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VIA ELECTRONIC FILING

Hon. Julius Genachowski
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

Dear Chairman Genachowski:

In a follow-up to your recent telephone call with Philipp Humm, Chief Executive Officer and President of T-Mobile USA, Inc. (“T-Mobile”), we provide the following information supporting adoption of the FCC’s proposed data roaming rule. This letter summarizes the extensive factual support for the adoption of such a rule that T-Mobile has placed in the record of this proceeding.

As demonstrated below, a data roaming rule is timely and necessary given the explosive growth in data traffic. Consolidation in the wireless industry – specifically acquisition of many regional carriers by AT&T and Verizon – has reduced the total number of potential roaming partners. T-Mobile and other carriers in this proceeding have demonstrated difficulties in securing data roaming arrangements on reasonable terms. Adoption of a data roaming rule will provide important consumer benefits and will address the limited but critical need for government oversight necessitated by these developments. Far from deterring investments in new wireless facilities, a data roaming rule will promote competition and enhance investment and job creation as it encourages network build-out without imposing congestion on host networks.

Growth In Data Traffic Compared To Voice

As data traffic grows to become a critically important part of mobile communications, data roaming is needed to spur wireless carriers’ investment in their networks while enabling them to offer seamless coverage for their customers.^{1/} The Commission’s *Wireless Competition*

^{1/} See, e.g., *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd 11407 (2010), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-81A1.pdf (“*Wireless Competition Report*”) at 75-76; T-Mobile Nov. 30, 2009 *Ex Parte* and attached paper, *Economic Analysis of the Provision of Roaming Services in the Wireless Service Industry*, Dr. Andrzej Skrzypacz, Professor of Economics, Stanford University Graduate School of Business, WT Docket No. 05-265 (filed Dec. 1, 2009) (stating

Report found that wireless traffic is rapidly shifting away from voice to data,^{2/} a trend confirmed by other studies.^{3/} The October 2010 Staff Technical Paper, *Mobile Broadband: The Benefits of Additional Spectrum*, subsequently projected that the volume of mobile data usage will increase by a factor of 35 by the year 2014, so that the so-called broadband spectrum “deficit” will be close to 300 MHz by that time.^{4/}

The Commission’s estimates are consistent with, and even modest compared to estimates from other sources. For example, some project that the amount of mobile data in 2014 will be 50 times what it was in 2009.^{5/} Others estimate that wireless data use will grow an astounding 1,914% from 2010 to 2015.^{6/} A recent Cisco Systems white paper found that global mobile data traffic nearly tripled in 2010 for the third year in a row, and that average smartphone use doubled in 2010.^{7/} For T-Mobile’s part, our experience has been that the volume of data traffic on our network is doubling every seven months.^{8/} Customers using T-Mobile’s premier 4G devices, the My Touch 4G and the G2, are now using on average 1 GB of data per month, while just a few years ago, data usage on a typical data capable phone was more on the order of 20 to 40 MB per month.

that “it is important to establish an automatic roaming policy now, to increase regulatory certainty so that firms can make more informed investment and competitive decisions”) (“*Economic Analysis of Roaming Services*”).

^{2/} *Wireless Competition Report* at 5 (noting the “transition to a data-centric market” where “data traffic has grown significantly, due to the increased adoption of smartphones”).

^{3/} CTIA – The Wireless Association, Ensuring Nondiscriminatory Access and Rates for Wireless Pole Attachments, Attachment to Letter from Brian M. Josef, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-245, at 7 (showing 119 million unique 3G and 4G wireless subscribers at the end of 2010) (filed March 8, 2011) (“CTIA Ex Parte”).

^{4/} Letter from Kathleen O’Brien Ham, Vice President, Federal Regulatory Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed Jan 6, 2011).

^{5/} See Ramon Nuez, *T-Mobile and the Mobile Broadband Future*, HUFFINGTON POST, June 4, 2010 (reporting that the growth of the Internet since 2000 is estimated at 399.3 percent, with 87 percent of that growth consumer-driven).

^{6/} CTIA Ex Parte, Attachment at 4.

^{7/} Cisco Systems, Inc., *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2010–2015*, Feb. 1, 2011, available at http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.pdf (“*Cisco White Paper*”).

^{8/} See, e.g., Sam Churchill, *T-Mobile Announces 7” Dell Streak*, DAILYWIRELESS.ORG, Jan. 6, 2011, available at <http://www.dailywireless.org/2011/01/06/t-mobile-announces-7-dell-streak/>.

T-Mobile Requires Roaming Only To A Limited But Critical Extent

In today's marketplace, where mobile data is becoming an "essential part of consumers' lives,"^{9/} no carrier has truly nationwide coverage. The National Broadband Plan recognized that few, if any, carriers provide "ubiquitous nationwide service entirely through their own facilities, particularly in the initial stages of construction and in rural areas."^{10/}

While T-Mobile largely serves its customers using its own network, it must still rely on roaming to provide ubiquitous service, especially in some of the more sparsely populated areas of the nation. T-Mobile's current 2G voice and data service footprint encompasses more than 297 million pops, or more than 95 percent of the total nationwide population. Of this amount, T-Mobile serves approximately 277 million, or approximately 89 percent of the total population, using its own facilities. We serve the remaining 6 percent of total covered pops through roaming arrangements. This coverage is essential to ensure that our customers have the seamless access to services when traveling away from their home markets that all wireless consumers have come to expect.^{11/}

Roaming has by no means deterred T-Mobile from continuing to make substantial investments in its broadband wireless network. T-Mobile recently announced the addition of approximately 5,000 additional cell sites that will enable it to provide facilities-based service to more than 290 million potential customers by 2013.^{12/} Through its aggressive build out efforts since obtaining and clearing its AWS-1 spectrum, T-Mobile now provides 3G or better service to more than 212 million pops, or 68 percent of the population, and 4G HSPA+ service to approximately 200 million pops, or 64 percent of the population.^{13/} T-Mobile's current HSPA+ technology offers theoretical download speeds up to 21 Mbps and upload speeds of up to 5.7 Mbps, and T-Mobile is upgrading its network this year to support even faster speeds (theoretical speeds of 42 Mbps).

Although these ongoing investments in network expansion will reduce T-Mobile's need to rely on roaming going forward, they will not eliminate it. T-Mobile will continue to require roaming arrangements to achieve a nationwide service footprint in those regions of the country where it does not yet have its own facilities. These areas primarily encompass the markets in

^{9/} *Cisco White Paper* at 17.

^{10/} *National Broadband Plan* at 49.

^{11/} See Letter from Tom Sugrue, Senior Vice President, Government Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265, at 4 (filed Feb. 2, 2011).

^{12/} See, e.g., Yu-Ting Wang, *DT to Step Up U.S. Operations with More Spectrum, Faster Network*, COMMUNICATIONS DAILY, Jan. 21, 2011.

^{13/} By virtue of its ongoing aggressive build-out, T-Mobile now has the largest network in the U.S. where consumers can benefit from 4G services. See Press Release, T-Mobile USA, Inc., T-Mobile 4G Service Now Available in More Markets and on More Devices (Nov. 2, 2010) *available at* <http://press.tmobile.com/articles/americas-largest-4g-network>.

which T-Mobile originally provided service through roaming with several important regional service providers.^{14/} These markets include areas in virtually every state. Without the availability of roaming arrangements in these areas, T-Mobile would be unable to ensure that its customers have seamless service when they travel.

The Impact Of Market Consolidation On The Wholesale Data Roaming Marketplace

In the 2010 *Order on Reconsideration and Second FNPRM* in this proceeding, the Commission found that “consolidation in the wireless industry may have reduced the number of available [data] roaming partners for some of the smaller, regional and rural carriers.”^{15/} This is certainly true for T-Mobile, which has seen roaming partners, including Dobson Cellular, Edge Wireless, Centennial, Alltel, RCC, and others acquired by one or the other of the “Big 2” over the past several years, significantly reducing (and in many areas, eliminating) T-Mobile’s choice of data roaming partners.^{16/} In turn, with its expanded footprint, AT&T, the dominant provider of roaming services for the GSM technology platform, now has the incentive and the ability to resist entering into reasonable data roaming agreements. It is a classic case of market failure that fully justifies the modest regulatory intervention requested here.

Not surprisingly, therefore, AT&T recently acknowledged that it “does not have a current desire” to seek 3G roaming from T-Mobile.^{17/} While roaming has historically been competitive and reciprocal, *i.e.*, there were multiple potential roaming partners and a mutual need for roaming, AT&T’s letter suggests that roaming is increasingly becoming a monopoly service provided on a unilateral basis. While AT&T attributes its current lack of desire to obtain

^{14/} These include, for example, the markets previously served by Dobson (parts of northern Minnesota, Michigan, Wisconsin, and Alaska), Edge Wireless (parts of California, Oregon, Washington, and Idaho), Farmer’s Cellular (parts of Alabama), Poka Lambro (parts of Texas), Centennial (parts of Louisiana and Illinois), and Alltel (parts of Montana, North Dakota, and South Dakota).

^{15/} *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 25 FCC Rcd 4181 ¶ 29 (2010) (“*Order on Reconsideration and Second FNPRM*”).

^{16/} See Comments of T-Mobile, WT Docket No. 05-265 at 7-8 (filed June 14, 2010); Reply Comments of T-Mobile USA, Inc., WT Docket No. 05-265 at 4-5 (filed July 12, 2010); Letter from Howard J. Symons, Counsel for T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 at 1-2 (filed Nov. 10, 2010); Letter from Kathleen O’Brien Ham, Vice President, Federal Regulatory Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket 05-265 at 1 (filed Dec. 20, 2010); Letter from Thomas J. Sugrue, Senior Vice President, Government Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 at 3-4 (filed Feb. 2, 2011). See also *Economic Analysis of Roaming Services* at 2 (“In particular, changes in ownership led to a disappearance of several important regional service providers (for example, Alltel, Dobson, Edge and RCC, a trend that started even before 2005).”).

^{17/} See Email from Gram Meadors, AT&T, to Dirk Mosa, T-Mobile, attached to 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).

roaming from T-Mobile to the fact that T-Mobile's 3G network does not use the same spectrum as AT&T's 3G handsets, handsets can readily be – and increasingly are – equipped with chipsets that enable the use of multiple 3G bands.^{18/} If AT&T did not have a national footprint made possible by its series of acquisitions, it would have the incentive to equip its phones with such chipsets to obtain roaming in areas where it lacked its own network. This is precisely what T-Mobile did in order to utilize AT&T's service for voice and 2G roaming in the 800 MHz band, in which T-Mobile does not have its own network.^{19/}

Our Inability To Secure 3G Roaming From AT&T On Commercially Reasonable Terms

AT&T's intransigence, a direct result of the dominant position it now holds in the roaming marketplace, has made it impossible for us to negotiate reasonable and non-discriminatory roaming arrangements in the absence of a rule.^{20/} While there may be isolated instances of 3G data agreements and recent overtures by AT&T to negotiate with carriers, there

^{18/} See Letter from Thomas J. Sugrue, Vice President, Government Affairs, T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed Nov. 9, 2010).

^{19/} A data roaming rule will also facilitate the development of multiband handsets that are capable of interoperability across different spectrum bands, which is becoming increasingly important given the concentration of spectrum below 1 GHz in the hands of AT&T and Verizon. See *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd 11407 (2010) at ¶ 275 (noting that, of the sub-1 GHz spectrum, Verizon and AT&T hold 78 percent of the licensed MHz-POPs in the combined cellular and 700 MHz bands). See also, *AT&T Mobility Spectrum LLC and Whidbey Telephone Company Seek FCC Consent to the Assignment of Lower 700 MHz B Block and Lower 700 MHz C Block Licenses*, Public Notice, DA 11-294 (rel. Feb. 16, 2011); Phil Goldstein, *AT&T hunts for more 700 MHz spectrum to boost 2G, 3G capacity*, FIERCEWIRELESS, Feb. 17, 2011, available at <http://www.fiercewireless.com/story/att-hunts-more-700-mhz-spectrum-boost-2g-3g-capacity/2011-02-17#ixzz1FOGGMikq>; *New Cingular Wireless PCS, LLC and Commnet of Florida, LLC Seek FCC Consent to the Assignment of One Cellular License*, Public Notice, DA 11-293 (rel. Feb. 16, 2011) (seeking consent to the assignment of cellular license from Commnet to New Cellular Wireless PCS, LLC, an indirect, wholly-owned subsidiary of AT&T Inc. and noting that and noting that “in this market, post-transaction AT&T would hold 68 megahertz of spectrum below 1GHz.”); *New Cingular Wireless PCS, LLC and NEATT Wireless, LLC Seek FCC Consent to the Assignment of Broadband PCS Licenses*, Public Notice, DA 11-244 (rel. Feb. 8, 2011) (seeking consent to the assignment of thirteen broadband PCS licenses from NEATT to New Cellular Wireless PCS, LLC, an indirect, wholly-owned subsidiary of AT&T Inc.); *New Cingular Wireless PCS, LLC and D&E Investments, Inc. Seek FCC Consent to the Assignment of Lower 700 MHz Band Licenses*, Public Notice, DA 11-244 (rel. Jan. 5, 2011) (seeking consent to the assignment of six lower 700 MHz band licenses from D&E to New Cellular Wireless PCS, LLC, an indirect, wholly-owned subsidiary of AT&T Inc. and noting that “in three of the CMAs [] AT&T would hold, post-transaction, 49 MHz of spectrum below 1 GHz [and that] only AT&T and Verizon Wireless would hold paired spectrum below 1 GHz.”).

^{20/} See, e.g., Letter from Thomas J. Sugrue, Senior Vice President, Government Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 at 2 (filed Feb. 2, 2011); T-Mobile Comments at 7-8 (citing 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)).

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.

In the record of this proceeding, T-Mobile had detailed the reasons that it has not been able to obtain a suitable roaming agreement with AT&T. These reasons include proposed roaming rates that were so unreasonable as to make it uneconomic for T-Mobile to offer the roaming feature to our subscribers; the proffer of a roaming footprint that overlapped with existing T-Mobile coverage; and the imposition of conditions on T-Mobile's ability to limit network overlap that effectively forced T-Mobile to purchase in-market roaming that we did not need.^{21/} Given AT&T's purported concern about the adverse impact that roaming could have on network buildout, the latter demand is particularly confounding. As a result, T-Mobile may remain unable to offer 3G or better service in any area of the country in which it is cost-prohibitive to build our own facilities.

Data Roaming Will Not Cause Unacceptable Network Congestion

Despite AT&T's and Verizon's claims to the contrary, a data roaming rule will not create unacceptable congestion on a host carrier's network. T-Mobile generally needs roaming in the most sparsely populated areas of the country, where congestion is not an issue. Moreover, as we have noted previously in this proceeding, roaming agreements today typically 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.^{22/} To the extent data roaming results in any actual congestion issues, such an event can likewise 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 reasonable terms and conditions.^{23/}

Data Roaming Will Promote New Investments In Rural Areas

As T-Mobile has repeatedly noted in this proceeding,^{24/} a roaming rule will enable us to invest in new facilities in smaller markets that would not be economical to build out unless we

^{21/} Letter from Thomas J. Sugrue, Senior Vice President, Government Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed Feb. 9, 2011).

^{22/} 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).

^{23/} *Id.*

^{24/} See, e.g., Letter from Howard J. Symons, Counsel to T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265, (filed Nov. 10, 2010); Letter from Kathleen O'Brien Ham, Vice President, Federal Regulatory Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed Dec. 20, 2011).

could use roaming to serve the adjacent more sparsely populated areas.^{25/} The availability of voice and 2G roaming facilitated build out for this reason,^{26/} and data roaming will create the same incentives. This increased investment will create jobs related to the construction and operation of the new facilities.

As new customers come online, moreover, still more jobs will be created. For instance, T-Mobile has noted in this proceeding that the Commission's voice roaming rule has enabled T-Mobile to locate call centers in areas in which it previously lacked coverage and build a facilities-based footprint over time as a customer base developed.^{27/} 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.^{28/}

T-Mobile's experience in Maine is evidence of these effects. There, the availability of 2G roaming had a direct impact on T-Mobile's ability to establish a facilities-based presence in several markets that it did not previously serve. Although T-Mobile had very few facilities in Maine prior to 2007, the availability of roaming arrangements played an important role in enabling T-Mobile to locate a call center in the state, creating jobs and establishing a presence that attracted a new and growing customer base. The traffic that T-Mobile generated through its roaming arrangements created economic incentives for T-Mobile to construct its own facilities and expand its presence in the market.

Today, T-Mobile employs more than 650 people at its Oakland, Maine, call center and has more than 45 sales outlets throughout the state, providing numerous additional jobs. And Maine is but one example where the availability of roaming arrangements has helped make it possible for T-Mobile to establish itself as a facilities-based competitor to AT&T and Verizon. In addition to Maine, some other markets in which roaming has helped enable T-Mobile to grow to become a facilities-based provider include State College, Pennsylvania, Knoxville, Tennessee, and southeastern New Mexico.^{29/} As the forgoing shows, the ability to roam has enabled T-Mobile to locate call centers in locations where it had limited service initially and build a facilities-based footprint over time as its customer base grows.

^{25/} Letter from Thomas J. Sugrue, Senior Vice President, Government Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed Feb. 2, 2011).

^{26/} *Id.*

^{27/} *Id.*

^{28/} Letter from Howard J. Symons, Counsel to T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265, (filed Nov. 10, 2010).

^{29/} *See* Letter from Thomas J. Sugrue, Senior Vice President, Government Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed Feb. 2, 2011).

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As the foregoing demonstrates, there is a strong factual basis for the adoption of a rule that extends the current voice roaming requirement to data roaming. The Commission has a complete record, compiled over the year since it first proposed the data roaming rule, on which to act. We respectfully request that you act as promptly as possible.

Please direct any questions regarding this filing to the undersigned.

Sincerely,

/s/

Thomas J. Sugrue
Senior Vice President, Government Affairs

cc: Edward Lazarus
Rick Kaplan
John Giusti
Angela E. Giancarlo
Louis Peraertz
Charles Mathias
Ruth Milkman
James Schlichting
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