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BY ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Communication, **WT Docket No. 05-265**

Dear Ms. Dortch:

T-Mobile's February 2, 2011 ex parte presentation in this proceeding makes it abundantly clear why no new regulatory roaming requirements are necessary given the record now pending before the Commission. T-Mobile chastises the Commission for not moving more quickly to impose new data roaming requirements. But the Commission's caution here, and continued careful review of the record now developed, is well warranted and appropriate. Indeed, the Commission's deliberate review is fully consistent with President Obama's recent pronouncement that new federal regulations should be cost-effective, transparent, simplified, and, most importantly, necessary. In this case, it is clear that even if the Commission had legal authority to impose new mobile broadband regulation, such regulation is not only unnecessary, it would be inimical to the public interest.

At the start of this proceeding, T-Mobile and others advocated that the Commission needed to ensure that broadband data roaming was available. T-Mobile now readily admits that it has effective voice and data roaming arrangements already in place, stating that today it relies on roaming arrangements to serve 6% of its total covered pops to provide ubiquitous voice and data service to more than 95% of the total nationwide population. AT&T is, in fact, one of T-Mobile's largest roaming partners. And despite T-Mobile's attempt to define 2007 as some sort of watershed in voice roaming arrangements, AT&T and T-Mobile had voice roaming agreements with one another long before the Commission's 2007 Roaming Order, dating back to the first deployments of GSM services.

T-Mobile also admits that it already has a data roaming agreement with AT&T that allows T-Mobile to roam on AT&T's 2/2.5G networks. Again, the parties have had data roaming agreements in place for many years, despite the absence of any regulatory compulsion. As the record makes clear, such 2G data roaming arrangements are now ubiquitous, and were reached widely throughout the industry on mutually agreeable terms without any regulatory oversight.

T-Mobile further admits that AT&T has in fact offered to amend the parties' current data roaming agreement to include roaming on AT&T's HSPA and HSPA+ broadband data networks. T-Mobile states that the parties have "not been able to agree," which appears to be a rejection by T-Mobile of our proposal (although it has not officially sent a business-to-business rejection to our roaming team). Thus, T-Mobile's complaint that it cannot currently offer any 3G data roaming service in any area on which they rely on our coverage is a result of its own making. T-Mobile remains free to return to the negotiating table or accept the broadband data roaming proposal we made at any time. But on one point there can no longer be any dispute: T-Mobile and AT&T have engaged in negotiations for a broadband data roaming arrangement.

As the full record of this proceeding now makes clear, the question pending before the Commission is no longer whether broadband data roaming is available – it is. The question has now become whether the Commission is going to insert itself into the commercial negotiation process in a way that it never has before to dictate the terms, conditions and even rates that one carrier can charge another. In short, having achieved broadband data roaming availability, what T-Mobile and others now want is for the Commission to regulate roaming rates. Such a move, as argued extensively elsewhere in this record, would be unprecedented, unwarranted and unwise.

T-Mobile also argues that data roaming will promote network investment and create jobs. That statement is demonstrably false. Broadband is the great infrastructure challenge of the 21st century and the National Broadband Plan is replete with policy recommendations to incent carriers to make network investments in broadband networks, particularly in rural and hard to serve areas. T-Mobile notes that it recently announced that it will add approximately 5,000 new cell sites, enabling it to provide facilities-based service to more than 290 million potential customers by 2013. AT&T is likewise adding about 2,000 cell sites a year and is investing billions this year on an accelerated LTE network build that will largely be complete by the end of 2013. Competition is driving these investment decisions, and, notably, these decisions are being made despite the lack of any unwarranted broadband data roaming mandate.

Roaming arrangements simply allow a carrier to make the economic choice *not* to invest in its own network but rather to rely on another carrier's investment to provide service to their customers. T-Mobile itself has argued that there are markets where it is not economical to build (i.e., rural and hard-to-serve areas) and that roaming arrangements help a carrier provide its customers coverage in those areas. Indeed, given T-Mobile's plan to cover 290 million potential customers with its own facilities, these hard-to-serve areas are likely the very areas for which T-Mobile will continue to seek roaming coverage. But in these hard-to-serve areas, it is particularly important that the market – not regulators -- dictate rates, terms and conditions so

that carriers facing the difficult choice of whether to invest in broadband infrastructure in these markets can expect to achieve a reasonable return on investment.

Every carrier faces tough economic choices regarding the question of whether to make network investments or rely on another carrier's coverage. Despite T-Mobile's assertion to the contrary, AT&T continues to rely on roaming partners in many markets. And the record now makes clear that T-Mobile can, at its option, obtain an amendment to its current roaming agreement that will allow it to rely on AT&T's mobile broadband data networks where we offer coverage but it does not.

In accordance with the Commission's rules, this letter is being filed electronically with the Secretary for inclusion in the public record.

Sincerely

A handwritten signature in black ink, appearing to read 'JM', followed by a horizontal line extending to the right.

Joan Marsh

cc via email:

Rick Kaplan
Josh Gottheimer
Ruth Milkman
Jim Schlichting
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Nese Guendelsberger
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