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	)	

COMMENTS OF

PUBLIC KNOWLEDGE,

OPEN TECHNOLOGY INSTITUTE AT NEW AMERICA FOUNDATION,

BENTON FOUNDATION

AND

COMMON CAUSE

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INTRODUCTION

Public Knowledge (PK) and the Open Technology Institute at New America Foundation (OTI), Benton Foundation (Benton)[1] and Common Cause (CC) (collectively "Public Interest Commenters") file these comments in support of T-Mobile's Petition for Expedited Declaratory Ruling.[2] As documented by T-Mobile and other carriers in this proceeding, the Commission's initial framework has failed to address adequately the dysfunction in the data roaming market. As data becomes an increasingly important part of mobile service packages, the anticompetitive harm that flows from this continued dysfunction increases exponentially.

Public Interest Commenters note, however, that this sorry state of affairs flows directly from the FCC's decision to classify wireless broadband and data roaming as a Title I information service rather than a Title II telecommunications service.[3] In contrast to the existing ineffective "commercial reasonableness" standard adopted under Title III authority for data roaming, the Commission's rules for mandatory voice and text roaming from its 2007 Order using Title II authority have been far more effective and straightforward.[4] There, the Commission classified

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[1] The Benton Foundation is a nonprofit organization dedicated to promoting communication in the public interest. These comments reflect the institutional view of the Foundation and, unless obvious from the text, are not intended to reflect the views of individual Foundation officers, directors, or advisors.

[2] *See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Public Notice (rel. June 10, 2014).

[3] *See Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling (rel. Mar. 23, 2007). Technically, the Commission has never determined the classification of data roaming, as distinct from last mile wireless broadband access service offered to consumers. *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 at ¶ 70 (2011) ("*Data Roaming Order*").

[4] *See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15,817 (2007) ("*Voice and SMS Roaming Order*").

voice roaming as a Title II service and mandated that all CMRS providers offer voice and SMS text roaming under its Title II authority.[5] Since then, the Commission has ***never*** needed to revisit this basic framework, nor have carriers reported significant problems with voice and text roaming agreements.[6]

It is a fine irony that Title II regulation proved simple, flexible, and effective, whereas regulation under Title I and Title III has proven complicated, cumbersome, and ultimately ineffective. Nor did implementation of a Title II regime for voice roaming cause wireless carriers to flee the voice market, or even reduce their investment in infrastructure. As a real time experiment on the cost and effectiveness of Title II "light touch" common carrier regulation versus Title I and Title III regulation subject to a "common carrier prohibition," the voice roaming versus data roaming experience provides a valuable lesson to anyone willing to look at the facts.

Public Interest Commenters recognize that the question of classification of mobile broadband, however, is not before the Commission in this proceeding.[7] Accordingly, Public Interest Commenters confine these comments to T-Mobile's proposal to improve the existing

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[5] *Voice and SMS Roaming Order* ¶¶ 1-2, 18-35. The Commission codified the rules at 47 C.F.R. § 20.12.

[6] In 2010, the FCC issued an *Order on Reconsideration* expanding the obligation to offer voice and text roaming under Sections 201 and 202 by eliminating the "home roaming exclusion," but did not otherwise alter its general framework using Section 201 and 202. See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 25 FCC Rcd 4181 (2010).

[7] To the extent the Commission learns from history and revisits its classification decision in the relevant pending proceedings, it would vastly simplify the problem of data roaming by permitting the same direct, simple solution the FCC used for voice and text roaming in 2007. *See Framework for Broadband Internet Service*, GN Docket No. 10-127, Public Notice, Wireline Bureau Seeks to Refresh the Record on Title II and Other Potential Legal Frameworks For Broadband Internet Access Service (rel. May 30, 2014); *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Notice of Proposed Rulemaking (rel. May 15, 2014).

"commercial reasonableness" framework through a series of proposed benchmarks. For the reasons given below, PK/OTI support T-Mobile's Petition.

ARGUMENT

As the Commission determined in its 2011 *Data Roaming Order*, AT&T and Verizon have both the incentive and the capability to raise data roaming rates (or deny data roaming entirely) and thus disadvantage its competitors.[8] Nothing has changed since 2011 to alter these conclusions. To the contrary, further concentration in the industry since 2011 and the exponential growth in demand for smart phones and data packages has only enhanced the ability of AT&T and Verizon to leverage their market power to impose higher costs on their rivals to the detriment of all subscribers.

I. AT&T AND VERIZON LEVERAGE THEIR CONTROL OF DATA ROAMING TO THE DETRIMENT OF ALL CONSUMERS, INCLUDING AT&T'S AND VERIZON'S SUBSCRIBERS.

The ability of AT&T and Verizon to impose artificially high data roaming costs on rivals (or deny data roaming altogether) allows AT&T and Verizon to maintain artificially high prices for their own customers. In addition, AT&T and Verizon can maintain a highly aggressive cap on data usage, coupled with significant overage charges, by denying competitors such as T-Mobile the ability to offer truly unlimited data packages. As documented by T-Mobile in their *Petition*, the high price of data roaming effectively prohibits T-Mobile from offering uncapped and unthrottled mobile broadband access by making it impossible to offer such packages at anything close to an affordable price.[9]

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[8] *Data Roaming Order* ¶¶ 25-28.

[9] Petition for Expedited Declaratory Ruling of T-Mobile USA, Inc., *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data*

A. Failure to Reform the Data Roaming Market Hurts All Consumers, Including AT&T and Verizon Customers.

Despite (a) an enhanced revenue stream from data roaming agreements, and (b) lower costs than rivals by avoiding data roaming, Verizon and AT&T customers continue to pay inflated data costs due to capped plans and aggressive overage fees. Whatever Verizon and AT&T are doing with the additional revenue, they are not passing it along to consumers in the form of lower prices.

To the extent AT&T and Verizon can artificially increase the cost of data roaming for rivals, rendering aggressive price competition economically unfeasible, it does more than extract monopoly rents from competitors. It allows Verizon and AT&T to charge artificially inflated prices to their own customers as well. In this case, Verizon and AT&T maintain strict data caps and overage fees and are able to maintain these strategies by rendering truly unlimited plans for competitors economically unfeasible.

Action by the Commission to curb unreasonably high data roaming rates will therefore directly benefit all consumers, including customers of AT&T and Verizon. As we have seen demonstrated since T-Mobile adopted its aggressive "uncarrier" strategy, competition benefits all consumers. Every pro-competitive move made by T-Mobile has triggered a response by AT&T and Verizon, benefiting all subscribers.

T-Mobile CEO John Legere has indicated in public statements that he would like to offer cheaper unlimited data plans.[10] Given the past history of T-Mobile, including passing on the savings from negotiating lower international roaming rates to consumers as part of the its T-

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Services, WT Docket No. 05-265, at 13 and Exhibit 1, Declaration of Dirk Mosa ¶ 10 (May 27, 2014).

[10] *See* Kevin Fitchard, *The GigaOm Interview: T-Mobile CEO John Legere On the Myth of Mobile Data Scarcity*, GIGAOM (June 19, 2014), http://gigaom.com/2014/06/19/interview-with-t-mobile-ceo-john-legere/.

Mobile Global Data plan, it seems reasonable to assume that requiring AT&T and Verizon to negotiate commercially reasonable data roaming agreements will result in T-Mobile offering lower prices and uncapped and unthrottled plans – forcing AT&T and Verizon to lower their own data rates.

B. Failure to Reform the Data Roaming Rules Has Negative Consequences for the Open Internet and "Virtuous Cycle" of Broadband Development.

As T-Mobile explains in its Petition, it cannot offer uncapped and unthrottled broadband under the current unreasonable data roaming rates. This has severe negative impacts on the "virtuous cycle" the FCC identified in the *Open Internet Order*.[11] T-Mobile Senior Vice President Dirk Mosa states in his declaration that: "[w]hen throttling and cap limitations are removed, consumers use significantly more data, ***typically in the range of 10-20x***."[12] Additionally, in a recent press release accompanying the launch of its "Music Freedom" promotion, T-Mobile cited survey evidence that 37% of mobile users avoid streaming on their cell phones for fear of exhausting their data cap and incurring overage charges.[13]

These numbers support the conclusion that aggressive bandwidth caps on mobile services have a huge negative impact on the willingness of subscribers to use their mobile broadband connections – particularly for streaming services. This undermines the "virtuous cycle" the Commission identified in the *Open Internet Order* as driving investment in infrastructure and the

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[11] *Preserving the Open Internet*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17,905, ¶ 14 (2010) (*Open Internet Order*); *see also Verizon v. FCC*, 740 F.3d 623, 635-42 (D.C. Cir. 2014).

[12] Mosa Declaration ¶ 25 (emphasis added).

[13] *T-Mobile Sets Your Music Free*, T-Mobile (June 18, 2014), http://newsroom.t-mobile.com/news/t-mobile-sets-your-music-free.htm.

development of new services.[14] Nor does this simply impact entertainment, although the impact of streaming media as entertainment should not be underestimated either from a competition perspective or from the perspective of promoting a diversity of views.[15] As public interest organization that use podcasts and online video to educate the public on important policy issues, the unwillingness of mobile users to stream content due to data caps raises grave concerns. Data caps – and their clearly demonstrated impact on user behavior – directly undermine the value of the Open Internet by discouraging users from seeking out new sources of educational materials, political discourse, and news. In response, edge providers reduce their investment in these products and services, diminishing both incentive for users to adopt broadband and incentive for providers to invest in infrastructure.

C. T-Mobile's "Music Freedom" Initiative Shows How High Data Roaming Rates Force Carriers to Undermine the Open Internet.

T-Mobile's recently announced "Music Freedom" initiative demonstrates how artificially high roaming rates force carriers into choices that damage the open nature of the Internet and threaten the harms the Commission identified in the *Open Internet Order* of creating a "two-tiered" Internet that favors incumbent services over new entrants and start ups. Last month, T-Mobile announced that it would allow unlimited music streaming for the seven most popular

[14] *See Open Internet Order* ¶ 14; *Verizon v. FCC*, 740 F.3d 623, 644-46 (D.C. Cir. 2014).

[15] *See* 47 U.S.C. § 257(b) (emphasizing national policy to use new technology to promote diversity of views and competition). Streaming media for entertainment purposes is often derided as a merely "cat videos." As the Commission well knows from its lengthy experience regulating broadcasting and cable, however, entertainment programming is a critical element of our national discourse. The ability of subscribers to access – and, in the case of the Internet, produce – diverse perspectives is critical both to serving the needs of traditionally marginalized communities and promoting acceptance and critical discourse in a pluralistic society. YouTube Channels such as Black Nerd Comedy featuring the self-proclaimed "Andre the Black Nerd," see https://www.youtube.com/user/BlackNerdComedy, or the "Thug Notes," http://www.thug-notes.com/, featuring "Doctor Sparky Sweet, Ph.D" discussing works of literature and philosophy using "gangsta" slang, do more than entertain. They actively break down stereotypes.

streaming services without counting the streaming from these specific sources against users' data caps.[16] While T-Mobile has stressed that it intends this move to give consumers their choice of streaming services, and CEO John Legere remains "open" to allowing users at some future date to configure their devices to select any "legitimate" streaming service, this decision invariably privileges the most popular, dominant music services that exist today at the expense of future rivals or existing less popular services.[17]

Based on T-Mobile's public statements, and their explanation of how the high price of data roaming makes genuinely unlimited mobile broadband service economically unfeasible, it appears that T-Mobile is not seeking to monetize artificial scarcity (in contrast to AT&T's "800 Data" service, which allows AT&T to collect artificially high overage fees from edge providers willing to pay) or favor its own products. Rather, it appears that T-Mobile has rationally decided to use unlimited music as a "loss leader" – paying the uneconomical data roaming cost for music specifically to attract customers from AT&T and Verizon.

Even assuming the best case for T-Mobile, the "Music Freedom" program ***still*** undermines the Open Internet and leads to precisely the harms the Network Neutrality rules tried to prevent. The most popular music channels do not need a further advantage over their less popular rivals, or potential new entrants. Competitors and new entrants count against the subscriber's cap, giving subscribers a reason to avoid them in favor of the uncapped services. As

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[16] *T-Mobile Sets Your Music Free*, T-Mobile (June 18, 2014), http://newsroom.t-mobile.com/news/t-mobile-sets-your-music-free.htm.

[17] *See* Mike Masnick, *Music Freedom or Holding Consumers Hostage? Letting ISPs Pick Winners and Losers Is A Problem*, TECHDIRT (June 19, 2014), https://www.techdirt.com/articles/20140619/06354227623/when-your-internet-access-provider-gets-to-pick-winners-losers-theres-problem.shtml; *see also* Michael Weinberg, *T-Mobile Uses Data Caps to Manipulate Competition Online, Undermine Net Neutrality*, PUBLIC KNOWLEDGE (June 19, 2014), https://www.publicknowledge.org/news-blog/blogs/t-mobile-uses-data-caps-to-manipulate-competition-online-undermine-net-neutrality.

T-Mobile's own statistics on how caps impact user behavior show, this difference between existing popular services and competitors will make subscribers increasingly less likely to sample new services and diverse offerings. This undermines the Communications Act's core policy of "favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity."[18] If a subscriber has exceeded the cap, rival music services will stream at 2G speeds subject to buffering and interruption, whereas the most popular services will stream smoothly at 4G for a more pleasurable listening experience.[19] Especially for an audience of music enthusiasts and audiophiles, these disadvantages can make it much more difficult for a new music service that failed to gain special status under the "Music Freedom" plan to earn a larger market share.

Furthermore, this decision by T-Mobile directly harms Public Knowledge. Given a choice between listening to a PK podcast, which counts against the data cap, and streaming music, which does not, the average user who might otherwise be interested in Public Knowledge's message will nevertheless prefer the uncapped service. But because Public Knowledge is not a music streaming service, it will never be eligible for uncapped treatment no matter how open T-Mobile makes its "Music Freedom" program.

T-Mobile has indicated that grant of its Petition would make it feasible for it to offer truly unlimited broadband by removing the artificially high cost of data roaming. Accordingly, grant of the Petition would not only remove a significant barrier to broadband use that undermines the

[18] 47 U.S.C. § 257(b).

[19] What happens if I go over the limit of my high-speed data?, T-Mobile (last visited July 10, 2014), http://www.t-mobile.com/cell-phone-plans/individual.html ("At T-Mobile we don't charge overage fees for domestic use. With our Simple Choice Plan, once you have used all the 4G LTE data included in your plan, your data speed will automatically convert to up to 2G web speeds for the remainder of your billing cycle.").

"virtuous cycle" of adoption and investment, it will serve the broader purposes of the Open Internet rules by promoting competition and diversity.

II. THE COMMISSION CAN ADOPT THE BENCHMARKS WITHOUT TRIGERRING THE "COMMON CARRIER PROHIBITION."

As T-Mobile argues in its Petition, adoption of further benchmarks does not necessarily trigger the "common carrier prohibition" identified by the D.C. Circuit.[20]

As an initial matter, Public Knowledge notes that this is entirely a problem of the Commission's own making. As already discussed above, the failure of the Commission to properly classify wireless broadband as Title II – or to classify as Title II the exchange of broadband traffic among carriers through data roaming, which constitutes pure transport with no associated information services – gives rise to the "common carrier prohibition" identified by the D.C. Circuit in the first place. Proper classification would allow the Commission to take the same course it adopted in the 2007 *Voice Roaming Order*, which effectively resolved the problem of anticompetitive conduct for voice and SMS text roaming.

Even given the classification of both mobile broadband service and data roaming as Title I services subject to regulation under Title III and Section 706, rather than directly subject to Title II, the Commission has several options. First, because it has never actually *addressed* the scope of Section 332(c)(4), it can expressly consider whether the D.C. Circuit properly interpreted the statute when it created the "common carriage prohibition." The Commission took a similar path when it defined cable modem service as an information service, directly contradicting the Ninth Circuit's previous holding that cable modem service was a

[20] *See Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014); *Cellco Partnership v. FCC*, 700 F.3d 534 (D.C. Cir. 2012).

telecommunications service as a matter of law.[21] Alternatively, the Commission can now address the arguments previously raised that it declined to consider in 2011 – that even if Section 332(c)(4) imposes a general prohibition against common carriage for non-CMRS service, other statutory grounds permit the Commission to apply common carriage obligations specifically to data roaming.

Finally, even if the Commission determines that it will continue to abide by the existing interpretation of Section 332(c)(4), the Commission has broad latitude to define what does and does not constitute "common carriage." The proposed benchmarks clearly do not rise to the level of requiring carriers to treat all requests for data roaming identically, which the D.C. Circuit has identified as the hallmark of common carriage.[22]

A. Because The Commission Previously Failed To Consider Whether Section 332(c)(4) Created a "Common Carriage Prohibition," It Can Address the Issue in this Proceeding.

The Commission has never actually considered the meaning of what constitutes "common carriage." Indeed, it did not even find that Section 332(c)(4) created a "common carriage prohibition" as articulated by the court. Rather, because the Commission determined the data roaming rules did not rise to the level of a common carrier obligation, the Commission did not need to consider whether Section 332(c)(4) constituted a prohibition on common carriage regulation.[23] Nothing prevents the Commission from fully addressing the question of whether a "common carriage prohibition" exists at all.[24]

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[21] *See Nat'l Cable Telecomm. Ass'n v. Brand X Internet Servs.*, 454 U.S. 967, 982-86 (2005) ("*Brand X*").

[22] *See Cellco Partnership v. FCC*, 700 F.3d 534 (D.C. Cir. 2012).

[23] *Data Roaming Order* ¶ 66 ("we do not need to determine that a mobile service should be classified as CMRS"). This distinction appears to have been lost on the D.C. Circuit. *Compare Cellco Partnership*, 700 F.3d at 545 ("The Commission concedes that, in keeping with *Midwest*

The Commission took precisely this course when it overruled the Ninth Circuit and determined that cable modem service was an information service, not a telecommunications service. In *AT&T Corp. v. City of Portland*, the Ninth Circuit found that cable modem service was a telecommunications service as a matter of law.[25] The Ninth Circuit affirmed that holding when it reversed the *Cable Modem Order*.[26]

On appeal, the Supreme Court found the Commission was free to interpret the statute without regard to the Ninth Circuit's opinion in *City of Portland*, and that this interpretation deserved deference. The Court found that because the Ninth Circuit had made its initial decision without the benefit of the agency's expert determination, the court's interpretation of the law was not binding on the agency.[27] The Court reasoned that Congress expressly delegated the interpretation of the statute to the expert agency, and the Ninth Circuit could not provide "the best" or "the only" possible interpretation absent the agency's express consideration of the meaning and scope of the statute.[28] Only where a statute is so unambiguous that no other possible interpretation is permissible could a court's decision be binding on the expert agency.[29]

The Commission should follow the same course here that it followed in the *Cable Modem Order*. The D.C. Circuit's interpretation, based entirely on a "concession" the Commission did

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Video II, it has no authority to treat mobile-data providers like Verizon as common carriers") *with Data Roaming Order* ¶ 68 n.205 ("We also note that, although we do not treat non-interconnected commercial mobile data providers as common carriers here, Section 332 does not provide an absolute prohibition on imposing common carrier regulation on a provider of private mobile radio service.")

[24] *City of Arlington v. FCC*, 133 S.Ct. 1863, 1874 (2013); *Brand X* at 982-86.

[25] *AT&T Corp. v. City of Portland*, 216 F.3d 871 (9th Cir. 2000).

[26] *Brand X Internet Servs. v. FCC*, 345 F.3d 1120, 1128-32 (9th Cir. 2003).

[27] *Brand X*, 454 U.S. at 982-83.

[28] *Id.* at 983-86.

[29] *Id.*

not actually make, hardly constitutes the "best" or "only" interpretation of a statute the very same court describes as "ambiguous."[30] Given the vital importance of the common carriage prohibition not merely to this proceeding, but to the Commission's broadband policy generally, the Commission has an obligation to actually consider the meaning and applicability of Section 332(c)(2)'s statement that a provider of Private Mobile Radio Service (PMRS) "shall not, insofar as such person is so engaged, be treated as a common carrier."[31]

B. The Commission Should Address the Arguments It Failed to Address in 2011 as to Why Section 332(c)(2) Does Not Apply Specifically to Data Roaming.

Additionally, the FCC failed to consider in the *Data Roaming Order* numerous arguments as to why, even assuming a general common carriage prohibition, it should not apply specifically to data roaming. For example, the Commission refused to consider whether the language in Section 201 and 201 that requires that rates "in connection with" provision of a Title II service would allow the Commission to regulate data roaming under Section 201 because it is offered "in connection with" the Title II CMRS service (in contrast to pure mobile broadband contracts, such as those generally offered for tablets, that are not bundled by the carrier with CMRS). Nor did the Commission consider whether broadband service constitutes a "functional equivalent" to CMRS under Section 332(d)(3), or any of the other reasons proposed by commenters as to why the "common carrier prohibition" of Section 332(c)(2) should not apply.[32]

Rather, the Commission decided that since the proposed "commercial reasonableness" standard did not constitute common carriage, it had no reason to address the scope of the prohibition in Section 332(c)(2) – a determination ultimately affirmed on appeal. Because the

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[30] *See Verizon v. FCC*, 740 F.3d at 651.

[31] 47 U.S.C. § 332(c)(2).

[32] *See Data Roaming Order* ¶ 70 (declining to address applicability of Title II authority).

proposed benchmarks again raise the question as to whether further refinement of the "commercially reasonable" standard could constitute common carriage obligations, the Commission has the opportunity to consider these arguments. If the Commission determines the common carriage prohibition does not apply specifically to data roaming, then the question of whether the benchmarks constitute impermissible common carriage becomes moot.

C. The Commission Has Broad Scope to Define "Common Carriage" and to Craft Remedies that Address Specific, Demonstrated Harms.

But even if the Commission declines to address these arguments, the Commission has broad discretion to define the scope of what constitutes "common carriage." As the D.C. Circuit has acknowledged, "common carriage" is an ambiguous term.[33] With only two opinions to serve as guideposts, the point at which a rule deprives a carrier of the right to make "individualized negotiations" rather than "treat all customers indifferently" remains entirely unclear. Certainly, however, mere benchmarks that provide a general guide – subject to examination of why specific circumstances may make these benchmarks inapplicable – cannot be equated with a requirement to offer identical terms to all similarly situated customers.

Furthermore, the proposed benchmarks are designed to address specific and well-documented harms already occurring in the marketplace. Rules designed to address specific, documented abuses cannot reasonably be considered abstract requirements to treat all traffic indifferently. The selected benchmarks use comparable commercial market negotiations where the providers lack the market power and incentive to propose unreasonable terms. It is difficult to imagine a more individualized approach that simultaneously gives meaning to purpose of the rules.

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[33] *Verizon v. FCC*, 740 F.3d at 651.

CONCLUSION

The T-Mobile Petition demonstrates everything wrong with the Commission's insistence that Title I provides a flexible and sufficient framework for promoting competition and deployment of broadband, and its irrational aversion to Title II. The 2007 *Voice Roaming Order* proved both simple in execution and effective in result. By contrast, the Commission's insistence on eschewing Title II for data roaming has produced an ineffective remedy in need of complicated corrective measures to achieve even the basic goal of curtailing blatant anticompetitive conduct in the data roaming market.

Nevertheless, the Commission should not compound this error in classification with further inaction. Assuming the Commission does not change course – or reconsider the applicability and scope of the underlying "common carriage prohibition" the D.C. Circuit identified in Section 332(c)(2) – it should adopt the benchmarks proposed by T-Mobile. The anti-competitive conduct of AT&T and Verizon constrains consumer choice, artificially inflates costs to subscribers, and undermines the goal of protecting the Open Internet and the virtuous cycle of adoption and investment.

Respectfully submitted,

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