



The Voice of Rural & Regional Carriers

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January 31, 2011

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: WT Docket No. 05-265
Ex Parte Notification**

Dear Ms. Dortch:

Rural Cellular Association (RCA)¹ submits this *ex parte* notice in response to Verizon Wireless' January 18, 2011 *ex parte* notice² and Federal Communications Commission (FCC or Commission) meeting on the need for a data roaming mandate. Based on overwhelming support in the record,³ RCA again urges the FCC to immediately adopt a data roaming mandate. Despite Verizon Wireless' claims, RCA members continue to experience difficulties obtaining data roaming agreements with reasonable terms and rates from the large national carriers in the absence of a data roaming mandate. An automatic data roaming obligation is essential to preserving and promoting competition, innovation and investment in wireless data services and wireless networks.

On November 12, 2010, RCA and the Rural Telecommunications Group (RTG)⁴ filed an *ex parte* notice with the Wireless Telecommunications Bureau (WTB) of the FCC, providing specific examples of anticompetitive behavior experienced by their respective members when attempting to obtain data roaming agreements with AT&T and/or Verizon Wireless.⁵ In response, Verizon Wireless claims that 47 of its 65 active roaming partners are RCA members, and that one fourth of its active

¹ RCA is an association representing the interests of nearly 100 regional and rural wireless licensees providing commercial services to subscribers throughout the Nation and licensed to serve more than 80 percent of the country. Most of RCA's members serve fewer than 500,000 customers.

² *Ex Parte* Letter from Tamara Preiss, Vice President, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary of the FCC, WT Docket No. 05-265 (filed December 1, 2010).

³ Cellular South Comments, filed in WT Docket No. 05-265 (June 14, 2010); Blooston Rural Carriers Comments, filed in WT Docket No. 05-265 (June 14, 2010); U.S. Cellular Comments, filed in WT Docket No. 05-265 (June 14, 2010); Leap Wireless International and Cricket Communications Comments, filed in WT Docket No. 05-265 (June 14, 2010); SouthernLINC Comments, filed in WT Docket No. 05-265 (June 14, 2010); Sprint Comments, filed in WT Docket No. 05-265 (June 14, 2010); T-Mobile Comments, filed in WT Docket No. 05-265 (June 14, 2010); Bright House Networks Comments, filed in WT Docket No. 05-265 (June 14, 2010); Media Access Project Comments, filed in WT Docket No. 05-265 (June 14, 2010); OPASTCO & NTCA Comments, filed in WT Docket No. 05-265 (June 14, 2010); Rural Telecommunications Group Comments, filed in WT Docket No. 05-265 (June 14, 2010); MetroPCS Comments, filed in WT Docket No. 05-265 (June 14, 2010).

⁴ RTG is a trade association representing rural wireless carriers who serve less than 100,000 subscribers. RTG's members have joined together to speed delivery of new, efficient and innovative telecommunications technologies to remote and underserved communities.

⁵ See *Ex Parte* Letter from Rebecca Murphy Thompson, RCA General Counsel, and Caressa D. Bennet, RTG General Counsel, to Marlene H. Dortch, Secretary, FCC, filed in WT Docket No. 05-265 (Nov. 12, 2010).

roaming partners either have not requested data roaming or made initial inquiries but then stopped actively seeking data roaming.

While it may be true that 47 of RCA members are active roaming partners with Verizon Wireless, RCA wonders how many of its 47 members are active *data* roaming partners, which was the subject of RCA and RTG's joint *ex parte* notice. RCA is also curious about the square mileage that these data roaming agreements cover and whether these data roaming agreements cover only areas where Verizon Wireless' network does not reach. RCA wonders how many of these active roaming partners are independently owned and operated from Verizon Wireless, with no equity or infrastructure assistance from Verizon Wireless. RCA further wonders how many of these roaming agreements are equitable, reasonable, and reciprocal and whether Verizon would be willing to share the details of these agreements with the FCC and RCA.

While it also may be true that some RCA members have stopped or delayed actively seeking data roaming agreements with Verizon Wireless, this is a result of Verizon Wireless' negotiation tactics, delaying negotiations for months at a time. At least one RCA member spent up to 18 months negotiating a roaming agreement with Verizon Wireless.⁶ In an increasingly consolidated and decreasingly competitive wireless market, a year and a half is an unreasonable amount of time to negotiate a roaming agreement for the benefits of rural consumers. Verizon Wireless' delay in responding to roaming requests forces RCA members to seek other alternatives to offer service outside of their service territories, including sale to a larger competitor.⁷ Additionally, RCA members may have stopped actively seeking data roaming agreement with Verizon Wireless because Verizon Wireless does not offer data roaming at fair and reasonable terms and conditions, as RCA members have requested. To prevent this, the FCC should require that all data roaming terms and conditions must be just and reasonable and that host carriers may not include any unreasonably discriminatory terms or conditions in their data roaming arrangements.⁸ In addition, RCA recommends that the Commission adopt a standardized roaming agreement negotiation process to promote the efficient and reasonable negotiation of automatic roaming agreements between carriers.⁹

In its *ex parte* notice, Verizon Wireless states that it has entered into EVDO data roaming agreements with nine additional roaming partners, eight of whom are RCA members. RCA is pleased that, since providing evidence on the record about its members' difficulties securing data roaming agreements with Verizon Wireless and AT&T,¹⁰ Verizon Wireless has begun entering into EVDO roaming with RCA members. Nevertheless, due to Verizon Wireless' market dominance, RCA members are forced to enter into agreements with unreasonable terms and conditions, which is why a data roaming mandate is necessary. Even if Verizon's numbers are correct, leaving 30% of RCA carrier members' roaming needs unmet¹¹ is an unacceptable policy outcome and suggests that market forces are

⁶ See *Ex Parte* Letter from Rebecca Murphy Thompson, RCA General Counsel, and Caressa D. Bennet, RTG General Counsel, to Marlene H. Dortch, Secretary, FCC, filed in WT Docket No. 05-265 (Nov. 12, 2010); see also RCA Comments, filed in WT Docket No. 05-265 (June 14, 2010) (RCA Comments); see also RCA Reply Comments, filed in WT Docket No. 05-265 (July 12, 2010) (RCA Reply Comments).

⁷ See *Ex Parte* Letter from Rebecca Murphy Thompson, RCA General Counsel, and Caressa D. Bennet, RTG General Counsel, to Marlene H. Dortch, Secretary, FCC, filed in WT Docket No. 05-265 (Nov. 12, 2010).

⁸ See RCA Comments at 15-17.

⁹ See *Id.* at 17.

¹⁰ See *Ex Parte* Letter from Rebecca Murphy Thompson, RCA General Counsel, and Caressa D. Bennet, RTG General Counsel, to Marlene H. Dortch, Secretary, FCC, filed in WT Docket No. 05-265 (Nov. 12, 2010).

¹¹ *Ex Parte* Letter from Tamara Preiss at 2, Vice President, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary of the FCC, WT Docket No. 05-265 (filed December 1, 2010).

not solving RCA members' roaming challenges. Further, RCA questions the speed of these EVDO agreements, and whether these agreements are truly 3G data roaming agreements.

The Commission should not accept the presence of some roaming agreements as evidence that market forces are "sufficient"¹² to ensure rural and regional carriers have access to data roaming with the large carriers. To compete with the national carriers, a smaller carrier may be forced to enter into an agreement that is neither fair nor reasonable to continue to provide services to a data customer. It is also likely that the increased negotiations and agreements, as Verizon Wireless claims, may be the result of the Commission's continued interest in the anticompetitive roaming practices of the largest two carriers and RCA's continued pressure for resolution. The record in this proceeding clearly demonstrates the need for a data roaming mandate. With the exception only of AT&T and Verizon Wireless, the entire wireless industry and the public interest community agree with the National Broadband Plan that an automatic data roaming obligation is in the public interest.¹³ The fact that so many carriers are seeking roaming agreements with AT&T and Verizon Wireless reflects smaller carriers' urgent need for data roaming capability. Without the details of the roaming agreements Verizon describes in its *ex parte* notice, neither RCA nor the FCC can be sure these agreements are 3G data roaming agreements negotiated with fair and reasonable terms and conditions. Immediate action on the FCC's data roaming item, imposing a requirement of automatic data roaming at fair and reasonable terms, will ensure that all consumers have access to data services that they expect and deserve.

For all the reasons discussed above, RCA continues to urge the Commission to adopt a data roaming mandate.

Sincerely,



Rebecca Murphy Thompson
General Counsel

cc: Ruth Milkman
Tom Peters
Nese Guendelsberger
Peter Trachtenberg
Tamara Preiss

¹² *Ex Parte* Letter from Tamara Preiss, Vice President, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary of the FCC, WT Docket No. 05-265 (December 1, 2010).

¹³ *See Ex Parte* Letter from James H. Barker, Counsel for Leap Wireless International, Inc. and Cricket Communications, Inc., to Marlene H. Dortch, Secretary, FCC, filed in WT Docket No. 05-265 (Oct. 27, 2010).