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October 15, 2010

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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 October 14, 2010, Mark A. Stachiw, Executive Vice President, General Counsel and Secretary of MetroPCS Communications, Inc. (“MetroPCS”), along with Carl W. Northrop and Michael Lazarus of Paul, Hastings, Janofsky & Walker LLP (“Paul Hastings”), met with Ruth Milkman, Jim Schlichting, Nese Guendelsberger, Paul Murray and Ziaol Sleem of the Wireless Telecommunications Bureau and with Austin Schlick, Andrea Keamez, Christopher Killen and Julie Veach of the Office of General Counsel.

The oral presentations made during the meeting were consistent with the pleadings and *ex partes* filed on behalf of MetroPCS in the above-referenced proceeding. MetroPCS discussed the matters contained in the attached presentation.

In particular, MetroPCS discussed the numerous avenues the Commission has to regulate data roaming under Title II and Title III of the Act. MetroPCS emphasized that the appropriate focal point was for the Commission to consider the service actually being provided by the roaming partner. MetroPCS demonstrated that the service being provided did not include the functions performed by the home carrier, and thus should appropriately be viewed as a simple carrier-to-carrier wholesale service. MetroPCS also emphasized that, while the Commission need not, and should not, classify the wholesale, carrier-to-carrier data roaming service as a private mobile radio service. However, MetroPCS pointed out that if the Commission adopted such a classification, it would not preclude common carrier regulation because data roaming is functionally equivalent to CMRS. MetroPCS advocated that the functional equivalence test be applied by finding that the functions performed by the data roaming partner were indistinguishable from the functions performed in the voice roaming context. MetroPCS explained that such equivalence applied whether the data roaming was as MetroPCS described or with the local breakout. Functional equivalence also could be found considering the economic substitutability of such services. MetroPCS discussed how voice over Internet protocol (“VoIP”) over wireless 3G networks can be considered the functional equivalent of CMRS voice service. Consumers are increasingly using 3G VoIP to replace wireless voice

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usage, limit the number of wireless voice minutes that they must pay for each month and to avoid high voice roaming charges in certain areas.¹ Such 3G VoIP options are not limited to merely a small subset of consumers on one carrier, either. Consumers have a number of options to choose from whether they use the iPhone, Android, BlackBerry or Nokia mobile platform, among others.² Given the increasing use of 3G VoIP telephony, it is clear that this service should be viewed as the functional equivalent of CMRS voice service.³ Indeed, companies are marketing their 3G VoIP services as a substitute to traditional voice service as a means of avoiding roaming charges⁴ – evidence that consumers view voice and data roaming as true economic substitutes for one another (*i.e.*, when the price of voice roaming rises, consumers will switch to 3G VoIP over data roaming for their voice needs).

MetroPCS pointed out that, although consumers already are using 3G VoIP in large numbers to replace their wireless voice needs, voice over data networks is expected to grow as more carriers shift to 4G standards, such as LTE, making voice and data roaming true economic substitutes. Many major carriers have recognized the prospect of building all-data networks, with VoIP voice services merely being additional data traveling along the 4G data network.⁵ Indeed, AT&T has stated that in tomorrow's wireless world "LTE 4G networks will carry both voice and data traffic over the same data network."⁶ These 4G voice products will not simply be third-party applications that run over a carrier's network. Instead, these will be powerful standards-based, carrier-tuned voice services that will be true replacements for traditional voice calling and will be deployed by the carriers in order to obtain the efficiencies associated with having combined voice/data networks.⁷ The global wireless industry is already working to create 4G LTE voice standards, such as VoLTE, in order "to deliver end-to-end voice and SMS for LTE devices, including

¹ See, e.g., Lynette Luna, "Skype's VoIP over 3G app available on iPhone," *FierceBroadbandWireless* (Jun. 1, 2010), available at <http://www.fiercebroadbandwireless.com/story/skypes-voip-over-3g-app-available-iphone/2010-05-31>; Michael Brandenburg, "Agito Brings Enterprise VoIP Over 3G To Combat Roaming Charges," *Network Computing* (Feb. 2, 2010), available at <http://www.networkcomputing.com/wireless/agito-brings-enterprise-voip-over-3g-to-combat-roaming-charges.php> ("Brandenberg Article").

² For example, popular 3G VoIP applications Skype (<http://www.skype.com/intl/en-us/get-skype/on-your-mobile/download/>), VoipStunt (<http://www.voipstunt.com/en/mobilevoip.php>) and TruPhone (<http://www.truphone.com/applications/devices/>) are available on multiple wireless platforms.

³ While in most cases, VoIP is being provided by a third party other than the carrier, the 3G network is being used to originate and terminate the voice calls to the public switched network. It is of no consequence that the carrier only provides a portion of that communication in that the carrier is interconnecting with the facility (the Internet) that is ultimately delivering the call to the public switched network.

⁴ *Brandenberg Article*.

⁵ Marin Perez, "Mobile Heavyweights Look For Voice Over LTE," *InformationWeek* (Mar. 9, 2009), available at <http://www.informationweek.com/news/telecom/voip/showArticle.jhtml?articleID=215801391>.

⁶ AT&T Data Roaming Comments at 66.

⁷ While there are some minor differences in VoIP provided by the carrier and when it is provided by a third party, for the purposes of determining functional equivalence the differences are immaterial.

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defining roaming and interconnect interfaces.”⁸ While 3G VoIP is the functional equivalent of, and an economic substitute for, CMRS voice service, VoLTE and other voice-over-4G services will be truly indistinguishable replacements for the traditional CMRS voice network. Further, MetroPCS mentioned that the industry is working towards VoLTE trials perhaps as early as the first half of 2011, with deployments to begin thereafter.

MetroPCS pointed out that the Commission has ample authority under section 332(a) of the Act to regulate data roaming if the Commission decided that it was not the functional equivalent of CMRS. MetroPCS also noted that the Commission has used other Title III sections to regulate private mobile services.

MetroPCS also discussed the requirements in order for regulation to be considered common carrier regulation. MetroPCS pointed out that in order to be common carrier regulation, an appropriate view is that the regulation just not not be pursuant to Title II. Another view is that the service needs to be offered to the public indiscriminately, the carrier is responsible for the end-to-end service and the rates must be reasonable and nondiscriminatory. MetroPCS discussed the *Midwest Video* case and what that permits the Commission at a minimum to require data roaming on a nondiscriminatory basis without being considered common carrier regulation.

MetroPCS urged the Commission to keep the data roaming proceeding on a fast track. MetroPCS noted in this regard that the Commission need not, and should not, await the outcome of the net neutrality debate and the consideration of the “Third Way” proposal, since the Commission’s authority over data roaming can be established under current precedents and rules. If the Commission does not act swiftly to grant automatic data roaming rights to all technologically-compatible carriers on just and reasonable terms and conditions, it risks having its important voice roaming mandate swallowed up in the shift to data-only voice services. As consumers show a growing reliance on 3G VoIP services as a substitute for traditional voice services, and as carriers eye the shift to an all-data network as 4G standards take hold, the Commission must act to preserve the ability of consumers to roam in a changing wireless world. Prompt action is particularly important so that carriers can make appropriate accommodations for roaming as they design, implement and roll-out their 4G LTE services.

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

⁸ Andrew Mitchell, “Looking to the horizon - 4G voice solutions,” 4G Trends (Sep. 1, 2010), *available at* <http://4gtrends.com/?p=4067>.

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Respectfully submitted,



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of PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: (via email) Ruth Milkman
Jim Schlichting
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Ziaol Sleem
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Christopher Killen
Julie Veach

Attachment

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