

PUBLIC VERSION

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

In the Matter of

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

Complainant,

v.

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

Defendant.

Proceeding No. 15-259

File No. EB-15-MD-007

**AMENDED FORMAL COMPLAINT AND LEGAL ANALYSIS
OF AT&T MOBILITY LLC**

[BEGIN CONFIDENTIAL]

[REDACTED] [END CONFIDENTIAL] When those negotiations failed, AT&T filed its Formal Complaint and Motion for Interim Relief with Commission Staff on October 21, 2015.¹⁰ Thereafter, the Commission directed the parties to submit Best and Final Offers (“BAFO”) reflecting the terms upon which they would be willing to provide data and voice roaming services.¹¹

⁵ See *id.* ¶¶ 3, 19-29.

⁶ See *id.* ¶¶ 3, 27.

⁷ See *id.* ¶¶ 3, 11, 37.

⁸ See *id.* ¶¶ 3, 38.

⁹ See *id.*

¹⁰ See *id.* ¶¶ 3, 43; Formal Complaint And Legal Analysis Of AT&T Mobility LLC (Oct. 21, 2015); AT&T’s Motion for Interim Relief (Oct. 21, 2015).

¹¹ See *id.* ¶ 3, 44; Notice of Formal Complaint at 3 (Oct. 26, 2015); see Letter Order (Nov. 17, 2015) (requiring parties to exchange Best and Final Offers on December 4, 2015).

of arm's-length agreements it has with other wireless providers—as well as the other factors identified in the Wireless Telecommunications Bureau's *Declaratory Ruling*.¹⁸ Likewise, AT&T's proposed voice roaming rates are consistent with the rates that are being offered in the marketplace and the Commission's rules.¹⁹ Finally, AT&T's other proposed terms and conditions are commercially reasonable terms and conditions that are standard in roaming agreements.²⁰

In this Amended Complaint, AT&T seeks an order from the Commission directing iWireless to provide roaming services to AT&T on terms and conditions that are commercially reasonable (for data roaming) and just, reasonable, and nondiscriminatory (for interconnected voice, data, and text roaming services).²¹ AT&T further seeks a determination that its BAFO complies with the Commission's roaming rules and that iWireless' BAFO violates the Commission's roaming rules.²² Finally, AT&T seeks imposition of interim rates during the

¹⁸ Declaratory Ruling, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, ¶ 9 (Dec. 18, 2014) (“*Declaratory Ruling*”). See Amended Complaint ¶¶ 87-93.

¹⁹ See *id.* ¶¶ 5, 94.

²⁰ See *id.* ¶ 5, 95.

²¹ See *id.* ¶¶ 6, 114.

²² See *id.*

pendency of this proceeding subject to true-up when the Commission resolves AT&T's Complaint.²³

In support of its Amended Complaint, AT&T is filing two declarations. First, AT&T is filing a declaration by Gram Meadors, Assistant Vice President of Alliance/Partnership, Wireless Roaming Strategy, at AT&T. Mr. Meadors' declaration discusses AT&T's provision and use of roaming services generally, describes the parties' negotiations (including the parties' BAFOs) and explains how the BAFOs compare to current market conditions. Second, AT&T is filing a declaration by Jonathan Orszag, Senior Managing Director at Compass Lexecon, LLC, an economic consulting firm. Mr. Orszag's declaration discusses the data roaming rates proposed by the parties' in their respective BAFOs, concludes that the data rates proposed by AT&T are commercially reasonable and explains why the data rates proposed by iWireless are not commercially reasonable.

Pursuant to Section 1.724(c) of the Commission's rules, AT&T's Amended Complaint includes a Legal Analysis. In addition, AT&T has also provided (i) an Information Designation in compliance with Sections 1.724(f)(1), (2), (3) and 1.724(g); (ii) AT&T's First Set of Interrogatories; and (iii) certifications that it has paid the applicable filing fees and that it has

²³ See *id.* [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL] AT&T nevertheless has included its request for interim relief in this Amended Complaint to preserve its rights, including the right to a true-up, after the Commission resolves the other matters at issue in this proceeding.

provided service of the Amended Complaint to counsel for iWireless.²⁴ AT&T has also provided courtesy copies to the Commission's Enforcement Bureau.

²⁴ By email dated December 16, 2015 Commission Staff confirmed that there was no need to provide proposed findings of fact and conclusions of law. *See* Email from L. Saks to E. Watkins, "RE: AT&T Mobility LLC v. Iowa Wireless Services, LLC, File No. EB-15-MD-007 – Joint Status Report" (Dec. 16, 2015).

TABLE OF CONTENTS

Formal Amended Complaint and Legal Analysis.....Tab 1

Declaration of Gram Meadors and ExhibitsTab 2

Declaration of Jonathan Orszag and AppendicesTab 3

Information Designation Pursuant to Rules 1.724(f)(1), (2), (3), and 1.724(g)Tab 4

AT&T’s First Set of Interrogatories to WCX.....Tab 5

Certificate of ServiceTab 6

Tab 1

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OF AT&T MOBILITY LLC**

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TABLE OF CONTENTS

OVERVIEW AND REQUEST FOR RELIEF 1

JURISDICTIONAL STATEMENT 6

THE PARTIES..... 7

I. FACTS IN SUPPORT OF THE FORMAL COMPLAINT 8

 A. The Evolving Market for Roaming Services 8

 B. The Unsuccessful Renegotiation of the AT&T/iWireless Agreement 11

 1. 2012-13 Negotiations..... 12

 2. 2014-15 Negotiations..... 13

 3. AT&T Enforces Its Rights Under the Agreement. 20

 4. iWireless’ Termination Of The Agreement and Subsequent
 Developments. 23

 5. AT&T’s and iWireless’ Best and Final Offers. 27

II. LEGAL STANDARDS 30

 A. Data Roaming 30

 B. Voice Roaming 34

 C. Interim Relief 36

III. IWIRELESS’ BEST AND FINAL OFFER VIOLATES THE COMMISSION’S
ROAMING RULES..... 38

 A. iWireless’ Proposed [BEGIN CONFIDENTIAL] [REDACTED]
 [REDACTED] [END CONFIDENTIAL] Is Not Commercially Reasonable. 39

 B. iWireless’ BAFO Would Result in Effective Data Rates That Are Not
 Commercially Reasonable When Compared To Market Rates. 42

 C. iWireless’ Proposed Voice “Rates” Are Unreasonable. 45

 D. iWireless’ Payment Terms Are Not Reasonable. 47

 E. iWireless’ [BEGIN CONFIDENTIAL] [REDACTED]
 [REDACTED] [END CONFIDENTIAL] Is Not Reasonable. 48

F.	Other Unreasonable Terms and Conditions.....	49
IV.	AT&T’S BEST AND FINAL OFFER COMPLIES WITH THE COMMISSION’S ROAMING RULES.....	51
A.	AT&T’s Proposed Data Roaming Rates Are Commercially Reasonable.	52
B.	AT&T’s Proposed Voice Roaming Rates Are Reasonable.	55
C.	Other Terms of AT&T’s BAFO.	56
	COUNT I	56
	COUNT II.....	58
	COUNT III.....	59
	PRAYER FOR RELIEF	60
	STATEMENT REGARDING SUPPORTING MATERIAL.....	61

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**AMENDED FORMAL COMPLAINT
AND LEGAL ANALYSIS OF AT&T
MOBILITY LLC**

OVERVIEW AND REQUEST FOR RELIEF

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

2. Until December 20, 2015, AT&T and iWireless were operating under a bilateral agreement, first signed by the parties (or their predecessors) on January 1, 2006 (the

“Agreement”).¹ Under this Agreement, as amended, AT&T paid iWireless (i) a data roaming rate of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] which, as discussed below, is not commercially reasonable;² and (ii) a voice roaming effective rate of approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] per minute of use (“mou”), which, as discussed below, is not just and reasonable and is unreasonably discriminatory.³ Indeed, iWireless has previously [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

3. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ See [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

² See Meadors Decl. ¶ 9; *infra* ¶¶ 18, 62-63, 68-71.

³ See Meadors Decl. ¶ 9 & n.8; *infra* ¶¶ 72-74, 94.

⁴ See *infra* ¶ 21. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

⁵ See *infra* ¶¶ 19-29.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

When those negotiations failed, AT&T filed its Formal Complaint and Motion for Interim Relief with Commission Staff on October 21, 2015.¹⁰ Thereafter, the Commission directed the parties to submit Best and Final Offers (“BAFO”) reflecting the terms upon which they would be willing to provide data and voice roaming services.¹¹

4. In its BAFO provided on December 4, 2015, iWireless’ proposed [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

⁶ *Infra* ¶ 27.

⁷ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

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

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

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

¹¹ Notice of Formal Complaint at 3 (Oct. 26, 2015); *see* Letter Order (Nov. 17, 2015) (requiring parties to exchange Best and Final Offers on December 4, 2015).

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

5. By contrast, AT&T has proposed (i) data roaming rates that plainly are commercially reasonable in accordance with 47 C.F.R. § 20.12(e); and (ii) voice roaming rates that are just, reasonable, and nondiscriminatory in accordance with 47 C.F.R. § 20.12(d).¹⁷ AT&T’s proposed data roaming rates are consistent with both the prevailing rates in the commercial marketplace—including what AT&T pays, on average, for data roaming pursuant to the dozens of arm’s-length agreements it has with other wireless providers—as well as the

¹² See Meadors Decl. ¶ 35 & Exhibit 4, thereto; *infra* ¶¶ 48, 63.

¹³ *Id.* ¶ 40 & Exhibit 5. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] *Id.* ¶ 40.

¹⁴ See *infra* ¶¶ 66, 68-71.

¹⁵ See *infra* ¶¶ 64-65 & n.198.

¹⁶ See *infra* ¶¶ 75-86.

¹⁷ See *infra* ¶¶ 87-95.

other factors identified in the Wireless Telecommunications Bureau's *Declaratory Ruling*.¹⁸ Likewise, AT&T's proposed voice roaming rates are consistent with the rates that are being offered in the marketplace and the Commission's rules.¹⁹ Finally, AT&T's other proposed terms and conditions are commercially reasonable terms and conditions that are standard in roaming agreements.²⁰

6. In this Amended Complaint, AT&T seeks an order from the Commission directing iWireless to provide roaming services to AT&T on terms and conditions that are commercially reasonable (for data roaming) and just, reasonable, and nondiscriminatory (for interconnected voice, data, and text roaming services).²¹ AT&T further seeks a determination that its BAFO complies with the Commission's roaming rules and that iWireless' BAFO violates the Commission's roaming rules.²² Finally, AT&T seeks imposition of interim rates

¹⁸ Declaratory Ruling, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, ¶ 9 (Dec. 18, 2014) ("*Declaratory Ruling*"). See *infra* ¶¶ 87-93.

¹⁹ See *infra* ¶ 94.

²⁰ See *infra* ¶ 95.

²¹ See *infra* ¶ 114.

²² See *id.*

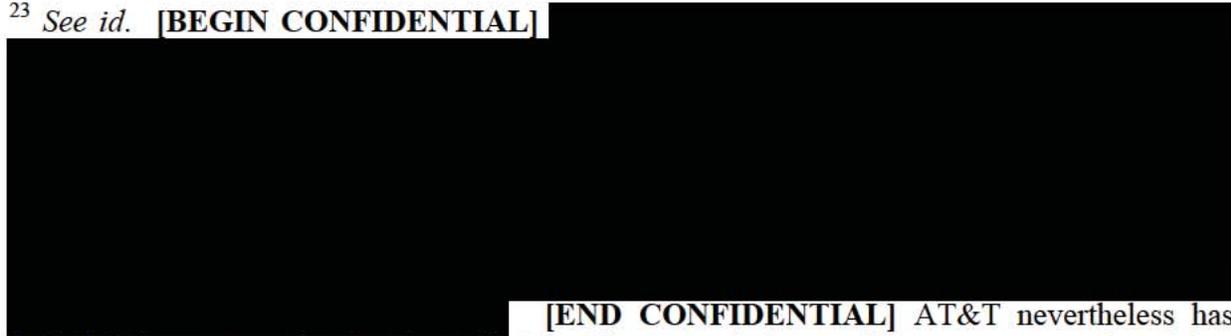
during the pendency of this proceeding subject to true-up when the Commission resolves AT&T's Complaint.²³

JURISDICTIONAL STATEMENT

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

8. The Commission has jurisdiction over this Amended Formal Complaint under 47 U.S.C. § 208 and Sections 1.720 to 1.735 of the Commission's Rules. 47 C.F.R. §§ 1.720 to 1.735. For purposes of this Amended Complaint, iWireless is a common carrier engaged in providing services subject to Title II of the Act with respect to its provision of voice roaming services,²⁴ and is a provider of data roaming services subject to Title III of the Act.²⁵ As

²³ *See id.* [BEGIN CONFIDENTIAL]



[END CONFIDENTIAL] AT&T nevertheless has included its request for interim relief in this Amended Complaint to preserve its rights, including the right to a true-up, after the Commission resolves the other matters at issue in this proceeding.

²⁴ Report and Order and Further Notice of Proposed Rulemaking, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, ¶ 23 (Aug. 16, 2007) ("Voice Roaming Order").

²⁵ Second Report and Order, *In re Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Mobile Data Services*, 26 FCC Rcd. 5411 ¶ 2 (2011) ("Data Roaming Order").

discussed below, iWireless has violated provisions of the Act and Commission rules that authoritatively implement the Act.

THE PARTIES

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

10. Defendant iWireless is a limited liability company organized under the laws of Delaware. iWireless is a facilities-based provider of broadband services throughout Iowa and in certain adjoining portions of South Dakota, Nebraska, Wisconsin (as well as minimal cross-border services in parts of Missouri and Minnesota).²⁶

11. As relevant to the Complaint, AT&T has purchased mobile voice and data roaming services from iWireless under a bilateral roaming Agreement, which was first signed by the parties (or their predecessors) on January 1, 2006, and which has since been amended on two separate occasions.²⁷ **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED]

²⁶ iWireless is majority owned (54%) by VoiceStream PCS I Iowa Corp., which is, in turn, wholly owned and controlled by T-Mobile US, Inc. (“T-Mobile”). See Public Notice, *Non Streamlined International Applications/Petitions Accepted For Filing*, Rep. No. TEL-01640NS, at 2 (Nov. 4, 2013) (discussing iWireless Petition for Declaratory Ruling ISP-PDDR-20131030-00007). The remaining 46% of iWireless’ equity, and a managing member interest, is indirectly held by Iowa Network Services, Inc., *id.*, a consortium of several independent telecommunications companies. See iWireless Appoints New Chief Executive Officer, <http://www.iwireless.com/support/about/press-releases/iwireless-appoints-new-chief-executive-officer.aspx> (last visited Oct. 6, 2015). iWireless describes itself to the public as a “T-Mobile Affiliate and Iowa Wireless Services company.” *Id.*

²⁷ See Meadors Decl. ¶ 9.

[END CONFIDENTIAL]

12. AT&T alleges in Count I that the rates and other terms and conditions for data roaming service that iWireless has offered to AT&T as part of its recent Staff-mandated BAFO for data roaming service are not commercially reasonable, in violation of 47 C.F.R. § 20.12(e) and as required by the *Data Roaming Order* and the *Declaratory Ruling*.²⁹ AT&T further alleges in Count II that the roaming rates and other terms and conditions for voice roaming that iWireless has offered AT&T are not just and reasonable and are unreasonably discriminatory, in violation of 47 C.F.R. § 20.12(d) and as interpreted by the *Voice Roaming Order* and *Order on Reconsideration*.³⁰ In Count III, AT&T seeks interim relief requiring iWireless to provide data and voice roaming services in accordance with the Commission’s rules, subject to true-up, during the pendency of the Amended Complaint proceeding.

I. FACTS IN SUPPORT OF THE FORMAL COMPLAINT

A. The Evolving Market for Roaming Services

13. No wireless provider, no matter how large its network, has the capability to serve its customers in all locations over its own facilities.³¹ Rather, to provide coverage in areas where they do not have facilities, wireless providers enter into roaming agreements to

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

²⁹ *Infra* ¶¶ 96-102.

³⁰ Order on Reconsideration and Second Further Notice of Proposed Rulemaking, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265 (Apr. 21, 2010) (“*Order on Reconsideration*”). See *infra* ¶¶ 103-108.

³¹ Meadors Decl. ¶ 4.

allow their customers to utilize other wireless providers' networks.³² The purpose of a roaming agreement is to enable a wireless provider to provide its customers with coverage when they travel outside of the wireless provider's own coverage area.³³

14. AT&T has negotiated roaming agreements with almost all of the domestic wireless providers that market handsets compatible with AT&T's networks.³⁴ AT&T currently has approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] commercially-negotiated roaming agreements with other domestic wireless providers, including major providers such as [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] as well as various smaller carriers.³⁵

15. Over the past few years, market rates for data roaming services have declined significantly.³⁶ The following chart, submitted by T-Mobile in a recent FCC proceeding, shows the decline in rates that T-Mobile has paid for data roaming services.

³² *Id.*

³³ *Id.*; *Data Roaming Order* ¶ 9.

³⁴ Meadors Decl. ¶ 5.

³⁵ *Id.*

³⁶ *Id.* ¶ 6.

T-MOBILE DATA ROAMING RATES³⁷

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

As reflected above, the overall drop in the rates that T-Mobile pays for data roaming has been dramatic (from \$3.06/MB in 2008 to \$0.18/MB in 2014) as has been the rate of decline on a year to year basis (e.g., 40% between 2013 and 2014).³⁸

16. The rates that AT&T has both paid and received for data roaming services have experienced similar declines during this same period.³⁹ Further, those rates have continued to decline since 2014.⁴⁰ Indeed, in the past year, the effective rate that AT&T pays for data roaming has declined from approximately [BEGIN CONFIDENTIAL] [REDACTED]

³⁷ See Declaration of Joseph Farrell in Support of Petition for Declaratory Ruling of T-Mobile USA, Inc., WT Docket No. 05-265, at Table 6 (May 19, 2014) (“Farrell Decl.”). The average rate for 2014 is estimated based on actual data for January 2014 and T-Mobile’s forecasts for the remainder of the year. *Id.* See also Meadors Decl. ¶ 6.

³⁸ Meadors Decl. ¶ 6.

³⁹ *Id.* ¶ 7.

⁴⁰ *Id.*

[REDACTED] [REDACTED] [END CONFIDENTIAL] The rates for voice roaming service that AT&T has recently negotiated have been in the range of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

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

17. As noted above, on January 1, 2006, Cingular Wireless LLC and iWireless entered into the Intercarrier Multi-Standard Roaming Agreement (as amended, the “Agreement”), which, *inter alia*, established bilateral rates for voice and data roaming service.⁴³

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

[REDACTED]
[REDACTED]

⁴¹ *Id.*; Declaration of Jonathan Orszag in Support of AT&T’s Amended Complaint (Dec. 23, 2015) (“Orszag Decl.”) ¶ 26. [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] See Orszag Decl. ¶ 26 n.21 & Table B-2.

⁴² Meadors Decl. ¶ 8.

⁴³ *Id.* ¶ 9.

⁴⁴ *Id.*

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

[REDACTED]

[REDACTED]

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

[REDACTED] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

1. 2012-13 Negotiations

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

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

⁴⁶ Meadors Decl. ¶ 9; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] A quick rule of thumb for estimating the effective rate for voice rates stated in terms of separate air and domestic toll changes is the sum of the air rate plus one-half of the domestic toll rate. Meadors Decl. ¶ 9 n.8. In this case, the rule of thumb estimates that the effective voice rate under the Agreement would be approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] *Id.*

⁴⁷ Meadors Decl. ¶ 9; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁴⁸ Meadors Decl. ¶ 9; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁴⁹ Meadors Decl. ¶ 9.

⁵⁰ *Id.* ¶ 10.

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

20. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

2. 2014-15 Negotiations

21. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

⁵¹ *Id.*

⁵² *Id.*; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

⁵³ Meadors Decl. ¶ 10. *See also* [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL]

⁵⁴ Meadors Decl. ¶ 10; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

⁵⁵ Meadors Decl. ¶ 10.

⁵⁶ *Id.* ¶ 11.

⁵⁷ *Id.*

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

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

23. iWireless also explained that [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]

⁵⁸ *Id.*

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

⁶⁰ Meadors Decl. ¶ 12.

⁶¹ *Id.*

⁶² *See id.* iWireless’ claims on this issue largely miss the point. [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

See id. ¶ 12 n.14.

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

24. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁶³ *Id.* ¶ 12.

⁶⁴ *Id.*

⁶⁵ *Id.* ¶ 13; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁶⁶ Meadors Decl. ¶ 13; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

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

CONFIDENTIAL INFORMATION REDACTED

[END CONFIDENTIAL]

25. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

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

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

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

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

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

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

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

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

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

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

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

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

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

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

28. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

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

⁷⁹ Meadors Decl. ¶ 16.

⁸⁰ *Id.*

⁸¹ *Id.*

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

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

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

CONFIDENTIAL]

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

34. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]

⁹⁴ Meadors Decl. ¶ 21; [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL]

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

⁹⁶ Meadors Decl. ¶ 22; [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL]

⁹⁷ [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL]

⁹⁸ *Id.* at 1-2.

⁹⁹ *Id.* at 12.

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

35. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹⁰⁰ [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹⁰¹ *Id.* at 1.

¹⁰² *Id.* at 7.

¹⁰³ *Id.* at 5-7.

¹⁰⁴ *Id.* at 2 [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹⁰⁵ *Id.* at 7.

¹⁰⁶ *Id.* at 6.

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

36. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

4. iWireless' Termination Of The Agreement and Subsequent Developments.

37. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁰⁷ *Id.* at 6-7.

¹⁰⁸ Meadors Decl. ¶ 25; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

¹⁰⁹ Meadors Decl. ¶ 25.

¹¹⁰ Meadors Decl. ¶ 26; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

¹¹¹ Meadors Decl. ¶ 26; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

38. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

39. On October 2, 2015, iWireless [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

¹¹² Meadors Decl. ¶ 26; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

¹¹³ Meadors Decl. ¶ 27; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

¹¹⁴ Meadors Decl. ¶ 27; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] Meadors Decl. ¶ 27 n.51; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

40. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

¹¹⁵ Meadors Decl. ¶ 28; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹¹⁶ Meadors Decl. ¶ 28; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹¹⁷ Meadors Decl. ¶ 28; [BEGIN CONFIDENTIAL] [REDACTED] [END
CONFIDENTIAL]

¹¹⁸ Meadors Decl. ¶ 29; [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹¹⁹ *Id.*

41. In response to this letter, [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. [END CONFIDENTIAL]

42. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

43. On October 21, 2015, AT&T filed its Formal Complaint and Legal Analysis seeking to compel iWireless to comply with 47 C.F.R. § 20.12, with respect to its provision of commercial mobile voice and data roaming services.¹²³ At the same time, AT&T submitted a Motion for Interim Relief to compel iWireless to continue to provide roaming service to AT&T

¹²⁰ Meadors Decl. ¶ 30; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

¹²¹ Meadors Decl. ¶ 30; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

¹²² Meadors Decl. ¶ 31; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

¹²³ Meadors Decl. ¶ 31; Formal Complaint and Legal Analysis of AT&T Mobility LLC (Oct. 21, 2015).

at the rates set forth in the Agreement, subject to true up, pending the Commission's resolution of AT&T's Formal Complaint.¹²⁴ On October 26, 2015, Commission Staff provided notice of AT&T's Complaint and set a procedural schedule for resolving the Complaint.¹²⁵

44. On November 6, 2015, iWireless filed a Motion to Compel Compliance with Confidentiality Order and Related Relief.¹²⁶ AT&T responded to that Motion on November 16, 2015.¹²⁷ On November 17, 2015, Commission Staff took iWireless' subject motion under advisement.¹²⁸ Commission Staff further suspended the procedural schedule in this matter, but directed iWireless to respond to AT&T's Motion for Interim Relief by November 20, 2015.¹²⁹ Commission Staff also directed that the parties, by December 4, 2015, exchange BAFOs setting forth each party's proposed terms for a roaming agreement to govern the parties roaming relationship on a going forward basis."¹³⁰

5. AT&T's and iWireless' Best and Final Offers.

45. In accordance with the Commission's procedural schedule, on December 4, 2015, AT&T and iWireless exchanged BAFOs.¹³¹

46. AT&T's BAFO. [BEGIN CONFIDENTIAL] [REDACTED]

¹²⁴ AT&T's Motion for Interim Relief at 1, 11 (Oct. 20, 2015).

¹²⁵ Notice of Formal Complaint (Oct. 26, 2015).

¹²⁶ Motion to Compel Compliance with Confidentiality Orders and for Related Relief (Nov. 6, 2015).

¹²⁷ AT&T's Opposition to iWireless' Motion to Compel (Nov. 16, 2015).

¹²⁸ Letter Order from L. Saks to C. Northrop and J. Bendernagel (Nov. 17, 2015).

¹²⁹ *Id.* at 2.

¹³⁰ *Id.*

¹³¹ Meadors Decl. ¶ 32. *See also* AT&T Best & Final Offer (Dec. 4, 2015); iWireless Best & Final Offer (Dec. 4, 2015).

[REDACTED]

[END CONFIDENTIAL]

47. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

48. iWireless' BAFO. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

¹³² AT&T Best & Final Offer at 1 (Dec. 4, 2015).

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

49. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁴⁰ iWireless BAFO, Appendix 1, Schedule 3.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*, Appendix 1, Schedule 3.

¹⁴⁶ *Id.*, Appendix 1, ¶ 1.

[REDACTED]
[REDACTED] [END CONFIDENTIAL]

II. LEGAL STANDARDS

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

A. Data Roaming

51. In 2011, the Commission issued its *Data Roaming Order*, which requires facilities-based providers of commercial mobile data services to offer data roaming arrangements to other such providers on commercially reasonable terms and conditions, subject to certain limitations which primarily relate to technical compatibility.¹⁴⁸ The goal of the *Data Roaming Order* was to allow consumers with mobile data plans to remain connected when they travel outside their own provider's network coverage areas by using another provider's network, and thus promote connectivity for and nationwide access to mobile data services.¹⁴⁹ In order to address disputes related to the data roaming requirement, the *Data Roaming Order*

¹⁴⁷ *Id.*, Appendix 1, ¶ 11.

¹⁴⁸ *See Data Roaming Order* ¶¶ 1, 43.

¹⁴⁹ *Id.* ¶ 1.

established a complaint process, and allowed for disputes to be resolved through the Commission’s complaint process, depending on the circumstances specific to each dispute.¹⁵⁰

52. In the *Data Roaming Order*, the Commission adopted a “commercial reasonableness” standard for adjudicating data roaming disputes between carriers.¹⁵¹ That standard, while flexible,¹⁵² was based on two substantive lodestars. *First*, the Commission explained that commercial reasonableness would be determined to a significant degree, not surprisingly, by the rates and terms that prevail in existing, negotiated roaming agreements that scores of sophisticated parties rely on today to compete in the marketplace.¹⁵³ *Second*, the Commission held that its data roaming rules must be applied to promote broadband investment and facilities-based competition and, therefore, that it expected roaming rates to be “high” relative to retail rates to maintain appropriate incentives for network build-out.¹⁵⁴

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

¹⁵⁰ *Id.* ¶ 8.

¹⁵¹ See *Data Roaming Order* ¶ 1. In its recent *Net Neutrality Order*, the Commission reaffirmed that the data roaming rules would continue to govern mobile broadband service. See Report and Order, *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 12-28, ¶ 526 (Mar. 12, 2015) (“We therefore forebear from application of the [commercial mobile radio service] roaming rule, section 20.12(d), to [mobile broadband internet access service] providers, conditioned on such providers continuing to be subject to . . . the data roaming rule codified in section 20.12(e).”).

¹⁵² *Data Roaming Order* ¶¶ 44-45 (“[T]he roaming rule is sufficiently flexible to apply to a wide range of ever changing technologies and commercial contexts. . . . Giving providers flexibility to negotiate the terms of their roaming agreements on an individualized basis ensures that the data roaming rules best serves our public interest goals[.]”).

¹⁵³ See *id.* ¶ 81 (“[W]e will presume . . . that the terms of a signed agreement meet the reasonableness standard.”).

¹⁵⁴ See *id.* ¶¶ 21, 22, 51 (“[T]he relatively high price of roaming compared to providing facilities-based service will often be sufficient to counterbalance the incentive to ‘piggy back’ on another carrier’s network.”).

and promoting facilities-based competition,¹⁵⁵ while retaining the flexibility to accommodate a significant range of outcomes.¹⁵⁶ The Commission declined to impose a “prescriptive regulation of rates,” but emphasized that host providers must offer data roaming “on commercially reasonable terms and conditions, subject to certain limitations[.]”¹⁵⁷

54. The *Data Roaming Order* further explained that, in resolving data roaming disputes, the Commission may consider 17 factors to evaluate the reasonableness of the negotiations, the providers’ conduct, and the terms and conditions of the proffered data roaming arrangements.¹⁵⁸ These factors include, among other things, whether the host provider “has engaged in a persistent pattern of stonewalling behavior, and the length of time since the initial request,” and “whether the terms and conditions offered by the host provider are so unreasonable as to be tantamount to a refusal to offer a data roaming arrangement.”¹⁵⁹ The Commission emphasized, however, that these factors are not exclusive or exhaustive, that the Commission may consider other factors in determining commercial reasonableness, and that each case will be decided based on the “totality of the circumstances.”¹⁶⁰ Conduct that unreasonably restrains trade is not commercially reasonable.¹⁶¹

¹⁵⁵ *See id.* ¶ 13 (“[A]dopting a roaming rule tailored for mobile data services will best promote consumer access to seamless mobile data coverage nationwide, appropriately balance the incentives for new entrants and incumbent providers to invest in and deploy advanced networks across the country, and foster competition[.]”).

¹⁵⁶ *See id.* ¶¶ 44-45 (“[T]he roaming rule is sufficiently flexible to apply to a wide range of ever changing technologies and commercial contexts.”).

¹⁵⁷ *Id.* ¶¶ 21, 40. These limitations are primarily related to technological compatibility of the providers’ networks. *See id.* ¶ 43.

¹⁵⁸ *Id.* ¶ 86.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* ¶¶ 86-87.

¹⁶¹ *Id.* ¶¶ 45-85.

55. Under the final rules adopted in the *Data Roaming Order*, facilities-based providers of commercial mobile data services are required to offer roaming arrangements to other such providers on commercially reasonable terms and conditions.¹⁶² The rules do not, however, require providers to purchase roaming services.¹⁶³

56. On May 27, 2014, T-Mobile filed a petition for a declaratory ruling seeking “additional guidance” relating to the Commission’s data roaming rules.¹⁶⁴ Responding to T-Mobile’s petition, the Wireless Bureau, in December 2014, issued its *Declaratory Ruling* purportedly “clarify[ing]” the Commission’s rules, providing “additional guidance,” and “lessen[ing] ambiguity.”¹⁶⁵ Specifically, the Wireless Bureau explained, *inter alia*, that while marketplace rates remained relevant, requesting providers could also “adduce evidence” as to whether proffered roaming rates are “substantially in excess” of “retail rates, international rates, MVNO/resale rates, as well as a comparison of proffered roaming rates to domestic roaming rates as charged by other providers.”¹⁶⁶ In so ruling, however, the Wireless Bureau also noted that “these other rates will [not] be probative factors in every case” or even “relevant to the same degree,”¹⁶⁷ and rejected renewed calls for the “imposition of a cap or ceiling on data roaming rates.”¹⁶⁸ Rather, the Wireless Bureau explained that the Commission will consider

¹⁶² 47 C.F.R. § 20.12(e)(1).

¹⁶³ *See id.*

¹⁶⁴ *See Declaratory Ruling* ¶ 1 (citing Petition for Expedited Declaratory Ruling of T-Mobile USA, Inc., Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265 (May 27, 2014)).

¹⁶⁵ *See id.* ¶ 10.

¹⁶⁶ *Id.* ¶ 9.

¹⁶⁷ *Id.* ¶ 17.

¹⁶⁸ *Id.* ¶ 30.

“these other rates” along with a “host of other factors” in determining commercial reasonableness under the “totality of the circumstances” of each case.¹⁶⁹

B. Voice Roaming

57. In 2007, the Commission issued its *Voice Roaming Order*, which provides that, as common carriers, Commercial Mobile Radio Services (“CMRS”) carriers must provide automatic roaming for interconnected voice service. The purpose of the *Voice Roaming Order* was “to facilitate reasonable roaming requests by carriers on behalf of wireless customers,” such that a requesting carrier could “enable its subscribers to receive service seamlessly.”¹⁷⁰ Thus, the Commission required CMRS carriers to provide automatic roaming services to other carriers upon reasonable request on a just, reasonable, and non-discriminatory basis pursuant to Sections 201 and 202 of the Communications Act.¹⁷¹ The Commission found that the common carrier obligation extends to services that are real-time, two-way switched voice or data service that are interconnected with the public switched network and use an in-network switching

¹⁶⁹ *Id.* ¶ 20 (relevant factors include the 17 factors identified in the *Data Roaming Order* “as well as others”). On January 16, 2015, AT&T filed an application for review of the *Declaratory Ruling*, arguing that it had created a “standardless approach” that had “thrown the Commission’s entire data roaming regime into confusion” due to the lack of “guidance [as to] how the Commission will apply . . . th[is] ruling[] in individual cases.”¹⁶⁹ See Application for Review of AT&T, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, at 2 (Jan. 16, 2015) (the “*Application for Review*”). Verizon Wireless filed a separate application for review on January 20, 2015, in which it argued that the Wireless Bureau had “unlawfully changed” the *Data Roaming Order*. See Verizon Application for Review, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, at 1-3 (Jan. 20, 2015). To date, the Commission has not acted on either filing.

¹⁷⁰ See *Voice Roaming Order* ¶ 28.

¹⁷¹ *Id.* ¶¶ 1-2.

facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.¹⁷²

58. Under the *Voice Roaming Order*, a request for automatic roaming is presumed reasonable if the requesting carrier's network is technologically compatible with the host carrier's network and the roaming service requested is outside of the requesting carrier's home market.¹⁷³ If a carrier makes a presumptively reasonable automatic roaming request, "the would-be host CMRS carrier has a duty to respond to the request and avoid actions that unduly delay or stonewall the course of negotiations regarding the request."¹⁷⁴

59. In 2010, the Commission issued its *Order on Reconsideration* "to increase consumers' access to seamless nationwide mobile services, wherever and whenever they choose," by creating "a framework for voice roaming that will encourage carriers of all sizes to reach reasonable commercial roaming arrangements."¹⁷⁵ As part of this framework, the Commission eliminated the home roaming exclusion, finding that in a number of respects, the exclusion failed to achieve its stated purposes.¹⁷⁶ The *Order on Reconsideration* establishes that a request for automatic roaming within the requesting carrier's home market is presumed reasonable if the requesting carrier's network is technologically compatible with the would-be

¹⁷² *Id.* ¶ 54.

¹⁷³ *Id.* ¶ 33.

¹⁷⁴ *Id.*

¹⁷⁵ Order on Reconsideration and Second Further Notice of Proposed Rulemaking, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265 (Apr. 21, 2010) ("*Order on Reconsideration*").

¹⁷⁶ *See id.* ¶¶ 18, 21-23.

host carrier's network.¹⁷⁷ Upon a presumptively reasonable request, CMRS carriers must provide automatic roaming for home roaming on just, reasonable and not unreasonably discriminatory terms and conditions.¹⁷⁸

C. Interim Relief

60. The Commission has authority under 47 U.S.C. § 154(i) ("Section 4(i)") to prevent iWireless from cutting off the ability of AT&T's customers to roam on the iWireless network pending final resolution of this Amended Complaint.¹⁷⁹ 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)."¹⁸⁰ The Commission has thus explained that Section 4(i) "clearly empower[s] the Commission to act promptly to restrain, on a temporary or interim basis, apparent or prima facie violations of the Act and our rules and orders."¹⁸¹ The Enforcement Bureau, pursuant to delegated authority—"as the primary Commission entity responsible for enforcement of the Communications Act and other communications statutes, the Commission's rules, Commission orders and Commission

¹⁷⁷ *Id.* ¶ 2.

¹⁷⁸ *Id.*

¹⁷⁹ See generally AT&T's Motion for Interim Relief at 7-9 (Oct. 20, 2015) (setting forth applicable legal standards).

¹⁸⁰ Second Report and Order, *Revision of the Commission's Program Carriage Rules; Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage*, 26 FCC Rcd. 11494, ¶ 26 (2011) ("2011 Program Carriage Rules Order") (citing *United States v. Southwestern Cable Co.*, 392 U.S. 157, 181 (1968)).

¹⁸¹ 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).

authorizations”—is authorized to issue an order providing such relief.¹⁸² Although the Commission has declined to “prescribe the legal and evidentiary showings required” for obtaining such interim relief,¹⁸³ the Commission typically considers four factors: (1) the likelihood of success on the merits; (2) the threat of irreparable harm absent the grant of preliminary relief; (3) the degree of injury to other parties if relief is granted; and (4) whether issuance of the order will further the public interest.¹⁸⁴

61. The Commission also has authority to grant interim relief under the *Data Roaming Order*.¹⁸⁵ 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.¹⁸⁶ 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.”¹⁸⁷ The Commission’s *Declaratory Ruling* reaffirmed this authority to grant interim relief, again subject to true-up, during the pendency of a data roaming

¹⁸² 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).

¹⁸³ *1997 Complaint Rules Order* ¶ 169.

¹⁸⁴ *See, e.g.*, *Ameritech Standstill Order* ¶ 13 (citing *Virginia Petroleum Jobbers v. Fed. Power Comm’n*, 259 F.2d 921 (D.C. Cir. 1958)).

¹⁸⁵ *Data Roaming Order* ¶¶ 79-80.

¹⁸⁶ *Id.* ¶ 79.

¹⁸⁷ *Id.* ¶ 80.

dispute between carriers.¹⁸⁸

III. IWIRELESS' BEST AND FINAL OFFER VIOLATES THE COMMISSION'S ROAMING RULES.

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

[REDACTED] [END CONFIDENTIAL] and (ii) its proposed BAFO results in [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

63. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁸⁸ *Declaratory Ruling*, ¶ 27. Additional discussion of the Commission's authority to impose interim relief is set forth in both AT&T's Motion for Interim Relief and its reply brief. *See* AT&T Motion for Interim Relief 6-8 (Oct. 21, 2015); AT&T Mobility LLC's Reply In Support of its Motion for Interim Relief at 13-15 (Nov. 30, 2015).

¹⁸⁹ Meadors Decl. ¶ 37; Orszag Decl. ¶ 12.

¹⁹⁰ Meadors Decl. ¶ 37; Orszag Decl. ¶ 8.

[REDACTED] [END CONFIDENTIAL] These and certain other deficiencies in iWireless' BAFO are discussed in greater detail below.

A. **iWireless' Proposed [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Is Not Commercially Reasonable.**

64. Nothing in the Commission's data roaming rules permits [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

¹⁹¹ Meadors Decl. ¶ 37; Orszag Decl. ¶¶ 8, 27-31.

¹⁹² See 47 C.F.R. § 20.12(e)(1).

¹⁹³ See *id.* See also *Data Roaming Order* ¶ 1 (“In this Order . . . we adopt[] a rule that requires facilities-based providers of commercial mobile data services to offer data roaming arrangements to other such providers on commercially reasonable terms and conditions, subject to certain limitations.”).

¹⁹⁴ Meadors Decl. ¶ 38. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

¹⁹⁵ Meadors Decl. ¶ 38.

65. iWireless' [BEGIN CONFIDENTIAL] [REDACTED]
[END CONFIDENTIAL] also substantially diminishes any incentive for AT&T to build out its own facilities in iWireless' service area.¹⁹⁶ Under the Commission's *Data Roaming Order*, the Commission sought to encourage commercially reasonable agreements designed to promote facilities-based competition for wireless services.¹⁹⁷ iWireless' BAFO would require AT&T [BEGIN CONFIDENTIAL] [REDACTED]

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

[END CONFIDENTIAL]

66. Further, iWireless' [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹⁹⁶ Meadors Decl. ¶ 39; Orszag Decl. ¶ 32.

¹⁹⁷ *Data Roaming Order* ¶ 21-22.

¹⁹⁸ Orszag Decl. ¶ 32; Meadors Decl. ¶ 39. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹⁹⁹ Meadors Decl. ¶ 41; *see also* Final Award at 6-7.

²⁰⁰ Meadors Decl. ¶ 40 & Exhibit 5; *see also* Orszag Decl. ¶ 13.

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

67. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁰¹ Meadors Decl. ¶ 40 & Exhibit 5.

²⁰² *Id.* ¶ 40 & Exhibit 5.

²⁰³ *See id.* ¶ 40 & Exhibit 5. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL] *Id.* ¶ 40.

²⁰⁴ *Id.* ¶ 41.

²⁰⁵ *See id.*

²⁰⁶ *Id.* ¶ 42.

²⁰⁷ iWireless Opposition to AT&T Motion for Interim Relief at 9.

[REDACTED] [END CONFIDENTIAL] Nothing in the FCC's roaming regulations permits a host provider to, in effect, underwrite its network build in this manner.²⁰⁹

B. iWireless' BAFO Would Result in Effective Data Rates That Are Not Commercially Reasonable When Compared To Market Rates.

68. iWireless' proposal also is commercially unreasonable because the [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] demanded by iWireless are [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED] [END CONFIDENTIAL]

69. For example, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]
[REDACTED]

²⁰⁸ Meadors Decl. ¶ 42.

²⁰⁹ *Id.*

²¹⁰ Orszag Decl. ¶¶ 13, 27; Meadors Decl. ¶¶ 37, 40, 43. [BEGIN CONFIDENTIAL]

[REDACTED] [END CONFIDENTIAL] *See id.*

[REDACTED]

[REDACTED]

[END CONFIDENTIAL] Accordingly, although Staff need not,²²⁴ and should not, accord significant weight to these “other rates,” to the extent that these are relevant, such rates further demonstrate the commercial unreasonableness of iWireless’ proposed data roaming rates.

C. iWireless’ Proposed Voice “Rates” Are Unreasonable.

72. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

73. iWireless proposal is not reasonable. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

²²² Orszag Decl. ¶ 31.

²²³ *Id.*

²²⁴ *Declaratory Ruling* ¶ 17 (“these other rates will [not] be probative factors in every case” or even “relevant to the same degree”).

²²⁵ Meadors Decl. ¶ 49. [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

²²⁶ Meadors Decl. ¶ 50 & Ex. 5.

[END CONFIDENTIAL]

D. iWireless' Payment Terms Are Not Reasonable.

75. Another deficiency in iWireless' BAFO relates to the payment terms and the

[BEGIN CONFIDENTIAL]

[END CONFIDENTIAL] These terms are not consistent with

established industry practice and are not commercially reasonable.²³³

76. [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

77. [BEGIN CONFIDENTIAL]

²³² Meadors Decl. ¶ 51. [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] See *id.* ¶ 51 n.92.

²³³ *Id.* ¶ 52 n.93. [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] *Id.*

²³⁴ See iWireless BAFO, Appendix 1, Schedule 3.

²³⁵ Meadors Decl. ¶ 54.

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

78. [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

E. iWireless' [BEGIN CONFIDENTIAL] [REDACTED]
[END CONFIDENTIAL] Is Not Reasonable.

79. iWireless' BAFO provides [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

80. The Commission has made clear that the parties' BAFOs [BEGIN
CONFIDENTIAL] [REDACTED]

²³⁶ *Id.*

²³⁷ *Id.* ¶ 55.

²³⁸ *See* iWireless BAFO, § 14.1.

²³⁹ *Id.* § 17.1.

²⁴⁰ Meadors Decl. ¶ 55.

²⁴¹ *See* iWireless BAFO, Appendix 1, ¶ 1.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

F. Other Unreasonable Terms and Conditions.

81. Other terms and conditions in iWireless' BAFO that are not commercially reasonable include the following:

82. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁴² Notice of Formal Complaint at 3.

²⁴³ Meadors Decl. ¶ 56.

²⁴⁴ *Id.*

²⁴⁵ *See* iWireless BAFO § 16.

²⁴⁶ Meadors Decl. ¶ 58.

²⁴⁷ *Id.*

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

83. [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

84. [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED] [END
CONFIDENTIAL]

85. [BEGIN CONFIDENTIAL]

[REDACTED]

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.* ¶ 59.

²⁵¹ *See* iWireless BAFO, Appendix 1, § 11.

²⁵² Meadors Decl. ¶ 60.

[REDACTED]

CONFIDENTIAL]

86. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

IV. AT&T’S BEST AND FINAL OFFER COMPLIES WITH THE COMMISSION’S ROAMING RULES.

87. AT&T’s proposal, in contrast, fully complies with the Commission’s data and voice roaming rules and thus is commercially reasonable. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] and its data and voice roaming rates are commercially reasonable and not unreasonable or unreasonably discriminatory.²⁵⁸

²⁵³ *Id.* ¶ 61.

²⁵⁴ *See* iWireless BAFO § 3.2.

²⁵⁵ Meadors Decl. ¶ 61.

²⁵⁶ *Id.* ¶ 62.

²⁵⁷ *See* iWireless BAFO § 4.1.

²⁵⁸ Meadors Decl. ¶¶ 33, 63; Orszag Decl. ¶¶ 8, 23-26.

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

88. AT&T's proposed data roaming rates of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] are consistent with²⁵⁹ what AT&T pays, on average, to roam on other wireless providers' networks [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

89. Further, because the rates that AT&T pays for data roaming are primarily for roaming in rural areas, they are a particularly good benchmark against which to measure the commercial reasonableness of iWireless' proposed rates.²⁶² A review of the contracts under which AT&T roams shows that, in a given month, AT&T roamed in approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] counties nationwide of which [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] are rural.²⁶³ Further, of the approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] agreements under which AT&T roamed, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] agreements involved roaming *only* in rural counties and in no instance did the urban counties in which AT&T roamed under an agreement [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

²⁵⁹ Meadors Decl. ¶ 63; Orszag Decl. ¶ 24.

²⁶⁰ Meadors Decl. ¶ 63; Orszag Decl. ¶ 23.

²⁶¹ See Orszag Decl. ¶¶ 23-24.

²⁶² Meadors Decl. ¶ 45.

²⁶³ *Id.*

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

90. The fact that AT&T has had a number of roaming agreements with other carriers that [BEGIN CONFIDENTIAL] █ [END CONFIDENTIAL] likewise does not undermine the commercial reasonableness of AT&T's BAFO.²⁶⁶ Those rates are generally found in agreements that have [BEGIN CONFIDENTIAL] █ [END CONFIDENTIAL] █ [END CONFIDENTIAL] Indeed, the Commission has explained that existing agreements which were not recently negotiated may no longer be useful in determining what is commercially reasonable in light of the current market for roaming services.²⁶⁸ Further, as explained by Mr. Meadors, AT&T is [BEGIN CONFIDENTIAL] █ [END CONFIDENTIAL] █ [END CONFIDENTIAL]

²⁶⁴ *Id.* This was not only true of AT&T's strategic roaming agreements but also of its arm's-length agreement. Of the [BEGIN CONFIDENTIAL] █ [END CONFIDENTIAL] agreements, [BEGIN CONFIDENTIAL] █ [END CONFIDENTIAL] are arm's-length agreements and under those agreements, AT&T roamed in approximately [BEGIN CONFIDENTIAL] █ [END CONFIDENTIAL] counties nationwide of which [BEGIN CONFIDENTIAL] █ [END CONFIDENTIAL] are rural. *See id.*

²⁶⁵ *Id.*; Orszag Decl. ¶ 23.

²⁶⁶ *See* Meadors Decl. ¶ 46.

²⁶⁷ *Id.*

²⁶⁸ *Declaratory Ruling* ¶ 26 ("A rate negotiated a year ago might have been commercially reasonable at that time but may no longer reflect current marketplace conditions . . .").

²⁶⁹ *See* Meadors Decl. ¶ 46.

not a basis for denying roaming on commercially reasonable terms.²⁷⁷ And, in any event, AT&T has deployed significant amounts of spectrum in rural communities both nationwide and in Iowa.²⁷⁸ Indeed, in Iowa alone AT&T has [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END
CONFIDENTIAL]

93. Finally, [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]⁸¹ [END
CONFIDENTIAL]

B. AT&T's Proposed Voice Roaming Rates Are Reasonable.

94. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

²⁷⁷ See *Declaratory Ruling* ¶ 28 (“In our view, the Commission’s inclusion of this factor [*i.e.*, build-out] was not intended to allow a host provider to deny roaming, or to charge commercially unreasonable roaming rates, in a particular area simply because the otherwise built-out requesting provider has not built out in that area. Any other interpretation of the Commission’s order would be inconsistent with the order itself, which made clear that one of the primary public interest benefits of roaming is that it can allow a provider without a presence in any given market to provide a competitive level of local coverage during the early period of investment and build out.” (footnote omitted))

²⁷⁸ Meadors Decl. ¶ 48.

²⁷⁹ *Id.*

²⁸⁰ *Id.* ¶¶ 12, 63.

²⁸¹ *Id.* ¶ 63.

²⁸² *Id.* ¶ 9 n.8.

[REDACTED] [END
CONFIDENTIAL] AT&T's proposed voice rate is identical to [BEGIN CONFIDENTIAL]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

C. Other Terms of AT&T's BAFO.

95. The other terms and conditions set forth in AT&T's BAFO are fully consistent with both the terms and conditions that AT&T is observing in the current market and with the terms and conditions AT&T has agreed to with other wireless providers. Indeed, AT&T's BAFO is based on AT&T's standard form of agreement.²⁸⁶

COUNT I

**Violation of 47 C.F.R. § 20.12(e) and 47 U.S.C. §§ 301, 332
Commercial Mobile Data Roaming**

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

97. The Commission's regulations provide that "a facilities-based provider of commercial mobile data services is required to offer roaming arrangements to other such

²⁸³ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

²⁸⁴ Meadors Decl. ¶ 64.

²⁸⁵ *Id.*

²⁸⁶ *Id.* ¶ 65.

providers on commercially reasonable terms and conditions,” subject to certain limitations. 47 C.F.R. § 20.12(e).

98. Section 47 C.F.R. § 20.12(e), was adopted by the Commission under Title III of the Communications Act, which provides the Commission with authority to manage spectrum and modify license and spectrum usage conditions in the public interest. *Data Roaming Order* ¶ 2. Thus, a provider offering data roaming services in violation of 47 C.F.R. § 20.12(e) is likewise violating Title III of the Communications Act.

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

100. iWireless has violated the requirements of 47 C.F.R. § 20.12(e) because the data rates and other terms and conditions of its BAFO are not commercially reasonable. By contrast, the data rates and other terms and conditions in AT&T’s BAFO are commercially reasonable.

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

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

Specifically, iWireless should be required to provide data roaming service to AT&T in accordance with AT&T's BAFO.

COUNT II

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

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

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

105. Section 47 C.F.R. § 20.12(d) is a regulation that the Commission has adopted under Title II of the Communications Act.²⁸⁷ Thus, a provider offering data roaming services in violation of 47 C.F.R. § 20.12(d) is likewise violating Title II of the Act.

106. iWireless has violated the requirements of 47 C.F.R. § 20.12(d) and Title II of the Communications Act because the rates and other terms in its BAFO are not reasonable and are unreasonably discriminatory. In contrast, the voice rates and other terms in AT&T's BAFO are reasonable and are not unreasonably discriminatory.

107. iWireless does not qualify for any exemption from the requirement to provide voice roaming service on reasonable and not unreasonably discriminatory terms. There are no technological barriers that would prevent iWireless from complying with the requirement to

²⁸⁷ *Voice Roaming Order* ¶ 23 ("We clarify that automatic roaming is a common carrier service, subject to the protections outlined in Sections 201 and 202 of the Communications Act.").

provide a roaming arrangement to AT&T. *See id.* § 20.12(d). Indeed, AT&T and iWireless have been exchanging voice roaming traffic for a number of years.

108. Accordingly, AT&T requests that the Commission order iWireless to provide voice roaming service to AT&T on reasonable and not unreasonably discriminatory terms, as required by 47 C.F.R. § 20.12(d), and to provide such other relief as the Commission may deem appropriate. Specifically, iWireless should be required to provide voice roaming service to AT&T in accordance with AT&T's BAFO.

COUNT III

Request for Interim Relief

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

110. Under the *Data Roaming Order*, the Commission has the authority to “order the host provider to provide data roaming on its proffered terms, during the pendency of [a] dispute, subject to possible true-up once the roaming agreement is in place.”²⁸⁸ The *Declaratory Ruling* similarly affirms the Commission's authority to provide interim relief, subject to true-up, during the pendency of a roaming dispute between carriers.²⁸⁹

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

²⁸⁸ *Data Roaming Order* ¶ 80.

²⁸⁹ *Declaratory Ruling* ¶ 27.

112. As explained in AT&T's Reply in Support of its Motion for Interim Relief, iWireless' proposed interim rates for data and voice roaming services violate these regulatory obligations.²⁹⁰ Further, as set forth in AT&T's Motion for Interim Relief and Reply in Support of Interim Relief, AT&T's request for interim relief satisfies all four factors considered by the Commission in granting such relief.

113. Accordingly, AT&T requests that the Commission (i) reject iWireless' proposed Interim Rates, and (ii) require iWireless to provide service during the pendency of the Complaint proceeding [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]²⁹¹

PRAYER FOR RELIEF

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

- a. Provide interim relief by ordering iWireless to (i) provide data and voice roaming services at the rates set forth in the Agreement; or (ii) provide data and voice roaming services in accordance with iWireless' BAFO (with any amounts in excess of the current rates being placed into escrow pending resolution of the Complaint proceeding), subject to a true-up following resolution of this Complaint.

²⁹⁰ See generally Reply in Support of AT&T's Motion for Interim Relief (Nov. 30, 2015).

²⁹¹ See AT&T's Reply in Support of Motion for Interim Relief at 16.

b. Find that the data roaming rates proposed by iWireless and other related terms required by iWireless in its BAFO violate 21 C.F.R. § 20.12(e) and the Commission's *Data Roaming Order* and *Declaratory Ruling* because the rates and other terms are not commercially reasonable.

c. Order iWireless to comply with 47 C.F.R. § 20.12(e) by providing data roaming service to AT&T at rates determined by the Commission to be commercially reasonable. Specifically, iWireless should be required to provide data roaming service pursuant to the rates and terms of AT&T's BAFO.

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

e. Order iWireless to comply with 47 C.F.R. § 20.12(d) by providing voice roaming service to AT&T at rates determined by the Commission to be reasonable and not unreasonably discriminatory. Specifically, iWireless should be required to provide voice roaming service pursuant to the rates and terms of AT&T's BAFO.

STATEMENT REGARDING SUPPORTING MATERIAL

115. As part of its Amended Complaint, AT&T is including a complete statement of facts that establish that iWireless has violated the Communications Act and the Commission's rules that implement the Act.²⁹² AT&T has included, within its Amended Formal Complaint, a Legal Analysis that explains why iWireless has violated the Act and the Commission's implementing rules.²⁹³

²⁹² See *supra* Part I.

²⁹³ See *supra* Parts II-IV.

116. Along with this Amended Formal Complaint, AT&T is attaching as exhibits copies of documents and data compilations upon which it intends to rely in support of this Amended Formal Complaint. AT&T also is providing (i) a supporting declaration filed by Gram Meadors, AT&T, Assistant Vice President of Alliance/Partnership, Wireless Roaming Strategy; (ii) a supporting declaration filed by Jonathan Orszag Compass Lexecon, LLC, Senior Managing Director; (iii) an information designation pursuant to Section 1.721(a)(10) of the Commission's Rules, 47 C.F.R. § 1.721(a)(10); and (iv) other forms and certifications required by the Commission's Rules, 47 C.F.R. § 1.721(a).²⁹⁴

117. AT&T is filing a public version and a confidential version of its Amended Formal Complaint. The Amended Formal Complaint, as well as the Declarations of Gram Meadors and Jonathan Orszag, contain material that has been designated as confidential. In AT&T's public submission, redacted versions of these materials are being filed. In its confidential submission, these materials are being filed on an unredacted basis, and are being filed under seal pursuant to a protective order that iWireless and AT&T agreed to in the arbitration.

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

²⁹⁴ By email dated December 16, 2015 Commission Staff confirmed that there was no need to provide proposed findings of fact and conclusions of law. *See* Email from L. Saks to E. Watkins, "RE: AT&T Mobility LLC v. Iowa Wireless Services, LLC, File No. EB-15-MD-007 – Joint Status Report" (Dec. 16, 2015).

Commission. AT&T further states that AT&T and iWireless **[BEGIN CONFIDENTIAL]**

[REDACTED]

[REDACTED]

[REDACTED] **[END CONFIDENTIAL]**

119. Pursuant to Section 1.721(a)(8) of the Commission's Rules, 47 C.F.R. § 1.721(a)(8), AT&T hereby certifies that it has, in good faith, attempted to discuss the possibility of settlement with iWireless prior to filing the Formal Complaint. As discussed above, AT&T has made extensive efforts to negotiate new roaming rates with iWireless, however those efforts were not productive.²⁹⁵ AT&T attempted to resolve this dispute through

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[END CONFIDENTIAL]**

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

²⁹⁵ See *supra* ¶¶ 19-29.

²⁹⁶ See *supra* ¶¶ 28-29.

Respectfully submitted,

/s/ James F. Bendernagel, Jr.

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Counsel for AT&T Mobility LLC

Dated: December 23, 2015

CERTIFICATE OF FEE PAYMENT

I hereby declare under penalty of perjury that (1) AT&T previously paid the \$225 filing fee required under 47 C.F.R. § 1.1106 on October 21, 2015 at the time that AT&T originally filed its Formal Complaint. This payment was made by by check sent to Lockbox # 979094. AT&T Mobility LLC's FRN is 0004979233.

/s/ James F. Bendernagel, Jr. _____
James F. Bendernagel, Jr.

Tab 2

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

In the Matter of

AT&T MOBILITY LLC

Complainant,

v.

IOWA WIRELESS SERVICES, LLC

Defendant.

Proceeding No. 15-259

File No. EB-15-MD-007

**DECLARATION OF GRAM MEADORS
IN SUPPORT OF AT&T'S AMENDED FORMAL COMPLAINT**

December 23, 2015

TABLE OF CONTENTS

I. Background.....1

II. AT&T’s Provision and Use of Data Roaming Services1

III. AT&T’s Dealing with iWireless.....4

 A. The Agreement.....4

 B. 2012-13 Negotiations.....5

 C. 2014-15 Negotiations.....6

 D. AT&T Enforces Its Rights Under the Agreement10

 E. iWireless’ Termination of the Agreement13

 F. The Parties’ Best and Final Offers (“BAFOs”)15

IV. iWireless’ Proposed BAFO Is Not Reasonable18

 A. [BEGIN CONFIDENTIAL] [REDACTED]
 [REDACTED] [END CONFIDENTIAL] Is Not Reasonable18

 B. iWireless’ Proposed Data Rates Are Not Commercially Reasonable20

 C. iWireless’ Proposed Voice “Rates” Are Not Reasonable.....24

 D. iWireless’ Proposed Payment Terms Are Not Reasonable.....26

 E. iWireless’ [BEGIN CONFIDENTIAL] [REDACTED]
 [REDACTED] [END CONFIDENTIAL].....27

 F. Other Unreasonable Terms and Conditions.....28

V. AT&T’S Proposed BAFO Is Reasonable30

I. BACKGROUND

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

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

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

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

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

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

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

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

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

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

[REDACTED] [END CONFIDENTIAL]

T-MOBILE DATA ROAMING RATES³

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

As can be seen from this chart, the overall drop in the rates that T-Mobile pays for data roaming has been dramatic (from \$3.06/MB in 2008 to \$0.18/MB in 2014) as has been the rate of decline on a year-to-year basis (*e.g.*, 40% between 2013 and 2014).

7. The rates that AT&T has both paid and received for data roaming services have experienced similar declines during this same period. Further, those rates have continued to decline since 2014. Indeed, in the past year, the average effective rate that AT&T pays for data roaming has declined from approximately [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL]

8. This decline is in large measure the result of AT&T entering into a number of new or revised arm's length roaming agreements that contain substantially lower rates. While the rates for data roaming services in these agreements have varied somewhat, they have generally been in the range of [BEGIN CONFIDENTIAL] [REDACTED]

³ See Ex. 1, Declaration of Joseph Farrell in Support of Petition for Declaratory Ruling of T-Mobile USA, Inc., WT Docket No. 05-265, at Table 6 (May 19, 2014).

⁴ See Declaration of Jonathan Orszag in Support of AT&T's Amended Complaint (Dec. 23, 2015) at ¶ 26. Over the same period, the rates that AT&T receives for roaming have also declined significantly from about [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

C. 2014-15 Negotiations

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

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

¹³ The Auction 97 process ultimately concluded on January 29, 2015. FCC, "Auction 97, Advanced Wireless Services (AWS-3)," available at http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=97 (last accessed May 20, 2015).

¹⁴ [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END
CONFIDENTIAL]

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

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

[END CONFIDENTIAL]

14. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹⁵ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

¹⁶ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

¹⁷ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

¹⁸ *Id.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. [END CONFIDENTIAL]

15. [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL]

16. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

¹⁹ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

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

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

²² [BEGIN CONFIDENTIAL] [REDACTED]. [END CONFIDENTIAL]

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

[REDACTED]

[REDACTED] **[END CONFIDENTIAL]**

17. **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

²⁴ **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]**

²⁵ **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]**

²⁶ **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]**

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

18. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]. [END CONFIDENTIAL]

D. AT&T Enforces Its Rights Under the Agreement

19. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]. [END CONFIDENTIAL]

20. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

²⁷ Ex. 2, Agreement, § 13.

²⁸ *Id.*

²⁹ *Id.*

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

[REDACTED]
[REDACTED] [END CONFIDENTIAL]

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

22. [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

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

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

³³ [BEGIN CONFIDENTIAL] [REDACTED] [END
CONFIDENTIAL]

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

³⁵ *Id.* at 4 [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

³⁶ *Id.* at 1-2.

³⁷ *Id.* at 12.

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

24. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

³⁸ [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

³⁹ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁴⁰ *Id.* at 1.

⁴¹ *Id.* at 7.

⁴² *Id.* at 5-7.

⁴³ *Id.* at 2 [BEGIN CONFIDENTIAL] [REDACTED]
[END CONFIDENTIAL]

⁴⁴ *Id.* at 7.

⁴⁵ *Id.* at 6.

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

25. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

E. iWireless' Termination of the Agreement

26. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

27. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴⁶ *Id.* at 6-7.

⁴⁷ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁴⁸ [BEGIN CONFIDENTIAL] [REDACTED] ND
CONFIDENTIAL]

⁴⁹ *Id.* at 1-2.

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

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

28. On October 2, 2015, iWireless [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

29. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

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

⁵² [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁵³ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁵⁴ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁵⁵ *Id.*

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

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

F. The Parties' Best and Final Offers ("BAFOs")

32. On November 17, 2015, the Staff issued a Letter Order suspending the initial procedural schedule that had been put in place following the filing of the Complaint.⁵⁹ Staff also directed the parties to submit BAFOs, which would thereafter be the focus of the complaint

⁵⁶ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁵⁷ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁵⁸ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁵⁹ Letter from L. Saks to C. Northrop and J. Bendemagel, "Re: *AT&T Mobility LLC v. Iowa Wireless Services LLC*, Proceeding No. 15-259; File No. EB-15-MD-007" (Nov. 17, 2015). The original schedule was set forth in the Notice of Formal Complaint issued on October 26, 2015.

proceeding. Consistent with that directive, the Parties made their BAFO submissions on December 4, 2015.

33. AT&T's BAFO: [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

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

35. iWireless' BAFO: [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]

⁶⁰ Ex. 3, AT&T Best & Final Offer at 1 (Dec. 4, 2015).

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

36. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

⁶⁸Ex. 4, iWireless Best and Final Offer, Appendix 1, Schedule 3 (Dec. 4, 2015).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*, Appendix 1, Schedule 3.

⁷⁴ *Id.*, Appendix 1, ¶ 1.

⁷⁵ *Id.*, Appendix 1, ¶ 11.

IV. iWIRELESS' PROPOSED BAFO IS NOT REASONABLE

37. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] These

and certain other deficiencies in iWireless' BAFO are discussed in greater detail below.

A. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL] Is Not Reasonable

38. Nothing in the Commission's data roaming rules permits [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

39. Further, iWireless' proposal would discourage AT&T from building out its network in Iowa. As further discussed below, AT&T has plans to build out its available spectrum in Iowa, which would reduce its roaming traffic on the iWireless network. If, however,

41. In the Notice of Formal Complaint dated October 26, 2015, Commission Staff made clear that the BAFOs should not address past contract disputes.⁷⁶ [BEGIN

CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL]

42. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

B. iWireless' Proposed Data Rates Are Not Commercially Reasonable

43. [BEGIN CONFIDENTIAL] [REDACTED]

⁷⁶ Notice of Formal Complaint at 3, ¶7 (“The BAFO should not address any disputes regarding the terms, interpretation, enforcement or alleged violation of any prior roaming agreement between the parties.”).

⁷⁷ Iowa Wireless Services, LLC Opposition to AT&T Mobility LLC’s Motion for Interim Relief at 9 (Nov. 20, 2015).

⁷⁸ [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] . [END CONFIDENTIAL]

44. These data rates are not commercially reasonable when compared to the rates that other participants in the market have agreed to pay, which AT&T believes is the best evidence of commercial reasonableness. AT&T currently is a party to approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] arm's length data roaming agreements. Under those agreements, AT&T paid an average data roaming rate of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] over the twelve months ending November 2015.⁸¹ Moreover, prevailing market rates have greatly declined over the last year. Indeed, as discussed above, AT&T has recently agreed to provide [BEGIN CONFIDENTIAL]

⁷⁹ [BEGIN CONFIDENTIAL] [REDACTED] . [END CONFIDENTIAL]

⁸⁰ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁸¹ See Orszag Decl. at ¶ 23. [BEGIN CONFIDENTIAL] [REDACTED] . [END CONFIDENTIAL] See *id.* at ¶ 27 & n.21.

[REDACTED]. [END
CONFIDENTIAL]

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

46. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]

⁸² *Id.*

[REDACTED]
[REDACTED]. [END CONFIDENTIAL]

50. iWireless' proposal is not reasonable. As an initial matter, [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. [END CONFIDENTIAL] In either event, the data rate would be unreasonable.

51. Likewise, the voice rate specified in the Parties' Agreement is also not reasonable. Indeed, a review of the agreements under which AT&T is currently paying for voice roaming service (excluding strategic relationships and the agreement with iWireless) shows that [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL] Moreover, since the middle of 2014, AT&T has negotiated voice rates in [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]

⁸⁸ See Ex. 5.

⁸⁹ [BEGIN CONFIDENTIAL] [REDACTED]. [END CONFIDENTIAL]

⁹⁰ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

⁹¹ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

55. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

E. iWireless' [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

56. iWireless' BAFO provides that [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁹⁶ *Id.*, § 14.1.

⁹⁷ *Id.*, § 17.1.

⁹⁸ *Id.*, Appendix 1, ¶ 1.

⁹⁹ *Id.*

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

F. Other Unreasonable Terms and Conditions

57. Other terms and conditions in iWireless' BAFO that are not reasonable include the following:

58. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

59. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

¹⁰⁰ Notice of Formal Complaint at 3.

¹⁰¹ iWireless BAFO, § 16.

¹⁰² *Id.*, § 2.1.

60. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END

CONFIDENTIAL]

61. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL] This is not commercially

reasonable.

62. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹⁰³ *Id.*, Appendix 1, ¶ 11.

¹⁰⁴ *Id.*, § 3.2.

¹⁰⁵ *Id.*, § 4.1.

V. AT&T'S PROPOSED BAFO IS REASONABLE

63. In contrast to iWireless' BAFO, AT&T's proposed BAFO is reasonable. AT&T's proposed data roaming rates are consistent with (i) the rates that AT&T has negotiated in recent agreements with other independent providers;¹⁰⁶ and (ii) what AT&T pays, on average, to roam on other wireless providers' networks [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

64. Likewise, AT&T's proposed voice rate is not [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] but is also consistent with the rates for voice service being offered in the current market for voice roaming services in which AT&T is seeing rates in the range of [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]. [END CONFIDENTIAL]

65. Finally, the other terms and conditions set forth in AT&T's BAFO are fully consistent with both the terms and conditions that AT&T is observing in the current marketplace and with the terms and conditions it has agreed to with other wireless providers. Indeed, the BAFO is based on AT&T's standard form of agreement.

¹⁰⁶ See *supra* ¶ 7.

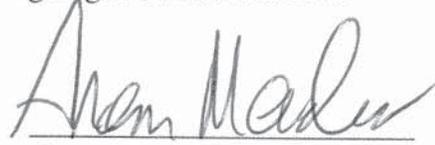
¹⁰⁷ See Orszag Decl. at ¶ 23.

¹⁰⁸ See *supra* ¶¶ 10, 12, 14, 16.

¹⁰⁹ See Orszag Decl. at Table B-2.

VERIFICATION PAGE

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

A handwritten signature in black ink, appearing to read "Gram Meadors", written over a horizontal line.

Gram Meadors

Dated: December 12, 2015

Exhibit 1

DECLARATION OF JOSEPH FARRELL, D.PHIL.

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

May 19, 2014

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

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

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

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

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

⁶⁶ See Table 2, *supra*.

Exhibit 2

Exhibit Removed As Confidential

Exhibit 3

Exhibit Removed As Confidential

Exhibit 4

Exhibit Removed As Confidential

Exhibit 5

Exhibit Removed As Confidential

Exhibit 6

Tab 3

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of

AT&T MOBILITY LLC

Complainant,

v.

IOWA WIRELESS SERVICES, LLC

Defendant.

Proceeding No. 15-259

File No. EB-15-MD-007

Declaration of Jonathan Orszag
in Support of AT&T's Amended Formal Complaint

December 23, 2015

CONTENTS

I. Qualifications	1
II. Assignment and Summary of Conclusions	1
III. iWireless' and AT&T's Proposed Data Roaming Rates.....	2
IV. Approach Used in Assessing Commercial Reasonableness	4
A. Commercially Reasonable Data Roaming Rates	4
B. Criteria for Assessing Commercial Reasonableness	5
V. AT&T's Proposed Roaming Rates Are Commercially Reasonable.....	5
VI. iWireless' Proposed Roaming Rates Are Not Commercially Reasonable	7

Appendix A: Curriculum Vitae - Jonathan M. Orszag

Appendix B: Tables

I. Qualifications

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

II. Assignment and Summary of Conclusions

6. We have been asked by counsel for AT&T Mobility LLC (“AT&T”) to assess whether the rates for data roaming proposed by Iowa Wireless Services, LLC (“iWireless”) are “commercially reasonable.” We have also been asked to evaluate under the same standard the data roaming rates that AT&T has

¹ In preparing this analysis, I was assisted by Drs. Loren Poulsen and Guillermo Israilevich, two Senior Vice Presidents at Compass Lexecon.

proposed. For purposes of this analysis, we use the “commercially reasonable” standard as defined by the Commission in the *Data Roaming Order* and *Declaratory Ruling*,² as explained below.

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

III. iWireless’ and AT&T’s Proposed Data Roaming Rates

10. By Letter Order dated November 17, Commission Staff directed AT&T and iWireless to submit Best and Final Offers by December 4, 2015, which both parties have done.³
11. **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

² Second Report and Order, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, 26 FCC Rcd. 5411, April 7, 2011 (hereinafter, *Data Roaming Order*); Wireless Telecommunications Bureau, *Declaratory Ruling, Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, 29 FCC 15483, December 18, 2014 (hereinafter, *Declaratory Ruling*).

³ See Declaration of Gram Meadors in Support of AT&T’s Amended Formal Complaint (Dec. 23, 2015) (hereinafter, *Meadors Decl.*) at ¶ 32.

⁴ *Id.* at ¶¶ 33-34 & Ex.3.

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

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

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

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

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

14. In the sections that follow, we assess the commercial reasonableness of AT&T’s and iWireless’ proposals. In Section IV, we explain our approach for assessing commercial reasonableness. In Section V, we show that the data rates AT&T has offered to iWireless are consistent with the data roaming agreements AT&T has entered into with other wireless service providers and are thus market-based and commercially reasonable. In Section VI, we show that iWireless’ proposed data rates are substantially higher than the rates in data roaming agreements that AT&T has entered into with other wireless service providers. We also show that iWireless’ proposed data rates are substantially in excess of the other pricing points identified by the Commission, which further proves that they are not commercially reasonable.

⁵ *Id.* at ¶¶ 35-36 & Ex. 4.

⁶ *Id.* at ¶ 40 & Ex. 5.

⁷ *See id.* at ¶ 43, [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

IV. Approach Used in Assessing Commercial Reasonableness

A. Commercially Reasonable Data Roaming Rates

15. The foundation of the commercially reasonable standard is the terms and conditions that result from arm's length negotiations between wireless carriers. Market-based rates reflect the opportunity costs associated with network capacity, the investment made to service that capacity, the opportunity to sell the capacity to other roaming partners, resellers or MVNOs; to provide additional services to the host carrier's own customers; and to preserve network capacity to enhance network reliability. One way to gauge the reasonableness of a given proposal is to assess the proposed rates relative to other similar agreed-upon rates attempting to hold constant unique factors that are always part of any negotiation.
16. The Commission has listed seventeen factors that it "may" consider in the assessment of whether a particular data roaming offer includes commercially reasonable terms and conditions.⁸ The factors identified by the Commission can generally be grouped into the following categories:
 - *Negotiation Factors*: how the host provider has responded to the request for negotiation (*e.g.*, potential stonewalling, unreasonable offers); whether the parties have or have had any roaming arrangements (and the terms of such agreements).
 - *Competitive Factors*: competitive harm/benefits to consumers; the impact on incentives for either provider to invest; the extent of providers' build-out in the data roaming area (including the presence of alternative roaming partners, the feasibility of building another network, and whether the requesting provider is already providing facilities-based service).
 - *Technical Factors*: technological compatibility and feasibility; whether changes to the host network are necessary to accommodate the request.
17. In addition to the *Data Roaming Order*, the Wireless Bureau's *Declaratory Ruling* provides further guidance about whether a particular data roaming offer includes commercially reasonable terms and conditions. Specifically, the Commission concluded that the *Data Roaming Order* permitted consideration of evidence regarding rates charged by the parties in other contexts, *i.e.*, whether the proffered roaming rates are "substantially in excess of retail rates, international rates, and MVNO/resale rates."⁹ The Commission also reiterated its earlier determination that it is appropriate to compare the offered roaming rates to the rates the parties have negotiated in other domestic roaming agreements.¹⁰

⁸ *Data Roaming Order*, ¶¶ 2, 85-86.

⁹ *Declaratory Ruling*, ¶ 9.

¹⁰ *Id.*, ¶¶ 9, 15-16.

B. Criteria for Assessing Commercial Reasonableness

18. We have analyzed, as economists, the commercial reasonableness of the data roaming agreements proposed by both AT&T and iWireless using the factors identified by the Commission. In this context, we have assessed, from an economic perspective, the applicability of each factor identified by the Commission as it relates to the facts of this case. In performing this analysis, we have:
- Reviewed the history of the parties' negotiations; and
 - Compared the rates and other terms in the proposed agreements to existing data roaming agreements between AT&T and other providers (and, based upon publicly available information, the rates in agreements between T-Mobile and other providers).
19. In making this economic assessment, we have paid particular attention to data roaming agreements previously executed by AT&T. One of the factors the Commission considers in determining the reasonableness of the terms and conditions of a data roaming offer is whether "the providers involved have had previous data roaming arrangements with similar terms."¹¹ In particular, the Commission stated that in its review, it will "expressly contemplate... the terms of other data roaming agreements."¹² Such a perspective is entirely consistent with sound economics.¹³
20. As a result, one can analyze existing data roaming agreements between AT&T and other providers to assess whether the rates and other terms and conditions in those agreements are consistent with what AT&T and iWireless have proposed.

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

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

¹¹ *Data Roaming Order*, ¶ 86.

¹² *Id.*, ¶ 81; *Declaratory Ruling*, ¶¶ 9, 15-16.

¹³ See discussion in ¶ 15, above.

VERIFICATION PAGE

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



Jonathan Orszag

Dated: December __, 2015

Appendix A



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PROFESSIONAL EXPERIENCE:

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

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

Volunteer Positions

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

EDUCATION:

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

HONORS, PROFESSIONAL ASSOCIATIONS, AND APPOINTMENTS:

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

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

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- “Managing Communications During Unprecedented Economic Times,” Panelist, The California Club, Los Angeles, CA, January 27, 2009.
- Presentation to the Computer & Communications Industry Association’s Antitrust Summit on Innovation and Competition Policy in High-Tech Markets, Washington DC, October 24, 2008.
- Presentation to the Center for American Progress Action Fund Session on the “Avoiding the Pitfalls of Credit Card Debt,” Washington, DC, February 25, 2008.
- “Distribution Fund Planning and Management: Lessons Learned from the Global Research Analyst Settlement,” with Francis McGovern, Presentation to the Securities and Exchange Commission, Washington, DC, January 31, 2006.
- “The Empirical Effects of Division II Intercollegiate Athletics,” Presentation to the National Collegiate Athletic Association 2006 Annual Convention, Indianapolis, Indiana, January 8, 2006.
- “Rules of the Game: Defining Antitrust Markets in Cases Involving Sports,” Presentation to the Wilmer, Cutler, Pickering, Hale & Dorr Antitrust Lunch, Washington, DC, December 8, 2005.
- “Competition Policy, Antitrust, and The High-Tech Economy,” Keynote Address to the Computer & Communications Industry Association TechSummit 2005, Laguna Beach, CA, October 26, 2005.
- “The Empirical Effects of Division II Intercollegiate Athletics,” Presentation to the Division II Chancellors and Presidents Summit, Orlando, FL, June 25, 2005.
- “The Empirical Effects of Collegiate Athletic Spending: An Update and Extension,” Presentation to the President’s Task Force on the Future of Intercollegiate Athletics, Tucson, AZ, June 9-10, 2005.
- “The Empirical Effects of Collegiate Athletic Spending: An Update and Extension,” Presentation to the NCAA Division I Board of Directors, Indianapolis, IN, April 28, 2005.

- “An Analysis of Division II Athletic Expenditures: Preliminary Findings,” Presentation to the NCAA Division II Board of Directors, Indianapolis, IN, April 28, 2005.
- “An Analysis of Division II Athletic Expenditures: An Overview of Study Design,” Presentation to the National Collegiate Athletic Association 2005 Annual Convention, Grapevine, Texas, January 8, 2005.
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- “The Impact of Asbestos Liabilities on Workers in Bankrupt Firms,” *South Texas Law Review*, “Symposium: Asbestos Litigation,” Fall 2003.
- “The Impact of Asbestos Liabilities on Workers in Bankrupt Firms,” Presentation to the Conference on “Understanding Asbestos Litigation: The Genesis, Scope, and Impact,” U.S. Chamber of Commerce, Washington, DC, January 23, 2003.
- “The Process of Economic Policy-Making During the Clinton Administration,” Presentation to the Conference on “American Economic Policy in the 1990s,” Center for Business and Government, John F. Kennedy School of Government, and Harvard University, Cambridge, MA, June 29, 2001.
- “The Impact of Paying for College on Family Finances,” Presentation to the Conference on “Funding Excellent Schools and Colleges for All Students,” National Conference of State Legislatures, Savannah, Georgia, February 17, 2001.
- “China and the Internet,” Remarks on Entertainment and the Internet in China at the EMASIA 2000 Forum, The Asia Society, Los Angeles, CA, May 23, 2000.
- “Is It The Star or Just an Extra? The Role Government Plays in a Digital Economy,” Remarks on the Regulation of Global Electronic Commerce at the eCommerce and Global Business Forum, The Anderson School at UCLA and the University of Washington Business School, Santa Cruz, CA, May 18, 2000.
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- “Don’t Just Think, Believe,” Remarks to the Assembly of Phillips Exeter Academy, Exeter, New Hampshire, February 9, 1999.

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- *Sky Angel U.S., LLC v. Discovery Communications, LLC, et al.* In the United States District Court of Maryland, Southern Division (Civil Action No. 8:13-cv-00031-DKC), (Expert Report: December 6, 2013; Deposition: January 31, 2014; Trial Testimony: November 23, 2015).
- *Oakley, Inc. vs. Nike, Inc. and Rory McIlroy*; In the United States District Court for the Central District of California (Case No. SACV12-02138 JVS-MLG), (Expert Report: November 26, 2013).
- *In re: Electronic Books Antitrust Litigation; The State of Texas, et al., v Penguin Group (USA), Inc., et al.*, In the United States District Court for the Southern District of New York (No. 11-md-02293 (DLC) and No. 12-cv-03394 (DLC)), (Declaration: November 15, 2013; Deposition: December 7, 2013; Sur-Reply Declaration: January 21, 2014).
- Hearing on “Pay-for-Delay Deals: Limiting Competition and Costing Consumers,” Testimony to the Senate Judiciary Committee, Subcommittee on Antitrust, Competition Policy, and Consumer Rights, July 23, 2013.
- *Federal Trade Commission v. Actavis, Inc., et al.*, Signatory, Brief of Antitrust Economists as *Amici Curiae* before the Supreme Court, No. 12-416, February 28, 2013.
- *VOOM HD Holding LLC v. EchoStar Satellite LLC*, In the Supreme Court of the State of New York, County of New York (Index No. 600292/08), (Expert Report: December 4, 2009; Deposition Testimony: March 5, 2010; Supplemental Expert Report: August 10, 2012; Supplemental Deposition Testimony: September 14, 2012; Jury Trial Testimony: October 11-12, 2012).

- *Hewlett-Packard Company v. Oracle Corporation*, In the Superior Court of the State of California, County of Santa Clara (Case No 1-11-CV-203163), (Expert Report: March 26, 2012; Rebuttal Report: April 9, 2012; Deposition Testimony: April 19, 2012; Supplemental Expert Report: December 10, 2012; Supplemental Deposition Testimony: February 5, 2013; Trial Testimony: March 18, 2013; Updates to Supplemental Expert Report: November 30, 2015).
- *In The Matter of Game Show Network, LLC v. Cablevision Systems Corporation*, in File No. CSR-8529-P, Before the Federal Communications Commission (Expert Report: December 12, 2011; Reply Declaration: February 9, 2012; Expert Report: December 14, 2012; Deposition Testimony: February 7, 2013, March 12, 2015; Direct Testimony: March 12, 2013; Supplemental Direct Testimony: March 19, 2013; Rebuttal Report: December 15, 2014; Complete Direct Testimony: June 1, 2015; Trial Testimony: July 20, 2015).
- Hearing on “The Express Scripts/Medco Merger: Cost Savings for Consumers or More Profits for the Middlemen?” Written Testimony to the Senate Judiciary Committee, Subcommittee on Antitrust, Competition Policy, and Consumer Rights, December 6, 2011.
- *In the Matter of Applications of AT&T Inc. and Deutsche Telekom AG For Consent To Assign or Transfer Control Licenses and Authorization*, in WT Docket No. 11-65, with Robert D. Willig and Jay Ezrielev, Submitted to the Federal Communications Commission, Commissioned by AT&T, June 9, 2011.
- *In The Matter of The Tennis Channel v. Comcast Cable Communications, LLC*, in File No. CSR-8258-P, Before the Federal Communications Commission (Declaration: February 11, 2010; Reply Declaration: April 13, 2010; Expert Report: February 25, 2011; Deposition Testimony: March 8, 2011; Written Direct Testimony: April 15, 2011; Rebuttal Declaration: April 26, 2011; Courtroom Testimony: April 27, 2011; Supplemental Deposition Testimony: May 1, 2011; Supplemental Rebuttal Declaration, May 12, 2011).
- “Response to Supplementary Comments of Hubert Horan,” Submitted to the Department of Transportation, *Joint Application of Delta Airlines, Inc.; Virgin Blue Airlines PTY LTD; Virgin Blue International Airlines PTY LTD d/b/a V Australia; Pacific Blue Airlines (NZ) LTD; and Pacific Blue Airlines (Aust) PTY LTD*, with Mark Israel, Bryan Keating, and Robert D. Willig, Docket DOT-OST-2009-0155, Commissioned by Delta Air Lines, October 22, 2010.
- “Measuring Consumer Benefits from Antitrust Immunity for Delta Air Lines and Virgin Blue Carriers,” Submitted to the Department of Transportation, *Joint Application of Delta Airlines, Inc.; Virgin Blue Airlines PTY LTD; Virgin Blue International Airlines PTY LTD d/b/a V Australia; Pacific Blue Airlines (NZ) LTD; and Pacific Blue Airlines (Aust) PTY LTD*, with Mark Israel, Bryan Keating, and Robert D. Willig, Docket DOT-OST-2009-0155, Commissioned by Delta Air Lines, October 13, 2010.
- *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, with Allan Shampine, Submitted to the Federal Communications Commission (WC Docket No. 07-245; GN Docket No. 09-51), Commissioned by the Edison Electric Institute, Declaration Submitted on October 4, 2010; Supplemental Declaration, Submitted on December 14, 2010.
- *In Re: Cable Subscribership Survey For the Collection of Information Pursuant to Section 612(g) of the Communications Act*, with Michael Katz and Theresa Sullivan, Submitted to the Federal Communications Commission (MB Docket No. 07-269), Commissioned by the

National Cable & Telecommunications Association, DIRECTV, and DISH Network, December 16, 2009.

- *Caroline Behrend, et al. vs. Comcast Corporation, et al.*, In the United States District Court for the Eastern District of Pennsylvania (Civil Action No. 03-6604), (Declaration: August 21, 2009; Deposition: September 29, 2009).
- *In The Matter of TCR Sports Broadcasting Holding, LLP d/b/a Mid-Atlantic Sports Network v. Comcast Corporation*, in MB Docket No. 08-214, File No. CSR-8001-P, Before the Federal Communications Commission (Declaration with Jay Ezriev: July 31, 2008; Expert Report: March 19, 2009; Deposition Testimony: April 23, 2009; Courtroom Testimony: May 26, 2009; Reply Declaration: June 1, 2009).
- *In The Matter of NFL Enterprises LLC v. Comcast Cable Communications, LLC*, MB Docket No. 08-214, File No. CSR-7876-P, Before the Federal Communications Commission (Declaration with Jay Ezriev: June 20, 2008; Expert Report: March 13, 2009; Deposition Testimony: April 1, 2009; Written Direct Testimony: April 6, 2009; Courtroom Testimony: April 16, 2009).
- *In The Matter of Applications for the Transfer of Control of Licenses and Authorizations From Centennial Communications Corp. to AT&T*, with Robert D. Willig and J. Loren Poulsen, Submitted to the Federal Communications Commission, Commissioned by AT&T, November 21, 2008.
- *In The Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act; Sunset of Exclusive Contract Prohibition; Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, Filed in Conjunction With Reply Comments Submitted to the Federal Communications Commission (MB Docket No. 07-29; MB Docket No. 07-198), Commissioned by Discovery Communications, Inc., February 12, 2008.
- *In Re: Intel Corp. Microprocessor Antitrust Litigation; Phil Paul et al v. Intel Corporation*, In the United States District Court for the District of Delaware (MDL Docket No. 05-1717 (JJF) and C.A. No. 05-485 (JJF), (Declaration: August 10, 2007; Declaration: April 23, 2007).
- *In The Matter of Applications for the Transfer of Control of Licenses and Authorizations From Dobson Communications to AT&T*, with Robert D. Willig, Submitted to the Federal Communications Commission, Commissioned by AT&T, July 12, 2007.
- *Microsoft Corporation v. Commission of the European Communities*, European Court of First Instance, Case T-201/04 R, April 24-25, 2006.
- *In The Matter of Satellite Home Viewer Extension and Reauthorization Act of 1994*, with Jay Ezriev, Submitted to the Library of Congress, Copyright Office (Docket No. RM 2005-07), Commissioned by EchoStar Satellite L.L.C., September 1, 2005.
- *In The Matter of Rainbow DBS Company, LLC, Assignor, and EchoStar Satellite L.L.C., Assignee, Consolidated Application for Consent to Assignment of Space Station and Earth Station Licenses, and related Special Temporary Authorization*, with Simon J. Wilkie, Submitted to the Federal Communications Commission (IB Docket No. 05-72), Commissioned by EchoStar Satellite L.L.C. and Rainbow DBS Company, LLC, April 12, 2005.

- *In The Matter of Applications for the Transfer of Control of Licenses and Authorizations From Western Wireless Corporation to ALLTEL Corporation*, with Robert D. Willig and Yair Eilat, Submitted to the Federal Communications Commission (WT Docket No. 05-50), Commissioned by ALLTEL Corporation and Western Wireless Corporation, March 29, 2005.
- *In The Matter of A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, with Robert D. Willig and Jay Ezrielev, Filed in Conjunction With Comments Submitted to the Federal Communications Commission (MB Docket No. 04-207), Commissioned by Discovery Communications, Inc., July 15, 2004.
- “An Economic Assessment of the Exclusive Contract Prohibition Between Vertically Integrated Cable Operators and Programmers,” with Peter R. Orszag and John M. Gale, Filed in Conjunction With Reply Comments Submitted to the Federal Communications Commission (CS Docket No. 01-290), Commissioned by EchoStar Satellite Corporation and DIRECTV, Inc., January 7, 2002
- Hearing on “The Department of Commerce Fiscal Year 2001 Budget and Its Native American Initiatives,” Testimony to the United States Senate Indian Affairs Committee, February 23, 2000.
- Hearing on “Testimony on S. 614: The Indian Tribal Regulatory Reform and Business Development Act,” Testimony to the United States Senate Indian Affairs Committee, May 19, 1999.

Appendix B

Tab 4

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONFIDENTIAL INFORMATION REDACTED

Subjects: Subject matter further described in more detail in the Declaration of Jonathan Orszag in Support of AT&T's Amended Formal Complaint, including the reasonableness of the parties' proposed rates when compared to market roaming rates and the other benchmark rates that the Commission has determined may be relevant.

6. Loren Poulsen
Senior Vice President
Compass Lexecon, LLC
1101 K Street, NW
Washington, DC 20005

Subjects: Subject matter further described in more detail in the Declaration of Jonathan Orszag in Support of AT&T's Amended Formal Complaint, including the reasonableness of the parties' proposed rates when compared to market roaming rates and the other benchmark rates that the Commission has determined may be relevant. **[BEGIN CONFIDENTIAL]**

[REDACTED]

[END
CONFIDENTIAL]

7. Guillermo Israilevich
Senior Vice President
Compass Lexecon, LLC
1101 K Street, NW
Washington, DC 20005

Subjects: Subject matter further described in more detail in the Declaration of Jonathan Orszag in Support of AT&T's Amended Formal Complaint, including the reasonableness of the parties' proposed rates when compared to market roaming rates and the other benchmark rates that the Commission has determined may be relevant.

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

Pursuant to Section 1.721(a)(ii) of the Commission's Rules, 47 C.F.R. § 1.721(a)(10)(ii), attached as Appendix A is a log describing the non-privileged documents, data compilations, and tangible things in the possession, custody, or control of AT&T that are relevant to the facts alleged with particularity in the Amended Formal Complaint. The Parties also filed other relevant materials with the Commission on December 9, 2015. These documents relate to the

arbitration of a dispute arising under the Parties' roaming agreement and are described on the confidential index attached as Appendix B.

AT&T notes that many of the documents described in Appendix A and all of the documents described in Appendix B contain Confidential Information (the Parties' email correspondence and some arbitration materials) and/or Highly Confidential Information (AT&T's data roaming agreements, backup documents relating to the same, and some arbitration materials), as those terms are defined in the Protective Order that is attached as Appendix C. A Protective Order has not yet been entered in this proceeding, but the Parties agreed to the attached Protective Order in the context of the arbitration.

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

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

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

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

Respectfully submitted,

Rachel Morgan
AT&T Services Inc.
208 S. Akard, Ste. 3313
Dallas, TX 75202
(214) 757-8023

Michael P. Goggin
AT&T Inc.
1120 20th Street, N.W.
Washington, D.C. 20036
(202) 457-2055

James F. Bendernagel, Jr.

James F. Bendernagel, Jr.
Paul J. Zidlicky
Kyle J. Fiet
Emily C. Watkins
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
(202) 736-8000
(202) 736-8711 (fax)

Counsel for AT&T Mobility LLC

Dated: December 23, 2015

Appendix A

Appendix B

Appendix C

Protective Order

1. Definitions.

a. Arbitration Panel. “Arbitration Panel” shall mean the panel of arbitrators appointed in this proceeding consistent with Section 30 of “Inter-carrier Multi-Standard Roaming Agreement by and between Cingular Wireless LLC and Iowa Wireless Services, LLC” dated January 1, 2006.

b. Authorized Representative. “Authorized Representative” shall have the meaning set forth in Paragraph 7 below.

c. Confidential Information. “Confidential Information” means (i) information submitted to the Arbitration Panel or to another party in this proceeding by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith constitutes trade secrets or commercial or financial information which is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4); or (ii) information submitted to the Arbitration Panel or to another party in this proceeding by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith falls within the terms of the Federal Communications Commission’s rules and orders regarding the designation and treatment of Confidential Information (*e.g.*, 47 C.F.R. § 0.459). Confidential Information includes additional copies of, and information derived from, Confidential Information.

d. Highly Confidential Information. “Highly Confidential Information” means information that satisfies the requisites of paragraph c. above and which the Submitting Party believes in good faith would materially impair its business if disclosed to personnel employed by the Reviewing Party.

e. Counsel. “Counsel” means In-House Counsel and Outside Counsel of Record.

f. In-House Counsel. “In-House Counsel” means the attorney or attorneys employed by a party to these proceedings or who is employed by an affiliated entity and who are actively engaged in the conduct of this proceeding.

g. Outside Counsel of Record. “Outside Counsel of Record” means the firm(s) of attorneys (including employees of those firms) representing a party in these proceedings, provided that such attorney is not involved in competitive decision-making activities of any competitor of a Submitting Party.

h. Outside Consultant. “Outside Consultant” means a consultant or expert retained for the purpose of assisting Counsel in this proceeding, provided that such consultant or expert is not involved in competitive decision-making activities of any competitor of a Submitting Party.

i. Declaration. “Declaration” means Appendix A or Appendix B to this Protective Order, as applicable.

j. Reviewing Party. “Reviewing Party” means a person or entity participating in this proceeding that receives a Submitting Party’s Confidential Information or Highly Confidential Information.

k. Submitting Party. “Submitting Party” means a person or entity that seeks confidential treatment of Confidential Information or Highly Confidential Information it has filed or produced in this proceeding, pursuant to this Protective Order.

1. Pleading. “Pleading” shall mean any written submission filed with the Commission in this proceeding.

2. Claim of Confidentiality. The Submitting Party may designate information as “Confidential Information” or “Highly Confidential Information” consistent with the definitions of those terms in Paragraph 1 of this Protective Order. The Arbitration Panel may upon petition with an opportunity to respond determine that all or part of the information claimed as “Confidential Information” or “Highly Confidential Information” is not entitled to such treatment.

3. Procedures for Claiming Information is Confidential or Highly Confidential. Confidential Information or Highly Confidential Information submitted to the Arbitration Panel shall bear on the front page in bold print, “DO NOT RELEASE,” or such similar designation along with the appropriate confidential designation under Paragraph 12.c. Such information shall be segregated by the Submitting Party from all non-confidential information submitted to the Arbitration Panel. To the extent a document contains both Confidential Information and/or Highly Confidential Information and non-confidential information, the Submitting Party shall designate the specific portions of the document claimed to contain Confidential Information or Highly Confidential Information and shall, where feasible, also submit a redacted version not containing Confidential Information and/or Highly Confidential Information.

4. Storage of Information at the Arbitration Panel. The Arbitration Panel shall place Confidential Information and Highly Confidential Information submitted to them in a non-public file. Such information shall be segregated in the files of the Arbitration Panel, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such information is released from the restrictions of this Order either through written agreement of the parties, or pursuant to the order of an administrative agency or a court having jurisdiction.

5. Access to Confidential Information. Unless otherwise agreed by the Submitting Party in writing, Confidential Information shall be made available only to Arbitration Panel staff, Arbitration Panel consultants, Counsel to the Reviewing Party, and persons designated by the Reviewing Party or Counsel to the Reviewing Party (including but not limited to Outside Consultants).

Except as provided in this Paragraph 5 or Paragraph 8 below, before Counsel to a Reviewing Party or such other person designated by the Reviewing Party may obtain access to

Confidential Information, Counsel or such other designated person must execute the Declaration attached as Appendix A. Consultants under contract to the Arbitration Panel may obtain access to Confidential Information or Highly Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement or if they execute the Declaration attached as Appendix B.

Each Submitting Party shall have an opportunity to object to the disclosure of Confidential Information to any such persons identified in Declarations based on Appendix A. Any objection must be filed with the Arbitration Panel and served on Counsel representing, retaining or employing such person within two business days after receiving a copy of that person's Declaration. Until any such objection is resolved by the Arbitration Panel and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Confidential Information. The Submitting Party shall make such information available for review by those persons that have executed a Declaration based on Appendix A and that are not the subject of an unresolved objection. Notwithstanding anything in this Paragraph or in Paragraph 10, the Submitting Party may agree in writing that any person that has executed a Declaration based on Appendix A is not subject to the two business day waiting period and may obtain Confidential Material immediately.

6. Disclosure of Confidential Information. Counsel to a Reviewing Party or such other person designated pursuant to Paragraph 5 may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of Paragraph 7 of this Protective Order only after advising such Authorized Representatives of the terms and obligations of the Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the Declaration attached as Appendix A.

7. Authorized Representatives shall be limited to:

- a. Counsel for the Reviewing Parties to this proceeding, including In-House Counsel actively engaged in the conduct of this proceeding in accordance with Paragraph 8, and their associated attorneys, paralegals, clerical staff and other employees, to the extent reasonably necessary to render professional services in this proceeding;
- b. Specified persons, including employees of the Reviewing Parties, requested by Counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding; or
- c. Any person designated by the Arbitration Panel in the public interest, upon such terms as the Arbitration Panel may deem proper.

8. Access to Highly Confidential Information. Unless otherwise agreed by the Submitting Party in writing, Highly Confidential Information shall only be disclosed to Outside

Counsel of Record for the Reviewing Party and Outside Consultants for the Reviewing Party who has executed the Declaration attached hereto as Appendix B.

Each Submitting Party shall have an opportunity to object to the disclosure of Highly Confidential Information to any such persons identified in Declarations based on Appendix B. Any objection must be filed with the Arbitration Panel and served on Counsel representing, retaining or employing such person within two business days after receiving a copy of that person's Declaration. Until any such objection is resolved by the Arbitration Panel and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Highly Confidential Information. The Submitting Party shall make such information available for review by the Reviewing Party's Outside Counsel of Record and Outside Consultants that have executed a Declaration based on Appendix B and that are not the subject of an unresolved objection. Notwithstanding anything in this Paragraph or in Paragraph 10, the Submitting Party may agree in writing that any person that has executed a Declaration based on Appendix B is not subject to the two business day waiting period and may obtain Highly Confidential Material immediately.

9. Copies of Confidential and Highly Confidential Information. Counsel, Authorized Representatives, and Outside Consultants in this proceeding may make additional copies of Confidential Information and Highly Confidential Information, as applicable, but only to the extent required and solely for the preparation and use in this proceeding. The original copy and all other copies of the Confidential Information and Highly Confidential Information shall remain in the care and control of such persons, shall be subject to all requirements and protections set forth herein, and shall be kept properly secured at all times.

10. Filing of Declaration. The Reviewing Party shall submit each executed Declaration to the Arbitration Panel, and serve it upon each Submitting Party through its Outside Counsel of Record. The Reviewing Party shall serve each executed Declaration so that the Declaration is received by each Submitting Party at least two business days prior to such person's reviewing or having access to such Submitting Party's Confidential Information or Highly Confidential Information, as applicable. Notwithstanding anything in this Paragraph or in Paragraphs 5 and 8, the Submitting Party may agree in writing that any person that has executed a Declaration based on Appendices A or B is not subject to the two business day waiting period and may obtain Confidential Material or Highly Confidential Material immediately.

11. Use of Confidential Information or Highly Confidential Information. Confidential Information or Highly Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than for use in this proceeding (including any subsequent administrative or judicial review) unless otherwise ordered by a court of competent jurisdiction, shall not be used for competitive business purposes, and shall not be used or disclosed except in accordance with this Protective Order. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information or Highly Confidential Information nor otherwise learned of its contents.

12. Pleadings Using Confidential Information or Highly Confidential Information. Submitting Parties and Reviewing Parties may, in any pleadings that they file in this proceeding, reference the Confidential Information or Highly Confidential Information, but only if they comply with the following procedures:

a. Any portions of the pleadings that contain or disclose Confidential Information or Highly Confidential Information must be physically segregated from the remainder of the pleadings and designated as such pursuant to Paragraph 3;

b. The portions containing or disclosing Confidential Information or Highly Confidential Information must be covered by a separate letter referencing this Protective Order;

c. Each page of any Party's filing that contains or discloses Confidential Information or Highly Confidential Information subject to this Protective Order must be clearly marked as applicable with the following designations or such other similar designations as to provide reasonable notice as to the contents of such materials:

“Confidential Information included pursuant to Protective Order” and

“Highly Confidential Information included pursuant to Protective Order.”

d. Any portion of a pleading that contains Confidential Information or Highly Confidential Information, to the extent it is required to be served, shall be served upon the Arbitration Panel and Outside Counsel of Record for the Reviewing Party. Such portions that contain Confidential Information or Highly Confidential Information shall be designated as such pursuant to Paragraph 3. They shall be stored by the Arbitration Panel pursuant to Paragraph 4 unless the Arbitration Panel directs otherwise (with notice to the Submitting Party and an opportunity to comment on such proposed disclosure). A Submitting Party or a Reviewing Party filing a pleading containing Confidential Information or Highly Confidential Information shall also file redacted copies of the pleading; one such copy of the pleading shall contain no Confidential Information or Highly Confidential Information. A second copy of the pleadings shall contain Confidential Information, but shall not contain Highly Confidential Information.

13. Violations of Protective Order. Should a Reviewing Party that has properly obtained access to Confidential Information or Highly Confidential Information under this Protective Order violate any of its terms, it shall immediately convey that fact to the Arbitration Panel and to the Submitting Party. Further, should such violation consist of improper disclosure or use of such information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The Violating Party shall also immediately notify the Arbitration Panel and the Submitting Party, in writing, of the identity of each party known or reasonably suspected to have obtained such information through any such disclosure. The Arbitration Panel retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to denial of further access to Confidential Information or Highly Confidential

Information in this proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or equity against any party using Confidential Information or Highly Confidential Information in a manner not authorized by this Protective Order.

14. Termination of Proceeding. Unless otherwise ordered by the Arbitration Panel or a court of competent jurisdiction, within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), Reviewing Parties (including their Counsel, Authorized Representatives, and Outside Consultants) shall destroy or return to the Submitting Party all Confidential Information and Highly Confidential Information as well as all copies and derivative materials made. The Reviewing Party shall certify in a writing served on the Arbitration Panel and the Submitting Party that no material whatsoever derived from such information has been retained by any person having access thereto, except that Counsel to a Reviewing Party may retain two copies of pleadings submitted on behalf of the Reviewing Party and other attorney work product. Any such information contained in any copies of pleadings retained by Counsel to a Reviewing Party or in materials that have not been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with Paragraphs 9 and 11 of this Protective Order unless such information is released from the restrictions of this Order either through written agreement of the parties, or pursuant to the order of the Arbitration Panel or a court having jurisdiction.

15. No Waiver of Confidentiality. Disclosure of Confidential Information or Highly Confidential Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any such materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information or Highly Confidential Information shall not be deemed a waiver of any privilege.

16. Client Consultation. Nothing in this Protective Order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Confidential Information or Highly Confidential Information; *provided, however,* that in rendering such advice and otherwise communicating with such client(s), Counsel shall not disclose Confidential Information or Highly Confidential Information to any person (including to In-House Counsel, in the case of Highly Confidential Information) who is not authorized pursuant to this Protective Order to receive such information.

17. Subpoena by Courts, Departments or Agencies. If a court, or a federal or state department or agency issues a subpoena or orders production of Confidential Information or Highly Confidential Information that a party has obtained under terms of this Protective Order, such party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Confidential Information or Highly Confidential Information.

18. Additional Rights Preserved. The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary or to the rights of the Reviewing Party to request further or renewed disclosure of Confidential Information or Highly Confidential Information. Nothing in this Protective Order shall be read to reduce the confidentiality protections available to the parties pursuant to the Intercarrier Multi-Standard Roaming Agreement by and between Cingular Wireless LLC and Iowa Wireless Services, LLC” dated January 1, 2006.

19. Effect of Protective Order. This Protective Order constitutes an Order of the Arbitration Panel and an agreement between the Reviewing Party, executing the attached Declaration, and the Submitting Party.

Appendix A to Protective Order

DECLARATION

I, _____, hereby declare under penalty of perjury that I have read the Protective Order in this proceeding, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceedings in this matter. I acknowledge that a violation of the Protective Order is a violation of an order of the - Arbitration Panel. I acknowledge that this Protective Order is also a binding agreement with the Submitting Party.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed this ___ day of _____, 2015.

(Signed) _____
(Printed name) _____
(Representing) _____
(Title) _____
(Employer) _____
(Address) _____
(Phone) _____

Appendix B to Protective Order

DECLARATION

I, _____, hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it. I agree that I am bound by the Protective Order and that I shall not disclose or use Confidential Information or Highly Confidential Information except as allowed by the Protective Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Arbitration Panel.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the order is due solely to my capacity as Counsel or consultant to a party or other person described in Paragraphs 5 or 8 of the foregoing Protective Order, as applicable, and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Confidential Information and Highly Confidential Information are used only as provided in the Protective Order; and (2) documents containing Confidential Information or Highly Confidential Information are not duplicated except as specifically permitted by the terms of Paragraph 9 of the Protective Order, and I certify that I have verified that there are in place procedures, at my firm or office, to prevent unauthorized disclosure of Confidential Information or Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed this ___ day of _____, 2015.

(Signed) _____
(Printed name) _____
(Representing) _____
(Title) _____
(Employer) _____
(Address) _____
(Phone) _____

Tab 5

**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

AT&T MOBILITY LLC'S AMENDED FIRST SET OF INTERROGATORIES

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

DEFINITIONS

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

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

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

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

INSTRUCTIONS

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

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

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

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

INTERROGATORIES

ATT-IWS 1:

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

Explanation:

The information sought in this interrogatory is necessary to the resolution of AT&T's allegations that (1) the data roaming rates and other terms and conditions proposed by iWireless are not commercially reasonable and (2) the voice roaming rates and other terms and conditions it has proposed are unreasonable and unjustly discriminatory. Specifically, the rates and terms and conditions in iWireless' roaming agreements with other providers are evidence of the commercial reasonableness and reasonableness of the Parties' respective BAFOs. Indeed, iWireless has taken the position that arguments regarding the rates and terms of agreements in the marketplace (i) "cannot be accepted at face value" because (ii) the Commission is not "privy to the underlying agreements upon which these claims are based," and, as a result, (iii) these claims "need to be examined in the crucible of the formal complaint process."¹

This information is not available to AT&T through a source other than iWireless.

[BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] **[END CONFIDENTIAL]** Additional

¹ Iowa Wireless Services, LLC Surreply to AT&T Mobility LLC's Reply in Support of AT&T's Motion for Interim Relief at 13 (Dec. 7, 2015) ("AT&T Surreply").

information responsive to this request is known by iWireless and is not the type of information that is typically made available publicly.

ATT-IWS 2:

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

Explanation:

The information sought in this interrogatory is necessary to the resolution of AT&T's allegations that (1) the data roaming rates and other terms and conditions proposed by iWireless are not commercially reasonable and (2) the voice roaming rates and other terms and conditions it has proposed are unreasonable and unjustly discriminatory. Specifically, the rates and terms and conditions in iWireless' roaming agreements with T-Mobile USA are evidence of the commercial reasonableness and reasonableness of the Parties' respective BAFOs. Indeed, iWireless has taken the position that arguments regarding the rates and terms of agreements in the marketplace (i) "cannot be accepted at face value" because (ii) the Commission is not "privity to the underlying agreements upon which these claims are based," and, as a result, (iii) these claims "need to be examined in the crucible of the formal complaint process."²

This information is not available to AT&T through a source other than iWireless. As noted in connection with ATT-IWS 1, **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

² See *supra* n. 1; see AT&T Surreply at 3 (arguing that "**[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** iWireless has a strategic relationship with T-Mobile, which holds a non-controlling 55% interest in iWireless" and "strategic relationships and arm's length agreements are not comparable").

CONFIDENTIAL INFORMATION REDACTED

 **[END CONFIDENTIAL]** The information requested is known by iWireless and is not the type of information that is typically made available publicly.

ATT-IWS 3:

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

Explanation:

The information sought in this interrogatory is necessary to the resolution of AT&T's allegation that the data roaming rates proposed by iWireless are not commercially reasonable. Specifically, the rates charged pursuant to iWireless' roaming agreements with other providers are evidence of the reasonableness of the rates iWireless has offered to AT&T. This information is also relevant to an assessment of the reasonableness of the Parties' respective BAFOs. Indeed, iWireless has taken the position that arguments regarding the rates and terms of agreements in the marketplace (i) "cannot be accepted at face value" because (ii) the Commission is not "privy to the underlying agreements upon which these claims are based," and, as a result, (iii) these claims "need to be examined in the crucible of the formal complaint process."³

This information is not available to AT&T through a source other than iWireless. As noted in connection with ATT-IWS 1, **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL] The information requested is known by iWireless and is not the type of information that is typically made available publicly.

³ See *supra* n. 1.

ATT-IWS 4:

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

Explanation:

The information sought in this interrogatory is necessary to the resolution of AT&T's allegation that the voice roaming rates it has proposed are unreasonable and unjustly discriminatory. Specifically, the rates charged pursuant to iWireless' roaming agreements with other providers are evidence of the reasonableness of the rates iWireless has offered to AT&T. This information is also relevant to an assessment of the reasonableness of the Parties' respective BAFOs. Indeed, iWireless has taken the position that arguments regarding the rates and terms of agreements in the marketplace (i) "cannot be accepted at face value" because (ii) the Commission is not "privity to the underlying agreements upon which these claims are based," and, as a result, (iii) these claims "need to be examined in the crucible of the formal complaint process."⁴

This information is not available to AT&T through a source other than iWireless. As noted in connection with ATT-IWS 1, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴ See *supra* n. 1.

[END CONFIDENTIAL] The information requested is known by iWireless and is not the type of information that is typically made available publicly.

ATT-IWS 5:

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] **[END CONFIDENTIAL]**

Explanation:

The information sought in this interrogatory is necessary to the resolution of AT&T's allegation that the data roaming rates proposed by iWireless are not commercially reasonable. Specifically, iWireless has claimed that **[BEGIN CONFIDENTIAL]** [REDACTED]

[END CONFIDENTIAL] *See Iowa Wireless Services, LLC Opposition to AT&T Mobility LLC's Motion for Interim Relief at 9 (Nov. 20, 2015).*

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

ATT-IWS 6:

Separately for each term, identify all the roaming agreements entered by iWireless that include [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

Explanation:

The information sought in this interrogatory is necessary to the resolution of AT&T’s allegation that the terms and conditions of roaming proposed by iWireless are not commercially reasonable. Specifically, the terms and conditions of roaming included in iWireless’ roaming agreements with other providers are evidence of the reasonableness of the terms and conditions iWireless has offered to AT&T. This information is also relevant to an assessment of the reasonableness of the Parties’ respective BAFOs. Indeed, iWireless has taken the position that arguments regarding the rates and terms of agreements in the marketplace (i) “cannot be accepted at face value” because (ii) the Commission is not “privy to the underlying agreements upon which these claims are based,” and, as a result, (iii) these claims “need to be examined in the crucible of the formal complaint process.”⁵

⁵ See *supra* n. 1.

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

ATT-IWS 7:

Identify each of iWireless' affiliates and describe, for each, the nature of the relationship between the affiliate and iWireless.

Explanation:

The information sought in this interrogatory is necessary to the resolution of AT&T's allegation that the roaming terms and conditions proposed by iWireless are not commercially reasonable. **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[END CONFIDENTIAL]**

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

ATT-IWS 8:

For each of iWireless' retail service plans, provide the current effective data rate.

Identify all data required to calculate the effective rates provided.

Explanation:

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

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

ATT-IWS 9:

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

Explanation:

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

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

ATT-IWS 10:

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

Explanation:

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

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

* * *

Respectfully submitted,

James F. Bendernagel, Jr.

James F. Bendernagel, Jr.

Paul J. Zidlicky

Kyle J. Fiet

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Counsel for AT&T Mobility LLC

Dated: December 23, 2015

Tab 6

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2015, I caused the foregoing Amended Formal Complaint to be served on Defendant and provided to the Commission as indicated below.

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

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

Lisa Saks
Christopher Killion
Rosemary McEnery
Markets Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Via Electronic Mail – a complete copy of the Confidential and Public Versions

/s/ Emily C. Watkins

Emily C. Watkins
SIDLEY AUSTIN LLP
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(202) 736-8000