

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Reexamination of Roaming Obligations of) WT Docket No. 05-265
Commercial Mobile Radio Services Providers)
And Other Providers of Mobile Data Services)

To: The Commission

NTCH, INC.'S COMMENTS IN SUPPORT OF PETITION

NTCH, Inc. (“NTCH”) offers these brief comments in support of Blanca Telephone Company’s (“BTC’s”) petition for reconsideration of the Commission’s *Second Report and Order* in this proceeding. BTC’s petition expresses general support for the Commission’s requirement that broadband service providers be required to make data roaming available on commercially reasonable terms. It takes issue, however, with the Commission’s failure to impose a shot clock on the attendant negotiations. BTC fears that the dominant carriers could string out negotiations indefinitely with little recourse by the company seeking roaming access.

NTCH shares BTC’s fears. We are aware of circumstances where representatives of the Big Two (Verizon Wireless and AT&T Wireless) have taken months to engage fully in roaming negotiations. Meetings are cancelled, personnel change, people go on vacation, proposals are reviewed by other people, etc. with the end result that a negotiation which could have been completed in a matter of days or a few weeks consumes literally months or even years. The process is frustrating since you can hardly fault people for taking vacations, going on maternity leave, changing jobs or doing all the other things that prevent the negotiation from advancing,

yet at the same time nothing happens. To put it bluntly, negotiations for roaming agreements are a very low priority with the Big Two since there is really no reward for them.

That is why the shot clock suggested by BTC has considerable merit. This is a situation where the market really does not function to lead to a prompt completion of the necessary negotiation. One party wants a deal and the other just doesn't care. In such circumstances, a regulatory thumb has to level the scales by imposing a reasonable but firm obligation on the companies involved to move the matter forward. The 60-day period proposed by BTC seems more than ample since usually the only matter under discussion is the rate, with much of the boilerplate having already been developed over the course of time. If no agreement is reached by the end of that period, the parties can then know definitively that they are at an impasse and Commission intervention may be needed.

Of course, the *Second Report and Order* uses "commercial reasonableness" as the touchstone for the terms which must be offered. That term can cover a multitude of sins. It would serve to expedite the roaming negotiations considerably if the Commission would offer guidelines as to the reasonableness of the proffered terms. One easily verifiable benchmark suggested by NTCH is the wholesale data rate offered by a host provider to its own customers. If a broadband company or carrier is offering a certain rate for data service to resellers or its own end users, that rate is presumptively sufficiently high to cover the company's costs while allowing for a fair return. Absent extraordinary circumstances, roaming rates offered on a volume basis to another company should be less than or equal to those wholesale or retail rates offered. By simply setting such a rate as a presumptive cap on what could be charged as roaming rates, the Commission would probably eliminate 75% of the posturing that goes on in roaming negotiations and serve to get the parties to agreement in a fraction of the time otherwise

required. Such a guideline would also ensure that the service-providing broadband company is remunerated adequately and fairly according to its own standards.

Thus, while adoption of a reasonable shot clock will go some way to resolving the problem posed by BTC, the adoption of a broad measure of rate reasonableness as described above would work even more effectively to expedite the achievement of fair roaming agreements.

Respectfully submitted,

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_____/s/_____
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December 16, 2011
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