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

In the Matter of	)	
	)	
Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services	)	WT Docket No. 05-265
	)	
Petition for Expedited Declaratory Ruling of T-Mobile, USA, Inc.	)	DA 14-798

COMMENTS OF VERIZON

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T-Mobile seeks to use a data roaming rate dispute with one carrier as a vehicle for requesting that the Commission make sweeping changes to its 2011 *Data Roaming Order* and adopt prescriptive new rules for reviewing data roaming rates. The Commission previously rejected requests similar to T-Mobile's in both the voice and data roaming proceedings and likewise should do so here. And the existing rules are working. Indeed, since April 2011, Verizon alone has entered into 48 new or renewed data roaming agreements, and average data roaming charges have declined by some 40 percent as parties have gotten more experience with data roaming arrangements. There is no need for additional rate regulation and the existing rules cannot be rewritten in response to a declaratory ruling petition in any event.

I. INTRODUCTION AND SUMMARY

T-Mobile asks the Commission to rule that the commercial reasonableness of a carrier's offered data roaming rate should be determined by reference to that carrier's retail, resale, international roaming and domestic roaming rates -- in addition to the factors the Commission

previously adopted.[1] Verizon opposes T-Mobile's petition. First, the dispute resolution remedies provided by the Commission in the *Data Roaming Order* are adequate to resolve T-Mobile's roaming dispute with AT&T, and T-Mobile fails to show why it cannot invoke those remedies. Second, T-Mobile asks the Commission to declare that the existing rules require comparison of rates to benchmarks the Commission previously rejected. There is no basis to reconsider applying such benchmarks, but, in any event, doing so would require a new rulemaking. Third, the existing data roaming rules are working as intended and do not need to be amended or clarified. Fourth, evaluating data roaming rates by comparison to prices for other services is not only unjustified but risks distorting prices for those services and disserving consumers.

II. T-MOBILE SHOULD USE THE REMEDIES PROVIDED IN THE *DATA ROAMING ORDER* TO RESOLVE ITS DISPUTE WITH AT&T.

The impetus for the Petition is T-Mobile's desire to obtain lower data roaming rates from AT&T.[2] Verizon is not privy to the facts surrounding negotiations between AT&T and T-Mobile and therefore cannot comment on T-Mobile's claim that the rates AT&T has offered are not commercially reasonable. Regardless, that claim can and should be resolved through one of the dispute resolution procedures the Commission established – not through a generic, industry-wide proceeding. Verizon thus opposes T-Mobile's effort to turn a two-party dispute into an alleged industry-wide problem in need of a prescriptive regulatory solution.

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[1] Petition for Expedited Declaratory Ruling of T-Mobile, USA, Inc., WT Docket No. 05-265, filed May 27, 2014 ("Petition").

[2] *See* Petition, Exhibit 1, Declaration of Dirk Mosa ("Mosa Declaration") at 2-5 (explaining why T-Mobile needs to roam on AT&T's network, alleging that AT&T's rates are not commercially reasonable, and that AT&T has engaged in anticompetitive tactics).

In the *Data Roaming Order*, the Commission adopted a number of factors it would consider to determine whether an offered rate is commercially reasonable.[3] It also established a number of dispute resolution processes – including mediation, formal and informal complaints – to resolve disputes alleging that terms, including rates, offered are not commercially reasonable.[4] Rather than seeking to apply the factors adopted by the Commission or avail itself of the processes established to resolve disputes, T-Mobile leaps to the unsupported conclusion that "the roaming market is dysfunctional" and can only be fixed by additional rate regulation.[5] But it fails to demonstrate why the multiple procedural rights and remedies the Commission established are not sufficient to address its dispute with AT&T.

In a recent order denying Blanca Telephone Company's Petition for Reconsideration in this docket seeking a "shot-clock" for data roaming negotiations, the Wireless Telecommunications Bureau stated that Blanca and other commenters "fail to demonstrate that the processes established by the Commission in the *Data Roaming Order* rules are inadequate to address problems of unreasonable delay. They offer no reason why providers cannot avail themselves of the established remedies. . . ."[6] The Bureau was correct and its conclusion applies with equal force here. It should deny the Petition and instruct T-Mobile that it may avail itself of the dispute resolution procedures already in place.

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[3] *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd 5411 (2011) ("*Data Roaming Order*") at ¶ 86.

[4] *Id.* at ¶¶ 74-84.

[5] Petition at 10.

[6] *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Order on Reconsideration, WT Docket No. 05-265, DA14-865 (Wireless Telecommunications Bureau, June 25, 2014) ("Blanca Reconsideration Order") at ¶ 11.

T-Mobile cites language in the *Data Roaming Order* inviting petitions for declaratory ruling. That language, however, appears in the dispute resolution section of the order and simply invites petitions for declaratory ruling as an alternative to a complaint proceeding for resolving a two-party roaming dispute.[7] Thus, T-Mobile could choose to seek Commission relief in its dispute with AT&T (such as requesting a determination that AT&T's offered data roaming rates are not commercially reasonable) through a declaratory ruling, or alternatively through a complaint. Nothing in the language T-Mobile cites constitutes an invitation to seek through a declaratory ruling new obligations or interpretations of the order that would apply globally to all providers. That, of course, is the province of rulemakings. T-Mobile is free to file a petition for rulemaking if it believes the roaming rules should be changed generically, but it is clear that its dispute is with AT&T. There is no basis in the *Data Roaming Order* to convert what is clearly a two-party dispute into a generic proceeding to adopt new data roaming policies that will affect the entire industry.

III. THE COMMISSION ALREADY CONSIDERED AND REJECTED THE RULING SOUGHT BY T-MOBILE.

The Administrative Procedure Act and Commission Rules provide that declaratory orders may be issued "to terminate a controversy or remove uncertainty."[8] In this case, there is no controversy or uncertainty regarding the relevance of the benchmarks requested by T-Mobile to determining whether a rate or term is commercially reasonable. In both the voice and data roaming proceedings, the Commission considered and rejected requests to use wholesale and/or

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[7] *Data Roaming Order* at ¶¶ 75-77 and footnote 231.

[8] 5 U.S.C. § 554(e), 47 C.F.R. §1.2;

retail rates as benchmarks for reasonable roaming rates. And it cannot rewrite the rules in response to a declaratory ruling petition.

In the voice context, both Leap and NTCH argued for such benchmark rates.[9] The Commission, however, rejected those arguments, stating, "we are not persuaded that consumers would be harmed in the absence of a price cap or some other form of rate regulation."[10] The Commission also found that rate regulation could harm both consumers and investment:

> [W]e agree with concerns raised in the record that rate regulation has the potential to distort carriers' incentives and behavior with regard to pricing and investment in network buildout. [Citation omitted] Capping roaming rates by tying them to a benchmark based on larger carriers' retail rates may diminish larger carriers' incentives to lower retail prices paid by their customers, and perhaps even give them an incentive to raise retail rates. . . . Similarly, regulation to reduce roaming rates has the potential to deter investment in network deployment by impairing buildout incentives facing both small and large carriers. By enabling smaller regional carriers to offer their customers national roaming coverage at more favorable rates without having to build a network, rate regulation would tend to diminish smaller carriers' incentives to expand the geographic coverage of their networks. In addition, by reducing or eliminating any competitive advantage gained as a result of building out nationwide or large regional networks, rate regulation would impair larger carriers' incentives to expand, maintain, and upgrade their existing networks.[11]

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[9] Comments of Leap Wireless International, Inc., WT Docket No. 05-265, filed November 28, 2005, at 17 (arguing that "[i]n areas where there are three or fewer facilities-based carriers from which the carrier seeking automatic roaming service could obtain such service, the Commission should prohibit a facilities-based carrier from demanding rates for automatic roaming that exceed that carrier's average retail revenue per minute for that area"); Comments of NTCH, Inc., WT Docket No. 05-265, filed November 28, 2005, at 6 (arguing that the Commission should require national wireless providers to make roaming available at rates no more than the rates they charge Mobile Virtual Network Operators ("MVNOs")).

[10] *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 at ¶ 37 (2007) ("*Voice Roaming Order*").

[11] *Voice Roaming Order* at ¶¶ 39-40.

Although these findings were made with respect to regulating roaming based on retail rates, the Commission's logic and findings also apply to roaming rates linked to MVNO rates or any other form of rate regulation.

Similarly, in the data roaming proceeding, a number of parties asked the Commission to adopt rules linking data roaming rates to rates for retail services.[12] The Commission rejected these requests and did not include the prices for other services in the list of factors for determining whether a roaming rate offered is commercially reasonable.[13] The Commission was concerned that a data roaming requirement would erode incentives to invest in advanced data services. In addressing these concerns, it stated:

> [H]ost providers will be paid for providing data roaming service, and we adopt a general requirement of commercial reasonableness for all roaming terms and conditions, including rates, *rather than a more prescriptive regulation of rates requested by some commenters*. This will give host providers appropriate discretion in the structure and level of such rates that they offer. As we found in the *Order on Reconsideration* "the relatively high price of roaming compared to providing facilities-based service will often be sufficient to counterbalance the incentive to 'piggy-back' on another carrier's network." [Citation omitted] We note that the pro-investment incentives that providers will have as a consequence of the high cost of roaming are reflected in the terms and conditions offered by mobile data service providers, which commonly include authorizing termination of service or other actions if a subscriber's roaming on other networks becomes too large a part of the subscriber's service use.[14]

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[12] Comments of Brighthouse Networks, WT Docket No. 05-265, filed June 14, 2010 at 13-14 (arguing that the Commission should adopt the use of "retail yield" – defined as average revenue for a unit of a particular data service divided by average usage for the data service -- as an evaluative criterion for determining if rates are reasonable); Comments of NTCH, Inc., WT Docket No. 05-265, filed June 14, 2010 at 5 (arguing that the Commission should adopt a benchmark for reasonable data roaming rates set at the prevailing market rates for data services); Reply Comments of SouthernLINC Wireless, WT Docket No. 05-265, filed July 12, 2010, at 27-28 (arguing that data roaming rates should be compared to the rates the host carrier charges its own retail subscribers for data services).

[13] *See Data Roaming Order* at ¶¶ 85-87 (discussing the commercially reasonable standard and providing a list of factors to be considered in analyzing terms against this standard).

[14] *Id.* at ¶ 21 (emphasis added).

Requiring data roaming to be offered at prices comparable to retail services would be inconsistent with the *Data Roaming Order* and would exacerbate concerns about investment incentives.

In addition, the Commission adopted the data roaming requirements pursuant to its authority under Title III of the Communications Act. It grounded its rules on its finding that carriers would have more "flexibility" with respect to rates than the common carrier requirement adopted for voice roaming.[15] Given that the Commission elected not to adopt requirements linking voice roaming rates to rates for retail or MVNO services in the common carrier voice roaming regime, it certainly could not adopt such requirements in a more "flexible" Title III regulatory regime. Indeed, any action by the Commission to place more prescriptive bounds on the rates a provider of mobile data services may charge for roaming would risk turning the existing data roaming rule into a common carrier requirement.

Because the Commission already considered and rejected requests to link roaming rates to the rates for other services, there is no "controversy" or "uncertainty" for the Commission to resolve in a declaratory ruling. If T-Mobile wants the Commission to reconsider and alter its previous findings, the proper vehicle is for it to file a petition for rulemaking.

IV. T-MOBILE FAILS TO DEMONSTRATE THAT MARKET FORCES AND THE EXISTING DATA ROAMING RULES ARE NOT WORKING.

In the Petition, T-Mobile does not make any claims of unreasonable behavior toward T-Mobile by any carrier other than AT&T. In an effort to find a problem that justifies its industry-

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[15] *See id* at ¶ 68 ("We also find that the data roaming rules we adopt do not amount to treating mobile data service providers as 'common carriers' under the Act. . . . Under the agreements to which negotiations may lead, providers will have flexibility with regard to roaming charges, subject to a general requirement of commercial reasonableness.").

wide solution, T-Mobile cites to a handful of roaming-related allegations by other entities, most of which were made in Commission merger application proceedings, as evidence that the existing data roaming rules are not working.[16] Contrary to these unfounded and unsubstantiated assertions, the facts strongly support a finding that market forces and the existing rules are working.

First, T-Mobile's economist, Dr. Joseph Farrell, acknowledges in his declaration supporting the Petition that "there has been a strong downward trend in wholesale data roaming rates in recent years."[17] Dr. Farrell supports this statement with data showing the average domestic data roaming prices paid by T-Mobile have steadily declined since 2008 and that the average projected price it will pay in 2014 is a little more than half of what it paid in 2008.[18] These data show that market forces, back-stopped by Commission rules and the availability of Commission mediation and complaint processes, are working to ensure a steady and significant decline in data roaming rates.

Second, Verizon has continued to negotiate commercially reasonable voice and data roaming agreements with its roaming partners. Since April 2011, when the *Data Roaming Order* was adopted, Verizon has either negotiated new agreements or negotiated rate changes in existing agreements with 48 of its 59 active roaming partners. In each of these cases, when Verizon's data roaming charges have changed**,** they have declined. Indeed, over that time period Verizon's average data roaming charges (measured in revenue per roaming MB used) have

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[16] Petition at 8-10.

[17] *Id.* at Exhibit 2, Declaration of Joseph Farrell, D. Phil. In Support of Petition for Expedited Declaratory Ruling of T-Mobile USA, Inc. ("Farrell Declaration") at 30.

[18] *Id.* at 31, Table 6. *See also id*. at 32, Figure 5 (graphically depicting the steady decline in T-Mobile's roaming cost since January 2008).

declined by more than 40 percent. These facts contradict T-Mobile's assertion that Verizon is able to dominate the market and has no incentive to negotiate reasonable roaming agreements.

Third, since the data roaming rules were adopted more than three years ago, there have been no reported decisions in any roaming complaint proceeding. If the market were "dysfunctional" as T-Mobile claims and providers were using perceived market advantages to force roaming partners to accept commercially unreasonable rates, one would expect to have seen a slew of complaints that had to be decided by the Commission. The absence of any such decisions undercuts T-Mobile's claim that further Commission action is needed. T-Mobile cannot credibly claim that the current rules and processes are not working and that existing remedies are inadequate when few parties have availed themselves of those rules and processes.

V. T-MOBILE'S PROPOSED BENCHMARKS ARE NOT APPROPRIATE.

Even if more prescriptive data roaming price regulation were warranted (and, as discussed above, it is not), the benchmarks – other than domestic roaming rates[19] -- T-Mobile would have the Commission adopt for determining whether a data roaming rate offer is commercially reasonable are not appropriate. Linking roaming rates to the rates for other services can have dire policy effects. Moreover, each of these benchmarks is flawed, as T-Mobile's own expert concedes, saying "[n]one of these benchmarks is or can be ideal."[20]

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[19] The *Data Roaming Order* already provides that other data roaming agreements be considered in the analysis of whether a carrier's offer is commercially reasonable. *Data Roaming Order* at ¶ 86 (including a factor considering "whether the providers involved have had previous data roaming arrangements with similar terms").

[20] Farrell Declaration at 3.

A. Linking Roaming Pricing to Pricing for other Services Is Bad Policy.

As discussed above, the Commission has previously rejected linking roaming rates to the rates for other services due to concerns that doing so could create incentives to raise the prices for those other services and diminish incentives to invest in network improvement and expansion.[21] These same concerns were voiced previously in this docket by noted economist and former FCC Deputy Chief Economist, Gregory L. Rosston. In a paper written for Sprint Nextel addressing proposals made by Leap and SouthernLINC to regulate roaming based on retail rates, Dr. Rosston wrote:

> [S]uch a regulation would reduce incentives to lower retail prices. Every time a carrier reduced its retail price it would also have to offer lower roaming prices to its competitors. As a result, the regulation has the potential to eliminate price competition for consumers. Worse, if carriers were also required to make advanced services available to everyone at a similarly low price, carriers would have lower incentive to innovate with new services.[22]

While Dr. Rosston's paper addressed proposals to link roaming rates to retail prices, his analysis applies with equal force to proposals to link roaming rates to the prices for other services. For example, linking roaming rates to MVNO rates would similarly reduce incentives to lower MVNO rates and reduce incentives to innovate.

In addition, using MVNO rates as a benchmark for roaming rates is at odds with the Commission's repeated determination that the roaming obligation is not a backdoor route to a resale obligation. Both the voice and data roaming orders rejected efforts to apply MVNO rates in the roaming context. The Commission underscored that the automatic roaming obligation it

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[21] *See* Section III., *supra.*

[22] Gregory L. Rosston, "A Solution in Search of a Problem: Leap and SouthernLINC," January 2006 at 17, ¶37, attached to Sprint Nextel Reply Comments, WT Docket No. 05-265, January 26, 2006.

was adopting was "not intended to resurrect CMRS resale obligations." It emphasized that "the Commission's mandatory resale rule was sunset in 2002, and automatic roaming obligations cannot be used as a backdoor way to create *de facto* mandatory resale obligations or virtual reseller networks."[23]

B. Roaming Rates and Rates for Other Services Are Derived from Different Factors and Are Thus Not Comparable.

Basing data roaming pricing on retail and/or MVNO pricing is not appropriate because the prices for retail, MVNO, and international roaming offerings are based on markedly different factors. Verizon previously explained that "[r]oaming rates cannot be compared to retail or wholesale rates":[24]

> [R]oaming rates vary depending on the need to expand the carrier's footprint into a new area, the availability of other carriers, the size of the roaming partner's customer base, the extent to which the roaming partner has implemented advanced digital technologies and other features, and the scope of geographic network coverage. Reseller rates, on the other hand, tend to vary based on the size or potential size of the reseller or MVNO customer base and the perceived ability of the reseller or MNVO to reach a market segment that the carrier is not otherwise reaching. Retail rates take into account the prices for similar retail services from other providers in the marketplace. Because prices for roaming, wholesale, and retail services are based on a mix of varying considerations, it is not surprising that prices for the different service categories vary.[25]

International roaming rates are no more instructive as to what a "commercially reasonable" domestic data roaming rate would be, again because they are driven by very different market and competitive considerations. International roaming rates are based on factors such as the number

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[23] *Voice Roaming Order* at ¶ 51. Likewise, the *Data Roaming Order* emphasized that "the data roaming obligation [it was adopting] does not create mandatory resale obligations." *Data Roaming Order* at ¶ 34.

[24] Reply Comments of Verizon Wireless, WT Docket No. 05-265, at 18 (filed Jan. 26, 2006).

[25] *Id.* (internal citation omitted).

of service providers offering roaming in each country, the rate structure for each provider in its home market(s), whether the carriers in a particular country use a compatible mobile technology, volume commitments, and the balance of traffic between the two providers. The rates produced by these factors, therefore, can vary (up or down) significantly from domestic roaming rates.

The prices for these service offerings reflect the different factors present. For example, a retail rate in a geographic area may be targeted to compete with a rate being offered by a particularly aggressive competitor in that area. Some customers may have retail rates based on a promotion that was available only for a limited period of time in a limited geographic area. Those prices may be lower than the prices generally available or available in other areas, but T-Mobile's proposal would make them the basis for comparing roaming rates available to other providers seeking roaming in that geographic area. In addition, MVNO relationships are viewed as supplemental to a carrier's retail channel. Thus, MVNO rates are typically designed to attract customers that the underlying service provider is not attracting, while not undermining the service provider's existing retail base.[26] A per MB data rate designed to attract business from a particular market segment is not an appropriate benchmark for roaming services, which do not offer the same benefits to the underlying service provider.

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[26] *See Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services,* Sixteenth Report, 28 FCC Rcd 3700 at ¶ 29 (2013) ("MVNOs may target their service and product offerings at specific demographic, lifestyle, and market niches, including consumers who are low income, are relatively price sensitive, do not want to commit to multi-year subscription contracts, have low usage needs, or do not want to buy a bundle that contains unwanted data services."); *id.* ¶ 30 ("A facilities-based provider that also resells services may be motivated by the desire to expand its geographic coverage outside of its network coverage area or to add service offerings that are not available on its own network by reselling the services of another provider."); *id.* ¶ 31 ("MVNOs often increase the range of services offered by the host facilities-based provider by targeting certain market segments, including segments previously not served by the hosting facilities-based provider."). *See also* Farrell Declaration at 30-31.

C. It Is Difficult to Compare Rates for Different Customers.

Dr. Farrell recognizes, at least in the context of retail pricing, that "[c]harging different prices to different customers ('price discrimination') is normal and not inherently problematic in markets such as mobile communications. This is why I do not suggest that strong conclusions can be drawn based on this one benchmark."[27] Dr. Farrell's analysis also recognizes one must make assumptions about data usage in order to determine the effective data price a retail customer pays: "[t]he price per MB of data usage depends both on his data usage and on the plan he chose."[28] What neither Dr. Farrell nor T-Mobile acknowledges, however, is that variations in pricing and pricing that varies with usage patterns exist for MVNO and roaming customers as well. These differences make comparing prices difficult, if not impossible, and make conclusions difficult to draw from any of T-Mobile's proposed benchmarks.

When carriers price services to a customer, whether a retail customer, MVNO or roaming partner, the pricing is based on the revenues expected to be generated by the entire bundle of services. The service bundle sold typically includes separate rate elements for access, data (and possibly different prices depending on the different data networks – 1x, EVDO, LTE – used), voice, SMS, and toll. The prices for each rate element may vary depending on the customer preferences and expected usage patterns. One customer may have a relatively low data rate, but higher access, voice, or SMS prices. For another customer, the data rate may be relatively higher, but other elements could be priced lower. Moreover, the data price may change as different volume tiers are reached. In such agreements, determining the effective price

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[27] Farrell Declaration at 20.

[28] *Id.* at 22.

necessarily includes determining the volume of data used and the price that applies to each volume tier.

In addition, the pricing for different categories of customers can be significantly different. For example, roaming partners do not typically pay access charges. Rather, the revenue from a roaming agreement is derived from voice, toll, data and other applicable charges. Retail and MVNO customers, however, are typically assessed a per-subscriber access charge. Because some revenue is derived from the access charge, the prices for the other elements in a retail or MVNO service bundle might be lower than in a roaming bundle. MVNO pricing often includes significant volume commitments and/or requirements to grow the volume annually. While some roaming agreements may include volume commitments, they typically do not include requirements to continue to grow the volume.

Differences in pricing of rate elements in individual customer offerings and among the different customer categories make comparing individual rate elements – such as a per MB data rate – extremely difficult. One cannot simply pick a per-MB roaming price out of one agreement and apply it to a different customer or a different type of customer with different needs, different rate elements, and different volume commitments. For this reason, the Commission should not compare rate elements for data roaming with rate elements derived from other service offerings.

VI. THE COMMISSION SHOULD NOT "CLARIFY" HOW EXISTING PRESUMPTIONS OR FACTORS WILL BE APPLIED.

T-Mobile also asks the Commission to "clarify," by which it means modify, how certain existing presumptions and factors will be applied. In particular it asks the Commission to

declare that the presumption that existing agreement terms are commercially reasonable does not apply to future agreements, and that the factor considering the extent of a requesting carrier's build-out does not enable a host carrier to deny roaming or charge commercially unreasonable prices for roaming in areas where the requesting carrier does not have network facilities.[29] These requests are meritless and should be denied.

Whether the terms of an existing agreement are commercially reasonable and the bearing such terms may have on future agreements are determinations to be made by the Commission in the context of a proceeding challenging data roaming rates offered by a provider. Just as the presumption that those terms, when agreed upon, were commercially reasonable can be overcome by evidence produced in a complaint or other Commission proceeding, so can the relevance of those terms to future agreements. There is no need and no basis for the Commission to prejudge that determination by ruling that the existing presumption is not appropriate.

Similarly, the relevance of the extent of the requesting party's network build-out to determining whether an offered term is commercially reasonable should be based on the totality of evidence presented.[30] The Commission has made clear that, under the commercially reasonable standard, "providers can negotiate different terms and conditions, including prices, with different parties."[31] The Commission should not prejudge negotiated rates, terms or conditions by granting T-Mobile's request. To do so would render the existing factor meaningless. Again, T-Mobile's Petition underscores why the case-by-case approach the

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[29] Petition at 16-23.

[30] *See Data Roaming Order* at ¶ 86 ("We emphasize that each case will be decided based on the totality of the circumstances.").

[31] *Id*. at ¶ 85.

Commission adopted is and remains the most appropriate way to address the myriad factors and competitive dynamics that affect how two carriers negotiate commercial roaming agreements.

At the end of the day, the transparent objective of T-Mobile's Petition is to convert the existing data roaming rules into an intrusive rate regulation regime where the Commission establishes common rates to be charged to resellers and roaming carriers alike, which is precisely what the D.C. Circuit previously warned the Commission against.[32]

VII. CONCLUSION

For the reasons stated above, the Commission should deny T-Mobile's petition to modify the *Data Roaming Order*.

Respectfully submitted,

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[32] *See Cellco Partnership v. FCC*, 700 F.3d 534, 548-549 (D.C. Cir. 2012) ("For instance, 'commercially reasonable,' as applied by the Commission, may in practice turn out to be no different from 'just and reasonable.' . . . In implementing the rule and resolving disputes that arise in the negotiation of roaming agreements, the Commission would thus do well to ensure that the discretion carved out in the rule's text remains carved out in fact.").