

# Flat-Verizon Discovery Supplement

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

In the Matter of	)	
	)	
Flat Wireless, LLC, for and on behalf of its Operating Subsidiaries	)	EB Docket No. 15-147 File No. EB-15-MD-005
	)	
Complainant	)	
	)	
v.	)	
	)	
Cellco Partnership d/b/a Verizon Wireless, and its Operating Subsidiaries	)	
	)	
Defendant	)	

**SUPPLEMENT TO JOINT STATEMENT OF FLAT AND VERIZON**

**Joint Statement of Stipulated Facts**

1. Flat Wireless, LLC (“Flat”) and Verizon Wireless (“Verizon”) agreed that discovery in the instant complaint would be guided by the rulings of the Enforcement Bureau (the “Bureau”) on the discovery requests in the still pending *NTCH, Inc. v. Cellco Partnership d/b/a Verizon Wireless* complaint (EB Docket No. 14-212, File No. EB-13-MD-006 (“NTCH v. Verizon Complaint”)) insofar as the issues are substantially the same.

2. The parties agreed that equivalents of all materials provided by NTCH would be provided by Flat, and that Verizon would provide updated copies of the materials it provided to NTCH, while preserving all objections and requests as made by the parties in the *NTCH v. Verizon Complaint* with regards to discovery matters.

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3. One additional procedural issue that remains outstanding is action by the Bureau on Flat's Motion to Accept its Amended Complaint, filed on September 9, 2015, without objection from Verizon.
4. Flat has chosen not to provide an expert response to Mr. Singer's declaration in the interests of moving the case forward.
5. Flat and Verizon further agreed to retain the right to make additional requests or objections in the instant complaint.

### **Joint Statement of Key Legal Issues**

1. In response to a request by the Bureau on January 14, 2016, for this Supplement to the Joint Statement, the parties met by phone on Thursday, January 21, 2016, and determined that the following discovery issues, not having been previously ruled on by the Bureau in the NTCH v. Verizon Complaint, remain outstanding:

- a) Whether Verizon must provide roaming rates charged to international carriers and rates charged by those international carriers to Verizon under the *T-Mobile Declaratory Ruling*.<sup>1</sup> (Interrogatory 1)
- b) Whether Verizon must provide retail, wholesale, or roaming rates offered by Verizon, but not accepted by the party to whom they were offered. (Interrogatory 2).
- c) Whether Verizon must provide rates which are no longer offered to customers, whether retail or wholesale (including MVNO) by Verizon, but which remain in effect ("grandfathered rates"). (Interrogatory 5)
- d) Whether Verizon must provide records of Flat customers attempting to utilize Verizon's network, whose calls failed to complete as a result of the non-implementation of the roaming agreement between Flat and Verizon. (Interrogatory 8)

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<sup>1</sup> *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket 05-265 (WTB, rel. Dec. 18, 2014), application for review pending.

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### Other Legal Issues Raised by Flat

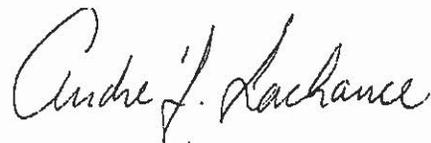
1. Whether parties may rely on “publicly available” information which is not otherwise in the record of the case in support of their positions.
2. Flat is providing the justification for the outstanding discovery requests requested by the MDR in this section.
  - a. Interrogatory 1: The parties and the Commission appear to be in agreement that the rates charged to other domestic carriers for roaming bear upon the reasonableness of the rates charged to other carriers and whether the voice rates offered are unreasonably discriminatory under Section 202 of the Act. There is no reason why international roaming rates should be exempt from this analysis. If the production of all international rates is unduly burdensome, Flat would be willing to work with Verizon to accept a representative subset.
  - b. Interrogatory 2: A rate that has been offered to another party whether accepted or not is a rate that is available and was obviously deemed reasonable by the offeror. Offered but unaccepted rates are therefore just as relevant as rates which have been accepted. Flat would limit this request to final offered rates to eliminate rates offered in the course of negotiations which did not result in a final offer.
  - c. Interrogatory 5: Rates which are currently being charged to buyers in the marketplace are a legitimate basis for comparison with rates now being offered. If the rates being charged were not reasonable, Verizon would not continue to charge them unless contracts precluded them from terminating the charge. Flat would therefore exclude from its request rates currently in effect which Verizon is precluded from changing due to contractual obligations.

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- d. Interrogatory 8: This interrogatory is intended to verify that there are significant areas where Verizon is the sole source provider of roaming to Flat's customer's. Verizon appears to be claiming that Sprint or other carriers are available as alternatives. The precise call details are not required now but will be needed at the damages phase of the case.

Respectfully submitted,

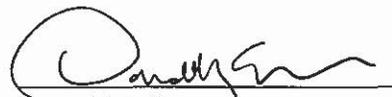


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