

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

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

REPLY COMMENTS OF CLEARWIRE CORPORATION

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INTRODUCTION

Clearwire agrees with the vast majority of commenters urging the Commission to explicitly extend to all mobile broadband Internet access providers the ability to obtain automatic data roaming on a non-discriminatory basis upon reasonable request.¹ As many commenters have demonstrated, the need for an automatic data roaming rule has become more obvious as evidence mounts that market forces alone cannot be relied on to address issues related to requests for data roaming.² The overwhelming majority of commenters agree that the status of today's data marketplace requires that the Commission establish basic rules of the road regarding the standards governing the establishment of roaming agreements among carriers. Clearwire therefore believes that the time is ripe for the Commission to create certainty with regard to carriers' rights to non-discriminatory access to data roaming, including upon the advanced mobile broadband platforms planned for the future.

As the record demonstrates, the FCC has ample authority under Title III and Title I to craft an automatic data roaming requirement that fits comfortably within its existing regulatory framework. The argument by AT&T and Verizon that implementation of an automatic data roaming requirement is impossible under the law ignores the multiple sources of statutory authority available to the Commission.

¹ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, WT Docket No. 05-265, (rel. Apr. 21, 2010) (*Data Roaming FNPRM*).

² *See, e.g.*, Comments of MTA Wireless, Inc., WT Docket No. 05-265 (fil. Oct. 29, 2007) ("MTA Comments") at 3-4; Comments of Rural Cellular Association, WT Docket No. 05-265 (fil. Oct. 29, 2007) at 4.

As the only facilities-based provider of wireless 4G services today, Clearwire acknowledges that neither it nor the Commission can fully anticipate the issues that may arise with regard to data roaming as new, non-CMRS carriers such as Clearwire deploy broadband data services. But Clearwire nonetheless urges the Commission to adopt a presumption, as it did in the voice context, that a mobile roaming request is “reasonable” if it is made by a technically compatible provider. In recognition of the differences between the voice and data markets, however, Clearwire asks that the Commission consider permitting host networks to include in roaming agreements practical rules of the road for addressing network congestion and differing service plans, levels of service, terms of use and network management policies..

Clearwire therefore recommends that the Commission extend basic principles of non-discrimination to data roaming for all mobile broadband Internet access providers, including a requirement that automatic data roaming be provided to other carriers on a just, reasonable and non-discriminatory basis.

DISCUSSION

A. The Record Reflects Widespread Support for the Extension of Non-Discrimination Principles to Data Roaming to Enhance Broadband Deployment and Competition

Twenty-two parties responded to the second further notice of proposed rulemaking and these comments generally fell into two camps: AT&T, Verizon and ACS Wireless³ against the extension of an automatic roaming obligation and every other party in favor. The commenters that are firmly lined up in support of an automatic roaming rule for data services argue that the

³ ACS notes that while it has already entered into data roaming agreements with out-of-market carriers, it refuses to offer 3G data roaming (“advanced data roaming”) to any in-market competitor. Comments of ACS Wireless, WT Docket No. 05-265 (fil. June 14, 2010) (“ACS Wireless Comments”) at 6-7. *See also* Comments of SouthernLINC, WT Docket No. 05-265 (fil. June 14, 2010) (“SouthernLINC Comments”) at 25-26 (citing MTA Comments at 3, 8).

current data roaming market has already failed to provide reasonable data roaming agreements and that market consolidation, increasing consumer reliance on data services, and the convergence of voice and data will exacerbate the problem.⁴ New entrants as well as small and regional players cite market behaviors by the dominant wireless incumbents that include an outright refusal to entertain a data roaming request, or a data roaming proposal that is so unreasonable with regard to its rates, terms and conditions as to constitute a refusal to deal.⁵ Even market powerhouses such as T-Mobile and Sprint stress the necessity of adopting a non-discriminatory data roaming rule to prevent abuses by the dominant carriers.⁶ These commenters make the case that it is imperative that automatic roaming rights attach to both voice and data services. Otherwise, competition in the wireless marketplace will be adversely affected by the inability of all carriers other than the “big two” to secure roaming agreements at reasonable and non-discriminatory rates and terms.

Commenters also provide an ample foundation to support a finding that consumers use and purchase voice and data services interchangeably, demonstrating the need for a seamless roaming experience for all mobile services. Numerous comments point to the convergence of voice and data,⁷ arguing that data services are increasingly being used as a direct substitute for voice services.⁸ Indeed, the Commission itself has noted that “consumers are increasingly

⁴ *E.g.*, Comments of Cincinnati Bell, WT Docket No. 05-265 (fil. June 14, 2010) (“Cincinnati Bell Comments”) at 8-9; Comments of Free Press, WT Docket No. 05-265 (fil. June 14, 2010) at 10-11; SouthernLINC Comments at 25-26; Comments of T-Mobile, WT Docket No. 05-265 (fil. June 14, 2010) (“T-Mobile Comments”) at 5-8, 10-11.

⁵ *E.g.* Cincinnati Bell Comments at 8-9; MTA Comments at 3. 8.

⁶ *See* Comments of Sprint Nextel, WT Docket No. 05-265 (fil. June 14, 2010) (“Sprint Comments”) at 5-6; T-Mobile Comments at 10-11.

⁷ *E.g.*, Comments of United States Cellular Corporation, WT Docket No. 05-265 (fil. June 14, 2010) (“US Cellular Comments”) at 7.

⁸ *E.g.*, T-Mobile Comments at 5, 7.

substituting among voice, messaging, and data services, and, in particular, are willing to substitute from voice to messaging or data services for an increasing portion of their communications needs.”⁹ Furthermore, AT&T, in comments associated with the development of the National Broadband Plan, stressed that “with each passing day, more and more communications services migrate to broadband and IP-based services, leaving the [PSTN] and plain-old telephone service (‘POTS’) as relics of a by-gone era.”¹⁰ AT&T has also argued that transitioning away from the PSTN will be a key component of achieving the goals of the National Broadband Plan.¹¹ These arguments suggest that data services and data infrastructure are not simply compliments to the PSTN universe; they are actively siphoning away communications traffic and customers from PSTN-connected services, and may eventually replace them altogether.

Clearwire agrees with the majority of commenters urging the Commission to extend the obligation for carriers to accommodate reasonable requests for roaming agreements to broadband data services. As noted by many parties, an automatic roaming obligation for data services will enable the development of new wireless services and facilitate entry by smaller players, who will be forced to meet customer expectations of seamless access to data services with the same regularity and ubiquity with which they have enjoyed access to voice services.¹²

⁹ *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, ¶ 8 (May 20, 2010).

¹⁰ Comments of AT&T Inc. on the Transition from the Legacy Circuit-Switched Network to Broadband, GN Docket No. 09-51 (fil. Dec. 21, 2009) at 1.

¹¹ *Id.*

¹² *See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 at ¶ 27 (2007)(2007 Roaming Order).

B. The Commission Has Several Sources of Authority Under Existing Law to Impose Automatic Roaming for Data Services

AT&T and Verizon mount their primary attack against an automatic data roaming requirement by claiming that section 332(c)(2) of the Act absolutely prohibits the imposition of roaming obligations for mobile data services. They argue that, under 332(c), any mobile service that is not interconnected with the PSTN does not meet the definition of a “commercial mobile service” and is therefore a “private mobile service.”¹³ Because 332(c)(2) prohibits common carrier treatment of “private mobile services” for any purpose under the Act, they claim the Commission is prohibited from adopting a data roaming requirement regardless of whether mobile broadband services are classified as “information services” or “telecommunications services.”¹⁴ However, this argument exaggerates the reach of section 332(c)(2) and fundamentally misconstrues Congress’s intent in carving out an exception for “private mobile services.”

Neither mobile data services nor data roaming services are “private mobile services” as that term was intended by Congress. Congress’s underlying purpose in distinguishing between “commercial” and “private” mobile services was to protect isolated, private networks from the full set of common carrier obligations that are associated with utilizing a public network for private profit. Congress intended to exclude only those services that had a *non-public* character such as a cab company’s wireless dispatch service, private business radio services or private paging systems. The definition of “private mobile service” focused on the lack of interconnection with the PSTN because the non-public character of these private services

¹³ Comments of Verizon Wireless, WT Docket 05-265 (fil. June 14, 2010) (“Verizon Comments”) at 19-22; Comments of AT&T Inc., WT Docket 05-265 (fil. June 14, 2010) (“AT&T Comments”) at 12-19.

¹⁴ *Id.*

followed directly from their lack of interconnection with the only public network that was relevant at the time the statute was enacted. Now that a second public network (the Internet) has gained commercial relevance, lacking interconnection with the PSTN is no longer equivalent to having a “private” character. Mobile data services interconnect with this public packet-switched network and are on open sale to the public; accordingly, they cannot be reasonably characterized as “private mobile services.”

Ignoring the clear purpose of section 332(c)(2), AT&T and Verizon create a false dichotomy in which all non-CMRS services and all information services are solely and forevermore “private mobile services,” regardless of their obvious commercial and public nature, and they seek to end the debate at this point.¹⁵ This conclusion is faulty because it disregards the clear purpose of section 332(c)(2) in an effort to preclude examination of other sources of FCC authority to regulate data roaming. Adhering to the actual legislative purpose of these provisions, the Commission has the flexibility to adopt an automatic data roaming requirement under Title III and Title I or to classify the transmission component of mobile roaming as a distinct telecommunications service that is subject to the provisions of Title II.

¹⁵ In fact, the provision of data roaming can reasonably be construed as falling outside Section 332’s dichotomized universe of mobile services because it is *neither* a commercial mobile service *nor* a private mobile service as those terms were intended, and 332(c) is thus wholly inapplicable. Even if this characterization of 332(c) is rejected, section 332(d) merely defines “commercial mobile service” as a public mobile service “interconnected with the public switched network” and directs the FCC to establish the definitions of “interconnected” and “public switched network.” Thus, the Commission is free to update its definitions to capture the post-1996 migration of traffic from the traditional, circuit-switched PSTN to the packet-switched Internet, curing the claimed definitional deficiency barring the automatic data roaming requirement.

1. Sources of Authority Under Title III

Clearwire agrees that Title III provides the Commission ample authority to adopt an automatic data roaming requirement.¹⁶ While Clearwire also agrees with commenters who note that Title III does not provide the Commission with unfettered authority to regulate all elements of wireless service,¹⁷ section 303 provides a firm statutory foundation for the proposed data roaming rule.

As noted by numerous commenters, section 303(b) provides express authority to impose general operational obligations that dictate the characteristics of the offered service.¹⁸ This provision states that the Commission shall “prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class” as public convenience, interest, or necessity requires.¹⁹ While the scope of this grant of authority is not unbounded,²⁰ the general obligation to offer roaming agreements on a reasonable, non-discriminatory basis easily falls within the limits of the provision. “Prescribing the nature of the service” clearly authorizes the adoption of rules that impose general, high-level obligations, and the data roaming requirement is exactly such an obligation. The proposed rule would simply prescribe that the nature of the data roaming service offered by the licensees be just, reasonable, and non-discriminatory.

¹⁶ See *Data Roaming FNPRM* at ¶¶ 66-67.

¹⁷ *E.g.*, T-Mobile Comments at 2.

¹⁸ *E.g.*, Comments of Leap Wireless International, Inc., WT Docket 05-265 (fil. June 14, 2010) (“Leap Comments”) at 11-12.

¹⁹ 47 U.S.C. § 303(b).

²⁰ See Verizon Comments at 40-41.

Furthermore, nothing in the language of this provision requires that such prescriptions be limited to the period before the issuance of the license, as claimed by Verizon.²¹ While the NPRM cited by Verizon does discuss the extent of the Commission's authority under section 303 to adopt rules in the context of allocation proceedings, the Commission in no way suggests that its 303 authority is *limited* to such proceedings. The diverse provisions of section 303 would indeed be puzzling if its scope were so limited. To the contrary, section 303 explicitly provides that the Commission's authority shall be utilized "from time to time,"²² while section 303(r) authorizes the Commission to adopt "such rules and regulations and prescribe such restrictions and conditions . . . as may be necessary to carry out the provisions."²³ Thus, the Act specifically contemplates that the authority granted by section 303(b) will be wielded in rulemakings – not simply allocation and assignment proceedings – that take place after licenses have already been issued.

The express authority granted by section 303(b) is further buttressed by sections 303(g) and 309. Section 303(g) provides that the Commission shall "generally encourage the larger and more effective use of radio in the public interest."²⁴ This is precisely the objective and effect of the proposed data roaming rule, which eases market entry and supports more widespread investment and network deployment, particularly in less populous and rural markets. Furthermore, as noted by Leap Wireless, the Commission has previously based its authority to

²¹ *Id.* at 39-40 (citing *Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use*, 10 FCC Rcd 4796, 4791 (para. 44) (1995)).

²² 47 U.S.C. § 303.

²³ *Id.* at § 303(r).

²⁴ 47 U.S.C. § 303(g).

impose a roaming requirement for CMRS providers on section 309, and the same reasoning would apply here.²⁵

Thus, section 303(b), reinforced by sections 303(g), 303(r), and 309, provide express statutory authority for the Commission to adopt an automatic roaming obligation for mobile broadband services as the public convenience, interest, or necessity requires; a requirement clearly met by the proposed rule, as thoroughly demonstrated in the comments. The Commission is therefore authorized under Title III to impose a data roaming obligation.

2. Sources of Authority Under Title I

The Commission may assert ancillary authority under Title I in furtherance of statutory responsibilities laid out elsewhere in the Act.²⁶ In addition to supporting the statutory responsibilities of Title III noted above, the parties also identify several other provisions to which the imposition of a data roaming requirement may be reasonably ancillary. As many commenters note, the provision of ubiquitous data services is essential to the survival of CMRS providers who offer both voice and data services, and a data roaming obligation is necessary to prevent frustration of the voice roaming scheme authorized by sections 201 and 202.²⁷ For these carriers operating in a voice-saturated market where the demand for data services is skyrocketing, reasonable data roaming arrangements are *essential* if a carrier is to compete. Accordingly, if smaller carriers are unable to obtain reasonable data roaming arrangements, their ability to obtain reasonable voice roaming will be rendered meaningless.²⁸

²⁵ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, Second Report and Order and Third Notice of Proposed Rulemaking (1996) at ¶ 10; Leap Comments at 14.

²⁶ *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010).

²⁷ *E.g.*, SouthernLINC Comments at 24-26; T-Mobile Comments at 12.

²⁸ T-Mobile Comments at 12.

T-Mobile also argues that the data roaming requirement is reasonably ancillary to the Commission's statutory responsibility to promote the interconnectedness and interoperability of common carrier networks under sections 201(a), 251(a), and 332(c)(1)(B).²⁹ T-Mobile stresses that carriers who cannot obtain reasonable data roaming agreements will not be able to compete. As these carriers struggle and fail as a result of the data divide, the interconnectedness among various wireless networks will diminish to the detriment of the public.

Furthermore, SouthernLINC claims that a data roaming obligation is reasonably ancillary to the Commission's responsibility to implement section 255's accessibility policies for the deaf and hard of hearing.³⁰ Without seamless data coverage, deaf and hard of hearing persons, especially those in rural areas, would have trouble accessing these vital services when they need them most.³¹

3. Sources of Authority Under Title II

Since under Title III and Title I there appears to be ample authority for the Commission to regulate data roaming, Clearwire agrees with the recommendation of many commenters that the Commission exercise its existing authority and avoid ensnaring this proceeding in the more general debate regarding the reclassification of broadband Internet services. However, a number of parties also recommend that the Commission denominate mobile roaming as a discrete, wholesale telecommunications service that is subject to Title II even if mobile Internet access remains classified as an information service.³² Cellular South analogizes this proposal to the Commission's consideration of interconnection requirements under Section 251 of the Act,

²⁹ *Id.* at 13-14.

³⁰ SouthernLINC Comments at 27.

³¹ *Id.*

³² *E.g.*, MetroPCS Comments at 22-28.

where the Commission found that “[t]he regulatory classification of the service provided to the ultimate end user [as an information service] has no bearing on the wholesale provider’s rights as a telecommunications carrier to interconnection under section 251.”³³ SouthernLINC also frames data-roaming as a wholesale input to the overarching data service.³⁴

Under this view, data roaming is a basic transmission service (utilizing standard authentication and routing processes) that is segregable from the overarching data transaction.³⁵ As such, the Commission has the authority to regulate this distinct roaming service under Title II. This classification would also avoid any potential conflicts with section 153(44), which Verizon claims is an absolute bar against common carrier treatment of “information services.”³⁶

C. The Commission Should Establish Conditions on Access to Data Roaming to Ensure the Development of Facilities-Based Competition, Establish a Presumption that Requests from a Technically Compatible Providers Are Reasonable and Permit Host Networks to Engage in Reasonable Network Management

1. Conditions on Access to Data Roaming

While Clearwire joins most commenters in embracing an automatic data roaming rule, it also supports the Commission’s proposal to set forth criteria establishing those entities that are qualified to request automatic data roaming under the FCC’s rules. Clearwire agrees with the Commission’s suggestion that conditions roaming access to data services in the same manner as it has with push-to-talk and SMS services: requiring that (1) the requesting provider themselves

³³ Comments of Cellular South, , WT Docket 05-265 (fil. June 14, 2010) at 7-8 (citing *Time Warner Request for a Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, To Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Red 3513, 3520 (para. 15) (2007)).

³⁴ SouthernLINC Comments at 18-22.

³⁵ Metro PCS Comments at 9 n.20, 18-23.

³⁶ Verizon Comments at 32-35.

offer the underlying service for which roaming is requested, (2) roaming be technically feasible, and (3) any changes to the host network necessary to accommodate roaming access be economically reasonable.³⁷ These threshold conditions effectively control the scope of the covered entities so that the data roaming obligation is neither under- nor over-inclusive, which is essential to creating optimal incentives for infrastructure investment. In addition, it meshes a new data roaming requirement with the existing regime established for services ancillary to voice services.

Importantly, these conditions are flexible enough to cover business models that fall outside of the traditional voice-centric framework, while limiting the data roaming entitlement to those providers whose investments are driving the nationwide coverage and robust competition that lie at the heart of the National Broadband Plan. As the mobile broadband market continues to develop, the scope of the data roaming requirement must be flexible enough to accommodate companies utilizing new, innovative business models that promise to drive investment in wireless facilities and provide the innovative services and competitive marketplace that consumers need. At the same time, these conditions can effectively address AT&T's "one-way street" concern that a data roaming requirement would allow any data service provider to resell other networks without building out a network of their own.³⁸ Thus, these threshold conditions create the optimal investment incentives by extending the data roaming entitlement only to those carriers who are driving the mobile broadband build-out that is essential to creating expansive nationwide coverage and competition as envisioned by the National Broadband Plan.

³⁷ *Data Roaming FNPRM* at ¶¶ 87-90.

³⁸ *See* AT&T Comments at 65-66; *See also Data Roaming FNPRM* at ¶ 89 ("[R]equiring a provider to offer a data service on its home network would appear to be an essential element of a request for roaming coverage as opposed to resale.").

However, the Commission should ensure that the technical compatibility requirement is not abused by reluctant host carriers to create artificial barriers to roaming by establishing unnecessarily expensive, overly complex or burdensome back office systems or processes for facilitating data roaming. The determination of technical compatibility may be an invitation for gamesmanship if carriers are allowed to supplement industry standards for roaming with additional, proprietary requirements intended to shield their networks from otherwise reasonable roaming requests. Artificial technical barriers can also drastically increase the cost of roaming, which is then passed on to consumers, and smaller carriers may be priced out altogether. Allowing such abuse would harm consumers by stifling competition, increasing costs, and reducing the availability of seamless roaming coverage.

2. A Presumption of Reasonableness

Clearwire does not support AT&T's arguments that seek to narrow the rights to data roaming only to carriers that offer the host network reciprocity in terms of footprint and capabilities. For example, AT&T asks for the ability to judge whether a roaming request is reasonable based on the "robustness, coverage and capabilities of the *requesting* provider's network, and whether the host provider has an interest in roaming on the requesting provider's network."³⁹ So, to paraphrase, to fashion a reasonable roaming request under this standard, a service provider not only has to be as big as AT&T, but AT&T has to need it as a roaming partner for its own customers. Although, as a facilities-based provider, Clearwire is wary of being faced with a presumption that a mobile broadband roaming request is "reasonable" if it is made by a technically compatible provider, the alternative proposed by AT&T of leaving such judgments to the sole discretion of the requested roaming provider is unacceptable. Under such a standard,

³⁹ AT&T Comments at 60 (emphasis in original).

potential host networks could easily refuse to consider data roaming requests from virtually any service provider except those chosen, in their sole discretion, as a roaming partner. Clearwire therefore agrees with the majority of commenters that the FCC, as it did in the context of voice roaming, presume that a mobile broadband roaming request is “reasonable” if made by a technically compatible provider that meets the criteria outlined above for determining which entities are covered by the automatic data roaming rule.

3. “Reasonableness” Should Permit Host Networks to Engage in Reasonable Network Management

As Clearwire stated in its comments, roaming on data-centric networks creates different challenges than voice roaming because of several obvious factors. Customers use data to support a wide range of applications and devices that place different speed and capacity demands on the network. In addition, data roaming requests may be accommodated differently from voice requests, particularly on greenfield 4G networks such as Clearwire’s. So while Clearwire is in favor of a presumption that a roaming request by a technically compatible provider is reasonable, it urges the Commission to acknowledge the differences between data and voice networks by tempering the definition of what constitutes a “reasonable” request with a number of practical rules of the road permitting the host network to address congestion, security and other significant operational issues.⁴⁰ The Commission asks whether it is sufficient to clarify “that a host provider’s provision of data roaming is subject to reasonable network operations needs.”⁴¹

While such as clarification is a starting point, the Commission should also consider permitting

⁴⁰ AT&T and Verizon raise many of these same concerns, but suggest that the Commission leave it to their judgment regarding whether a roaming request is reasonable. Clearwire urges the Commission to affirmatively acknowledge the reasonableness of these principles so that there is greater certainty and clarity with regard to the negotiation and execution of data roaming agreements.

⁴¹ *Data Roaming FNPRM* at ¶ 81.

host carriers to address in their roaming arrangements important issues such as network congestion, differing terms and conditions of service, and different policies regarding network management and acceptable use.

For example, data consumption by mobile wireless customers has outstripped even aggressive predictions and is only projected to grow. Consequently, host networks may need to manage congestion in certain markets or during certain time periods. To address this concern, host carriers should be permitted to establish in roaming agreements a network management process that gives priority to their own customers during times of congestion while treating all guest traffic equally. This will permit host networks to effectively manage the in-market experience of its own customers and its relationship with its customers while still accommodating roamers. If guest networks are apprised ahead of time that prioritization will occur during times of congestion and if they are made aware of the network management techniques that will be employed by the host network, they can educate their customers regarding the level of service they will receive while roaming.⁴² Prioritization of host data traffic is already a feature of commercially negotiated roamer arrangements both domestically and internationally and should be permitted under an FCC mandated roamer regime as well. In addition, prioritization will encourage guest networks to expand their own networks and facilities to address congestion if they find that their customers are frequently roaming in a market where capacity is constrained.

Second, data roaming agreements should be founded upon basic, best efforts access to the network regardless of whether the guest network has agreed to a higher standard of service for

⁴² Such prioritization could include: (1) manual or dynamic packet prioritization at times and location of congestion; (2) "speed" limits on roaming users; and (3) congestion based pricing. [This is from AT&T's comments. We should reword.]

that customer within its own footprint. To require otherwise would make the entire roaming proposition wholly unmanageable by the host network that has no control over the terms and conditions of service agreed to by the guest network and its customers or the types of devices and applications that the customer will use while roaming. Again, guest networks can educate their customers regarding differences in service levels associated with home and roam markets.

Third, host networks should be able to apply the same network management and acceptable use policies to guest traffic that it has put in place for its own customers, regardless of whether these policies differ from the guest network's. Again, this flexibility is necessary to ensure that data roaming does not become an unmanageable quagmire for host networks since these policies are not uniform among carriers.

Finally, Clearwire notes that none of these conditions are immutable if the guest network and the host network successfully negotiate changes or enhancements to the standard automatic roaming arrangement. As Clearwire notes in its opening comments, it is positioned as a "network of networks" and has several significant wholesale arrangements today with Sprint, Comcast, Time-Warner and Bright House. In addition, Clearwire is continually developing new marketing and distribution channels for its services. Clearwire welcomes the opportunity to enter into more comprehensive wholesale or resale arrangements with roaming partners that would like establish a multi-faceted relationship with Clearwire. What a mandated data roaming arrangement should provide, however, is a basic data roaming relationship that effectively balances the desire of guest networks for data roaming with the host carrier's need for a simple, comprehensive approach to handling roaming subscribers.

4. Prescriptive Rate Regulation is Unnecessary

Clearwire agrees with commenters such as Leap Wireless and T-Mobile that the Commission should adopt a rule requiring wireless carriers to provide automatic data roaming on

a reasonable and non-discriminatory basis to requesting carriers.⁴³ Such a rule would allow the Commission to address complaints on a case-by-case basis when a carrier refuses to enter into data roaming negotiations or demands unreasonably high rates. However, Clearwire disagrees with Bright House Networks and NTCH that the Commission should take the unprecedented step of imposing strict rate regulation.⁴⁴

When addressing the argument that rate regulation should be imposed on voice roaming fees, the Commission found that “the better course . . . is that the rates individual carriers pay for automatic roaming services be determined in the marketplace through negotiations between the carriers, subject to the statutory requirement that any rates charged be reasonable and non-discriminatory.”⁴⁵ The same reasoning applies to data roaming. The market remains free to determine the rates and terms of roaming agreements; but in the event that a carrier behaves in an unreasonable or discriminatory fashion, the Commission maintains the flexibility to consider the unique aspects of the parties and the details of their proposals when it evaluates the complaint.

CONCLUSION

In conclusion, Clearwire recommends that the Commission explicitly extend to all mobile broadband Internet access providers the ability to obtain automatic data roaming on a non-discriminatory basis upon reasonable request. As new, advanced data platforms are eventually deployed, the Commission will need to ensure that incumbent market dominance does not compromise the Commission’s goal of promoting network choice and a rich broadband experience for consumers. Clearwire therefore believes that the time is ripe for the Commission

⁴³ See Leap Comments at 28-29; T-Mobile Comments at 5-6.

⁴⁴ See Comments of Bright House Networks, WT Docket No. 05-265 (fil. June 14, 2010) at 13-14; Comments of NTCH, Inc., WT Docket No. 05-265 (fil. June 14, 2010) at 4.

⁴⁵ 2007 Roaming Order at ¶ 37.

to create certainty with regard to carriers' rights to non-discriminatory access to data roaming, including upon the advanced mobile broadband platforms planned for the future. Clearwire respectfully submits the foregoing comments and asks that the Commission consider the views expressed herein.

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