

March 25, 2011

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St. SW  
Washington, DC 20554

RE: Notice of *Ex Parte* presentation in: ET Docket 10-237  
WT Docket No. 05-265  
RM-11497

Dear Ms. Dortch:

On March 24, 2011, Harold Feld, Legal Director, Public Knowledge (PK), met with Angela Giancarlo, Chief of Staff to Commissioner McDowell, and Charles Matthias and Rafi Martina, with regard to the above captioned matters.

With regard to ET Docket No. 10-237, PK reviewed its comments filed in response to the NOI urging that the FCC begin a rulemaking to facilitate “private commons” type leasing. No new arguments or representations were made beyond those contained in the comments filing.

With regard to data roaming, PK argued that the Commission has authority to impose data roaming obligations and to require such terms and services be just and reasonable under Section 201(b) of the Act. As the Act clearly states: “All charges, practices, classifications, and regulations for and *in connection with* such communication service, shall be just and reasonable” (emphasis added). The words “in connection with” clearly intend to include non-common carrier services when offered in conjunction with common carrier services, such as CMRS. Congress was well aware that, absent such an authorization, it would be trivially easy for carriers to bundle common carrier and non-common carrier services and impose unjust and unreasonable rates through such bundles.

PK note that there would be a legal distinction between offering pure wireless broadband as a standalone service and wireless broadband in connection with CMRS service. In particular, where carriers *require* consumers to have a voice contract as a prerequisite to a data contract, the authority of Section 201(b) to regulate practices and rates of non-Title II services “in connection with” Title II services is plain.

The argument by opponents of data roaming that Section 332(d) affected an implied repeal of the Commission’s authority by imposing a prohibition on previously authorized regulation should be rejected as unfounded. There is no evidence that Congress intended to so limit the FCC’s authority. To the contrary, the legislative history of Section 332(d) states that it was intended for the sole purpose of clarifying that any service not CMRS or found functionally equivalent retained its traditional classification as Private Mobile Radio Service (PMRS).

PK observed that the proposed AT&T-T-Mobile merger is, indeed “the mother of all roaming agreements” and demonstrates the urgent need for industry-wide data roaming at just and reasonable rates. If the Commission intends to maintain a competitive environment in wireless, it must adopt regulations that enable companies to compete, rather than stand idly by until companies are forced to merge with dominant players.

With regard to RM-11497, PK voiced support for permitting consumers to continue to buy wireless boosters without consent of wireless carriers. PK observed that allowing customers to “self provision” helps to expand the availability of broadband and lower overall build out cost. The Commission has adequate authority under Section 302 (47 U.S.C. §302a) to prevent harmful interference by imposing quality and operation standards on the sale and use of boosters themselves.

In accordance with the FCC’s *ex parte* rules, this document is being electronically filed in the above-referenced dockets today.

Sincerely,

\_\_\_\_\_/s/  
Harold Feld  
Legal Director  
Public Knowledge

CC: Angela Giancarlo  
Charles Matthias  
Rafi Martina