

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)

To: The Commission

REPLY COMMENTS

The Blooston Rural Carriers (identified on Appendix A hereto), by their attorneys and pursuant to the Commission’s *Public Notice*, Report No. 2938, released November 21, 2011 (“*Public Notice*”), hereby submit their reply comments in the referenced proceeding. The Public Notice solicits opposition and reply pleadings in connection with Blanca Telephone Company’s (“Blanca’s”) “Petition for Reconsideration,” filed June 6, 2011 (“Petition”) requesting adoption of a 60-day shot clock in data roaming negotiations.¹ In support hereof, the following is shown:

Statement of Interest

1. The Blooston Rural Carriers are Tier III Commercial Mobile Radio Service (“CMRS”) providers authorized by the Commission to provide wireless service in rural areas. As such, they are subject to the data roaming provisions adopted by the Commission in this proceeding, and therefore they each have a direct economic interest in the outcome of the issues raised by Blanca’s Petition.

Argument

2. Blanca’s Petition requests the Commission to modify the data roaming agreement

¹ The *Public Notice* announcing the filing of Blanca’s Petition was published in the Federal Register on December 1, 2011 specifying December 16, 2011 and December 27, 2011 as the respective due dates for oppositions and replies. 76 *Fed. Reg.* 74721 (December 1, 2011).

negotiation requirements adopted by the Commission in this proceeding to incorporate a “shot clock” mechanism under which either party to the negotiations could invoke the Commission’s dispute resolution procedures after a 60-day period. On December 16, 2011, AT&T, Inc. filed an opposition to the Petition arguing that a uniform time limit on negotiations would be inappropriate. However, Metro PCS Communications, Inc. and its subsidiaries, the National Telecommunications Cooperative Association, NTELOS Holdings Corp., PR Wireless, Inc. d/b/a Open Mobile, Revol Wireless, the Rural Cellular Association, Rural Telecommunications Group, Inc. and United States Cellular Corporation (the “Joint Commenters”) and NTCH, Inc. (“NTCH”) filed Comments in support of the Petition.

3. By way of background, in 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) (the “Data Roaming Order”), the Commission recognized the important role that data roaming plays in the wireless industry, adopted provisions requiring the nationwide wireless carriers to offer data roaming arrangements on commercially reasonable terms and conditions, and reminded carriers of their duty to respond promptly to negotiation requests and to avoid actions that unduly delay or stonewall the course of negotiations.² However, notwithstanding the recognized importance of data roaming to the public (and the corresponding need to negotiate and implement data roaming agreements expeditiously), the Commission declined to adopt a shot-clock mechanism. In this regard, the Commission stated that “some data roaming negotiations may be more complex or fact-intensive than others and are likely to require more time” and thus a “single time limit for all negotiations

² Data Roaming Order, Para. 42.

would not be appropriate in such cases.”³

4. In point of fact, roaming negotiations are only “complex and fact-intensive” because the large carriers claim that the negotiations are “complex and fact-intensive,” which is a thinly disguised justification (*i.e.*, an excuse) for stonewalling and foot dragging. The large carriers engage in such behavior because they do not want to enter into a roaming agreement with a small carrier because either a) the two companies compete in the provision of service in certain areas, or b) the agreement is of little or no benefit to the large carrier. As the Commission’s Staff Report on the AT&T/T-Mobile transaction noted, a “roaming agreement between two providers can be difficult when there is limited mutual interest,” and also noted that AT&T’s opponents claim that AT&T has been less than forthcoming in its negotiation of roaming arrangements.⁴ If both sides are truly engaged in good faith negotiations, the process is not “complex or fact-intensive” at all. As NTCH correctly points out, “usually the only matter under discussion is the rate,”⁵ and rate issues should not require more than two or three weeks to resolve if both parties are negotiating in good faith.

5. The Joint Commenters have pointed out cases where “negotiations” have dragged on for an unconscionable period of time – years in some cases without an agreement even being reached.⁶ This is not the product of a “complex or fact-intensive” subject matter, it is the pure and simple result of stonewalling and foot dragging.

6. If the Commission is truly serious about making data roaming available to all wireless customers on a nationwide basis, it should grant the relief requested by Blanca. The public is

³ Data Roaming Order, Para. 84.

⁴ FCC Staff Report, WT Docket No. 11-65 (filed November 29, 2011), Paras. 67 and 100 n.294.

⁵ NTCH Comments, pg. 2.

prejudiced by the unconscionable negotiating tactics of the large carriers. And as the Joint Commenters correctly note, the Commission has used shot-clock mechanisms to good effect in the context of (a) negotiating interconnection agreements, (b) collocations and new tower applications, and (c) pole attachments⁷ – each an area where the subject matter is more complex and fact-intensive than any data roaming agreement could ever be.

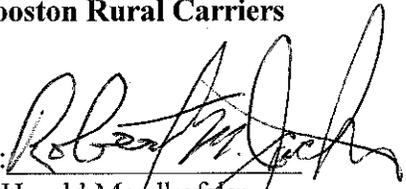
7. We submit that a 60-day shot clock would motivate the parties to complete their negotiations in a timely matter. In those few cases (if any) that truly involve complex or fact-intensive issues, a party to the negotiations should be able to request some additional time to complete the negotiations for good cause shown, which we submit should be in thirty-day increments. The Commission should not penalize the many for those few (if any) negotiations which will require more than 60 days to complete.

WHEREFORE, the Blooston Rural Carriers request that Blanca's Petition be granted.

Respectfully submitted,

Blooston Rural Carriers

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⁶ Joint Comments, pp.7-8.

⁷ Joint Comments, pp. 10-13.

Appendix A

Dumont Telephone Company
Ligtel Communications, Inc.
NNTC Wireless, LLC

CERTIFICATE OF SERVICE

I hereby certify that I am an attorney with the law offices of Blooston, Mordkofsky, Dickens, Duffy & Prendergast and that on December 27, 2011 I caused to be sent either by electronic mail (e-mail) or by first-class U.S. Mail postage prepaid, as indicated, a copy of the foregoing "**Reply Comments**" to the following:

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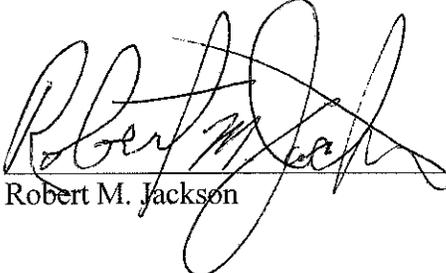
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