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VIA ELECTRONIC FILING

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

Re: **EX PARTE PRESENTATION**

WT Docket No. 05-265

Dear Ms. Dortch:

Unlike virtually every other wireless carrier, numerous consumer groups, and other participants in this proceeding, AT&T continues to oppose the adoption of even modest, tailored rules to ensure that data roaming is available on just, reasonable, and non-discriminatory terms and conditions.[1/] As demonstrated below, AT&T's latest arguments are without merit. The Commission should proceed promptly to extend its voice roaming rules to data roaming.

As a threshold matter, AT&T repeats its claim that a data roaming rule is not necessary because roaming agreements for all types of data services, including 3G services, are currently being negotiated.[2/] T-Mobile takes issue with that statement. While there may be isolated instances of such agreements and recent overtures by AT&T to negotiate with carriers,[3/] there can be no doubt that the adoption of a regulatory framework for such agreements is necessary to facilitate negotiations and promote competition and consumer choice for wireless broadband services. The increasing concentration in markets for roaming services, which has reduced the number of potential roaming partners (to one in most markets where T-Mobile is seeking to roam) has made the need for such a framework critical.

1/ *See* Letter from Michael Goggin, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed Nov. 23, 2010) ("*AT&T November 23 Ex Parte*").

2/ *Id.* at 1.

3/ *See, e.g.*, Letter from Jeanine Poltronieri, Assistant Vice President, External Affairs, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed Nov. 3, 2010). *See also* Letter from Howard J. Symons, Counsel to T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265, at 1 (filed Nov. 9, 2010).

AT&T next repeats its earlier claim that extending the data roaming rule to a requesting carrier's home markets will create disincentives for network buildout,[4/] but the Commission has already eliminated the home roaming exclusion for voice services upon a finding that "building another network may be economically infeasible or unrealistic in some geographic portions of licensed service areas."[5/] Contrary to AT&T's assertions, the Commission specifically determined that home roaming does *not* cause carriers to forgo investments in their own networks. In fact, the Commission found that "in certain circumstances the [home roaming] exclusion can hinder the development of . . . competition and create *dis*incentives to construction,"[6/] and that "[c]arriers deploying next generation networks will still have incentives to build out to ensure that their subscribers receive all of the benefits of the carriers' own advanced networks."[7/]

These findings apply four-square in the data roaming context. As T-Mobile has previously noted, the high cost of roaming creates a strong incentive for carriers to build out their own networks wherever economically feasible rather than rely on roaming from other carriers.[8/] It is for this reason – and not because we seek "excessive" roaming rights[9/] – that T-Mobile has previously argued that the particular stage of a home market buildout should not be considered relevant to the reasonableness of a roaming request. Allowing a would-be host carrier to resist a roaming request on the basis of the host carrier's subjective evaluation of the requesting carrier's buildout will simply give the host carrier an excuse to delay or deny reasonable roaming requests.

AT&T's argument that the Commission should take a different approach to home roaming in the data context – despite the Commission's strong rejection of AT&T's arguments only seven months ago with respect to voice roaming – is also unavailing. AT&T says that "[m]andated data roaming . . . would inevitably lead wireless broadband providers to postpone, reduce or forego. . . network investments."[10/] As noted above, however, the FCC rejected this precise argument, and AT&T provides no justification for why it should not be rejected again. The fact that there is a looming spectrum shortage does not affect any of the reasons that the FCC eliminated the home roaming exclusion. The Commission will not, as AT&T alleges, be handing "wireless broadband providers a powerful reason not to make market-driven investments in building out their networks and improving spectral efficiency in areas where they already hold spectrum."[11/] Carriers will have no less incentive to build out data networks than

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4/ *AT&T November 23 Ex Parte* at 4-5.

5/ *See Reexamination of Roaming Obligations of Commercial Mobile 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, 25 FCC Rcd 4181, ¶ 23 (2010).

6/ *Id*. at ¶ 21 (emphasis added).

7/ *Id*. at ¶ 32.

8/ Reply Comments of T-Mobile USA, Inc., WT Docket No. 05-265 (filed July 12, 2010), at 14.

9/ *Cf. AT&T November 23 Ex Parte* at 6.

10/ *Id*. at 6-7.

11/ *Id*. at 7.

they do to build out voice networks – if anything, the incentives to build are even greater given the increasingly data-centric nature of wireless traffic. And again, the Commission has already determined that those incentives are unaffected, and in some cases enhanced, by a home roaming requirement.

As T-Mobile has also previously explained, a data roaming rule will *promote* the Commission's goals of encouraging investment and jobs. By ensuring the availability of data roaming on just, reasonable, and non-discriminatory terms, for instance, a roaming rule will enable T-Mobile to invest in new facilities in smaller markets that would not be economical to build out unless T-Mobile could use roaming to serve the adjacent more sparsely populated areas. The availability of data roaming will also promote additional investment in T-Mobile's existing footprint, to meet the increased demands of a larger subscriber base that it could attract by virtue of being able to provide service in areas where it has not yet built out. In both cases, the increased investment will create jobs related to the construction and operation of the new facilities. The enhanced productivity that wireless users will realize from the competitive choice from among multiple providers of mobile high speed broadband will also benefit the economy.

The Commission should also reject AT&T's suggestion that a roaming requirement will lead to roaming carriers' inefficient use of spectrum. As T-Mobile has demonstrated, it is committed to continuing to build out its network and making the most efficient use of its spectrum. T-Mobile's HSPA+ technology offers theoretical download speeds up to 21 Mbps and upload speeds of up to 5.7 Mbps, and next year T-Mobile is planning to upgrade the network to support even faster speeds (theoretical speeds of 42 Mbps) and double the average data rates. T-Mobile has ample incentive to use its spectrum efficiently in order to provide better service to more customers and compete more effectively with carriers that have far more spectrum than it does. AT&T cites the recently issued FCC *Mobile Broadband White Paper*[12/] to support its claims regarding the purported spectral inefficiency of roaming and its demand for a home roaming exclusion, but this is a fundamental misreading of the *Mobile Broadband White Paper*. The *Mobile Broadband White Paper* does not suggest that efficiency requires the buildout of wireless networks in areas where it is not economically sound to do so; indeed, such a requirement would be the definition of *in*efficient investment. Rather, the focus of the *Mobile Broadband White Paper* is on the need for carriers to ensure that wireless networks offer the maximum possible transmission speeds.[13/] T-Mobile takes steps to do just that.

Finally, AT&T also argues that "[roaming agreement] terms that fail to take due account of network congestion concerns could compromise the quality of the services a carrier provides to its own customers, and compromise its ability to engage in proper network planning."[14/] This

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[12/] FCC Staff Technical Paper, *Mobile Broadband: The Benefits of Additional Spectrum*, October 2010 ("*Mobile Broadband White Paper*").

[13/] *See Mobile Broadband White Paper* at 14 ("The most important dimension of wireless network performance is spectral efficiency, typically measured in bits per second per Hertz. This metric reflects the amount of data a sector can transmit on a normalized time/bandwidth basis.").

[14/] *AT&T November 23 Ex Parte* at 4.

argument is also misplaced. As T-Mobile has explained previously, roaming agreements generally include a provision giving the host carrier the ability to suspend roaming service if roaming becomes impracticable for reasons such as system overload, system outage, or other operational or technical issues.[15/] Thus, to the extent data roaming results in any actual congestion issues, such an event can be addressed in the roaming agreements themselves. As T-Mobile has cautioned, however, if the Commission were to recognize a host carrier's right to suspend or manage roaming traffic to limit congestion, it must also make clear that the host carrier may not insist on suspension or management rights that have the intent or effect of undermining or frustrating its obligation to provide roaming on just and reasonable terms and conditions.[16/]

Sincerely,

/s/

Kathleen O'Brien Ham
Vice President, Federal Regulatory Affairs

cc: (all via e-mail)
Rick Kaplan
John Giusti
Angela Giancarlo
Charles Mathias
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Paul Murray

15/ *See* Letter from Howard J. Symons, Counsel to T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265, at 1 (filed Nov. 2, 2010).

16/ *Id*.