Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Worldcall Interconnect, Inc.	)	Proceeding No. 14-221
a/k/a Evolve Broadband,	)	File No. EB-14-MD-011
Complainant	)	
	)	
v.	)	
	)	
AT&T Mobility LLC,	)	
Defendant	)	

ORDER

Adopted: April 14, 2016 **Released: April 14, 2016**

By the Chief, Market Disputes Resolution Division, Enforcement Bureau:

I. INTRODUCTION

1. In this interim Order, we deny portions of a formal complaint that Worldcall Interconnect, Inc. (WCX) filed against AT&T Mobility LLC (AT&T) alleging a violation of the Commission's roaming rules and orders. As explained below, we address the merits of two key issues in dispute including (a) the scope of AT&T's obligation to offer data roaming; and (b) proposed rates for data roaming. Namely, we find that AT&T is not obligated to offer data roaming to WCX in all of the areas that WCX has requested and that WCX has not demonstrated that AT&T's proposed rates are commercially unreasonable. We direct the parties to resume good faith negotiations of a roaming agreement that is consistent with the guidance provided herein, and to submit to the Enforcement Bureau ("Bureau") staff assigned to this matter a report on the progress of their negotiations within 60 days of the release of this Order.

II. BACKGROUND

A. Legal Framework

2. Roaming arrangements between wireless service providers enable customers of one provider to receive services from another provider's network when traveling outside of their own provider's network coverage area. The Commission has determined that the availability of wireless roaming arrangements is critical to promoting seamless consumer access to mobile services nationwide, to promoting innovation and investment, and to promoting facilities-based competition among multiple

service providers.[1] It also has determined that data roaming would "encourage service providers to invest in and upgrade their networks and to deploy advanced mobile services ubiquitously, including in rural areas."[2] Further, the Commission has noted that consolidation in the mobile wireless marketplace may have reduced the incentives of the largest providers to enter into agreements with other providers because of their reduced need for reciprocal roaming.[3]

3. Accordingly, the Commission has established requirements to ensure the availability of roaming agreements in the mobile wireless marketplace.[4] Under the Commission's rules, two different regimes govern the roaming obligations of commercial mobile radio service (CMRS) providers. The first regime, established in 2007 under Sections 201 and 202 of the Act, imposes "automatic roaming" obligations on CMRS providers that "offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility."[5] Such providers are required, on reasonable request, to provide roaming on reasonable and not unreasonably discriminatory terms and conditions.[6]

4. The Commission adopted a second roaming regime in 2011 applicable to "commercial mobile data services," which were defined to include all commercial mobile services that were not interconnected with the public switched network.[7] In the *Data Roaming Order*, adopted pursuant to Title III of the Communications Act,[8] the Commission sought to promote consumer access to nationwide mobile broadband service by requiring facilities-based providers of commercial mobile data services to offer roaming arrangements to other such providers on commercially reasonable terms and conditions, subject to certain limitations.[9] The Commission stated that it would determine the "commercial reasonableness" of offered roaming terms "based on the totality of the circumstances," and provided a non-exhaustive list of factors that it could consider in resolving data roaming disputes.[10] The Commission noted that the commercial reasonableness of particular roaming terms would "depend on

---

[1] *See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Second Report and Order, 26 FCC Rcd 5411, para. 1 (2011) (*Data Roaming Order*); *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, 4182, para. 2 (2010) ("*Voice Roaming Order on Reconsideration*").

[2] *Data Roaming Order*, 26 FCC Rcd at 5443, para. 64.

[3] *Data Roaming Order*, 26 FCC Rcd at 5426-27, para. 27.

[4] *See Data Roaming Order*, 26 FCC Rcd at 5412-14, paras. 3-7 (summarizing the history of the Commission's roaming rules and orders).

[5] 47 CFR § 20.12(a)(2), (d).

[6] *Id.*, § 20.12(d).

[7] *Data Roaming Order*, 26 FCC Rcd at 5411-12, paras. 1-2.

[8] 47 U.S.C. § 303(b), (r).

[9] *See Data Roaming Order*, 26 FCC Rcd at 5411, 5432-33, paras. 1, 42-43; *see also* 47 CFR § 20.12(e) (data roaming rule).

[10] *Data Roaming Order*, 26 FCC Rcd at 5415, para. 8; *id.* at 5452-53, para. 86 (listing factors).

numerous individualized factors," and that under the commercial reasonableness standard, providers may "negotiate different terms and conditions on an individualized basis, including prices, with different parties."[11]

5. In the *Data Roaming Order*, the Commission set forth procedures for resolving disputes regarding compliance with the Commission's data roaming rule.[12] The Commission held that parties may file a formal or informal complaint under Section 20.12(e)(2) of the Commission's rules[13] and delegated authority to the Bureau to adjudicate such complaints.[14] The Commission also delegated to the Bureau the authority to take specific steps to resolve particular disputes including, among others, requiring the parties to provide to the Commission the best and final offer that each presented during their negotiations and, where appropriate, ordering the parties to resume negotiations.[15] The Commission indicated that the Bureau's determination of the appropriate steps to take in resolving a particular dispute would depend in part on its assessment of the actions of both parties.[16]

6. In 2014, the Wireless Telecommunications Bureau (WTB) issued a *Declaratory Ruling* that provided further guidance to parties on the "commercial reasonableness" of proffered data roaming rates.[17] In that ruling, WTB clarified that the data roaming rule permits a complainant "to adduce evidence" in a particular roaming case as to whether roaming rates in a host provider's offer "are substantially in excess of retail rates, international rates, and MVNO/resale rates" and to submit "a comparison of proffered roaming rates to domestic roaming rates as charged by other providers."[18] WTB

---

[11] *Data Roaming Order*, 26 FCC Rcd at 5445-46, para. 68. In the recent *Open Internet Order*, the Commission reclassified mobile broadband internet access services (MBIAS) as commercial mobile radio services. In doing so, it forbore from applying the automatic roaming rule in Section 20.12(d) to MBIAS providers, "conditioned on such providers continuing to be subject to the obligations, process, and remedies under the data roaming rule codified in section 20.12(e)." *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, 5857-58, para. 526 (2015) (*Open Internet Order*).

[12] *Data Roaming Order*, 26 FCC Rcd at 5447-52, paras. 71-84.

[13] *Data Roaming Order*, 26 FCC Rcd at 5448-49, 5451, paras. 74-76, 82; 47 CFR § 20.12(e)(2). The Commission also held that, depending on the circumstances of each case, it may be appropriate to address a dispute regarding compliance with the data roaming rules by filing a petition for declaratory ruling under Section 1.2 of the Commission's rules, and noted that the Wireless Telecommunications Bureau has delegated authority to resolve such disputes. *See, e.g.*, *Data Roaming Order*, 26 FCC Rcd at 5451, paras. 81-82.

[14] *Id.*, 26 FCC Rcd at 5451, para. 82 ("We further clarify that the Enforcement Bureau has delegated authority to resolve complaints arising out of the data roaming rule.") & n.238 ("We add appropriate clarifying language to this effect to the rule governing the functions of the Enforcement Bureau.") (citing modifications to 47 CFR § 0.111(a)(11)).

[15] *Data Roaming Order*, 26 FCC Rcd at 5450, para. 79.

[16] *Id.*

[17] *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, at *4, para. 9 (WTB 2014) (*Declaratory Ruling*). AT&T Services, Inc. and Verizon each filed an application for review of the *Declaratory Ruling*. *See* Application for Review of AT&T, WT Docket No. 05-265 (filed Jan. 16, 2015) (pending); Verizon Application for Review, WT Docket No. 05-265 (filed Jan. 20, 2015) (pending).

[18] *Declaratory Ruling*, 29 FCC Rcd 15483, at *4, para. 9.

further stated that "the probative value of these other rates as reference points will depend on the facts and circumstances of any particular case," including the list of factors identified in the *Data Roaming Order*.[19]

B. History of the Parties' Dispute

7. WCX holds a lower B Block 700 MHz license to provide wireless services in Cellular Market Area (CMA) 667.[20] CMA 667 encompasses a predominantly rural area in central Texas that is adjacent to CMAs covering Austin, Houston, and San Antonio.[21] WCX states that it offers wireless broadband internet access service within CMA 667 using Long Term Evolution (LTE) technology.[22]

8. AT&T holds multiple radio station authorizations, including in CMAs adjacent to WCX's licensed area. Relevant to this complaint, AT&T holds licenses for, and states that it offers LTE services in areas adjoining, CMA 667, including in Austin, Houston, and San Antonio, Texas.[23]

9. On November 6, 2014, WCX filed the instant Complaint.[24] WCX alleged that, in pre-Complaint negotiations, AT&T improperly refused to enter into a data roaming agreement proposed by WCX and instead proposed data roaming terms that violate the Commission's roaming rules and orders.[25] WCX asked the Commission to find that AT&T's proposed terms are not commercially reasonable under the *Data Roaming Order* and Section 20.12(e) of the Commission's rules and requested entry of an order directing AT&T to provide data roaming services to WCX pursuant to the terms of a proposed agreement

---

[19] *Id.*

[20] Joint Statement of Stipulated Facts, Disputed Facts and Key Legal Issues, EB-14-MD-011, at 1, para. 3 (filed Dec. 11, 2014) (Jt. Statement).

[21] Jt. Statement at 1, paras. 3-4. WCX's licensed area contains 11,000 square miles, has a population of fewer than 400,000 people, and covers all or part of the following counties: Austin, Bastrop, Burleson, Caldwell, Colorado, Fayette, Gonzales, Jackson, Lavaca, Lee, Matagorda, Washington, and Wharton. *Id.* at 1, para. 4.

[22] Jt. Statement at 1, para. 5. LTE refers to a high performance air interface for cellular mobile communications systems, increasing the capacity and speed of wireless networks relative to 3G deployments. *See, e.g.*, *Connect America Fund*, WC Docket No. 10-90, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657, 6861 (2010) (OBI Tech. Paper No. 1, "The Broadband Availability Gap"). WCX contends that it "has already met the FCC build-out requirements" for CMA 667. *See* Declaration of Lowell Feldman at 5 (Oct. 1, 2014) (Feldman Decl.).

[23] Jt. Statement at 3, para. 14.

[24] Second Amended Complaint, EB-14-MD-011 (Nov. 6, 2014) (Compl. or Complaint). WCX filed its original complaint on September 8, 2014, and an amended complaint on October 1, 2014, which it further amended and filed as the instant Complaint on November 6, 2014. On November 5, 2014, AT&T filed its answer to the October 1st version of the complaint and, in doing so, anticipated certain amendments that WCX had agreed to incorporate into the Complaint that is now before us. *See* Answering Submission of AT&T Mobility LLC, EB-14-MD-011 at 1 n.1 (Nov. 5, 2014) (Answering Submission) & Tab 1, Answer to Amended Complaint (Answer). On November 21, 2014, WCX filed its reply. *See* Worldcall Interconnect, Inc. Reply to AT&T Mobility Answer Package, EB-14-MD-011 (Nov. 21, 2014) (Reply).

[25] Compl. at 9, 15-17, paras. 17, 29-33.

that WCX had appended to its Complaint.[26]

10. After the parties filed their pleadings in this case, they engaged in further negotiations that failed to resolve the dispute. Bureau staff then directed the parties to exchange Best and Final Offers (Final Offers) setting forth the terms under which each party was willing to enter into a roaming arrangement.[27] Around that time, WCX also concluded negotiations of a separate roaming agreement with [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL], a copy of which WCX then filed under seal in the record of this proceeding.[28] After WCX and AT&T submitted Final Offers in the present case, they filed briefs addressing the major terms in dispute, as reflected in their respective Final Offers.[29]

11. Throughout the course of these proceedings, the parties demonstrated a willingness to negotiate in good faith and, indeed, have conceded that "[g]ood faith is not an issue in contention."[30] Although the parties made an effort to compromise regarding several of the disputed issues, and managed to narrow their differences on certain of those issues, they ultimately reached an impasse in their negotiations.[31]

---

[26] Compl. at 6, 15, 43-44, paras. 11, 29, 94(g). Although the Complaint alleges that the "automatic roaming rule" in Section 20.12(a)(2) and (d) also applies here "at least in part," *see id.* at iii, n.2; *see also id.* at 9 n.50, the proposed roaming agreement that WCX attached to its Complaint addresses only data roaming. *See infra* note 32.

[27] Letter from Lisa Saks, FCC, to Scott McCollough, Counsel for WCX, and James Bendernagel, Counsel for AT&T, EB-14-MD-011 (July 7, 2015); WCX Best and Final Offer (July 15, 2015) (WCX Final Offer); AT&T Best and Final Offer (July 15, 2015) (AT&T Final Offer).

[28] Letter from Matthew Henry, Counsel for WCX, to Lisa Saks and Lisa Boehley, FCC, EB-14-MD-011 (July 22, 2015) (attaching roaming agreement with [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] WCX has indicated that its roaming agreement with [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] *See* Worldcall Interconnect, Inc.'s Responses to AT&T Mobility LLC's First Set of Interrogatories, at 207 (June 19, 2015) (WCX Interrogatory Responses) [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] AT&T also filed copies of its data roaming agreements under seal in the record of this proceeding, including its so-called "strategic" agreements and its so-called "arm's length" agreements.

[29] *See* Worldcall Interconnect, Inc. Initial Merits Brief, EB-14-MD-011 (Aug. 10, 2015) (WCX Br.); Responsive Brief of AT&T Mobility LLC, EB-14-MD-011 (Aug. 31, 2015) (AT&T Br.); Reply Brief of Worldcall Interconnect, Inc., EB-14-MD-011 (Sept. 14, 2015) (WCX Reply Br.). *See also* WCX Br. at 2 ("AT&T and WCX have clear differences over a few but vitally important overarching legal and policy issues."); AT&T Br. at 12 (listing "four principal areas of dispute" between the parties as reflected in the parties' Final Offers); Appx. A (setting forth key disputed terms from WCX's Final Offer); Appx. B (setting forth key disputed terms from AT&T's Final Offer).

[30] Jt. Statement at 6, para. 34. The Commission stated that, in evaluating the commercial reasonableness of a proposed data roaming agreement, it could consider the course of the host provider's conduct, including whether a provider has engaged in a persistent pattern of stonewalling behavior. *Data Roaming Order*, 26 FCC Rcd at 5452, paras. 85-86.

[31] *See, e.g.,* WCX Br. at 14-15, 24; AT&T Br. at 5-7.

III. DISCUSSION

12. We consider below the commercial reasonableness of specific terms proposed in the parties' Final Offers and provide guidance on certain issues in dispute under the *Data Roaming Order*,[32] including (a) the scope of AT&T's obligation to offer data roaming; and (b) proposed rates for data roaming. Because the Commission intended the data roaming rule in Section 20.12(e) to "accommodate a variety of terms and conditions in data roaming" and "allow[] host providers to control the terms and conditions of proffered data roaming agreements, within a general requirement of commercial reasonableness," the primary question before us is whether WCX, as the complainant, has met its burden of showing that AT&T's proposed terms fall outside of that general requirement of commercial reasonableness.[33]

A. Scope of Data Roaming Obligation

13. In its Complaint, WCX initially argued that it was not seeking to offer service to customers who reside outside of the home area where WCX holds a 700 MHz license, CMA 667.[34] WCX later

---

[32] The roaming agreement that WCX originally proposed to AT&T before it filed the Complaint, and which WCX urged the Commission to adopt as a form of relief, addressed only data roaming. *See* Compl. at 6, 15-16, paras. 11, 29-31; Feldman Decl., para. 12, Exh. 1 to Feldman Decl. (entitled "Domestic Data Roaming Agreement" and identified by WCX as the "RWA Model Agreement"); *see also* Compl. at 11, para. 21 (stating that "WCX will largely analyze the issues by applying the lower 'commercially reasonable' standard . . . ."). Although WCX's subsequent Final Offer [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] Accordingly, in this Order we address the disputed issues under the data roaming rule in Section 20.12(e), rather than the "automatic roaming" rule in Section 20.12(d).

[33] *Data Roaming Order*, 26 FCC Rcd at 5429, 5451, paras. 33, 81. *See also Nina Shahin v. Verizon Delaware LLC*, File No. EB-13-MD-002, Memorandum Opinion and Order, 29 FCC Rcd 4200, 4201, para. 4 (2014) ("In a formal complaint proceeding under Section 208 of the Act, the complainant bears the burden of proof."); *Directel, Inc. v. Am. Tel. and Tel. Co.*, Memorandum Opinion and Order, 11 FCC Rcd 7554, 7560-61, para. 14-15 (Com. Carr. Bur. 1996); *Amendment of Rules Governing Procedures to be Followed when Formal Complaints are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497 (1997); *Amendment of Rules Concerning Procedures to be Followed when Formal Complaints are Filed Against Common Carriers,* Report and Order, 8 FCC Rcd 2614 (1993); *see generally* 47 CFR §§ 1.720-1.735.

[34] *See, e.g.,* Reply at 36, para. 48 ("WCX is not trying to 'effectively offer service to customers in areas where WCX does not have a license.' WCX is trying to provide home-based services to customers that reside in, conduct significant business in or have a physical presence in WCX's home area."); Compl. at 23, 27, paras. 48, 57 (arguing that "WCX is already offering data and other service in its home area using its own spectrum and facilities" and "[a] provider cannot be 'incented' to 'invest' in a network outside its home area and in places where the provider has no licenses."); Compl. Legal Analysis at 281 ("WCX has built-out its home area network, and is seeking roaming for out-of-area purposes").

changed course and asserted that it does in fact seek to acquire customers who reside outside CMA 667,[35] and argued that AT&T must offer a roaming arrangement that covers such customers.

14. Specifically, WCX contends that AT&T's Final Offer is commercially unreasonable because it denies roaming to (a) WCX customers "that reside anywhere other than WCX's fully-licensed 700 MHz CMA [CMA 667]"[36] and (b) to WCX customers that reside in places where WCX obtains connectivity through contracted third party access.[37] AT&T contends that it has no obligation to provide roaming service to WCX customers that do not receive their primary service from WCX's facilities-based mobile wireless network, located in CMA 667.[38] Specifically, AT&T objects to language in WCX's Final Offer [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][39] AT&T maintains that WCX's request for access to AT&T's network to serve such customers is actually a request for a resale arrangement—not roaming—which AT&T has no obligation to provide.[40]

15. Based upon the record before us, we agree with AT&T. The roaming rules in Section 20.12 grant roaming rights only to providers of facilities-based service. Section 20.12(e)(1) and the *Data Roaming Order* "impose an obligation . . . on facilities-based providers of commercial mobile data services to offer data roaming arrangements *to other facilities-based providers of commercial mobile data services*" subject to certain limitations.[41] The Commission has never required a provider to offer data

---

[35] For example, WCX has stated that it seeks to serve an MVNO with customers in or around [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] WCX Interrogatory Responses at 13.

[36] WCX Br. at 18.

[37] *See, e.g.,* WCX Br. at 20 (asserting that AT&T's refusal to offer "authorized roamer status to users that reside in places where WCX deploys alternative network coverage or obtains connectivity through contracted third party access" conflicts with Commission policy); WCX Br. at 18 n.32 (complaining that AT&T's Final Offer [BEGIN CONFIDENTIAL] [redacted] .[END CONFIDENTIAL]

[38] AT&T Br. at 13-14.

[39] AT&T Br. at 7-8 & n.35 (citing WCX Final Offer, Sec. 1, [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

[40] *See* AT&T Br. at 1, 11, 13-16. AT&T cites statements in the Commission's roaming orders indicating that the roaming obligations imposed under Section 20.12 cannot be used as a backdoor way to create de facto mandatory resale obligations. AT&T Br. at 15 nn.62, 65, 66, (citing *Data Roaming Order*, 26 FCC Rcd at 5429-30, 5432, 5454, paras. 34, 41 & n.122, 88, and *Automatic Roaming Order*, 22 FCC Rcd 15817, 15836, para. 51 (2007)).

[41] *Data Roaming Order*, 26 FCC Rcd at 5444, para. 67 (emphasis added); 47 CFR § 20.12(e)(1) ("A *facilities-based provider of commercial mobile data services* is required to offer roaming arrangements to other *such providers* on commercially reasonable terms and conditions, subject to the following limitations") (emphasis added). Similarly, the automatic roaming rule in Section 20.12(d) accords roaming rights only to facilities-based providers. *See* 47

roaming to an entity that does not provide facilities-based service to its customers.[42]

16. We find no credible evidence that WCX is a facilities-based provider outside CMA 667, where WCX holds a 700 MHz license. Although WCX claims that it offers facilities-based service "to end users throughout the country using other types of wireless spectrum,"[43] WCX has not shown what facilities-based services it allegedly offers outside CMA 667, or identified any facilities outside CMA 667 through which it offers service.[44] To the extent WCX seeks to use AT&T's network as the primary network for new WCX customers residing in areas outside CMA 667 where WCX lacks network facilities, WCX requests a resale agreement, not roaming.[45] The Commission's mandatory resale rule, which when applicable applied only to automatic roaming, expired in 2002.[46]

17. Further, we find no merit in WCX's objection that AT&T's roaming offer does not cover WCX customers residing in places where WCX "obtains connectivity through contracted third party access." To the extent WCX seeks to serve customers through third party connectivity rather than its own facilities, it is not a facilities-based provider under Section 20.12.[47] For all of these reasons, we find that WCX's request to access AT&T's network in order to acquire customers who reside outside WCX's

---

CFR § 20.12(d) (" it shall be the duty of each host carrier . . . to provide automatic roaming to any technologically compatible, *facilities-based* CMRS carrier on reasonable and not unreasonably discriminatory terms and conditions . . . .") (emphasis added).

[42] WCX is a facilities-based provider of service to its customers who reside within CMA 667 – the service area licensed to it, in which it has constructed operational facilities – and not to any customers it may have who live outside this service area, where WCX has no facilities of its own. In light of the Commission's distinction between roaming and resale described below, we interpret the Commission's use of the term "roaming" as not applicable to customers acquired while residing outside the provider's "local or regional service areas." *Data Roaming Order*, 26 FCC Rcd at 5419, 5420, paras. 15, 17.

[43] WCX Reply Br. at 5 & n.23 (complaining that the terms of AT&T's Final Offer "deny AT&T roaming to WCX customers that reside anywhere other than WCX's fully-licensed 700 MHz CMA" and asserting that "WCX offers facilities-based CMRS service to end users throughout the country using other types of wireless spectrum").

[44] Although WCX has suggested that it "will build network" outside CMA 667 in order to provide facilities-based service, WCX has not offered evidence that it has actually done so or sufficient evidence that it will do so in the future. *See* WCX Br. at 17.

[45] *See, e.g.*, *Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Service*, WT Docket No. 15-125, Eighteenth Report, DA 15-1487, at 24 n.73 (Dec. 2015) ("In contrast to the purchase of capacity wholesale to provide resale or MVNO services, a provider uses roaming services to market extended coverage to consumers residing within the provider's network coverage area, but not to acquire customers where a service provider does not have network coverage."). *See also Data Roaming Order*, 26 FCC Rcd at 5431, para. 38 n.116 (internal citation omitted) (noting that, in proposing a data roaming requirement, the Commission did not intend for such requirement "to constitute a resale requirement" and indicated that the Commission would decide in the context of a "specific dispute whether data roaming should be provided in a particular instance, and on what terms, or whether the request is essentially a request for resale").

[46] 47 CFR § 20.12(b)(3).

[47] While we analyze the scope of AT&T's roaming obligation under Section 20.12(e) of the Commission's rules, our conclusions in this regard would be the same under Section 20.12(d). As WCX has observed, "the question whether WCX is seeking 'resale' rather than 'roaming' applies regardless of whether § 20.12(d) applies or § 20.12(e) applies to any given service." WCX Reply at 40 n.65; *id*. at 35 n.54.

CMA constitutes a request for resale, rather than roaming, which AT&T has no obligation to provide under Section 20.12.[48]

B. Proposed Data Roaming Rates

18. The parties propose different rate levels and rate structures for the provision of LTE data roaming services.[49] WCX is not seeking roaming from AT&T in areas where WCX has licensed spectrum.[50] [BEGIN CONFIDENTIAL] [END CONFIDENTIAL].[51]

---

[48] *See, e.g.*, *Data Roaming Order*, 26 FCC Rcd at 5430, para. 34 ("the data roaming obligation does not create mandatory resale obligations"); *id.* at 5432, para. 41 n.122 ("As we have stated in the past, however, roaming arrangements cannot be used as a backdoor way to create *de facto* mandatory resale obligations."). Of course, the parties are free to enter into a resale arrangement, on a voluntary basis, that would permit WCX to access AT&T's network in order to serve customers in areas where WCX does not provide facilities-based service. [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]

[49] [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] *See* WCX Final Offer, Exh. 8. Inasmuch as WCX's brief only took issue with the "per MB" data rates, we evaluate here only the parties' disputed data roaming rates. *See* 47 CFR § 1.732(b) (requiring briefs to include "all legal and factual claims . . . previously set forth in the complaint" and instructing that any claims "previously made but not reflected in the briefs will be deemed abandoned").

[50] Reply Legal Analysis at 1253 ("WCX seeks roaming for areas outside of its licensed area. WCX is not seeking roaming inside its home area."). [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]

[51] AT&T Final Offer, Exh. 8. Based on WCX's statement that a "large percentage" of the population in its licensed service area regularly commutes to Austin, Houston, or San Antonio (all places where WCX alleges that AT&T has compatible licenses), it appears likely that [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] Reply Legal Analysis at 1254.

19. [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL].[53]

20. As a threshold matter, we agree with AT&T that "the relevant question is not which of the parties' proposals is more reasonable," but whether AT&T's proposed rates fall within a range of commercially reasonable rates.[54] As explained below, we conclude that WCX has not met its burden of demonstrating that AT&T's proposed rates fall outside of a range of commercially reasonable rates or are otherwise commercially unreasonable.

21. WCX contends that AT&T's proposed data roaming rates are "prohibitively excessive" and "so extortionate that WCX cannot both roam and provide a competitively priced service."[55] At the same time, WCX does not dispute AT&T's claim that AT&T's proposed rates are "well below the average effective rates paid by AT&T for data roaming and by other wireless providers to roam on AT&T's network in arm's length agreements."[56] Instead, WCX dismisses data roaming rates in other AT&T agreements that exceed those WCX has proposed as the product of AT&T's superior bargaining power and merely informative, but not conclusive, on the question of the commercial reasonableness of those rates as to WCX.[57]

22. [BEGIN CONFIDENTIAL] [redacted]

---

[52] WCX Br. at 24; WCX Final Offer, Sec. 8, Exh. 8.

[53] WCX Final Offer, Sec. 8, Exh. 8.

[54] AT&T Br. at 17. *See also Data Roaming Order*, 26 FCC Rcd at 5429, para. 33 (noting that the data roaming rule "allows host providers to control the terms and conditions of proffered data roaming arrangements, within a general requirement of reasonableness"); *id.* at 5451, para. 81 (anticipating that the standard of commercial reasonableness will "accommodate a variety of terms and conditions in data roaming"); *id.* at 5450, para. 79 (allowing Commission staff to resolve a roaming dispute "*in which a violation of our rules is found*" by, among other things, ordering the parties to enter into an agreement pursuant to the terms of the complainant's commercially reasonable final offer) (emphasis added)).

[55] WCX Reply Br. at 7.

[56] AT&T Br. at 20 n.93 (citing Meadors Supp. Decl. at 2; Supplemental Declaration of Jonathan Orszag at 9 (July 24, 2015) (Orszag Supp. Decl.)).

[57] WCX Reply at 34 ("'reasonableness' is fact specific and what is reasonable for one carrier or set of carriers may not be reasonable for another"); Supplemental Declaration of Martyn Roetter at 14 (Aug. 10, 2015) (Roetter Supp. Decl.) ("The contents of other agreements are informative but cannot be determinative in a complaint case involving a carrier that has never had an agreement with AT&T."); WCX Reply Legal Analysis at 1255-62 (discussing relevance of AT&T's extant agreements).

[58] AT&T Br. at 20; Orszag Supp. Decl. at 7; *id.*, Appx. B, Tbl. B-2.

[END CONFIDENTIAL]

23. The *Data Roaming Order* established that rates in other data roaming agreements are a factor that the Commission may consider in assessing the commercial reasonableness of proposed data roaming rates.[62] [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL],[63] we note that the Commission's roaming rules and orders do not require that a proposed roaming rate be the best rate that a party has offered to other roaming partners. Rather, the rules give providers leeway to determine what rates to offer so long as they fall within a "general requirement of reasonableness."[64] In the absence of other probative evidence, we find that the data roaming rates in the roaming agreements that AT&T has submitted in this proceeding, including the

---

[59] Orszag Supp. Decl. at 9; *id.*, Appx. B, Tbl. B-2.

[60] Orszag Supp. Decl. at 7-9; *id.*, Appx. B, Tbl. B-2. In addition, Mr. Orszag states that [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] Orszag Supp. Decl. at 9.

[61] Orszag Supp. Decl. at 8; *id.*, Appx. B, Tbl. B-1.

[62] *Data Roaming Order*, 26 FCC Rcd at 5453, para. 86 (included among factors the Commission identified for assessing commercial reasonableness of roaming terms is "whether the providers involved have had previous data roaming arrangements with similar terms"); *see also Declaratory Ruling*, 29 FCC Rcd 15483, at *5, para.16 (noting that the *Data Roaming Order* expressly contemplates that the terms of other data roaming agreements, including prices, may be relevant in judging the commercial reasonableness of such terms); *id.*, 29 FCC Rcd 15483, at *7, para. 20 (noting that the data roaming rule permits a comparison of proffered roaming rates and other domestic roaming rates).

[63] *See* Orszag Supp. Decl., Appx. B, Tbl. B-1 [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] *See infra* para. 24.

[64] *Data Roaming Order*, 26 FCC Rcd at 5429, para. 33 (noting that the data roaming rule "allows host providers to control the terms and conditions of proffered data roaming arrangements, within a general requirement of reasonableness"); *id.* at 5451, para. 81 (anticipating that the standard of commercial reasonableness will "accommodate a variety of terms and conditions in data roaming"); *id.* at 5423, para. 21 ("[W]e adopt a general requirement of commercial reasonableness for all roaming terms and conditions, including rates, rather than a more prescriptive regulation of rates. . . .This will give host providers appropriate discretion in the structure and level of such rates that they offer."). As reflected in an analysis prepared by AT&T's expert, [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

related analyses of AT&T's expert, are highly probative of the commercial reasonableness of AT&T's proposed data roaming rates.

24. WCX argues that AT&T's expert improperly excluded AT&T's [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] so-called "strategic" agreements from his analysis of AT&T's data roaming agreements.[65] We disagree. Based on the record, we find that AT&T has demonstrated that its "strategic" agreements include rates and terms that address a broader set of rights, [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] that are not directly related to roaming and, as a result, are not useful proxies in determining the commercial reasonableness of rates included in a proposed agreement that covers only roaming.[66]

25. Relatedly, we reject WCX's contention that [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] The data roaming rules contemplate that providers may "negotiate different terms and conditions on an individualized basis, including prices, with different parties."[68] It is entirely possible, [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] Second, WCX's argument fails to acknowledge WCX's own evaluation of the superiority of AT&T's network coverage.[70] [BEGIN HIGHLY CONFIDENTIAL]

---

[65] WCX Br. at 24; Roetter Supp. Decl. at 12-14.

[66] AT&T Br. at 21-22; *id.* at 22 & n.106 ("Such agreements involve [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]) (quoting Meadors Supp. Decl., para. 17 & Exh. C thereto (summarizing strategic agreements)), & n.107 (citing Orszag Supp. Decl., para. 53 ("[R]oaming rates in strategic agreements are inherently distorted by other components of the agreement and are not a good predictor of the rates that would result in an arm's length agreement between independent parties just for roaming.")). [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] *See* AT&T Br. at 22 & n.108.

[67] WCX Br. at 7-9.

[68] *Data Roaming Order*, 26 FCC Rcd at 5445-46, para. 68.

[69] [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

[70] Roetter Supp. Decl. at 7-8 (noting that "AT&T is one of the only two providers with almost ubiquitous nationwide coverage and is therefore a 'must have' roaming supplier.").

[END HIGHLY CONFIDENTIAL][71]

26. WCX also challenges the commercial reasonableness of AT&T's proposed data roaming rates on the grounds that they exceed retail data prices.[72] According to WCX, the "right" data roaming price would make it possible for WCX to compete in the retail market and would not exceed "retail market prices."[73] Because Commission orders have expressly refused to employ retail prices as a ceiling or a cap on roaming rates, we reject WCX's assertion that the commercial reasonableness standard requires proffered roaming rates to be set at a level comparable to or below a provider's retail data rates.[74] We also reject WCX's claim that AT&T's proposed rates are commercially unreasonable under the *Declaratory Ruling*.[75] The *Declaratory Ruling* indicates only that proposed data roaming rates that are

---

[71] *Data Roaming Order*, 26 FCC Rcd at 5454, para. 88 (explaining that "providers can make significant capital and marketing investments with respect to differentiating the quality and brand image of their networks from competitors").

[72] WCX Br. at 22-23 (citing Roetter Supp. Decl. at 14-15, 19); *see also* Roetter Supp. Decl. at 20, 25-27.

[73] WCX Br. at 23; Roetter Supp. Decl. at 20.

[74] *Data Roaming Order*, 26 FCC Rcd at 5423, 5436, paras. 21, 51 (noting 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); *Declaratory Ruling*, 29 FCC Rcd 15483, at *6, para. 18 (noting that reference points, including retail data rates, "do not function as a ceiling or as a cap" on data roaming rates).

[75] [BEGIN CONFIDENTIAL]

"substantially in excess of retail rates" serve as "potentially relevant reference points in determining the commercial reasonableness of [the] proposed rates."[76] Because WCX has not demonstrated that AT&T's proposed data roaming rates are "substantially in excess" of AT&T's retail data rates,[77] it has failed to show that these rates run afoul of the guidance in the *Declaratory Ruling*.[78] We note that the parties also debated whether AT&T's proposed roaming rates are substantially in excess of resale/MVNO rates and international roaming rates, but find that there is insufficient information in the record to make a determination regarding those issues.[79]

27. Finally, WCX argues that the "right" data roaming price would provide AT&T a reasonable margin over the costs that it incurs in providing data roaming services.[80] As AT&T correctly observes, however, "[n]owhere in the Commission's rulings is such an approach endorsed," and the use of AT&T's costs in this context appears incompatible with the Commission's decision to adopt a general requirement of "commercial reasonableness for all roaming terms and conditions, including rates, rather than a more

---

[END CONFIDENTIAL]

[76] *Declaratory Ruling*, 29 FCC Rcd 15483, at *4, para. 9; *see also id.* at *6, para. 17.

[77] [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] *See* Orszag Supp. Decl. at 14 & Tbl. B-5.

[78] We also disagree with WCX's suggestion that the "right" data roaming rate will ensure WCX's ability to compete in the retail market place under its current business model. Although the anticipated "level of competitive harm in a given market and the benefits to consumers" that is associated with a proffered roaming term is a consideration under the *Data Roaming Order*, WCX's claimed individual inability to compete demonstrates neither aspect. *Data Roaming Order*, 26 FCC Rcd at 5453, para. 86. *See also* Declaration of Jonathan Orszag at 6-7 (Nov. 5, 2014) (Orszag Decl.) (listing several LTE service providers operating in CMA 667). In addition, WCX has not offered evidence effectively rebutting AT&T's contention that comparable data roaming rates included in dozens of AT&T agreements with rural and small providers have not rendered those providers' services unsustainable. *See, e.g.*, Orszag Decl. at 29 (noting that rural carriers whose roaming rates are "much higher [] than what WCX proposes here, have continued to invest in upgrading their networks and in expanding the services they offer to their customers.").

[79] *See, e.g.*, WCX Br. at 22; Roetter Supp. Decl. at 18-20; AT&T Br. at 19-20; Orszag Supp. Decl. at 14-16. For example, WCX made no effort to submit a systematic review of MVNO or international roaming rates that would allow a determination that the rates it does cite represent appropriate reference points for determining the commercial reasonableness of AT&T's proposed data roaming rates.

[80] WCX Br. at 23; *id.* at 22 (claiming that AT&T's proposed data roaming rates are "entirely without cost justification"); Roetter Supp. Decl. at 16.

specific prescriptive regulation of rates."[81] Accordingly, we reject WCX's suggestion that AT&T is required to justify the commercial reasonableness of its proposed data roaming rates based on cost data.

28. Based on the foregoing, we find that WCX has not demonstrated that AT&T's proposed data roaming rates are commercially unreasonable.

C. Remaining Issues

29. In this interim Order, we have addressed the merits of two key issues in dispute – namely, the scope of AT&T's obligation to offer data roaming and the proposed data roaming rates. Because the guidance we have provided here regarding these key issues may alter the parties' negotiating positions with respect to one or more of the remaining issues in dispute, we find that the parties should renew their negotiations with the goal of achieving a negotiated resolution of the remaining issues.[82] Accordingly, we direct the parties to resume good faith negotiations of a roaming agreement that is consistent with the guidance provided in this Order and to submit to the Bureau staff assigned to this matter a report on the progress of their negotiations within 60 days of the release of this Order. If the parties have not reached an agreement by that date, the report should indicate whether both parties wish to continue their negotiations. The Bureau's staff are also available to assist the parties in resolving their dispute through mediation.

30. Finally, if one or more of the issues raised in this proceeding remain unresolved at the end of the 60-day negotiation period, and either party wishes to discontinue the negotiations as of that date, WCX may request a further ruling addressing the unresolved issue(s) based on the present record. In that event, we will then issue a final order that incorporates the rulings set forth in this interim Order and provides rulings on any remaining unresolved issues.

---

[81] AT&T Br. at 21 (citing *Data Roaming* Order, 26 FCC Rcd at 5423, para. 21).

[82] For example, although the parties previously were unable to agree on terms limiting WCX's use of AT&T's network for data roaming, and on the enforcement provisions that govern if these limitations are breached, the guidance we provide here regarding the scope of AT&T's roaming obligation and the commercial reasonableness of the proposed roaming rates may cause the parties to re-evaluate their views on what usage or enforcement provisions are necessary or appropriate.

IV. ORDERING CLAUSE

31. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 4(i), 4(j), 208, 301, 303, 304, 309, 316, and 332 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 208, 301, 303, 304, 309, 316, and 332, and Sections 0.111(a)(11), 0.311, 1.720-1.735, and 20.12 of the Commission's rules, 47 CFR §§ 0.111(a)(11), 0.311, 1.720-1.735, and 20.12, the Complaint is DENIED to the extent set forth in this Order.

FEDERAL COMMUNICATIONS COMMISSION

Christopher Killion
Chief, Market Disputes Resolution Division
Enforcement Bureau

APPENDIX A

Relevant Terms from WCX Best and Final Offer

[BEGIN CONFIDENTIAL]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[END CONFIDENTIAL]

APPENDIX B

Relevant Terms from AT&T Best and Final Offer

[BEGIN CONFIDENTIAL]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

	[redacted]		[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]				
[redacted]				
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]				
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

[END CONFIDENTIAL]