

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

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

REPLY OF AT&T

AT&T Inc. (“AT&T”), on behalf of itself and its subsidiaries, respectfully submits the following Reply to the Comments filed by NTHC, Inc. (“NTHC”)¹ and by MetroPCS Communications, Inc., National Telecommunications Cooperative Association, NTELOS Holdings Corp., PRWireless, Inc. d/b/a Open Mobile, Revol Wireless, Rural Cellular Association, Rural Telecommunications Group, Inc., and United States Cellular Corporation (collectively “MetroPCS et al.”)² Nothing contained in the NTHC or MetroPCS et al. comments warrants reconsideration of the *Data Roaming Order*.³ The comments largely rehash the arguments made in Blanca Telephone Company’s Petition for Reconsideration, which were already addressed and rejected by the Commission. To the extent that the comments attempt to

¹ See Comments of NTHC, Inc., WT Docket No. 05-265 (filed Dec. 16, 2011) (“NTHC Comments”).

² See Comments of by MetroPCS Communications, Inc., National Telecommunications Cooperative Association, NTELOS Holdings Corp., PRWireless, Inc. d/b/a Open Mobile, Revol Wireless, Rural Cellular Association, Rural Telecommunications Group, Inc., and United States Cellular Corporation, WT Docket No. 05-265 (filed Dec. 16, 2011) (“MetroPCS et al. Comments”).

³ See Reexamination of Roaming Obligations Of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, *Second Report and Order*, 26 FCC Rcd 5411 (2011) (“*Data Roaming Order*”).

introduce new issues for consideration, they should be rejected because they are procedurally infirm and lack merit.

I. THE COMMISSION PROPERLY REJECTED THE “SHOT CLOCK” PROPOSAL.

As AT&T explained in its Opposition, the Commission considered and rejected the imposition of a negotiations shot clock in the *Data Roaming Order*.⁴ The Commission indicated that several commenters proposed a time limit for roaming negotiations as a mechanism for limiting the ability of host carriers to engage in delay tactics.⁵ However, the Commission correctly determined that a one-size-fits-all solution would be ill-suited to the data roaming market, in which some negotiations will be more fact-intensive and time-consuming than others.⁶

The NTHC or MetroPCS et al. comments raise no new arguments in favor of a negotiations time limit the Commission has not already considered and rejected. If anything, the comments tend to support the Commission’s conclusion that time limits on roaming negotiations are not appropriate because such negotiations can be complex. Indeed, in arguing that data roaming negotiations are less complex than the Commission assumes, MetroPCS et al. acknowledge that technical issues arose as roaming transitioned from voice to 2G and to 3G data roaming agreements and negotiating carriers required time to address those concerns.⁷ Moreover, as MetroPCS et al. also acknowledge, new issues are being raised by 4G roaming agreements for which standard solutions have yet to be developed.⁸ Similarly, in attempting to describe

⁴ See Opposition to Petition for Reconsideration of AT&T at 1-2, WT Docket 05-265 (filed Dec. 16, 2011).

⁵ *Data Roaming Order*, ¶ 84.

⁶ *Id.*

⁷ MetroPCS et al. Comments at n.14.

⁸ *Id.*

“delays” encountered during roaming agreement negotiations, MetroPCS et al. further detail complex issues that must be addressed in the course of these negotiations. For example, negotiators must come to terms on various classes of service, traffic prioritization, network testing, and future traffic projections.⁹ Each of these issues is essential to establishing an effective commercial agreement between roaming partners and is typically the subject of individualized negotiations.

MetroPCS et al.’s references to Commission precedent in support of their proposal for a negotiation time limit are similarly unpersuasive. The parties point to the existence of the Section 252 interconnection negotiation procedures,¹⁰ the *Tower Siting Shot Clock Ruling*,¹¹ and the *Pole Attachment Order*¹² and assert that a similar mechanism would be appropriate for the negotiation of roaming agreements.¹³ Reliance on these authorities is misplaced, however, as the Commission was well aware of these precedents when it rejected proposals for a shot clock in roaming negotiations. The *Pole Attachment Order* is particularly telling, as it was released on the same day as the *Data Roaming Order*. Without commenting on the substantive decisions

⁹ *Id.*, 7-8.

¹⁰ 47 C.F. R. § 252.

¹¹ See Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, WT Docket No. 08-165, *Declaratory Ruling*, 24 FCC Rcd 13994 (2009) (“*Tower Siting Shot Clock Ruling*”).

¹² See In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future, in WC Docket No. 07-245, GN Docket No. 09-51, *Report and Order and Order on Reconsideration*, 26 FCC Rcd 5240 (2011) (“*Pole Attachment Order*”).

¹³ *See id.*, 10-13.

made in that order, the Commission clearly made a conscious determination that the different circumstances between these two issues warranted individualized solutions.¹⁴

II. THE COMMENTS ARE PROCEDURALLY DEFECTIVE.

Just as the Blanca Petition relied solely “on arguments that have been fully considered and rejected by the Commission in the same proceeding,”¹⁵ so do the comments of NTHC and MetroPCS et al. As such, the comments “plainly do not warrant consideration by the Commission” under the Commission’s procedural rules for petitions for reconsideration.¹⁶ Here, the Commission expressly acknowledged and considered the “shot clock” proposals in the course of making a reasoned determination not to adopt a timeline for roaming negotiations. MetroPCS et al. in particular should be aware of the fact that these arguments were previously presented to the Commission, as two of the signatories of the present comments—the Rural Cellular Association and United States Cellular Corporation—were among the parties the Commission specifically identified in the *Data Roaming Order* as having proposed a shot clock.¹⁷ As the parties are simply repeating the same arguments in favor of a shot clock that the Commission expressly rejected, the comments warrant no serious consideration.

¹⁴ The Commission should give no weight to MetroPCS et al.’s reliance on certain documents from the proposed AT&T/T-Mobile merger as support for its positions. The cited documents have no precedential value. The Staff Analysis on the AT&T/T-Mobile merger is not a Commission precedent. Unlike the *Data Roaming Order*, which was approved by a majority of the Commissioners, the Staff Report was never voted on by the Commission and does not have the force of law. Likewise, contrary to the implication of MetroPCS et al., the U.S. District Court’s denial of the Motion to Dismiss C-Spire’s roaming claims was not a ruling on the merits of those claims. As the commenters know, at the Motion to Dismiss stage, the court is only deciding whether a claim, if true, can be the basis for legal relief. Denying the Motion to Dismiss in no way suggests that the Court made any judgment on the merits of the allegations made by C-Spire.

¹⁵ See 47 C.F.R. § 1.429(1)(3)

¹⁶ See 47 C.F.R. § 1.429(1).

¹⁷ See *Data Roaming Order*, n.240 (citing RCA Comments at 17 and U.S. Cellular Reply Comments at 5).

The Comments are also defective on other grounds, for attempting to expand the scope of the proceeding. Instead of merely filing in support of Blanca’s Petition for Reconsideration, both NTHC and MetroPCS et al. seek Commission action with respect to additional issues not timely raised for reconsideration in Blanca’s Petition. In particular, requests for Commission action or declarations with respect to substantive roaming terms, such as NTHC’s request for a benchmark on roaming rates based upon the wholesale data rate offered by a host provider to its own customers,¹⁸ are entirely unrelated to Blanca’s Petition for Reconsideration, which did not venture beyond the shot clock proposal.

NTHC and MetroPCS et al. had ample opportunity to file Petitions for Reconsideration and neglected to do so. The parties cannot now expand the scope of issues under consideration through Comments. If the commenters have a legitimate complaint with respect to the roaming agreement negotiations process, they can seek the assistance of the Commission on a case-by-case basis—which is the appropriate mechanism for such complaints expressly provided in the *Data Roaming Order*.¹⁹ However, the anecdotal allegations of delay are too vague and bereft of specifics for AT&T to respond. The Commission’s case-by-case complaint process requires a complaining party make a case on the facts and is the appropriate forum for addressing properly supported grievances.

¹⁸ See NTHC Comments at 2.

¹⁹ See *Data Roaming Order*, ¶ 84 (“If a provider involved in a data roaming negotiation believes that another provider is delaying the negotiation unduly, it may ask the Commission to set a time limit for that particular negotiation. We will consider such requests on a case-by-case basis.”).

III. CONCLUSION

The Commission made a well-reasoned determination to reject proposals to impose time limits on negotiations in the *Data Roaming Order*. In doing so it fully considered and responded to all arguments in favor of such proposals. As AT&T explained in its Opposition, Blanca's Petition for Reconsideration raises no new facts or arguments that warrant revisiting the Commission's analysis. Similarly, the comments of NTHC and MetroPCS et al. provide no basis for the Commission to reconsider its decision in the *Data Roaming Order*. As such, the Commission should deny Blanca's petition.

Respectfully submitted,

/s/ Michael P. Goggin

Michael P. Goggin

Gary L. Phillips

Paul K. Mancini

AT&T INC.
1120 20th Street, N.W.
Washington, D.C. 20036
202-457-2055

December 27, 2011

Certificate of Service

I, Pamela Conley, hereby certify that on this 27th day of December 2011, a copy of the **REPLY OF AT&T** is being sent via first class mail, postage paid, to the following.

Carl W. Northrop
Michael Lazarus
Jessica DeSimone
Telecommunications Law
Professionals PLLC
875 15th Street, NW, Suite 750
Washington, DC 20005

*Counsel for Metro PCS Communications, Inc.
NTELOS Holdings Corp., PRWireless, Inc.
Revol Wireless*

Rebecca Murphy Thompson
General Counsel
Rural Cellular Association
805 15th Street, NW, Suite 401
Washington, DC 20005

Counsel for Rural Cellular Association

Peter Connelly
Holland & Knight, LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington, DC 20006

*Counsel for Unites States Cellular
Corporation*

Todd B. Lantor
John Cimko
Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Drive, Suite 1200
McLean, Virginia 22102

Counsel for Blanca Telephone Company

Jill Canfield
Director – Legal & Industry
National Telecommunications
Cooperative
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203

*Counsel for National Telecommunications
Cooperative Association*

Caressa D. Bennet, Managing Principal
Daryl A. Zakov, Associate
Bennet & Bennet PLLC
4350 East West Highway, Suite 201
Bethesda, MD 20814

*Counsel for Rural Telecommunications
Group*

Donald J. Evans
Fletcher, Heald & Hildreth
1300 N. 17th St.
Arlington, BA 22209

Counsel for NTCH, Inc.

/s/ Pamela Conley
Pamela Conley