PUBLIC VERSION

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

In the Matter of **AT&T MOBILITY LLC** ***Complainant,*** *v.* **IOWA WIRELESS SERVICES, LLC** ***Defendant.***	**Proceeding No. 15-259** **File No. EB-15-MD-007**

REPLY OF IOWA WIRELESS SERVICES, LLC TO THE AT&T MOBILITY LLC RESPONSE TO THE APPLICATION FOR REVIEW

Pursuant to 47 C.F.R. § 1.115(d), Iowa Wireless Services, LLC ("iWireless") submits this reply to the response (the "Response") of AT&T Mobility LLC ("AT&T") to the iWireless Application for Review of the letter ruling ("Letter Ruling") of the staff (the "Staff") of the Enforcement Bureau (the "Bureau") dated December 18, 2015.[1]

I. The Background Cited By AT&T is Irrelevant

AT&T devotes nearly five pages of its Response to yet another repetition of its largely inaccurate[2] version of the facts which led to this dispute. But, in truth, there is a single

[1] AT&T asserts incorrectly in its footnote 1 that iWireless' filing should have been limited to 5 pages. First, the Application does not seek review of an "interlocutory action" but rather a "final action." The Letter Ruling places iWireless under an immediate obligation to provide data roaming service to AT&T at an FCC-prescribed rate. *See Burlington Northern Railway Co. v. Surface Transportation Bd.,* 75 F.3d 685, 690-91 (D.C. Cir. 1996) (an agency order was final when it had "immediate effects" on the carrier's legal rights "with the force of law" and placed the carrier under "an immediate obligation."). Second, this proceeding is not a "Hearing proceeding" for purposes of 47 C.F.R. § 1.115(f) because this case has not "been designated for hearing" nor is it governed by Subpart B of the FCC's Part 1 Rules. *See* 47 C.F.R. § 1.201 *et seq.*

[2] AT&T Response to iWireless Application for Review filed Feb. 3, 2016 at pps. 3-8 ("Response"). For example, AT&T continues to claim, falsely, that iWireless has threatened to

dispositive fact – which happens to be *undisputed*: the rate imposed by the Bureau on iWireless conforms to neither the interim rate proposed by iWireless,[3] nor to the rate reflected in the iWireless best and final offer ("BAFO").[4] AT&T has failed to justify this unnecessary and unlawful departure by the Staff from the Commission-established interim process.

II. AT&T Misrepresents the iWireless Position

AT&T falsely asserts that iWireless is claiming it has *carte blanche* authority to impose any interim rate it chooses. In truth, iWireless is claiming that the Bureau should abide by the interim procedure established by the Commission in the *Data Roaming Order* where, *as here,* the host carrier proposes an interim rate **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** Simply stated, a proffered rate that falls within the range of existing rates in the marketplace meets the "general requirement of reasonableness" referenced in the *Data Roaming Order.*[6]

III. The Staff Ruling Causes Potentially Irreparable Harm

AT&T tries to invoke a "no harm no foul" defense, claiming that iWireless "can establish no lasting harm from the Letter Ruling because the interim rate is subject to possible true-up at the end of the proceedings."[7] This assertion is false. **[BEGIN CONFIDENTIAL]** [redacted]

---

discontinue service to AT&T, that AT&T has been the moving force in negotiations, and that iWireless has been inadequately responsive.

[3] *See* iWireless Opposition to Interim Relief filed Nov. 20, 2015 at 17.

[4] *See* iWireless Best and Final Offer filed Dec. 4, 2015.

[5] For example, AT&T's own evidence in this proceeding establishes that it is party to an operative agreement in which data is exchanged at **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

[6] *Data Roaming Order* at para. 33. AT&T is incorrect when it argues that iWireless has ignored this aspect of the interim process. *See* Response, n. 33.

[7] Response, p. 15.

[redacted] **[END CONFIDENTIAL]** While there is no question regarding AT&T's ability to sustain iWireless' proffered rate, iWireless is seriously concerned that **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

IV. If It Looks, Swims and Quacks Like a Duck, It Is a Duck

AT&T essentially concedes that the Staff has no authority to engage in ratemaking by arguing at length that no ratemaking has occurred here.[9] However, when the Staff imposes with the force of law an interim rate over the objection of the host carrier, and selects a rate that does not conform to any rate proffered by the host carrier, it is engaged in ratemaking. The observation by AT&T that the Staff made clear that the interim rate did not reflect a determination as to whether iWireless' proposed rates were commercially reasonable[10] only makes matters worse. Not only has the Staff engaged in unlawful ratemaking, it has done so without regard to the merits of iWireless' offer.

Nor does the AT&T claim that the imposed rate is subject to possible true-up – a

---

[8] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

[9] Response at Section II.

[10] Response at p. 11

contention iWireless contests[11] – serve to alter the fact that the Staff has imposed a rate of *its* choosing which iWireless is forced to observe. If iWireless refused to honor the rate set by the Staff it no doubt would face fines and forfeitures. This is a rate order.

V. The Staff Exceeded Its Delegated Authority

AT&T seeks to empower the Staff to disregard the explicit Commission-established interim procedure by citing Section 4(i) of the Communications Act.[12] This argument completely misses the point. Section 4(i) empowers *the Commission*, not the Staff whose powers are limited to those delegated to it. And here, the Commission has exercised its power under Section 4(i) by establishing an interim procedure that makes clear that the interim rate is set by the host carrier.[13] AT&T has failed to cite any authority – because there is none – that the Staff has the delegated authority to disregard an explicit interim procedure laid out in detail in an order by the full Commission.[14] Indeed, the rules of delegation provide otherwise.[15]

VI. AT&T's Efforts to Obfuscate the Issues Cannot Shield the Staff's Unlawful Action

AT&T relegates to footnotes its weak responses to two of the strongest arguments in the Application for Review. First, as iWireless demonstrated, the Staff reliance **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** is

---

[11] The authority of the Staff to order a true-up derives from the *Data Roaming Order*. The *Staff* – having abandoned the procedure in the *Data Roaming Order* – has no delegated authority to true up a rate it has set.
[12] Response at pp. 9-10.
[13] *Data Roaming Order* at para. 80.
[14] The AT&T claim at pps. 10-11 – that the *Data Roaming Order* empowers the Staff to impose "other appropriate remedies" than those set forth with respect to interim rates – is taken completely out of context. The Staff's power to impose other appropriate remedies applies to situations where a carrier has been found to be delaying data roaming negotiations. That does not apply here.
[15] AT&T cites the general role of the Enforcement Bureau (47 C.F.R § 0.111) and the general powers delegated to the Bureau but fails to address the specific limitations set forth in 47 C.F.R § 0.311(a)(3).

indefensible in light of the *Declaratory Ruling* which expressly holds that rates from prior contracts are not presumptively reasonable.[16] AT&T makes the nonsensical rebuttal in footnote 51 that it never claimed the prior rate was commercially reasonable only that it provided a means for preserving the *status quo*.[17] Again, it doesn't help AT&T's case to disavow the commercial reasonableness of the rate the staff imposed.

Second, footnote 48 of the Response fails to justify the Staff's rejection of the alternative of adopting on an interim basis the rate in the iWireless BAFO which would have conformed to *both* the *Data Roaming Order and* to the alternative relief requested by AT&T. The fact that iWireless never argued that its BAFO rate would have been acceptable is irrelevant: the *Data Roaming Order* clearly empowers the Staff to adopt the host provider's BAFO on an interim basis.[18] Equally irrelevant is the fact that the iWireless BAFO differed from the *status quo*. The *Data Roaming Order* makes no mention of using expired rates as an interim measure.

For the foregoing reasons, iWireless respectfully requests that its Application for Review be **GRANTED**.

By: /s/ Carl W. Northrop

Carl W. Northrop
Michael Lazarus
Telecommunications Law Professionals PLLC
1025 Connecticut Ave. NW; Suite 1011
Washington, DC 20036
(202) 789-3120
(202 789-3112 (Fax)
Counsel for Iowa Wireless Services, LLC

Dated: February 16, 2016

[16] *See* Reexamination of Roaming Obligations of Commercial Mobile Radio Service and Other Providers of Mobile Data Services (WT Docket No. 05-265), *Declaratory Ruling*, 29 FCC Rcd 15483, at para. 26 (WTB 2014).
[17] The AT&T response is schizophrenic, defending the Staff in one section because it "preserved the *status quo*" (Response Section II) and later arguing that iWireless has no basis to complain because it would be worse off if the Staff had maintained the *status quo.*" (Response, p. 13).
[18] *Data Roaming Order* at para. 80.

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2016, I caused the foregoing 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
Emily Watkins
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, DC 20005
Via Electronic Mail – a complete copy of the Confidential and Public Versions

Lisa Saks
Lisa Boehley
Adam Suppes
Markets Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Via Hand Delivery – three complete copies of the Confidential Version
Via Electronic Mail – a complete copy of the Confidential and Public Versions

/s/ Jessica Gyllstrom

Jessica D. Gyllstrom
Telecommunications Law Professionals PLLC
1025 Connecticut Avenue, N.W. Suite 1011
Washington, DC 20036
202-789-3116