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April 8, 2010

57739-000015

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Reexamination of Roaming Obligations of Commercial Mobile Radio Service  
Providers (WT Docket No. 05-265)

Dear Ms. Dortch:

On April 7, 2010, Mark A. Stachiw of MetroPCS Communications, Inc. (“MetroPCS”), along with Carl W. Northrop and Andrew Morentz of Paul, Hastings, Janofsky & Walker LLP (“Paul Hastings”), participated in separate meetings with the following Commission personnel regarding the above-referenced proceeding: (1) David Goldman, Legal Advisor to Chairman Genachowski; (2) Louis Peraertz, Legal Advisor to Commissioner Clyburn; and (3) Charles Mathias, Legal Advisor to Commissioner Baker. In addition, Messrs. Stachiw and Northrop, along with Michael Lazarus of Paul Hastings, participated in a meeting with John Giusti, Legal Advisor to Commissioner Copps regarding the same. The oral presentations in these meetings were consistent with the pleadings and *ex partes* filed on behalf of MetroPCS in the above-referenced proceeding, as further supplemented below.

MetroPCS reiterated its view that the in-market roaming exception should be eliminated by the Commission. MetroPCS advocated that the Commission make clear that Commission policy favors both in market and out-of market roaming, and that both are common carrier services governed by the legal standards established by Sections 201 and 202 of the Act.<sup>1</sup>

MetroPCS urged the Commission not to enumerate any particular “conditions” or “factors” that the Commission would consider in determining whether the denial of roaming in a particular circumstance was just and reasonable. Enumerating factors is ill-advised because (i) even if the Commission describes the factors as representative and not exhaustive, they will become controlling considerations that reduce future flexibility of the Commission in dealing with Section 208 complaints; (ii) any list of factors will encourage the largest nationwide carriers – which are the primary proponents of factors<sup>2</sup> – to use them to deny roaming to small, rural and mid-tier carriers; (iii) providing a laundry list of

<sup>1</sup> 47 U.S.C. §§ 201 and 202.

<sup>2</sup> See, e.g., Verizon Ex Parte in WT Docket No. 05-265 filed March 22, 2010.

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factors that will be considered in connection with a denial of roaming service will deter voluntary negotiation and breed litigation – litigation that will inevitably inure to the detriment of the smaller carrier that is seeking roaming.

Due to the constantly-evolving nature of the wireless industry, MetroPCS advocated that the Commission will be better served to rely on the just and reasonable standard of Sections 201 and 202, which can be applied to the facts as they exist at the time the case arises based on the many case law precedents that define this oft-applied legal standard. This will prevent the Commission from being “boxed in” by a predetermined list of factors that may be inapplicable to the communications landscape of tomorrow. The better approach is to have disputes governed by the general standards of Sections 201 and 202.

MetroPCS pointed out that any roaming factor designed to force smaller and mid-sized carriers to build-out their licensed areas systems more quickly is discriminatory and wrong-headed. The largest carriers who have opposed roaming are the ones who hold the most undeveloped spectrum capable of meeting the needs of consumers in unserved and underserved areas.

MetroPCS also stressed the critical importance of data roaming rights, and recommended that any further notice of proposed rulemaking pertaining to data roaming be put on a fast track due to the critical role data roaming rights will play in fostering the roll out of 3G and 4G services. The Commission’s own National Broadband Plan recognizes that the time is ripe for action on data roaming, recommending that the Commission “should move forward promptly in the open proceeding on data roaming.”<sup>3</sup>

Although certain opponents of data roaming have sought to raise technical barriers to data roaming, MetroPCS emphasized that it is only seeking a declaration by the Commission that data roaming must be provided upon reasonable request where it is technically feasible to do so.

MetroPCS additionally urged the Commission not to allow the recently released *Comcast v. FCC* decision to delay action on data roaming. MetroPCS understands that the Commission is contemplating a *Further Notice* on data roaming in part to solicit comment on the Commission’s jurisdictional authority to mandate data roaming. This will give interested parties a full opportunity to address the *Comcast* decision, so there is no reason to delay getting the proceeding started.

On April 8, 2010, Carl Northrop, representing MetroPCS had a telephone conversation with Ruth Milkman, Chief of the Wireless Telecommunications Bureau which, in addition to touching upon the subject matter of the prior day’s meetings, discussed the scope of

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<sup>3</sup> CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN, 36 (2010).

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the various factors the Commission was considering mentioning in the order, and the extent to which they delved into the facts and circumstances of the serving carrier.

Kindly refer any questions in connection with this letter to the undersigned.

Respectfully submitted,



Carl W. Northrop  
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: (via email) David Goldman  
John Giusti  
Louis Peraertz  
Charles Mathias  
Ruth Milkman