

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-_____

MOTION FOR INTERIM RELIEF

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Dated: October 20, 2015

AT&T Mobility LLC (“AT&T”) respectfully requests that the Commission grant interim relief, as described herein, compelling iWireless to continue to provide roaming service to AT&T pending the Commission’s resolution of the Formal Complaint that AT&T is filing concurrently with this Motion. AT&T is compelled to file this Motion because iWireless has

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

[REDACTED] [END CONFIDENTIAL] By this Motion, AT&T seeks, consistent with the Commission’s rules, to establish interim rates for those services, subject to a true-up, during the pendency of the Commission’s resolution of AT&T’s Formal Complaint against iWireless.

I. BACKGROUND

Since January 1, 2006, AT&T and iWireless (or their predecessors) have been parties to a bilateral roaming agreement (the “Agreement”).¹ Under this Agreement, AT&T currently has been paying a data roaming rate of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] and an effective voice roaming rate of approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] per minute of use (“mou”).² These rates were [BEGIN CONFIDENTIAL] [REDACTED]

¹ See Complaint ¶ 20; Declaration of Gram Meadors (“Meadors Decl.”) ¶ 8 (Oct. 13, 2015).

² See Complaint ¶¶ 2, 21; Meadors Decl. ¶ 8; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

[BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

[BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

⁹ Complaint ¶ 40; Meadors Decl. ¶ 23; [BEGIN CONFIDENTIAL]

[REDACTED] [END

CONFIDENTIAL]

¹⁰ Complaint ¶ 40; Meadors Decl. ¶ 23; [BEGIN CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL]

¹¹ Complaint ¶ 40; [BEGIN CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL]

¹² [BEGIN CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL]

¹³ *Id.* See also 47 C.F.R. § 20.12(d) and (e).

¹⁴ See Complaint ¶ 41; Meadors Decl. ¶ 24; [BEGIN CONFIDENTIAL]

[REDACTED] [END CONFIDENTIAL]

[END CONFIDENTIAL]

In response, iWireless [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

On the same date, iWireless [BEGIN CONFIDENTIAL]

¹⁵ Complaint ¶ 41 n.107; Meadors Decl. ¶ 24; [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

¹⁶ [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL] See also

Complaint ¶ 42; Meadors Decl. ¶ 24.

¹⁷ [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

¹⁸ *Id.*

¹⁹ Complaint ¶ 42; Meadors Decl. ¶ 24; [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

²⁰ Complaint ¶ 43; Meadors Decl. ¶ 25; [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END

CONFIDENTIAL]

In response to this letter, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

²¹ Complaint ¶ 42-43; Meadors Decl. ¶¶ 24-25; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

²² Complaint ¶ 43; Meadors Decl. ¶ 25; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

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

²⁴ *Id.*

²⁵ *Id.*

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

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

II. LEGAL STANDARD

The Commission has clear authority under 47 U.S.C. § 154(i) (“Section 4(i)”) to grant the interim relief requested herein. 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).”³⁰ The Commission thus has explained that Section 4(i)

²⁶ [BEGIN CONFIDENTIAL] [REDACTED] 5). [END CONFIDENTIAL]

²⁷ *Id.*

²⁸ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

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

³⁰ 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,

“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.”³¹ The Enforcement Bureau, pursuant to delegated authority, is “the primary Commission entity responsible for enforcement of the Communications Act and other communications statutes, the Commission’s rules, Commission orders and Commission authorizations,” and is clearly authorized to issue an order providing such relief.³²

The Commission also has authority to grant interim relief under the *Data Roaming Order*.³³ The *Data Roaming Order* explains that, where negotiations fail to produce a mutually acceptable set of terms and conditions, including rates, the Commission Staff may require the parties to submit best and final offers.³⁴ To ensure that the requesting provider is able to obtain data roaming service on an interim basis during the pendency of the dispute, the Commission Staff may, if requested, “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.”³⁵ The Commission’s *Declaratory Ruling* reaffirmed this authority to grant interim relief

¶ 26 (2011) (“*2011 Program Carriage Rules Order*”) (citing *United States v. Southwestern Cable Co.*, 392 U.S. 157, 181 (1968)).

³¹ 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).

³² 47 C.F.R. §§ 0.111, 0.311. At least one other Commission Bureau, with similar delegated authority, has issued standstill orders. See, e.g., Order on Reconsideration, *Time Warner Cable*, 21 FCC Rcd. 9016, ¶ 34 (Media Bureau 2006).

³³ *Data Roaming Order* ¶¶ 79-80.

³⁴ *Id.* ¶ 79.

³⁵ *Id.* ¶ 80.

during the pendency of a data roaming dispute between carriers.³⁶

III. ARGUMENT

Although the Commission has declined to “prescribe the legal and evidentiary showings required” for obtaining interim relief,³⁷ the Commission considers four factors: (1) likelihood of success on the merits; (2) the threat of irreparable harm absent the grant of interim 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.³⁸ Where a movant can show “serious questions going to the merits” and a “balance of hardships tipping sharply in [the movant’s] favor,” the Commission will impose interim relief.³⁹ The Commission has further noted that in cases “involving the administration of regulatory statutes designed to promote the public interest,” the public interest factor “necessarily becomes crucial.”⁴⁰

A. AT&T is Likely to Prevail on the Merits

There is no dispute that AT&T is entitled to receive the roaming services that it has requested from iWireless.⁴¹ Instead, the issue in dispute relates to the rates that iWireless can charge for these services and the terms that iWireless can demand as a condition of service. Specifically, the issue is whether iWireless unilaterally can demand [BEGIN

CONFIDENTIAL] [REDACTED]

³⁶ Declaratory Ruling, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, ¶ 27 (Dec. 18, 2014) (the “Declaratory Ruling”).

³⁷ *1997 Complaint Rules Order* ¶ 169.

³⁸ *See, e.g., Ameritech Standstill Order* ¶ 13 (citing *Virginia Petroleum Jobbers v. Fed. Power Comm’n*, 259 F.2d 921 (D.C. Cir. 1958)).

³⁹ *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”).

⁴⁰ *Ameritech Standstill Order* ¶¶ 14, 22 (internal quotation marks omitted).

⁴¹ 47 C.F.R. § 20.12(d), (e).

[REDACTED] [END CONFIDENTIAL]

In its Complaint and supporting declarations, AT&T has provided substantial evidence showing that iWireless' existing rates under the Agreement violate the Commission's rules and orders regarding data and voice roaming. *First*, AT&T has shown that the data roaming rates that iWireless is charging and has offered to AT&T [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] are not commercially reasonable, in violation of 47 C.F.R. § 20.12(e), the *Data Roaming Order*, and the *Declaratory Ruling*.⁴² *Second*, AT&T has shown that the voice roaming rates that iWireless is charging and has offered to AT&T are not reasonable and are unduly discriminatory, in violation of 47 C.F.R. § 20.12(d), the *Voice Roaming Order*, and *Order on Reconsideration*.⁴³ AT&T has also provided substantial evidence showing that AT&T's proposed rates are entirely consistent with the Commission's roaming rules.⁴⁴ A fortiori, iWireless cannot, consistent with the Commission's roaming rules,

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

Accordingly, AT&T has demonstrated that it is likely to succeed on the merits that iWireless cannot [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] At a minimum, AT&T has "raise[d] serious questions going to the merits" of the parties' rate dispute, such that interim relief should be awarded based on the showing below that the "balance of hardships tip[s] strongly in

⁴² See Complaint Part III.

⁴³ See Complaint Part IV.

⁴⁴ See Complaint ¶¶ 65-66, 79.

[AT&T's] favor."⁴⁵

B. The Equities Strongly Favor Granting Interim Relief to AT&T

The balance of equities likewise support granting interim relief during the pendency of AT&T's Formal Complaint. As an initial matter, awarding interim relief is clearly in the public interest. In the *Data Roaming Order*, the Commission explained that, where, as here, a carrier disputes the commercial reasonableness of a host provider's proffered terms and conditions, "it is in the public interest to provide a possible avenue for the requesting provider to obtain data roaming service on an interim basis during the pendency of the dispute."⁴⁶ As discussed above, iWireless has thus far [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] An award of interim relief would ensure that both parties are aware of their rights and obligations going forward.

The balance of the hardships between the parties likewise weighs in favor of awarding the requested relief. Without interim relief, AT&T would be [BEGIN CONFIDENTIAL]

[REDACTED] [END CONFIDENTIAL] At the same time, iWireless would not be harmed by

⁴⁵ *Ameritech Standstill Order* ¶ 14 (internal quotation marks omitted).

⁴⁶ *Data Roaming Order* ¶ 80.

⁴⁷ Complaint ¶ 43; Meadors Decl. ¶ 25; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁴⁸ Cf. *Ameritech Standstill Order* ¶ 27 (emphasizing that potentially unlawful practice was already causing petitioners to lose customers, and that "it will be very difficult to remedy these losses" in the event the Commission ultimately ruled the practice to be unlawful); First Report and Order, *In re Program Access Rules & Examination of Programming Tying Arrangements*, 25 FCC Rcd 746, ¶ 73 (2010) (establishing rules by which a complainant distributor can petition for interim access to programming and noting that "[a]s part of a showing of irreparable harm, a complainant may discuss, among other things, the impact on subscribers and the likelihood that subscribers will switch [distributors] to obtain the programming in dispute.").

granting the requested relief because (i) iWireless would be paid at interim rates; and (ii) those rates would be subject to a true-up based on the rates that the Commission ultimately determines are consistent with 47 C.F.R. §§ 20.12(d) and (e).

C. The Requested Interim Relief is Fully Consistent With The Data Roaming Order

Finally, granting interim relief is fully consistent with the dispute resolution process outlined in the *Data Roaming Order*. As noted above, the *Data Roaming Order* provides that Commission Staff may, if requested, “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.”⁴⁹ The current dispute presents a clear case for the award of interim relief.

iWireless has [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL] Under these

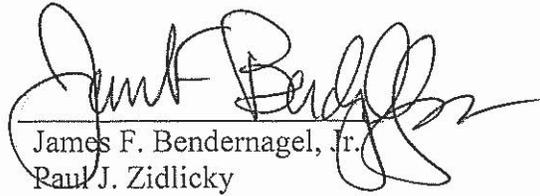
circumstances, a grant of interim relief is fully consistent with the Commission’ roaming rules

IV. CONCLUSION

For the foregoing reasons, AT&T requests that the Bureau enter an order that, subject to a true-up, requires iWireless to (i) continue to provide voice and data roaming services at the rates set forth in the Agreement, or (ii) make a best and final offer, and provide voice and data roaming services in accordance with that offer.

⁴⁹ *Id.* ¶ 80.

Respectfully submitted,



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Counsel for AT&T Mobility LLC

Dated: October 20, 2015

PROPOSED ORDER

Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

AT&T MOBILITY LLC
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Complainant,

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IOWA WIRELESS SERVICES, LLC
4135 NW Urbandale Drive

Urbandale, IA 50322

Defendant.

File No. EB-15-MD-_____

[PROPOSED] ORDER

Adopted: ____, 2015

Released: ____, 2015

By the _____, Market Disputes Resolution Division, Enforcement Bureau:

1. On October 13, 2015, AT&T Mobility LLC (“AT&T”) filed its Motion for Interim Relief (the “Motion”).
2. The Motion is GRANTED.
3. IT IS ORDERED that, on an interim basis and subject to true-up, Iowa Wireless Services LLC shall continue to provide voice and data roaming services at the rates set forth in the January 1, 2006 Inter-carrier Multi-Standard Roaming Agreement, as amended, or, alternatively, make a best and final offer, and provide voice and data roaming services in accordance with that offer.

FEDERAL COMMUNICATIONS COMMISSION

Market Disputes Resolution Division
Enforcement Bureau