



PUBLIC VERSION

Via ECFS and delivery

June 6, 2016

Lisa Saks
Lisa Boehley
Market Disputes Resolution Division, Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: *In the Matter of Worldcall Interconnect, Inc. a/k/a Evolve Broadband, Complainant v. AT&T Mobility, LLC, Defendant*, Proceeding No. 14-221; File No. EB-14-MD-011 – Motion for Clarification

Dear Mses. Saks and Boehley,

I write to request further clarification of the interim order the Bureau issued on April 14, 2016.¹ The parties have begun negotiating as instructed. We have made some progress, but have reached a disagreement regarding our respective interpretations of one aspect of the interim order. The parties continue to discuss issues not involving the impasse, and will continue the effort pending clarification.

Counsel for AT&T has received a draft of this document and indicated that AT&T considers much of this request to be confidential because it relates to AT&T's BAFO and the parties current negotiations. The portions of this motion of concern to AT&T are marked confidential. AT&T does not join in this motion and will be filing a response in opposition.

A confidential version and two copies of this motion will be filed with the Commission's Secretary. A redacted version will be submitted via the Commission's Electronic Comment Filing System. Hard copies will be hand delivered to you.

Grounds for Clarification

The parties do not agree, and WCX respectfully requests clarification, regarding the interim order's ruling in part III.A., "Scope of Data Roaming Obligation." Specifically, paragraph 15 holds that only facilities-based providers can benefit from the Commission's

¹ Because this motion does not seek a dispositive ruling, but instead a clarification, findings of fact, conclusions of law and a proposed order have not been appended. If these items are necessary, WCX will amend to include them at the Enforcement Bureau's direction.

roaming rules. Paragraph 16 held that, “[t]o 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.” Paragraph 17 then held that, “[t]o 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.” Therefore, the interim order ruled that, to the extent WCX’s terms would result in roaming for non-facilities-based services – either provided via third parties or using AT&T as the primary network – AT&T is not obligated to provide roaming for such services. The interim order, however, did not expressly rule whether AT&T’s scope-related terms are commercially reasonable.

The interim order (and the Commission orders upon which it relies) instead ties roaming rights and obligations to the provision of *facilities-based services*. Thus, the determinative factor for whether a requesting carrier is entitled to roaming – and a host carrier obligated to render it – is whether the requesting carrier uses its own facilities as the primary network to provide mobile wireless services to its customers.

WCX reads the discussion in paragraphs 15 through 17 to mean that, if WCX does in fact use its own facilities as the primary network to offer mobile wireless service outside CMA 667, those services and customers would be eligible for roaming. Although the interim order also found that WCX has not shown that it presently offers facilities-based services outside of CMA 667, there is no dispute that WCX plans to or is capable of doing so.² WCX is now awaiting resolution of its roaming rights before it risks the investment to expand its service footprint.³ But the interim order appears to make clear that, when WCX does offer facilities-based, primary network mobile wireless services outside its licensed service area, it is entitled to roaming.

[REDACTED]

² See, e.g., Reply Declaration of Lowell Feldman, EB-14-MD-011 (Nov. 21, 2014) at p. 14; WCX Responses to AT&T Mobility LLC’s First Interrogatories, EB-14-MD-011 (Jun. 19, 2015) at p. 9.

³ See Reply Declaration of Lowell Feldman, EB-14-MD-011 (Nov. 21, 2014) at pp. 8 and 95-96.



[Redacted text block]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

WCX believes that resolution of these questions, and any other clarifications regarding this disagreement, would greatly benefit the parties' negotiations. Thank you for your attention in this matter.

Respectfully submitted,

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