

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

In the Matter of)
Reexamination of Roaming Obligations of)
Commercial Mobile Radio Service Providers and) WT Docket No. 05-265
Other Providers of Mobile Data Services)

To: The Commission

Reply Comments of NTELOS Inc.

NTELOS Inc., on behalf of itself and its wireless operating subsidiaries, hereby submits its reply comments in the above-captioned proceeding. As NTELOS' experience and the record in this proceeding demonstrate, prudent measures to extend automatic roaming standards to the growing market for broadband wireless data services are necessary to encourage innovation and competition within the increasingly concentrated wireless communications market, and ensure that small wireless carriers will continue to be able to meet their customers' growing demand for ubiquitous wireless data service at competitive and reasonable rates.

INTRODUCTION

As NTELOS,¹ the Commission,² and other commenters have noted, the mobile wireless market is in the process of becoming increasingly dominated by mobile data services, which deliver broadband access to multimedia content, such as ringtones and streaming music and video, as well as direct connection to the wider Internet, to mobile subscriber smartphones and

¹ NTELOS Comments, WT Docket No. 05-265, filed June 14, 2010 ("NTELOS Comments") at 4-6

² See *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66, Fourteenth Report, FCC 10-81, filed May 20, 2010, ("*14th Wireless Competition Report*") at 5-6

other devices. As mobile devices continue to evolve into sophisticated handheld computers capable of supporting a variety of functions beyond voice calling, customers are beginning to substitute data services, such as text and email messaging, for phone service at an increasing rate.³ As with wired broadband, growing customer access to wireless data services has profoundly positive implications for the US as a whole—an industry survey quoted by SouthernLINC in its comments predicts that increased use of wireless broadband technology “will generate almost \$860 billion in additional GDP over the next decade.”⁴

For NTELOS and other smaller carriers, however, the ability to offer competitive, unique products to serve the rural broadband market is predicated on the ability to obtain agreements permitting their customers to access data services even while roaming outside of their home network area. Increasing consolidation of the wireless market by AT&T and Verizon Wireless, however, threatens to make these national data roaming agreements difficult or impossible to obtain without a framework that provides for a right to roam except in cases of demonstrable technological or economic infeasibility. As customers in the mobile marketplace continue to demand a broader palette of services, all dependent on seamless, ubiquitous network access, the Commission must act to ensure that providers of all sizes are able to continue providing nationwide wireless broadband service at reasonable rates.

³ *Fourteenth Report* at 10

⁴ Roger Entner, Ovum, *The Increasingly Important Impact of Wireless Broadband Technology and Services on the US Economy*, quoted in SouthernLINC, *Comments of SouthernLINC Wireless*, filed in WT Docket No. 05-265, FCC 10-59, June 14, 2010, (“SouthernLINC Comments”), at 6

I. AN AUTOMATIC DATA ROAMING REQUIREMENT WOULD SERVE THE PUBLIC INTEREST

Previous Commission orders regarding roaming, including the *Second Notice of Further Proposed Rulemaking* to which these comments are now addressed, and the *2007 Report and Order* which preceded it have noted that automatic roaming mandates for voice and text services serve the public interest by promoting consumers' ability to communicate on a nationwide basis, without having to navigate a maze of conflicting and incompatible systems organized according to the caprice of private wireless providers, and help to further the Commission's statutory goals under the Telecommunications Act of making available "...a rapid, efficient, Nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges... for the purpose of promoting safety of life and property through the use of wire and radio communications" by encouraging the development of nationally-interconnected networks run by vigorously competing carriers.⁵

As customers continue to substitute data services in situations where they previously used voice service, and, as T-Mobile USA notes in its comments, as voice services themselves become "just another data application in Internet Protocol (IP) format",⁶ carried over non-PSTN connected networks, the same concerns of universal service at reasonable rates have become transferred to the realm of data. Individuals, families, governments, businesses, and public safety organizations have already come to rely on data services on a daily basis. By ensuring that broadband network access remains available to them nationwide and on competitive terms, a

⁵ 47 USC § 151, quoted in *Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, WT Docket No. 05-265, FCC 10-59, April 21, 2010 ("2nd FNPRM") at 35-36

⁶ *Comments of T-Mobile USA, Inc.*, WT Docket No. 05-265, FCC 10-59, June 14, 2010 ("T-Mobile Comments") at 7

data roaming obligation would help to further wireless broadband as an engine of innovation nationwide.

II. AUTOMATIC DATA ROAMING REQUIREMENT WILL PROMOTE INVESTMENT IN WIRELESS INFRASTRUCTURE

Verizon and AT&T, the two largest wireless network operators, predictably claim in their comments that to impose a data roaming requirement would be to “risk hindering... future investment...”⁷ in the wireless market, even going so far as to assert, in AT&T’s case, that smaller carriers would somehow nefariously build less expensive 1G/2G infrastructure as a kind of decoy to allow them to meet statutory requirements for 3G roaming, then neglect their own infrastructure in favor of providing nationwide access at 3G speeds, using only their competitors’ equipment.⁸

Verizon and AT&T’s concerns are far-fetched and without merit. NTELOS and other carriers’ use of roaming to provide the seamless voice and data access that wireless customers demand is not some anti-competitive scheme, as Verizon and AT&T seem to suggest—it is, in fact, the only way that non-national carriers can compete effectively within the wireless market. As the Commission noted in its 14th *Wireless Competition Report*, “all providers employ roaming to some extent to fill gaps in their coverage”.⁹ This is true of major national carriers, who rely on roaming to fill the increasingly smaller gaps in their nationwide networks where rural and regional carriers operate. It is especially true for smaller providers like NTELOS, who

⁷ Verizon Wireless, *Comments of Verizon Wireless*, WT Docket No. 05-265, FCC 10-59, June 14, 2010 (“Verizon Comments”) at 9

⁸ AT&T, *Comments of AT&T*, WT Docket No. 05-265, FCC 10-59, June 14, 2010 (“AT&T Comments”) at 64

⁹ 14th *Wireless Competition Report*, at 75

do not possess spectrum holdings across the nation and so are dependent for their very survival on negotiated roaming agreements to provide voice and data coverage for their customers.

AT&T and Verizon aside, there is a broad consensus in the wireless industry that a data roaming obligation would enhance competition and the public interest.¹⁰ As SouthernLINC Wireless notes in its comments, existing incentives in the form of build-out requirements already require small carriers to build out their networks in their licensed areas or risk losing their spectrum licenses. In addition to build-out requirements, it is not economically sustainable to rely on roaming rather than invest in facilities.¹¹ Nevertheless, facility build-out and network upgrade projects to accommodate data services remain very major investments— investments that smaller carriers like NTELOS simply cannot make if they cannot be assured that data roaming agreements will be available. NTELOS' 2007-08 upgrade of virtually its entire network to EVDO 3G was the largest capital expenditure in the company's history and now 4G is on the horizon. Small and regional carriers like NTELOS are again evaluating upgrades to their networks, this time for 4G. A data roaming requirement that eliminates uncertainty with regard to small carriers' ability to obtain the roaming agreements will encourage investment in broadband technology nationwide, especially in rural areas underserved by the major nationwide carriers.

¹⁰ See for example *SouthernLINC Comments* at 39, *Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies and the National Telecommunications Cooperative Association*, filed in WT Docket No. 05-265, FCC 10-59, June 14, 2010 (*"OPASTCO/NTCA Comments"*), at 5

¹¹ *SouthernLINC Comments* at 39-40

III. AN AUTOMATIC DATA ROAMING REGULATION WOULD HELP TO ENSURE THE CONTINUED COMPETITIVENESS OF THE WIRELESS MARKET

As NTELOS and others have noted in their comments previously in this proceeding, market consolidation has increased within the wireless market over the past 5 years, increasingly making it difficult for smaller carriers to compete with larger, national network providers. According to the Commission's own *14th Report on Wireless Competition*, Verizon Wireless and AT&T, the nation's largest wireless providers, now command 60 percent of subscribers and revenue,¹² and 5 carriers alone control over 80% of available wireless spectrum.¹³ The increasing power of a very few, extremely large carriers increasingly gives national networks the ability to cement their dominance by denying access, among other things, to data roaming agreements. When NTELOS negotiated many of its original roaming agreements, the wireless market consisted of a patchwork of smaller providers, each of whom assembled national networks by building out their own territories and negotiating reciprocal roaming arrangements with other parties. Now that major carriers have much smaller 'holes' to fill in their networks, NTELOS and other small carriers still need to negotiate roaming deals, but larger carriers increasingly do not. The situation has become one in which the major carriers hold all the cards in data roaming negotiations—with the result, as OPASTCO reports in its comments, that major carriers have increasingly begun to refuse to enter negotiations for data roaming at all with smaller carriers, or else impose cost prohibitive rates on the service that, in some cases, could cost roaming customers hundreds of dollars.¹⁴ Without a data roaming mandate, smaller wireless

¹² *Fourteenth Report* at 6,

¹³ *Id.* at 147

¹⁴ OPASTCO/NTCA Comments at 4

companies will have no recourse in data roaming negotiations, forcing them to accept terms that will drive customers into the arms of major carriers, and push the overall market towards an inefficient, customer-abusive oligopoly. Data roaming is a critical component needed by virtually every carrier in the industry to be able to compete and expand, lowering market barriers to entry, increasing customer choice in the wireless data sector, lowering prices, and encouraging innovation in the broadband marketplace.

IV. CONCLUSION

As data services become the dominant means by which Americans communicate with each other, Commission oversight to ensure that nationwide wireless broadband remains available from a variety of providers at competitive rates becomes more and more critical. It is essential that the Commission extend the framework already in effect for voice, push-to-talk, and SMS. Only by doing so will the Commission be able to ensure that Americans will enjoy broadband access from the carrier of their choice.

Respectfully submitted,

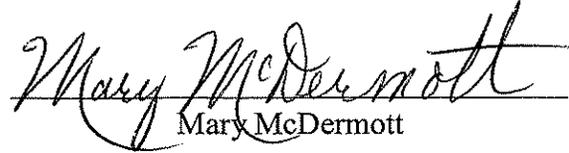
By: 

Mary McDermott
David W. Ranzini
NTELOS
401 Spring Lane, Suite 300
Waynesboro, VA 22980
(540) 946-8677
mcdermottm@ntelos.com

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CERTIFICATE OF SERVICE

I, Mary McDermott, certify that a copy of the foregoing NTELOS Reply Comments in WT Docket No. 05-265 was sent via the U.S. Postal Service to the following parties on this 12th day of July, 2010.


Mary McDermott

Grant B. Spellmeyer
Senior Director, Legislative and
Regulatory Affairs
United States Cellular Corporation
8410 West Bryn Mawr
Chicago, IL 60631

Maria L. Cattafesta
Senior Counsel, Government Affairs
Sprint Nextel Corporation
900 7th Street, NW, Suite 700
Washington, DC 20001

Peter M. Connolly
Holland & Knight LLP
2099 Pennsylvania Ave, NW
Suite 100
Washington, DC 20006-6801

Robert J. Irving Jr.
S.V.P. and General Counsel
Leap Wireless International, Inc.
10307 Pacific Center Court
San Diego, CA 92121

John T. Scott, III
V.P. and Deputy General Counsel –
Regulatory Law
Verizon Wireless
1300 I Street, NW
Suite 400-West
Washington, DC 20005

James H. Barker
Alexánder Maltas
Latham & Watkins LLP
555 11th St. NW
Suite 1000
Washington, DC 20004

Andre J. Lachance
Asst. General Counsel
Verizon Wireless
1300 I Street, NW
Suite 400-West
Washington, DC 20005

Leonard Steinberg
General Counsel and Corporate Secretary
Alaska Communications System, Inc.
600 Telephone Avenue, Suite 500
Anchorage, AK 99503

Charles W. McKee
V.P., Government Affairs
Federal & State Regulatory
Sprint Nextel Corporation
900 7th Street, NW, Suite 700
Washington, DC 20001

Elisabeth H. Ross
Birch, Horton, Bittner & Cherot
1155 Connecticut Avenue NW
Suite 1200
Washington, DC 20036

Thomas J. Sugrue
Kathleen O'Brien Ham
Sara F. Leibman
Indra Sehdev Chalk
T-Mobile USA, Inc.
401 Ninth Street, NW, Suite 550
Washington, DC 20004

Shirley S. Fujimoto
David D. Rines
Fish & Richardson, P.C.
1425 K Street, NW
11th Floor
Washington, DC 20005

Holly Henderson
External Affairs Manager
SouthernLINC Wireless
5555 Glenridge Connector, Suite 500
Atlanta, GA 30342

Michael D. Rosenthal
Director of Legal and External Affairs
Verizon Wireless
5555 Glenridge Connector, Suite 500
Atlanta, GA 30342

Stuart Polikoff
V.P., Regulatory Policy and Business
Development
OPASTCO
2020 K Street NW
7th Floor
Washington, DC 20006

Brian Ford
Regulatory Counsel
OPASTCO
2020 K Street NW
7th Floor
Washington, DC 20006

Howard J. Symons
Jennifer A. Cukier
Julie Babayan
Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo, P.C.
701 Pennsylvania Ave. NW, Suite 900
Washington, DC 20004

Daniel Mitchell
V.P., Legal and Industry
NTCA
4121 Wilson Boulevard
Arlington, VA 22203

Jill Canfield
Senior Regulatory Counsel
NTCA
4121 Wilson Boulevard
Arlington, VA 22203

Rebecca Murphy Thompson
General Counsel
Rural Cellular Association
805 15th Street, NW, Suite 610
Washington, DC 20005

Todd B. Lantor
Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Drive, Suite 1200
McLean, VA 22102

Cathleen A. Massey
V.P., Regulatory Affairs & Public Policy
Clearwire Corporation
1250 I Street, NW
Suite 901
Washington, DC 20005

Erin Boone
Corporate Counsel, Regulatory Affairs
Clearwire Corporation
1250 I Street, NW
Suite 901
Washington, DC 20005

Peter Trachtenberg
Spectrum and Competition Policy
Division
Federal Communications Commission
445 12th Street
Washington, DC 20554

Christina Clearwater
Spectrum and Competition Policy
Division
Federal Communications Commission
445 12th Street
Washington, DC 20554

Nese Guendelsberger
Spectrum and Competition Policy
Division
Federal Communications Commission
445 12th Street
Washington, DC 20554

Best Copy and Printing, Inc.
fcc@bcpiweb.com