



Charles W. McKee
Vice President
Government Affairs - Federal & State Regulatory

Sprint Nextel
Suite 700
900 7th Street, NW
Washington, DC 20001

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Via Electronic Submission

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: ***Ex Parte Communication***
Intercarrier Roaming, WT Docket No. 05-265

Dear Ms. Dortch:

Sprint reiterates its strong support for the Commission's extension of the automatic roaming obligation to all mobile data services to help satisfy consumer expectations for seamless, ubiquitous service nationwide and to promote mobile broadband deployment and competition.

In the event that the Commission adopts an automatic data roaming requirement, however, AT&T requests that the Commission carve out an express "safe harbor" permitting host carriers to prioritize traffic for their own customers in times of congestion. According to AT&T, prioritization methods include, but are not limited to: (1) manual or dynamic packet prioritization at times and locations of congestion; (2) limiting roaming users to 2/2.5G networks at times and locations of congestion; (3) "bandwidth" limits on roaming users; and (4) congestion-based pricing.¹

As a general matter, Sprint maintains that all wireless carriers should be free to engage in reasonable and not unreasonably discriminatory network management practices as necessary to alleviate data traffic congestion. Carriers have a variety of network management tools at their disposal for this purpose and should maintain flexibility to use them as appropriate. Sprint believes, however, that AT&T's proposed exception is unnecessary and could be exploited to conceal anticompetitive conduct.

¹ AT&T Reply Comments at 43.

As long as the Commission extends the protections of Sections 201, 202, and 208 of the Communications Act to automatic data roaming services, host carriers will have a standing obligation to provide automatic data roaming at just and reasonable rates and on not unreasonably discriminatory terms and conditions. Prioritizing traffic as AT&T describes is a form of discrimination. Since Section 202(a) permits only reasonable discrimination, the issue is whether AT&T's proposed prioritization is reasonable. This is necessarily a factual determination that will vary depending on the specific circumstances of any given situation.

By requesting this exception, AT&T essentially is asking the Commission to deem this type of discrimination reasonable under all circumstances without any fact-based analysis. Making such a blanket pre-determination removes the threat of potential scrutiny and therefore effectively gives a host carrier license to exploit the exception and engage in anticompetitive behavior. For example, a host carrier may be more apt to downgrade the service quality for roamers using the congestion justification, regardless of whether congestion exists or not. An investigation into what is reasonable in a particular situation, however, would likely reveal whether a host carrier is using this type of prioritization to engage in anticompetitive conduct.

Therefore, Sprint urges the Commission to reject AT&T's proposal and ensure that the protections of Section 201, 202 and 208 (or an equivalent obligation imposed under Title III) attach to any automatic data roaming requirement it adopts. Moreover, to help protect against unreasonable discrimination and potential anticompetitive abuse, Sprint respectfully requests the Commission to clarify that host carriers must offer the same levels or tiers of service they offer to their own customers (*e.g.*, best efforts up to premium tier services) to home carriers requesting automatic data roaming services.

Pursuant to Section 1.1206 of the Commission's rules, this letter is being electronically filed with your office. Please let us know if you have any questions regarding this filing.

Respectfully submitted,

/s/ Charles W. McKee
Charles W. McKee
Vice President
Government Affairs – Federal & State Regulatory

Maria L. Cattafesta
Senior Counsel
Government Affairs