

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

**IOWA WIRELESS SERVICES, LLC ANSWER AND LEGAL ANALYSIS IN
RESPONSE TO THE AMENDED FORMAL COMPLAINT AND LEGAL ANALYSIS
OF AT&T MOBILITY LLC**

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TAB 1

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Dated: January 22, 2016

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Iowa Wireless Services, LLC (“iWireless”) submits this Answer to the Amended Formal Complaint (the “Amended Complaint”) filed by AT&T Mobility LLC (“AT&T”) before the Federal Communications Commission (the “Commission” or “FCC”) on December 23, 2015.¹ The following is respectively shown:

¹ This Answer is filed in accordance with the procedural schedule approved by the staff (the “Staff”) of the Enforcement Bureau (the “Bureau”) of the Commission on December 14, 2015. See Letter of Christopher Killion to Carl W. Northrop and James F. Bendernagel dated December 14, 2015 Re: AT&T Mobility LLC v. Iowa Wireless Services, LLC, Proceeding No. 15-259, File No EB-15-MD-007.

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I. OVERVIEW AND SUMMARY OF THE iWIRELESS ANSWER

AT&T asks the Commission to violate the core principle underlying the data roaming rule, which is to allow individualized decisionmaking by the host carrier as to the terms and conditions on which roaming is provided.² In effect, AT&T wants the Commission to abandon its well-considered and oft-stated refusal to engage in wireless ratemaking³ and to force iWireless to provide service on a going forward basis at a rate to which iWireless objects. Moreover, AT&T is advocating that iWireless be ordered to adopt a rate based upon what it claims are the “average” rates and rate trends in the market.⁴ The Commission must reject AT&T’s unprecedented and unsupported demands. Acceptance of AT&T’s arguments would be tantamount to treating iWireless, and potentially all data service providers, as common carriers obligated to provide service at uniform, non-discriminatory rates. Such an approach would violate the clear admonition of the United States Court of Appeals for the District of Columbia Circuit that the Commission must, in applying the data roaming rule, honor the principle of individualized decisionmaking.⁵ Importantly, forcing iWireless to provide service at the rate proposed by AT&T, or at a prescriptively low rate imposed by the FCC, could force [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

² See Legal Analysis, *infra* at pp. 7-11, 17-22.

³ See *id.*

⁴ Amended Complaint ¶ 5.

⁵ See Legal Analysis, *infra* at pp. 17-22.

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- Several relevant data points indicate the reasonableness of iWireless' proposed rate: **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED] **[END CONFIDENTIAL]**

Based on the foregoing reference points, and the Declaration of the iWireless economic expert, former FCC Chief Economist Thomas Hazlett,¹² the rate proposed by iWireless in its BAFO is commercially reasonable. By AT&T's calculation, the iWireless rate falls between **[BEGIN CONFIDENTIAL]** [REDACTED]

¹⁰ iWireless pointed out on several occasions in the course of this proceeding that AT&T was charging Carrier 39 **[BEGIN CONFIDENTIAL]** [REDACTED]
[END CONFIDENTIAL]

¹¹ As the Staff knows, iWireless has repeatedly cited **[BEGIN CONFIDENTIAL]** [REDACTED]
[END CONFIDENTIAL]

¹² See Declaration of Thomas W. Hazlett, PhD ("Hazlett Decl.").

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[REDACTED] [END CONFIDENTIAL] By iWireless' calculation, the rate goes as low as [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] and would be consistent with AT&T's mantra that roaming rates in general are going down.

In keeping with the entitlement of the host carrier to set both the level **and structure** of the applicable roaming rates,¹⁵ the iWireless BAFO sets [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] This structure is in keeping with iWireless' commercially reasonable requirement that AT&T, if it wants lower rates, expand the parties' roaming arrangement [BEGIN CONFIDENTIAL] [REDACTED]

¹³ Amended Complaint ¶ 69.

¹⁴ Hazlett Decl. ¶ 11.

¹⁵ See Legal Analysis *infra* at p. 13.

¹⁶ iWireless also proposes that the [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]
Shumaker Decl. ¶ 29 n.36.

¹⁷ Hazlett Decl. ¶ 9.

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[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL] It is commercially reasonable for a carrier to charge a higher rate for a shorter term arrangement.¹⁹ It also is commercially reasonable for a carrier to be compensated for continuing to maintain a legacy network, especially where its counterparty is sparing itself the costs associated with maintaining that same legacy network.²⁰

iWireless' Answer demonstrates that iWireless has offered data roaming service to AT&T on commercially reasonable terms and conditions in accordance with the data roaming rule. However, the Commission has no authority to enforce the data roaming rule against iWireless at this time. As noted in the Affirmative Defenses Section, the manner in which the Commission treated data roaming when it reclassified mobile broadband internet access service ("MBIAS") deprives the Commission of the authority to subject iWireless to the data roaming restrictions in Section 20.12(d).²¹ Pending the outcome of the rulemaking proceeding that the Commission has indicated is forthcoming, the result of which will only apply on a going forward basis,²² the data services offered by iWireless are subject to free market conditions.

¹⁸ See Legal Analysis *infra* at p. 8.

¹⁹ Hazlett Decl. ¶ 22.

²⁰ Hazlett Decl. ¶¶ 26-28.

²¹ See discussion *infra* at p. 72

²² See Protecting and Promoting the Open Internet; GN Docket No. 14-28, *Report and Order on Remand, Declaratory Ruling, and Order*, 30 FCC Rcd 5601, 5857, ¶ 526 (2015) *appeal pending United States Telecom Association v. FCC* (case no 15-1063 (D.C. Cir.) ("Net Neutrality Order").

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II. LEGAL ANALYSIS

The following section summarizes the applicable legal principles which govern this dispute and how those principles apply to the operative facts. In all cases, iWireless' proposed BAFO is commercially reasonable.

A. iWireless' Proposed BAFO Is Commercially Reasonable

Carriers are entitled to set terms of each roaming arrangement on an individualized basis taking into consideration the "totality of the circumstances."²³ "Providers can negotiate different terms and conditions on an individualized basis, including prices, with different parties."²⁴ Here, there are myriad circumstances that serve to validate iWireless' BAFO, including, but not limited to:

- [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] As more and more AT&T customers make the transition from 2G to 3G and/or 4G/LTE services, iWireless is faced with the prospect of a radically declining volume of traffic. It is commercially reasonable for this eventuality

²³ See 47 C.F.R. Section 20.12(e); see also Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Radio Service Data; WT Docket No. 05-265, *Second Report and Order*, 26 FCC Rcd 5411, 5451, ¶ 87 (2011) ("*Data Roaming Order*").

²⁴ *Id.* ¶ 69.

²⁵ Amended Complaint ¶ 18; Shumaker Decl. ¶ 11 n.8.

²⁶ Shumaker Decl. ¶ 32.

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to be factored into the rate.²⁷

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

[REDACTED] [END CONFIDENTIAL] It is commercially reasonable for iWireless to take this circumstance, and its devastating commercial impact, into consideration in setting its rates.³¹

- [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]

[END CONFIDENTIAL] with resulting negative economic consequences for iWireless

[BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

- AT&T claims that one of the two “substantive lodestars” for determining commercial reasonableness under the *Data Roaming Order* is the rates and terms in existing, negotiated roaming agreements in the marketplace. Here, AT&T concedes in its

²⁷ Hazlett Decl. ¶ 22.

²⁸ Shumaker Decl. ¶ 33.

²⁹ *Id.*

³⁰ *Id.*

³¹ Hazlett Decl. ¶ 22.

³² Shumaker Decl. ¶ 34.

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Amended Complaint that [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

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

- Because of AT&T's market dominance, and the absence of comparable alternative roaming partners for iWireless when the current Agreement was executed and last amended, AT&T was able to use its massive bargaining power [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL] With AT&T having foregone the construction of its own system in Iowa while AT&T's competitors have expanded their

³³ AT&T now states the operative rate has been lowered. In essence, an agreement in which AT&T received the vast majority of the roaming traffic at [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] has now magically been decreased – just in time for this Amended Complaint to be filed.

³⁴ Shumaker Decl. ¶ 39.

³⁵ *Id.* ¶ 36.

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nationwide coverage, the parties' relative bargaining positions have changed, justifying a different rate.³⁶

- The evolution to 4G/LTE technology in major markets can bring economic benefits to urban carriers because increased capacity can support higher customer counts and customer use.³⁷ Lesser populated rural markets do not have the same prospects for economic gain through technology upgrades. Indeed, rural carriers must upgrade not because they are capacity-constrained and need new technology to meet increasing customer demand, but rather because they must spend money to adapt and to avoid becoming technologically obsolete.³⁸ In effect, the current need to adapt to technological change subjects rural carriers to costs that must be factored into their rate structures.³⁹

For example, [BEGIN CONFIDENTIAL] [REDACTED]

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

- Other economic factors also have an impact on rural carriers including decreases over time in USF subsidies and the increasing difficulty of competing against nationwide incumbents in a wireless market that is becoming increasingly nationwide in scope.⁴¹

³⁶ *Id.*

³⁷ *Id.* ¶ 37.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* ¶ 38.

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

These considerations all factor into the totality of the circumstances, and must be applied in a manner consistent with the recent assurance that the Commission “will continue to allow host providers substantial room for individualized bargaining.”⁴²

B. AT&T’s Is Dismantling Its 2G System

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] In the *Data Roaming Order*, the Commission took steps to prevent carriers from only building a 2G network, providing their customers with 3G capable handsets, and then relying on roaming arrangements to provide nationwide 3G coverage. Indeed, the Commission went so far as to rule that it is commercially reasonable for a provider to condition the effectiveness of a roaming arrangement on the requesting provider’s provision of mobile data service using a generation of wireless technology comparable to the technology on which the requesting provider seeks to roam.⁴³

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴² Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, *Declaratory Ruling*, 29 FCC Red 15483, 15493, ¶ 37 (WTB 2014) (“*Roaming Declaratory Ruling*”).

⁴³ See *Data Roaming Order* ¶ 44.

[REDACTED] [END CONFIDENTIAL] Taking this factor into consideration is consistent with the repeated Commission assurances that the numerous factors identified as relevant in the case-by-case analysis are “non-exhaustive” and that carriers “may argue that the Commission should consider other relevant factors in determining whether a request is reasonable or a host carrier's position is unreasonable or unreasonably discriminatory under Sections 201 and 202 of the Act” or whether a request is commercially reasonable.⁴⁴

C. AT&T Is “Home Market” Roaming

AT&T holds licenses that would enable it to provide its own facility-based service *throughout* the iWireless territory. In the *2007 Roaming Order*,⁴⁵ the Commission held that a host carrier was only required to provide automatic roaming service outside of the requesting carrier’s “home market,” with “home market” being defined as any geographic location where the requesting carrier had a wireless license.⁴⁶ This ruling was based upon the finding that “requiring home roaming could harm facilities-based competition and negatively affect buildout in these markets, thus adversely impacting network quality, reliability and coverage.”⁴⁷ In its *2010 Roaming Order*, the Commission replaced the categorical home roaming exclusion – *over*

⁴⁴ See *2010 Roaming Order* ¶ 40; see also *Data Roaming Order* ¶ 87 (the 17 specified factors are “not exclusive or exhaustive;” providers “may argue that the Commission should consider other relevant factors”).

⁴⁵ See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817 (2007) (“*2007 Roaming Order*”).

⁴⁶ *Id.* at ¶ 11.

⁴⁷ *Id.*

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*the objection of AT&T*⁴⁸ – with a case-by case assessment. In doing so, however, the Commission made clear that it would “continue to support the goal of promoting facilities-based competition by providing incentives for carriers to construct wireless facilities on the spectrum available to them.”⁴⁹ The Commission found that, “as a practical matter, the relatively high price of roaming compared to providing facilities-based service will often be sufficient to counterbalance the incentive to ‘piggy back’ on another carrier’s network.”⁵⁰ Indeed, AT&T acknowledged in its Amended Complaint that the Commission has held that its data roaming rules “must be applied to promote broadband investment and facilities-based competition, and therefore, that it expected roaming rates to be ‘high’ relative to retail rates to maintain appropriate incentives for network build out.”⁵¹ The Commission also emphasized that host carriers have “flexibility to establish the structure and the level of roaming rates,” and to consider the fact that a requesting carrier holds spectrum in an area where it seeks to roam.⁵²

When these principles are applied here, iWireless’ BAFO is plainly justified.⁵³ AT&T holds an estimated 66 MHz to 196 MHz of spectrum in the 99 counties in Iowa⁵⁴ which means that AT&T has been piggy-backing on the iWireless network in AT&T’s “home market” for nearly a decade. [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL], AT&T has made a commercial, business decision to

⁴⁸ *2010 Roaming Order* ¶¶ 15-17.

⁴⁹ *Id.* ¶ 18.

⁵⁰ *Id.* ¶ 32.

⁵¹ *See Data Roaming Order* ¶ 21-22.

⁵² *2010 Roaming Order* ¶ 32.

⁵³ Hazlett Decl. ¶ 26.

⁵⁴ *See Shumaker Decl.* ¶ 31.

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build its network only in select, more populous or well-travelled areas and is relying upon the roaming relationship with iWireless [BEGIN CONFIDENTIAL] ██████████ [END CONFIDENTIAL] to serve the high cost rural areas. Obviously, a [BEGIN CONFIDENTIAL] ██████████ [END CONFIDENTIAL] was not sufficiently high to incent AT&T to provide facility based coverage.

iWireless is not asking to be allowed to deny roaming service to AT&T in this home market area. But, in accordance with the standards specified by the Commission, iWireless must be allowed to establish the structure and level of roaming rates to be charged.

D. AT&T Cannot Dictate The Market Rate

One factor that should NOT be given any weight by the Commission is AT&T's claim that the average rates reflected in its agreements with other carriers for data roaming service should be controlling here. *AT&T, by its own repeated public admissions is a net payor of roaming charges rather than a net seller.*⁵⁵ For example, in opposing the relief ultimately granted by the Commission in the *Roaming Declaratory Ruling*, AT&T stated that its data roaming agreements are "typically reciprocal and AT&T is a net purchaser of roaming" meaning that "AT&T has no incentive to seek high data roaming rates."⁵⁶ Under these circumstances, however, AT&T does have a powerful incentive to use its considerable market power to drive down the average roaming rates it pays, even in rural areas, despite the fact that, by its own

⁵⁵ On several occasions AT&T has stated that it is a net payor of roaming charges. *See, e.g., AT&T Ex Parte Notice*, WT Docket No. 05-265, at 6-7 (Dec. 10, 2014); *AT&T Ex Parte Notice*, WT Docket No. 05-265, at 1 (Nov. 24, 2014); *AT&T Ex Parte Notice*, WT Docket No. 05-265, at 2 (Nov. 14, 2014); *AT&T Ex Parte Notice*, WT Docket No. 05-265, at 3 (Nov. 12, 2014).

⁵⁶ *See Opposition of AT&T to Motion for Declaratory Ruling in WT Docket No. 05-265*, at 19 (July 10, 2014).

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admission, “AT&T does not dispute that roaming rates for rural areas can be higher than roaming rates in urban areas.”⁵⁷ The simple truth is that AT&T has sufficient power to set the roaming rate for many rural carriers, and others, whether they like it or not. The fact that AT&T has succeeded in foisting lower rates on some rural carriers does not establish that the resulting rates are commercially reasonable *per se*.

Moreover, AT&T and its predecessor Cingular Wireless have been using their market power to game the regulatory system with regard to the Commission’s roaming regulations for years. As far back as 2004, the Commission found it to be necessary to address roaming issues in the context of its review and consideration of the Cingular/AT&T Wireless merger based upon complaints of other carriers that AT&T and Cingular were not accommodating reasonable roaming requests.⁵⁸ This led to “a reevaluation of the Commission’s roaming rules and policies” in the context of a broad rulemaking proceeding.⁵⁹ In the course of this proceeding, Cingular opposed requests by smaller carriers that the Commission secure a representative sample of roaming agreements from the major carriers on a confidential basis in order to establish a complete record on roaming rates and practices.⁶⁰

As noted in the *2010 Roaming Decision*, AT&T also opposed the elimination of the home roaming exclusion, arguing that that a home roaming requirement would undermine facilities-based service and discourage competition based on coverage and service quality.⁶¹ In the

⁵⁷ Amended Complaint ¶ 69.

⁵⁸ See Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21588 ¶ 172 (2004).

⁵⁹ See *2007 Roaming Order* ¶ 13.

⁶⁰ See *id.* ¶ 17.

⁶¹ See *2010 Roaming Order* ¶ 15.

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process, AT&T went on the record with its view that “the home roaming exclusion has positive effects on competition and there is no justification for allowing a company to take advantage of its competitor’s investment in network infrastructure and superior in-market coverage.”⁶² Yet, AT&T seeks to do exactly that by seeking to impose upon iWireless an unjustifiably low rate.

Most significantly, as is established in the *Data Roaming Order*, despite the public interest justifications cited by the Commission, AT&T vigorously opposed the data roaming rule.⁶³ The Commission ended up rejecting the argument by AT&T that “a data roaming rule is unnecessary because data roaming agreements are occurring without regulation,” finding instead that “providers have encountered significant difficulties obtaining data roaming arrangements on advanced “3G” data networks, particularly from the major nationwide providers.”⁶⁴ Indeed, the Commission expressly found that “AT&T has largely refused to negotiate domestic 3G roaming arrangements until recently, even though it launched its 3G service in 2005 and was providing coverage to 275 major metropolitan areas in May 2008.”⁶⁵ The iWireless experience confirms this finding, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

AT&T also opposed the Commission’s guidance in the *Roaming Declaratory Ruling*.

⁶² *Id.* ¶ 30.

⁶³ *Data Roaming Order* ¶¶ 9-12 (noting in paragraph 12 that “only AT&T and Verizon oppose the adoption of a data roaming obligation”).

⁶⁴ *Id.* ¶ 24.

⁶⁵ *Id.* ¶ 25.

⁶⁶ Shumaker Decl. ¶ 11 n.8. Ironically, AT&T even opposed the adoption by the Commission of mediation and arbitration procedures to handle roaming complaints. *Data Roaming Order* ¶ 72.

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AT&T argued that the use of the benchmark rate reference points would be contrary to the public interest by “curtailing or eliminating the ability to offer discrimination in terms.”⁶⁷ Having lost on these points, AT&T now is prosecuting an appeal of the *Roaming Declaratory Ruling*. The appeal does not erase the fact that, in the course of the proceeding, AT&T went so far as to attack the use of uniform benchmarks because “‘it is reasonable to see higher rates for rural roaming than for urban roaming’ due to the unique economic challenges faced by service providers in rural markets.”⁶⁸

AT&T has sought in the past to take advantage of the market power it enjoys by virtue of the scope of its nationwide network by strenuously refusing to offer roaming agreements to lesser carriers. And, when AT&T was forced by the FCC’s rules to offer roaming to its competitors, it used its market power to impose onerous rates and conditions. Now that the FCC policy requiring AT&T to offer roaming services is firmly entrenched in the regulatory landscape, AT&T’s tactics have changed, but its overall objective has not. AT&T continues to use its vast market power to disadvantage other carriers when it comes to roaming.

E. Individualized Decisionmaking Is The Lodestar

There are a myriad of reasons that the Commission should not be overly influenced by AT&T’s repetition *ad nauseum* of the contention that roaming rates in general or on average are declining or exhibiting a downward trend.⁶⁹ But the main one is clear – data roaming rates are subject to individualized decisionmaking; not uniform rate setting by either the requesting

⁶⁷ *Roaming Declaratory Ruling* ¶ 19.

⁶⁸ *Id.* ¶ 22.

⁶⁹ A review of the AT&T Amended Complaint and the Attachments reveals dozens of references to this contention.

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carrier, or the FCC, based upon market averages or trends.

The Commission has repeatedly declined to impose price caps or any other forms of rate regulation on the fees carriers charge one another for roaming services. In its *2007 Roaming Order*,⁷⁰ the Commission held that automatic voice roaming is a common carrier service subject to Sections 201 and 202 of the Act that must be provided on reasonable and non-discriminatory terms and conditions.⁷¹ Nonetheless, the Commission concluded that regulation of roaming rates “is not warranted on economic grounds” and that “rate regulation has the potential to distort carrier’s incentives and behavior with regard to pricing and investment in network buildout.”⁷² The Commission also determined that consumers would not be harmed in the absence of a price cap or some other form of rate regulation. On the contrary, the Commission preferred that roaming rates were established through individualized negotiations between the carriers.⁷³

This hands-off approach to roaming rate regulation was reinforced in the *2010 Roaming Order*, which emphasized that a wireless carrier’s obligation to provide automatic roaming is “not framed in absolute terms” but rather only prohibits “unjust and unreasonable discrimination”; the Commission has “broad discretion in interpreting these statutory obligations” and will do so based upon “the totality of the circumstances in a particular case.”⁷⁴ The Commission then set forth eleven factors that it will take into consideration in determining whether a particular carrier’s actions are unjust and unreasonable, emphasizing that “no

⁷⁰ See *2007 Roaming Order*.

⁷¹ *Id.* ¶ 23.

⁷² *Id.* ¶ 38.

⁷³ *Id.* ¶ 37.

⁷⁴ *Id.* ¶ 37.

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particular factor will be dispositive.”⁷⁵ In setting forth its factors, the Commission emphasized that

these factors are not exclusive or exhaustive. Carriers may argue that the Commission should consider other relevant factors in determining whether a request is reasonable or a host carrier's position is unreasonable or unreasonably discriminatory under Sections 201 and 202 of the Act. In ... determining whether a carrier will be found liable for a violation of its obligations under Sections 201 and 202, the Commission will also consider whether its position had a reasonable basis, taking into account all relevant precedents and decisions by the Commission.⁷⁶

In 2011, the Commission released its *Data Roaming Order*,⁷⁷ which required facilities-based providers of commercial mobile data services to offer data roaming arrangements to other providers on commercially reasonable terms and conditions.⁷⁸ The core holding in the *Data Roaming Order* is that data roaming is not a common carrier service subject to Title II of the Communications Act. As a result, the Commission expressly held that it “will not require providers to serve all comers indifferently on the same terms and conditions.”⁷⁹ Rather, “[p]roviders can negotiate different terms and conditions on an individualized basis, including prices, with different parties.”⁸⁰ Specifically:

The commercial reasonableness of terms offered to a particular provider may depend on numerous individualized factors, including the level of competitive harm in a given market and the benefits to consumers; the extent and nature of the requesting provider’s build-out; whether the requesting provider is seeking roaming for an area where it is already providing facilities-based service; and the

⁷⁵ *Id.* ¶ 39.

⁷⁶ *Id.* ¶ 40

⁷⁷ *Data Roaming Order* ¶ 87.

⁷⁸ *See* 47 C.F.R. § 20.12(e).

⁷⁹ *Data Roaming Order* ¶ 68.

⁸⁰ *Id.*

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impact of granting the request on the incentives for either provider to invest in facilities and coverage, services, and service quality.⁸¹

In taking this approach, the Commission expressly rejected a “more specific prescriptive regulation of rates requested by some commenters.”⁸² As emphasized in the statement of Chairman Genachowski that accompanied the *Data Roaming Order*, “we have avoided, as we did unanimously in the voice roaming context, regulating rates for data roaming agreements, instead leaving it to the parties to set their terms.”⁸³

Because data roaming is not subject to Sections 201 and 202 of the Act, the talisman which empowered the Commission to adopt the data roaming rule is “individualized decisionmaking:”

Giving providers flexibility to negotiate the terms of their roaming arrangements on an individualized basis ensures that the data roaming rule best serves our public interest goals discussed herein, and the boundaries of the rule are narrowly tailored to execute our spectrum management duties under the Act.⁸⁴

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

[T]he data roaming rule leaves substantial room for individualized bargaining and discrimination in terms. The rule expressly permits providers to adapt roaming agreements to “individualized circumstances without having to hold themselves out to serve all comers indiscriminately on the same or standardized terms.” *Data Roaming Order*, 26 F.C.C.R. at 5433 ¶ 45. Given this ..., the data roaming rule does “not amount to a duty to hold out facilities *indifferently* for public use.”⁸⁵

Indeed, the Court went so far as to admonish the Commission to adhere to the letter of the

⁸¹ *Id.*

⁸² *Id.* ¶ 21.

⁸³ *Id.* ¶ 69.

⁸⁴ *Id.* ¶ 45.

⁸⁵ *Cellco Partnership v. FCC*, 700 F.3d 534, 548 (D.C. Cir. 2012) (citing *FCC v. Midwest Video Corp.*, 440 U.S. 689, 706 n.16 (1979)).

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individualized decisionmaking requirement:

In implementing the rule and resolving disputes that arise in the negotiation of roaming agreements, the Commission would thus do well to ensure that the discretion carved out in the rule's text remains carved out in fact.⁸⁶

The *Data Roaming Order* contains many important rulings that are relevant here. For example, the order makes clear that the data roaming rule was specifically crafted to “give host providers appropriate discretion *in the structure and level* of such rates that they offer,” recognizing that “the relatively high price of roaming compared to providing facilities-based service will often be sufficient to counterbalance the incentive to ‘piggy-back’ on another carrier’s network.”⁸⁷ The rule “allows host providers to control the terms and conditions of proffered data roaming arrangements, within a general requirement of reasonableness.”⁸⁸

The Commission also recognized that “some data roaming negotiations may be more complex or fact-intensive than others and are likely to require more time” to resolve. Consequently, the Commission decided to “decline to adopt a specific time limit” for the conclusion of roaming negotiations, and will only find conduct during negotiations to be commercially unreasonable if a party is guilty of “stonewalling and undue delays.”⁸⁹

Recognizing that the legal bases for regulating voice roaming and data roaming were different, the Commission adopted a different non-exhaustive list of factors to take into consideration in evaluating the totality of the circumstances on a case-by-case basis. Again the Commission emphasized that these factors are not exclusive or exhaustive and that providers

⁸⁶ *Id.* at 549.

⁸⁷ *Data Roaming Order* ¶ 21 (citing *2010 Roaming Order* at 4190 ¶ 18; 4197, ¶ 31) (emphasis added).

⁸⁸ *Id.* ¶ 33.

⁸⁹ *Id.* ¶ 84.

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may argue that the Commission should consider other relevant factors in determining the commercial reasonableness of the negotiations, providers' conduct, and the terms and conditions of the proffered data roaming arrangements, including the prices.⁹⁰

In view of the applicable legal principles set forth above, the Commission must reject AT&T's effort to dictate uniform standardized roaming terms through its self-serving citation to rates from its own dictated agreements. This is particularly true in light of the recent *Roaming Declaratory Ruling* in which the Commission rejected using rate "benchmarks" – one of which was roaming rates charged by other providers – for assessing commercial reasonableness. Heeding AT&T's and others' concerns that linking roaming rates to other rates would create a *de facto* price cap and reduce negotiating freedom,⁹¹ the Commission concluded that "these [benchmark rates] do not function as a ceiling or as a cap on prices."⁹² The Commission should therefore reject out of hand AT&T's false contention that "the rates and terms that prevail in existing, negotiated roaming agreements" represent one of "two substantive lodestars" of the data roaming standard. The touchstone has been and remains individualized decisionmaking based upon the totality of the circumstances and the iWireless BAFO is commercially reasonable under this standard.⁹³

⁹⁰ *Id.* ¶¶ 86-86.

⁹¹ *Id.* ¶ 7.

⁹² *Id.* ¶ 18. The *Roaming Declaratory Ruling* also addressed the expressed concern that the benchmarking of data roaming rates "would put significant downward pressure on all roaming rates indiscriminately and would disadvantage smaller service providers in their negotiations with larger service providers." The Commission indicated that that the degree of relevance of these other rates will depend on the facts and circumstances in any given case, and gave its assurance that its approach "will continue to allow host providers substantial room for individualized bargaining." *Roaming Declaratory Ruling* ¶ 22.

⁹³ Hazlett Decl. *passim*.

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III. iWIRELESS ANSWER TO AMENDED COMPLAINT PARAGRAPHS

iWireless Answer to Paragraph 7: iWireless admits that AT&T is bringing its Amended Complaint pursuant to the cited statutory provisions and rule sections but denies that those provisions and sections empower the Commission to engage in the rate setting that AT&T seeks.⁹⁴

iWireless Answer to Paragraph 8: iWireless admits that the Commission has jurisdiction over the Amended Complaint to the extent that it pertains to voice service under 47 U.S.C. § 208. iWireless denies that the Commission has any authority under Section 208 with respect to data roaming service because Section 208 only applies to common carriers and the Commission has forborne from regulating data roaming as a common carrier service at this time. iWireless denies that Sections 1.720 to 1.735 empower the Commission to set rates on a going forward basis as requested by AT&T.⁹⁵

iWireless admits that voice roaming service, which is a Commercial Mobile Radio Services (“CMRS”), is classified as a common carrier service but denies AT&T’s claim that it is “subject to Title II of the Act” since the Commission has forborne from applying various provisions of Title II to CMRS and has disavowed rate regulation of CMRS.⁹⁶

iWireless admits that, prior to the adoption of the *Net Neutrality Order*,⁹⁷ data roaming

⁹⁴ See discussion *supra* at pp. 17-22.

⁹⁵ See *id.*

⁹⁶ See discussion *infra* at pp. 70-73.

⁹⁷ See *Net Neutrality Order*.

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service was regulated under Title III, but denies AT&T's claim that data roaming currently is subject to Title III. Paragraph 526 of the *Net Neutrality Order* purports to leave mobile broadband Internet access services providers subject to 22.12(e) but makes no mention of Title III generally.⁹⁸ As is discussed in the Affirmative Defenses Section, the reclassification of MBIAS as a Commercial Mobile Service under Title II, and the simultaneous forbearance from the application of the CMRS roaming rule to MBIAS providers, places data roaming in a regulatory limbo and deprives the Commission of the authority to engage in rate regulation of data services.⁹⁹ Pending the outcome of the rulemaking proceeding that the Commission has indicated is forthcoming,¹⁰⁰ the result of which will only apply on a going forward basis, the data services offered by iWireless are subject to free market conditions.

iWireless Answer to Paragraph 9: iWireless admits the allegations in paragraph 9.

iWireless Answer to Paragraph 10: iWireless admits the allegations in the text of paragraph 10.¹⁰¹ With respect to Footnote 26, iWireless admits that T-Mobile and Iowa Network Services own interests in iWireless. **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED]

⁹⁸ *Id.* ¶ 526.

⁹⁹ See discussion *infra* pp. 70-73.

¹⁰⁰ See *Net Neutrality Order* ¶ 526.

¹⁰¹ See Shumaker Decl. ¶ 4.

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of Paragraph 13.¹⁰⁸ iWireless denies that the only purpose of a roaming agreement is to enable a wireless provider to provide its customers with coverage outside of the wireless provider's own coverage area. When a carrier holds a license for an area – which is the case with AT&T throughout Iowa – a roaming agreement can enable a carrier to piggyback on another carrier's system and avoid building out a high cost area.¹⁰⁹

iWireless Answer to Paragraph 14: iWireless is without knowledge or information sufficient to form a belief as to the truth of the assertions in paragraph 14.

iWireless Answer to Paragraph 15: iWireless denies that any general trend in roaming rates dictates commercially reasonable rates as between AT&T and iWireless.¹¹⁰ iWireless admits that the chart labeled “T-Mobile Data Roaming Rates” was submitted by T-Mobile to the FCC in a recent proceeding, but iWireless was not a party to the submission and is without knowledge or information sufficient to form a belief as to the accuracy of the average price information in the chart.¹¹¹ iWireless objects to the use of this chart on several grounds including (a) the chart is hearsay being offered by AT&T for the truth of the matter asserted; and (b) the chart does not provide sufficient information to permit a determination as to whether any or all of the parties to the summarized agreements are similarly situated to the circumstances pertaining to AT&T/iWireless.

¹⁰⁸ See *id.* ¶ 7.

¹⁰⁹ See *id.* ¶ 7 n.4.

¹¹⁰ Hazlett Decl. ¶ 12.

¹¹¹ See Shumaker Decl. ¶ 6 n.3.

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iWireless Answer to Paragraph 16: iWireless is without knowledge or information sufficient to form a belief as to the truth of the assertions in paragraph 16. iWireless further denies that the average effective rates being paid by AT&T govern the commercial reasonableness of the iWireless rate, which is based on individualized decisionmaking taking into consideration the totality of the circumstances.¹¹² iWireless further notes that AT&T has consistently stated to the FCC that it is a “net payor” of roaming, and, consequently, it is in AT&T’s interest to use its vast leverage to drive down certain roaming rates where it is a net payor.¹¹³ iWireless also denies that the average rates paid by AT&T are relevant in the absence of sufficient information to permit a determination as to whether any or all of the parties to the summarized agreements are similarly situated to iWireless.¹¹⁴

iWireless Answer to Paragraph 17: iWireless admits the allegations in paragraph 17 but notes that, due to the superior bargaining position of AT&T, the Agreement [BEGIN

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

¹¹² See *Data Roaming Order* ¶ 42 Hazlett Decl. ¶ 22.

¹¹³ On several occasions AT&T has stated that it is a net payor of roaming charges. See, e.g., *AT&T Ex Parte Notice*, WT Docket No. 05-265, at 6-7 (Dec. 10, 2014); *AT&T Ex Parte Notice*, WT Docket No. 05-265, at 1 (Nov. 24, 2014); *AT&T Ex Parte Notice*, WT Docket No. 05-265, at 2 (Nov. 14, 2014); *AT&T Ex Parte Notice*, WT Docket No. 05-265, at 3 (Nov. 12, 2014).

¹¹⁴ See *Data Roaming Order* ¶ 86; Hazlett Decl. ¶ 22.

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[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 18: iWireless admits the allegations in the first 5 sentences of paragraph 18. iWireless notes, however, that despite [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 19: iWireless admits that AT&T and iWireless at various points [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 20: iWireless admits that AT&T proposed [BEGIN CONFIDENTIAL]

[REDACTED]

¹¹⁵ Shumaker Decl. ¶ 11 n.8.

¹¹⁶ *Data Roaming Order* at ¶ 11.

¹¹⁷ *See id.* ¶¶ 13, 20.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 21: [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL]

¹¹⁸ *Id.* ¶ 13.

¹¹⁹ *Id.*

¹²⁰ *See id.* ¶ 14.

¹²¹ *See id.*

¹²² *See id.*

¹²³ *See id.*

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iWireless Answer to Paragraph 22: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 23: iWireless admits [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 24: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

¹²⁴ See *id.*.

¹²⁵ See *id.* ¶ 15.

¹²⁶ See *id.* ¶ 17.

¹²⁷ See *id.* ¶¶ 18, 39.

¹²⁸ See *id.* ¶ 15.

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[REDACTED]

[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 25: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

¹²⁹ See Amended Complaint ¶¶ 91.

¹³⁰ See *Data Roaming Order* ¶ 42 (noting that the FCC “will determine whether the terms and conditions of a proffered data roaming arrangement are commercially reasonable on a case-by-case basis, taking into consideration the totality of the circumstances.”)

¹³¹ See Shumaker Decl. ¶ 15.

¹³² See *id.*

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

iWireless Answer to Paragraph 26: [BEGIN CONFIDENTIAL] [REDACTED]

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

CONFIDENTIAL]

iWireless Answer to Paragraph 27: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

¹³³ See *id.* ¶ 16.

¹³⁴ See *id.* ¶¶ 15, 16.

¹³⁵ See *id.* ¶ 16.

¹³⁶ See *id.* ¶ 18.

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[REDACTED]

[REDACTED]

[REDACTED]¹⁴⁵ [END CONFIDENTIAL]

iWireless Answer to Paragraph 28: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

¹⁴³ See *id.*

¹⁴⁴ See *id.* ¶ 17.

¹⁴⁵ See *id.* ¶¶ 15, 16.

¹⁴⁶ See *id.* ¶ 19.

¹⁴⁷ See *id.*

¹⁴⁸ See *id.* ¶ 18.

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[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 31: iWireless admits the allegations in paragraph 31.

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 32: iWireless admits the allegations in paragraph 32 of the Amended Complaint with the caveat [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

¹⁵⁴ See *id.* ¶ 27.

¹⁵⁵ See *id.* ¶ 27 n.35.

¹⁵⁶ See *id.* ¶ 28.

¹⁵⁷ See *id.*

¹⁵⁸ See *id.* ¶ 24.

¹⁵⁹ See *id.* ¶ 25.

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

iWireless Answer to Paragraph 33: [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 34: [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 35: [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹⁶⁰ See *id.*

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iWireless Answer to Paragraph 36: [BEGIN CONFIDENTIAL] [REDACTED]

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

iWireless Answer to Paragraph 37: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]
[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 38: [BEGIN CONFIDENTIAL] [REDACTED]

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

iWireless Answer to Paragraph 39: [BEGIN CONFIDENTIAL] [REDACTED]

¹⁶¹ See Shumaker Decl. ¶ 27.

¹⁶² See *id.* ¶ 22.

¹⁶³ See *id.*

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[REDACTED] [END
CONFIDENTIAL]

iWireless Answer to Paragraph 40: [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[END CONFIDENTIAL]

iWireless Answer to Paragraph 41: iWireless admits that it filed a letter in response to a Staff proposal for a conference call and a further letter on October 8, 2015 providing further assurances [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] The letters speak for themselves.

iWireless Answer to Paragraph 42: [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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[END CONFIDENTIAL]

iWireless Answer to Paragraph 43: iWireless admits the allegations in paragraph 43.

iWireless Answer to Paragraph 44: iWireless admits the allegations in paragraph 44.

iWireless Answer to Paragraph 45: iWireless admits the allegations in paragraph 45.

iWireless Answer to Paragraph 46: iWireless admits that AT&T submitted a BAFO on December 4, 2015. The BAFO speaks for itself.

iWireless Answer to Paragraph 47: iWireless admits that AT&T submitted a BAFO on December 4, 2015. The BAFO speaks for itself.

iWireless Answer to Paragraph 48: iWireless admits that it submitted a BAFO on December 4, 2015. The BAFO speaks for itself.

iWireless Answer to Paragraph 49: iWireless admits that it submitted a BAFO on December 4, 2015. The BAFO speaks for itself.

iWireless Answer to Paragraph 50. iWireless admits that AT&T has made the allegations and is seeking the relief stated in Paragraph 50. iWireless denies that iWireless is

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subject to Section 20.12(e) because the Commission's rules still define "Commercial mobile data service" as "any mobile data service that is not interconnected with the public switched telephone network" (47 C.F.R. § 20.3). In the *Net Neutrality Order* the Commission redefined the public switched telephone network in a manner that converted the iWireless data offering into an interconnected service. As is discussed in detail below, the perfunctory effort of the Commission to have interconnected mobile data services remain subject to 20.12(e) notwithstanding the reclassification is unenforceable.¹⁶⁴ Unless and until the Commission revisits the issue in a rulemaking proceeding to set new data roaming rules on a going forward basis, data roaming offerings by carriers are subject to free market forces. In any event, iWireless denies that it has refused to provide data roaming service to AT&T on terms that are commercially reasonable or voice roaming service on terms that are just, reasonable and not unreasonable discriminatory. iWireless denies that the Commission Staff has the authority to grant interim relief at variance from the procedure specifically set forth in the *Data Roaming Order* and the *Declaratory Ruling*.¹⁶⁵ iWireless denies the implication of AT&T that iWireless was planning to terminate AT&T's ability to roam on the iWireless network pending final resolution of this dispute.

iWireless Answer to Paragraph 51: iWireless admits that the Commission released the *Data Roaming Order* in 2011. That order speaks for itself. iWireless denies that AT&T has accurately summarized the goal of the *Data Roaming Order*.

¹⁶⁴ See discussion *infra* at pp. 69-72.

¹⁶⁵ See Iowa Wireless Services, LLC Opposition to Motion for Interim Relief ("iWireless Opposition").

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iWireless Answer to Paragraph 52: iWireless admits that “commercial reasonableness” is the applicable legal standard for adjudicating roaming disputes between commercial mobile data service providers, but denies that iWireless or AT&T meets that definition. iWireless admits that the Commission expects data roaming rates to be “high” relative to retail rates to maintain appropriate incentives for network build-out and to “counterbalance the incentive to ‘piggy back’ on another carrier’s network.”¹⁶⁶ iWireless denies that the commercial reasonableness standard is based upon the two substantive lodestars cited by AT&T. Rather, the standard is based upon the totality of the circumstances in which the Commission will take into consideration 17 listed factors, among and in addition to, others.¹⁶⁷ The core objective of the data roaming rule is to “allow[] host providers to control the terms and conditions of proffered service within a general requirement of commercial reasonableness.”¹⁶⁸ To this end, host carriers “may negotiate the terms of their roaming arrangements on an individualized basis ... without having to hold themselves out to serve all comers indiscriminately on the same or standardized terms.”¹⁶⁹ iWireless denies that the data roaming rules continue to apply to mobile broadband data service providers.

iWireless Answer to Paragraph 53: iWireless admits the allegations in Paragraph 53 with the caveat that obligating a host carrier to provide data roaming service at a rate designated

¹⁶⁶ *Data Roaming Order* ¶ 21.

¹⁶⁷ *Id.* ¶ 86.

¹⁶⁸ *Id.* ¶ 33.

¹⁶⁹ *Id.* ¶ 45.

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by the Commission or by a requesting carrier would be a form of prescriptive rate regulation prohibited by the *Data Roaming Order* and would, therefore, exceed the Commission's authority.

iWireless Answer to Paragraph 54: iWireless admits that the *Data Roaming Order* contains a non-exhaustive list of 17 factors to be taken into consideration by the Commission. iWireless denies that AT&T has accurately summarized the factors. iWireless further denies any implication that iWireless has engaged in stonewalling, let alone a persistent pattern of stonewalling, or that it has offered to provide service on terms so unreasonable as to be tantamount to a refusal to deal or which unreasonably restrain trade.

iWireless Answer to Paragraph 55: iWireless admits the first sentence of Paragraph 55. iWireless denies that Section 20.12(e)(1), which is cited as authority for the second sentence of paragraph 55, establishes the proposition that carriers are not obligated to purchase roaming services. Whether or not a carrier is legally obligated to purchase data roaming services, it is commercially reasonable for a host carrier to offer data roaming service on terms and conditions which encourage the requesting carrier to allow its customers to enjoy 3G and 4G/LTE services while roaming rather than having the requesting carrier disable or block its customers from doing so.¹⁷⁰

iWireless Answer to Paragraph 56: iWireless admits that the Commission released the *Roaming Declaratory Ruling* in December 2014. That order speaks for itself and iWireless

¹⁷⁰ See Hazlett Decl. ¶ 12.

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denies that AT&T has accurately summarized it. For example, the *Roaming Declaratory Ruling* expressly declined to use “rates charged by other providers” as a cap, ceiling or benchmark in assessing the commercial reasonableness of a proffered rate, emphasizing that the Commission will “continue to allow host providers substantial room for individualized bargaining.”¹⁷¹ AT&T has a pending Application for Review appealing the *Roaming Declaratory Ruling*.

iWireless Answer to Paragraph 57: iWireless admits that the Commission released its *Voice Roaming Order* in 2007. That order speaks for itself and iWireless denies that AT&T has accurately summarized it. For example, notwithstanding the fact that voice roaming is a common carrier service subject to Title II, the Commission expressly declined to impose a price cap or any other form of rate regulation on the fees carriers charged one another when one carrier’s customer roams on another carrier’s network. The Commission determined that consumers would not be harmed in the absence of a price cap or some other form of rate regulation and considered the better course to be for the rates individual carriers pay for automatic roaming services be established through negotiations between the carriers.¹⁷² The Commission concluded that regulation of roaming rates “is not warranted on economic grounds” and that “rate regulation has the potential to distort carrier’s incentives and behavior with regard to pricing and investment in network buildout.”¹⁷³

¹⁷¹ *Roaming Declaratory Ruling* ¶¶ 18, 22.

¹⁷² *Id.* ¶ 37.

¹⁷³ *Id.* ¶ 38.

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iWireless Answer to Paragraph 58: iWireless admits the allegations in paragraph 58.

iWireless did not unduly delay or stonewall in the course of negotiations with AT&T.¹⁷⁴

iWireless Answer to Paragraph 59: iWireless admits that the Commission released its *Order on Reconsideration* in 2010. That order speaks for itself and iWireless denies that AT&T has accurately summarized it. For example, the Commission replaced the categorical home roaming exclusion – *over the objection of AT&T* – with a case-by case assessment. In doing so, the Commission made clear that it would “continue to support the goal of promoting facilities-based competition by providing incentives for carriers to construct wireless network facilities on the spectrum available to them.”¹⁷⁵ The Commission found that, “as a practical matter, the relatively high price of roaming compared to providing facilities-based service will often be sufficient to counterbalance the incentive to ‘piggy back’ on another carrier’s network.” The Commission also emphasized that host carriers have “flexibility to establish the structure and the level of roaming rates,” and to take into consideration as a relevant factor the fact that a requesting carrier holds spectrum in an area where it seeks to roam.¹⁷⁶

The *2010 Roaming Order* emphasizes that a wireless carrier’s obligation to provide automatic roaming is “not framed in absolute terms” and only prohibits “unjust and unreasonable discrimination;” the Commission has “broad discretion in interpreting these statutory obligations” and will do so based upon “the totality of the circumstances in a particular case.”¹⁷⁷

¹⁷⁴ See Shumaker Decl. ¶ 20.

¹⁷⁵ *2010 Roaming Order* ¶ 18.

¹⁷⁶ *Id.* ¶ 32.

¹⁷⁷ *Id.* ¶ 37.

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iWireless Answer to Paragraph 60: The assertions in paragraph 60 contain legal conclusions to which no answer is required. To the extent an answer is required, AT&T's conclusions are denied. Further, iWireless denies that the Staff has authority under Section 4(i) to order interim relief of the type requested by AT&T and/or at variance from the specific process the Commission set up in the *Data Roaming Order*.¹⁷⁸ iWireless further denies that ordering iWireless to provide service to AT&T on an interim basis at a rate other than the interim rate proffered by such iWireless subject to true up does not exceed the delegated authority of the Bureau or is lawful.¹⁷⁹

iWireless Answer to Paragraph 61: iWireless denies that the Commission has authority to grant interim relief beyond what is explicitly contained in the *Data Roaming Order* or *Roaming Declaratory Ruling*. iWireless admits the allegations in paragraph 61 insofar as they confirm that the key to any interim service mechanism is that the rates are set "on [the host carrier's] proffered terms during the pendency of the dispute" because the Commission has disavowed any authority to set *ex ante* rates.¹⁸⁰

iWireless Answer to Paragraph 62: The assertions in paragraph 62 contain legal conclusions to which no answer should be required. To the extent a response is required, iWireless (a) denies that the rates in its BAFO violate any Commission rule or policy and (b)

¹⁷⁸ See generally iWireless Opposition; iWireless Application for Review (Jan. 19, 2016) ("Application for Review").

¹⁷⁹ See generally iWireless Opposition; Application for Review.

¹⁸⁰ See generally iWireless Opposition; Application for Review.

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denies that the structure of its BAFO undermines the goals of the Commission.¹⁸¹ [BEGIN

CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 63: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] In the *Data Roaming Order*, the Commission expressly held that it “will not require providers to serve all comers indifferently on the same terms and conditions.”¹⁸⁴ Rather, “[p]roviders can negotiate different terms and conditions on an individualized basis, including prices, with different parties.”¹⁸⁵ Significantly, the order makes clear that the data roaming rule was specifically crafted to “give host providers appropriate discretion *in the structure and level of such rates that they offer*” recognizing that “the relatively high price of roaming compared to providing facilities-based service will often be sufficient to counterbalance the incentive to ‘piggy-back’ on another carrier’s network.”¹⁸⁶ *The rule “allows host providers to control the terms and conditions of proffered data roaming arrangements, within a general requirement of*

¹⁸¹ See Shumaker Decl. ¶ 29.

¹⁸² See *id.*

¹⁸³ See *id.*

¹⁸⁴ *Data Roaming Order* at ¶ 68.

¹⁸⁵ *Id.*

¹⁸⁶ *Data Roaming Order* ¶ 21 (citing *2010 Roaming Order* ¶¶ 18, 31).

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reasonableness.”¹⁸⁷

[BEGIN CONFIDENTIAL]

[REDACTED]

[END

CONFIDENTIAL]

iWireless Answer to Paragraph 64: iWireless denies the allegations in paragraph 64. AT&T has failed to cite any Commission authority for the proposition that [BEGIN

CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL]

iWireless Answer to Paragraph 65: iWireless denies the allegations in Paragraph 65.

[BEGIN CONFIDENTIAL]

[REDACTED]

¹⁸⁷ *Id.* ¶ 33.

¹⁸⁸ *See* Shumaker Decl. ¶ 29.

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[REDACTED]

[END CONFIDENTIAL]

iWireless Answer to Paragraph 66: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

¹⁸⁹ See Hazlett Decl. ¶ 19-20.

¹⁹⁰ See *id.*

¹⁹¹ See Shumaker Decl. ¶ 26.

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[REDACTED]

[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 67: iWireless denies the allegations of Paragraph 67.

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 68: iWireless denies the allegations in Paragraph 68.

[BEGIN CONFIDENTIAL] [REDACTED]

¹⁹² See *id.* ¶ 29.

¹⁹³ See *id.* ¶ 24.

¹⁹⁴ See *id.* ¶ 26.

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[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 69: [BEGIN CONFIDENTIAL] [REDACTED]

¹⁹⁵ Hazlett Decl. ¶ 11.

¹⁹⁶ *See id.*

¹⁹⁷ *See* Shumaker Decl. ¶ 11 n.8.

[END CONFIDENTIAL]

iWireless Answer to Paragraph 70: iWireless denies that any single factor provides the “best evidence” of commercial reasonableness. Adopting the approach advocated by AT&T would require every carrier to charge the average prevailing rate in the market, which is contrary to the overarching principle of individualized decisionmaking. The DC Circuit decision which upheld the *Data Roaming Order* on appeal made clear that

[T]he data roaming rule leaves substantial room for individualized bargaining and discrimination in terms. The rule expressly permits providers to adapt roaming agreements to “individualized circumstances without having to hold themselves out to serve all comers indiscriminately on the same or standardized terms.” *Data Roaming Order*, 26 F.C.C.R. at 5433 ¶ 45. Given this ..., the data roaming rule does “not amount to a duty to hold out facilities *indifferently* for public use.”²⁰⁰

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

In implementing the rule and resolving disputes that arise in the negotiation of roaming agreements, the Commission would thus do well to ensure that the discretion carved out in the rule’s text remains carved out in fact.²⁰¹

The “best evidence” test proposed by AT&T would remove the discretion the rule requires and be tantamount to common carrier regulation.²⁰² iWireless lacks sufficient information to admit

¹⁹⁸ See iWireless Opposition; see Shumaker Decl. *passim*.

¹⁹⁹ See Shumaker Decl. ¶ 29. Hazlett Decl. ¶ 15.

²⁰⁰ *Cellco Partnership v. FCC*, 700 F.3d 534, 548 (D.C. Cir. 2012) (citing *FCC v. Midwest Video Corp.*, 440 U.S. 689, 706 n.16 (1979)).

²⁰¹ *Id.* at 549.

²⁰² Hazlett Decl. ¶ 2.

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or deny the number of data roaming agreements that AT&T has in place or the effective rates under those agreements or whether they include single or multiple technologies. Regardless, iWireless denies that the average rate paid - and for what technologies - by AT&T is an appropriate benchmark for the iWireless rates given the facts and circumstances presented here.²⁰³

iWireless Answer to Paragraph 71: iWireless admits that the Staff need not and should not accord significant weight to the other rates cited by AT&T (retail rates and foreign rates).

iWireless Answer to Paragraph 72: [BEGIN CONFIDENTIAL] [REDACTED]

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

iWireless Answer to Paragraph 73: [BEGIN CONFIDENTIAL] [REDACTED]

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

²⁰³ *Id.* ¶ 17.

²⁰⁴ *See* Amended Complaint ¶ 8.

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iWireless Answer to Paragraph 74: iWireless denies that the voice rate in the prior Agreement is no longer reasonable or that such a characterization has any relevance in this dispute. iWireless lacks sufficient information to admit or deny the number of voice roaming agreements that AT&T has in place or the effective rates under those agreements or what technologies are used under those agreements. Regardless, iWireless denies that the average rate paid by AT&T is an appropriate benchmark for the iWireless rates given the facts and circumstances presented here.

iWireless Answer to Paragraph 75: iWireless denies [BEGIN CONFIDENTIAL] [REDACTED]

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

iWireless Answer to Paragraph 76: iWireless denies that it is commercially unreasonable [BEGIN CONFIDENTIAL] [REDACTED]

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

²⁰⁵ See Shumaker Decl. ¶ 29 n.36.

²⁰⁶ See *id.*

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

iWireless Answer to Paragraph 77: [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END
CONFIDENTIAL]

iWireless Answer to Paragraph 78: [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 79: iWireless admits the allegations in paragraph 79.

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iWireless Answer to Paragraph 80: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 81: This precatory paragraph requires no answer.

iWireless Answer to Paragraph 82: iWireless admits that the initial term of the
iWireless BAFO is [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 83: iWireless admits that [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 84: iWireless admits the allegations in the first sentence of paragraph 84. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 85: T-Mobile does not control iWireless and [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 86: iWireless admits the allegations in paragraph 86. [BEGIN [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

²⁰⁷ See Shumaker Decl. *passim*.

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iWireless Answer to Paragraph 87: iWireless denies the allegations in paragraph 87.

iWireless Answer to Paragraph 88: iWireless is without knowledge or information sufficient to form a belief as to the truth of the assertions in paragraph 88. In any event, iWireless denies that the average rates paid by AT&T to roam on other parties networks serve to dictate the commercially reasonable rate in the circumstances here.

iWireless Answer to Paragraph 89: iWireless is without knowledge or information sufficient to form a belief as to the truth of the assertions in paragraph 89. In any event, iWireless denies that the average rates paid by AT&T to roam on other parties networks serve to dictate the commercially reasonable rate in the circumstances here.²⁰⁸

iWireless Answer to Paragraph 90: iWireless denies the allegations in paragraph 90.

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁰⁸ Hazlett Decl. ¶ 2.

²⁰⁹ *Id.*

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[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

iWireless Answer to Paragraph 91: [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END

CONFIDENTIAL]

iWireless Answer to Paragraph 92: The Commission repeatedly has stated that the fact that a carrier is seeking to roam in an area where it holds licenses but has declined to build is a relevant factor in determining the commercial reasonableness of a host carrier's offer. For

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example, in its *2010 Roaming Order*,²¹⁰ the Commission replaced the categorical home roaming exclusion – over the objection of AT&T– with a case-by case assessment. In doing so, the Commission made clear that it would “continue to support the goal of promoting facilities-based competition by providing incentives for carriers to construct wireless facilities on the spectrum available to them.”²¹¹ The Commission found that, “as a practical matter, the relatively high price of roaming compared to providing facilities-based service will often be sufficient to counterbalance the incentive to ‘piggy back’ on another carrier’s network.” The Commission also emphasized that host carriers have “flexibility to establish the structure and the level of roaming rates,” and to take into consideration as a relevant factor the fact that a requesting carrier holds spectrum in an area where it seeks to roam being a relevant factor.²¹² With these rulings in mind, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 93: iWireless denies the allegations of paragraph 93. Iowa has more small independent telephone companies than any other state.²¹⁴ [BEGIN CONFIDENTIAL] [REDACTED]

²¹⁰ See *2010 Roaming Order*.

²¹¹ *Id.* ¶ 18.

²¹² *Id.* ¶ 32.

²¹³ Hazlett Decl. ¶ 19.

²¹⁴ See Shumaker Decl. ¶ 5 n.2.

²¹⁵ See *id.* ¶ 39.

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

iWireless Answer to Paragraph 94: iWireless admits the first two sentences of paragraph 94 and admits [BEGIN CONFIDENTIAL] [REDACTED]

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

²¹⁶ See *id.* ¶ 39.

²¹⁷ See *id.* ¶ 26.

²¹⁸ See *id.*

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iWireless Answer to Paragraph 95: iWireless is without knowledge or information sufficient to form a belief as to the truth of the assertions in paragraph 95. In any event, iWireless denies that the terms and conditions reflected in the standard form agreement that AT&T has managed, with its superior bargaining leverage, to impose upon smaller carriers has any relevance to the commercially reasonable terms that iWireless can charge based upon the totality of the circumstances at hand. **[BEGIN CONFIDENTIAL]**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED] [END CONFIDENTIAL]

iWireless Answer to Paragraph 96. This precatory paragraph requires no answer.

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iWireless Answer to Paragraph 97: iWireless admits the allegations in paragraph 97.

iWireless Answer to Paragraph 98: iWireless agrees that Section 47 C.F.R. § 20.12(e), was adopted by the Commission under Title III of the Communications Act. iWireless denies that Title III gives the Commission the authority to grant AT&T the relief it is seeking. Specifically, AT&T has cited no provision in Title III that empowers the Commission to set going forward rates for roaming services over the objection of the host carrier and the Commission repeatedly has disavowed any intention to engage in such rate regulation.

iWireless Answer to Paragraph 99: iWireless denies the allegations in paragraph 99. By definition, a provider of commercial mobile data service is “[a]ny mobile data service that is not interconnected with the public switched network.” 47 C.F.R. § 20.3. By redefining the public switched network in the *Net Neutrality Order* to include internet-based services that utilize public IP addresses, the Commission has converted the service offered by iWireless into an interconnected service that does not meet the definition of “commercial mobile data service.” The terms of the rule control over any contrary language in a *Report and Order*.

iWireless Answer to Paragraph 100: iWireless denies the allegations in paragraph 100.

iWireless Answer to Paragraph 101: iWireless denies that it is subject to Section 20.12(e). iWireless admits the allegations in the second and third sentence in paragraph 101.

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iWireless Answer to Paragraph 102: iWireless denies that AT&T is entitled to the relief it seeks. iWireless has offered, by its BAFO, to provide data roaming service to AT&T on commercially reasonable terms notwithstanding the fact that iWireless is not subject to 20.12(e). And, imposing on iWireless the rate proposed in the AT&T BAFO would be a form of *ex ante* rate regulation beyond the FCC's authority.

iWireless Answer to Paragraph 103. This precatory paragraph requires no answer.

iWireless Answer to Paragraph 104: iWireless admits the allegations in Paragraph 104.

iWireless Answer to Paragraph 105: iWireless admits the allegations in the first sentence of paragraph 105. iWireless denies that providers of data roaming service are subject to 47 C.F.R. § 20.12(d) which pertains to voice roaming.

iWireless Answer to Paragraph 106. iWireless denies the allegations in paragraph 106.

iWireless Answer to Paragraph 107: iWireless admits the allegations in paragraph 107.

iWireless Answer to Paragraph 108: iWireless denies that AT&T is entitled to the relief it seeks. iWireless has offered, by its BAFO, to provide voice roaming service to AT&T on

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commercially reasonable terms.²¹⁹ And, imposing on iWireless the rate proposed in the AT&T BAFO would be a form of *ex ante* rate regulation beyond the FCC's authority.

iWireless Answer to Paragraph 109: This precatory paragraph requires no answer.

iWireless Answer to Paragraph 110: iWireless admits the allegations in paragraph 110 to the extent they confirm that the Staff lacks the authority to order a host carrier to provide voice or data roaming service on terms other than the terms proffered by the host carriers. Otherwise, the allegations in paragraph 110 are denied.

iWireless Answer to Paragraph 111: iWireless admits that it is obligated to provide voice roaming service to AT&T in accordance with 20.12(d). iWireless denies that its data roaming service is subject to 47 C.F.R. § 20.12. iWireless is not a provider of commercial mobile data service as defined in the FCC rules and the Commission has forbore from subjecting data carriers to the voice roaming rule.

iWireless Answer to Paragraph 112: iWireless denies the allegations in paragraph 112.

iWireless Answer to Paragraph 113: iWireless denies that AT&T is entitled to the relief it seeks because service should be provided at the rate proffered by iWireless. Of the two alternative forms of relief requested by if AT&T, only the second (service provided at the rate specified in the iWireless BAFO) comports with the Commission-established procedure in the

²¹⁹ Hazlett Decl. *passim*.

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Data Roaming Order. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL] Under these circumstances, there can be no true-up.

IV. STATEMENT REGARDING SUPPORTING MATERIAL

As part of its Answer, iWireless has included a Legal Analysis relevant to the claims and arguments set forth in the Answer.²²⁰

Along with this Answer, iWireless is attaching as exhibits copies of the following documents upon which it intends to rely in support of this Answer and Legal Analysis:²²¹ (i) a supporting declaration filed by Craven Shumaker, CEO of iWireless; (ii) a supporting declaration filed by Thomas W. Hazlett, PhD, H.H. Macaulay Endowed Professor of Economics at Clemson University and (iii) an information designation pursuant to Section 1.724(f) and 1.724(g) of the Commission's Rules, 47 C.F.R. § 1.724(f)(1), (2), (3), and 1.724(g).

iWireless is filing a public version and a confidential version of its Answer. The Answer contains material that has been designated as confidential. In the public version, redacted versions of these materials are being filed. In the confidential version, these materials are being

²²⁰ See 47 C.F.R. § 1.724(c).

²²¹ AT&T has provided true and correct copies of the following documents that iWireless relies or intends to rely to support the facts alleged and legal arguments made in this Answer: (1) the Roaming Agreement; (2) the iWireless BAFO; and (3) the AT&T BAFO. Since these documents have already been placed into the record, iWireless has not attached them to this Answer. Copies of all documents are located at and available through Counsel for iWireless and can be provided upon request.

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filed on an unredacted basis, and are being filed in accordance with the Commission's confidentiality rules.

Pursuant to Section 1.724(h) of the Commission's Rules, 47 C.F.R. § 1.724(h), iWireless hereby certifies that it has, in good faith, attempted to discuss the possibility of settlement on numerous occasions with AT&T prior to AT&T filing the Amended Complaint. iWireless has made extensive efforts to negotiate a revised roaming arrangement with AT&T, however those efforts have not been productive.

V. AFFIRMATIVE DEFENSES

1. In accordance with § 1.724(e) of the Rules, iWireless asserts the following affirmative defenses to the allegations contained in the Amended Complaint.

FIRST DEFENSE

2. Count I of the Amended Complaint does not state a cause of action under the Act. Section 208(a) of the Act gives the Commission jurisdiction to adjudicate complaints "of anything done or omitted to be done by any common carrier subject to [the Act], in contravention of the provisions thereof."²²² Count I purports to contain the allegation that iWireless violated §§ 301 and 332 of the Act, but AT&T does not complain of anything done or omitted to be done by iWireless in violation of § 301 or § 332.²²³

3. Section 301 provides in pertinent part, "[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio ... except under and in accordance with [the Act] and with a license in that behalf granted under the provisions of

²²² 47 U.S.C. § 208(a). See *Framers and Merchants Mutual Tel. Co. of Wayland, Iowa v. FCC*, 668 F.3d 714, 719 (D.C. Cir. 2011) (§ 208(a) "provides authority to adjudicate complaints 'of anything done or omitted to be done by any common carrier' in violation of the ... Act").

²²³ See Amended Complaint ¶¶ 96-102.

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[the Act].”²²⁴ AT&T does not allege that iWireless used or operated a radio transmitter in violation of the Act or without a license granted by the Commission under the Act.

4. Section 332 applies to how CMRS providers are regulated by the Commission, *see id.* § 332(c)(1), (8), or by state and local governments.²²⁵ Because § 332 does not prohibit a CMS provider from doing anything or require a CMS provider to do anything, *see id.* § 332(c), AT&T could not, and did not, allege that iWireless did anything or omitted to do anything in violation of § 332.

5. Claiming that § 20.12(e) of the Rules was adopted by the Commission under Title III of the Act, AT&T contends that a violation of the rule would be a violation of Title III.²²⁶ In fact, the Commission promulgated § 20.12(e) pursuant to “particular delegations of authority” in §§ 303 and 316 of the Act.²²⁷ The fact that the rule was promulgated pursuant to *authority* delegated by §§ 303 and 316 of the Act does not make a violation of the rule a violation of §§ 303 and 316, much less a violation of § 301 or § 332. Absent a ruling by the Commission that a violation of § 20.12(e) would be a violation of the §§ 301 and 332, a violation of 20.12(e) cannot give rise to a private cause of action under §§ 301 and 332.²²⁸

SECOND DEFENSE

6. Count I of the Amended Complaint does not state a cause of action under the

²²⁴ 47 U.S.C. § 301.

²²⁵ *See id.* § 332(c)(3), (7).

²²⁶ *See* Amended Complaint ¶ 98.

²²⁷ *Cellco Partnership v. FCC*, 700 F.3d 534, 542 (D.C. Cir. 2012).

²²⁸ *See Global Crossing Telecommunications, Inc. v. FCC*, 550 U.S. 45, 59-60 (2007) (a violation of an FCC rule adopted under one section of the Act cannot give rise to a private cause of action under a separate section of the Act absent a reasonable and authoritative ruling that a violation of the rule is a violation of the statute).

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Rules. Count 1 purports to contain the allegation that iWireless violated § 20.12(e) of the Rules by offering roaming arrangements for commercial mobile data services to AT&T on terms and conditions that are not commercially reasonable.²²⁹ However, § 20.12(e) only requires “[a] facilities-based provider of commercial mobile data services ... to offer roaming arrangements to other such providers on commercially reasonable terms and conditions.”²³⁰

7. The Commission defines the term “commercial mobile data service” to mean “[a]ny mobile data service that is not interconnected with the public switched network and is: (i) [p]rovided for profit; and (ii) [a]vailable to the public or to such classes of eligible users as to be effectively available to the public.”²³¹ The term “interconnected” is defined to mean “[d]irect or indirect connection through automatic or manual means ... to permit the transmission or reception of messages or signals to or from points in the public switched network.”²³² And the term “public switched network” means “[t]he network that includes any common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile service providers, that uses the North American Numbering Plan, or public IP addresses, in connection with the provision of switched services.”²³³

8. All the mobile data services provided by iWireless are interconnected to the public switched network. Because it is not a facilities-based provider of commercial mobile data services, iWireless is not subject to § 20.12(e) of the Rules, and it is under no legal duty to offer roaming arrangements to providers of such services on commercially reasonable terms and

²²⁹ See Amended Complaint ¶ 100.

²³⁰ 47 C.F.R. § 20.12(e).

²³¹ 47 C.F.R. § 20.3.

²³² *Id.*

²³³ *Id.*

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conditions. iWireless cannot be charged with violating § 20.12(e) of the Rules.

THIRD DEFENSE

9. Count I of the Amended Complaint does not state a claim upon which relief can be granted. The relief sought by Count I is for the Commission to order iWireless to provide mobile data roaming service to AT&T's customers on commercially reasonable terms, as required by § 20.12(e) of the Rules, specifically in accordance with AT&T's BAFO.²³⁴ However, iWireless does not provide commercial mobile data service, and it is not subject to § 20.12(e) of the Rules. iWireless provides mobile data service that is interconnected to the public switched network and has been classified as a CMS under § 332(d)(1) of the Act, *see* 47 U.S.C. § 332(d)(1), and as a mobile broadband internet access service ("MBIAS") by the Commission.²³⁵

10. The Commission has an obligation, as an adjudicator under § 208(a) of the Act, to decide AT&T's Amended Complaint "under the law currently applicable."²³⁶ Under current law, the Commission forbears from applying § 205 of the Act, which authorizes it to investigate and prescribe rates and practices, to MBIAS providers.²³⁷ A Commission order directing iWireless to provide MBIAS to AT&T's customers in accordance with AT&T's BAFO, or at any other rate set by the Commission over the objection of iWireless, would constitute a rate prescription under § 205.²³⁸ The Commission cannot grant the relief sought under Count I, because it forbears from

²³⁴ *See* Amended Complaint ¶ 102.

²³⁵ *See* 47 C.F.R. § 8.2(e); *Net Neutrality Order*.

²³⁶ *AT&T Co. v. FCC*, 978 F.2d 727, 732 (D.C. Cir. 1993), *cert denied*, 509 U.S. 913 (1994).

²³⁷ *See Net Neutrality Order*, 30 FCC Rcd at 5845.

²³⁸ *See* 47 U.S.C. § 205; *AT&T Co. v. FCC*, 487 F.2d 865, 874 (2nd Cir. 1973) (a Commission action is a rate prescription if it "compels the carrier to adhere to a fixed rate").

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subjecting MBIAS providers to *ex ante* rate regulation.²³⁹

FOURTH DEFENSE

11. Count II of the Amended Complaint does not state a claim upon which relief can be granted. The relief sought by Count II is for the Commission to order iWireless to provide voice roaming service to AT&T's customers on reasonable and not unreasonably discriminatory terms, as required by § 20.12(d) of the Rules, specifically in accordance with AT&T's BAFO.²⁴⁰

12. A Commission order directing iWireless to provide voice roaming service to AT&T's customers in accordance with AT&T's BAFO would constitute a rate prescription under § 205 of the Act.²⁴¹ However, under current law, the Commission forbears from applying § 205 to CMS providers.²⁴² The Commission cannot grant the relief sought under Count II, because it currently forbears from prescribing the rates that CMS providers may charge for the service.²⁴³

FIFTH DEFENSE

13. Count III of the Amended Complaint does not state a claim upon which relief can be granted. The relief sought by Count III is for the Commission to order iWireless to provide roaming services to AT&T's customers during the pendency of the Amended Complaint under the terms and conditions of the parties' prior bilateral agreement, or, alternatively, pursuant to its

²³⁹ See *Net Neutrality Order*, 30 FCC Rcd at 5842.

²⁴⁰ See Amended Complaint ¶ 108.

²⁴¹ See 47 U.S.C. § 205; *AT&T*, 487 F.2d at 874.

²⁴² See *Implementation of §§ 3(n) and 332 of the Communications Act*, 9 FCC Rcd 1411, 1479 (1994) ("*Wireless Forbearance Order*").

²⁴³ See *id.*

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BAFO to AT&T (subject to a true-up).²⁴⁴ Such an order would constitute a rate prescription under § 205 of the Act.²⁴⁵ However, under current law, the Commission forbears from applying § 205 to CMS and MBIAS providers.²⁴⁶ The Commission cannot grant the relief sought under Count III, because it currently forbears from prescribing the rates that CMS and MBIAS providers may charge for the services.²⁴⁷

SIXTH DEFENSE

14. iWireless' voice and data roaming offer to AT&T is in accordance with the applicable rules and regulations of the Commission for all of the reasons set forth above.

²⁴⁴ See Amended Complaint ¶ 113.

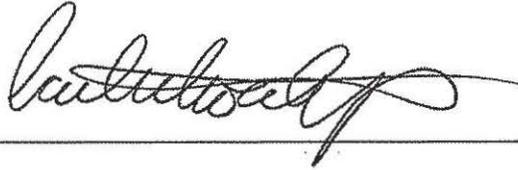
²⁴⁵ See 47 U.S.C. § 205; *AT&T*, 487 F.2d at 874.

²⁴⁶ See *Wireless Forbearance Order*, 9 FCC Rcd at 1479; *Net Neutrality Order*, 30 FCC Rcd at 5845.

²⁴⁷ See *Wireless Forbearance Order*, 9 FCC Rcd at 1479; *Net Neutrality Order*, 30 FCC Rcd at 5845.

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Respectfully submitted,



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Counsel for Iowa Wireless Services, LLC

Dated: January 22, 2016

TAB 2

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**

DECLARATION OF CRAVEN SHUMAKER

I. BACKGROUND

1. My name is Craven Shumaker. I am the President and Chief Executive Officer of Iowa Wireless Services, LLC (“iWireless”), a position I have held since July 2012. I have more than 20 years of experience in the telecommunications industry. Prior to working at iWireless, I held numerous executive leadership posts at Nextel and its acquirer, Sprint, including: Regional Vice President for the South, Regional President for the North and Senior Vice President of Indirect Sales and Distribution for the US and Puerto Rico with a staff of 900 employees.

2. I am actively involved in the negotiation of iWireless’ roaming agreements with other wireless providers.

3. As part of my role as President and Chief Executive Officer, I supervised the

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roaming negotiations between iWireless and AT&T Mobility LLC (“AT&T”) from [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] to the present. This declaration discusses iWireless’ provision and use of roaming services generally, describes the parties’ negotiations, and explains why iWireless’ Best and Final Offer (“BAFO”)¹ is commercially reasonable.

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

5. Iowa Network Services, Inc. (“INSI”) – a corporation privately owned by approximately 127 independent telephone companies (“ITCs”) in Iowa, and serving 500,000 rural Iowans in 99 counties statewide – is a substantial stakeholder in iWireless.² [BEGIN

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

6. T-Mobile is a non-controlling investor in iWireless and [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

¹ See iWireless Best and Final Offer (Dec. 4, 2015).

² Iowa, with its 127 ITCs, has more independent telephone companies than any other state. Next in line is Minnesota with fewer than 50. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]
[REDACTED] [END CONFIDENTIAL]

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[REDACTED]
[REDACTED]
[REDACTED] **[END CONFIDENTIAL]** Most importantly, T-Mobile and iWireless are not at all similarly-situated in terms of the scope of their networks, and the demographics of the areas they serve.³

II. iWIRELESS' PROVISION AND USE OF RURAL DATA ROAMING SERVICES

7. Wireless providers enter into roaming agreements to allow their customers to utilize other wireless providers' networks in order to provide ubiquitous service to customers in all locations.⁴

8. Roaming agreements are especially important in rural areas of the country, like Iowa. The FCC has used as a baseline definition of "rural" a county with a population density of 100 persons or fewer per square mile.⁵ By this standard, the areas served by iWireless **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** governed by the Agreement with

³ iWireless is aware that T-Mobile recently submitted a chart labeled "T-Mobile Data Roaming Rates" to the FCC in a separate proceeding, however iWireless was not a party to the submission and is without knowledge or information to form a belief as to the accuracy of the average price information in the chart. *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).

⁴ In the case of AT&T, the roaming Agreement with iWireless has allowed AT&T to piggy-back on the networks of iWireless **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** and thus to avoid building out its own network in high cost rural areas.

⁵ *See* Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services et al. (WT Docket No. 02-381 et al.), *Report and Order*, 19 FCC Rcd 19078, 19087-88 (2004); *see also* Updating Part 1 Competitive Bidding Rules (WT Docket No. 14-170), *Report and Order*; *Order on Reconsideration of the First Report and Order*; *Third Order on Reconsideration of the Second Report and Order*; *Third Report and Order*, FCC 15-80 at ¶¶ 104, 130 (rel. July 21, 2015).

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AT&T are predominantly rural.⁶

9. The costs of providing communications services in rural areas with a low population density are likely to be significantly higher than in more urban areas of the country, further exacerbating the need for roaming partnerships in rural states like Iowa. Indeed, many factors contribute to higher costs. For example, one major contributor is the higher recurring costs of the backhaul facilities needed to serve less developed areas. In rural Iowa, backhaul is needed not only to connect the approximately [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] but also to haul traffic back to the single switch that serves the entire state. In addition, the cost of cell sites in more remote areas is higher because there are fewer opportunities for colocation that can reduce per carrier costs. And, iWireless and the ITCs are competing against legacy carriers which have the benefit of using prime cellular and other lowband spectrum with their superior propagation characteristics. Because of the propagation differences, iWireless cannot simply utilize the same cell sites and grid pattern of its competitors, which serves to further reduce colocation opportunities. Additionally, the maintenance of cell sites in remote and rural areas is often more expensive and challenging due to much longer travel times than in more urban areas. And, finally, the costs of [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] is much higher than the costs [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL]

⁶ The average population density in the counties served by iWireless [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] under the Agreement is less than 50.97 persons per square mile – far below the 100 persons/square mile standard. See Exhibit 1. [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED]

[END CONFIDENTIAL]

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10. In addition to having to contend with higher costs, rural carriers are facing a series of other competitive and economic challenges. Changes in the USF program have reduced subsidies. The evolution of wireless from a predominantly local or regional market to a nationwide market has affected the ability of small carriers to compete for customers. And, technological changes force carriers to upgrade legacy networks even if they never reached capacity, in order to avoid becoming obsolete.

III. OVERVIEW OF THE TERMS OF THE iWIRELESS-AT&T ROAMING AGREEMENT

11. iWireless and AT&T (as successor in interest to Cingular) were parties to a roaming agreement (the "Agreement") [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

12. Under the Agreement, as amended, the parties reciprocally provided roaming services to each other at the following rates: (i) a data roaming rate of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] and (ii) a voice effective rate of approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] per minute of use ("mou").

⁷ See Agreement, at ¶ 2.

⁸ [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL]

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IV. OVERVIEW OF THE NEGOTIATIONS AND OTHER DEALINGS
BETWEEN iWIRELESS AND AT&T

A. Rate Negotiations

13. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

14. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

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

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

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[REDACTED]

[END CONFIDENTIAL]

15. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

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

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

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

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[REDACTED]

[REDACTED] [END CONFIDENTIAL]

16. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

¹⁴ [BEGIN CONFIDENTIAL] [REDACTED] [END

CONFIDENTIAL]

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

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

¹⁷ [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

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[REDACTED]

[REDACTED] [END CONFIDENTIAL]

17. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

18. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18 [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

19 [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL]

20 [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL]

21 [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

22 [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

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[REDACTED]

[END CONFIDENTIAL]

19. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

²³ [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL]

²⁴ [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL]

²⁵ [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END

CONFIDENTIAL]

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[REDACTED]
[REDACTED]
[REDACTED] [END

CONFIDENTIAL]

20. [BEGIN CONFIDENTIAL] [REDACTED] [END
CONFIDENTIAL] iWireless has taken a series of actions in a good faith effort and on a timely
basis to reach mutually agreeable terms to govern the parties' going forward relationship. At no
point has iWireless unduly delayed or stonewalled in the course of negotiations with AT&T; in
fact, many times iWireless has been the party to initiate the discussions.

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

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

²⁶ See *supra* ¶ 15.

²⁷ [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

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

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[REDACTED]

[REDACTED] [END CONFIDENTIAL]

B. The [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

23. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

24. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

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

³⁰ Agreement, Section 13.

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

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

25. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

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

[END CONFIDENTIAL]

27. [BEGIN CONFIDENTIAL] [REDACTED]

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

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

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[REDACTED]

[REDACTED] [END CONFIDENTIAL]

28. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

³⁴ The Agreement was negotiated prior to the adoption of the [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL]

³⁵ [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

C. iWireless' Best and Final Offer is Commercially Reasonable

29. On December 4, 2015, the Parties exchanged BAFOs at the request of Commission Staff. [BEGIN CONFIDENTIAL] [REDACTED]

³⁶ [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

³⁷ [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

³⁸ [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] See iWireless Opposition

to Motion for Interim Relief at 5-15 (Nov. 20, 2015).

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[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

30. For all of the reasons set forth in the Answer, the iWireless BAFO is commercially reasonable. However, I post here some specific justifications to explain why the iWireless BAFO is commercially reasonable.

31. Notably, although AT&T holds licenses for significant spectrum throughout the areas served by iWireless [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]— estimated by iWireless to range from 66 MHz to 196 MHz in the 99 counties contained in Iowa³⁹ – AT&T has chosen to build its own network in only select, more populous areas and is relying upon the roaming relationship with iWireless [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³⁹ See Exhibit 2.

⁴⁰ See Exhibit 3.

⁴¹ See Mike Dano, *AT&T's Donovan: Wireless Network Costs Decreasing due to SDN, Ethernet Backhaul, Cloud Computing*, FIERCEWIRELESSTECH (Aug. 12, 2015) http://www.fiercewireless.com/tech/story/atts-donovan-wireless-network-costs-decreasing-due-sdn-ethernet-backhaul-cl/2015-08-12?utm_campaign=+SocialMedia. (it's much cheaper for AT&T to connect its cell towers to its own fiber network than to another provider's fiber network).

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[REDACTED] [END CONFIDENTIAL]

32. [BEGIN CONFIDENTIAL] [REDACTED]

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

[REDACTED] [END CONFIDENTIAL] iWireless is faced with the prospect of a radically declining volume of traffic. It is commercially reasonable for this eventuality to be factored into the going forward rate.

33. [BEGIN CONFIDENTIAL] [REDACTED]

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

CONFIDENTIAL] It is commercially reasonable for iWireless to take this circumstance, and its devastating commercial impact, into consideration in setting its rates.

34. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL] with resulting negative economic consequences for iWireless

[BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

35. AT&T claims that one of the two “substantive lodestars” for determining

⁴² See Exhibit 4.

⁴³ Amended Complaint ¶ 9.

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commercial reasonableness under the *Data Roaming Order* is the rates and terms in existing, negotiated roaming agreements in the marketplace. Here, AT&T concedes in its Complaint that

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

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

37. The evolution to 4G/LTE technology in major markets can bring economic benefits to urban carriers because increased capacity can support higher customer counts and customer use. Lesser populated rural markets do not have the same prospects for economic gain through technology upgrades. Indeed, rural carriers must upgrade not because they are capacity-

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[REDACTED]

[REDACTED]

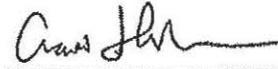
[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

VERIFICATION PAGE

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



Craven Shumaker

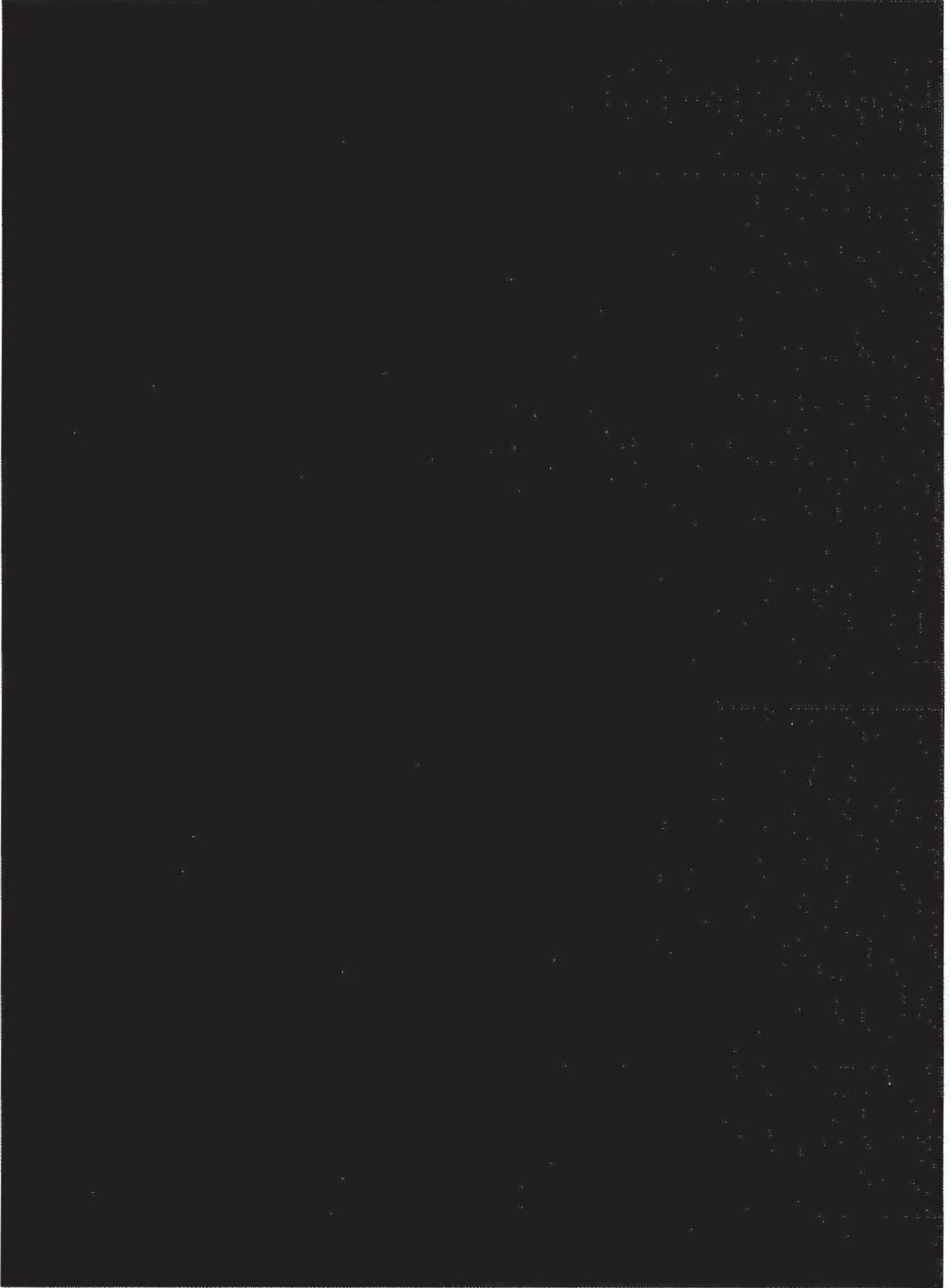
Dated: January 21, 2016

EXHIBIT 1

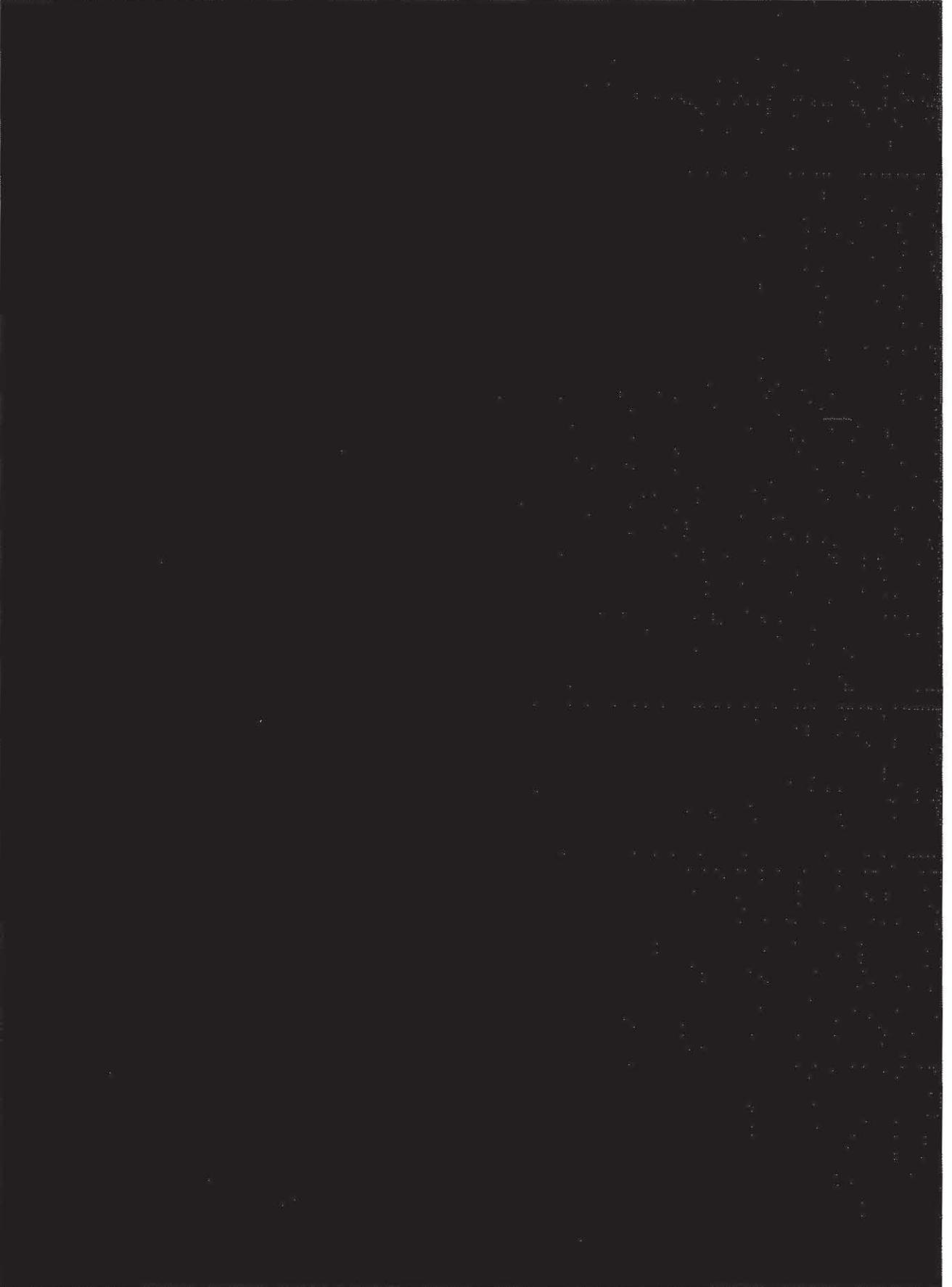
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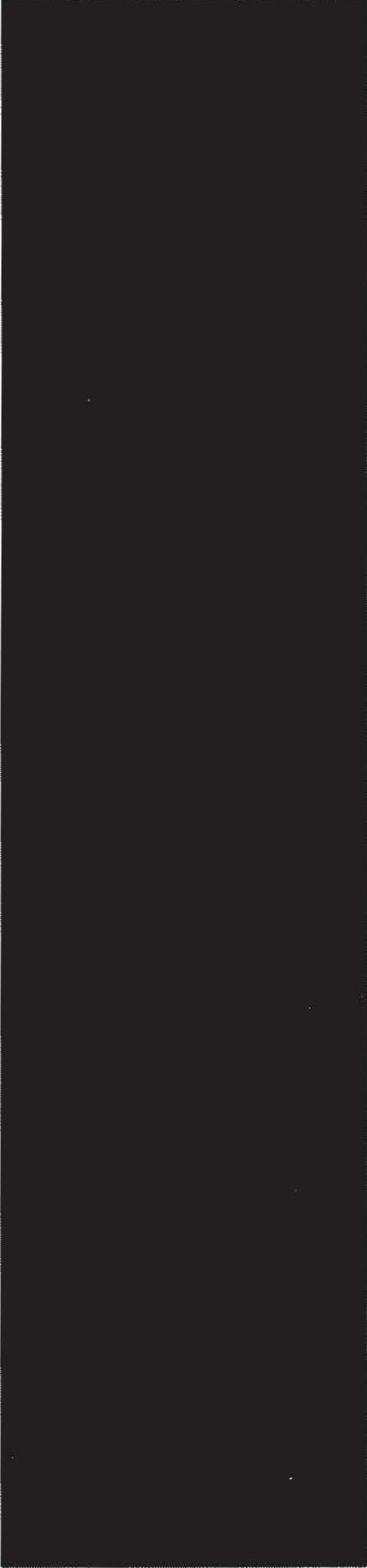


EXHIBIT 2

AT&T Spectrum Holdings – Iowa Counties

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

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

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

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

Osceola 136 MHz

Plymouth 106 MHz

Sioux 96 MHz

EXHIBIT 3

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EXHIBIT 4

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TAB 3

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**

DECLARATION OF THOMAS W. HAZLETT, PhD.

1. **Introduction.** My name is Thomas W. Hazlett and I am the H.H. Macaulay Endowed Professor of Economics at Clemson University, where I also serve as Director of the Information Economy Project. I have previously taught economics and public policy at the University of California, Davis, the University of Pennsylvania, and George Mason University, and served as Chief Economist of the Federal Communications Commission. I have written extensively on telecommunications policy, spectrum allocation, and competitive issues within the information sector, publishing such research in economics journals, law reviews, and technical publications, as well as popular media outlets such as the *Wall Street Journal* and the *Financial Times*. A C.V. is attached.¹

¹ See Exhibit 1.

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2. Overview. Iowa Wireless Services, LLC (“iWireless”) asked me to review the documents in this dispute over mobile roaming rates and evaluate the arguments made by AT&T² and its expert economist, Jonathan Orszag,³ on the issue of “commercial reasonableness.” I do that in this Declaration. My opinion is that the best and final offer (“BAFO”) put forward by iWireless on December 4, 2015 in this proceeding⁴ is commercially reasonable. The arguments against this interpretation by AT&T focus narrowly on calculated price variances, do not adjust for important sources of the observed variances, and then bypass the essential analysis of competitive effect which is required to determine the “totality of the circumstances” involved in any given roaming rate agreement. The AT&T position conflicts with the FCC’s stated premise that it “resolves disputes thereunder on a case-by-case basis.”⁵ The Commission allows providers to “negotiate different terms and conditions, including prices, with different parties, where differences in terms and conditions reasonably reflect differences in particular cases.”⁶ Because data roaming is not a common carrier service, the Commission explicitly nested data roaming rules within “individualized decisionmaking.”⁷ When looked at in the proper context, as delineated in the FCC’s *Data Roaming Order*, iWireless’ offer to engage in roaming services with AT&T on the terms set forth in its BAFO is commercially reasonable. The alternative proposal

² Amended Formal Complaint and Legal Analysis of AT&T Mobility LLC (Dec. 23, 2015) (“Amended Complaint”).

³ Declaration of Jonathan Orszag in Support of AT&T’s Amended Formal Complaint (Dec. 23, 2015) (“Orszag Decl.”).

⁴ iWireless Best & Final Offer (Dec. 4, 2015).

⁵ See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, *Declaratory Ruling*, 29 FCC Rcd 15483, 15493, ¶ 3 (WTB 2014) (“*Roaming Declaratory Ruling*”).

⁶ Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Radio Service Data; WT Docket No. 05-265, *Second Report and Order*, 26 FCC Rcd 5411, 5451, ¶ 87 (2011) (“*Data Roaming Order*”).

⁷ *Id.* ¶ 45.

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by AT&T, and its justification based solely upon unadjusted market averages, is contrary to the principles enunciated by the FCC that govern the determination of commercial reasonableness. Moreover, to adopt AT&T's methodology would effectively treat iWireless as a common carrier.

3. *The Offers.* iWireless is a facility-based provider of broadband services throughout Iowa and in certain adjoining portions of South Dakota, Nebraska, Illinois and Wisconsin.⁸ [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

4. iWireless has maintained a roaming relationship with AT&T, a fellow GSM service provider, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

⁸ Declaration of Craven Shumaker ¶ 4 ("Shumaker Decl.").

⁹ *Id.* ¶ 5.

¹⁰ *Id.* ¶ 11.

¹¹ See Orszag Decl.

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5. The prior roaming agreement between iWireless and AT&T covered [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL] While iWireless is technically capable of supplying 3G, and now 4G, service [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]
CONFIDENTIAL]

6. Under their prior agreement, AT&T and iWireless [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]

¹² Shumaker Decl. ¶ 11.
¹³ [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]
CONFIDENTIAL]
¹⁴ Shumaker Decl. ¶¶ 14, 15.

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

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

8. *Evaluation of Commercially Reasonable.* [BEGIN CONFIDENTIAL] [REDACTED]

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

AT&T, citing what it contends are generally declining rates (per MOU and per MB) in the industry, claims that this temporal change is not commercially reasonable. Of course, the impact on the rate (price per MB) is determined by both the monthly charge and the quantity of data used by customers.

[BEGIN CONFIDENTIAL] [REDACTED]

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

9. The impact of the switch to a [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

¹⁵ See Amended Complaint ¶ 66; [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

¹⁶ [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] See discussion *supra* ¶ 5.

¹⁷ See discussion below.

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[REDACTED]

[END CONFIDENTIAL]

10. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL] For instance, AT&T has announced to its subscribers that it will be entirely abandoning 2G services by 2017, preparing mobile users to adapt to more advanced networks.¹⁹ The move is driven by the fact that “mobile data traffic on the AT&T national wireless network increased 100,000 percent (between January 2007 and December 2014).”²⁰ The abandonment of the old technology is to accommodate newer technology, as AT&T explains that the migration will reallocate “existing spectrum for its most efficient use,” thereby giving

¹⁸ “Today, 4G smartphones generate nearly 10 times more traffic than non-4G devices, according to Cisco.” David Goldman, *5G will cost you a bundle*, CNN.COM (May 19, 2015) <http://money.cnn.com/2015/05/18/technology/5g-cost-wireless-data/>.

¹⁹ AT&T, *Frequently Asked Questions: 2G Sunset*, <http://www.business.att.com/content/other/2g-sunset-faq.pdf> (last visited Jan. 21, 2015).

²⁰ *Id.*



[END CONFIDENTIAL]

12. The iWireless offer is criticized in the Orszag Declaration [BEGIN

CONFIDENTIAL]



²⁴ Cisco, *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update 2014 – 2019 White Paper* (Feb. 3, 2015) available at http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/white_paper_c11-520862.html.

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[REDACTED]

[REDACTED] [END CONFIDENTIAL]

13. To the extent that the iWireless approach is successful, it will create gains both for the iWireless network and AT&T's customers. More deeply, the strategy to pursue such outcomes entails precisely the sort of economic circumstance that must be factored into the determination of rates, part and parcel of the "totality of the circumstances" the Commission includes in an evaluation of "commercially reasonable."

14. It should be noted that – without questioning the price data presented by AT&T – the numerical argument made by AT&T about reasonableness is flawed. AT&T objects to the iWireless offer as "commercially unreasonable"²⁵ on the grounds that [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

Each of these claims is ill-founded. First, however, I pause to review the simple implications of AT&T's empirical argument, juxtaposing it against facts already in the record. Second, I review the FCC's standard for determining "commercially reasonable" rates before going to a more fundamental analysis of the shortcomings of AT&T's arguments.

15. *The rates that iWireless proposes to charge are themselves* [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

²⁵ See Amended Complaint ¶¶ 62-75.

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[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

²⁶ Orszag Decl. at Table B-2.

²⁷ *Id.*

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16. Under the FCC's rules for "commercially reasonable" offers, average rates do not define the range of permissible offers. In relying on carriers to negotiate individualized agreements serving the interests of both parties, the Commission expects agreements to reflect multiple market- and relationship-specific factors. It is not the mean market price, averaged across all circumstances, that provides guidance for reasonableness, but the distribution of prices across varying circumstances. Each relationship has its own business context and "commercial reasonableness will be determined based on the totality of the circumstances,"²⁸ in that carriers are allowed to engage in individualized decisionmaking.²⁹

17. AT&T has not differentiated the situations in which it [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] Moreover, prices cannot, without an examination of the market situation, be used to establish the price delineation they assert. If it could, if AT&T's methodology were appropriate, then the fact that the iWireless roaming prices [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL]

18. Additionally, AT&T alleges that data rates generally are declining dramatically, and argues that iWireless' proffered rates [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] are unreasonable. But this conflicts with the trend of prices in the specific instance. The rate that AT&T has charged iWireless for data (and vice versa) [BEGIN CONFIDENTIAL] [REDACTED]

²⁸ *Data Roaming Order* ¶ 8.

²⁹ *Id.* ¶ 68 ("Providers can negotiate different terms and conditions on an individualized basis, including prices, with different parties").

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[REDACTED]

[REDACTED] [END CONFIDENTIAL]

19. AT&T argues that the [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] Such a result is wholly at odds with the Commission's roaming regulations, which are designed to encourage such build outs.³²

The error here is that, while the marginal MB is priced at zero over a certain range of usage, the margin over which build-out decisions are made corresponds to much larger increments of usage

³⁰ See Orszag Decl.
³¹ See Amended Complaint ¶ 39
³² *Id.*

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and to payments made over months or years. Infrastructure expansions involve capital investments, on the one side, and revenue-producing (or cost-saving) activity generated in future years via the new infrastructure, on the other. It is clear that, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

20. The assertion by AT&T that a zero marginal price, over any increment of service, leads to under-investment would render all “bill and keep” contracts, which are widespread in communications networks and Internet backbone markets, systematically inefficient. They are not, and are commonly considered to be “commercially reasonable” in a variety of contexts (including roaming agreements). [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] To offset that conclusion requires an analysis incorporating market-specific and contract-specific facts coupled with an explanation of why the format that is commercially reasonable in one context is unreasonable in another. Yet, AT&T fails to do that.

³³ Amended Complaint ¶ 64.

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21. *Standard for Analysis*. The FCC’s Data Roaming Order laid out a series of 17 points that should be factored into the analysis of what is “commercially reasonable” in roaming agreements. One of the points is extremely broad – “various other or extenuating circumstances”³⁴ – and the Commission clarifies that the analysis could be even broader, stating that “these factors are not exclusive or exhaustive.”³⁵ While it permits consideration of rates charged for mobile retail services, mobile wholesale services, and in other mobile roaming contracts, the Commission specifically directs that such “reference points do not function as a ceiling or as a cap on prices, “in that a broad range of information could have a bearing on commercial reasonableness.”³⁶

22. While AT&T notes that retail, wholesale, and other prices charged for mobile services can be used as reference points, as per the FCC’s Order, it ignores the fact that the prices are not to be used as the only reference points. The Commission is clear on the general point, repeatedly stressing the totality of the circumstances, and in laying out many other factors besides observed price points in arms-length transactions. Among these are:

- “the level of competitive harm in a given market and the benefits to consumers;
- the extent and nature of providers’ build-out;
- the impact... on the incentives for either provider to invest in facilities and coverage, services, and service quality;
- the propagation characteristics of the spectrum licensed to the providers.”³⁷

23. As a general matter, these factors (and others on the checklist) explain the broad

³⁴ *Data Roaming Order* ¶ 86.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

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distribution of prices observed in “commercially reasonable” agreements. In particular, rates are routinely adjusted for quantities (high volumes generally cheaper than small volumes); urban/rural (higher capital costs in rural areas tend to raise rates); asymmetries (in traffic flows); whether a roaming customer has spectrum rights in the roaming markets in question (those that do own licenses generally pay higher rates, reflecting perhaps the expectation of a relatively short-term relationship). They illustrate how the specific factors evident in a case-by-case determinations can be of important magnitude in evaluation rates.

24. In the extant roaming dispute, if iWireless offers roaming prices that are above commercially reasonable levels, AT&T will be incentivized to build-out its local (Iowa) wireless network facilities and supply the requested wireless services at a more reasonable (internal transfer) price. AT&T not only has the complementary network assets in place to expand the scope of its service, but possesses FCC mobile licenses that blanket the state of Iowa.³⁸ This is a consideration to account for, as indicated by the FCC’s checklist, because the alternative for the party rejecting given terms is readily at hand. Not only does AT&T have a remedy for an unreasonable bargaining position put forward by iWireless, iWireless can foresee that AT&T has other options available.

25. There is a strong incentive for iWireless not to squander the opportunity for additional revenues, as per the roaming agreement with AT&T. In doing so, iWireless would lose a source of business. Put another way, market forces constrain iWireless to make a commercially reasonable offer. That iWireless makes such an offer indicates that it believes that AT&T cannot duplicate its services more efficiently via integration. That AT&T has yet to build-out much of Iowa **[BEGIN CONFIDENTIAL]** [REDACTED]

³⁸ See Shumaker Decl. ¶ 31.

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[REDACTED]

[REDACTED] [END CONFIDENTIAL] tends to support iWireless' assessment. This puts the iWireless offer within the bounds of commercially reasonable.

26. The prices that AT&T attempts to use as benchmarks are illustrative in some contexts more than in others. In the AT&T v. iWireless dispute, roaming prices would tend to deviate from average rates (retail or wholesale) as referenced by AT&T due to several factors: relatively low volumes, AT&T's ownership of wireless licenses, asymmetric traffic flows, rural markets, short contract terms, and legacy networks. All of these price drivers suggest that business context is important, consistent with what the FCC sets forth in its regulatory framework.

27. Another specific business issue in this dispute revolves around the fact that iWireless is supplying, [BEGIN CONFIDENTIAL] [REDACTED]

³⁹ Shumaker Decl. ¶ 14.

[END CONFIDENTIAL]

28. The example of Microsoft operating system software may provide an analogy. Microsoft contracts with enterprises to service its various Windows platforms for computers, and charges much higher prices for annual service contracts for older Windows versions it is attempting to phase out.⁴⁰ The prices both pay for the cost of maintaining old systems (which, in any event, are not growing and no longer constitute a strategic line of business for the firm) and provide a premium to customers who help contribute to an emerging platform or ecosystem.

29. An example closer to home involves AT&T's current plan to "sunset" its 2G service by 2017. This transition is called for as AT&T ramps up its 4G capacity, migrating spectrum to the more advanced system. It informed its customers in 2015:

As devices rapidly upgrade from 2G to newer technologies, carriers are shifting spectrum and other network resources to support this change, while also bringing new spectrum into service for 3G and 4G LTE. AT&T, like all other companies, must make a business decision about how to allocate limited resources given the explosion of the mobile Internet.⁴¹

30. **Conclusion.** The focus in the Orszag declaration is largely on whether the AT&T BAFO is commercially reasonable. But, even if the AT&T BAFO was determined to be commercially reasonable, that would not serve to undermine the iWireless offer since a broad range of offers will fall within the zone of commercial reasonableness. The BAFOs of the respective parties are not required to be, and cannot be expected to be, identical given the

⁴⁰ Jack Schofield, *What can I do if Windows won't run my old software, such as Quicken 2002?* THE GUARDIAN (April 23, 2015) <http://www.theguardian.com/technology/askjack/2015/apr/23/windows-run-old-software-quicken-2002>.

⁴¹ AT&T, *Frequently Asked Questions: 2G Sunset*, <http://www.business.att.com/content/other/2g-sunset-faq.pdf> (last visited Jan. 21, 2015).

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principles that underlie the applicable rule. The pertinent inquiry, given AT&T's complaint, is whether the *iWireless proposal* is commercially reasonable. In its *2010 Roaming Order*, the Commission emphasized that it was granting host carriers "flexibility to establish the structure and the level of roaming rates."⁴² Similarly, the *Data Roaming Order* makes clear that the data roaming rule was specifically crafted to "give *host providers* appropriate discretion in the structure and level of such rates that they offer."⁴³ The rule "allows host providers to control the terms and conditions of proffered data roaming arrangements, within a general requirement of reasonableness."⁴⁴ *iWireless* has made a proposal within the zone of reasonableness.

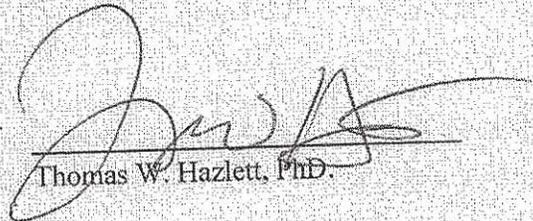
⁴² See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 25 FCC Rcd 4181, 4197 ¶ 32 (2011) ("*2010 Roaming Order*").

⁴³ *Data Roaming Order* ¶ 21 (citing *2010 Roaming Order* ¶ 18) (emphasis added).

⁴⁴ *Id.* ¶ 33.

VERIFICATION PAGE

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



Thomas W. Hazlett, PhD.

Dated: January 21, 2016

EXHIBIT 1

January 2016
Thomas W. Hazlett
Abbreviated C.V.

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- 2014-present ✧ Hugh H. Macaulay Endowed Professor of Economics, Clemson University
- 2014-present ✧ Director, Information Economy Project, Clemson University
- 2005-2015 ✧ Professor of Law & Economics, George Mason University
- Spring 2005 ✧ Visiting Faculty, Wharton School, University of Pennsylvania
- 2001-2003 ✧ Fellow, AEI-Brookings Joint Center for Regulatory Studies
- 1991-1992 ✧ Chief Economist, Federal Communications Commission
- 1990-1991 ✧ Visiting Scholar, Graduate School of Business, Columbia University
- 1984-2000 ✧ Professor of Agricultural & Resource Economics, UC Davis

Degree: Ph.D., UCLA, 1984 (Economics)

Specialization: Law & Economics, Public Choice, Technology Policy

Books:

Public Policy Toward Cable Television: The Economics of Rate Controls, co-authored with Matthew Spitzer (M.I.T. Press; 1997).

The Political Spectrum: From Marconi to the iPhone, the Quest to Liberate Wireless Technologies of Freedom (Yale University Press; forthcoming, 2016).

Selected Research Articles:

"Private Monopoly and the Public Interest: An Economic Analysis of the Cable Television Franchise," *University of Pennsylvania Law Review* 134 (July 1986), 1335-1409.

"Duopolistic Competition in CATV: Implications for Public Policy," *Yale Journal on Regulation* VII, No. 1 (Winter 1990), 65-119.

"The Rationality of U.S. Regulation of the Broadcast Spectrum," *Journal of Law & Economics*, XXXIII (April 1990), 133-175.

"The Cost of Rent Seeking: Evidence from the Cellular Telephone License Lotteries" (with Robert J. Michaels), *Southern Economic Journal* 39 (January 1993), 425-35.

"Was the Fairness Doctrine a 'Chilling Effect'? Evidence from the Post-Deregulation Radio Market," with David Sosa, *Journal of Legal Studies XXVI* (January 1997), 307-29.

"Physical Scarcity, Rent-Seeking and the First Amendment," *Columbia Law Review 97* (May 1997), 905-44.

"Prices and Outputs Under Cable TV Reregulation," *Journal of Regulatory Economics 12* (September 1997), 173-95.

"Assigning Property Rights to Radio Spectrum Users: Why Did FCC License Auctions Take 67 Years?" *Journal of Law & Economics XLI* (October 1998), 529-76.

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"The Fallacy of Regulatory Symmetry: An Economic Analysis of the 'Level Playing Field' in Cable TV Franchising Statutes," with George Ford, *3 Business & Politics* (April 2001), 21-46.

"The Wireless Craze, the Unlimited Bandwidth Myth, the Spectrum Auction Faux Pas, and the Punchline to Ronald Coase's 'Big Joke': An Essay on Airwave Allocation Policy," *15 Harvard Journal of Law & Technology* (Spring 2001), 335-469.

"Spectrum Tragedies," *22 Yale Journal on Regulation* (Summer 2005), 242-74.

"Advanced Wireless Technologies and Public Policy," with Matthew L. Spitzer, *79 Southern California Law Review* (March 2006), 595-665.

"Property Rights to Radio Spectrum in Guatemala and El Salvador: An Experiment in Liberalization," with Giancarlo Iburguen and Wayne A. Leighton, *3 Review of Law & Economics* (Dec. 2007), 437-84.

"Optimal Abolition of FCC Allocation of Radio Spectrum," *22 Journal of Economic Perspectives* (Winter 2008), 103-28.

"Property Rights and the Value of Wireless Licenses," *51 Journal of Law & Economics* (Aug. 2008), 563-97.

"Natural Experiments in Broadband Regulation," with Anil Caliskan, *7 Review of Network Economics* (Dec. 2008), 460-80.

“A Welfare Analysis of Spectrum Allocation Policies,” with Roberto E. Muñoz, 40 *RAND Journal on Economics* (Autumn 2009), 424-54.

“Market Power in U.S. Broadband Services,” with Dennis Weisman, *Review of Industrial Organization* (March 2011), 151-71.

“What Really Matters in Spectrum Allocation Design,” with Roberto Muñoz & Diego Avanzini, 10 *Northwestern Journal of Technology & Intellectual Property* (Jan. 2012), 93-123.

“Radio Spectrum and the Disruptive Clarity of Ronald Coase,” with David Porter and Vernon Smith, 54 *Journal of Law & Economics* (Nov. 2011), S125-65.

“The Law and Economics of Network Neutrality,” with Joshua D. Wright, 45 *Indiana Law Review* (2012), 767-840.

“The Rationality of U.S. Regulation of the Broadcast Spectrum in the 1934 Communications Act,” 45 *Review of Industrial Organization* (Nov. 2014), 203-220.

Some Recent General Circulation Essays and Interviews

“Hell No, Don’t Let Them Go!” (on college basketball players jumping to the NBA), with Joshua D. Wright, *Chicago Tribune* (May 8, 2008).

“A Transition to Yesterday: Subsidizing the Killer App of 1952,” *Ars Technica* (Nov. 3, 2008).

“Analog Switch-off Goes Unnoticed,” *Financial Times* (Feb. 28, 2009).

“We’re Number Two?” *Commentary* (Dec. 2009), 28-30.

“Ronald Coase and the Radio Spectrum,” *Financial Times* (Dec. 16, 2009).

“Putting Economics Above Ideology,” *Barron’s* (July 12, 2010).

“Fred Kahn’s First-Class Flight,” *Financial Times* (Dec. 31, 2010).

“Television for the 21st Century,” *The Hill* (June 13, 2011).

“Googling Innovation,” *Financial Times* (June 30, 2011).

“Gravitational Shift: Competition in Mobile Phones Has Supplanted Competition Among Networks,” *Barron’s* (Mar. 31, 2012).

“The iPhone Turns Five,” *Wall Street Journal* (June 26, 2012).

“Should Congress Overturn the Net Neutrality Rules,” debate with Gigi Sohn, *Wall Street Journal* (May 10, 2013).

“Micromanaging the Web Would Be a Macro Mistake,” with Joshua Wright, *Wall Street Journal* (July 13, 2014).

Interview in Scott Berinato, “Cable Providers Win Even in an a La Carte World,” *Harvard Business Review* (Oct. 22, 2014).

“How To Neuter the Net Revolution,” *Time* (Nov. 11, 2014).

“Speed Kills, but Spectrum Bureaucracy Failed to Apply the Brakes,” with Harold Feld, *THE HILL* (June 12, 2015).

TAB 4

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

**INFORMATION DESIGNATION PURSUANT TO
RULES 1.724(f)(1), (2), (3), and 1.724(g)**

Iowa Wireless Services, LLC (“iWireless”) submits this information designation in accordance with Section 1.724(f)(1), (2), (3), and 1.724(g) of the Federal Communication Commission’s (the “Commission’s”) Rules, 47 C.F.R. §§ 1.724(f)(1), (2), (3), and 1.724(g).

Individuals Believed to Have First-Hand Knowledge, Rule 1.724(f)(1)

Pursuant to Section 1.724(f)(1) of the Commission’s Rules, 47 C.F.R. § 1.724(f)(1), set forth below are the names, addresses, and positions of the individuals who have first-hand knowledge of facts alleged with particularity in the Answer, and a description of the facts within any such individual’s knowledge.

1. Craven Shumaker
President and Chief Executive Officer

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Iowa Wireless Services, LLC
4135 NW Urbandale Drive
Urbandale, IA 50322

Subjects: Subject matter further described in more detail in the Declaration of Craven Shumaker in Support of iWireless' Answer, including the roaming relationship and negotiation between AT&T and iWireless, and the reasonableness of the parties' proposed rates when compared to market roaming rates.

2. George 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, 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.

3. 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.

4. 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.

5. Thomas W. Hazlett
Hugh H. Macaulay Endowed Professor of Economics
Director, Information Economy Project
Clemson University

PUBLIC VERSION
Confidential Information Redacted

124 Starboard Tack Drive
Salem, S.C. 29676

Subjects: Subject matter further described in more detail in the Declaration of Thomas Hazlett in Support of iWireless' Answer, 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 1.724(f)(2)

Pursuant to Section 1.724(f)(2) of the Commission's Rules, 47 C.F.R. § 1.724(f)(2), attached as Appendix A is a log describing the non-privileged documents, data compilations, and tangible things in the possession, custody, or control of iWireless that are relevant to the facts alleged with particularity in the Answer. The Parties also filed other relevant materials with the Commission on December 9, 2015. These documents relate to [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] and are described on the confidential index attached as Appendix B.

iWireless notes that many of the documents listed in Appendix A and all of the documents listed in Appendix B contain Confidential Information (the Parties' email correspondence and some [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]) and/or Highly Confidential Information (iWireless' data roaming agreements, and backup documents relating to the same, and some [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]) as those terms are defined in the Protective Order that has been presented by AT&T Mobility LLC ("AT&T"). A Protective Order has not yet been entered in this proceeding.

Identification of Persons and Documents, Rule 1.724(f)(3)

Pursuant to Section 1.724(f)(3) of the Commission's Rules, 47 C.F.R. § 1.724(f)(3), iWireless provides that this information designation was prepared by iWireless' outside counsel, Telecommunications Law Professionals PLLC ("TLP"), in cooperation with iWireless' in-house

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counsel and iWireless' employees. TLP, in coordination with iWireless' 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 Craven Shumaker, including his correspondence with AT&T; the files of previous employees of iWireless that relate to this matter, the data roaming contract files of iWireless; and the source materials relied on by Craven Shumaker in his Declaration.

Documents Relied Upon, Rule 1.724(g)

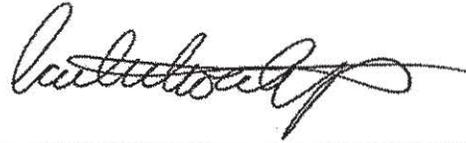
Pursuant to Section 1.724(g) of the Commission's Rules, 47 C.F.R. § 1.724(g), attached as exhibits to the Answer are copies of the affidavits upon which iWireless relies or intends to rely to support the facts alleged and legal arguments made in its Answer.¹ These exhibits have been served, along with this Answer, upon AT&T's counsel.

¹ AT&T has provided true and correct copies of the following documents that iWireless relies or intends to rely to support the facts alleged and legal arguments made in this Answer: (1) the Roaming Agreement; (2) the iWireless BAFO; and (3) the AT&T BAFO. Since these documents have already been placed into the record, iWireless has not attached them to this Answer. Copies of all documents are located at and available through Counsel for iWireless and can be provided upon request.

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Dated: January 22, 2016

Respectfully submitted,



Carl W. Northrop
Michael Lazarus
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PROFESSIONALS PLLC
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(202) 789-3112 (fax)

*Counsel for Iowa Wireless
Services, LLC*

Appendix A

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In the Matter of AT&T Mobility LLC v. Iowa Wireless Services, LLC, Proceeding No. 15-259, File No. EB-15-MD-007
Appendix A to Information Designation: Relevant Documents Pursuant to 47 C.F.R. § 1.724(f)(1), (2), (3), and 1.724(g)



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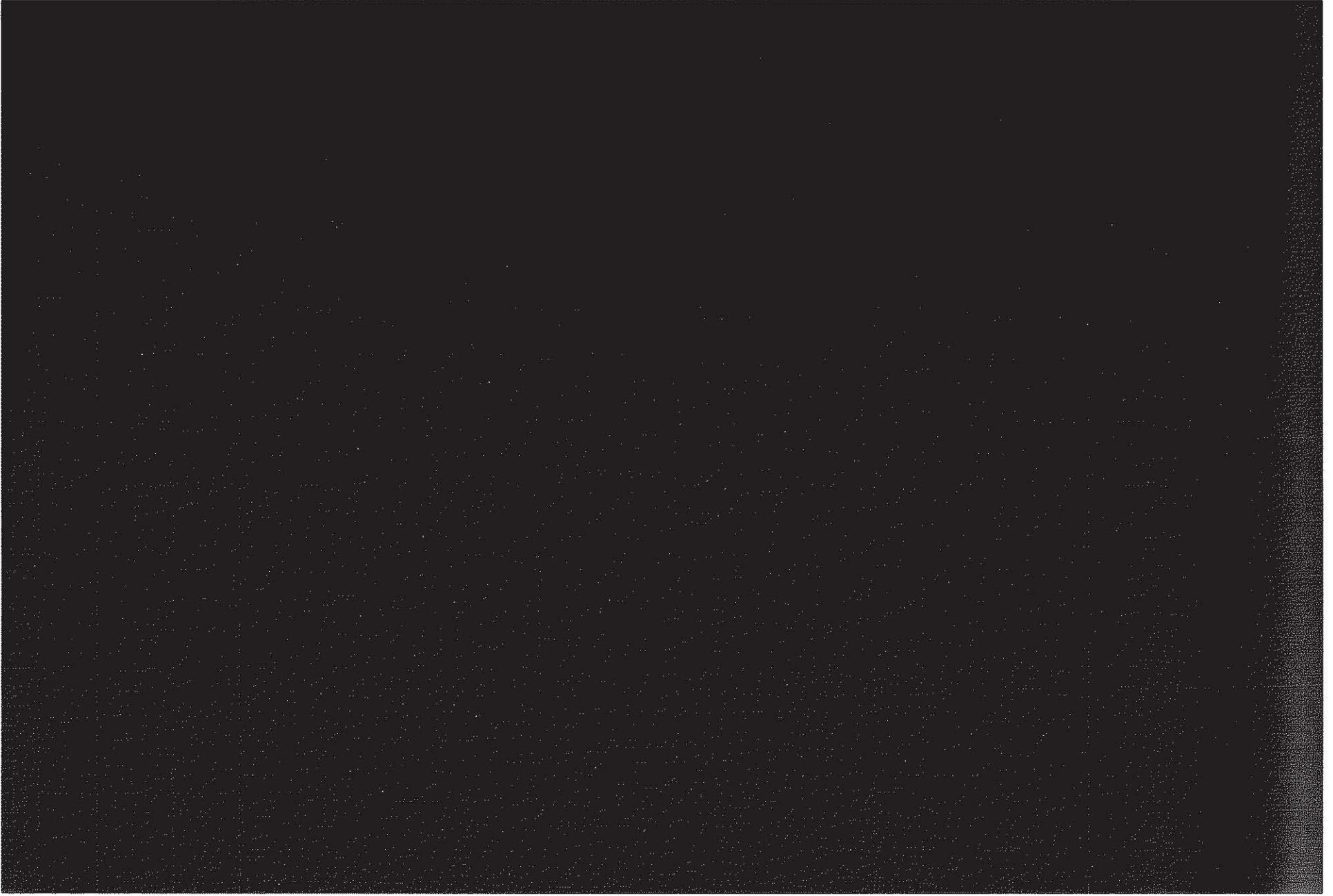
Copies of all documents are located at and available through Counsel for iWireless

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Copies of all documents are located at and available through Counsel for iWireless

PUBLIC VERSION
Confidential Information Redacted



Copies of all documents are located at and available through Counsel for iWireless

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Appendix B

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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,

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IOWA WIRELESS SERVICES, LLC
4135 NW Urbandale Drive
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Defendant.

Proceeding No. 15-259
File No. EB-15-MD-007



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TAB 5

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

IOWA WIRELESS SERVICES, LLC FIRST SET OF INTERROGATORIES

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

INSTRUCTIONS

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

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- A. These interrogatories are continuing in character, so as to require you to file supplementary answers if you obtain further or different information during this proceeding.
- B. When knowledge or information in possession of a party is requested, such request includes knowledge of the party's agents, servants, representatives, employees, and, unless privileged, its attorneys.
- C. If an objection is made to an interrogatory, an answer should be made as to such part of the interrogatory that is not considered objectionable.
- D. The conjunctive shall include the disjunctive and *vice versa*; the singular shall include the plural and *vice versa*; "all" shall include "any" and *vice versa*; and "each" shall include "every," to the end that each request shall be construed to cover the broadest scope of information.
- E. In the event you refrain from providing a response to any interrogatory, and/or if you withhold any responsive information or document on the grounds that it is privileged or otherwise excludable from discovery, you shall:
 - (i) Identify with specificity the doctrine or privilege upon which the withholding of any information, response, communication or document is grounded;
 - (ii) Identify any circumstances affecting the existence, extent or waiver of the claimed immunity or privilege, including the identity of all persons who know the information or have seen or read the document or response;

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- (iii) Identify the information, response, communication, or document, and describe its subject matter, including the dates; and
 - (iv) Identify every person who participated in the communication of the information or document, including who received the document, who was copied on it, who transmitted the document and/or its author, and who heard or witnessed the communication.
- F. To the extent that any of the below interrogatories request commercially sensitive information, iWireless is willing to enter into a protective order with AT&T in order to ensure that only outside counsel, *i.e.*, counsel not involved in competitive decision-making, including activities, association, and relationship with a client involving the business decisions of the client or any competitor of a client, or the analysis underlying the business decisions of a client, may review such information.

DEFINITIONS

- A. "You" or "Your" refers to AT&T Mobility, LLC ("AT&T") and/or its employees, agents, attorneys, accountants, officers, directors, controlled-affiliates, successors, assigns, partners, representatives, contractors, and anyone acting on its behalf, at its request or with its authorization.
- B. "Document(s)" is used in the broadest sense possible to include anything within the scope of the Commission's rules, including without limitation, any written, printed, typed, photostatic, photographed, recorded or otherwise reproduced communication or representation, whether comprised of letters, words, numbers, pictures, sounds or symbols, or any combination thereof, whether in paper, magnetic, electronic or other

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form and wherever located. This definition includes copies or duplicates of Documents contemporaneously or subsequently created that have any non-conforming notes or other markings. Without limiting the generality of the foregoing, the term Documents includes, but is not limited to, correspondence, memoranda, personal notes, records, letters, envelopes, telegrams, messages, electronic mail, instant messages, studies, analyses, contacts, agreements, working papers, summaries, statistical statements, spreadsheets, financial statements or work papers, accounts, analytical records, reports and/or summaries of investigations, trade letters, press releases, comparisons, books, calendars, diaries, journals, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, drawings, diagrams, instructions, voice-mail, notes or minutes of meetings or other communications of any type, including inter- and intra-office communications, faxed materials (including fax cover sheets), questionnaires, surveys, charts, graphs, photographs, phonograph recordings, film, tapes, disks, diskettes, data cells, tape back-ups, drums, print-outs, all other data compilations from which information can be obtained (translated, if necessary, by you into usable form), all other written, printed, typed, recorded, or graphic material of any nature whatsoever and any preliminary versions, drafts or revisions of the foregoing.

- C. "Identify," "identity," or "identification," (1) when used in reference to a natural person means that person's full name, last known home address and telephone number(s), last known business address and telephone number(s), the specific AT&T or other business entity by which that person is employed and present occupation or business affiliation; (2) when used in reference to a person other than a natural person, means that person's full name, a description of the nature of the person (that is, whether it is a corporation,

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partnership, etc. under the definition of a person below), and the person's last known address, telephone number and principal place of business; (3) when used in reference to any persons after the person has been properly identified previously means the person's name; and (4) when used in reference to a document or information, requires you to state the date, the author (or, if different, the signer or signers), the addressee, the identity of the present custodian of the document, and the type of document (e.g., letter, memorandum, telegram, or chart) or to attach an accurate copy of the document to your answer, appropriately labeled to correspond to the interrogatory.

- D. "Communication(s)" shall refer to and include conversations, discussions, meetings, correspondence, telephone calls, letters, telecopies, facsimiles, e-mail messages, instant messages, voice-mail, and all other forms of oral and written expression by which information may be conveyed.
- E. "Regarding," "relating to," or "related to" means, in whole or in part, constituting, defining, evidencing, containing, describing, concerning, discussing, embodying, establishing, comprising, reflecting, presenting, depicting, reporting, indicating, edifying, analyzing, stating, showing, mentioning, summarizing, referring to, dealing with, connected with, commenting on, referring to, responding to or in any way pertaining to the specified matter.
- F. "Person" means, in the plural as well as singular, all entities, including without limitation, any natural person, firm, association, partnership, corporation, limited liability company, organization, business, receiver, real estate licensee, mortgage company, broker or other form of legal or equitable entity, such as trusts, joint ventures, estates, and agencies or

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governmental entities, including the parties to this suit and their officers, directors, partners, agents, contractors, subcontractors, employees, representatives and affiliates.

- G. “Arm’s Length Roaming Agreement” has the meaning that AT&T used to determine which roaming agreements would be classified as “Arm’s Length” in Appendix B of the Declaration of Jonathan Orszag which accompanied the Amended Complaint (Tab 3, Appendix B).
- H. “Strategic Roaming Agreement” has the meaning that Gram Meadors of AT&T used to determine which roaming agreements would be classified as “strategic agreements” for purposes of the calculations contained in FN 91 of the Meadors Declaration which accompanied the Amended Complaint in Appendix B (Tab 2).
- I. “Monthly Effective Rate” shall be calculated by dividing the total revenue properly charged to a carrier for a given month for a given class of service (e.g., voice, data) by the associated units of service (minutes for voice; MB for data) for the same carrier for the same month.
- J. “Participating ITCs” refers to the independent telephone companies in Iowa [BEGIN
CONFIDENTIAL]
[END CONFIDENTIAL]

INTERROGATORIES

iWIRELESS INTERROGATORY 1:

Identify the rates (in-collect and out-collect) for voice and data roaming service specified in each Arm's Length Roaming Agreement pursuant to which AT&T has provided or received roaming services since July 1, 2008.

Explanation:

[BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END

CONFIDENTIAL] The information sought in this interrogatory is relevant to this issue. It also is relevant to the resolution of AT&T's allegations, which iWireless disputes, that (1) the data roaming rates proposed by iWireless are not commercially reasonable, and (2) the voice roaming rates it has proposed are unreasonable and unjustly discriminatory. AT&T further claims, which iWireless disputes, that "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 . . . Likewise, AT&T's proposed voice roaming rates are consistent with the rates that are being offered in the marketplace and with the Commission's rules." (Am. Compl. ¶ 5).

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

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iWIRELESS INTERROGATORY 2:

For the period starting July 1, 2008, identify on a carrier-by-carrier basis the Monthly Effective Rates for voice and data services charged pursuant to each of the contracts identified in response to iWireless Interrogatory 1. Identify all data required to calculate the effective rates provided.

Explanation:

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL] The information sought in this interrogatory is relevant to this issue. The information sought in this interrogatory also is relevant to the resolution of AT&T's allegation, which iWireless disputes, that the data roaming rates proposed by iWireless are not commercially reasonable, and that AT&T's proposed data roaming rates are commercially reasonable.

This information is not available to iWireless through a source other than AT&T. It is known by AT&T and not the type of information that is available publicly. On information and belief, unlike iWireless, AT&T keeps effective rate information of this nature on a regular basis and as a result assembling the requested information will not be unduly burdensome.

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iWIRELESS INTERROGATORY 3:

For each roaming partner of AT&T represented in the [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] referenced in paragraph 89 of the Amended Complaint, provide the average population per square mile of the counties the roaming partner (and any affiliates covered by the agreement) is licensed to serve (i.e., not the counties where AT&T chose to roam; the counties where the carrier was licensed to serve).

Explanation:

The information sought in this interrogatory is relevant to the claims containing in paragraph 89 of the Amended Complaint. The fact that AT&T only chose to roam in the rural counties of its roaming partners does not mean that those partners are similarly-situated to iWireless [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL].

The average population density in all of the counties served by iWireless [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] under the Agreement is less than 50.97 persons per square mile – far below the 100 persons/square mile standard the Commission uses to define a “rural” market. This means that the areas served by iWireless [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] are predominantly rural. The interrogatory explores whether that is the case with respect to the agreements AT&T is inviting the Commission to consider, since AT&T has conceded that the roaming rates for rural areas can be higher than the roaming rates in urban areas.

This information is not available to iWireless through a source other than AT&T since iWireless is not privy to the identity of the carriers that are parties to the referenced [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] agreements.

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iWIRELESS INTERROGATORY 4:

For each contract identified in response to iWireless Interrogatory 1, identify separately for in-collect and out-collect roaming the amount of monthly roaming traffic by technology, i.e., voice, 2G data, 3G data, 4G/LTE data.

Explanation:

A major point of contention between the parties is whether it is commercially reasonable for iWireless to structure its rate in a manner that [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] The information sought in this interrogatory is relevant to the resolution of this issue. This information is not available to iWireless through a source other than AT&T. It is known by AT&T and not the type of information that is available publicly.

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iWIRELESS INTERROGATORY 5:

For the period starting July 1, 2008 to the present, identify all roaming agreements to which AT&T is or was a party (Arm's Length Roaming Agreements and Strategic Roaming Agreements) that provide or provided for a [BEGIN CONFIDENTIAL]

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

Explanation:

A major issue in this proceeding is whether it is commercially reasonable for iWireless to [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] The information sought in this interrogatory is necessary to resolve this issue. AT&T also stated that [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [REDACTED] [END CONFIDENTIAL] As a result, this information is necessary to test this AT&T claim.

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

¹ AT&T notes at paragraph 64 of the Amended Complaint that [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL]

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iWIRELESS INTERROGATORY 6:

For the period starting July 1, 2008 to the present, identify every carrier that has sought, requested or commenced negotiating a voice or data roaming arrangement with AT&T, but failed to reach a mutually-agreable arrangement that resulted in an executed agreement, specifying the last roaming rate offered by AT&T during such negotiations and the date of the offer.

Explanation:

AT&T claims that it [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] iWireless has alleged that AT&T has sufficient market power to skew the rate averages, and one way it could do that is by refusing to, or failing, to enter into agreements with certain carriers. It also is relevant to the assessment of commercial reasonableness to compare the offers exchanged between iWireless and AT&T to roaming offers that were communicated between AT&T and other providers, even if such offers did not result in an executed roaming agreement.

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

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iWIRELESS INTERROGATORY 7:

For the period starting July 1, 2008 to the present, for all contracts identified in response to iWireless Interrogatories 1 and 6, identify the amount of time elapsed from the date of the initial request for roaming services (or for an amendment to an existing roaming agreement) to the date that the initial roaming agreement (or resulting amendment) was signed. If no agreement or amendment was reached specify the date the negotiations were terminated.

Explanation:

The information sought in this interrogatory will provide evidence of the amount of time that roaming negotiations take. AT&T has made several claims, which iWireless disputes, challenging the good-faith and responsiveness of iWireless in the course of negotiations.

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

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iWIRELESS INTERROGATORY 8:

Identify the current status, projected timetable and the overall plan with respect to AT&T's shutdown or elimination of the AT&T 2G/GSM networks in the continental United States generally and in the geographic areas served by iWireless [BEGIN CONFIDENTIAL] [REDACTED] [BEGIN CONFIDENTIAL] in particular, including the number and percentage of AT&T customers that have 2G-capable phones at present, the rate at which AT&T's customers are transitioning away from 2G-capable phones, and the projected number and percentage of AT&T customers that will have 2G-capable phones for each of the next 5 years.

Explanation:

A major issue in this proceeding is whether it is commercially reasonable for iWireless to charge a higher rate for roaming service when [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] The requested information is necessary for iWireless and its economic expert to assess the impact of the AT&T plan. This information is not available to iWireless through a source other than AT&T. It is known by AT&T and is not the type of information that is available publicly

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iWIRELESS INTERROGATORY 9:

For the period starting January 1, 2006 to the present, identify each and every roaming agreement entered into by AT&T which contained a clause in the nature of a

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

Explanation:

iWireless contends that AT&T has, and has had, sufficient market power to foist one-sided terms on its roaming partners and this interrogatory will provide information relevant to this claim. iWireless also claims that the developments pertaining to [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] is a relevant fact in the Commission's assessment of the totality of the circumstances, and this interrogatory will enable this issue to be put into a proper context.

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

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iWIRELESS INTERROGATORY 10:

Provide a complete, detailed recitation of the facts and circumstances surrounding

[BEGIN CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL]

Explanation

iWireless contends that average rates cited by AT&T, and the trend of rates, should be discounted because AT&T is able to manipulate the market due to its market power. iWireless also contends that [BEGIN CONFIDENTIAL]

[REDACTED]

[END CONFIDENTIAL] This interrogatory will provide information necessary to address these claims. This information is not available to iWireless through a source other than AT&T. It is known by AT&T and not the type of information that is available publicly.

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Respectfully submitted,



-

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Tel. (202) 789-3120

Counsel to Iowa Wireless Services, LLC

Dated: January 22, 2016

TAB 6

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

**IOWA WIRELESS SERVICES, LLC OPPOSITION AND OBJECTION TO AT&T
MOBILITY LLC'S AMENDED FIRST SET OF INTERROGATORIES**

Pursuant to Section 1.729(c) of the Federal Communication Commission's Rules, 47 C.F.R. § 1.729(c), Iowa Wireless Services, LLC ("iWireless") hereby files the below opposition and objections to the amended first set of interrogatories submitted in this proceeding by AT&T Mobility LLC ("AT&T" or "Complainant") on December 23, 2015.

GENERAL OBJECTIONS

1. iWireless objects to each interrogatory contained therein to the extent that they request information that is protected from disclosure by the attorney-client privilege, the attorney

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work product doctrine, is an attorney-attorney communication, and/or any other applicable privilege or immunity.

2. iWireless objects to each interrogatory contained therein to the extent that they are overbroad as to time and scope, and/or unduly burdensome and oppressive.

3. iWireless objects to each interrogatory contained therein to the extent that they are irrelevant and immaterial to the pending action and are not reasonably calculated to lead to the discovery of admissible evidence. iWireless further objects to each interrogatory contained therein, to the extent that they are vague and ambiguous, and/or unintelligible, in the context of this matter.

4. iWireless objects to the AT&T interrogatories *in toto* as they violate Section 1.729(a) of the Commission's rules by having more than ten written interrogatories, including subparts. The following interrogatories have multiple subparts: Interrogatory 1 – three subparts; Interrogatory 2 – four subparts; Interrogatory 6 – five subparts; Interrogatory 7; two subparts.

For ease of reference, the Definitions and Interrogatories of AT&T are set forth below, followed by any applicable iWireless objection.

iWireless objects to and has no obligation to follow or adhere to AT&T's proposed instructions with respect to the Interrogatories, and its objections will be provided in accordance with the Commission's rules. In addition, AT&T has no ability to request any documentation with respect to its requests at this time, and iWireless has no obligation to provide any documentation associated with any interrogatory responses, and thus will not do so.

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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

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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.

iWIRELESS OBJECTION

iWireless objects to this definition as being overbroad, the result of which is to make any interrogatory using the specified terms unduly burdensome. Requiring iWireless to identify the "name(s) of person(s) that wrote, signed, initialed, dictated, or otherwise participated in the creation" of each document is not only burdensome but likely impossible, as is the requirement that iWireless identify every person that has possession of every copy of every document.

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.

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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.

iWIRELESS OBJECTION

iWireless objects to this definition because it is overbroad as to scope with the result that it renders every interrogatory that uses the defined terms unduly burdensome and oppressive. iWireless further objects to the extent AT&T requests information from persons who are not under the direction or control of iWireless, including T-Mobile USA, Iowa Network Services, Inc. and all of the independent telephone companies that own INSI, as iWireless is unable to cause them to provide information. AT&T may only request information from iWireless which

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is the only party named in the AT&T Amended Complaint. iWireless further objects to the inclusion of T-Mobile and INSI within the category of a parent, affiliated or subsidiary company of iWireless, as neither T-Mobile USA nor INSI controls or is under common control with iWireless. iWireless further objects to this interrogatory because including T-Mobile and INSI within the subject definitions results in every interrogatory using these terms being overly broad, burdensome and unlikely to lead to the discovery of relevant information:

INTERROGATORIES

AT&T INTERROGATORY 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.

iWIRELESS OBJECTION:

iWireless objects to this three-part interrogatory to the extent it requests information that is confidential and not able to be shared without third party consent. iWireless further objects because this interrogatory is overbroad in that it is not limited to seeking information as to arm's length roaming agreements. AT&T previously has observed, correctly, that strategic roaming agreements are different and therefore not relevant in the context of setting a commercially reasonable arm's length roaming rate, and thus [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] is irrelevant to this proceeding. iWireless further objects to the extent this interrogatory requests information that is protected from disclosure by the attorney-client privilege, the attorney work product doctrine, is an attorney-attorney communication, and/or any other applicable privilege or immunity.

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AT&T INTERROGATORY 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.

iWIRELESS OBJECTION:

iWireless objects to this four-part interrogatory because it is based upon the incorrect premise that T-Mobile is an affiliate of iWireless. iWireless further objects to the extent it requests information that is confidential and not able to be shared without third party consent. iWireless further objects to this interrogatory because it requests information that is not relevant to this proceeding. AT&T previously has observed, correctly, that strategic roaming agreements are different and not relevant in the context of setting a commercially reasonable roaming arm's length roaming rate, and thus **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED] **[END CONFIDENTIAL]** is irrelevant to this proceeding. iWireless further objects because the date on which T-Mobile began to roam on the iWireless network is irrelevant to the matters at issue in this proceeding.

AT&T INTERROGATORY 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 3 on a carrier by carrier (or provider by provider) basis. Identify all data required to calculate the effective rates provided.

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iWIRELESS OBJECTION:

iWireless objects to this interrogatory because it is vague, overbroad and/or unduly burdensome and oppressive. The term “monthly effective rates” is not defined and is not a term of art with a common, uniform meaning in the industry. Requiring iWireless to assemble the data required to do a calculation for nearly 50 months for multiple carriers is unduly burdensome and oppressive. iWireless further objects to this interrogatory to the extent it requests information that is confidential and not able to be shared without third party consent.

AT&T INTERROGATORY 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.

iWIRELESS OBJECTION:

iWireless objects to this interrogatory because it is vague, overbroad and/or unduly burdensome and oppressive. The term “monthly effective rates” is not defined and is not a term of art with a common, uniform meaning in the industry. In addition, requiring iWireless to assemble the data required to do a calculation for nearly 50 months for multiple carriers is unduly burdensome and oppressive. iWireless objects to this interrogatory to the extent it requests information that is confidential and not able to be shared without third party consent.

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AT&T INTERROGATORY 5:

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

iWIRELESS OBJECTION:

iWireless also objects because this interrogatory it is overbroad and burdensome. Using the AT&T definition of “describe,” AT&T is asking iWireless to state “each and every fact” of which it has knowledge pertaining to the iWireless 4G buildout which would be an overwhelming task. iWireless further objects because this interrogatory requests information that is highly confidential and contains business trade secrets the disclosure of which is not necessary or appropriate in this proceeding. AT&T is not entitled to receive information related to a competitor’s buildout schedule, and the disclosure of buildout plans could be used by AT&T to influence its own business decisions.

AT&T INTERROGATORY 6:

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

[END CONFIDENTIAL]

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iWIRELESS OBJECTION

iWireless objects to this five-part interrogatory because, properly viewed, the prior multiple part interrogatories have exhausted the 10 interrogatory limit to which AT&T is subject. iWireless further objects to this interrogatory because the interrogatory is not likely to lead to the discovery of relevant information. The touchstone of the data roaming rule is “individualized decisionmaking” and the iWireless Answer sets forth the particular facts and circumstances *with respect to AT&T* which justify the aspects of the iWireless BAFO to which this interrogatory is addressed. Because iWireless is not obligated to provide data roaming service to all comers on a non-discriminatory basis, the information solicited by AT&T here is not relevant. iWireless further objects to this interrogatory to the extent it requests information that is confidential and not able to be shared without third party consent.

AT&T INTERROGATORY 7:

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

iWIRELESS OBJECTION

iWireless objects to this two-part interrogatory because, properly viewed, the prior multiple part interrogatories have exhausted the 10 interrogatory limit to which AT&T is subject. iWireless further objects to this interrogatory because it is vague. The term “affiliate” is not defined and it is not a term of art which has a common uniform meaning in the industry. Furthermore, the identity of any iWireless affiliates is not relevant to the matters in issue in this proceeding.

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AT&T INTERROGATORY 8:

For each of iWireless' retail service plans, provide the current effective data rate. Identify all data required to calculate the effective rates provided.

IWIRELESS OBJECTION

iWireless objects to this interrogatory because, properly viewed, the prior multiple part interrogatories have exhausted the 10 interrogatory limit to which AT&T is subject. iWireless further objects to this interrogatory because it is vague. The term "current effective data rate" is not defined and is not a term of art with a common, uniform meaning in the industry.

AT&T INTERROGATORY 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.

IWIRELESS OBJECTION

iWireless objects to this interrogatory because, properly viewed, the prior multiple part interrogatories have exhausted the 10 interrogatory limit to which AT&T is subject. iWireless further objects to this interrogatory because it is vague. The term "current, effective data roaming rate" is not defined and is not a term of art with a common, uniform meaning in the industry. iWireless objects to this interrogatory to the extent it requests information that is confidential and not able to be shared without third party consent.

PUBLIC VERSION
Confidential Information Redacted

AT&T INTERROGATORY 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.

iWIRELESS OBJECTION

iWireless objects to this interrogatory because, properly viewed, the prior multiple part interrogatories have exhausted the 10 interrogatory limit to which AT&T is subject. iWireless further objects to this interrogatory because it is vague. The term “current, effective data roaming rate” is not defined and is not a term of art with a common, uniform meaning in the industry. iWireless objects to this interrogatory to the extent it requests information that is confidential and not able to be shared without third party consent.

Respectfully submitted,



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Counsel to Iowa Wireless Services, LLC

Dated: January 22, 2016

TAB 7

CERTIFICATE OF SERVICE

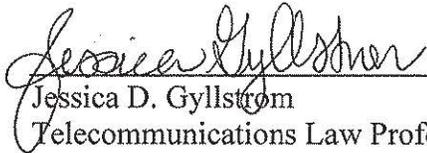
I hereby certify that on January 22, 2016, I caused the foregoing Answer and Legal

Analysis to be delivered to:

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

James Bendernagel
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Lisa Saks
Lisa Boehley
Adam Suppes
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