

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.

Proceeding No 15-259

File No. EB-15-MD-007

**MOTION OF AT&T MOBILITY LLC FOR LEAVE TO FILE A REPLY IN SUPPORT
OF ITS MOTION FOR INTERIM RELIEF**

Pursuant to Rule 1.727(d) and Rule 1.3 of the Commission's Rules, AT&T Mobility LLC ("AT&T") respectfully seeks leave to file a Reply in Support of Its Motion for Interim Relief.

There is good cause for granting this motion because the Opposition filed by Iowa Wireless Services, LLC ("iWireless") introduces new arguments relevant to AT&T's request for interim relief, including an extended defense of the [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] rate that it proposes for the first time in its Opposition. The public interest supports allowing AT&T to submit the reply attached as Exhibit A to this motion to address

iWireless' proposed interim rates and iWireless' arguments seeking to reconcile those rates with the Commission's data and voice roaming rules.

ARGUMENT

Rule 1.3 of the Commission's Rules provides that "[a]ny provision of the [Commission's] rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown." 47 C.F.R. § 1.3. Here, there is "good cause" for allowing AT&T to file a Reply in Support of Its Motion for Interim Relief because the Opposition filed by iWireless raises legal and factual issues that AT&T should be permitted to address.

First, near the end of its Opposition, iWireless, for the first time, sets forth its proposal for interim rates during the pendency of the Complaint proceeding before Commission Staff. Opposition to Motion for Interim Relief ("Opp.") at 17. AT&T should be permitted an opportunity to address that proposal and whether it is consistent with the Commission's regulatory standards governing data and voice roaming and with its rules for interim rate relief. Because iWireless had not disclosed its actual rate proposal until it filed its Opposition, AT&T had no opportunity to address it in its initial Motion for Interim Relief. Allowing AT&T to address iWireless' specific proposal would further the public interest by allowing the Commission to consider both parties' views regarding the validity of iWireless' proposal.

Second, iWireless devotes significant effort attempting to justify its proposal based on the "totality of the circumstances." Opp. at 3, 7. Specifically, iWireless identifies a laundry list of factors that it contends support imposition of a [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] rate for data roaming. *Id.* at 5-10. Here, too, AT&T should be permitted to address the "facts" identified by iWireless in support of its proposal as well as address other

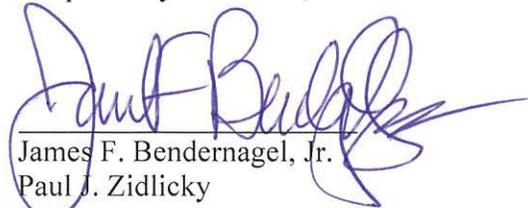
factors relevant to the Commission's analysis of iWireless' rate proposals that were omitted from iWireless' presentation.

Finally, iWireless' Opposition argues that the Commission must accept iWireless' proposal and has no authority to provide any other interim remedy. Opp. at 19-20. AT&T should be permitted to respond to iWireless' discussion of the Commission's legal authority to provide interim relief during the period that it considers and addresses the claims in AT&T's Formal Complaint. Allowing AT&T to address these new issues would advance the public interest by providing the Commission with the benefit of both parties' views regarding the scope of its legal authority.

CONCLUSION

For these reasons, the Commission should permit AT&T to file its Reply in Support of Its Motion for Interim Relief. A copy of that reply is attached as Exhibit A, hereto.

Respectfully submitted,



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Dated: November 30, 2015

Exhibit A

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AT&T MOBILITY LLC'S REPLY IN SUPPORT OF ITS MOTION FOR INTERIM
RELIEF

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Counsel for AT&T Mobility LLC

Dated: November 30, 2015

CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] rate is at least [BEGIN

CONFIDENTIAL] [REDACTED]

[REDACTED] [END

CONFIDENTIAL] iWireless' proposed data rate is also [BEGIN CONFIDENTIAL]

[REDACTED] [END CONFIDENTIAL] Although iWireless

is correct that the Commission may take into account changes in market conditions to avoid

“perpetuating terms negotiated years ago,” that factor weighs heavily *against* iWireless because

data roaming rates have *fallen* significantly since the parties' existing Agreement was negotiated

in [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]² Consequently, allowing

iWireless to impose data roaming charges [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] would fly in the face of the Commission's

pronouncements and flout the commercial reasonableness standard.

iWireless attempts to justify its interim rate proposal based on the “totality of the circumstances.” Opp. at 3, 5. But, in so arguing, it ignores (i) the rates that other wireless

providers, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] (ii) that market rates for roaming

services have been falling for years since the parties' negotiated a [BEGIN CONFIDENTIAL]

[REDACTED] [END CONFIDENTIAL] Further, many of the

² The unreasonableness of iWireless' proposal is even more apparent when one considers what it would cost to AT&T for its customers to download content. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

other “facts” that iWireless highlights are either unsubstantiated or misleadingly taken out of context. For example, iWireless presents no evidence that its existing Agreement with AT&T was the result of AT&T’s exercise of market power, nor does that claim make much sense given that [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] Likewise, the fact that AT&T has spectrum in Iowa does not authorize iWireless to impose commercially unreasonable rates.³

Finally, as shown in Part III, below, AT&T’s request for Interim Relief is not “moot” because the Commission Staff has clear authority to prevent iWireless from unilaterally imposing whatever rates it desires during the pendency of the Complaint proceeding. Under the *Data Roaming Order*, Commission Staff may (i) order a host carrier to provide data roaming in accordance with its Best and Final Offer subject to true-up and (ii) “move expeditiously with fines, forfeitures and other appropriate remedies” if “a would be host provider violates its duty by actions that unduly delay or stonewall the course of negotiations.”⁴ iWireless’ conduct fully justifies Commission Staff exercising such authority in the present situation.

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL] Given this course of conduct (which continues with its Interim Rate proposal), Commission Staff should reject iWireless’ proposed rates and direct iWireless to continue providing service at the current contract rates during the pendency of the Complaint

³ Declaratory Ruling, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, ¶ 29 (Dec. 18, 2014) (the “Declaratory Ruling”).

⁴ 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”); *id.* ¶ 86 (explaining that “terms and conditions offered by the host provider [may be] so unreasonable as to be tantamount to a refusal to offer a data roaming agreement”).

proceeding. Alternatively, Commission Staff should direct iWireless to make a Best and Final Offer that is commercially reasonable (in no event should the rates be higher than the rates in the Agreement adopted by the parties [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] and order iWireless to provide service in accordance with that Best and Final Offer while the Complaint proceeding is pending. And, to reduce any incentive for further delay, the Commission should (i) clarify that the interim rates will be subject to true-up, and (ii) permit AT&T to pay into escrow amounts, if any, that are in excess of the current rates under the parties' Agreement.

II. IWIRELESS' PROPOSED INTERIM RATES ARE NOT REASONABLE

iWireless' proposed Interim Rates are not reasonable under the Commission's regulatory standards. Opp. at 17. iWireless proposes to charge AT&T [BEGIN CONFIDENTIAL]

[REDACTED] [END CONFIDENTIAL] *Id.* The proposals are well in excess of the rates currently being negotiated in the commercial marketplace. Further, iWireless' arguments in support of its proposal are inconsistent with the Commission's roaming decisions, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

A. iWireless' Proposed Data Roaming Rate is Not Commercially Reasonable

As explained in AT&T's Formal Complaint and Legal Analysis, data roaming rates have declined significantly since 2008. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]⁵

The evidence further establishes that rates for roaming in rural areas continue to decline. Indeed, Mr. Meadors presented testimony showing that over the past year AT&T has entered into

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END

CONFIDENTIAL] In no instance has AT&T recently entered into a roaming agreement with any provider that has rates as high as the interim [BEGIN CONFIDENTIAL] [REDACTED] [END

CONFIDENTIAL] data rate that iWireless has proffered. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

Current market conditions thus demonstrate that iWireless' proposed rate of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] is not commercially reasonable.

Likewise, evidence relating to the other pricing points identified in the Wireless Bureau's 2014 *Declaratory Ruling* also shows the unreasonableness of iWireless' proposed interim data roaming rate.⁸ As is clear from the evidence presented by AT&T's expert witness, Jonathan

Orszag, iWireless' proposed data rate of [BEGIN CONFIDENTIAL] [REDACTED] [END

⁵ See Declaration of Gram Meadors ¶¶ 6-7 (Oct. 20, 2015) ("Meadors Decl.").

⁶ *Id.* ¶ 7. Likewise, Mr. Meadors provided evidence that rates for voice roaming service recently negotiated by AT&T have been in the range of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] per MOU. *Id.* For the reasons set forth in the Complaint, iWireless' proposed voice rate likewise is unreasonable and unreasonably discriminatory under the Commission's regulatory standards governing voice roaming.

⁷ See Declaration of Jonathan Orszag, Tabl. B-2 (Provider No. 9) (Oct. 20, 2015) ("Orszag Decl.").

⁸ While it is true that the Commission did not establish any of these reference prices as "benchmarks," it did make clear that these pricing points were relevant and that requesting providers could "adduce evidence" as to whether the proffered roaming rates are "substantially in excess" of retail rates, international rates and MVNO/resale rates. *Declaratory Order* ¶¶ 17-20.

CONFIDENTIAL] is “substantially in excess” of each of these reference points.⁹ Indeed, that iWireless’ proposal is commercially unreasonable is clear when one compares its proposed data rate of **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]**¹⁰ While AT&T agrees with the Commission that retail rates cannot be used as a benchmark, there is no justification for this type of massive disparity.

Finally, as noted above, the unreasonableness of iWireless’ data roaming rate is most graphically demonstrated when one looks at the costs associated with downloading content. The following chart illustrates the potential download costs associated with iWireless’ proposed data rate. **[BEGIN CONFIDENTIAL]**



[END CONFIDENTIAL] These examples underscore that iWireless’ proposal is commercially unreasonable.

In sum, there is no justification under the Commission’s data roaming rules for iWireless’ data roaming proposal to AT&T.

⁹ Orszag Decl. ¶¶ 28-29.

¹⁰ *Id.* ¶ 28.

B. None of iWireless' Purported Justifications Supports Imposition of a [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Data Roaming Rate

In seeking to justify its proposal, iWireless does not dispute that its proposed data rate greatly exceeds [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL] Instead, it advances a laundry list of factors to suggest that, under the “totality of circumstances,” Opp. at 3, 5, iWireless is justified in charging AT&T (i) a data roaming rate [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END

CONFIDENTIAL] or (ii) a voice roaming rate [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] None of the factors identified by iWireless justifies its proposed rates.

As an initial matter, there is no merit to iWireless' claim that AT&T has engaged in a relentless campaign of harassment that has “subjected iWireless to extraordinary ongoing costs and expenses that were not factored into the prior rate.” Opp. at 9. To the contrary, AT&T has simply sought to enforce its rights under the parties' Agreement and to negotiate new roaming rates that are consistent with the Commission's roaming rules. Neither of those activities is in any way inappropriate. Indeed, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

Equally baseless is iWireless' claim that it is entitled [BEGIN CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL] Opp. at 8. Given that iWireless' rates are above market and not commercially reasonable, it comes as no surprise that AT&T [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

There is also no merit to iWireless' claim that its proposed [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED] [END
CONFIDENTIAL]¹²

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

CONFIDENTIAL]

Similarly misplaced is iWireless' claim that its Agreement with AT&T [BEGIN

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

¹² Similarly lacking in merit are iWireless' observations [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹³ See Meadors Decl. ¶¶ 32-33.

¹⁴ *Id.* ¶ 33.

¹⁵ *Id.*

¹⁶ *Id.* [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] See Meadors Decl. ¶ 32.

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

Finally, in discussing the “totality of the circumstances,” iWireless fails to disclose to the Commission that iWireless [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

C. The Commission’s Roaming Decisions Do Not Support iWireless’ Proposed Interim Rates

None of the Commission’s prior roaming decisions supports iWireless’ proposed interim rates. *See Opp.* at 11-16. In its 2011 *Data Roaming Order*, the Commission identified a series of relevant factors in assessing commercial reasonableness. The first of those factors related to whether the parties had negotiated in good faith; the second factor sought to determine whether the offered rates were so unreasonable as to constitute a refusal to make an offer.¹⁷ [BEGIN

CONFIDENTIAL] [REDACTED]

[REDACTED]

¹⁷ *Data Roaming Order* ¶ 86.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

Further, the 2014 *Declaratory Ruling* does not support iWireless' position. Opp. at 7, 14. iWireless quotes the 2014 *Declaratory Ruling* for the proposition that “rates from a prior agreement ‘might have been commercially reasonable at the time but may no longer reflect current marketplace conditions.’” *Id.* at 7. Here, however, marketplace conditions since 2008 have reflected a *decline* in roaming rates. As a result, the 2014 *Declaratory Ruling* supports the view that the prior [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] rate reflected in the Agreement between AT&T and iWireless cannot be presumed to be commercially reasonable because the marketplace now reflects even *lower* data rates. The 2014 *Declaratory Ruling* cannot be twisted to support iWireless' view that a [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] supports the commercial reasonableness of a [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] rate proposal in 2015 in the face of undisputed evidence that data rates have fallen since 2008.

¹⁸ iWireless cites paragraph 44 of the *Data Roaming Order*, Opp. at 10 n.23, but that paragraph does not assist iWireless. In that paragraph, the Commission explained that they could tailor their roaming requests “to a wide range of ever changing technologies.” *Data Roaming Order* ¶ 44. The *Data Roaming Order* thus allows AT&T to obtain roaming services that meet the needs of its customers.

¹⁹ *Id.* ¶ 86.

Canadian Radio-Television and Telecommunications Commission. Opp. at 13. In that proceeding, Mr. Hazlett was not discussing interim rates but rather was arguing against the imposition of rate caps, which has nothing to do with the matters at issue here.

III. THE COMMISSION HAS TO THE POWER TO IMPOSE AN APPROPRIATE INTERIM REMEDY

iWireless also is mistaken in suggesting that the Commission must acquiesce in whatever roaming rates iWireless unilaterally proposes during pendency of this dispute. See Opp. at 18-21. To support its position that the Commission is powerless to do otherwise, iWireless focuses on the second sentence of Paragraph 80 of the *Data Roaming Order*, which states, in relevant part, that “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.”²³ iWireless’ mischaracterization of the Commission’s authority fails for two reasons.

First, by its terms, the quoted language from Paragraph 80 does not *obligate* the Commission to accept whatever rate a host carrier proffers. Rather, Paragraph 80 makes clear that (i) the Commission has discretion whether to impose a proffered rate (“the Commission staff may . . . order”); and (ii) a host provider’s proffered rate will apply during the pendency of proceedings before the Commission only “in *appropriate circumstances*.”²⁴ Here, iWireless has demanded interim rates [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] In these circumstances,

²³ *Data Roaming Order* ¶ 80. iWireless similarly cites Paragraph 27 of the *Declaratory Ruling*, which, includes substantially identical language. See *Declaratory Ruling* ¶ 27 (“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,” subject to true-up).

²⁴ *Id.* (emphases added).

[REDACTED]

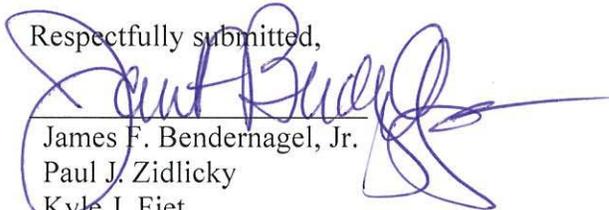
[REDACTED] [END CONFIDENTIAL] during the pendency of the dispute.

Finally, in the alternative, the Commission can and should impose the following interim remedy. Consistent with Paragraph 80 of the *Data Roaming Order*, the Commission should (i) direct iWireless to make a Best and Final Offer that is commercially reasonable, not based on the assumption that the proposal is interim in nature, and in no event higher than the rates [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] (ii) order iWireless to provide service to AT&T in accordance with that Best and Final Offer during the pendency of the complaint proceeding; (iii) clarify that the rates charged during the pendency of this dispute are subject to true-up, and (iv) permit AT&T to pay into escrow any amounts charged by iWireless under its Best and Final Offer that are in excess of the current rates in the Agreement.

IV. CONCLUSION

AT&T respectfully requests that the Commission (i) reject iWireless' proposed Interim Rates, and (ii) require iWireless to provide service during the pendency of the Complaint proceeding consistent with the parties' current Agreement. Alternatively, the Commission should direct iWireless to provide service during the pendency of the Complaint proceeding pursuant to its Best and Final Offer to AT&T (subject to true-up), and if iWireless' Best and Final Offer exceeds its current rates with AT&T, then allow AT&T to pay any amounts in excess of the current rates into escrow pending resolution of the Complaint proceeding.

Respectfully submitted,



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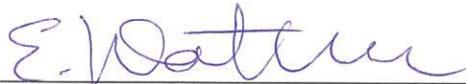
CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2015, I caused the foregoing submission to be served on Defendant and provided to the Commission as indicated below.

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