5 to the extent it seeks information beyond that which was agreed to in the Discovery Agreement. In addition to the reasons set forth in the General Opposition, the documents and information provided in the Complaint, Answer, Statement of Facts, Information Designation, Declarations, Legal Analysis, and the information produced under the Discovery Agreement are sufficient “to ensure the development of a

¹⁸ 47 U.S.C. §§ 201-202; 47 C.F.R. §§ 20.12(d)-(e). See 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. 17, 2015) (“NTCH Discovery Ruling Explanation”) at 2 (denying a similar interrogatory requested by NTCH finding that rates offered but not in effect “may well have no relevance to the material issues in dispute.”).

complete record” such that further discovery from Verizon is not necessary.¹⁹ Verizon opposes the request for rates that are still active on the Verizon network but no longer offered to new customers, because retail and MVNO rates that are no longer being offered are even less relevant to determining whether roaming rates are reasonable.²⁰

6. ***Interrogatory 6 seeking average monthly volume information for each service category.*** Verizon opposes this Interrogatory in its entirety. In addition to the reasons set forth in the General Opposition, Flat has failed to demonstrate that the information sought in interrogatory 6 is either relevant to the material facts in the proceeding or necessary to the resolution of the dispute.²¹ And this information is not readily available to Verizon.

7. ***Interrogatory 7 seeking information about the identity of individuals that are the source of the answers to the interrogatories.*** In addition to the reasons set forth in the General Opposition, Verizon opposes Interrogatory 7 to the extent it seeks information about interrogatories that Verizon opposes. Verizon also opposes interrogatory 7 to the extent it seeks information beyond that which Verizon has disclosed in the Information Designation, Affidavits, and Discovery Response.

8. ***Interrogatory 8 reserving the right to request additional interrogatories.*** Interrogatory 8 does not seek any information and does not require a response. Verizon is opposed to any additional discovery for the reasons set forth in the General Opposition.

9. ***Document Request.*** Verizon opposes Complainant’s request for documents for the reasons set forth in the General Opposition.

¹⁹ See *Complaint Rules Order*, 12 FCC Rcd at 22549 ¶ 117.

²⁰ See NTCH Supplemental Discovery Ruling at 2 (denying a similar discovery request by NTCH).

²¹ Legal Analysis at ____.

Respectfully submitted,

/s/

Christopher M. Miller
Tamara L. Preiss
Andre J. Lachance
1300 I Street, N.W.
Suite 400 West
Washington, DC 20005
(703) 351-3071

Steven G. Bradbury
Dechert LLP
1900 K Street, N.W.
Washington, DC 20006

Attorneys for Verizon Wireless

Kathleen M. Grillo
Of Counsel

September 15, 2015

**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.¹ 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-

¹ *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.

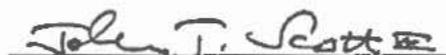
14. **Interrogatory 8.** For the reasons described in Verizon's Legal Analysis, Interrogatory 8 is neither relevant to the material facts in the proceeding nor necessary to the resolution of the dispute. Legal Analysis §§ I.A, I.C and II.C. Verizon therefore opposes this Interrogatory in its entirety.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



Michael E. Glover
Of Counsel

John T. Scott, III
Christopher M. Miller
Andre J. Lachance
Robert G. Morse
1300 I Street, N.W.
Suite 400 West
Washington, DC 20005
(202) 515-2400

Attorneys for Verizon Wireless

August 4, 2014

**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*.

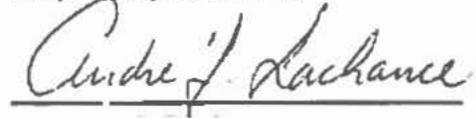
²¹ *Complaint Rules Order*, 12 FCC Rcd. at 22549, ¶ 117.

²² See Discovery Ruling at 2.

* * *

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.

Kathleen M. Grillo
Of Counsel

Christopher M. Miller
Andre J. Lachance
1300 I Street, N.W.
Suite 400 West
Washington, D.C. 20005
(202) 515-2400

Steven G. Bradbury
Dechert LLP
1900 K Street, N.W.
Washington, D.C. 20006

Attorneys for Verizon Wireless

July 10, 2015

TAB F

VERIZON'S RESPONSE TO FLAT'S INTERROGATORIES

1. Produce a chart reflecting the per unit rates paid to Verizon and by Verizon in each of its existing roaming agreements for all Service Categories (i.e., voice, toll, SMS, and data services), a statement as to whether Verizon is a net payer or net receiver under each agreement for voice, data and in total, and volume figures reflecting total minutes of voice roaming under each agreement. The chart will not identify Verizon's roaming partners by name. (Interrogatory 1 as modified by agreement of the parties, not objected to or ordered by MDRD in *NTCH, Inc. v. Cellco Partnership d/b/a Verizon Wireless*, File No. EB-13-MD-006)

RESPONSE: See attached Exhibit A.

2. With respect to LTE roaming rates associated with Verizon's LTE in Rural America ("LRA") agreements, produce a chart showing: [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED]

[END HIGHLY CONFIDENTIAL INFORMATION] The LRA roaming rate chart will not identify the LRA partner by name and will not include [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED]

[END HIGHLY CONFIDENTIAL INFORMATION] (Interrogatory 1 as modified by agreement of the parties, not objected to or ordered by MDRD in *NTCH, Inc. v. Cellco Partnership d/b/a Verizon Wireless*, File No. EB-13-MD-006)

RESPONSE: See attached Exhibit B.

3. Produce Verizon's lowest wholesale (including MVNO) rates provided for each Service Category (i.e., voice, toll, SMS, and data services). (Interrogatory 5 as modified by agreement of the parties, not objected to or ordered by MDRD in *NTCH, Inc. v. Cellco Partnership d/b/a Verizon Wireless*, File No. EB-13-MD-006)

RESPONSE: Verizon's lowest wholesale rates for voice, toll, SMS, and data services are available only to resellers willing and able (1) to make [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL INFORMATION] and (3) to pay [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED]
[REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL INFORMATION] Under these conditions, the lowest rates are as follows:

- Voice/Toll rate: [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED] [END HIGHLY CONFIDENTIAL INFORMATION]
- SMS rate: [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED] [END HIGHLY CONFIDENTIAL INFORMATION]
- MMS (multi-media message) rate: [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED] [END HIGHLY CONFIDENTIAL INFORMATION]
- Data bundles, one of which must be selected: [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED] [END HIGHLY CONFIDENTIAL INFORMATION]
- Data coverage rate: [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED] [END HIGHLY CONFIDENTIAL INFORMATION]

4. Produce the lowest retail rate Verizon provides for each Service Category (i.e., voice, toll, SMS, and data services). (Interrogatory 5 as modified by agreement of the parties, not objected to or ordered by MDRD in *NTCH, Inc. v. Cellco Partnership d/b/a Verizon Wireless*, File No. EB-13-MD-006)

RESPONSE: The “lowest” rates available to new retail customers in each Service Category are set forth below. Note that the lowest rate in any particular service category is not meaningful in isolation because these rates are not offered to any retail customers on a standalone basis independent of other terms and conditions of service. Rather, these rates are one part of total revenue (from all sources) Verizon expects to receive from a customer set and may also reflect other factors such as marketing inducements and other business decisions. For example, to receive these

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rates, customers must pay daily or monthly access charges regardless of usage (except prepaid daily plans where the first usage of the day triggers the access charge), agree to rates for other service categories, and must meet certain conditions, which are set forth below. The Service Category rates, other pricing elements, and conditions for service collectively make up the “Rate Plan” for each customer set.

Where the lowest service category price is available in multiple Rate Plans, Verizon is providing information for the Rate Plan with the lowest per-day or per-month access charge for different customer sets (e.g., prepaid, postpaid, data-only).

The amount a customer pays to Verizon depends on the plan the customer chooses and the amount of actual usage of all service categories under the plan. In other words, the plan with the lowest per-service category rate may not result in the lowest monthly charge to the customer.

A. Voice and toll. Verizon’s retail rate plans do not have separate service categories for “voice” and “toll.” Voice rates include toll services. One way to analyze the “lowest” voice and toll rate is to identify those service plans that include an unlimited voice allowance for the lowest access charge. Set forth below are the Rate Plans with the lowest per-day or per-month access charge, for those plans with unlimited voice/toll allowance, for different customer types.

- Rate Plan: Prepaid Basic Device \$1.99 Unlimited Talk Daily Plan
Available to: Basic devices only
Prepaid daily access charge: \$1.99 (paid *each day* any service is used regardless of actual usage)
Voice/Toll rate: unlimited
SMS rate: \$0.02/message
MMS (multi-media message – *i.e.*, pictures, group texts) rate: \$0.25/message
Mobile Web¹ rate: \$ 0.99/day
One time activation charge: \$35.00
- Rate Plan: Prepaid Basic Device \$45 Monthly Plan
Available to: Basic devices only
Prepaid monthly access charge: \$45.00 (paid *each month* any service may be used regardless of actual usage)
Voice/Toll rate: unlimited
SMS rate: unlimited
MMS rate: unlimited
Data allowance: 500 MB

¹ This is a limited Internet access service for basic phones.

REDACTED – FOR PUBLIC INSPECTION

Additional data lasting different periods can be purchased: \$5 for 500 MB expiring in 30 days; \$10 for 1 GB expiring in 90 days; and \$20 for 3 GB expiring in 180 days

One time activation charge: \$35.00

- Rate Plan: Prepaid Smartphone \$45 Monthly Plan
Available to: Smartphones only
Prepaid monthly access charge: \$45.00 (paid *each month* any service may be used regardless of actual usage)
Voice/Toll rate: unlimited
SMS rate: unlimited
MMS rate: unlimited
Data allowance: 1 GB
Additional data lasting different periods can be purchased: \$5 for 500 MB expiring in 30 days; \$10 for 1 GB expiring in 90 days; and \$20 for 3 GB expiring in 180 days²
One time activation charge: \$35.00
- Rate Plan: Postpaid More Everything³ Smart Phone Entry Tier
Available to: Smartphones only
Postpaid monthly account access charge: \$20.00 (paid *each month* any service may be used regardless of actual usage)
Monthly line access charge: \$25 per line
Voice/Toll rate: unlimited
SMS rate: unlimited
MMS rate: unlimited
Data allowance: 500 MB
Data overage rate: \$15.00/250 MB
One time activation charge: \$35.00 per device

B. SMS. One way to analyze the “lowest” SMS rate is to identify those service plans that include unlimited SMS. The rate plans with the lowest access charges for unlimited SMS, which all require meeting the terms and conditions for the plans and paying all access charges, are the Prepaid Basic Device \$45 Monthly Plan, Prepaid Smartphone \$45 Monthly Plan, and Postpaid More Everything Smart Phone Entry Tier plans described above.

² A monthly access charge must be paid for each month in which a data allotment lasting beyond the first month is used.

³ More Everything plans allow up to 10 lines to share service allowances in a particular plan. Access requires an account level access charge plus a charge for each line on the account, including the first line.

REDACTED – FOR PUBLIC INSPECTION

- C. Data. Except for price plans that are available only to tablets, connected devices and data-only devices, data is sold in a bundle with other services, such as voice and messaging. All price plans that include data have daily or monthly access charges (which may or may not include a set amount of data), an activation charge, and overage fees. The access charge and activation charge must be paid regardless of usage.

Unlike voice/toll and SMS, Verizon no longer offers an unlimited data plan to new customers. In this response, Verizon is providing information about the Rate Plans with the lowest monthly access data charges (assuming none of the allowances are exceeded) for bundles available to different customer types where the bundle includes a full internet data experience.⁴

- Rate Plan: Prepaid Smartphone \$45 Monthly Plan
Available to: Smartphones only
Prepaid monthly access charge: \$45.00 (paid *each month* any service may be used regardless of actual usage)
Voice/Toll rate: unlimited
SMS rate: unlimited
MMS rate: unlimited
Data allowance: 1 GB
Additional data lasting different periods can be purchased: \$5 for 500 MB expiring in 30 days; \$10 for 1 GB expiring in 90 days; and \$20 for 3 GB expiring in 180 days
One time activation charge: \$35.00
- Rate Plan: Prepaid Tablet and Connected Device⁵ Daily Data Only Plan
Available to: Tablets and connected devices only
Prepaid daily access charge: \$5.00 (paid *each day* any service is used regardless of actual usage)
Voice/Toll rate: N/A
SMS rate: N/A
MMS rate: N/A
Data allowance: 300 MB per day
Data overage rate: plan must be re-purchased for \$5, even if day has not expired
One time activation charge: \$35.00

⁴ Verizon has not included pricing for basic phone data plans under which the internet experience will be the limited Mobile Web experience described in footnote 1.

⁵ Examples of connected devices are pet trackers, health trackers and vehicle diagnostics devices.

REDACTED – FOR PUBLIC INSPECTION

- **Rate Plan Description: Prepaid Connected Device Monthly Data Only Plan**
Available to: Connected devices only
Prepaid monthly access charge: \$10.00 (paid *each month* any service may be used regardless of actual usage)
Voice/Toll rate: N/A
SMS rate: N/A
MMS rate: N/A
Data allowance: 250 MB
Data overage rate: plan must be re-purchased for \$10, even if month has not expired
One time activation charge: \$35.00
- **Rate Plan: Prepaid Tablet and Connected Device Monthly Data Only Plan**
Available to: Tablet and connected devices only
Prepaid monthly access charge: \$20.00 (paid *each month* any service may be used regardless of actual usage)
Voice/Toll rate: N/A
SMS rate: N/A
MMS rate: N/A
Data allowance: 1 GB
Data overage rate: plan must be re-purchased for \$20, even if month has not expired
One time activation charge: \$35.00
- **Rate Plan: Postpaid More Everything Basic Device Plan Monthly Plan**
Postpaid monthly account access charge: \$5.00 (paid *each month* any service may be used regardless of actual usage)
Monthly line access charge for each line: \$20 per line
Voice/Toll allowance: 700 MOU
Voice/Toll overage rate: \$0.45/MOU
SMS rate: unlimited
MMS rate: unlimited
Data allowance: N/A
Data overage rate: \$1.99/MB
One time activation charge: \$35.00 per device
- **Rate Plan: Postpaid More Everything Smart Phone Entry Tier**
Postpaid monthly account level access charge: \$20.00 (paid *each month* any service may be used regardless of actual usage)
Monthly line access charge for each line: \$25 per line

REDACTED – FOR PUBLIC INSPECTION

Voice/Toll rate: unlimited
SMS rate: unlimited
MMS rate: unlimited
Data allowance: 500 MB
Data overage rate: \$15.00/250 MB
One time activation charge: \$35.00 per device

- **Rate Plan: Postpaid More Everything Tablets and Connected Devices Data Only Plan**
Available to: Tablets and connected devices only
Postpaid monthly account level access charge: \$20.00 (paid *each month* any service may be used regardless of actual usage)
Monthly line access charge per tablet/connected device: \$10.00/tablet, \$5.00/connected device
Voice/Toll rate: N/A
SMS rate: N/A
MMS rate: N/A
Data allowance: 2 GB
Data overage rate: \$15.00/1 GB
One time activation charge: \$35.00 per device
- **Rate Plan: Postpaid More Everything Data Only Plan**
Available to: Mobile Broadband devices such as mobile hotspots, jetpacks, and USBs; tablets; and connected devices only
Postpaid monthly account access charge: \$30.00 (paid *each month* any service may be used regardless of actual usage)
Plus monthly line access charge: \$20/Mobile Broadband device, \$10.00/tablet, \$5.00/connected device
Voice/Toll rate: N/A
SMS rate: N/A
MMS rate: N/A
Data allowance: 4 GB
Data overage rate: \$15.00/1 GB
One time activation charge: \$35.00 per device

Exhibit A

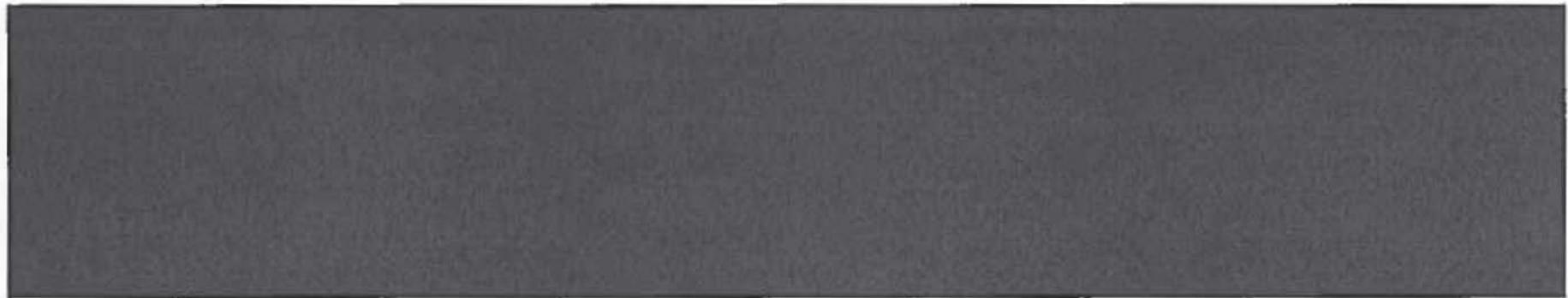
CDMA Carriers with LTE

CARRIER ID	LRA Y/N	VZW 3G Revenue Rates (Inbound on VZW)					VZW 4G Revenue Rates (Inbound on VZW)				VZW 3G COST RATES (Outbound on Roam Carrier)					VZW 4G COST RATES (Outbound on Roam Carrier)				Total Voice Volumes 2Q YTD 2015		Voice	Data	Total				
		Volce Air	Dom Toll	1X DATA	EVDO DATA	SMS	VOLTE AIR per MOU	VOLTE Toll Per Mou	LTE DATA per MB	SMS per MO	Volce Air	Dom Toll	1X DATA	EVDO DATA	SMS	VOLTE AIR per MOU	VOLTE Toll Per Mou	LTE DATA per MB	SMS per MO	Voice Air Revenue MOU	Voice Air Cost MOU				VZW Revenue Volume (OUTCOLLECT)	VZW Cost Volume (INCOLLECT)		
		VZW NET PAYER OR NET RECEIVER (based on Total Voice \$) Excl.LRA \$					VZW NET PAYER OR NET RECEIVER (based on Total Data \$) Excl.LRA \$				VZW NET PAYER OR NET RECEIVER (based on total \$) Excl.LRA \$																	
56																												
57																												

Carrier 38 CDMA only Rate Attachment

Rates – Voice -

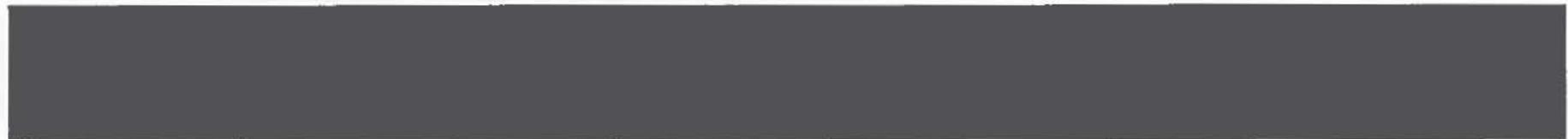
Serving Carrier	Effective Date	Air Rate / Minute	Domestic Toll Rate / Minute	Int'l LD Rate / Minute
Carrier 38				
Carrier 38				
VERIZON				
VERIZON				



Short Messaging Service (SMS) – There will be no charge for SMS. Each Party agrees to implement a Bill and Keep rating process for Mobile Originated and Mobile Terminated SMS.

Rates – Data -

Serving Carrier	Effective Date	Rate per KB
VERIZON		
VERIZON		
Carrier 38		
Carrier 38		



Carrier 47 CDMA only Rate Attachment

<u>Verizon Wireless Serving Carrier</u>	Effective Date	Airtime Rate/Min	Domestic Toll Rate/Min
[REDACTED]			

<u>Carrier 47 Serving Carrier</u>	Effective Date	Airtime Rate/Min	Toll Rate/Min
[REDACTED]			

Carrier 48 CDMA only Rate Attachment

VZW Serving Carrier 48		
VOICE		
<u>All Markets Combined</u>		
Monthly MOUs (M)	Air	Toll

Carrier 48 Serving VZW		
VOICE		
<u>All Markets Combined</u>		
Monthly MOUs (M)	Air	Toll

VZW Serving Carrier 48	
Data	
<u>Rounded MB Structure ⁽¹⁾</u>	
Monthly MBs (M)	1X &EVDO
<u>Unrounded MB Rate Structure ⁽²⁾</u>	
Monthly MBs (M)	1X &EVDO

Carrier 48 Serving VZW	
Data	
<u>Rounded MB Structure ⁽⁴⁾</u>	
Monthly MBs (M)	1X &EVDO
<u>Unrounded MB Rate Structure ⁽⁵⁾</u>	
Monthly MBs (M)	1X &EVDO



Carrier 56 CDMA w/ LTE Data Rate Attachment

• The sum of monthly data volumes (1X, EVDo and LTE) are used to determine rate tier

Future Data Rates (1)(2)	
Monthly Volume Range (in 000's)	Cost Per MB
[REDACTED]	

Carrier 57 CDMA w/ LTE Data Rate Attachment



Data Rate summary:

Serving Carrier	LTE Data rate per MB
[Redacted]	

Exhibit B

LRA Rates		
LRA Community of Interest Roaming Rate	LRA Nationwide LTE Roaming Rate	VZW LTE Roaming Rate
		

TAB G

that time, Flat sought rates of [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

8. Verizon currently has active CDMA roaming agreements with [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

9. 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]

[REDACTED] [END CONFIDENTIAL] The weighted

average charges paid by Verizon for each category are as follows: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL]

10. 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 is as follows: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

11. With respect to LTE, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [END CONFIDENTIAL]

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

Dated: 9/11, 2015


Michael J. Pocher

DECLARATION OF JOSEPH M. GRIFFIN

1. My name is Joseph M. Griffin, and I work for Verizon Communications. In my current position, my responsibilities include developing and maintaining Verizon Wireless' consumer retail rate plans.
2. The purpose of my declaration is to certify portions of Verizon's response to Flat Wireless's Interrogatories in Flat Wireless LLC. v. Cellco Partnership d/b/a Verizon Wireless, EB Docket No. 15-147, File No. EB-15-MD-005. Specifically, I am certifying the information provided in Response 4.
3. I have reviewed the information provided in Verizon's response to Flat's Interrogatories and declare, under penalty of perjury, that the information is true and correct based on information available to me.

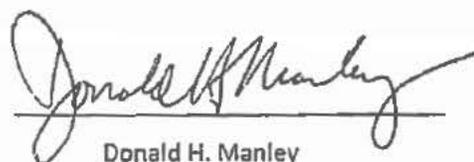
Dated: 9/4 2015


Joseph M. Griffin

DECLARATION OF DONALD H. MANLEY

1. My name is Donald H. Manley, and I work for Verizon Communications. In my current position, my responsibilities include negotiating and maintaining Verizon Wireless' wholesale and MVNO agreements.
2. The purpose of my declaration is to certify portions of Verizon's response to Flat Wireless's Interrogatories in Flat Wireless LLC. v. Cellco Partnership d/b/a Verizon Wireless, EB Docket No. 15-147, File No. EB-15-MD-005. Specifically, I am certifying the information provided in Response 3.
3. I have reviewed the information provided in Verizon's response to Flat's Interrogatories and declare, under penalty of perjury, that the information is true and correct based on information available to me.

Dated: September 4, 2015


Donald H. Manley

DECLARATION OF PHILIP E. JUNKER

1. My name is Philip E. Junker, and I work for Verizon Communications. In my current position, my responsibilities include negotiating and maintaining Verizon Wireless' LTE in Rural America program and contracts.
2. The purpose of my declaration is to certify portions of Verizon's response to Flat Wireless's Interrogatories in Flat Wireless LLC. v. Cellco Partnership d/b/a Verizon Wireless, EB Docket No. 15-147, File No. EB-15-MD-005. Specifically, I am certifying the information provided in Response 2.
3. I have reviewed the information provided in Verizon's response to Flat's Interrogatories and declare, under penalty of perjury, that the information is true and correct based on information available to me.

Dated: September 4, 2015

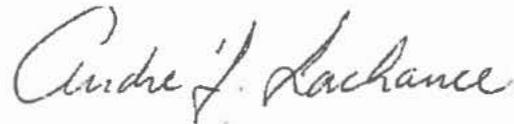


Philip Junker

DECLARATION OF ANDRE J. LACHANCE

1. My name is Andre J. Lachance, and I work for Verizon Communications. In my current position, my responsibilities include representing Verizon entities in proceedings before the Federal Communications Commission. In that capacity, I engaged in discussions with Donald J. Evans, Counsel for Flat Wireless ("Flat") aimed at settling Flat's roaming dispute with Verizon.
2. The purpose of my declaration is to certify the portion of Verizon's Statement of Facts pertaining to settlement discussions held between Verizon and Flat on July 7 and 8, 2015.
3. I have reviewed the information provided in the last paragraph in Section I of Verizon's Statement of Facts and declare, under penalty of perjury, that the information is true and correct based on information available to me.

Dated: September 15, 2015



Andre J. Lachance

TAB H

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

In the Matter of)	
)	
Flat Wireless, LLC,	)	EB Docket No. 15-147
)	
Complainant	)	File No. EB-15-MD-005
)	
v.)	
)	
Cellco Partnership dba Verizon Wireless,)	
)	
Defendant)	

VERIZON WIRELESS INTERROGATORIES

Under Section 1.729 of the Commission’s rules,¹ Cellco Partnership dba Verizon Wireless (“Verizon”) requests that the Commission direct Flat Wireless, LLC (“Flat”) to respond to the following interrogatories:

1. Identify each wireless carrier with whom Flat has a roaming agreement in which Flat pays or is charged voice, toll, SMS or data roaming rates that are higher than the rates that are requested in Flat’s Prayer for Relief,² together with the rate Flat 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 Flat and the affiliates in which it has a controlling interest hold, including when those licenses were acquired, the population covered by

¹ 47 C.F.R. § 1.729.

² See Complaint, ¶ 47.

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. § 20.12.³ 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 Flat is not seeking to roam where it has existing licenses.⁴ Information about 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. § 20.12.⁵ License-specific information such as this is generally considered competitively sensitive and is not publicly available.

³ 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*").

⁴ *Complaint* ¶ 44.

⁵ See *Home Roaming Order*, 25 FCC Rcd at 4194 ¶ 25; *Data Roaming Order*, 26 FCC Rcd at 5452-53 ¶ 86.

TABI

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2015, copies of the foregoing letter and all attachments thereto were delivered by hand to the following individuals:

Donald J. Evans
Jonathan R. Markman
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street,
Suite 1100
Arlington, VA 22209



Sarah E. Trosch