Sprint

Charles W. McKee
Vice President, Government Affairs
Federal & State Regulatory

Sprint Corporation
900 7th Street NW, Suite 700
Washington, DC 20001
charles.w.mckee@sprint.com

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Via Electronic Submission

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, DC 20554

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

Dear Ms. Dortch:

Based on recent filings, it is clear that Verizon seeks to deny competitive carriers access to commercially reasonable data roaming based on network build-out, regardless of the Commission's requirements. Verizon is a primary member of Mobile Future, which continues to claim that the *Declaratory Ruling's*[1] clarification of the data roaming rule has reduced network investment, but fails to provide any credible evidence that the *Declaratory Ruling* had such an effect.[2] The old argument that access to roaming reduces network investment is an issue that the Commission has already evaluated and thoroughly addressed. Moreover, the false accusations and mischaracterizations that Mobile Future and Verizon make cannot divert attention away from their failure to make a sustainable argument against the *Declaratory Ruling*, which Sprint Corporation ("Sprint") continues to support.

As a policy matter, the Commission initially tried the approach Verizon and Mobile Future promote by allowing host carriers to deny roaming in the name of encouraging network

[1] *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Service*, Declaratory Ruling, DA 14-1865, 29 FCC Rcd. 15483 (2014) (*Declaratory Ruling*).

[2] Ex Parte Letter of Mobile Future, WT Docket No. 05-265, (Aug. 27, 2015) (*Mobile Future Ex Parte*).

investment and build-out, but that approach failed. The original voice roaming rule, adopted in 2007, permitted host carriers to deny access to voice roaming in a requesting carrier's home market (*i.e.*, the home market exclusion).[3] Echoing the arguments Verizon and Mobile Future make, the Commission reasoned that "requiring home roaming could harm facilities-based competition and negatively affect build-out in these markets."[4]

Based on overwhelming evidence in the record to the contrary, however, the Commission reversed course and eliminated the home market exclusion in 2010.[5] Specifically, the Commission flatly rejected the same arguments Verizon and Mobile Future now make and determined that the home roaming exclusion would "discourage, rather than encourage, the facilities-based competition it sought to promote"[6] and "create disincentives to construct."[7] In particular, it concluded that "for many CMRS carriers, there are areas within their licensed service areas where there is insufficient demand to support construction in those areas by another carrier."[8] The Commission also recognized that "it may be significantly more costly to build out when the carrier only has access to higher spectrum frequencies where propagation characteristics are less advantageous."[9] In addition, it determined that the home roaming exclusion "does not adequately account for the fact that building another network may be economically infeasible or unrealistic in some geographic portions of licensed service areas."[10] Furthermore, the Commission found that "in some areas of the country with very low population densities, it is simply uneconomic for several carriers to build out."[11]

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[3] *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 ¶ 48 (2007) (*2007 Report and Order*). A requesting carrier's home market was defined to include any geographic location where that carrier "holds a wireless license or spectrum usage rights (e.g., spectrum leases) . . . ." *Id.*

[4] *Id.* at ¶ 49.

[5] *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 25 FCC Rcd 4181 ¶ 18 (2010) (*2010 Report and Order*).

[6] *Id.*

[7] *Id.* at ¶ 21.

[8] *Id.* at ¶ 23. Sprint has examined the possibility of expanding its footprint to cover areas currently served by Verizon alone and found that these markets cannot economically support entry by a competitive carrier of Sprint's size. Indeed, it would cost Sprint billions to construct and operate enough towers to serve these areas, while the return would be woefully inadequate to recoup that initial investment; it would take several decades just to break even.

[9] *Id.*

[10] *Id.*

[11] *Id.*

The Commission concluded that the better approach included a general presumption of reasonableness, combined with a case-by-case determination of reasonableness based on the totality of the circumstances in the event of a dispute.[12] This more balanced approach takes multiple factors into consideration, including the extent and nature of each carrier's build out if relevant, but "no particular factor will be dispositive."[13]

AT&T and Verizon repeated the same build-out arguments that Verizon and Mobile Future now make when the Commission proposed to adopt the data roaming rule.[14] After careful consideration, the Commission determined that the voice roaming rule's general approach also served the public interest in the data roaming context. Accordingly, data roaming requests are presumed commercially reasonable, and in the event of a dispute, the Commission will assess the commercial reasonableness of a data roaming offer based on a non-exhaustive list of 17 factors.[15] The Commission *again* concluded that build-out was not the only factor, but one of at least 17 that may be considered in a fact-based, "totality of the circumstances" analysis.[16] The Commission once more found that this type of framework "preserves incentives to invest and protects consumers by facilitating their access to nationwide service." [17]

Verizon and Mobile Future stubbornly persist in making the exact same build-out arguments against the *Declaratory Ruling* that the Commission rejected in the formulating the voice and data roaming regimes.[18] The *Declaratory Ruling* does not change that analytical

[12] *See id.* at ¶ 31.

[13]*Id.* at ¶ 39.

[14] *See e.g., Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Second Report and Order, 26 FCC Rcd 5411 ¶ 12 (2011) (*Data Roaming Order*), *aff'd sub nom.* Cellco Partnership v. FCC, 700 F.3d 534 (D.C. Cir. 2012).

[15] *Id.* at ¶ 86.

[16] *Id.* at ¶ 85.

[17] *Id.* at ¶ 22; *See also 2010 Report and Order* at ¶¶ 18, 31.

[18] In addition, Mobile Future attempts to buttress its argument by comparing the growth rates of rural population served by 3 or more mobile broadband providers between 2009 and January 2012, with January 2012 to January 2014, and then claiming that the slowing growth rate is due to the *Data Roaming Order*. Mobile Futures Ex Parte Letter at 2. Mobile Future, however, disingenuously ignores that in November 2011, the FCC significantly revised high cost universal service support for competitive eligible telecommunications carriers, including instituting a phase out of then-existing support, to be replaced by a more limited, and as-yet-undefined Mobility Fund Phase 2. *See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd. 17,663, 17,832 at ¶ 519 (2011). Indeed, the FCC's explicit goal was to reduce support for building multiple mobile networks in high cost areas. *See id.* ¶ 28. Changes in USF support for CETCs are a much more likely explanation

framework. It merely provides useful guidance to help ensure that the data roaming rule is implemented as the Commission originally intended. In particular, it clarifies that the build-out factor cannot be used to deny or charge exorbitant rates for data roaming, which appears to be exactly what Verizon intends.

Mobile Future is not only resurrecting failed policy arguments, but also, together with Verizon, falsely accusing Sprint of avoiding network investment.[19] This red herring claim is a thinly veiled attempt to divert attention away from the fact that they have no viable argument against the *Declaratory Ruling*.

To set the record straight, Sprint has continually invested in its network to improve its service and remain competitive. Indeed, Sprint continues to expand its LTE service, which now covers over 280 million people across the entire country in urban, suburban and rural areas.[20] Sprint is also embarking on an aggressive network expansion and upgrade project, deploying thousands of new macro sites and tens of thousands of small cells to start in all areas of the country.[21] Indeed, Sprint expects its capital expenditures to be approximately $5 billion for fiscal 2015, which runs until the end of March 2016.[22] In fact, over the last two and a half years, Sprint has aggressively poured more of its earnings into network investment than any other national carrier.[23] Furthermore, to help maximize coverage in additional rural areas, Sprint has developed innovative, strategic partnerships with rural carriers which include investments to help them upgrade their networks to LTE.[24] These efforts can hardly be characterized as "a deliberate

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for the slowed growth of rural areas served by three or more mobile broadband providers than the *Data Roaming Order*.

[19] Ex Parte Letter of Verizon, WT Docket No. 05-265, at 1 (Aug. 17, 2015) (*Verizon Ex Parte*).

[20] *See Sprint Network Information Center* (June 24, 2015) *available at* http://newsroom.sprint.com/presskits/sprint-network-vision-information-center.htm.

[21] Blog – Aug. 18, 2015: *Closing the Gap on Network Performance* by Dr. John Saw, Chief Network Officer, Sprint, *available at* http://newsroom.sprint.com/blogs/sprint-perspectives/blog-closing-the-gap-on-network-performance.htm. Verizon bases its claims on a year-old analyst report premised on unconfirmed assumptions and the report itself states that its findings are preliminary, still evolving, and subject to change. *See Verizon Ex Parte*, Attachment at 1.

[22] *Sprint Reports Continued Progress in Its Turnaround During the First Fiscal Quarter of 2015*, News Release, Sprint (Aug. 4, 2015) *available at* http://newsroom.sprint.com/news-releases/sprint-reports-continued-progress-in-its-turnaround-during-the-first-fiscal-quarter-of-2015.htm

[23] Based on publicly available financial data, Sprint has re-invested 132 percent of its wireless earnings from 2013 through 2Q 2015, whereas Verizon has re-invested only 29 percent during the same period.

[24] The Rural Roaming Preferred Provider (R2P2) program, which provides rural carriers with low cost access to Sprint's 4G LTE network, and helps "'accelerat[e] the deployment and utilization of 4G LTE across the U.S. where the cost of building such networks and the roaming costs are prohibitively expensive'". *Sprint Reaches 4G LTE Roaming Agreements with 15 Additional Rural Carriers*, News Release, Sprint (Sept. 5, 2014) *available at* http://newsroom.sprint.com/news-releases/sprint-reaches-4g-lte-roaming-agreements-with-15-additional-rural-

decision not to build out its network."[25] Sprint is not acquiring network assets by eliminating a competitor as Verizon did[26] or leveraging prior USF subsidies,[27] but actually deploying new, state-of-the-art facilities.

The repeated, failed policy arguments and false accusations around build-out cannot hide or change the fact that no carrier has or will build out every corner of the United States. Carriers will always need commercially reasonable data roaming to ensure consumers have seamless, ubiquitous access to service, a public interest objective that Mobile Future and Verizon would rather ignore. The *Declaratory Ruling* helps ensure that they cannot.

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carriers.htm. As the R2P2 program demonstrates, Sprint and other competitive wireless carriers will pursue opportunities to incrementally reduce exposure to excessive roaming rates. *See* Sprint Reply Comments, WT Docket No. 05-265, at 18-19 (Aug. 20, 2014). For the foreseeable future, however, there will continue to be large areas of the country where such opportunities are not available.

[25] *Verizon Ex Parte* at 2.

[26] Although Verizon held spectrum licenses in the areas served by legacy Alltel, Verizon chose to acquire Alltel instead of investing in and building a new network duplicating Alltel's.

[27] Verizon fails to acknowledge the role high-cost universal service policies have played in both supporting buildout of its network and in guarding against competitive overbuild of its network. Verizon argues that Commission's new mobility fund programs are available for Sprint to use to build out its network, rather than rely on roaming. *Verizon Ex Parte* at 2. Verizon, however, knows that Mobility Fund Phase I funds were not available in areas already served with 3G or better wireless service. Verizon itself successfully advocated for this restriction for the Mobility Fund Phase I and for the forthcoming Mobility Fund Phase II stating that the purpose of USF funds is to expand coverage rather than subsidizing competitors in already served areas. *See e.g.*, Comments of Verizon and Verizon Wireless, WT Docket No. 10-208 at 15 (Dec. 10, 2010) ("We agree with the Commission's proposal to support only one provider per area (i.e., one winner per auction). All universal service funding is finite, and the purpose of the universal service program is not to subsidize competition in areas that are prohibitively expensive for even one provider to serve.")); Reply Comments of Verizon and Verizon Wireless WC Docket No. 10-90, WT Docket No. 10-208 at 5-6 (Jan. 7, 2013) ("Areas eligible for Phase II support are, by definition, areas that are prohibitively expensive for even one carrier to serve. It therefore makes no sense to subsidize multiple carriers in such an area at such a cost where one (subsidized) carrier can provide the desired service to consumers."). Moreover, Verizon is the beneficiary of a subsidized wireline network through support from explicit state and federal universal service funds and from implicit subsidies it received in the form of carrier access charges. While these charges were purposely established at inflated levels to support universal service goals in the pre-Act monopoly era, Verizon's wireline ILEC affiliate continues to collect them today. And it is clear that Verizon's wireline network supports Verizon's wireless operations. As Verizon's Chief Financial Officer recently noted, "[W]ireline capital -- and I won't get the number but it's pretty substantial -- is being spent on the Wireline side of the house to support the Wireless growth. So the IP backbone, the data transmission, fiber to the cell, that is all on the Wireline books but it's all being built for the Wireless Company." Transcript *available at* http://www.verizon.com/about/investors/goldman-sachs-21st-annual-communacopia-conference.

Pursuant to Section 1.1206 of the Commission's rules, this letter is being electronically filed with your office. Please let us know if you have any questions regarding this filing.

Respectfully submitted,

Charles W. McKee
Vice President, Government Affairs
Federal & State Regulatory

Maria Cattafesta
Senior Counsel, Government Affairs