

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, Iowa 50322

Defendant.

Proceeding 15-259

File No. EB-15-MD-007

OPPOSITION TO MOTION FOR INTERIM RELIEF

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TABLE OF CONTENTS

I. SUMMARY	1
II. BACKGROUND	1
A. iWireless Is Not Terminating Roaming Service To AT&T	2
B. iWireless' Comprehensive Settlement Efforts	3
III. CIRCUMSTANCES HAVE CHANGED MATERIALLY BETWEEN AT&T AND iWIRELESS.....	5
A. AT&T's Decision To Dismantle Its 2G System Is Significant.....	10
B. The Fact That AT&T Is Doing "Home Market" Roaming Is Significant	11
C. The Absence Of A Fixed Term Is Significant	13
D. AT&T Should Not Be Able To Dictate The Market Rate	14
E. Individualized Decisionmaking Is The Standard	14
IV. iWIRELESS IS PROFFERING A COMMERCIALY REASONABLE INTERIM RATE.....	16
V. AT&T'S MOTION IS MOOT AND SHOULD OTHERWISE BE DENIED	18
A. The Relief AT&T Seeks Is Contrary To Law	19
VI. CONCLUSION	22

Iowa Wireless Services, LLC (“iWireless”), by its attorneys and pursuant to the Staff letter dated October 29, 2015,¹ hereby opposes the Motion for Interim Relief (“Motion”) of AT&T Mobility LLC (“AT&T”) dated October 20, 2015. The Motion is based upon misstatements of fact and law, unsupported by relevant authority, and must be denied by the Enforcement Bureau (the “Bureau”). In accordance with the explicit process established by the Commission, iWireless has proffered an interim rate to AT&T and has committed that it will not suspend roaming service to AT&T on the iWireless network during the pendency of the parties’ dispute as long AT&T pays sums due to iWireless on a timely basis. This renders the Motion moot.

I. SUMMARY

Iowa Wireless Services, LLC (“iWireless”) is opposing the Motion for Interim Relief (“Motion”) filed by AT&T Mobility, LLC (“AT&T”). The Motion mistakes the applicable facts and law and seeks relief that is directly contrary to the well-considered Commission policy governing interim service arrangements pending the resolution of a roaming dispute. iWireless has proffered an interim rate to AT&T which meets the commercial reasonableness standard, and will not discontinue service to AT&T as long as the sums due are paid on a timely basis. As a result, the Motion is moot.

II. BACKGROUND

AT&T and iWireless are parties to a bilateral roaming agreement dated January 1, 2006, (the “Agreement”). [BEGIN CONFIDENTIAL] [REDACTED]

¹ [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL]

[REDACTED]

CONFIDENTIAL]

A. iWireless Is Not Terminating Roaming Service To AT&T

Contrary to the claim of AT&T at page 3 of the Motion, [BEGIN CONFIDENTIAL]

[REDACTED]

² [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

³ [BEGIN CONFIDENTIAL]
[END CONFIDENTIAL]

⁴ [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

[REDACTED] [END
CONFIDENTIAL]

iWireless' recognizes that licensees are obligated to make data roaming service available to other technically compatible carriers on commercially reasonable terms and conditions, and to permit a requesting carrier to obtain data roaming service on an interim basis during the pendency of a dispute. iWireless has made clear to AT&T throughout this dispute that, if the parties were unable to reach a mutually acceptable going forward agreement, iWireless would, in accordance with the Commission's established process, proffer an interim rate that, if paid by AT&T, would allow service to continue throughout the pendency of the dispute. [BEGIN
CONFIDENTIAL] [REDACTED]

[REDACTED] [END
CONFIDENTIAL]

As is set forth in detail below, iWireless has proposed an interim rate that is commercially reasonable under the totality of the circumstances. iWireless will continue to provide roaming service to AT&T so long as AT&T pays that proffered rate.

B. iWireless' Comprehensive Settlement Efforts

There are compelling reasons why iWireless did not earlier proffer proposed terms for its interim arrangement with AT&T. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL] iWireless

⁵ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

was and remains concerned that entering into an interim arrangement with AT&T will only foster endless litigation. While AT&T, with its seemingly endless resources, may consider that to be an acceptable outcome, iWireless prefers to resolve this matter and move on, [BEGIN

CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] Settlement-

related evidence is excluded under FRE 408 from adversarial pleadings to promote the amicable resolution of disputes.⁸ The public policy considerations that support protecting the confidentiality of settlement negotiations in federal court cases apply with equal force in FCC complaint proceedings. The FCC itself has acknowledged the “public policy favoring confidentiality of discussions to encourage negotiations and settlements,” and has ruled that proposals and statements made during settlement negotiations are inadmissible in any proceeding or subsequent proceeding and must be stricken from the record.⁹ For this reason, iWireless is advocating that AT&T be ordered to reform and refile its Formal Complaint deleting, among

⁶ See Motion to Compel AT&T Compliance with Confidentiality Orders and for Related Relief, Proceeding No. 15-259 dated Nov. 6, 2015.

⁷ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] iWireless reserves all of its rights with regard to this inappropriate AT&T disclosure.

⁸ See *Affiliated Mfrs., Inc. v. Aluminum Co. of Am., Inc.*, 56 F.3d 521, 526 (3d Cir. 1995) (“[T]he policy behind Rule 408 is to encourage freedom of discussion with regard to compromise.”).

⁹ See *Applications of Horne Indus.*, 91 FCC 2d 1193, 1195 (1982); see also *RKO Gen. et al.*, 2 FCC Rcd 1626, 1627 (1980). [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

other things, all references to and discussion of [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

III. CIRCUMSTANCES HAVE CHANGED MATERIALLY BETWEEN AT&T AND
iWIRELESS

[BEGIN CONFIDENTIAL] [REDACTED]

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

However, as the Commission knows, making a determination of commercial reasonableness involves a complex fact-based analysis. Carriers are entitled to set terms of each roaming arrangement on an individualized basis taking into consideration the “totality of the circumstances.”¹² Indeed, the Commission has recognized that “[p]roviders can negotiate different terms and conditions on an individualized basis, including prices, with different parties.”¹³ Here, there are myriad circumstances that serve to justify the interim rate proffered by iWireless, including, but not limited to:

1. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

As more and more AT&T customers make the transition from 2G to 3G or 4G services,

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

¹¹ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

¹² See 47 C.F.R. Section 20.12(e); see also Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Radio Service Data; WT Docket No. 05-265, *Second Report and Order*, 26 FCC Rcd 5451 at para. 87 (2011) (the “Data Roaming Order”).

¹³ *Data Roaming Order* at para. 69.

iWireless is faced with the prospect of handling a declining volume of traffic over time. It is commercially reasonable for this to be factored into the rate.

2. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL] It is commercially reasonable for iWireless to take this circumstance into consideration in setting its rates.

3. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL] In contrast, an interim arrangement is by its nature ephemeral and, [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL] iWireless must therefore view this as a short term transitional mechanism for AT&T which is a circumstance that justifies a higher price.¹⁵

4. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL] with resulting negative economic

¹⁴ The legal implication of this important fact on the determination of a commercially reasonable rate is discussed in greater detail at page 10, below.
¹⁵ This factor is discussed in greater detail below at pps. 13-14, below.

consequences for iWireless and the participating ITCs. It is commercially reasonable for iWireless to take these AT&T actions into consideration in setting the interim rate.

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

CONFIDENTIAL] This is incorrect. The recent *Declaratory Ruling*¹⁶ makes clear that rates from a prior agreement “might have been commercially reasonable at the time but may no longer reflect current marketplace conditions.”¹⁷ In this instance, circumstances have changed and iWireless is entitled to take those changes into consideration in setting both the interim and the going forward rate. Indeed, AT&T itself cites the *Declaratory Ruling* in its Formal Complaint for the proposition that the rates in the current Agreement have no presumptive validity on a going forward basis.¹⁸

6. AT&T claims that one of the two “substantive lodestars” for determining commercial reasonableness under the *Data Roaming Order* is the rates and terms in existing, negotiated roaming agreements in the marketplace.¹⁹ Here, AT&T concedes in its Formal Complaint that [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[END CONFIDENTIAL] Given these facts, neither AT&T nor the Bureau could lawfully

¹⁶ See Reexamination of Roaming Obligations of Commercial Mobile Radio Service and Other Providers of Mobile Data Services (WT Docket No. 05-265), Declaratory Ruling, DA 14-1865 released December 18, 2014 (the “*Declaratory Ruling*”).

¹⁷ *Id.* at para. 27.

¹⁸ Formal Complaint, Section III.C.1.

¹⁹ *Id.* at para. 46. This AT&T position grossly oversimplifies the applicable multi-factor, totality of the circumstances test.

²⁰ [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

conclude that an iWireless rate [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL] cannot be commercially reasonable.

7. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL] Transactions of this nature could negatively impact the economics of the iWireless operations. This conduct is legitimately factored into the iWireless determination of a commercially reasonable rate.

8. AT&T holds licenses throughout the iWireless territory [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]
In light of the abject deterioration of the AT&T/iWireless relationship, the prospect of [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL] -- which is appropriately factored into iWireless' determination of a commercially reasonable rate.

9. Because of AT&T's market dominance, and the absence of comparable alternative roaming partners for iWireless when the current Agreement was executed and last amended, AT&T was able to use its massive bargaining power [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL] With AT&T having foregone the construction of its own system in Iowa while other AT&T competitors have expanded their nationwide coverage, the parties' relative bargaining positions have changed, justifying a different rate.

10. The cooperative working relationship that iWireless enjoyed with AT&T [BEGIN

²¹ [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

11. The evolution to 4G technology in major markets can bring economic benefits to urban carriers because increased capacity can support higher customer counts and customer use. Lesser populated rural markets do not have the same prospects for economic gain through technology upgrades. Indeed, rural carriers often need to upgrade not because they are capacity-constrained and need new technology to meet increasing customer demand, but rather because they must spend money to adapt and to avoid becoming technologically obsolete. In effect, the current need to adapt to technological change subjects rural carriers to costs that must be factored into their rate structures. For example, [BEGIN

CONFIDENTIAL] [REDACTED]

[REDACTED] [END

CONFIDENTIAL] This is a relevant circumstance to be factored into the establishment of a commercially reasonable rate.

12. Other economic factors also have an impact on rural carriers including decreases over time in USF subsidies and the increasing difficulty of competing against nationwide incumbents in a wireless market that is becoming increasingly nationwide in scope. This is a relevant circumstance to be factored into the establishment of a commercially reasonable rate.

These considerations all factor into the totality of the circumstances, and must be applied in a manner consistent with the recent assurance that the Commission “will continue to allow host providers substantial room for individualized bargaining.”²²

A. AT&T’s Decision To Dismantle Its 2G System Is Significant

[BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL] In the *Data Roaming Order*, the Commission took steps to prevent carriers from only building a 2G network, providing their customers with 3G capable handsets, and then relying on roaming arrangements to provide nationwide 3G coverage. Indeed, the Commission went so far as to rule that it is commercially reasonable for a provider to condition the effectiveness of a roaming arrangement on the requesting provider’s provision of mobile data service using a generation of wireless technology comparable to the technology on which the requesting provider seeks to roam.²³ [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] Taking this factor into consideration is consistent with the repeated Commission assurances that the numerous factors identified as relevant in the case-by-case analysis are “non-exhaustive” and that carriers “may argue that the Commission should

²² *Declaratory Ruling* at para. 37.

²³ *See Data Roaming Order* at para. 44.

consider other relevant factors in determining whether a request is reasonable or a host carrier's position is unreasonable or unreasonably discriminatory under Sections 201 and 202 of the Act" or whether a request is commercially reasonable.²⁴

B. The Fact That AT&T Is Doing "Home Market" Roaming Is Significant

It also is highly significant that AT&T holds licenses that would enable it to provide its own facility-based service *throughout* the iWireless territory. In the *2007 Roaming Order*,²⁵ the Commission held that a host carrier was only required to provide automatic roaming service outside of the requesting carrier's "home market," with "home market" being defined as any geographic location where the requesting carrier had a wireless license.²⁶ This ruling was based upon the finding that "requiring home roaming could harm facilities-based competition and negatively affect buildout in these markets, thus adversely impacting network quality, reliability and coverage."²⁷ In its *2010 Roaming Order*, the Commission replaced the categorical home roaming exclusion -- over the objection of AT&T²⁸ -- with a case-by case assessment. In doing so, however, the Commission made clear that it would "continue to support the goal of promoting facilities-based competition by providing incentives for carriers to construct wireless facilities on the spectrum available to them."²⁹ The Commission found that, "as a practical matter, the 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

²⁴ See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 25 FCC Rcd 4181, para. 40 (2010) ("2010 Roaming Order"); see also *Data Roaming Order* at para. 87 (the 17 specified factors are "not exclusive or exhaustive;" providers "may argue that the Commission should consider other relevant factors").

²⁵ See 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 (2007) (the "2007 Roaming Order").

²⁶ *Id.* at para. 11.

²⁷ *Id.*

²⁸ *2010 Roaming Order* at para. 15-17.

²⁹ *Id.* at para. 18.

network.”³⁰ Indeed, AT&T acknowledged in its Complaint that the Commission has 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.”³¹ The Commission also emphasized that host carriers have “flexibility to establish the structure and the level of roaming rates,” and to take into consideration as a relevant factor the fact that a requesting carrier holds spectrum in an area where it seeks to roam.³²

When these principles are applied to the situation iWireless faces with AT&T, a rate higher than [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] for roaming service is plainly justified. AT&T holds an estimated 66 MHz to 196 MHz of spectrum in the 99 counties in Iowa³³ which means that AT&T is piggy-backing on the iWireless network in a “home market” for AT&T. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL] is not sufficiently high to incent AT&T to provide facility based coverage.

Again, to be clear, iWireless is not asking to be allowed to deny roaming service to AT&T in this home market area. But, in accordance with the standards specified by the

³⁰ *Id.* at para. 32.

³¹ Complaint at para. 46; *see Data Roaming Order* at 21-22.

³² *2010 Roaming Order* at para. 32.

³³ *See Exhibit 1.*

³⁴ [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL]

Commission, iWireless must be allowed to establish the structure and level of roaming rates to be charged. And, so long as iWireless selects a rate that is lower than rates that AT&T itself is charging in the marketplace, AT&T should not be heard to complain. Ultimately, the test is whether the iWireless position has “a reasonable basis taking into consideration all relevant precedents and decisions of the Commission.”³⁵

C. The Absence Of A Fixed Term Is Significant

The fact that any interim arrangement with AT&T will not have a fixed term, or any real certainty regarding traffic, is an additional circumstance that justifies a higher rate. Consider, for example, what happens when a real estate lease runs out. Typically, the tenant can enter into a new long term lease at one rate, or a short term month-to-month arrangement at a substantially higher rate. This point was made persuasively by former FCC Chief Economist Thomas Hazlett in public testimony he filed when the Canadian Radio-Television and Telecommunications Commission (the “CRTC”) was considering regulating roaming rates in Canada.³⁶

Say that renting a given business office on a five-year contract might cost \$4,000 per month. But renting the same exact space on a monthly basis might cost \$10,000 (or more). The cost to the building owner of creating and maintaining the space is constant between the two scenarios . . . But the monthly deal gives the buyer the added flexibility, namely the ability to move elsewhere should a better opportunity emerge. Locking down for five years reduces the degree of freedom, an inherently risky action. In these highly competitive markets buyers enjoying more short term options are charged for their value. Similarly, a Canadian wireless carrier might price network access much higher for wholesale customers who can enter and exit at will, without any long-term commitments.³⁷

Simply stated, it is commercially reasonable for a carrier to charge a higher rate for a roaming

³⁵ 2010 Roaming Order at para. 40.

³⁶ See Testimony of Thomas Hazlett filed Jan. 29, 2014 in CRTC File No.: 8620-C12-201317230 and 8620-C12-201312082

³⁷ *Id.* at p. 8 (footnotes omitted).

arrangement that is not locked in for any term, much less a long term. And, the Commission's data roaming rules make clear that the operative standard to which iWireless must adhere is commercial reasonableness.

D. AT&T Should Not Be Able To Dictate The Market Rate

One factor that should NOT be given any weight by the Commission is AT&T's claim that the rates it pays to other carriers for data roaming service -- [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] are primarily for roaming in rural areas.³⁸ *AT&T, by its own repeated public admissions is a net payor of roaming charges rather than a net seller.*³⁹ For example, in opposing the relief ultimately granted by the Commission in the *Declaratory Ruling*, AT&T stated that its data roaming agreements are "typically reciprocal and AT&T is a net purchaser of roaming" meaning that "AT&T has no incentive to seek high data roaming rates."⁴⁰ Under these circumstances, AT&T does have a powerful incentive to use its considerable market power to drive down the average roaming rates it pays, even in rural areas, despite the fact that, by its own admission, "AT&T does not dispute that roaming rates for rural areas can be higher than roaming rates in urban areas."⁴¹ The simple truth is that AT&T has sufficient power to set the roaming rate for many rural carriers, whether they like it or not. The fact that AT&T has succeeded in foisting lower rates on some rural carriers does not establish that the resulting rates are commercially reasonable *per se*.

E. Individualized Decisionmaking Is The Standard

There are other reasons as well that the Commission should not be overly influenced by

³⁸ Complaint, para. 41.

³⁹ See, e.g., *AT&T ex parte* letters in WT Docket No. 05-265 dated Nov. 12 at p. 3; Nov. 14 at p. 2, Nov. 24 at p. 1; Dec 10 at pps. 6-7 (all stating that AT&T is a net payor of roaming charges).

⁴⁰ See Opposition of AT&T to Motion for Declaratory Ruling in WT Docket No 05-265 dated July 10, 2014 at p. 19.

⁴¹ Complaint, para. 69.

AT&T's repetition *ad nauseum* of the contention that roaming rates in general or on average are declining or are exhibiting a downward trend.⁴² The core holding in the *Data Roaming Order* is that data roaming is not a common carrier service subject to Title II of the Communications Act and, as a result, the Commission expressly held that it "will not require providers to serve all comers indifferently on the same terms and conditions."⁴³ Because data roaming is not subject to Sections 201 and 202 of the Act, the talisman which empowered the Commission to adopt the data roaming rule is "individualized decisionmaking:"

Giving providers flexibility to negotiate the terms of their roaming arrangements on an individualized basis ensures that the data roaming rule best serves our public interest goals discussed herein, and the boundaries of the rule are narrowly tailored to execute our spectrum management duties under the Act.⁴⁴

The DC Circuit decision which upheld the *Data Roaming Order* on appeal hinged upon this very point:

[T]he data roaming rule leaves substantial room for individualized bargaining and discrimination in terms. The rule expressly permits providers to adapt roaming agreements to "individualized circumstances without having to hold themselves out to serve all comers indiscriminately on the same or standardized terms." *Data Roaming Order*, 26 F.C.C.R. at 5433 ¶ 45. Given this ..., the data roaming rule does "not amount to a duty to hold out facilities *indifferently* for public use."⁴⁵

Indeed, the Court went so far as to admonish the Commission to adhere to the letter of the individualized decisionmaking requirement:

In implementing the rule and resolving disputes that arise in the negotiation of roaming agreements, the Commission would thus do well to ensure that the discretion carved out in the rule's text remains carved out in fact.⁴⁶

⁴² A brief scan of the AT&T Complaint and the Attachments reveals dozens of references to this contention.

⁴³ *Data Roaming Order* at para. 68.

⁴⁴ *Id.* at para. 45.

⁴⁵ *Cellco Partnership v. FCC*, 700 F.3d 534, 548 (D.C. Cir. 2012) (citing *FCC v. Midwest Video Corp.*, 440 U.S. 689, 706 n.16 (1979)).

⁴⁶ *Id.* at 549.

In view of the applicable legal principles set forth above, the Commission must reject AT&T's effort to bring uniform standardized terms to the roaming market by citing average rates from other agreements. This is particularly true in light of the recent *Declaratory Ruling* in which the Commission rejected using rate "benchmarks" -- one of which was roaming rates charged by other providers -- for assessing commercial reasonableness. Heeding concerns expressed by AT&T and others that linking roaming rates to other rates would create a *de facto* price cap and reduce negotiating freedom,⁴⁷ the Commission concluded that "these [benchmark rates] do not function as a ceiling or as a cap on prices."⁴⁸ Given this clear ruling, the Commission should reject out of hand the false AT&T contention that "the rates and terms that prevail in existing, negotiated roaming agreements" represent one of "two substantive lodestars" of the data roaming standard. The touchstone has been and remains individualized decisionmaking based upon the totality of the circumstances.

IV. iWIRELESS IS PROFFERING A COMMERCIALY REASONABLE INTERIM RATE

iWireless previously advised AT&T that the reason iWireless hadn't proposed an interim rate was that iWireless was still making its determination as to the appropriate rate. Taking into consideration the number of factors that the Commission has identified as being relevant to a determination of commercial reasonableness (17),⁴⁹ the changing facts and circumstances cited above, and the number of interested parties with which iWireless is coordinating (65 ITCs), the process naturally took time. Additionally, iWireless was awaiting [BEGIN CONFIDENTIAL]

⁴⁷ *Id.* at para. 7.

⁴⁸ *Id.* at para. 18. The *Declaratory Ruling* also addressed the expressed concern that the benchmarking of data roaming rates "would put significant downward pressure on all roaming rates indiscriminately and would disadvantage smaller service providers in their negotiations with larger service providers." The Commission indicated that that the degree of relevance of these other rates will depend on the facts and circumstances in any given case, and gave its assurance that its approach "will continue to allow host providers substantial room for individualized bargaining." *Id.* at para. 22.

⁴⁹ See *Data Roaming Order*, para. 87.

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

As promised,⁵¹ iWireless is today proffering terms pursuant to which it will provide service to AT&T pending the resolution of the AT&T Complaint. See Exhibit 4. The rate details are as follows:

- [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]

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

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

Several aspects of the proffer are noteworthy:

1. The proffered rate is [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]

⁵⁰ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁵¹ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL].

[REDACTED] [END

CONFIDENTIAL] AT&T should not be heard to argue that the Commission must abandon its explicit policy of allowing the host carrier to set the interim rate, subject to possible true-up, when the proffered rate [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

2. To the extent the proffered rate causes AT&T to extend its facility-based service in Iowa more rapidly, consumers will benefit from having additional competitive choices.
3. The proffered rate is commercially reasonable because the Commission accords host carriers “flexibility to establish *the structure and level of roaming rates*”⁵² and allows them to apply “different terms *and conditions* on an individualized basis.”⁵³

In sum, the interim rates proffered by iWireless are commercially reasonable.

V. AT&T’S MOTION IS MOOT AND SHOULD OTHERWISE BE DENIED

The Commission contemplated the precise circumstance presented here and adopted a very specific protocol to handle the situation. Specifically, paragraph 80 of the *Data Roaming Order* expressly provides that:

[w]ith respect to disputes filed before reaching an agreement regarding the commercial reasonableness of a would-be host provider’s proffered terms and conditions . . . the Commission staff may, if requested and in appropriate circumstances, 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.⁵⁴

This procedure was expressly reaffirmed by the WTB in the very recent T-Mobile *Declaratory*

Ruling:

⁵² See *2010 Roaming Order* at para. 32 (emphasis added).

⁵³ *Data Roaming Order* at para. 68.

⁵⁴ *Id.* at para. 80 (emphasis added).

[t]o the extent a requesting provider requires data roaming services but believes a would-be host provider's proffered terms and conditions are commercially unreasonable, we remind such providers that the Commission staff may, in appropriate circumstances, order a would-be host provider to provide data roaming services on its proffered terms during the pendency of a dispute. Such service would be subject to possible true-up once a roaming agreement is in place.⁵⁵

Notably, the reiteration in the *Declaratory Ruling* of the interim service process immediately followed the discussion of situations in which parties had a prior agreement but could not agree upon a going forward rate, noting that a prior rate structure "might have been commercially reasonable at that time but may no longer reflect current marketplace conditions, which is why the Commission limited this presumption [of reasonableness] to existing agreements and not to future negotiations."⁵⁶

iWireless asks the Commission staff to follow the established interim service protocol. Since iWireless has expressly confirmed that it will not cut off service to AT&T provided that the proffered rate is paid in full on a timely basis -- and since there can be no doubt that AT&T is in a financial position to pay the interim rate subject to possible true-up -- there is absolutely no reason or precedent to abandon the express procedure adopted by the Commission. The AT&T claim for interim relief must be dismissed as moot.

A. The Relief AT&T Seeks Is Contrary To Law

Contrary to the AT&T argument at Section III.C. of the AT&T Motion, AT&T's request for interim relief does NOT conform to the Commission-established protocol for interim service in the *Data Roaming Order*. [BEGIN CONFIDENTIAL] [REDACTED]

[END]

⁵⁵ *Declaratory Ruling* at para. 27 (emphasis added).

⁵⁶ *Id.*

CONFIDENTIAL] The Commission repeatedly has rejected invitations to set even benchmarks for roaming rates, let alone specific individualized rates as between two carriers.⁵⁷ It would be particularly inappropriate for the Staff to engage in such ratemaking without the benefit of a complete record.

Second, **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED] **[END CONFIDENTIAL]** Moreover, this proposition flies in the face of the recent holdings in the *Declaratory Ruling* in which the Commission expressly declined to adopt rate benchmarks from existing agreements in the market and found that any presumption of commercial reasonableness associated with a prior agreement has no application to the subsequent negotiation of another agreement that is not yet signed.

Third, **[BEGIN CONFIDENTIAL]** [REDACTED]

[END CONFIDENTIAL] Such an *ad hoc* ruling would be unlawful, and certainly beyond the authority delegated to the Staff,⁵⁹ in light of the explicit protocol for interim service adopted by the full Commission in the *Data Roaming Order* by its own terms.

Significantly, there is absolutely no doubt that AT&T is in a financial position to sustain itself until any possible true-up decision is made.⁶⁰ **[BEGIN CONFIDENTIAL]** [REDACTED]

⁵⁷ *Declaratory Ruling* at para. 30; *Data Roaming Order* at para. 68.

⁵⁸ **[BEGIN CONFIDENTIAL]** [REDACTED]

[END CONFIDENTIAL]

⁵⁹ It is axiomatic that the Enforcement Bureau has no delegated authority to resolve novel questions of law or policy that cannot be resolved under existing precedents or guidelines. See 47 C.F. R. Section 0.311(a)(3).

⁶⁰ AT&T recently reported wireless revenues of *over \$18 billion dollars*. See Phil Goldstein, AT&T Leans on Prepaid, Connected Devices for Subscriber Growth in Q3, Fierce Wireless, October 23, 2015.

[REDACTED] [END CONFIDENTIAL] In effect, AT&T is seeking interim relief that could actually cause the precise loss of customer service that AT&T claims to be seeking to avoid, and which the Commission is determined to avoid.

The AT&T Motion argues that the FCC has the legal authority to grant the extraordinary interim relief it is requesting. But, AT&T only cites to general provisions in the Communications Act and clearly distinguishable precedents,⁶¹ and admits, as it must, that “the Commission “has declined to ‘prescribe the legal and evidentiary showings required’ for interim relief,” even assuming such authority existed.⁶² AT&T has utterly failed to overcome the inalterable fact that, in this particular context, the Commission has set forth a clear, established procedure, specifically crafted to address the precise circumstances at issue here.⁶³

In sum, iWireless, as the host party, proposes an interim rate in an instance where a dispute has been filed before the parties have reached agreement relating to terms and conditions, and is willing to continue service to AT&T while such interim rate is paid – thus meeting its requirements under the *Data Roaming Order* and rendering this Motion by AT&T moot.

⁶¹ AT&T cites to standstill orders involving Ameritech (Motion, n.38) and programming tying arrangements (Motion n. 48) that premised injunctive relief on an irreparable loss of customers. AT&T need not lose any customers if it follows the interim relief protocol specified by the Commission.

⁶² Motion, p 8.

⁶³ Even if the Bureau were to examine the four injunctive relief factors proposed for consideration by AT&T, the relief AT&T seeks would not be granted because the balance of the equities clearly weighs in favor of iWireless: (1) Likelihood of Success on the Merits - iWireless has and will demonstrate further that its proposed rates are commercially reasonable; (2) The Threat of Irreparable Harm - iWireless has reaffirmed that it will provide data roaming service to AT&T so long as its interim rate is paid, which AT&T can afford to do, and the payments are subject to possible true-up; (3) Balance of Harms - Neither AT&T nor its customers will be harmed by an FCC decision to utilize the interim procedures it has established. Varying the procedure threatens a loss of service; (4) The Public Interest - In addition to the foregoing considerations which have public interest ramifications in favor of iWireless, there is a distinct public interest benefit in having the FCC resolve its first roaming dispute using the interim procedures it has specified in recent orders rather than adopting novel *ad hoc* procedures.

VI. CONCLUSION

For the foregoing reasons, iWireless requests that the Bureau deny the Motion.

By: /s/ Carl Northrop

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Counsel for Iowa Wireless Services, LLC

Dated: November 20, 2015

PROPOSED ORDER

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, Iowa 50322

Defendant.

Proceeding 15-259

File No. EB-15-MD-007

[PROPOSED] ORDER

Adopted: _____, 2015

Released: _____, 2015

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

1. On October 23, 2015, AT&T Mobility LLC ("AT&T") filed its Motion for Interim Relief (the "Motion").
2. On November 20, 2015, Iowa Wireless Services, LLC filed its Opposition to the Motion.
3. The Motion is DENIED. In accordance with the procedures established by the Commission, iWireless is ordered to provide data roaming service to AT&T during the pendency of this dispute on the terms proffered by iWireless on November 20, 2015.

FEDERAL COMMUNICATIONS COMMISSION

Market Disputes Resolution Division Enforcement Bureau

EXHIBIT 1

AT&T Spectrum Holdings – Iowa Counties

County	Total Amount of Spectrum
Pottawattamie	130 MHz
Scott	130 MHz
Dallas	108 MHz
Polk	108MHz
Warren	108 MHz
Linn	118 MHz
Black Hawk	86 MHz
Bremer	96 Mhz
Woodbury	153 MHz
Dubuque	128 MHz
Johnson	116 MHZ
Adams	146 MHz
Fremont	126 MHz
Mills	146 MHz
Montgomery	146 MHz
Page	146 MHz
Taylor	146 MHz
Clarke	116 MHz
Decatur	116 MHz
Lucas	116 MHz
Ringgold	116 MHz

Union	116 MHz
Wayne	116 MHz
Appanoose	86 MHz
Davis	96 MHz
Jefferson	96 MHz
Monroe	96 MHz
Van Buren	96 MHz
Wapello	96 MHz
Des Moines	86 MHz
Henry	86 MHz
Lee	86 MHz
Louisa	86 MHz
Muscatine	86 MHz
Cedar	96 MHz
Clinton	106 MHz
Jackson	126 MHz
Jones	106 MHz
Iowa	118 MHz
Jasper	128 MHz
Keokuk	108 MHz
Mahaska	108 MHz
Marion	128 MHz
Poweshiek	128 MHz
Washington	128 MHz
Adair	116 MHz

Audubon	146 MHz
Cass	146 MHz
Guthrie	116 MHz
Madison	116 MHz
Crawford	151 MHz
Harrison	171 MHz
Monona	151 MHz
Shelby	181 MHz
Calhoun	108 MHz
Carroll	128 MHz
Greene	128 MHz
Ida	128 MHz
Sac	118 MHz
Boone	118 MHz
Hamilton	118 MHz
Humboldt	118 MHz
Story	128 MHz
Webster	118 MHz
Wright	118 MHz
Benton	118 MHz
Grundy	108 MHz
Hardin	128 MHz
Marshall	108 MHz
Tama	108 MHz
Allamakee	108 MHz

Buchanan	108 MHz
Clayton	128 MHz
Delaware	128 MHz
Fayette	108 MHz
Winneshiek	98 MHz
Butler	88 MHz
Chickasaw	78 MHz
Floyd	88 MHz
Howard	66 MHz
Mitchell	76 MHz
Cerro Gordo	98 MHz
Franklin	98 MHz
Hancock	98 MHz
Kossuth	98 MHz
Winnebago	98 MHz
Worth	98 MHz
Buena Vista	108 MHz
Clay	153 MHz
Dickinson	108 MHz
Emmet	108 MHz
Palo Alto	118 MHz
Pocahontas	118 MHz
Cherokee	131 MHz
Lyon	196 MHz
O'Brien	96 MHz

Osceola	136 MHz
Plymouth	106 MHz
Sioux	96 MHz

EXHIBIT 2

PUBLIC VERSION
CONFIDENTIAL INFORMATION REDACTED

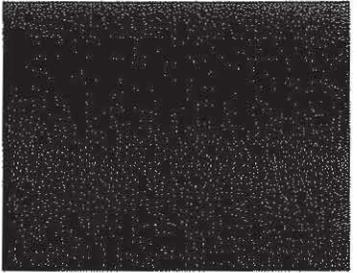
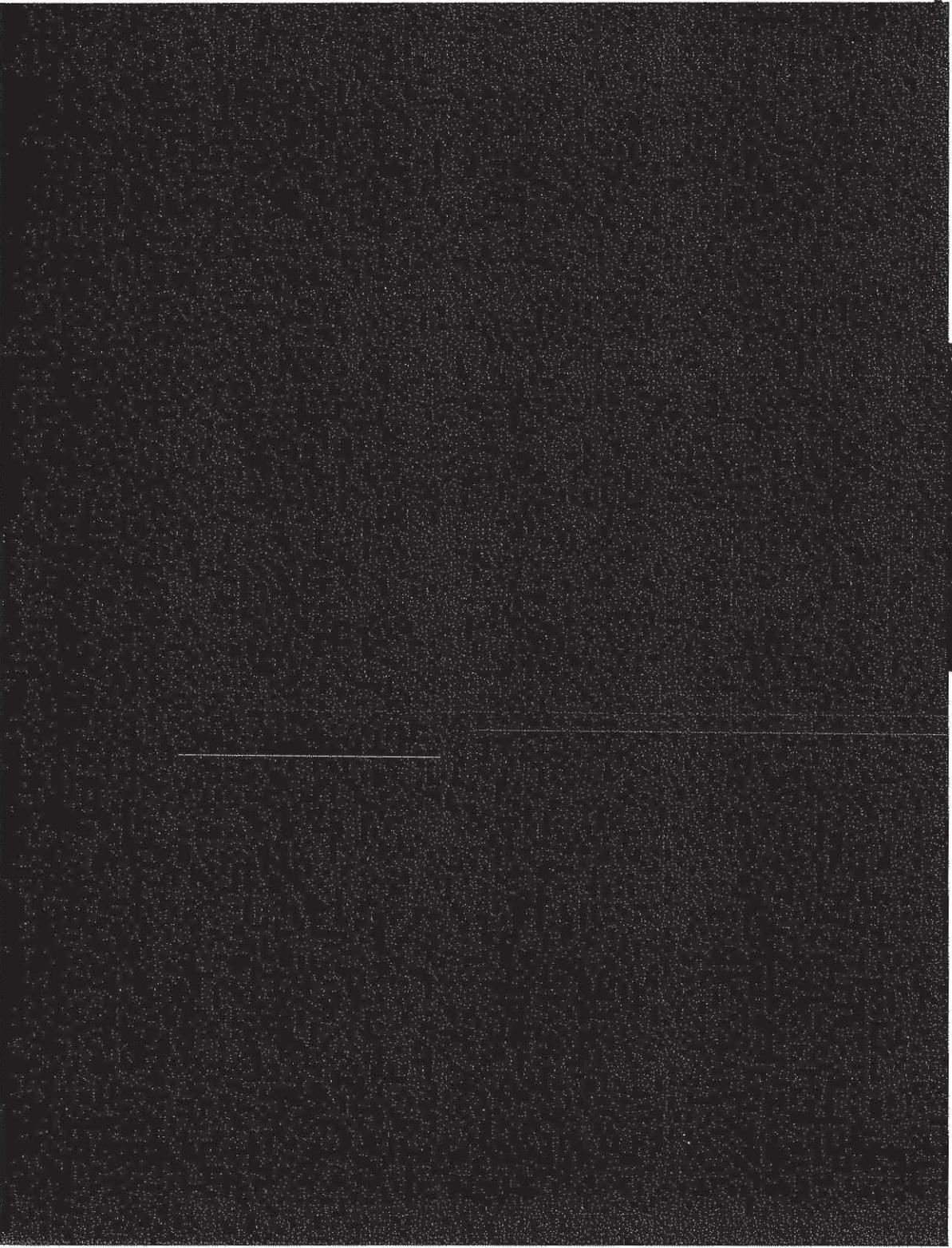


EXHIBIT 3

PUBLIC VERSION
CONFIDENTIAL INFORMATION REDACTED

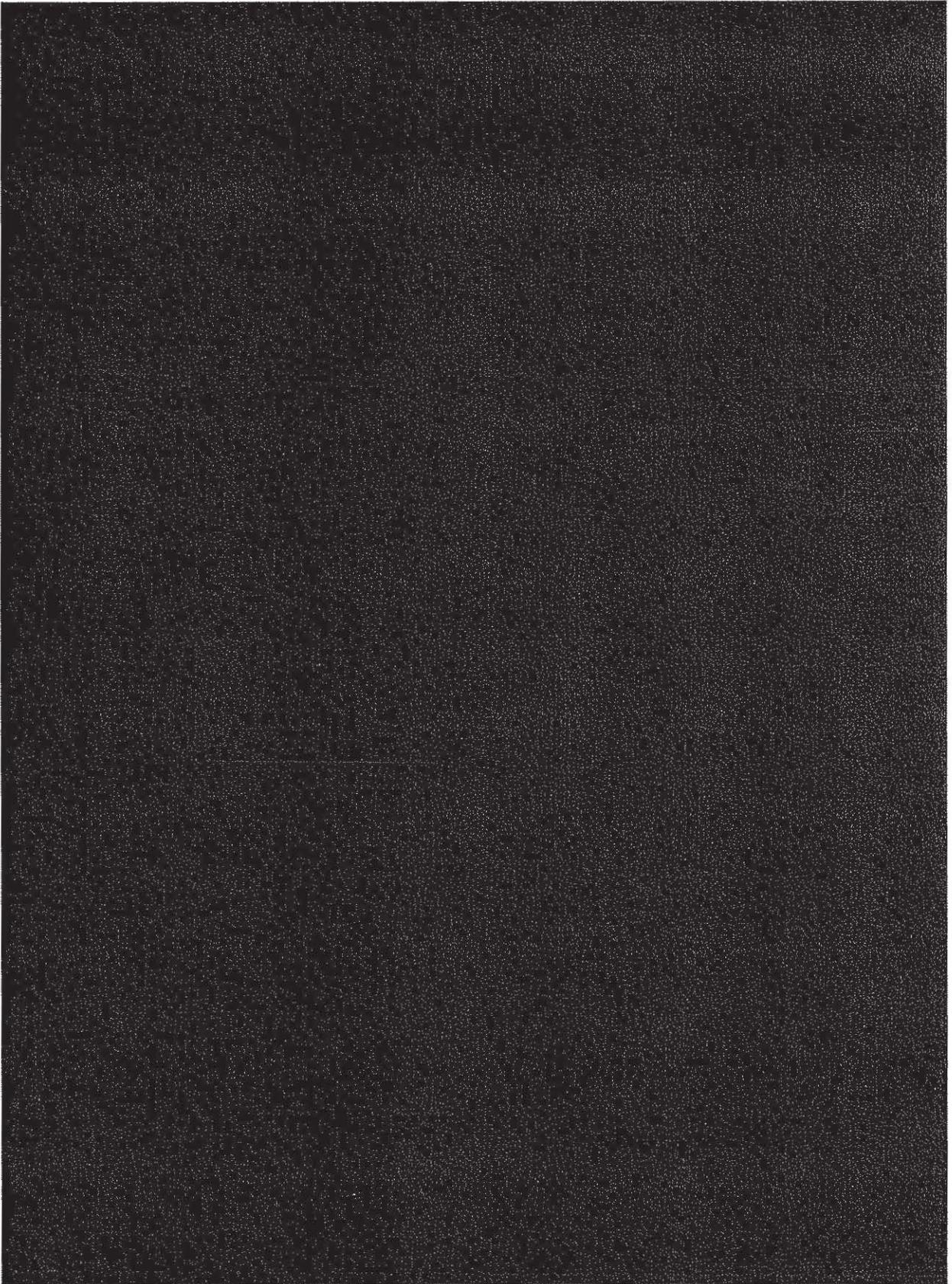


EXHIBIT 4

CONFIDENTIAL INTERIM ROAMING RATE

[REDACTED]

[REDACTED]

1, [REDACTED]

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

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

5. [REDACTED]

6. [REDACTED]

1 [REDACTED]

2 [REDACTED]

PUBLIC VERSION
CONFIDENTIAL INFORMATION REDACTED

a.

[REDACTED]

b.

[REDACTED]

c.

[REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2015, I caused the foregoing Opposition to Motion for Interim Relief of Iowa Wireless Services, LLC to be served on Complainant and provided to the Commission as indicated below.

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

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/s/ Jessica Gyllstrom

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