

# T-Mobile USA, Inc.

**Data Roaming**  
**WT Docket No. 05-265**

**Ex Parte Presentation**  
**October 22, 2010**



# Overview

## T-Mobile Supports the Commission's Proposal to Extend Automatic Roaming Obligations to Data Services.

- Data roaming is critical to ensure wireless broadband competition.
- The Commission has ample authority to adopt a data roaming rule.
- The Commission can assess the reasonableness of data roaming arrangements by applying factors similar to those adopted in the voice roaming context.

# A Data Roaming Rule Is Critical To Promoting Competition

Consumers today use their wireless devices for more than simply making phone calls.

- Wireless traffic is shifting from voice to data.
- Voice itself is increasingly becoming a data application.
- Consumers expect their wireless devices to operate seamlessly when they travel – regardless of whether they are using voice or data services.

# A Data Roaming Rule Is Critical To Promoting Competition

- In order to compete successfully, carriers must be able to offer customers data roaming just as they can voice roaming.
- The Commission has recognized that all carriers need roaming to provide seamless service.
- It was for these reasons that the Commission found it in the public interest for wireless providers to honor voice roaming requests.

# A Data Roaming Rule Is Critical To Promoting Competition

The National Broadband Plan recognized the importance of a data roaming obligation.

- The Plan recognized that few, if any, carriers provide “ubiquitous nationwide service entirely through their own facilities” – particularly in rural areas.
- The Plan found that data roaming is in the public interest because it facilitates entry and promotes competition for mobile broadband services.
- The Plan concluded that a data roaming rule was necessary to ensure that customers can obtain access to e-mail, the Internet and other mobile broadband services outside the geographic regions served by their providers.

# A Data Roaming Rule Is Critical To Promoting Competition

- Market consolidation has reduced the number of choices for roaming partners and has strengthened the market position of the two largest providers.
- Absent Commission oversight, data roaming will not be provided at reasonable rates, terms and conditions, diminishing competition.
- A data roaming requirement would benefit consumers in rural areas by
  - ensuring that customers of small rural providers can roam outside their home area
  - promoting facilities based investment by rural carriers by ensuring that they can offer competitive services that include roaming capabilities
  - where facilities based investment is not sensible, allowing carriers to provide service

# Assessing the Reasonableness of Data Roaming Arrangements

- In the voice roaming context, the Commission established a presumption that all roaming requests are reasonable.
- It imposed the following factors on push-to-talk and SMS services, which should be applied to requests for data roaming:
  - The requesting provider must provide the underlying service with its own facilities and spectrum.
  - Roaming must be technically feasible.
  - Changes to the host network must be economically reasonable.

# Assessing the Reasonableness of Data Roaming Arrangements

- The starting point should be that the same presumption and factors for voice roaming should apply to data roaming, but with some deletions and additions.
- *Deletions* from voice roaming factors:
  - the extent and nature of the requesting carrier's build-out in areas where it holds spectrum rights should not be relevant.
  - the alleged impact on investments in network facilities is demonstrably without basis and should not be considered.
- *Additions* to voice roaming factors:
  - the price, terms, and conditions on which a host carrier is providing data roaming to other carriers.
  - the price, terms, and conditions on which the host carrier is providing voice roaming to the requesting carrier and to other carriers.
  - whether the host carrier's financial terms are so unreasonable as to be tantamount to a denial of roaming.
  - the length of time the negotiations have continued without agreement .
  - whether the requesting carrier can secure data roaming arrangements in surrounding areas.

# The Commission Has Ample Authority To Adopt a Data Roaming Rule

## ■ Title I

- The Commission may exercise ancillary authority under Title I, even after the *Comcast* decision:
  - if the matter falls within the Commission’s jurisdiction over wire or radio communications; and
  - if the regulation is reasonably ancillary to the effective performance of the Commission’s statutorily mandated responsibilities.
- Roaming is clearly within the Commission’s jurisdiction over radio communications.
- A data roaming rule is reasonably ancillary to the FCC’s Title II authority to ensure interconnection among common carriers in general and CMRS providers in particular.
- Without access to data roaming, a carrier’s right to obtain voice roaming will be rendered increasingly meaningless.
- A data roaming rule is reasonably ancillary to the FCC’s Title II authority to ensure the reasonableness of CMRS rates and a competitive CMRS marketplace.
  - Voice applications over data services will increasingly compete with traditional common carrier voice offerings of CMRS providers
- A data roaming rule is reasonably ancillary to the FCC’s Title III authority to facilitate the larger and more effective use of the radio spectrum, an obligation not limited to carrier services.

# The Commission Has Ample Authority To Adopt a Data Roaming Rule

## ■ Title III

- While the Commission's direct Title III authority is not limitless, in this case the Commission's statutory duties and the public interest support the proposed rules.
- In particular, the Commission has direct authority to adopt a data roaming rule under its plenary Title III authority over radio communications to:
  - prescribe the nature of services
  - make rules as may be necessary to carry out the provisions of the Act
  - serve the public convenience, interest, or necessity
  - promote the public interest.
- The Commission's prior classification of roaming as a common carrier service does not preclude its exercise of Title III authority to extend roaming to wireless data services.
- The FCC's Title III authority is not affected by whether the underlying service is a telecommunications service or information service, or CMRS or PMRS.

# Data Roaming is not a Private Mobile Radio Service

- Data roaming is *CMRS* because it allows carriers to offer users the capability to interconnect with the PSTN.
  - The Commission has made it clear that the service itself need not interconnect with the PSTN or that interconnection with the PSTN occur every time the service is used.
  - A service is interconnected if it permits a consumer to reach the PSTN.
  - Data roaming meets these tests.
- Even if data roaming is not deemed to be interconnected, it is still the functional equivalent of *CMRS*.
  - The functional equivalence test relies heavily on consumers' expectations.
  - Consumers should not have to be engineers or telecommunications lawyers to distinguish between services covered by the roaming rule and those that are not. -- Commissioner Copps
- Not all common carrier wireless offerings need be *CMRS*.
  - Such offerings may include carrier-to-carrier transport service.

**Thank you!**

