

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

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 BendBroadband

Bend Cable Communications, LLC d/b/a BendBroadband (“BendBroadband”) submits these reply comments in response to the Second Further Notice of Proposed Rulemaking (“FNPRM”) in the above-captioned proceeding.¹

BendBroadband is a small, locally-run, family-owned cable operator that has served central Oregon since 1955. The company provides service to approximately 35,000 customers in its three franchised service areas in Deschutes County. This is a small market, ranked 192nd in population out of the 210 markets measured by Nielsen.² The area surrounding our franchised areas is even more remote, rural, and underserved. NTIA recently selected BendBroadband to receive a Recovery Act grant to expand our fiber-optic network to deliver next-generation broadband to additional communities in our area. In addition, in late 2009, we continued to update and expand our network and service offerings by launching a 3G Evolved High Speed Packet Access (“HSPA+”) network, which provides mobile broadband service to central Oregon at the fastest speeds available in the United States. While some of the national wireless carriers

¹ *Reexamination of Roaming Obligations of Commercial 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, FCC 10-59 (rel. Apr. 21, 2010) (*Notice*). Reply comments are due on or before July 12, 2010. FCC, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, 75 Fed. Reg. 22338 (Apr. 28, 2010).

² *2009 Television & Cable Factbook*, p. A-7 (Nielsen DMA TV Households Ranking).

offer mobile broadband in central Oregon, the speeds are not yet comparable to what BendBroadband currently offers.

We began implementing our expansion into wireless in 2006, when we participated in the FCC's AWS auction. Since then, we have spent over \$7 million at FCC spectrum auctions to acquire rights to AWS and 700 MHz spectrum that covers approximately one third of the geographic area of Oregon. As mentioned above, in the fall of 2009, we used this spectrum to become the first communications company in the country to deploy the fastest wireless broadband technology on the planet – the HSPA+ wireless protocol with demonstrated lab speeds of up to 21 mbps downstream and 5.6 mbps upstream, and positioned for a seamless upgrade path to Long Term Evolution (LTE) with potential future capacity of 100 mbps.

Many of our customers inside the cable footprint, as well as those newly reached with our “fixed” wireless product, increasingly want broadband mobility. Our service is capable of supporting broadband connectivity for a businesswoman on the nearly 100 mile drive from the rural farming community of Madras through Bend to La Pine, or for a National Forest ranger or state police officer patrolling the hundreds of thousands of remote acres covered by our wireless footprint.

Unfortunately, to date we primarily use our spectrum to offer wireless broadband on a “fixed” basis to customers in rural communities outside of our cable footprint, where wireline broadband is not feasible. Our mobile broadband product is not commercially viable for most consumers primarily because we cannot offer mobility outside of our service area, due to our inability to secure reasonable rates and terms for data roaming.

Therefore, BendBroadband strongly supports the majority of comments already filed in this docket supporting a mandatory roaming requirement on data services as essential for

competition in the wireless market to flourish.³ Consumers increasingly desire data services to be available to them at all times and in all geographic locations, particularly when they travel from home. As the Commission reported earlier this year, “69 percent of American adults used some type of non-voice, mobile data service in April 2009, up from 58 percent in December 2007.”⁴ Mobile data services are in many cases replacing wireless voice services.⁵ Thus, the Commission’s National Broadband Plan correctly established its goal to “[e]xpedit[e] action on data roaming...to achieve wide, seamless and competitive coverage,... and promote entry and competition.”⁶

In order to compete in this data-centric environment, new entrants and other competitive providers of wireless data services require the ability to offer seamless coverage to their customers, but the increasing consolidation of the wireless industry means that the larger, incumbent carriers have less incentive to negotiate reasonable roaming agreements.⁷ T-Mobile notes that although it initially opposed a data roaming requirement, it now recognizes that mandatory roaming requirements should be extended to data services as “[m]arket consolidation in the wireless industry has reduced the number of choices for data roaming partners,” and in

³ See generally Blooston Rural Carriers comments; Bright House Networks comments; Clearwire comments; NTCH comments; Sprint comments; T-Mobile comments.

⁴ *Fourteenth CMRS Competition Report*, FCC 10-81 (2010), at para. 161 citing John Horrigan, *Wireless Internet Use, More Than Half of Americans – 56% - Have Accessed the Internet Wirelessly on Some Device, Such as a Laptop, Cell Phone, MP3 Player, or Game Console*, Pew Internet & American Life Project, July 2009 (survey conducted March 26 - April 19, 2009), at 21-22.

⁵ *Fourteenth CMRS Competition Report* at para. 183 (“[i]ndividual mobile wireless service providers, such as AT&T and Verizon Wireless, confirm that their customers are migrating from voice-centric services to data-centric services. AT&T reported that its network experienced an 18-fold increase in mobile data traffic during the two-and-a-half years after the iPhone was introduced, and that its mobile data traffic increased over four times between June 2008 and June 2009.”)

⁶ National Broadband Plan, Recommendation 4.11.

⁷ See, e.g., Blooston Rural Carriers comments at 7-8; T-Mobile comments at 7-11; Clearwire comments at 1-2; Bright House Networks comments at 8-10; NTCH comments at 2.-3.

order to mitigate the “head start” advantage that larger carriers may have.⁸ Similarly, Bright House Networks points out that as a cable company, it expects to offer customers a “quadruple play” option that competes with the larger carriers’ own bundled offerings, and that the Commission should ensure that the larger carriers are “not able to use lack of access to data roaming as a way to cripple” its competitive services.⁹

BendBroadband’s own experience is that the current price points for data service roaming agreements create very real barriers to entry. Since we are planning to upgrade our network to LTE technology, and due to our inability to enter into a roaming agreement, we have designed and launched a data-only wireless network.¹⁰ In discussions with one potential roaming partner eighteen months ago, we were offered only a combined voice-data roaming agreement; no data-only roaming agreements would be considered. Since we have launched a data only product at this time, the voice roaming component of the agreement would have created a capital and expense burden for us, without any feasible return on investment. The rate offered was approximately \$1 per megabyte. Because the average smartphone user consumes over 1 gigabyte per month, the roaming charge for such a customer under the proposed agreement could

⁸ T-Mobile comments at 7-8.

⁹ Bright House Network comments at 9.

¹⁰ Another significant impediment to our launch of a financially viable mobile data product is the ongoing wireless industry issue of device exclusivity. As Cincinnati Bell notes in its comments in this proceeding, even with the deployment of LTE networks, a mandatory roaming requirement is necessary. Although the development of LTE networks may result in more roaming partners, there is no guarantee that those LTE network providers will offer reasonable roaming arrangements. Moreover, Cincinnati Bell explains that, to roam from a CDMA network to a LTE network will require multi-mode phones, which have not been manufactured yet. However, to the extent that such multi-mode phones will be made, BendBroadband agrees with Cincinnati Bell that manufacturers will likely enter into exclusive agreements with larger carriers for such phones, which will allow the larger carriers’ customers to roam on the LTE networks of smaller or regional carriers, while the smaller carriers’ customers may not have reciprocal ability to offer their customers the option to roam from LTE networks to CDMA networks. *See* Cincinnati Bell comments at 10-11. Therefore, it is important that the Commission require mandatory data roaming even with the advent of LTE and 4G technologies, and to include such advanced technologies in the roaming requirement.

be \$1,000/month or more. Such rates make it financially infeasible for a new entrant such as BendBroadband to enter into data service roaming arrangements. Although BendBroadband has invested a substantial amount of resources into building an innovative wireless network, and has acquired spectrum to deliver sorely needed data services to rural communities in Oregon, we will be unable to meet our customers' needs for mobile data services unless the Commission steps in to assure that roaming agreements be made available on just, reasonable, and nondiscriminatory terms.¹¹

BendBroadband further supports the proposal that the Commission develop “criteria it will use in roaming disputes,” and that the Commission should “be willing to review a provider’s proposed rates to determine if they are reasonable and not unreasonably discriminatory.”¹² The Commission should also review allegations of unreasonable or discriminatory roaming terms, or the mandatory data roaming requirement would be ineffective. Specifically, we support the proposal that the Commission implement an expedited resolution process for roaming complaints,¹³ as this would help to ensure that smaller competitors have the ability to resolve its complaints without expending excessive time, money, and resources – the very barriers to entry that currently exist today without a roaming requirement.

At BendBroadband, we have launched the most innovative wireless network in the United States, and have deployed our wireless network ahead of those incumbent wireless carriers that have similar spectrum holdings. We have designed our network and utilized our spectrum, at least initially, to provide much needed data services to rural customers. However, at present we are unable to utilize our valuable spectrum to present a compelling wireless mobile

¹¹ See, e.g., Clearwire comments at 3.

¹² Bright House Networks comments at 13.

¹³ See Bright House Networks comments at 14.

data product because of unreasonable data roaming and device exclusivity barriers ... barriers imposed by the large incumbent wireless carriers to specifically stifle innovation.

BendBroadband appreciates the Commission's focused examination of these issues, and urges the Commission to take action as soon as possible to impose a data roaming mandate. Given the increasing dominance of a few providers in the wireless market and the Commission's recognition that the "growth of the mobile broadband data market is at a critical early stage," it is paramount that the Commission mandate data roaming on reasonable terms and conditions now so that barriers to entry do not stifle innovative and competitive offerings like BendBroadband's.

Respectfully submitted,

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