

PUBLIC VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

AT&T MOBILITY LLC
1055 Lenox Park Blvd. NE
Atlanta, GA 30319
404-236-7895

Complainant,

v.

IOWA WIRELESS SERVICES, LLC
4135 NW Urbandale Drive
Urbandale, IA 50322

Defendant.

File No. EB-15-MD-_____

FORMAL COMPLAINT AND LEGAL ANALYSIS OF AT&T MOBILITY LLC

SUMMARY

AT&T Mobility LLC (“AT&T”) brings this Formal Complaint to compel Iowa Wireless Services, LLC (“iWireless” or “Iowa Wireless”) to comply with 47 C.F.R. § 20.12, which requires facilities-based providers of commercial mobile voice and data services to offer roaming arrangements to other such providers on commercially reasonable terms and conditions (for data roaming services), *id.* § 20.12(e), and just and reasonable, and not unreasonably discriminatory terms and conditions (for interconnected voice, data, and text roaming services), *id.* § 20.12(d).

AT&T and iWireless are currently operating under a bilateral agreement, first signed by the parties (or their predecessors) on January 1, 2006 (the “Agreement”).¹ Under this Agreement, as amended, AT&T pays iWireless (i) a data roaming rate of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] which, as discussed in the Complaint, is not commercially reasonable;² and (ii) a voice effective rate of approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] per minute of use (“mou”), which, as

¹ [BEGIN CONFIDENTIAL] [REDACTED]

² See Formal Complaint ¶¶ 56-64.

discussed in the Complaint, is not just and reasonable and is unreasonably discriminatory.³

Indeed, iWireless has [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

While AT&T has made a good-faith effort over the past several years to negotiate with iWireless for appropriate roaming rates, iWireless has steadfastly refused to offer AT&T commercially reasonable data roaming rates or just, reasonable, and nondiscriminatory voice roaming rates.⁵ [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

³ See *id.* ¶¶ 76-77.

⁴ See *id.* ¶ 24.

⁵ See *id.* ¶¶ 22-43.

⁶ *Id.* ¶ 30.

⁷ See *id.* ¶ 34. [BEGIN CONFIDENTIAL]

⁸ See Complaint ¶¶ 58-64, 76-77.

CONFIDENTIAL INFORMATION REDACTED

By contrast, AT&T has proposed (i) data roaming rates that plainly are commercially reasonable in accordance with 47 C.F.R. § 20.12(e); and (ii) voice roaming rates that are reasonable and nondiscriminatory in accordance with 47 C.F.R. § 20.12(d).⁹

AT&T's proposed data roaming rates are [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

Notwithstanding these facts, iWireless has refused to negotiate in a meaningful manner.

As detailed below, iWireless: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

⁹ See *id.* ¶¶ 65-66, 77.

¹⁰ Declaratory Ruling, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, ¶ 9 (Dec. 18, 2014) (the “*Declaratory Ruling*”). See Complaint ¶¶ 65-66.

¹¹ See Complaint ¶¶ 76-77.

¹² See Meadors Decl. ¶¶ 30, 37.

¹³ See Complaint ¶¶ 32-36.

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

In this Complaint, AT&T seeks an order from the Commission directing iWireless to provide roaming services to AT&T at commercially reasonable rates (for data roaming) and reasonable, nondiscriminatory rates (for interconnected voice, data, and text roaming services).¹⁷ As noted above, data and voice roaming rates have continued to decline, and, as a result, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

AT&T further requests interim relief during the pendency of this dispute in the form of an order, subject to true-up, requiring iWireless to (i) continue providing data and voice roaming services to AT&T at the rates set forth in the Agreement; or (ii) make a best and final offer and provide data and voice roaming services in accordance with that offer, pending final

¹⁴ See Complaint ¶¶ 43, 64. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

¹⁵ See *id.* ¶¶ 36, 42, 62-63.

¹⁶ See *id.* ¶¶ 13, 40.

¹⁷ *Id.* ¶ 98.

¹⁸ See Meadors Decl. ¶ 37.

resolution of this Complaint.¹⁹ AT&T is concurrently filing a separate motion for interim relief.

In support of its Complaint, AT&T is filing two declarations. First, AT&T is filing a declaration by Gram Meadors, Assistant Vice President of Alliance/Partnership, Wireless Roaming Strategy, at AT&T. Mr. Meadors' declaration provides the detailed facts concerning AT&T's history of negotiations with iWireless and discusses the terms and conditions in AT&T's roaming agreements with other carriers. Second, AT&T is filing a declaration by Jonathan Orszag, Senior Managing Director at Compass Lexecon, LLC, an economic consulting firm. Mr. Orszag's declaration explains that iWireless's proposed roaming rates are above the rates prevailing in the commercial marketplace as well as the "other rates" identified by the Commission in the *Declaratory Ruling*.

Pursuant to Section 1.724(c) of the Commission's rules, AT&T's Complaint includes a Legal Analysis. In addition, AT&T has also provided (i) Proposed Findings of Fact and Conclusions of Law; (ii) an Information Designation in compliance with Sections 1.724(f)(1), (2), (3) and 1.724(g); (iii) a AT&T's First Set of Interrogatories; and (iv) certifications that it has paid the applicable filing fees and that it has provided service of the Complaint to counsel for iWireless. AT&T has also provided courtesy copies to the Commission's Enforcement Bureau.

¹⁹ See Second Report and Order, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, ¶ 80 (Apr. 7, 2011) (the "*Data Roaming Order*") (noting that Commission Staff may "order the host provider to provide data roaming on its proffered terms, during the pendency of the dispute, subject to possible true-up once the roaming agreement is in place"); *accord Declaratory Ruling* ¶ 27.

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TAB 1

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FORMAL COMPLAINT AND LEGAL ANALYSIS OF AT&T MOBILITY LLC

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OVERVIEW AND REQUEST FOR RELIEF

1. AT&T Mobility LLC (“AT&T”) brings this Formal Complaint to compel Iowa Wireless Services, LLC (“iWireless” or “Iowa Wireless”) to comply with 47 C.F.R. § 20.12, which requires facilities-based providers of commercial mobile voice and data services to offer roaming arrangements to other such providers on commercially reasonable terms and conditions (for data roaming services), *id.* § 20.12(e), and just and reasonable and not unreasonably discriminatory terms and conditions (for interconnected voice, data, and text roaming services), *id.* § 20.12(d).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

4. By contrast, AT&T has proposed (i) data roaming rates that plainly are commercially reasonable in accordance with 47 C.F.R. § 20.12(e); and (ii) voice roaming rates that are just, reasonable, and nondiscriminatory in accordance with 47 C.F.R. § 20.12(d).⁹

5. AT&T's proposed data roaming rates are [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁶ *Infra* ¶ 30.

⁷ *See infra* ¶ 34. [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] *See also* Declaration of Gram Meadors (“Meadors Decl.”) ¶ 19 (Oct. 13, 2015). [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁸ *See infra* ¶¶ 58-64, 75-76.

⁹ *See infra* ¶¶ 65-66, 76.

¹⁰ Declaratory Ruling, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, ¶ 9 (Dec. 18, 2014) (the “*Declaratory Ruling*”). *See infra* ¶¶ 65-66.

text roaming services).¹⁷ As noted above, data and voice roaming rates have continued to decline,¹⁸ and, as a result, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

8. AT&T further requests interim relief during the pendency of this dispute in the form of an order, subject to true-up, requiring iWireless to (i) continue providing data and voice roaming services to AT&T at the rates set forth in the Agreement; or (ii) make a best and final offer and provide data and voice roaming services in accordance with that offer, pending final resolution of this Complaint.²⁰ AT&T is concurrently filing a separate motion for interim relief.

JURISDICTIONAL STATEMENT

9. AT&T brings this Formal Complaint pursuant to Sections 201, 202, 203, and 208 of the Communications Act (the “Act”), 47 U.S.C. §§ 201, 203, 208, 301, *et seq.* and Sections 1.720 *et seq.*, and 20.12 of the Commission’s rules, 47 C.F.R. §§ 1.720 *et seq.*, 20.12.

10. The Commission has jurisdiction over this Formal Complaint under 47 U.S.C. § 208 and Sections 1.720 to 1.735 of the Commission’s Rules. 47 C.F.R. §§ 1.720 to 1.735. For purposes of this Complaint, iWireless is a common carrier engaged in providing services

¹⁷ *Infra* ¶ 96.

¹⁸ *See supra* ¶ 5.

¹⁹ *See* Meadors Decl. ¶ 37.

²⁰ *See* Second Report and Order, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, ¶ 80 (Apr. 7, 2011) (the “Data Roaming Order”) (noting that Commission Staff may “order the host provider to provide data roaming on its proffered terms, during the pendency of the dispute, subject to possible true-up once the roaming agreement is in place”); *accord* *Declaratory Ruling* ¶ 27.

subject to Title II of the Act with respect to its provision of voice roaming services,²¹ and is a provider of data roaming services subject to Title III of the Act.²² As discussed below, iWireless has violated provisions of the Act and Commission rules that authoritatively implement the Act.

THE PARTIES

11. AT&T Mobility LLC is a limited liability company organized under the laws of Delaware. Pursuant to 47 C.F.R. § 1.721(a)(3), the names, addresses, and telephone numbers of AT&T's counsel are listed on the cover page of this Complaint.

12. Defendant Iowa Wireless Services, LLC is limited liability company organized under the laws of Delaware. iWireless is a facility-based provider of broadband services throughout Iowa and in certain adjoining portions of South Dakota, Nebraska, Wisconsin (as well as minimal cross-border services in parts of Missouri and Minnesota).²³

13. As relevant to the Complaint, AT&T purchases mobile voice and data roaming services from iWireless under a bilateral roaming Agreement, which was first signed by the parties (or their predecessors) on January 1, 2006, and which has since been amended on two

²¹ Report and Order and Further Notice of Proposed Rulemaking, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, ¶ 23 (Aug. 16, 2007) (the “Voice Roaming Order”).

²² *Data Roaming Order* ¶ 2.

²³ iWireless is majority owned (54%) by VoiceStream PCS I Iowa Corp., which is, in turn, wholly owned and controlled by T-Mobile US, Inc. (“T-Mobile”). See Public Notice, *Non Streamlined International Applications/Petitions Accepted For Filing*, Rep. No. TEL-01640NS, at 2 (Nov. 4, 2013) (discussing iWireless Petition for Declaratory Ruling ISP-PDDR-20131030-00007). The remaining 46% of iWireless' equity, and a managing member interest, is indirectly held by Iowa Network Services, Inc., *id.*, a consortium of several independent telecommunications companies. See iWireless Appoints New Chief Executive Officer, <http://www.iwireless.com/support/about/press-releases/iwireless-appoints-new-chief-executive-officer.aspx> (last visited Oct. 6, 2015). iWireless describes itself as a “T-Mobile Affiliate and Iowa Wireless Services company.” *Id.*

Voice Roaming Order and *Order on Reconsideration*.²⁷ Count III states a claim for interim relief pending the Commission's resolution of this Complaint.²⁸

I. FACTS IN SUPPORT OF THE FORMAL COMPLAINT

A. The Evolving Market for Roaming Services

15. No wireless provider, no matter how large its network, has the capability to serve its customers in all locations over its own facilities.²⁹ Rather, to provide coverage in areas where they do not have facilities, wireless providers enter into roaming agreements to allow their customers to utilize other wireless providers' networks.³⁰ The purpose of a roaming agreement is to enable a wireless provider to provide its customers with coverage when they travel outside of the wireless provider's own coverage area.³¹

16. AT&T has negotiated roaming agreements with almost all of the domestic wireless providers that market handsets compatible with AT&T's networks.³² AT&T currently has approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] commercially-negotiated roaming agreements with other domestic wireless providers, including major providers such as [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] as well as various smaller carriers.³³

²⁷ *Order on Reconsideration and Second Further Notice of Proposed Rulemaking, Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265 (Apr. 21, 2010) (the "*Order on Reconsideration*"). *See Infra* ¶¶ 84-89.

²⁸ *Infra* ¶¶ 90-95.

²⁹ Meadors Decl. ¶ 4.

³⁰ *Id.*

³¹ *Id.*; *Data Roaming Order* ¶ 9.

³² Meadors Decl. ¶¶ 5, 30.

³³ *Id.*

17. Over the past few years, market rates for data roaming services have declined significantly.³⁴ The following chart, submitted by T-Mobile in a recent FCC proceeding, shows the decline in rates that T-Mobile has paid for data roaming services.

T-MOBILE DATA ROAMING RATES³⁵

<u>Year</u>	<u>Volume (MB mil)</u>	<u>Average Price (\$ per MB)</u>
2008	30.36	3.060
2009	54.09	2.910
2010	105.97	1.660
2011	171.63	1.197
2012	144.01	0.859
2013	266.53	0.300
2014	646.54	0.181

18. The average rates that AT&T has paid for data roaming services over the same time period have also declined significantly.³⁶ AT&T is currently a party to approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] arm's-length data roaming agreements.³⁷ Under those agreements AT&T paid an average data roaming rate of [BEGIN

³⁴ *Id.* ¶ 6.

³⁵ See Declaration of Joseph Farrell in Support of Petition for Declaratory Ruling of T-Mobile USA, Inc., WT Docket No. 05-265, at Table 6 (May 19, 2014) (“Farrell Decl.”). The average rate for 2014 is estimated based on actual data for January 2014 and T-Mobile’s forecasts for the remainder of the year. *Id.* See also Meadors Decl. ¶ 6.

³⁶ Meadors Decl. ¶ 6.

³⁷ Declaration of Jonathan Orszag (“Orszag Decl.”) ¶ 22 (Oct. 13, 2015); Meadors Decl. ¶ 30. AT&T is also a party to [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] strategic roaming agreements. See Meadors Decl. ¶¶ 5, 30. See also footnote 159.

CONFIDENTIAL INFORMATION REDACTED

21. This Agreement has been amended twice.⁴⁴ *First*, on November 30, 2007, AT&T and iWireless amended the Agreement to substitute AT&T in place of Cingular Wireless LLC and to establish [BEGIN CONFIDENTIAL] [REDACTED]

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

[END CONFIDENTIAL] *Second*, on January 13, 2012, the parties executed an addendum

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

⁴⁴ *Id.*

⁴⁵ *Id.*; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

⁴⁶ Meadors Decl. ¶ 8; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] A quick rule of thumb for estimating the effective rate for voice rates stated in terms of separate air and domestic toll changes is the sum of the air rate plus one-half of the domestic toll rate. Meadors Decl. ¶ 8 n.6. In this case, the rule of thumb estimates that the effective voice rate under the Agreement would be approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] *Id.*

⁴⁷ Meadors Decl. ¶ 8; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁴⁸ Meadors Decl. ¶ 8; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁴⁹ Meadors Decl. ¶ 8.

1. 2012-13 Negotiations

22. As the commercial marketplace for data roaming has evolved, AT&T has

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

23. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁵⁰ *Id.* ¶ 9.

⁵¹ *Id.*

⁵² Meadors Decl. ¶ 9; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

⁵³ Meadors Decl. ¶ 9. *See also* [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

2. 2014-15 Negotiations

24. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

25. Following the conclusion of the Auction 97 process,⁵⁹ AT&T [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵⁴ Meadors Decl. ¶ 9; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁵⁵ Meadors Decl. ¶ 9.

⁵⁶ *Id.* ¶ 11.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ The Auction 97 process concluded on January 29, 2015. FCC, “Auction 97, Advanced Wireless Services (AWS-3),” available at http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=97 (last accessed Sept. 29, 2015).

⁶⁰ Meadors Decl. ¶ 12.

⁶¹ *Id.*

[REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

28. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁶⁷ Meadors Decl. ¶ 13; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁶⁸ Meadors Decl. ¶ 14; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁶⁹ Meadors Decl. ¶ 14; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁷⁰ Meadors Decl. ¶ 14; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

29. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁷¹ Meadors Decl. ¶ 14; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁷² Meadors Decl. ¶ 14; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁷³ Meadors Decl. ¶ 14; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁷⁴ Meadors Decl. ¶ 14; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁷⁵ Meadors Decl. ¶ 15; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁷⁶ Meadors Decl. ¶ 15; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

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

30. Over the next two months, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END

CONFIDENTIAL]

⁷⁷ Meadors Decl. ¶ 15; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

⁷⁸ Meadors Decl. ¶ 15; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

⁷⁹ Meadors Decl. ¶ 16.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

⁸³ Meadors Decl. ¶ 16; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

33. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

34. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

⁸⁸ Meadors Decl. ¶ 19; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁸⁹ Meadors Decl. ¶ 20; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁹⁰ Meadors Decl. ¶ 20; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

35. In addition, iWireless [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

36. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

37. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁹¹ Meadors Decl. ¶ 20; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁹² Meadors Decl. ¶ 20; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁹³ Meadors Decl. ¶ 20. For example, AT&T's total roaming traffic on iWireless' network in 2014 was approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] *Id.* ¶ 20 n.27. Through September 2015, AT&T has [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] *Id.*

⁹⁴ *Id.* ¶ 21.

⁹⁵ Meadors Decl. ¶ 21; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁹⁶ Meadors Decl. ¶ 21; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

38. AT&T also pointed out that [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

39. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

⁹⁷ Meadors Decl. ¶ 21; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁹⁸ Meadors Decl. ¶ 21; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁹⁹ Meadors Decl. ¶ 21; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

¹⁰⁰ Meadors Decl. ¶ 22.

¹⁰¹ See, e.g., *id.* ¶ 25 n.35.

4. Subsequent Developments

40. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END
CONFIDENTIAL]

41. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]

¹⁰² Meadors Decl. ¶ 23; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹⁰³ Meadors Decl. ¶ 23; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹⁰⁴ [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹⁰⁵ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

42. In response, iWireless [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁰⁶ Meadors Decl. ¶ 24; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] Meadors Decl. ¶ 24 n.31; [BEGIN CONFIDENTIAL]

[REDACTED] [END CONFIDENTIAL]

¹⁰⁷ Meadors Decl. ¶ 24; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

¹⁰⁸ Meadors Decl. ¶ 24; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

¹⁰⁹ Meadors Decl. ¶ 24; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

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

43. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹¹⁰ Meadors Decl. ¶ 24; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL] The specific rates are [BEGIN CONFIDENTIAL]
[REDACTED] [END CONFIDENTIAL] See
Meadors Decl. ¶ 24; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹¹¹ Meadors Decl. ¶ 24; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹¹² Meadors Decl. ¶ 25; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹¹³ Meadors Decl. ¶ 25; [BEGIN CONFIDENTIAL] [REDACTED] [END
CONFIDENTIAL] Meadors Decl. ¶ 25 n.35.

[REDACTED]
[REDACTED] [END CONFIDENTIAL]

II. LEGAL STANDARDS

44. AT&T's alleges that iWireless has violated (i) 47 C.F.R. § 20.12(e) by refusing to provide data roaming service to AT&T on terms that are commercially reasonable; and (ii) 47 C.F.R. § 20.12(d) by refusing to offer AT&T voice roaming service on terms that are just, reasonable and not unreasonably discriminatory. AT&T has also requested that the Commission issue interim relief to prevent iWireless from terminating AT&T's ability to roam on the iWireless network pending final resolution of this dispute. The legal standards pertaining to each of the claims are set forth below.

A. Data Roaming

45. In 2011, the Commission issued its *Data Roaming Order*, which requires facilities-based providers of commercial mobile data services to offer data roaming arrangements to other such providers on commercially reasonable terms and conditions, subject to certain limitations which primarily relate to technical compatibility.¹¹⁵ The goal of the *Data Roaming Order* was to allow consumers with mobile data plans to remain connected when they travel outside their own provider's network coverage areas by using another provider's network, and thus promote connectivity for and nationwide access to mobile data services.¹¹⁶ In order to address disputes related to the data roaming requirement, the *Data Roaming Order*

¹¹⁴ Meadors Decl. ¶ 25; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

¹¹⁵ See *Data Roaming Order* ¶¶ 1, 43.

¹¹⁶ *Id.* ¶ 1.

established a complaint process, and allowed for disputes to be resolved through the Commission’s complaint process, depending on the circumstances specific to each dispute.¹¹⁷

46. In the *Data Roaming Order*, the Commission adopted a “commercial reasonableness” standard for adjudicating data roaming disputes between carriers.¹¹⁸ That standard, while flexible,¹¹⁹ was based on two substantive lodestars. *First*, the Commission explained that commercial reasonableness would be determined to a significant degree, not surprisingly, by the rates and terms that prevail in existing, negotiated roaming agreements that scores of sophisticated parties rely on today to compete in the marketplace.¹²⁰ *Second*, the Commission held that its data roaming rules must be applied to promote broadband investment and facilities-based competition and, therefore, that it expected roaming rates to be “high” relative to retail rates to maintain appropriate incentives for network build-out.¹²¹

47. In so ruling, the Commission’s *Data Roaming Order* sought to balance the core policy goals of expanding the availability of data roaming, encouraging broadband investment,

¹¹⁷ *Id.* ¶ 8.

¹¹⁸ See *Data Roaming Order* ¶ 1. In its recent *Net Neutrality Order*, the Commission reaffirmed that the data roaming rules would continue to govern mobile broadband service. See Report and Order, *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 12-28, ¶ 526 (Mar. 12, 2015) (“We therefore forebear from application of the [commercial mobile radio service] roaming rule, section 20.12(d), to [mobile broadband internet access service] providers, conditioned on such providers continuing to be subject to . . . the data roaming rule codified in section 20.12(e).”).

¹¹⁹ *Data Roaming Order* ¶¶ 44-45 (“[T]he roaming rule is sufficiently flexible to apply to a wide range of ever changing technologies and commercial contexts. . . . Giving providers flexibility to negotiate the terms of their roaming agreements on an individualized basis ensures that the data roaming rules best serves our public interest goals[.]”).

¹²⁰ See *id.* ¶ 81 (“[W]e will presume . . . that the terms of a signed agreement meet the reasonableness standard.”).

¹²¹ See *id.* ¶¶ 21, 22, 51 (“[T]he relatively high price of roaming compared to providing facilities-based service will often be sufficient to counterbalance the incentive to ‘piggy back’ on another carrier’s network.”).

and promoting facilities-based competition,¹²² while retaining the flexibility to accommodate a significant range of outcomes.¹²³ The Commission declined to impose a “prescriptive regulation of rates,” but emphasized that host providers must offer data roaming “on commercially reasonable terms and conditions, subject to certain limitations[.]”¹²⁴

48. The *Data Roaming Order* further explained that, in resolving data roaming disputes, the Commission may consider 17 factors to evaluate the reasonableness of the negotiations, the providers’ conduct, and the terms and conditions of the proffered data roaming arrangements.¹²⁵ These factors include, among other things, whether the host provider “has engaged in a persistent pattern of stonewalling behavior, and the length of time since the initial request,” and “whether the terms and conditions offered by the host provider are so unreasonable as to be tantamount to a refusal to offer a data roaming arrangement.”¹²⁶ The Commission emphasized, however, that these factors are not exclusive or exhaustive, that the Commission may consider other factors in determining commercial reasonableness, and that each case will be decided based on the “totality of the circumstances.”¹²⁷ Conduct that unreasonably restrains trade is not commercially reasonable.¹²⁸

¹²² See *id.* ¶ 13 (“[A]dopting a roaming rule tailored for mobile data services will best promote consumer access to seamless mobile data coverage nationwide, appropriately balance the incentives for new entrants and incumbent providers to invest in and deploy advanced networks across the country, and foster competition[.]”).

¹²³ See *id.* ¶¶ 44-45 (“[T]he roaming rule is sufficiently flexible to apply to a wide range of ever changing technologies and commercial contexts.”).

¹²⁴ *Id.* ¶¶ 21, 40. These limitations are primarily related to technological compatibility of the providers’ networks. See *id.* ¶ 43.

¹²⁵ *Id.* ¶ 86.

¹²⁶ *Id.*

¹²⁷ *Id.* ¶¶ 86-87.

¹²⁸ *Id.* ¶¶ 45-85.

49. Under the final rules adopted in the *Data Roaming Order*, facilities-based providers of commercial mobile data services are required to offer roaming arrangements to other such providers on commercially reasonable terms and conditions.¹²⁹ The rules do not, however, require providers to purchase roaming services.¹³⁰

50. On May 27, 2014, T-Mobile filed a petition for a declaratory ruling seeking “additional guidance” relating to the Commission’s data roaming rules.¹³¹ Responding to T-Mobile’s petition, the Wireless Bureau last December issued its *Declaratory Ruling* purportedly “clarify[ing]” the Commission’s rules, providing “additional guidance,” and “lessen[ing] ambiguity.”¹³² Specifically, the Wireless Bureau explained, *inter alia*, that while marketplace rates remained relevant, requesting providers could also “adduce evidence” as to whether proffered roaming rates are “substantially in excess” of “retail rates, international rates, MVNO/resale rates, as well as a comparison of proffered roaming rates to domestic roaming rates as charged by other providers.”¹³³ In so ruling, however, the Wireless Bureau also noted that “these other rates will [not] be probative factors in every case” or even “relevant to the same degree,”¹³⁴ and rejected renewed calls for the “imposition of a cap or ceiling on data roaming rates.”¹³⁵ Rather, the Wireless Bureau explained that the Commission will consider

¹²⁹ 47 C.F.R. § 20.12(e)(1).

¹³⁰ *See id.*

¹³¹ *See Declaratory Ruling* ¶ 1 (citing Petition for Expedited Declaratory Ruling of T-Mobile USA, Inc., Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265 (May 27, 2014)).

¹³² *See id.* ¶ 10.

¹³³ *Id.* ¶ 9.

¹³⁴ *Id.* ¶ 17.

¹³⁵ *Id.* ¶ 30.

“these other rates” along with a “host of other factors” in determining commercial reasonableness under the “totality of the circumstances” of each case.¹³⁶

B. Voice Roaming

51. In 2007, the Commission issued its *Voice Roaming Order*, which provides that, as common carriers, Commercial Mobile Radio Services (“CMRS”) carriers must provide automatic roaming for interconnected voice service. The purpose of the *Voice Roaming Order* was “to facilitate reasonable roaming requests by carriers on behalf of wireless customers,” such that a requesting carrier could “enable its subscribers to receive service seamlessly.”¹³⁷ Thus, the Commission required CMRS carriers to provide automatic roaming services to other carriers upon reasonable request on a just, reasonable, and non-discriminatory basis pursuant to Sections 201 and 202 of the Communications Act.¹³⁸ The Commission found that the common carrier obligation extends to services that are real-time, two-way switched voice or data service that are interconnected with the public switched network and use an in-network switching

¹³⁶ *Id.* ¶ 20 (relevant factors include the 17 factors identified in the *Data Roaming Order* “as well as others”). On January 16, 2015, AT&T filed an application for review of the *Declaratory Ruling*, arguing that it had created a “standardless approach” that had “thrown the Commission’s entire data roaming regime into confusion” due to the lack of “guidance [as to] how the Commission will apply . . . th[is] ruling[] in individual cases.”¹³⁶ See Application for Review of AT&T, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, at 2 (Jan. 16, 2015) (the “*Application for Review*”). Verizon Wireless filed a separate application for review on January 20, 2015, in which it argued that the Wireless Bureau had “unlawfully changed” the *Data Roaming Order*. See Verizon Application for Review, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, at 1-3 (Jan. 20, 2015). To date, the Commission has not acted on either filing.

¹³⁷ See *Voice Roaming Order* ¶ 28.

¹³⁸ *Id.* ¶¶ 1-2.

facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.¹³⁹

52. Under the *Voice Roaming Order*, a request for automatic roaming is presumed reasonable if the requesting carrier’s network is technologically compatible with the host carrier’s network and the roaming service requested is outside of the requesting carrier’s home market.¹⁴⁰ If a carrier makes a presumptively reasonable automatic roaming request, “the would-be host CMRS carrier has a duty to respond to the request and avoid actions that unduly delay or stonewall the course of negotiations regarding the request.”¹⁴¹

53. In 2010, the Commission issued its *Order on Reconsideration* “to increase consumers’ access to seamless nationwide mobile services, wherever and whenever they choose,” by creating “a framework for voice roaming that will encourage carriers of all sizes to reach reasonable commercial roaming arrangements.”¹⁴² As part of this framework, the Commission eliminated the home roaming exclusion, finding that in a number of respects, the exclusion failed to achieve its stated purposes.¹⁴³ The *Order on Reconsideration* establishes that a request for automatic roaming within the requesting carrier’s home market is presumed reasonable if the requesting carrier’s network is technologically compatible with the would-be

¹³⁹ *Id.* ¶ 54.

¹⁴⁰ *Id.* ¶ 33.

¹⁴¹ *Id.*

¹⁴² Order on Reconsideration and Second Further Notice of Proposed Rulemaking, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265 (Apr. 21, 2010) (“*Order on Reconsideration*”).

¹⁴³ *See id.* ¶¶ 18, 21-23.

host carrier's network.¹⁴⁴ Upon a presumptively reasonable request, CMRS carriers must provide automatic roaming for home roaming on just, reasonable and not unreasonably discriminatory terms and conditions.¹⁴⁵

C. Interim Relief

54. The Commission has clear authority under 47 U.S.C. § 154(i) ("Section 4(i)") to prevent iWireless from cutting off the ability of AT&T's customers to roam on the iWireless network pending final resolution of this Complaint. As the Commission has noted, "[t]he Supreme Court has affirmed the Commission's authority to impose interim injunctive relief, in the form of a standstill order, pursuant to Section 4(i)."¹⁴⁶ The Commission has thus explained that Section 4(i) "clearly empower[s] the Commission to act promptly to restrain, on a temporary or interim basis, apparent or prima facie violations of the Act and our rules and orders."¹⁴⁷ The Enforcement Bureau, pursuant to delegated authority—"as the primary Commission entity responsible for enforcement of the Communications Act and other communications statutes, the Commission's rules, Commission orders and Commission authorizations"—is clearly authorized to issue an order providing such relief.¹⁴⁸

¹⁴⁴ *Id.* ¶ 2.

¹⁴⁵ *Id.*

¹⁴⁶ Second Report and Order, *Revision of the Commission's Program Carriage Rules; Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage*, 26 FCC Rcd. 11494, ¶ 26 (2011) ("2011 Program Carriage Rules Order") (citing *United States v. Southwestern Cable Co.*, 392 U.S. 157, 181 (1968)).

¹⁴⁷ Report and Order, *Implementation of the Telecommunications Act of 1996 Amendment of Rules Governing Procedures To Be Followed When Formal Complaints Are Filed Against Common Carriers*, 12 FCC Rcd. 22497, ¶ 159 (1997) ("1997 Complaint Rules Order"). See also Memorandum Opinion and Order, *AT&T Corp. v. Ameritech Corp.*, 13 FCC Rcd. 14508, ¶ 14 n.45 (1998) ("*Ameritech Standstill Order*") (noting that Commission's authority to award interim relief includes power to restrict ongoing conduct).

¹⁴⁸ 47 C.F.R. §§ 0.111, 0.311.

55. Although the Commission has declined to “prescribe the legal and evidentiary showings required” for obtaining such interim relief,¹⁴⁹ the Commission typically considers four factors: (1) likelihood of success on the merits; (2) the threat of irreparable harm absent the grant of preliminary relief; (3) the degree of injury to other parties if relief is granted; and (4) that the issuance of the order will further the public interest.¹⁵⁰ The Commission has explained that no “single factor is dispositive.”¹⁵¹ Rather, the Commission applies a sliding scale, where a particular compelling demonstration of one of the factors requires a less compelling demonstration of other factors.¹⁵² Thus, where a movant can show “serious questions going to the merits” and that a “balance of hardships tipping sharply in [the movant’s] favor,” the Commission will impose interim relief.¹⁵³

III. IWIRELESS HAS FAILED TO OFFER COMMERCIALY REASONABLE TERMS AND CONDITIONS FOR DATA ROAMING.

56. iWireless has violated 47 C.F.R. § 20.12(e) by failing to offer commercially-reasonable terms and conditions for data roaming. The record shows that iWireless steadfastly refused to renegotiate the parties’ [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

¹⁴⁹ *1997 Complaint Rules Order* ¶ 169.

¹⁵⁰ *See, e.g., Ameritech Standstill Order* ¶ 13 (citing *Virginia Petroleum Jobbers v. Federal Power Comm’n*, 259 F.2d 921 (D.C. Cir. 1958)).

¹⁵¹ *Id.* ¶ 14.

¹⁵² *Id.*

¹⁵³ *Id.* (internal quotations omitted). *See also In re Hyperion Commc’ns Long Haul, L.P.*, 15 FCC Rcd 10202, ¶ 3 (2000) (noting that injunctive relief “may be granted on account of a particularly strong showing as to at least one of the factors, regardless of an absence of showing of another factor”).

59. Prevailing market rates further have decreased since 2014.¹⁵⁸ AT&T currently is party to [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] arm's-length data roaming agreements.¹⁵⁹ Under those agreements, AT&T paid an average data roaming rate of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] over the 12 months ending August 2015.¹⁶⁰ Indeed, the agreements that AT&T has negotiated during the last twelve months have included rates for 2G/3G service in the range of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] and LTE rates in the range of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]. In addition, AT&T recently agreed to provide [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]

60. Further, iWireless's proposal is commercially unreasonable relative to the "other rates" identified in the *Declaratory Ruling*.¹⁶³ While AT&T believes that those "other rates" have less relevance in a data roaming dispute, the evidence demonstrates that iWireless'

¹⁵⁸ See Meadors Decl. ¶¶ 7, 30.

¹⁵⁹ *Id.* See also Orszag Decl. ¶ 22. AT&T has two types of roaming agreements: (i) arm's-length agreements that provide for roaming services alone; and (ii) strategic agreements that include other services beyond just roaming. Meadors Decl. ¶ 5. [BEGIN CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL] Meadors Decl. ¶ 5. See also Orszag Decl. ¶ 22.

¹⁶⁰ Orszag Decl. ¶ 23 n.14; Meadors Decl. ¶ 30.

¹⁶¹ Meadors Decl. ¶ 30.

¹⁶² *Id.*

¹⁶³ See Orszag Decl. ¶ 26.

proposed data roaming rates are substantially in excess of such rates.¹⁶⁴ For example, AT&T's retail customers generally pay data rates that are [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL] Accordingly, although Staff need not,¹⁶⁸ and should not, accord significant weight to these "other rates," to the extent that these are relevant, such rates further demonstrate the commercial unreasonableness of iWireless' proposed data roaming rates.

61. In addition to setting unreasonable per MB rates, iWireless' proposals contain other terms that are not commercially reasonable. As discussed above, each of iWireless' proposals has been conditioned on AT&T [BEGIN CONFIDENTIAL] [REDACTED]

¹⁶⁴ See *id.* ¶¶ 27-30.

¹⁶⁵ See Orszag Decl. ¶ 27. This finding is consistent with the findings of T-Mobile's expert, Dr. Farrell, based on retail rates charged by AT&T, Verizon, Sprint, and T-Mobile as of February 2014. Dr. Farrell showed, for example, that retail customers using 1 GB of data or more per month paid no more than 12¢/MB, and for the average usage of T-Mobile's customers (approximately 1.7 GB per month), the retail rates were between 3¢-8¢/MB of data usage. See Farrell Decl. ¶¶ 67-69, Table 2. Furthermore, these retail data rates are within the same range as the data rates that iWireless advertises to its retail customers, which range from less than 1¢/MB to approximately 4¢/MB, before other adjustments. See iWireless – No Contract Plans, <https://www.iwireless.com/store/PlansNoContract.aspx> (last visited Oct. 12, 2015).

¹⁶⁶ Orszag Decl. ¶ 29.

¹⁶⁷ *Id.*

¹⁶⁸ *Declaratory Ruling* ¶ 17 ("these other rates will [not] be probative factors in every case" or even "relevant to the same degree").

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL] These preconditions to any agreement are not commercially reasonable for the following reasons.

62. First, nothing in the Commission's data roaming rules permits iWireless to condition its rate proposal on AT&T's [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] Under the Commission's rules, facilities-based providers of commercial mobile data services are "required to offer" roaming arrangements to other such providers on "commercially reasonable terms and conditions;" the rules do not require carriers to purchase these services.¹⁷² Indeed, the vast majority of AT&T's roaming agreements are [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] While the parties to an agreement can, and in some instances do, agree on [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] such agreements are

¹⁶⁹ See *supra* ¶¶ 36, 42. See also Meadors Decl. ¶¶ 20, 24; [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL]

¹⁷⁰ See *supra* ¶ 43. See also Meadors Decl. ¶ 25; [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL]

¹⁷¹ See 47 C.F.R. § 20.12(e)(1).

¹⁷² See *id.* See also *Data Roaming Order* ¶ 1 ("In this Order . . . we adopt[] a rule that requires facilities-based providers of commercial mobile data services to offer data roaming arrangements to other such providers on commercially reasonable terms and conditions, subject to certain limitations.").

¹⁷³ Meadors Decl. ¶ 27.

C. iWireless' Arguments in Support of Its Proposed Data Roaming Rates Are Without Merit.

67. iWireless' arguments in support of its proposed data roaming rates, which it has raised at various points throughout the parties' negotiations, are without merit.

1. iWireless' Roaming Rates Are Not Entitled to a Presumption of Reasonableness.

68. iWireless has argued that, under Commission precedent, the [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] data roaming rate in the Agreement is entitled to a presumption of reasonableness because it was the result of an arm's-length negotiation between the parties. This argument fails for two reasons. *First*, the [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] roaming rate is outdated. The parties negotiated the roaming rate in 2007, and it became effective on [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] data roaming rate is no longer commercially reasonable in light of the significant changes in the market for data roaming that have taken place over the previous [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] years.¹⁹¹ Indeed, iWireless itself [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] *Second*, because iWireless has [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] it cannot now argue that the rates in the Agreement are entitled to any presumption of reasonableness.

¹⁹¹ See *Declaratory Ruling* ¶ 26 (explaining that the relevancy of rates in prior agreements between two parties may be limited by “the length of time since the prior negotiation and the existence of subsequent changes in marketplace conditions”).

¹⁹² See *supra* ¶ 24.

2. **iWireless is Not Entitled to Charge Inflated, Above-Market Rates For Rural Roaming.**

69. iWireless has also argued that, because most of its geographic market is rural, it is entitled to charge higher roaming rates than other carriers. AT&T does not dispute that roaming rates for rural areas can be higher than roaming rates in urban areas. However, this distinction does not justify the exorbitant roaming rates iWireless is demanding from AT&T. Indeed, the rates that AT&T pays to other carriers for data roaming—which are significantly less than iWireless’ rates—are primarily for roaming in *rural* areas.¹⁹³

70. A review of the contracts under which AT&T roams shows that, in a given month, AT&T roamed in approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] counties nationwide of which [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] are rural.¹⁹⁴ Further, of the approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] agreements under which AT&T roamed, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] agreements involved roaming *only* in rural counties and in no instance did the urban counties in which AT&T roamed under an agreement [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [END CONFIDENTIAL] Despite being overwhelmingly rural, the average effective rate that AT&T

¹⁹³ See Meadors Decl. ¶¶ 30-31.

¹⁹⁴ *Id.* ¶ 31.

¹⁹⁵ *Id.* This was not only true of AT&T’s strategic roaming agreements but also of its arm’s-length agreement. Of the [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] agreements, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] are arm’s-length agreements and under those agreements, AT&T roamed in approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] counties nationwide of which [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] are rural. *See id.*

pays under its arm's-length roaming agreements is [BEGIN CONFIDENTIAL] [REDACTED]
[END CONFIDENTIAL]

3. iWireless Overstates The Relevance of The Small Number of Agreements That AT&T Has With Other Carriers at Higher Roaming Rates.

71. The fact that AT&T has a number of roaming agreements with other carriers that [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] does not justify iWireless' proposed rates. Those rates are generally found in agreements that have [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] Indeed, the Commission has explained that existing agreements which were not recently negotiated may no longer be useful in determining what is commercially reasonable in light of the current market for roaming services.¹⁹⁸ Further, as explained by Mr. Meadors, AT&T is [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] For example, in the last year, AT&T had active contracts with [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] providers (in addition to iWireless) with data roaming rates in excess of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] As a result of its ongoing efforts, AT&T has either [BEGIN CONFIDENTIAL] [REDACTED]

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* ¶ 32.

¹⁹⁸ *Declaratory Ruling* ¶ 26 (“A rate negotiated a year ago might have been commercially reasonable at that time but may no longer reflect current marketplace conditions . . .”).

¹⁹⁹ Meadors Decl. ¶ 32.

²⁰⁰ *Id.*

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

72. Similarly deficient are iWireless' claims regarding the roaming rates that
[BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL] iWireless
overstates and mischaracterizes the relevance of the [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL] As an initial matter, the [BEGIN CONFIDENTIAL]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [END CONFIDENTIAL] Rather,
as is customary in the wireless industry, iWireless was [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

²⁰¹ *Id.*
²⁰² *Id.* ¶ 33.
²⁰³ *Id.*
²⁰⁴ *Id.*
²⁰⁵ *Id.*

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

4. **iWireless Cannot Demand Unreasonable Roaming Rates Based on Allegations That AT&T Has Undeployed Spectrum in Iowa.**

73. Finally, iWireless has also argued that it is entitled to charge AT&T above-market roaming rates because AT&T owns spectrum in Iowa that it has not yet fully deployed. This argument is similarly without merit. Indeed, the Commission stated in the *Declaratory Ruling* that a carrier’s ownership of spectrum that is not fully deployed is not a basis for denying roaming on commercially reasonable terms.²⁰⁷

74. And, in any event, AT&T has deployed significant amounts of spectrum in rural communities both nationwide and in Iowa.²⁰⁸ Indeed, in Iowa alone AT&T has [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Furthermore, the rates that AT&T has proposed to iWireless expressly take into account, among other things, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

²⁰⁶ *Id.*

²⁰⁷ See *Declaratory Ruling* ¶ 28 (“In our view, the Commission’s inclusion of this factor [*i.e.*, build-out] was not intended to allow a host provider to deny roaming, or to charge commercially unreasonable roaming rates, in a particular area simply because the otherwise built-out requesting provider has not built out in that area. Any other interpretation of the Commission’s order would be inconsistent with the order itself, which made clear that one of the primary public interest benefits of roaming is that it can allow a provider without a presence in any given market to provide a competitive level of local coverage during the early period of investment and build out.” (footnote omitted))

²⁰⁸ Meadors Decl. ¶ 34.

²⁰⁹ *Id.*

²¹⁰ *Id.*

IV. IWIRELESS' VOICE ROAMING RATES ARE UNREASONABLE AND UNREASONABLY DISCRIMINATORY

75. In its Staff-directed proposal dated June 12, 2015, iWireless proposed a voice roaming rate of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] These rates are not just and reasonable and, AT&T believes, are unreasonably discriminatory. As an initial matter, the rate that iWireless has offered [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Under the Agreement, AT&T pays iWireless [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

76. Further, the voice roaming rates in iWireless' proposal are not in line with the current market for voice roaming services in which AT&T is seeing rates in the range of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] iWireless' proposed rates are also high as compared to the rates in AT&T's current contracts. A review of the agreements under which AT&T is currently paying for voice roaming service (excluding strategic agreements and the agreement with iWireless) shows that [BEGIN

²¹¹ Meadors Decl. ¶ 20; [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL]

²¹² See Meadors Decl. ¶¶ 38, 8 n.6.

²¹³ *Id.*

²¹⁴ *Id.* ¶ 39.

¶ 2. Thus, a provider offering data roaming services in violation of 47 C.F.R. § 20.12(e) is likewise violating Title III of the Communications Act.

80. iWireless is subject to 47 C.F.R. § 20.12(e) because it is a facilities-based provider of commercial mobile data services. *Id.* § 20.12(e)(1).

81. iWireless has violated the requirements of 47 C.F.R. § 20.12(e) because the rates and other terms that (i) it is providing AT&T for data roaming services under the now-terminated Agreement; and (ii) has offered to AT&T as part of the parties' renegotiation of their existing data roaming Agreement are not commercially reasonable. *Id.*

82. iWireless does not qualify for any of the criteria that exempt a facilities-based provider of mobile data services from the requirement to offer data roaming services on commercially reasonable terms and conditions. There are no technological barriers that would prevent iWireless from complying with the requirement to provide a roaming arrangement to AT&T. *Id.* § 20.12(e)(1)(ii)-(iv). Indeed, AT&T and iWireless have been exchanging data roaming traffic for a number of years.

83. Accordingly, AT&T requests that the Commission order iWireless to provide data roaming service to AT&T on commercially reasonable terms, as required by 47 C.F.R. § 20.12(e), and to provide such other relief as the Commission may deem appropriate.

COUNT II

Violation of 47 C.F.R. § 20.12(d) and 47 U.S.C. §§ 201-202 Voice Roaming Service

84. AT&T repeats and realleges the allegations contained in the prior paragraphs of this Complaint as if fully set forth herein.

85. The Commission’s regulations provide that “[u]pon a reasonable request, it shall be the duty of each host carrier subject to [47 C.F.R. § 20.12(a)] to provide automatic roaming to any technologically compatible, facilities-based CMRS carrier on reasonable and not unreasonably discriminatory terms and conditions, pursuant to Sections 201 and 202 of the Communications Act, 47 U.S.C. 201 and 202.” 47 C.F.R. § 20.12(d).

86. Section 47 C.F.R. § 20.12(d) is a regulation that the Commission has adopted under Title II of the Communications Act.²¹⁸ Thus, a provider offering data roaming services in violation of 47 C.F.R. § 20.12(d) is likewise violating Title II of the Act.

87. iWireless has violated the requirements of 47 C.F.R. § 20.12(d) and Title II of the Communications Act because the rates and other terms that it (i) is currently providing AT&T for automatic voice roaming; and (ii) has offered to AT&T as part of the parties’ renegotiation of their existing Agreement are not reasonable and are unreasonably discriminatory.

88. iWireless does not qualify for any exemption from the requirement to provide voice roaming service on reasonable and not unreasonably discriminatory terms. There are no technological barriers that would prevent iWireless from complying with the requirement to provide a roaming arrangement to AT&T. *See id.* § 20.12(d). Indeed, AT&T and iWireless have been exchanging voice roaming traffic for a number of years.

89. Accordingly, AT&T requests that the Commission order iWireless to provide voice roaming service to AT&T on reasonable and not unreasonably discriminatory terms, as

²¹⁸ *Voice Roaming Order* ¶ 23 (“We clarify that automatic roaming is a common carrier service, subject to the protections outlined in Sections 201 and 202 of the Communications Act.”).

required by 47 C.F.R. § 20.12(d), and to provide such other relief as the Commission may deem appropriate.

COUNT III

Request for Interim Relief

90. AT&T repeats and realleges the allegations contained in the prior paragraphs of this Complaint as if fully set forth herein.

91. Under the *Data Roaming Order*, the Commission has the authority to “order the host provider to provide data roaming on its proffered terms, during the pendency of [a] dispute, subject to possible true-up once the roaming agreement is in place.”²¹⁹ The *Declaratory Ruling* similarly affirms the Commission’s authority to provide interim relief during the pendency of a roaming dispute between carriers.²²⁰

92. Under 47 C.F.R. § 20.12, iWireless is required to provide roaming services to AT&T on commercially reasonable terms (for data roaming) and reasonable and not unreasonably discriminatory terms (for interconnected voice, data, and text roaming). iWireless cannot refuse to provide this service when requested by AT&T.

93. Despite these obligations, iWireless has refused to negotiate in a meaningful way with AT&T to reach an agreement on roaming rates. iWireless has refused **[BEGIN**

CONFIDENTIAL] [REDACTED]

[REDACTED] **[END CONFIDENTIAL]** Furthermore, that proposal, and iWireless’s subsequent proposals, have not been made in good faith. As a condition of any new rate

²¹⁹ *Data Roaming Order* ¶ 80.

²²⁰ *Declaratory Ruling* ¶ 27.

agreement, iWireless has demanded, in violation of the Commission's rules, that AT&T

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] Moreover, iWireless has [BEGIN CONFIDENTIAL]

[REDACTED] [END CONFIDENTIAL]

94. AT&T's request for interim relief satisfies all four factors considered by the Commission in granting such relief.

a. *First*, AT&T has demonstrated a likelihood of success on the merits. AT&T has stated compelling claims that iWireless has (i) violated 47 C.F.R. § 20.12(e) by refusing to provide data roaming services to AT&T on commercially reasonable terms; and (ii) violated 47 C.F.R. § 20.12(d) by refusing to provide interconnected voice, data, and text roaming service to AT&T on just, reasonable, and not unreasonably discriminatory terms.

b. *Second*, there is a significant threat of irreparable harm absent a grant of interim relief. iWireless has [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL]

c. *Third*, granting interim relief will result in no harm to iWireless. Under any interim relief, iWireless will receive payments from AT&T for providing roaming

service, subject to a true-up after the Commission issues a final ruling on Counts I and II of the Complaint.

d. *Finally*, granting interim relief will further the public interest by ensuring that roaming service remains available for AT&T's customers roaming in iWireless' coverage area pending the resolution of the parties' dispute.

95. Accordingly, AT&T requests that the Commission provide interim relief in the form of an order, subject to true-up, requiring iWireless to (i) continue providing data and voice roaming services at the rates set forth in the Agreement; or (ii) make a best and final offer and provide data and voice roaming services in accordance with that offer pending resolution of this Complaint.

PRAYER FOR RELIEF

96. Wherefore, and pursuant to Section 1.721(a)(7) of the Commission's rules, Complainant AT&T requests that the Commission:

a. Provide interim relief by ordering iWireless to (i) continue providing data and voice roaming services at the rates set forth in the Agreement; or (ii) make a best and final offer and provide data and voice roaming services in accordance with that offer, subject to a true-up following resolution of this Complaint.

b. Find that the data roaming rate in the parties Agreement **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** violates 21 C.F.R. § 20.12(e) and the Commission's *Data Roaming Order* and *Declaratory Ruling* because the rate is not commercially reasonable.

c. Find that the data roaming rates proposed by iWireless and other related terms required by iWireless violate 21 C.F.R. § 20.12(e) and the Commission's *Data*

Roaming Order and *Declaratory Ruling* because the rates and other terms are not commercially reasonable.

d. Order iWireless to comply with 47 C.F.R. § 20.12(e) by providing data roaming service to AT&T at rates determined by the Commission to be commercially reasonable.

e. Find that the voice roaming rates proposed by iWireless violate 47 C.F.R. § 20.12(d) and the *Voice Roaming Order* and *Order on Reconsideration* because they are unreasonable and unreasonably discriminatory.

f. Order iWireless to comply with 47 C.F.R. § 20.12(d) by providing voice roaming service to AT&T at rates determined by the Commission to be reasonable and not unreasonably discriminatory.

STATEMENT REGARDING SUPPORTING MATERIAL

97. As part of its Complaint, AT&T is including a complete statement of facts that establish that iWireless has violated the Communications Act and the Commission's rules that implement the Act.²²¹ AT&T is also including, within its Formal Complaint, a Legal Analysis that explains why iWireless has violated the Act and the Commission's implementing rules.²²²

98. Along with this Formal Complaint, AT&T is attaching as exhibits copies of documents and data compilations upon which it intends to rely in support of this Formal Complaint. AT&T also is providing (i) a supporting declaration filed by Gram Meadors, AT&T, Assistant Vice President of Alliance/Partnership, Wireless Roaming Strategy; (ii) a supporting declaration filed by Jonathan Orszag, Compass Lexecon, LLC, Senior Managing

²²¹ See *supra* Part I.

²²² See *supra* Parts II-IV.

Director; (iii) proposed findings of fact; (iv) an information designation pursuant to Section 1.721(a)(10) of the Commission's Rules, 47 C.F.R. § 1.721(a)(10); and (v) other forms and certifications required by the Commission's Rules, 47 C.F.R. § 1.721(a).

99. AT&T is filing a public version and a confidential version of its Formal Complaint. The Formal Complaint, as well as the Declarations of Gram Meadors and Jonathan Orszag, contain material that has been designated as confidential. In the public version, redacted versions of these materials are being filed. In the confidential version, these materials are being filed on an unredacted basis, and are being filed under seal pursuant to a Protective Order that has been presented to iWireless by AT&T on August 15, 2015. iWireless has not agreed to the proposed order, provided any comments regarding the proposed order, or otherwise commented on the proposed protective order.

100. Pursuant to Section 1.721(a)(9) of the Commission's Rules, 47 C.F.R. § 1.721(a)(9), AT&T states that there are no other actions that have been filed with the Commission, any court, or other government agency, that are based on the same claim or set of facts, in whole or in part. Nor does the Formal Complaint seek prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding currently before the Commission. AT&T further states that AT&T and iWireless are **[BEGIN CONFIDENTIAL]**

[REDACTED]

[REDACTED] **[END**

CONFIDENTIAL]

101. Pursuant to Section 1.721(a)(8) of the Commission's Rules, 47 C.F.R. § 1.721(a)(8), AT&T hereby certifies that it has, in good faith, attempted to discuss the possibility of settlement with iWireless prior to filing the Formal Complaint. As discussed

above, AT&T has made extensive efforts to negotiate new roaming rates with iWireless, however those efforts were not productive.²²³ AT&T attempted to resolve this dispute through

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

[REDACTED] [END CONFIDENTIAL] AT&T further submits that interim relief, subject to true-up by iWireless, is both necessary and appropriate because iWireless has

[BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]

[REDACTED] [END CONFIDENTIAL] And while iWireless has denied that it [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED]

²²³ See supra ¶¶ 22-43.

²²⁴ See supra ¶¶ 32-39.

²²⁵ See supra ¶¶ 42-43.

²²⁶ [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

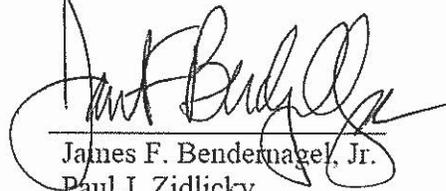
²²⁷ [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

102. Pursuant to Section 1.721(a)(8) of the Commission's Rules, 47 C.F.R. § 1.721(a)(8), AT&T further states that on October 9, 2015, AT&T's counsel sent a certified letter to iWireless outlining the allegations that form the basis for the complaint, inviting a response within a reasonable period of time, and including a brief summary of all additional steps taken to resolve the dispute prior to the filing of the Formal Complaint.

Respectfully submitted,



James F. Bendernage, Jr.
Paul J. Zidlicky
Emily C. Watkins
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(202) 736-8711 (fax)

Counsel for AT&T Mobility LLC

Dated: October 20, 2015

²²⁸ See, e.g., [BEGIN CONFIDENTIAL] [REDACTED]

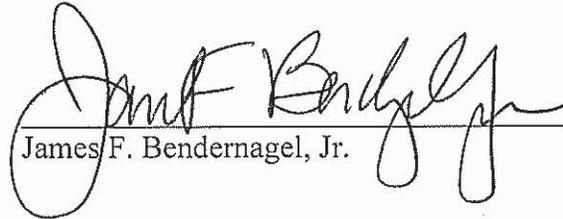
[END CONFIDENTIAL]

²²⁹ [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL]

CERTIFICATE OF FEE PAYMENT

I hereby declare under penalty of perjury that (1) AT&T is paying the \$225 filing fee for the Formal Complaint (pursuant to 47 C.F.R. § 1.1106) by check sent to the Lockbox # 979094, and (2) AT&T Mobility LLC's FRN is 0004979233.


James F. Bendernagel, Jr.

TAB 2

PUBLIC VERSION

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
AT&T MOBILITY LLC,)	
Complainant)	
)	File No. EB-15-MD-____
v.)	
)	
Iowa Wireless Services, LLC)	
Defendant)	
)	

DECLARATION OF GRAM MEADORS

October 20, 2015

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I. BACKGROUND

1. My name is Gram Meadors. I am the Assistant Vice President of Alliance/Partnership, Wireless Roaming Strategy, at AT&T Mobility LLC (“AT&T”), a position I have held since March 2009. I have more than 20 years of experience in the telecommunications industry. Prior to working at AT&T, I held the following positions: Senior Vice President and General Counsel of SkyHawke Technologies, LLC (d/b/a SkyGolf), from March 2008 to March 2009; owner of Meadors Law & Business Consultants from December 2003 to March 2008; Vice President and General Counsel of SkyTel Communications, Inc., from December 2000 to December 2003; and Assistant General Counsel of SkyTel Communications, Inc., from December 1993 to December 2000.

2. I am responsible for the development of AT&T’s policies with respect to domestic voice, data, and SMS roaming. In addition, I am actively involved in the negotiation of AT&T’s roaming agreements with other wireless providers and, as a consequence, I am generally familiar with the terms and conditions of each of those agreements. As noted below, AT&T currently has roaming agreements with most domestic wireless providers that utilize technology that is compatible with AT&T’s wireless network.

3. As part of my role as Assistant Vice President, I supervised the negotiations in recent years between AT&T and Iowa Wireless Services, LLP (“iWireless”) regarding roaming rates. This declaration discusses AT&T’s provision and use of roaming services generally, describes the parties’ negotiations (including specific proposals), and explains how those proposals compare to current market conditions.

II. AT&T’S PROVISION AND USE OF DATA ROAMING SERVICES

4. No wireless provider, no matter how large its network, has the capability to serve its customers in all locations over its own facilities. For example, AT&T, with its extensive

network, does not provide facilities-based coverage in all locations. Rather, to provide coverage in areas where they do not have facilities, wireless providers enter into roaming agreements to allow their customers to utilize other wireless providers' networks. The purpose of a roaming agreement is to enable a wireless provider to provide its customers with coverage when they travel outside of the wireless provider's own coverage area.¹

5. AT&T has negotiated roaming agreements with almost all of the domestic wireless providers that market handsets compatible with AT&T's networks. AT&T currently has approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] commercially-negotiated roaming agreements with other domestic wireless providers, including major providers such as [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] as well as various smaller carriers. AT&T has two types of roaming agreements: arm's length agreements that provide for roaming services alone and strategic agreements that include other components beyond just roaming.² When analyzing roaming rates, AT&T excludes the strategic arrangements because the rates under those agreements reflect other considerations and thus are not representative of the rates that would have been reached by arm's length negotiations for roaming alone.

6. Over the past few years, market rates for data roaming service have declined significantly. The following chart, submitted by T-Mobile in a recent FCC proceeding, shows the decline in rates that T-Mobile has paid for data roaming services.

¹ Second Report and Order, *In re Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Mobile Data Services*, 26 FCC Rcd. 5411 ¶ 9 (2011) ("Data Roaming Order").

² Some strategic agreements reflect the inclusion of [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

10. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END

CONFIDENTIAL]

C. 2014-15 Negotiations

11. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁸ [BEGIN CONFIDENTIAL] [REDACTED]
[END CONFIDENTIAL]

⁹ [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹⁰ Ex. 4, [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

[REDACTED]

[REDACTED]. [END CONFIDENTIAL]

12. [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]. [END CONFIDENTIAL]

13. [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹¹ The Auction 97 process ultimately concluded on January 29, 2015. FCC, "Auction 97, Advanced Wireless Services (AWS-3)," *available at* http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=97 (last accessed May 20, 2015).

¹² [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

¹³ Ex. 5. [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

14. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

¹⁴ [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL]

¹⁵ Ex. 5, [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL]

¹⁶ *Id.*

¹⁷ [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL]

¹⁸ [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL]

19. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

20. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

²⁵ [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

²⁶ Ex. 6, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

²⁷ [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

21. [BEGIN CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL]

E. Subsequent Developments

22. [BEGIN CONFIDENTIAL]

[REDACTED]

[END

CONFIDENTIAL]

23. [BEGIN CONFIDENTIAL]

[REDACTED]

²⁸ Ex. 7, [BEGIN CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

24. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

²⁹ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

³⁰ *Id.* at 1-2.

³¹ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

³² [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

³³ Ex. 9, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

³⁴ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

25. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END

CONFIDENTIAL]

IV. THE DATA ROAMING RATES PROPOSED BY IWIRELESS ARE NOT REASONABLE

26. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [END CONFIDENTIAL] This proposal, as well as iWireless' more recent proposals, are not commercially reasonable for the following reasons.

27. First, nothing in the Commission's data roaming rules permits [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL] Under the

³⁵ Ex. 9 at 4. [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

Commission's rules, AT&T is under no obligation to purchase a certain volume of data roaming; rather, the regulatory obligation is on iWireless to make data roaming available. Indeed, the vast majority of AT&T's agreements are billed on a per MB basis exactly for that reason; while the parties to an agreement can, and in some instances do, agree on fixed monthly payments, such agreements are entirely voluntary and are generally based on unique considerations that do not apply in the case of iWireless.

28. Second, because iWireless is obligated to make roaming service available to AT&T, iWireless' demand that **[BEGIN CONFIDENTIAL]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] **[END CONFIDENTIAL]**

29. Last, and most importantly, the data rates offered by iWireless are not commercially reasonable because they greatly exceed the prevailing rates in the commercial marketplace, as shown below.

30. In AT&T's view, commercial reasonableness is best measured against the rates that other participants in the market have agreed to pay. Although there are a range of rates in the commercial marketplace, iWireless' **[BEGIN CONFIDENTIAL]** [REDACTED]
[REDACTED] **[END CONFIDENTIAL]** fail under this standard. AT&T currently is a party to approximately **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** arm's length data roaming agreements. Under those agreements, AT&T paid an average data roaming rate of

[BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] over the twelve months ending August 2015.³⁶ Moreover, prevailing market rates have continued to decline. Indeed, as discussed above, the agreements that AT&T has negotiated during the last twelve months have included rates for 2G/3G service in the range of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] and LTE rates in the range of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]. In addition, AT&T recently agreed to provide a [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL].

31. Further, because the rates that AT&T pays for data roaming are primarily for roaming in rural areas, they are a particularly good benchmark against which to measure the commercial reasonableness of iWireless' proposed rates. A review of the contracts under which AT&T roams shows that in a given month AT&T roamed in approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] counties nationwide of which [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] are rural. Further, of the approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] agreements under which AT&T roamed, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] agreements only involved roaming in rural counties and in no instance, did the urban counties in which AT&T roamed under an agreement outnumber the rural counties. This was not only true of AT&T's strategic roaming agreements but also of its arm's length agreements. Of the [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] agreements, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] are arm's length agreements, and, under those agreements, AT&T roamed in approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] counties

³⁶ See Orszag Decl. at P 23.

nationwide of which [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] are rural. Despite being overwhelmingly rural, the average effective rate that AT&T pays under its arm's-length agreements is [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

32. Although AT&T still pays high rates for data roaming services on some contracts, those rates are generally found in agreements that have been in place for a long time where the rates have not been the subject of recent negotiation. My business team at AT&T is currently in the process of addressing these outdated contracts, and the higher rates are being phased out as a result. For example, in the last year AT&T had active contracts with [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] providers (in addition to iWireless) with data rates in excess of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]. As a result of my team's efforts, AT&T has implemented roaming alternatives that have either eliminated or greatly reduced its usage in the case of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] of those arrangements (total traffic under these agreements as of May 2015 accounted for a small fraction of a percent of total usage under AT&T's arm's length agreements), negotiated new lower rates in the case of one of the agreements, and is in ongoing negotiations to lower the rates in the other two.

33. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

³⁷ *Id.*

[REDACTED]
[REDACTED] [END CONFIDENTIAL]

37. Finally, as previously pointed out, data roaming rates are continuing to decline.⁴³

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] Moreover, all indications are that this downward trend will continue and

that as a consequence, commercially reasonable rates will be lower [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

V. THE VOICE ROAMING RATES PROPOSED BY IWIRELESS ARE NOT REASONABLE

38. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

39. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

⁴³ See, e.g., Ex. 7.

CONFIDENTIAL INFORMATION REDACTED

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

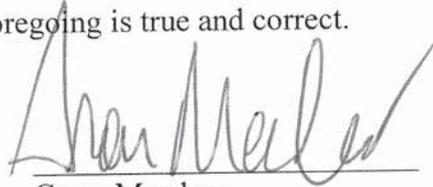
[REDACTED]

[REDACTED] [END CONFIDENTIAL]

⁴⁴ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

VERIFICATION PAGE

I hereby swear under penalty of perjury that the foregoing is true and correct.


Gram Meadors

Dated: October 12, 2015

Exhibit 1

DECLARATION OF JOSEPH FARRELL, D.PHIL.

**IN SUPPORT OF PETITION FOR EXPEDITED DECLARATORY RULING
OF T-MOBILE USA, INC.**

May 19, 2014

- (86) Table 6 presents the average rate that T-Mobile has paid for wholesale domestic data roaming in the last six years (2008-2013), and its forecasts of the average rate it expects to pay for 2014. A monthly series of average prices is displayed in Figure 5. I note that the average domestic wholesale data roaming rate that T-Mobile paid in 2013 is 3.6 times the maximum retail rate that Verizon charges a user of 1,700 MB per month, six times the rate AT&T charges, over seven times the rate that T-Mobile charges, and over ten times Sprint's maximum rate.⁶⁶ Similarly the average domestic wholesale roaming rate that T-Mobile paid in 2013 is more than ten times the average rate that T-Mobile charged MVNOs during that year.

Table 6. T-Mobile's domestic wholesale data roaming purchases, 2008-2013, and T-Mobile's forecast for 2014.

Year	Volume (MB mil)	Average Price (\$ per MB)	Roaming volume as % of T-Mobile subscribers' usage
2008	30.36	3.060	1.12%
2009	54.09	2.910	0.52%
2010	105.97	1.660	0.27%
2011	171.63	1.197	0.18%
2012	144.01	0.859	0.09%
2013	266.53	0.300	0.06%
2014*	646.54	0.181	0.16%

* Actual values up to January 2014, forecasts for the remaining months.

Source: Bates White calculations based on T-Mobile data.

⁶⁶ See Table 2, *supra*.

Exhibit 2

Exhibit 3

Exhibit 4

Exhibit 5

Exhibit 6

Exhibit 7

Exhibit 8

Exhibit 9

TAB 3

PUBLIC VERSION

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

In the Matter of

**AT&T MOBILITY LLC
1055 Lenox Park Blvd. NE
Atlanta, GA 30319
404-236-7895**

Complainant,

v.

**IOWA WIRELESS SERVICES, LLC
4135 NW Urbandale Drive
Urbandale, IA 50322**

Defendant.

File No. EB-15-MD-_____

Declaration of Jonathan Orszag

October 20, 2015

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Appendix A: Curriculum Vitae - Jonathan M. Orszag

Appendix B: Tables

I. Qualifications

1. My name is Jonathan Orszag. I am a Senior Managing Director and member of the Executive Committee of Compass Lexecon, LLC, an economic consulting firm. My services have been retained by a variety of public-sector entities and private-sector firms ranging from small businesses to Fortune 500 companies. These engagements have involved a wide array of matters, from entertainment and telecommunications issues to issues affecting the sports and retail industries. I have provided testimony to the U.S. Congress, U.S. courts, the European Court of First Instance, the Federal Communications Commission (“the Commission”), and other domestic and foreign regulatory bodies on a range of issues, including competition policy, industry structure, and fiscal policy.
2. Previously, I served as the Assistant to the U.S. Secretary of Commerce and Director of the Office of Policy and Strategic Planning and as an Economic Policy Advisor on President Clinton’s National Economic Council. For my work at the White House, I was presented the Corporation for Enterprise Development’s 1999 leadership award for “forging innovative public policies to expand economic opportunity in America.”
3. I am a Fellow at the University of Southern California’s Center for Communication Law & Policy and a Senior Fellow at the Center for American Progress. I received an M.Sc. in economic and social history from Oxford University, which I attended as a Marshall Scholar. I graduated *summa cum laude* in economics from Princeton University and was elected to Phi Beta Kappa.
4. While I served in the federal government, I worked on a number of policy issues involving the telecommunications sector, including policy matters affecting the wireless industry. Since leaving government, I have been active in applied analysis of issues affecting the telecommunications sector. For example, I have written about wireless spectrum auctions; valued wireless spectrum; written about the consumer benefits from broadband access; analyzed policy issues affecting the mobile wireless industry; and analyzed a number of mergers between wireless companies.
5. My full *curriculum vitae*, including a listing of my prior testimony, is included as Appendix A.

II. Assignment and Summary of Conclusions

6. I have been asked by counsel for AT&T Mobility (“AT&T”) to assess whether the rates for data roaming proposed by Iowa Wireless Services, LLC (“Iowa Wireless”) are “commercially reasonable.” I have also been asked to evaluate under the same standard the data roaming rates that AT&T has proposed. For purposes of this analysis, I use the “commercially reasonable” standard as defined by the Commission in the *Data Roaming Order* and *Declaratory Ruling*,¹ as explained below.

¹ Second Report and Order, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, 26 FCC Rcd. 5411, April 7, 2011 (hereinafter, *Data Roaming Order*); Wireless Telecommunications Bureau, *Declaratory Ruling, Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers*

7. I have been asked to analyze AT&T's domestic roaming rates, its retail rates, its rates for international roaming, and its MVNO/resale rates for mobile data services.
8. Based on my analysis, I have reached the following conclusions:
 - The rates offered by AT&T for roaming are consistent with and track the rates AT&T has agreed to in recent arm's length agreements with independent wireless service providers and thus fall within the "commercially reasonable" standard.
 - By contrast, Iowa Wireless's proposed data roaming rates are substantially above the average effective roaming rates that AT&T pays to other domestic carriers and the average effective rates negotiated between AT&T and other rural wireless service providers. In addition, the rates proposed by Iowa Wireless are also substantially above the average T-Mobile roaming rate, as reflected in recent public filings.
 - With regards to the other rate points identified by the Commission in the *Declaratory Order*, the evidence shows that Iowa Wireless' rates are substantially in excess of those rates, on average, thus supporting the conclusion that Iowa Wireless's proposed rates are not commercially reasonable.
9. In the following sections, I describe in more detail the facts and economic analyses that lead to these conclusions. My opinions may be revised in light of any new evidence that may emerge. I, therefore, reserve the right to incorporate such evidence into my analysis.

III. Iowa Wireless' and AT&T's Proposed Data Roaming Rates

10. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]. [END
CONFIDENTIAL]

11. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

of Mobile Data Services, WT Docket No. 05-265, 29 FCC 15483, December 18, 2014 (hereinafter, *Declaratory Ruling*).

² See Declaration of Gram Meadors (Oct. 13, 2015) (hereinafter, Meadors Decl.) at Ex. 3.

³ *Id.*

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[REDACTED]
[REDACTED] [END
CONFIDENTIAL]

12. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]

[END CONFIDENTIAL]

13. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

14. In the three following sections, I assess the commercial reasonableness of AT&T's and Iowa Wireless' proposals. In Section IV, I explain my approach for assessing commercial reasonableness. In Section V, I show that the rates AT&T has offered to Iowa Wireless are consistent with the data roaming agreements AT&T has entered into with other wireless service providers and are thus market-based and commercially reasonable. In Section VI, I show that Iowa Wireless' proposed rates are substantially higher than rates in data roaming agreements AT&T has entered into with other wireless service providers. I also show that Iowa Wireless' proposed roaming rates are substantially in excess of the other benchmark rates, which further proves that they are not commercially reasonable.

⁴ Meadors Decl. at Ex. 4.

⁵ See Meadors Decl. at ¶¶ 24 – 25, Ex. 6.

IV. Approach Used in Assessing Commercial Reasonableness

A. Commercially Reasonable Data Roaming Rates

15. The foundation of the commercially reasonable standard is the terms and conditions that result from arm's length negotiations between wireless carriers. Market-based rates reflect the opportunity costs associated with network capacity, the investment made to service that capacity, the opportunity to sell the capacity to other roaming partners, resellers or MVNOs; to provide additional services to the host carrier's own customers; and to preserve network capacity to enhance network reliability. One way to gauge the reasonableness of a given proposal is to assess the proposed rates relative to other similar agreed upon rates attempting to hold constant unique factors that are always part of any negotiation.
16. The Commission has listed seventeen factors that it "may" consider in the assessment of whether a particular data roaming offer includes commercially reasonable terms and conditions.⁶ The factors identified by the Commission can generally be grouped into the following categories:
 - *Negotiation Factors*: how the host provider has responded to the request for negotiation (*e.g.*, potential stonewalling, unreasonable offers); whether the parties have or have had any roaming arrangements (and the terms of such agreements).
 - *Competitive Factors*: competitive harm/benefits to consumers; the impact on incentives for either provider to invest; the extent of providers' build-out in the data roaming area (including the presence of alternative roaming partners, the feasibility of building another network, and whether the requesting provider is already providing facilities-based service).
 - *Technical Factors*: technological compatibility and feasibility; whether changes to the host network are necessary to accommodate the request.
17. In addition to the *Data Roaming Order*, the *Wireless Bureau's Declaratory Ruling* provides further guidance about whether a particular data roaming offer includes commercially reasonable terms and conditions. Specifically, the Commission concluded that the *Data Roaming Order* permitted consideration of evidence regarding rates charged by the parties in other contexts, *i.e.* whether the proffered roaming rates are "substantially in excess of retail rates, international rates, and MVNO/resale rates."⁷ The Commission also reiterated its earlier determination that it is appropriate to compare the offered roaming rates to the rates the parties have negotiated in other domestic roaming agreements.⁸

⁶ *Data Roaming Order*, ¶¶ 2, 85-86.

⁷ *Declaratory Ruling*, ¶ 9.

⁸ *Declaratory Ruling*, ¶¶ 9, 15-16.

B. Criteria for Assessing Commercial Reasonableness

18. I have analyzed, as an economist, the commercial reasonableness of the data roaming agreements proposed by both AT&T and Iowa Wireless during the negotiation process using the factors identified by the Commission. In this context, I have assessed, from an economic perspective, the applicability of each factor identified by the Commission as it relates to the facts of this case. In performing this analysis, I have:
- Reviewed the history of the parties' negotiations; and
 - Compared the rates and other terms in the proposed agreements to existing data roaming agreements between AT&T and other providers (and, based upon publicly available information, the rates in agreements between T-Mobile and other providers).
19. In making my economic assessment, I have paid particular attention to data roaming agreements previously executed by AT&T. One of the factors the Commission considers in determining the reasonableness of the terms and conditions of a data roaming offer is whether "the providers involved have had previous data roaming arrangements with similar terms."⁹ In particular, the Commission stated that in its review, it will "expressly contemplate... the terms of other data roaming agreements."¹⁰ Such a perspective is entirely consistent with sound economics.¹¹
20. As a result, one can analyze existing data roaming agreements between AT&T and other providers to assess whether the rates and other terms and conditions in those agreements are consistent with what AT&T (and Iowa Wireless) proposed during the negotiation process.

V. AT&T's Proposed Roaming Rates Are Commercially Reasonable

21. To assess whether the data roaming rates proposed by AT&T are commercially reasonable, I analyzed the data roaming agreements that have been executed between AT&T and other domestic providers. Because the market is continually evolving, newer agreements generally should take precedence over older ones because they take into account more recent innovations and competitive conditions in the marketplace. As such, one can analyze existing data roaming agreements between AT&T and other providers to assess whether the rates in those agreements are consistent with the rates that AT&T proposed to Iowa Wireless.
22. In my analysis of AT&T's domestic roaming rates, I focused on [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] data roaming agreements that resulted from arm's length negotiations between AT&T and other domestic wireless service providers, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] of which were negotiated or amended after the *Data Roaming Order*. In conducting

⁹ *Id.*, ¶ 86.

¹⁰ *Id.*, ¶ 81; *Declaratory Ruling*, ¶¶ 9, 15-16.

¹¹ See discussion in ¶ 15, above.

this analysis, I excluded strategic agreements because they involve factors other than roaming and, as such, are not representative of agreements that involve roaming alone.¹²

23. The data roaming rates AT&T has proposed to Iowa Wireless [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] are within the range of the data roaming rates effectively paid or charged by AT&T during the period from September 2014 to August 2015.¹³ Indeed, the weighted average effective roaming rate (either paid or charged by AT&T) during this period was [BEGIN CONFIDENTIAL] [REDACTED]. [END CONFIDENTIAL] The weighted average effective rate paid by AT&T for roaming on other providers' networks, approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] is within the range of rates proposed to Iowa Wireless. The weighted average rate charged by AT&T for other operators' roaming on AT&T's network was [BEGIN CONFIDENTIAL] [REDACTED]. [END CONFIDENTIAL]¹⁴
24. Finally, I have reviewed the T-Mobile data roaming rates reported to the Commission by Dr. Joseph Farrell.¹⁵ Dr. Farrell's analysis shows the average data roaming rate T-Mobile has paid for wholesale domestic data roaming during the 2008-2013 period, and T-Mobile's forecast of the average rate it expected to pay in 2014 (as of January 2014). According to Dr. Farrell, T-Mobile paid an average data roaming rate of \$0.30 per MB in 2013. For 2014, T-Mobile forecasted an average rate of \$0.18 per MB.¹⁶ Although I do not have access to T-Mobile's data, AT&T's proposed rates are consistent with T-Mobile's rates as reported by Dr. Farrell and one would expect that T-Mobile's roaming rates have continued to decline in 2015.

¹² For example, some of the other considerations include [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

¹³ See Table B-1. In some of AT&T's recent agreements with [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] The settlement adjustment is not captured in my calculations of average effective rates. However, given the relatively small share of traffic volume under these agreements, such an adjustment would not significantly alter the average effective rates discussed above.

¹⁴ The agreement governing rates of Provider #44 could be considered strategic. If one excludes those rates from the average effective rate paid by AT&T for roaming on other providers' networks it does not affect my conclusion. The rates proposed by AT&T are still within the range of rates proposed to Iowa Wireless. See Table B-2.

¹⁵ See Declaration of Joseph Farrell in Support of Petition for Declaratory Ruling of T-Mobile USA, Inc., WT Docket No. 05-265, at Table 6 (May 19, 2014) (hereinafter, *Farrell Decl.*) (Table 6 is provided as Ex. 1 to Meadors Decl.).

¹⁶ *Id.*

VI. Iowa Wireless's Proposed Roaming Rates Are Not Commercially Reasonable

25. As noted above, [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[END CONFIDENTIAL] These rates are not commercially reasonable. They are well above the roaming rates negotiated by AT&T in recent arm's length agreements with other wireless service providers¹⁷ and also well above the average effective roaming rates paid and charged by AT&T pursuant to these agreements during the 12-month period with available data – [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] The rates proposed by Iowa Wireless are also substantially above T-Mobile's effective roaming rates as reported by Dr. Farrell.
26. Further, Iowa Wireless' proposal does not fall within a "commercially reasonable" standard relative to the "other rates" identified in the Commission's *Declaratory Ruling*.¹⁹ Before reviewing these alternative benchmarks, I should note that as a matter of economics and valuation, the arm's length roaming agreements that AT&T has with other wireless carriers in the U.S. are far more appropriate benchmarks than these "other rates." Thus, while I present these alternative benchmarks below, I put far more weight on the benchmark obtained by examining arm's length agreements with other U.S. wireless carriers.
27. For example, Iowa Wireless' proposed data roaming rates are many times higher than the rates AT&T's retail customers generally pay for data.²⁰ There is a wide variation in pricing across AT&T's retail data plans. As shown in Table B-3, on average across all of AT&T's retail customers, the

¹⁷ *Meadors Decl.* at p. 7.

¹⁸ See Tables B-1 & B-2. Again, this conclusion holds whether or not data for Provider #44 is included.

¹⁹ While acknowledging the many limitations in using these other rates as a benchmark for roaming rates, however, the Commission has identified them as potentially relevant. See *Declaratory Ruling*, ¶¶ 9, 15-16.

²⁰ See Table B-3. My calculation of effective retail data rates takes into account the following factors: First, retail customers pay a monthly charge for a "bucket" of data, regardless of usage. As a result, the effective rate paid (in dollars per MB of usage) will be higher than the advertised rate if the customer does not use the full amount of data allowed by the plan. Second, retail customers cannot always predict their exact usage and, as a result, some customers pay overage charges when they exceed their monthly data allowance. Third, retail customers need to pay a monthly line access charge in order to get data service. Table B-3 incorporates these factors into two indicative calculations of the effective data rates for AT&T's retail data plans (in July 2015). For each retail data plan, Table B-3 shows the share of customers under each plan ("Group Mix"), the monthly recurring charge for the data plan ("Data MRC"), and the monthly data charge including the line access charge ("Data MRC + Lines"). It also shows for each plan the GB included, the average data utilization in the group, the overage rate (per GB), and the average overage cost for the customers in the plan.

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range between [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] For pooled plans which typically involve larger data usage, the calculation of an effective rate is more complicated; the data rate is generally lower (between [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] than in a tiered plan but the monthly fixed charge is higher (typically around [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL])

²⁷

These rates allocate the monthly access fees according to data, voice and text usage charges.

VERIFICATION PAGE

I hereby swear under penalty of perjury that the foregoing is true and correct.



Jonathan Orszag

Dated: October 12, 2015

Appendix A



CURRICULUM VITAE

Jonathan M. Orszag

OFFICES:

Compass Lexecon, LLC
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PROFESSIONAL EXPERIENCE:

- **Senior Managing Director**, Compass Lexecon (previously Competition Policy Associates, Inc. (“COMPASS”) and before that, Sebago Associates, Inc.), March 2000-Present. Manage economic consulting firm specializing in antitrust, economic policy, and litigation matters. Member of the firm’s Executive Committee. Conduct economic and financial analysis on a wide range of complex issues in policy and regulatory for corporations and public-sector entities. Serve as expert witness in proceedings before U.S. and international courts and administrative agencies and the European Court of First Instance on competition policy issues, including industry structure, vertical relationships, and intellectual property rights.
- **Assistant to the Secretary and Director of the Office of Policy and Strategic Planning**, U.S. Department of Commerce (Washington, D.C.), March 1999-March 2000. Served as the Secretary of Commerce's chief policy adviser. Responsible for coordinating the development and implementation of policy initiatives within the Department. Worked on a wide range of issues, from implementing the steel loan guarantee program to telecommunications and e-commerce issues. Represented the Secretary of Commerce in meetings with other government officials and outside organizations, and testified before Congress on behalf of the Department on budget and Native American economic development issues.
- **Economic Policy Advisor**, National Economic Council, The White House (Washington, D.C.), August 1997-March 1999; Assistant Director, January 1996-November 1996. Coordinated policy processes on a wide range of issues, from Social Security reform to job training reform, unemployment insurance reform, homeownership and low-income housing issues, the minimum wage, and Individual Development Accounts. Responsible for helping to coordinate the Administration’s daily economic message and to promote (and defend) President Clinton's economic record.

- **Economics Teacher**, Phillips Exeter Academy Summer School (Exeter, New Hampshire), June 1997-August 1997. Taught introductory economics at Phillips Exeter Academy Summer School.
- **Economic Consultant**, James Carville (Washington, D.C.), August 1995-January 1996. Helped James Carville, President Clinton's 1992 campaign strategist, research and write his *New York Times* #1 best-selling book, *We're Right, They're Wrong: A Handbook for Spirited Progressives*.
- **Special Assistant to the Chief Economist**, U.S. Department of Labor, (Washington, D.C.), August 1994-August 1995. Served as an economic aide to the Chief Economist (Alan B. Krueger) and the Secretary of Labor (Robert B. Reich).

Volunteer Positions

- **Director of Policy Preparations for Vice Presidential Debate**, Gore-Lieberman Presidential Campaign, September 2000-October 2000. Oversaw policy preparations for Democratic Vice Presidential candidate before his debate with the Republican Vice Presidential candidate.
- **Weekly Commentator**, *Wall Street Journal Online*, September 2004-November 2004. Commented on economic issues during the 2004 presidential campaign. Topics of weekly commentary included jobs, health care, energy, trade, taxes, tort reform, appointments, and fiscal policy.

EDUCATION:

- Oxford University, M.Sc. in Economic and Social History, 1997
- Princeton University, A.B. *summa cum laude* in Economics, 1996
- Phillips Exeter Academy, graduate with High Honors, 1991

HONORS, PROFESSIONAL ASSOCIATIONS, AND APPOINTMENTS:

- Phi Beta Kappa, inducted June 1996
- Marshall Scholar, 1996
- *USA Today* All-USA College Academic Team, 1996
- Corporation for Enterprise Development Leadership Award for “Forging Innovative Public Policies to Expand Economic Opportunity in America,” 1999
- *Who's Who in America*, 2001-Present; Also, *Who's Who in the World*; *Who's Who in Science and Engineering*; *Who's Who in Finance and Business*; and *Who's Who of Emerging Leaders*
- California Workforce Investment Board, 2000-2003
- California Governor's Technology Advisory Group, 2000-2003
- Adjunct Lecturer, University of Southern California (Los Angeles, CA), January 2002-June 2002.

- *Global Competition Review's* "40 under 40: The World's 40 Brightest Young Antitrust Lawyers and Economists," 2004
- *Global Competition Review's* "Best Young Competition Economists," 2006
- *The International Who's Who of Competition Economists*, 2007-Present
- LawDay Leading Competition Economics Experts, 2009-Present.
- Expert Guides, Best of the Best USA, 2011-Present.
- Fellow, University of Southern California's Center for Communication Law & Policy, 2007-Present.
- FTI Consulting Inc., Founders Award, 2008.
- Senior Fellow, Center for American Progress, 2009-Present
- Board of Directors, Sebago Associates, Inc., 2000-2007; Competition Policy Associates, Inc., 2003-2006; The First Tee of Washington, DC, 2005-2011; Ibrix, Inc. (Sold to Hewlett-Packard), 2006-2007; JMP Securities, Inc. (NYSE: JMP), 2011-Present; Tiger Woods Foundation, Board of Governors, 2012-Present; Children's Golf Foundation, 2013-Present; Friends of the Global Fight Against AIDS, Tuberculosis, and Malaria, 2013-Present.
- Clinton Global Initiative, Member, 2008-Present; Grassroot Soccer, Ambassadors Council, 2010-Present; The First Tee, Trustee, 2013-Present.
- Member of the American Economic Association, the Econometric Society, the American Finance Association, and the United States Golf Association.

REPORTS, PAPERS, AND NOTES:

- "Tax Reform in The Bahamas: An Evaluation of Proposed Options," with David Kamin, Commissioned by the Commonwealth of The Bahamas, May 27, 2014.
- "The Impact of Federal Revenues from Limiting Participation in the FCC 600 MHz Spectrum Auction," with Philip Haile and Maya Meidan, Commissioned by AT&T, October 30, 2013.
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- "The Economic Benefits of Pharmacy Benefit Managers," with Kevin Green, Commissioned by Express Scripts and Medco, December 5, 2011.
- "An Analysis of the Benefits of Allowing Satellite Broadband Providers to Participate Directly in the Proposed CAF Reverse Auctions," with Bryan Keating, Commissioned by ViaSat, Inc., April 18, 2011.

- “A Preliminary Economic Analysis of the Budgetary Effects of the Proposed Restrictions on ‘Reverse Payment’ Settlements,” with Bret Dickey and Robert D. Willig, August 10, 2010.
- “An Economic Assessment of Patent Settlements in the Pharmaceutical Industry,” with Bret Dickey and Laura Tyson, Volume 10, Issue 2, *Annals of Health Law*, Winter 2010.
- “An Economic Analysis of Consumer Harm from the Current Retransmission Consent Regime,” with Michael Katz and Theresa Sullivan, Commissioned by the National Cable & Telecommunications Association, DIRECTV, and DISH Network, November 12, 2009.
- “Intellectual Property and Innovation: New Evidence on the Relationship Between Patent Protection, Technology Transfer, and Innovation in Developing Countries,” with Mark Dutz and Antara Dutta, October 2009.
- “Intellectual Property and Innovation: A Literature Review of the Value of Patent Protection for Developing Countries,” with Mark Dutz and Antara Dutta, October 2009.
- “An Economic Perspective on the Antitrust Case Against Intel,” with Robert D. Willig and Gilad Levin, October 2009.
- “The Substantial Consumer Benefits of Broadband Connectivity for U.S. Households,” with Mark Dutz and Robert D. Willig, July 2009.
- “An Economic Assessment of the Homeowners’ Defense Act of 2009,” with Doug Fontaine, July 2009.
- “A Preliminary Economic Analysis of FTC Chairman Leibowitz’s June 23rd Speech,” with Robert D. Willig, June 24, 2009.
- “Assessment of Microsoft’s Behaviour in the Browser Market,” with Assaf Eilat, Gilad Levin, Andrea Lofaro, and Jan Peter van der Veer, Submitted to the Commission of the European Communities, COMP/C-3/39.530, May 27, 2009.
- “An Economic Perspective on the Microsoft Internet Explorer Tying Case,” with Assaf Eilat, Gilad Levin, Andrea Lofaro, and Jan Peter van der Veer, Submitted to the Commission of the European Communities, COMP/C-3/39.530, April 24, 2009.
- “The Empirical Effects of Collegiate Athletics: An Update Based on 2004-2007 Data,” with Mark Israel, February 2009.
- “An Econometric Analysis of the Matching Between Football Student Athletes and Colleges,” with Yair Eilat, Bryan Keating, and Robert D. Willig, January 2009.
- “An Economic Assessment of Regulating Credit Card Fees and Interest Rates,” with Susan H. Manning, October 2007.
- “An Assessment of the Competitive Effects of the SKY-Prime Merger: Lessons from the Recent News Corp.-DIRECTV Merger,” with Cristian Santesteban, Submitted to New Zealand Commerce Commission, January 23, 2006.
- “Closing the College Savings Gap,” with Peter R. Orszag and Jason Bordoff, November 2005.
- “Putting in Place An Effective Media Player and Media Server Remedy,” with Joseph E. Stiglitz, Submitted to the Korean Fair Trade Commission, October 10, 2005.
- “An Economic Analysis of Microsoft’s Tying of the Windows Media Player to the Windows Operating System and Its Impact on Consumers, Competition, and Innovation,” with Joseph E. Stiglitz, Submitted to the Korean Fair Trade Commission, September 12, 2005.

- “Economic Analyses of Microsoft’s Abusive Tie and Its Impact on Consumers, Competition, and Innovation,” with Joseph E. Stiglitz and Sangin Park, Submitted to the Korean Fair Trade Commission, September 12, 2005.
- “The Empirical Effects of Division II Intercollegiate Athletics,” with Peter R. Orszag, June 2005.
- “An Economic Analysis of Microsoft’s Abusive Tie and Its Impact on Consumers, Competition, and Innovation,” with Joseph E. Stiglitz and Jason Furman, Submitted to the European Court of First Instance, Case T-201/04 R, May 12, 2005.
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- “The Empirical Effects of Collegiate Athletic Spending: An Update,” with Peter R. Orszag, April 2005.
- “Putting in Place An Effective Media Player Remedy,” with Joseph E. Stiglitz, Submitted to the Commission of the European Communities, April 27, 2005.
- “The Empirical Effects of Collegiate Athletic Spending: An Interim Report,” with Robert E. Litan and Peter R. Orszag, the National Collegiate Athletic Association and Sebago Associates, Inc., August 2003 (reprinted in *The Business of Sports*, edited by Scott Rosner and Kenneth Shropshire (Jones and Bartlett Publishes, 2004)).
- “Learning and Earning: Working in College,” with Peter R. Orszag and Diane M. Whitmore, *Journal of Student Employment*, Volume IX, Number 1, June 2003.
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- “The Process of Economic Policy-Making During the Clinton Administration,” with Peter R. Orszag and Laura D. Tyson, in *American Economic Policy in the 1990s*, edited by Jeffrey Frankel and Peter R. Orszag (Cambridge, Massachusetts: MIT Press, 2002).
- “The Implications of the New Fannie Mae and Freddie Mac Risk-Based Capital Standard,” with Joseph E. Stiglitz and Peter R. Orszag, *Fannie Mae Papers*, Volume I, Issue 2, March 2002 (reprinted in *Housing Matters: Issues in American Housing Policy*).
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- “Learning and Earning: Working in College,” with Peter R. Orszag and Diane M. Whitmore, UPromise, Inc. and Sebago Associates, Inc., August 2001.

- “The Impact of Potential Movie and Television Industry Strikes on the Los Angeles Economy,” with Ross C. DeVol, Joel Kotkin, Peter R. Orszag, Robert F. Wescott, and Perry Wong, The Milken Institute and Sebago Associates, Inc., April 19, 2001.
- “Would Raising IRA Contribution Limits Bolster Retirement Security for Lower- and Middle-Income Families?” with Peter R. Orszag, Center on Budget and Policy Priorities, April 2, 2001.
- “Computers in Schools: Domestic and International Perspectives,” California Technology, Trade, and Commerce Agency and Sebago Associates, Inc., March 2001.
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Appendix B

TAB 4

PUBLIC VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

AT&T MOBILITY LLC
1055 Lenox Park Blvd. NE
Atlanta, GA 30319
404-236-7895

Complainant,

v.

IOWA WIRELESS SERVICES, LLC
4135 NW Urbandale Drive
Urbandale, IA 50322

Defendant.

File No. EB-15-MD-_____

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**AT&T MOBILITY LLC
1055 Lenox Park Blvd. NE
Atlanta, GA 30319
404-236-7895**

Complainant,

v.

**IOWA WIRELESS SERVICES, LLC
4135 NW Urbandale Drive
Urbandale, IA 50322**

Defendant.

File No. EB-15-MD-_____

AT&T Mobility LLC (“AT&T”) submits these Proposed Findings of Fact and Conclusions of Law pursuant to Section 1.724(c) of the Federal Communications Commission (the “Commission”) Rules, 47 C.F.R. § 1.724(c), as part of AT&T’s Formal Complaint against Iowa Wireless Services, LLC (“iWireless”) (together with AT&T, the “Parties”), in this proceeding.

PROPOSED FINDINGS OF FACT

I. The Parties

FOF 1. AT&T Mobility LLC is a limited liability company organized under the laws of Delaware.

FOF 2. Defendant Iowa Wireless Services, LLC is limited liability company organized under the laws of Delaware.

FOF 3. iWireless is a facility-based provider of broadband services throughout Iowa and in certain adjoining portions of South Dakota, Nebraska, Wisconsin (as well as minimal cross-border services in parts of Missouri and Minnesota).

FOF 4. iWireless is majority owned (54%) by VoiceStream PCS I Iowa Corp., which is, in turn, wholly owned and controlled by T-Mobile US, Inc. (“T-Mobile”).¹

FOF 5. The remaining 46% of iWireless’ equity, and a managing member interest, is indirectly held by Iowa Network Services, Inc.,² a consortium of independent telecommunications companies.³

FOF 6. iWireless describes itself as a “T-Mobile Affiliate and Iowa Wireless Services company.”⁴

II. The Evolving Market for Roaming Services

FOF 7. No wireless provider, no matter how large its network, has the capability to serve its customers in all locations over its own facilities.⁵

FOF 8. To provide coverage in areas where they do not have facilities, wireless providers enter into roaming agreements to allow their customers to utilize other wireless providers’ networks.⁶

¹ See Public Notice, *Non Streamlined International Applications/Petitions Accepted For Filing*, Rep. No. TEL-01640NS, at 2 (Nov. 4, 2013) (discussing iWireless Petition for Declaratory Ruling ISP-PDDR-20131030-00007).

² *Id.*

³ See iWireless Appoints New Chief Executive Officer, <http://www.iwireless.com/support/about/press-releases/iwireless-appoints-new-chief-executive-officer.aspx> (last visited Oct. 6, 2015).

⁴ *Id.*

⁵ Declaration of Gram Meadors (“Meadors Decl.”) ¶ 4 (Oct. 13, 2015).

⁶ *Id.*

FOF 9. AT&T has negotiated roaming agreements with almost all of the domestic wireless providers that market handsets compatible with AT&T's networks.⁷

FOF 10. AT&T currently has approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] commercially-negotiated roaming agreements with other domestic wireless providers, including major providers such as [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] as well as various smaller carriers.⁸

FOF 11. The vast majority of AT&T's roaming agreements are [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

FOF 12. Over the past few years, market rates for data roaming services have declined significantly.¹⁰

FOF 13. The following chart, submitted by T-Mobile in a recent FCC proceeding, shows the decline in rates that T-Mobile has paid for data roaming services.¹¹

⁷ *Id.* ¶¶ 5, 30.

⁸ *Id.*

⁹ *Id.* ¶ 27.

¹⁰ *Id.* ¶ 6.

¹¹ *See* Declaration of Joseph Farrell in Support of Petition for Declaratory Ruling of T-Mobile USA, Inc., WT Docket No. 05-265, at Table 6 (May 19, 2014) ("Farrell Decl."). The average per MB price for 2014 is estimated. *See id.*

T-MOBILE DATA ROAMING RATES

<u>Year</u>	<u>Volume (MB mil)</u>	<u>Average Price (\$ per MB)</u>
2008	30.36	3.060
2009	54.09	2.910
2010	105.97	1.660
2011	171.63	1.197
2012	144.01	0.859
2013	266.53	0.300
2014	646.54	0.181

FOF 14. The average rates that AT&T has paid for data roaming services over the same time period from 2008 to 2015 have also declined significantly.¹²

FOF 15. AT&T is currently a party to approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] arm's-length data roaming agreements.¹³

FOF 16. Under those agreements, AT&T paid an average data roaming rate of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] during the 12 months ending August 2015.¹⁴

FOF 17. The overall average effective rate (*i.e.*, for rates paid and rates charged by AT&T) during this time period was [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]

¹² See Meadors Decl. ¶ 6.

¹³ Declaration of Jonathan Orszag (“Orszag Decl.”) ¶ 22 (Oct. 13, 2015); Meadors Decl. ¶ 30.

¹⁴ Orszag Decl. ¶¶ 22-23 & n.14; Meadors Decl. ¶ 30.

III. The Unsuccessful Renegotiation of the AT&T/iWireless Agreement

A. The AT&T/Wireless Agreement

FOF 22. On January 1, 2006, Cingular Wireless LLC and iWireless entered into the Intercarrier Multi-Standard Roaming Agreement (as amended, the “Agreement”), which, *inter alia*, established bilateral rates for voice and data roaming service.²⁰

FOF 23. This Agreement has been amended twice.²¹

FOF 24. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 25. That amendment also put in place voice roaming rates of [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

²⁰ *Id.* ¶ 8.

²¹ *Id.*

²² *Id.*; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

²³ Meadors Decl. ¶ 8; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

²⁴ *See* Meadors Decl. ¶ 8 n.6.

²⁵ Meadors Decl. ¶ 8; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 30. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

FOF 31. Over the months that followed, AT&T regularly [BEGAN
CONFIDENTIAL] [REDACTED] [END
CONFIDENTIAL]

FOF 32. iWireless did not [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

FOF 33. iWireless did not [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

C. 2014-2015 Negotiations

FOF 34. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

³⁰ *Id.*; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

³¹ Meadors Decl. ¶ 9. *See also* [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

³² Meadors Decl. ¶ 9; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

³³ Meadors Decl. ¶ 9.

³⁴ *Id.* ¶ 11.

FOF 35. On that call, iWireless [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 36. AT&T indicated that it was [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 37. Following the conclusion of the Auction 97 process, AT&T [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

FOF 38. AT&T again stressed that [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

FOF 39. iWireless [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* ¶ 12.

³⁸ *Id.*

³⁹ *See id.*

CONFIDENTIAL INFORMATION REDACTED

FOF 40. iWireless also explained that [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 41. iWireless requested, however, that [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 42. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

FOF 43. AT&T explained that the [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END

CONFIDENTIAL]

FOF 44. Accordingly, AT&T [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

⁴⁰ *Id.* ¶ 12.

⁴¹ *Id.*

⁴² *Id.* ¶ 13; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁴³ Meadors Decl. ¶ 13; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 45. Specifically, AT&T [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

FOF 46. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 47. Later that day, iWireless responded that it had [BEGIN CONFIDENTIAL] [REDACTED]

⁴⁴ Meadors Decl. ¶ 13; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁴⁵ Meadors Decl. ¶ 13; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁴⁶ Meadors Decl. ¶ 14; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 48. iWireless [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 49. AT&T [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END
CONFIDENTIAL]

FOF 50. In response to that email, iWireless did not [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 51. AT&T [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

⁴⁷ Meadors Decl. ¶ 14; [BEGIN CONFIDENTIAL] [REDACTED] [END
CONFIDENTIAL]

⁴⁸ Meadors Decl. ¶ 14; [BEGIN CONFIDENTIAL] [REDACTED] [END
CONFIDENTIAL]

⁴⁹ Meadors Decl. ¶ 14; [BEGIN CONFIDENTIAL] [REDACTED] [END
CONFIDENTIAL]

⁵⁰ Meadors Decl. ¶ 14; [BEGIN CONFIDENTIAL] [REDACTED] [END
CONFIDENTIAL]

⁵¹ Meadors Decl. ¶ 14; [BEGIN CONFIDENTIAL] [REDACTED] [END
CONFIDENTIAL]

FOF 52. Later, on a [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END
CONFIDENTIAL]

FOF 53. Following the [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

FOF 54. In response to [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

FOF 55. AT&T further stated that it was [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

⁵² Meadors Decl. ¶ 14; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

⁵³ Meadors Decl. ¶ 15; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

⁵⁴ Meadors Decl. ¶ 15; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

⁵⁵ Meadors Decl. ¶ 15; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

CONFIDENTIAL INFORMATION REDACTED

FOF 56. AT&T concluded by stating that [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END

CONFIDENTIAL]

FOF 57. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

FOF 58. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

FOF 59. iWireless also [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

FOF 60. At that point, AT&T attempted to [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

FOF 61. iWireless also [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]

⁵⁶ Meadors Decl. ¶ 15; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

⁵⁷ Meadors Decl. ¶ 16.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 62. [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 63. AT&T also stated that [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 64. AT&T requested [BEGIN CONFIDENTIAL]

[REDACTED]

⁶¹ Meadors Decl. ¶ 16; [BEGIN CONFIDENTIAL]

[REDACTED] [END CONFIDENTIAL]

⁶² Meadors Decl. ¶ 17; [BEGIN CONFIDENTIAL]

[REDACTED] [END CONFIDENTIAL]

⁶³ Meadors Decl. ¶ 17; [BEGIN CONFIDENTIAL]

[REDACTED] [END CONFIDENTIAL]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

D. AT&T's Request for Staff Supervised Mediation

FOF 65. iWireless did not [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 66. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 67. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 68. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END

CONFIDENTIAL]

⁶⁴ Meadors Decl. ¶ 17; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁶⁵ Meadors Decl. ¶ 18; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁶⁶ Meadors Decl. ¶ 19; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁶⁷ Meadors Decl. ¶ 20; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁶⁸ Meadors Decl. ¶ 20; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

FOF 69. Specifically, iWireless [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

FOF 70. In addition, iWireless [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END

CONFIDENTIAL]

FOF 71. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

⁶⁹ Meadors Decl. ¶ 20; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁷⁰ Meadors Decl. ¶ 20; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁷¹ Meadors Decl. ¶ 20; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁷² Meadors Decl. ¶ 20.

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

E. Subsequent Developments

FOF 83. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 84. iWireless stated that it would [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

⁸² See, e.g., *id.* ¶ 25 n.35.

⁸³ Meadors Decl. ¶ 23; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

⁸⁴ Meadors Decl. ¶ 23; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

CONFIDENTIAL INFORMATION REDACTED

FOF 85. Alternatively, iWireless' [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 86. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 87. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 88. In response, iWireless [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

⁸⁵ [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL]

⁸⁶ [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL]

⁸⁷ Meadors Decl. ¶ 24; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL]

⁸⁸ Meadors Decl. ¶ 24; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL]

CONFIDENTIAL INFORMATION REDACTED

FOF 89. At the same time, iWireless [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END

CONFIDENTIAL]

FOF 90. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

FOF 91. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

FOF 92. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END
CONFIDENTIAL]

FOF 93. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]

⁸⁹ Meadors Decl. ¶ 24; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

⁹⁰ Meadors Decl. ¶ 24; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

⁹¹ Meadors Decl. ¶ 24; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

⁹² Meadors Decl. ¶ 24; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

CONFIDENTIAL] offer (which tops out at **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]**) exceed the currently prevailing market rates.⁹⁶

FOF 97. T-Mobile has submitted expert testimony indicating that its average data roaming rate in 2013 was 30¢/MB, and projecting that rate would drop to 18¢/MB in 2014.⁹⁷

FOF 98. Prevailing market rates further have decreased since 2014.⁹⁸

FOF 99. AT&T currently is party to **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** arm's-length data roaming agreements.⁹⁹

FOF 100. Under those agreements, AT&T paid an average data roaming rate of **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** over the 12 months ending August 2015.¹⁰⁰

FOF 101. In the last twelve months, has entered into arm's-length roaming agreements with **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** wireless service providers; these agreements have generally included rates for 2G/3G service in the range of **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** and LTE rates in the range of **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]**

⁹⁶ Meadors Decl. ¶ 30.

⁹⁷ Farrell Decl. ¶ 86, Table 6. *See also* Meadors Decl. ¶ 6; Orszag Decl. ¶ 24.

⁹⁸ *See* Meadors Decl. ¶¶ 7, 30.

⁹⁹ *Id.* *See also* Orszag Decl. ¶ 22.

¹⁰⁰ Orszag Decl. ¶ 23 n.14; Meadors Decl. ¶ 30.

¹⁰¹ Meadors Decl. ¶¶ 7, 30.

FOF 102. AT&T recently agreed to provide a [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 103. AT&T's retail customers generally pay data rates that are [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 104. Based on retail rates charged by AT&T, Verizon, Sprint, and T-Mobile as of February 2014, retail customers using 1 GB of data or more per month paid no more than 12¢/MB, and for the average usage of T-Mobile's customers (approximately 1.7 GB per month), the retail rates were between 3¢-8¢/MB of data usage.¹⁰⁴

FOF 105. These retail data rates are within the same range as the data rates that iWireless advertises to its retail customers, which range from less than 1¢/MB to approximately 4¢/MB, before other adjustments.¹⁰⁵

FOF 106. The data roaming rates paid by most [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 107. That same observation holds true for [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

¹⁰² *Id.* ¶ 30.

¹⁰³ *See* Orszag Decl. ¶ 28.

¹⁰⁴ *See* Farrell Decl. ¶¶ 67-69, Table 2.

¹⁰⁵ *See* iWireless – No Contract Plans, <https://www.iwireless.com/store/PlansNoContract.aspx> (last visited Oct. 10, 2015).

¹⁰⁶ Orszag Decl. ¶ 29.

V. Other Findings of Fact

A. Prevailing market rates for rural data roaming

FOF 108. The rates that AT&T pays to other carriers for data roaming—which are significantly less than iWireless’ rates—are primarily for roaming in rural areas.¹⁰⁸

FOF 109. A review of the contracts under which AT&T currently roams shows that, in a given month, AT&T roamed in approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] counties nationwide of which [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] are rural.¹⁰⁹

FOF 110. Further, of the approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] agreements under which AT&T roamed, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] agreements involve roaming *only* in rural counties and in no instance, did the urban counties in which AT&T roamed under an agreement [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

FOF 111. Despite being overwhelmingly rural, the average effective rate that AT&T pays under its arm’s-length roaming agreements is [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

¹⁰⁷ *Id.*

¹⁰⁸ *See* Meadors Decl. ¶ 31.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

B. AT&T's agreements with other carriers at higher roaming rates

FOF 112. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

FOF 113. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

FOF 114. In the last year, AT&T had active contracts with [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] providers (in addition to iWireless) with data roaming rates in excess of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

FOF 115. AT&T has either [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹¹² *Id.* ¶ 32.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

FOF 116. iWireless' [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 117. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 118. In connection with that [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 119. As is customary in the wireless industry, iWireless was [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 120. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

FOF 121. As a result, the roaming rate in the [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

¹¹⁶ *Id.* ¶ 33.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *See id.*

C. AT&T's deployment of spectrum in Iowa

FOF 122. AT&T has deployed significant amounts of spectrum in rural communities both nationwide and in Iowa.¹²²

FOF 123. In Iowa alone AT&T has [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

VI. iWireless' Proposed Voice Roaming Rates Are [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

FOF 124. The voice roaming rates in iWireless' proposal are [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

FOF 125. iWireless' proposed rates are also high as compared to [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

FOF 126. In [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] agreements under which AT&T is currently paying for voice roaming service (excluding strategic agreements and the agreement with iWireless) the voice roaming rates are lower than the [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] contract rate proposed by iWireless.¹²⁶

FOF 127. Since the beginning of 2015, AT&T has negotiated voice rates in [BEGIN CONFIDENTIAL] [REDACTED]

¹²² *Id.* ¶ 34.

¹²³ *Id.*

¹²⁴ *Id.* ¶ 39.

¹²⁵ *See id.*

¹²⁶ *Id.*

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

¹²⁷ *Id.*

¹²⁸ *Id.*

PROPOSED CONCLUSIONS OF LAW

I. iWireless' Proposed Data Roaming Rates and Other Terms Violate 47 C.F.R. § 20.12(e) and Title III of The Communication Act

COL 1. iWireless' proposed data roaming rates and other terms are commercially unreasonable and, therefore, violate 47 C.F.R. § 20.12(e) and Title III of the Communication Act.

A. Legal Standard

COL 2. In 2011, the Commission issued its *Data Roaming Order*, which requires facilities-based providers of commercial mobile data services to offer data roaming arrangements to other such providers on commercially reasonable terms and conditions, subject to certain limitations, which relate to technical compatibility.¹²⁹

COL 3. The goal of the *Data Roaming Order* was to allow consumers with mobile data plans to remain connected when they travel outside their own provider's network coverage areas by using another provider's network, and thus promote connectivity for and nationwide access to mobile data services.¹³⁰

COL 4. To address disputes related to the data roaming requirement, the *Data Roaming Order* established a complaint process, and allowed for disputes to be resolved through the Commission's complaint process, depending on the circumstances specific to each dispute.¹³¹

COL 5. In the *Data Roaming Order*, the Commission adopted a "commercial reasonableness" standard for adjudicating data roaming disputes between carriers.¹³²

¹²⁹ See *Data Roaming Order* ¶¶ 1, 43.

¹³⁰ *Id.* ¶ 1.

¹³¹ *Id.* ¶ 8.

¹³² See *Data Roaming Order* ¶ 1.

COL 6. That standard, while flexible,¹³³ was based on two substantive lodestars.

COL 7. First, the Commission explained that commercial reasonableness would be determined to a significant degree, not surprisingly, by the rates and terms that prevail in existing, negotiated roaming agreements that scores of sophisticated parties rely on today to compete in the marketplace.¹³⁴

COL 8. Second, the Commission held that its data roaming rules must be applied to promote broadband investment and facilities-based competition and, therefore, that it expected roaming rates to be “high” relative to retail rates to maintain appropriate incentives for network build-out.¹³⁵

COL 9. In so ruling, the Commission’s *Data Roaming Order* sought to balance the core policy goals of expanding the availability of data roaming, encouraging broadband investment, and promoting facilities-based competition,¹³⁶ while retaining the flexibility to accommodate a significant range of outcomes.¹³⁷

COL 10. The Commission declined to impose a “prescriptive regulation of rates,”

¹³³ *Data Roaming Order* ¶¶ 44-45 (“[T]he roaming rule is sufficiently flexible to apply to a wide range of ever changing technologies and commercial contexts. . . . Giving providers flexibility to negotiate the terms of their roaming agreements on an individualized basis ensures that the data roaming rules best serves our public interest goals[.]”).

¹³⁴ *See id.* ¶ 81 (“[W]e will presume . . . that the terms of a signed agreement meet the reasonableness standard.”).

¹³⁵ *See id.* ¶¶ 21, 22, 51 (“[T]he relatively high price of roaming compared to providing facilities-based service will often be sufficient to counterbalance the incentive to ‘piggy back’ on another carrier’s network.”).

¹³⁶ *See id.* ¶ 13 (“[A]dopting a roaming rule tailored for mobile data services will best promote consumer access to seamless mobile data coverage nationwide, appropriately balance the incentives for new entrants and incumbent providers to invest in and deploy advanced networks across the country, and foster competition[.]”).

¹³⁷ *See id.* ¶¶ 44-45 (“[T]he roaming rule is sufficiently flexible to apply to a wide range of ever changing technologies and commercial contexts.”).

but emphasized that host providers must offer data roaming “on commercially reasonable terms and conditions, subject to certain limitations[.]”¹³⁸

COL 11. The *Data Roaming Order* further explained that, in resolving data roaming disputes, the Commission may consider 17 factors to evaluate the reasonableness of the negotiations, the providers’ conduct, and the terms and conditions of the proffered data roaming arrangements.¹³⁹

COL 12. These factors include, among other things, whether the host provider “has engaged in a persistent pattern of stonewalling behavior, and the length of time since the initial request,” and “whether the terms and conditions offered by the host provider are so unreasonable as to be tantamount to a refusal to offer a data roaming arrangement.”¹⁴⁰

COL 13. The Commission emphasized, however, that these factors are not exclusive or exhaustive, that the Commission may consider other factors in determining commercial reasonableness, and that each case will be decided based on the “totality of the circumstances.”¹⁴¹

COL 14. Conduct that unreasonably restrains trade is not commercially reasonable.¹⁴²

COL 15. The Commission’s final data roaming rule is set out in 47 C.F.R. § 20.12(e), which states that “a facilities-based provider of commercial mobile data services is

¹³⁸ *Id.* ¶¶ 21, 40. These limitations are primarily related to technological compatibility of the providers’ networks. *See id.* ¶ 43.

¹³⁹ *Id.* ¶ 86.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* ¶¶ 86-87.

¹⁴² *Id.* ¶¶ 45-85.

required to offer roaming arrangements to other such providers on commercially reasonable terms and conditions,” subject to certain limitations related to technical feasibility.

COL 16. The Commission’s data roaming rules do not, however, require providers to purchase roaming services.¹⁴³

COL 17. Section 47 C.F.R. § 20.12(e), was adopted by the Commission under Title III of the Communications Act, which provides the Commission with authority to manage spectrum and modify license and spectrum usage conditions in the public interest.¹⁴⁴ Thus, a provider offering data roaming services in violation of 47 C.F.R. § 20.12(e) is also violating Title III of the Communications Act.

COL 18. On May 27, 2014, T-Mobile filed a petition for a declaratory ruling seeking “additional guidance” relating to the Commission’s data roaming rules.¹⁴⁵ Responding to T-Mobile’s petition, the Wireless Bureau last December issued its *Declaratory Ruling* purportedly “clarify[ing]” the Commission’s rules, providing “additional guidance,” and “lessen[ing] ambiguity.”¹⁴⁶

COL 19. The Wireless Bureau explained, *inter alia*, that while marketplace rates remained relevant, requesting providers could also “adduce evidence” as to whether proffered roaming rates are “substantially in excess” of “retail rates, international rates, MVNO/resale rates, as well as a comparison of proffered roaming rates to domestic roaming rates as charged

¹⁴³ *See id.*

¹⁴⁴ *Data Roaming Order* ¶ 2.

¹⁴⁵ *See Declaratory Ruling* ¶ 1 (citing Petition for Expedited Declaratory Ruling of T-Mobile USA, Inc., Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265 (May 27, 2014)).

¹⁴⁶ *See id.* ¶ 10.

by other providers.”¹⁴⁷

COL 20. In so ruling, however, the Wireless Bureau also noted that “these other rates will [not] be probative factors in every case” or even “relevant to the same degree,”¹⁴⁸ and rejected renewed calls for the “imposition of a cap or ceiling on data roaming rates.”¹⁴⁹

COL 21. Rather, the Wireless Bureau explained that the Commission will consider “these other rates” along with a “host of other factors” in determining commercial reasonableness under the “totality of the circumstances” of each case.¹⁵⁰

B. iWireless’ proposed data roaming rates are not commercially reasonable

COL 22. iWireless’ proposed data roaming rates and other terms are not commercially reasonable.

COL 23. Commercial reasonableness is best measured against the prevailing rates in the commercial marketplace.¹⁵¹

COL 24. [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

COL 25. Further, the data roaming rates in iWireless’ proposal are substantially higher than the “other rates” identified in the *Declaratory Ruling*.¹⁵³

¹⁴⁷ *Id.* ¶ 9.

¹⁴⁸ *Id.* ¶ 17.

¹⁴⁹ *Id.* ¶ 30.

¹⁵⁰ *Id.* ¶ 20 (relevant factors include the 17 factors identified in the *Data Roaming Order* “as well as others”).

¹⁵¹ *See* Meadors Decl. ¶ 30. *See also* Orszag Decl. ¶¶ 19-20.

¹⁵² *See* FOF 96 - FOF 102.

¹⁵³ *See* FOF 103 -FOF 107.

C. The other terms in iWireless' proposals are not commercially reasonable

COL 26. In addition to setting unreasonable per MB rates, iWireless' proposals contain other terms that are not commercially reasonable.

COL 27. Each of iWireless' proposals have been [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

COL 28. These preconditions to any agreement are not commercially reasonable for the following reasons.

COL 29. First, nothing in the Commission's data roaming rules permits iWireless to condition its rate proposal on AT&T's [BEGIN CONFIDENTIAL]

[REDACTED] [END CONFIDENTIAL]

COL 30. Under the Commission's rules, facilities-based providers of commercial mobile data services are "required to offer" roaming arrangements to other such providers on "commercially reasonable terms and conditions"; the rules do not require carriers to *purchase* these services or purchase a minimum volume of such services.¹⁵⁷ By imposing [BEGIN CONFIDENTIAL]

¹⁵⁴ See FOF 71, FOF 90 -FOF 92.

¹⁵⁵ See FOF 94.

¹⁵⁶ See 47 C.F.R. § 20.12(e)(1).

¹⁵⁷ See *id.* See also *Data Roaming Order* ¶ 1 ("In this Order . . . we adopt[] a rule that requires facilities-based providers of commercial mobile data services to offer data roaming arrangements to other such providers on commercially reasonable terms and conditions, subject to certain limitations.").

[REDACTED]

[END CONFIDENTIAL]

COL 36. *Second*, because iWireless is obligated to make roaming service available to AT&T,¹⁶² iWireless' demand that AT&T agree to [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

COL 37. In its most recent offer, iWireless conditioned each of its proposals on AT&T's [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] Nothing in the Commission's roaming rules permits such linkage.

COL 38. iWireless' demand in this regard is particularly egregious in that it has demanded that AT&T [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

D. AT&T's proposed data roaming rates are commercially reasonable

COL 39. AT&T's proposal, by contrast, is commercially reasonable and complies with 47 C.F.R. § 20.12(e).

COL 40. AT&T's proposed data roaming rates of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] are consistent with (i) the rates that AT&T has

¹⁶¹ See FOF 90 - FOF 93.

¹⁶² 47 C.F.R. § 20.12(e)(1).

¹⁶³ See FOF 82, FOF 94.

¹⁶⁴ See *id.*

negotiated in recent agreements with other independent providers;¹⁶⁵ (ii) what AT&T pays, on average, to roam on other wireless providers' networks [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] and (iii) with the data roaming rates that iWireless' majority owner, T-Mobile, had submitted to the Commission for consideration (18¢-30¢/MB).¹⁶⁷

COL 41. Since AT&T made its proposal, data rates have continued to decline, and, as a result, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

COL 42. AT&T's proposed [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] iWireless' own proposal provides for a [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

- E. iWireless' arguments in support of its proposed data roaming rates do not establish their commercial reasonableness**
 - 1. iWireless' proposed roaming rates are not entitled to a presumption of reasonableness**

COL 43. The Parties negotiated the roaming rate [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

¹⁶⁵ See FOF 18 - FOF 19.

¹⁶⁶ See FOF 15 - FOF 16.

¹⁶⁷ See FOF 13.

¹⁶⁸ See FOF 76; Meadors Decl. ¶ 37.

¹⁶⁹ See FOF 69.

¹⁷⁰ See FOF 24.

3. **The existence of agreements with data roaming rates higher than those proposed by iWireless does not establish the commercial reasonableness of iWireless' proposed rates**

COL 49. The fact that AT&T has a number of roaming agreements with other carriers that include roaming rates above those demanded by iWireless does not establish that iWireless' proposed rates are commercially reasonable.

COL 50. Those rates are [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

COL 51. Existing agreements which were not recently negotiated may no longer be useful in determining what is commercially reasonable in light of the current market for roaming services.¹⁷⁶

COL 52. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

COL 53. In the last year, AT&T had active contracts with [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [END

CONFIDENTIAL]

¹⁷⁵ FOF 112.

¹⁷⁶ *Declaratory Ruling* ¶ 26 (“A rate negotiated a year ago might have been commercially reasonable at that time but may no longer reflect current marketplace conditions . . .”).

¹⁷⁷ FOF 113.

¹⁷⁸ FOF 114.

COL 54. AT&T has either [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

COL 55. iWireless' contract with [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] does not establish the commercial reasonableness of iWireless' proposed data roaming rates.

COL 56. The contract between iWireless and [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

COL 57. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

4. **AT&T's ownership of spectrum in Iowa that is not fully deployed does not make iWireless' proposed data roaming rates commercially reasonable**

COL 58. There is no merit to iWireless' argument that it is entitled to charge AT&T above-market roaming rates because AT&T owns spectrum in Iowa that it has not yet fully deployed.

¹⁷⁹ FOF 115.

¹⁸⁰ FOF 116 - FOF 117.

¹⁸¹ See FOF 117- FOF 121.

COL 59. The Commission stated in the *Declaratory Ruling* that a carrier's ownership of spectrum that is not fully deployed is not a basis for denying roaming on commercially reasonable terms.¹⁸²

COL 60. Further, AT&T has deployed significant amounts of spectrum in rural communities both nationwide and in Iowa.¹⁸³

F. iWireless has violated 47 C.F.R. § 20.12(e) and Title III of the Communication Act by refusing to offer data roaming service to AT&T on commercially reasonable terms.

COL 61. iWireless is subject to 47 C.F.R. § 20.12(e) because it is a facilities-based provider of commercial mobile data services.¹⁸⁴

COL 62. iWireless has violated the requirements of 47 C.F.R. § 20.12(e) because the rates and other terms that (i) it is providing AT&T for data roaming services under the [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]; and (ii) has offered to AT&T as part of the Parties' renegotiation of their existing data roaming Agreement are not commercially reasonable.

COL 63. iWireless does not qualify for any of the criteria that exempt a facilities-based provider of mobile data services from the requirement to offer data roaming services on commercially reasonable terms and conditions.

¹⁸² See *Declaratory Ruling* ¶ 28 (“In our view, the Commission’s inclusion of this factor [*i.e.*, build-out] was not intended to allow a host provider to deny roaming, or to charge commercially unreasonable roaming rates, in a particular area simply because the otherwise built-out requesting provider has not built out in that area. Any other interpretation of the Commission’s order would be inconsistent with the order itself, which made clear that one of the primary public interest benefits of roaming is that it can allow a provider without a presence in any given market to provide a competitive level of local coverage during the early period of investment and build out.” (footnote omitted))

¹⁸³ FOF 122 - FOF 122.

¹⁸⁴ 47 C.F.R. § 20.12(e)(1).

COL 64. AT&T's proposed data roaming rates and other conditions are consistent with 47 C.F.R. § 20.12(e) because they are commercially reasonable.

II. iWireless' Proposed Voice Roaming Rates and Other Terms Violate 47 C.F.R. § 20.12(d) and Title II of The Communication Act.

COL 65. iWireless' proposed voice roaming rates and other terms violate 47 C.F.R. § 20.12(e) and Title II of the Communication Act.

A. Legal Standard

COL 66. In 2007, the Commission issued its *Voice Roaming Order*, which provides that, as common carriers, Commercial Mobile Radio Services ("CMRS") carriers must provide automatic roaming for interconnected voice service.¹⁸⁵

COL 67. The purpose of the *Voice Roaming Order* was "to facilitate reasonable roaming requests by carriers on behalf of wireless customers," such that a requesting carrier could "enable its subscribers to receive service seamlessly."¹⁸⁶

COL 68. Thus, the Commission required CMRS carriers to provide automatic roaming services to other carriers upon reasonable request on a just, reasonable, and non-discriminatory basis pursuant to Sections 201 and 202 of the Communications Act.¹⁸⁷

COL 69. The Commission ruled that the common carrier obligation extends to services that are real-time, two-way switched voice or data service that are interconnected with the public switched network and use an in-network switching facility that enables the provider to

¹⁸⁵ Report and Order and Further Notice of Proposed Rulemaking, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265 (Aug. 16, 2007) (the "*Voice Roaming Order*").

¹⁸⁶ See *Voice Roaming Order* ¶ 28.

¹⁸⁷ *Id.* ¶¶ 1-2.

reuse frequencies and accomplish seamless hand-offs of subscriber calls.¹⁸⁸

COL 70. Under the *Voice Roaming Order*, a request for automatic roaming is presumed reasonable if the requesting carrier's network is technologically compatible with the host carrier's network and the roaming service requested is outside of the requesting carrier's home market.¹⁸⁹

COL 71. If a carrier makes a presumptively reasonable automatic roaming request, "the would-be host CMRS carrier has a duty to respond to the request and avoid actions that unduly delay or stonewall the course of negotiations regarding the request."¹⁹⁰

COL 72. In 2010, the Commission issued its *Order on Reconsideration* "to increase consumers' access to seamless nationwide mobile services, wherever and whenever they choose," by creating "a framework for voice roaming that will encourage carriers of all sizes to reach reasonable commercial roaming arrangements."¹⁹¹

COL 73. As part of this framework, the Commission eliminated the home roaming exclusion, finding that in a number of respects, the exclusion failed to achieve its stated purposes.¹⁹²

COL 74. The *Order on Reconsideration* establishes that a request for automatic roaming within the requesting carrier's home market is presumed reasonable if the requesting

¹⁸⁸ *Id.* ¶ 54.

¹⁸⁹ *Id.* ¶ 33.

¹⁹⁰ *Id.*

¹⁹¹ Order on Reconsideration and Second Further Notice of Proposed Rulemaking, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265 (Apr. 21, 2010) ("*Order on Reconsideration*").

¹⁹² See *id.* ¶¶ 18, 21-23.

carrier's network is technologically compatible with the would-be host carrier's network.¹⁹³

COL 75. Upon a presumptively reasonable request, CMRS carriers must provide automatic roaming for home roaming on reasonable and not unreasonably discriminatory terms and conditions.¹⁹⁴

COL 76. The Commission's voice roaming rules are set out in 47 C.F.R. § 20.12(d) and state that "[u]pon a reasonable request, it shall be the duty of each host carrier subject to [47 C.F.R. § 20.12(a)] to provide automatic roaming to any technologically compatible, facilities-based CMRS carrier on reasonable and not unreasonably discriminatory terms and conditions, pursuant to Sections 201 and 202 of the Communications Act, 47 U.S.C. 201 and 202."

COL 77. Section 47 C.F.R. § 20.12(d) is a regulation that the Commission has adopted under Title II of the Communications Act.¹⁹⁵ Thus, a provider offering data roaming services in violation of 47 C.F.R. § 20.12(d) is likewise violating Title II of the Act.

COL 78. iWireless has violated the requirements of 47 C.F.R. § 20.12(d) and Title II of the Communications Act because the rates and other terms that it (i) is currently providing AT&T for automatic voice roaming; and (ii) has offered to AT&T as part of the Parties' renegotiation of their existing Agreement are not reasonable and are unreasonably discriminatory.

COL 79. iWireless does not qualify for any exemption from the requirement to provide voice roaming service on reasonable and not unreasonably discriminatory terms.

¹⁹³ *Id.* ¶ 2.

¹⁹⁴ *Id.*

¹⁹⁵ *Voice Roaming Order* ¶ 23 ("We clarify that automatic roaming is a common carrier service, subject to the protections outlined in Sections 201 and 202 of the Communications Act.").

CONFIDENTIAL INFORMATION REDACTED

B. iWireless has violated 47 C.F.R. § 20.12(d) and Title II of the Communication Act by refusing to offer voice roaming service to AT&T on just and reasonable and not unreasonably discriminatory terms.

COL 80. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END
CONFIDENTIAL]

COL 81. These rates are not just and reasonable and are unreasonably discriminatory.

COL 82. The rate that iWireless has offered for [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

COL 83. Under the Agreement, AT&T pays iWireless [BEGIN
CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

COL 84. Further, the voice roaming rates in iWireless' proposal are not in line with the current market for voice roaming services in which AT&T is seeing rates in the range of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

COL 85. iWireless' proposed rates are also high as compared to the rates in [BEGIN CONFIDENTIAL] [REDACTED]

¹⁹⁶ FOF 70.

¹⁹⁷ See FOF 24 - FOF 25.

¹⁹⁸ FOF 25.

¹⁹⁹ FOF 124.

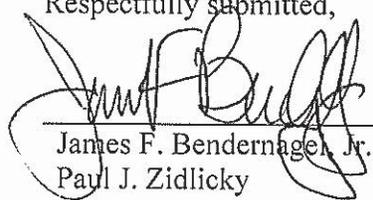
CONFIDENTIAL INFORMATION REDACTED

[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [END CONFIDENTIAL]
agreements include contract rates lower than the [BEGIN CONFIDENTIAL] [REDACTED] [END
CONFIDENTIAL] contract rate proposed by iWireless.²⁰⁰

COL 86. Further, since the beginning of 2015, AT&T has negotiated voice rates in
[BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

COL 87. AT&T's proposed voice roaming rates and other conditions are consistent
with 47 C.F.R. § 20.12(d) because they are just and reasonable and not unreasonably
discriminatory.

* * *

Respectfully submitted,

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Emily C. Watkins
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1501 K Street NW
Washington, DC
20005 (202) 736-8000
(202) 736-8711 (fax)

Counsel for AT&T Mobility LLC

Dated: October 20, 2015

²⁰⁰ FOF 126.
²⁰¹ FOF 127.

TAB 5

PUBLIC VERSION

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**AT&T MOBILITY LLC
1055 Lenox Park Blvd. NE
Atlanta, GA 30319
404-236-7895**

Complainant,

v.

**IOWA WIRELESS SERVICES, LLC
4135 NW Urbandale Drive
Urbandale, IA 50322**

Defendant.

File No. EB-15-MD-_____

**INFORMATION DESIGNATION PURSUANT TO
RULES 1.721(a)(10)(i), (ii), (iii), AND 1.721(a)(11)**

AT&T Mobility LLC (“AT&T”) submits this information designation in accordance with Sections 1.721(a)(10)(i), (ii), (iii), and 1.721(a)(11) of the Federal Communication Commission’s (the “Commission”) Rules, 47 C.F.R. §§ 1.721(a)(10) (i), (ii), (iii), and 1.721(a)(11).

Individuals Believed to Have First-Hand Knowledge, Rule 1.721(a)(10)(i)

Pursuant to Section 1.721(a)(10)(i) of the Commission’s Rules, 47 C.F.R. § 1.721(a)(10)(i), set forth below are the names, addresses, and positions of the individuals who have first-hand knowledge of facts alleged with particularity in the Complaint, and a description of the facts within any such individual’s knowledge.

1. George Meadors
Assistant Vice President of Alliance/Partnership, Wireless Roaming Strategy
AT&T Mobility LLC

1025 Lenox Park Blvd. N.E.
Suite D882
Atlanta, GA 30319

Subjects: Subject matter further described in more detail in the Declaration of Gram Meadors, including AT&T's provision and use of data roaming services, the parties' negotiations, the reasonableness of the parties' proposed rates when compared to market roaming rates.

2. Kurt Dresch
Director of Roaming Strategy, Global Connection Management
AT&T Mobility LLC
1025 Lenox Park Blvd. N.E.
Suite D882
Atlanta, GA 30319

Subjects: The roaming relationship and negotiations between AT&T and Iowa Wireless.

3. Joey Kitchel
Lead Interconnection Agreements Manager
AT&T Mobility LLC
1025 Lenox Park Blvd. N.E.
Suite D882
Atlanta, GA 30319

Subjects: The roaming relationship and negotiation between AT&T and Iowa Wireless.

4. Craven Shumaker
President and Chief Executive Officer
Iowa Wireless Services, LLC
4135 NW Urbandale Drive
Urbandale, IA 50322

Subjects: The roaming relationship and negotiation between AT&T and Iowa Wireless.

4. Jonathan Orszag
Senior Managing Director
Compass Lexcon, LLC
1101 K Street, NW
Washington, DC 20005

Subjects: Subject matter further described in more detail in the Declaration of Jonathan Orszag, including the reasonableness of the parties' proposed rates when

compared to market roaming rates and the other benchmark rates that the Commission has determined are relevant.

Documents, Data Compilations, and Tangible Things, Rule 1.721(a)(10)(ii)

Pursuant to Section 1.721(a)(ii) of the Commission's Rules, 47 C.F.R. § 1.721(a)(10)(ii), attached is a log describing the non-privileged documents, data compilations, and tangible things in the possession, custody, or control of AT&T that are relevant to the facts alleged with particularity in the Complaint.

AT&T notes that many of the documents on the log contain Confidential Information (the Parties' email correspondence) and/or Highly Confidential Information (AT&T's data roaming agreements, and backup documents relating to the same, as those terms are defined in the Protective Order that has been presented to iWireless by AT&T on August 15, 2015. iWireless has not agreed to the proposed order, provided any comments regarding the proposed order, or otherwise commented on the proposed protective order.

Identification of Persons and Documents, Rule 1.721(a)(10)(iii)

Pursuant to Section 1.721(a)(10)(iii) of the Commission's Rules, 47 C.F.R. § 1.721(a)(10)(iii), AT&T provides that this information designation was prepared by AT&T's outside counsel, Sidley Austin LLP, in cooperation with AT&T's in-house counsel and AT&T's employees. Sidley Austin LLP, in coordination with AT&T's in-house counsel, identified the individuals who have first-hand knowledge of the relevant facts. The materials set forth in the document log were collected from the following sources: the files of George Meadors, including his correspondence with Iowa Wireless; the files of Kurt Dresch, including his correspondence with Iowa Wireless; the files of Joey Kitchel, including his correspondence with Iowa Wireless; the data roaming contract files of AT&T's Wireless Roaming Strategy Group; and the source

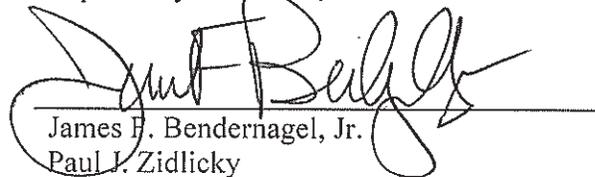
materials relied on by Mr. Orszag in his Declarations. Mr. Orszag and his team at Compass Lexecon LLC collected the public source materials cited in Mr. Orszag's Declaration.

Documents Relied Upon, Rule 1.721(a)(11)

Pursuant to Section 1.721(a)(11) of the Commission's Rules, 47 C.F.R. § 1.721(a)(11), attached as exhibits to the Complaint are copies of the affidavits, documents, data compilations, and tangible things in AT&T's possession, custody or control upon which AT&T relies or intends to rely to support the facts alleged and legal arguments made in its Complaint. These exhibits have been served, along with the Complaint, upon Iowa Wireless's counsel.

Dated: October 20, 2015

Respectfully submitted,



James F. Bendernagel, Jr.

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Emily C. Watkins

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(202) 736-8711 (fax)

Counsel for AT&T Mobility LLC

Attachment

TAB 6

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

**AT&T MOBILITY LLC
1055 Lenox Park Blvd. NE
Atlanta, GA 30319
404-236-7895**

Complainant,

v.

**IOWA WIRELESS SERVICES, LLC
4135 NW Urbandale Drive
Urbandale, IA 50322**

Defendant.

File No. EB-15-MD-_____

AT&T MOBILITY LLC'S FIRST SET OF INTERROGATORIES

Pursuant to Section 1.729 of the Federal Communication Commission's (the "Commission") Rules, 47 C.F.R. § 1.729, AT&T Mobility LLC ("AT&T") requests that the Commission direct Iowa Wireless Services, LLC ("iWireless"), to respond to the following interrogatories in accordance with the Definitions and Instructions set out below.

DEFINITIONS

The definitions set forth below shall apply to each of the following interrogatories, unless other explicitly indicated:

1. "Any" means each, every, and all persons, places, or things to which the term refers.
2. "Communication" means any transfer of information, whether written, printed, electronic, oral, pictorial, or otherwise transmitted by any means or manner whatsoever.

3. “Copy” means any reproduction, in whole or in part, of an original document and includes, but is not limited to, non-identical copies made from copies.
4. “Describe” and “description” means to set forth fully, in detail, and unambiguously each and every fact of which you have knowledge related to answering the interrogatory.
5. “Document” means any written, drawn, recorded, transcribed, filed, or graphic matter, including scientific or researchers’ notebooks, raw data, calculations, information stored in computers, computer programs, surveys, tests and their results, however produced or reproduced. With respect to any document that is not exactly identical to another document for any reason, including but not limited to marginal notations, deletions, or redrafts, or rewrites, separate documents should be provided.
6. “Identify,” “identity,” or “identification,” when used in relation to “person” or “persons,” means to state the full name and present or last known address of such person or persons and, if a natural person, his or her present or last known job title, the name and address of his or her present or last known employer, and the nature of the relationship or association of such person to you.
7. “Identify,” “identity,” or “identification,” when used in relation to “document” or “documents,” means to state the date, subject matter, name(s) of person(s) that wrote, signed, initialed, dictated, or otherwise participated in the creation of same, the name(s) of the addressee(s) (if any), and the name(s) and address(es) (if any) of each person or persons who have possession, custody, or control of said document or documents.

8. “Identify” when used in relation to a “communication” means to identify the participants in each communication and, if such communication is not contained in a document, the date, place, and content of such communication.
9. “Including” means including but not limited to.
10. “Original” means the first archetypal document produced, that is, the document itself, not a copy.
11. “Person” or “persons” means any natural person or persons, group of natural persons acting as individuals, group of natural persons acting as a group (*e.g.*, as a board of directors, a committee, *etc.*), or any firm, corporate entity, partnership, association, joint venture, business, enterprise, cooperative, municipality, commission, or governmental body or agency.
12. “Relate to,” “relating to,” or “in relation to” means involving, reflecting, identifying, stating, referring to, evidencing, constituting, analyzing, underlying, commenting upon, mentioning, or connected with, in any way, the subject matter of the request.
13. “You,” “your,” or “iWireless” means Iowa Wireless Services, LLC; any of its parent, affiliated or subsidiary companies, including but not limited to T-Mobile USA, Iowa Network Services, Inc. (“INSI”) and any of the approximately 127 independent telephone companies that own INSI; and employees, officers, directors, agents, representatives, and all other persons or entities acting or purporting to act on their behalf, including without limitation any outside consultant or witness retained by them. In that regard, each and every interrogatory contained herein is directed at you.

INSTRUCTIONS

When responding to the following interrogatories, please comply with the instructions below:

1. Each interrogatory is continuing in nature and requires supplemental responses as soon as new, different or further information is obtained that is related to answering the interrogatory.
2. Provide all information, including all documents, related to answering the interrogatory that are in your possession, custody, or control, regardless of whether such documents are possessed directly by you or by your employees, officers, directors, agents, representatives, or any other person or entity acting or purporting to act on their behalf.
3. In any interrogatory, the present tense shall be read to include the past tense, and the past tense shall be read to include the present tense.
4. In any interrogatory, the singular shall be read to include the plural, and the plural shall be read to include the singular.
5. In any interrogatory, the use of the conjunctive shall be read to include the disjunctive, and the use of the disjunctive shall be read to include the conjunctive.
6. Any document withheld from production on the grounds of a privilege is to be specifically identified by author(s), addressee(s), length, and date, with a brief description of the subject matter or nature of the document, and a statement of the privilege asserted.
7. Please begin the response to each request on a separate page.

8. Please restate each interrogatory before providing the response or objection.
9. Please specify the interrogatory in response to which any document, narrative response, or objection is provided. If a document, narrative response or objection relates to more than one request, please cross reference.
10. For each separate interrogatory, identify the person(s) under whose supervision the response was prepared.
11. For any interrogatory consisting of separate subparts or portions, a complete response is required to each subpart as if the subpart or portion were propounded separately.
12. Produce any documents in the form of legible, complete and true copies of the original documents as “original” is defined herein.
13. Please provide all documents in their native format, together with all metadata.
14. If you assert that documents or information related to answering an interrogatory are unavailable or have been discarded or destroyed, state when and explain in detail why any such document or information was unavailable, discarded or destroyed, and identify the person directing the discarding or destruction. If a claim is made that the discarding or destruction occurred pursuant to a discarding or destruction program, identify and produce the criteria, policy or procedures under which such program was undertaken.
15. If any interrogatory cannot be answered in full after reasonable inquiry, provide the response to the extent available, state why the interrogatory cannot be answered in full,

and provide any information within your knowledge concerning the description, existence, availability, and custody of any unanswered portions.

INTERROGATORIES

ATT-IWS 1:

Identify all contracts pursuant to which iWireless has provided or received roaming services since January 1, 2012 and identify the rates for voice and data roaming service specified in each contract.

Explanation:

The information sought in this interrogatory is necessary to the resolution of AT&T's allegations that (1) the data roaming rates proposed by iWireless are not commercially reasonable and (2) the voice roaming rates it has proposed are unreasonable and unjustly discriminatory. Specifically, the rates charged pursuant to iWireless' other roaming agreements are evidence of the reasonableness of the rates iWireless has offered to AT&T.

This information is not available to AT&T through a source other than iWireless. It is known by iWireless and not the type of information that is typically made available publicly.

ATT-IWS 2:

Indicate whether iWireless' affiliate T-Mobile USA roams on iWireless' network. If so, identify the rates and terms pursuant to which T-Mobile USA roams, the date on which it began roaming on iWireless' network, and T-Mobile USA's monthly roaming traffic by county for the last 12 months.

Explanation:

The information sought in this interrogatory is necessary to the resolution of AT&T's allegations that (1) the data roaming rates proposed by iWireless are not commercially reasonable and (2) the voice roaming rates it has proposed are unreasonable and unjustly discriminatory. Specifically, the rates charged pursuant to iWireless' other roaming agreements are evidence of the reasonableness of the rates iWireless has offered to AT&T.

This information is not available to AT&T through a source other than iWireless. It is known by iWireless and not the type of information that is typically made available publicly.

ATT-IWS 3:

For the period January 1, 2012, identify the monthly effective rates for data service charged pursuant to each of the contracts identified in response to ATT-IWS 1 on a carrier by carrier basis. Identify all data required to calculate the effective rates provided.

Explanation:

The information sought in this interrogatory is necessary to the resolution of AT&T's allegation that the data roaming rates proposed by iWireless are not commercially reasonable. Specifically, the rates charged pursuant to iWireless' other roaming agreements are evidence of the reasonableness of the rates iWireless has offered to AT&T.

This information is not available to AT&T through a source other than iWireless. It is known by iWireless and not the type of information that is typically made available publicly.

ATT-IWS 4:

For the period January 1, 2012, identify the monthly effective rates for voice service charged pursuant to each of the contracts identified in response to ATT-IWS 1 on a carrier by carrier basis. Identify all data required to calculate the effective rates provided.

Explanation:

The information sought in this interrogatory is necessary to the resolution of AT&T's allegation that the voice roaming rates it has proposed are unreasonable and unjustly discriminatory. Specifically, the rates charged pursuant to iWireless' other roaming agreements are evidence of the reasonableness of the rates iWireless has offered to AT&T.

This information is not available to AT&T through a source other than iWireless. It is known by iWireless and not the type of information that is typically made available publicly.

ATT-IWS 5:

For each contract identified in ATT-IWS 1, identify the amount of monthly data roaming traffic by county and indicate whether each county meets the Commission’s definition of “rural,” being a county with a population density of 100 persons or fewer per square mile.

Explanation:

The information sought in this interrogatory is necessary to the resolution of AT&T’s allegation that the data roaming rates proposed by iWireless are not commercially reasonable. Specifically, AT&T and iWireless agree that the roaming rates for rural areas can be higher than the roaming rates in urban areas but disagree about how much higher rural rates can be and still be commercially reasonable. As a result, this information is necessary to determine the difference in the market price for rural versus urban roaming.

This information is not available to AT&T through a source other than iWireless. It is known by iWireless and not the type of information that is typically made available publicly.

ATT-IWS 6:

For each contract identified in ATT-IWS 1, identify the amount of monthly roaming traffic by technology, i.e. 2G, 3G, LTE.

Explanation:

The information sought in this interrogatory is necessary to the resolution of AT&T's allegation that the data roaming rates proposed by iWireless are not commercially reasonable. Specifically, AT&T and iWireless agree that it is appropriate to charge rates dependent on the technology used to provide the data roaming service but disagree about the what the commercially reasonable rate is for each technology. As a result, this information is necessary to determine the difference in the market price for roaming on different technologies.

This information is not available to AT&T through a source other than iWireless. It is known by iWireless and not the type of information that is typically made available publicly.

ATT-IWS 7:

Indicate whether iWireless has any agreements with MVNOs or other resellers. If so, provide the current, effective data roaming rate being charged pursuant to each agreement identified. Identify all data required to calculate the effective rates provided.

Explanation:

The information sought in this interrogatory is necessary to the resolution of AT&T's allegation that the data roaming rates proposed by iWireless are not commercially reasonable. Specifically, the Commission had indicated that resale rates are relevant to the determination of commercial reasonableness.

This information is not available to AT&T through a source other than iWireless. It is known by iWireless and not the type of information that is typically made available publicly.

ATT-IWS 8:

Indicate whether iWireless has any roaming agreements with foreign carriers. If so, provide the current, effective data roaming rate being charged pursuant to each agreement identified. Identify all data required to calculate the effective rates provided.

Explanation:

The information sought in this interrogatory is necessary to the resolution of AT&T's allegation that the data roaming rates proposed by iWireless are not commercially reasonable. Specifically, the Commission had indicated that resale rates are relevant to the determination of commercial reasonableness.

This information is not available to AT&T through a source other than iWireless. It is known by iWireless and not the type of information that is typically made available publicly.

ATT-IWS 9:

For each of iWireless' retail service plans, provide the current effective data roaming rate. Identify all data required to calculate the effective rates provided.

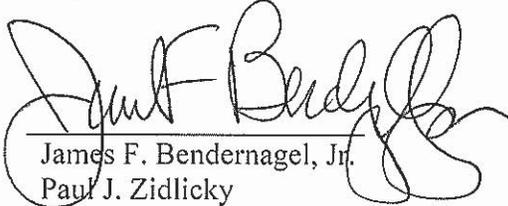
Explanation:

The information sought in this interrogatory is necessary to the resolution of AT&T's allegation that the data roaming rates proposed by iWireless are not commercially reasonable. Specifically, the Commission had indicated that resale rates are relevant to the determination of commercial reasonableness.

iWireless' retail rates are publicly available but the information necessary to calculate the effective rate, like data usage, is not available to AT&T through a source other than iWireless. It is known by iWireless and not the type of information that is typically made available publicly.

* * *

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James F. Bendernagel, Jr.", written over a horizontal line.

James F. Bendernagel, Jr.
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Emily C. Watkins
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Counsel for AT&T Mobility LLC

Dated: October 20, 2015

TAB 7

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2015, I caused the foregoing Formal Complaint to be served on Defendant and provided to the Commission as indicated below.

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Via Hand Delivery – a complete hard copy of the Confidential Version
Via Electronic Filing – a complete copy of the Public Version

Carl Northrop
Telecommunications Law Professionals PLLC
1025 Connecticut Avenue, NW
Suite 1011
Washington, DC 20036
Via Hand Delivery – a complete copy of the Confidential Version
Via Electronic Mail – a complete copy of the Confidential and Public Versions

Lisa Saks
Christopher Killion
Rosemary McEnery
Markets Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
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Washington, DC 20554
Via Electronic Mail – a complete copy of the Confidential and Public Versions



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