

**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 Service Providers and )  
Other Providers of Mobile Data Services )

To: The Commission

**COMMENTS OF PINPOINT WIRELESS, INC.**

PinPoint Wireless, Inc. (“PinPoint”)<sup>1</sup>, by its attorneys, respectfully submits these Comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Public Notice*<sup>2</sup> seeking comments on the petition for expedited declaratory ruling filed by T-Mobile USA, Inc. (“T-Mobile”).<sup>3</sup> PinPoint strongly supports the spirit of T-Mobile’s *Petition*, but, as outlined below, urges the Commission to take additional steps to promote transparency and clarity in the roaming marketplace.

**I. BACKGROUND**

PinPoint has been meeting the mobile communications needs of its customers in rural Southwest Nebraska since 2000. As the nation’s wireless infrastructure has matured, American consumers have come to expect all retail wireless carriers to offer voice and data rate plans with

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<sup>1</sup> PinPoint is a cellular mobile radio service (CMRS) service provider serving rural Southwest Nebraska. It holds a PCS spectrum license in the Nebraska Basic Trading Area (BTA) 270, which covers eight counties (Chase, Dundy, Furnas, Hayes, Hitchcock, and Red Willow in Nebraska and Decatur and Rawlins in Kansas) with a total resident population of 31,343.

<sup>2</sup> *Wireless Telecommunications Bureau Seeks Comment on Petition for Expedited Declaratory Ruling Filed by T-Mobile USA, Inc. Regarding Data Roaming Obligations*, DA 14-798, Public Notice (rel. June 10, 2014) (“*Public Notice*”).

<sup>3</sup> *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. (filed May 27, 2014) (“*Petition*”).

nationwide coverage. For a facilities-based carrier like PinPoint, this expectation requires that its nationwide retail service offering include a combination of local coverage (provided on-network) and roaming partner coverage.<sup>4</sup> Because PinPoint is a local mobile wireless service provider with a modest licensed footprint covering just a few counties in two states, it relies upon N.E. Colorado Cellular, d/b/a Viaero Wireless (“Viaero”) and AT&T (which operate similar GSM/LTE-based networks) as absolutely crucial nationwide roaming partners. PinPoint depends on these two carriers (and, to a lesser extent, T-Mobile) to supplement its local coverage so that it can offer truly nationwide retail plans that are even remotely competitive with the retail rates and plans offered by the nationwide carriers.

In 2011, the Commission adopted rules requiring “all facilities-based providers of commercial mobile data services to offer data roaming arrangements to other such providers on commercially reasonable terms and conditions.”<sup>5</sup> However, the Commission failed to define what constitutes “commercially reasonable” rates, terms and conditions. This lack of clarity and direction by the Commission, combined with the coverage needs of small and rural service providers, has allowed certain “must-have”<sup>6</sup> carriers to strong-arm small, facilities-based carriers like PinPoint into entering data roaming agreements containing commercially unreasonable

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<sup>4</sup> For retail mobile virtual network operators (“MVNOs”), especially those that rely on the expansive underlying networks of AT&T and Verizon Wireless (e.g., Cricket, NET10, and Tracfone), there is no need to rely on roaming partner coverage.

<sup>5</sup> *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, Second Report & Order, WT Docket No. 05-265, FCC 11-52 (released April 7, 2011) (“*Data Roaming Order*”) at ¶42; *aff’d sub nom. Cellco P’ship v. FCC*, 700 F.3d 534 (D.C. Cir. 2012).

<sup>6</sup> While T-Mobile does not define a “must have” carrier, PinPoint considers a must-have carrier to be the only wireless carrier that is able to provide the requesting carrier with wireless data roaming services in a market that has significant “map value” to the requesting carrier. “Map value” is used in the wireless industry to describe a service area that adds significant value to a carrier’s network by satisfying the demand of the carrier’s customers. Examples of areas with map value include major Interstates; areas covering hundreds of square miles; markets that fill-in a carrier’s doughnut hole-shaped service territory; and rural markets that are immediately adjacent to a carrier’s service territory.

roaming rates. This imbalance in the marketplace ultimately hurts competition and drastically reduces consumer choice. Accordingly, and pursuant to Section 1.2 of the Commission's rules, PinPoint urges the Commission to act on the T-Mobile *Petition* and clarify what it means for data roaming rates to be "commercially reasonable".<sup>7</sup> If a nationwide carrier like T-Mobile -- with tens of millions of customers, valuable spectrum across the United States and a facilities-based GSM/LTE network stretching from coast-to-coast -- is unable to offer compelling retail plans because of high data roaming costs, then a small, rural carrier like PinPoint is all but doomed in large part because a significant percentage of its subscribers are regularly dependent upon adjacent local roaming with Viaero, and nationwide roaming with AT&T and T-Mobile.

In 2012, PinPoint and Viaero engaged in efforts to renegotiate roaming rates between the two carriers. Viaero's proposed data roaming rates were excessively high compared to the retail rates the company charged its own customers, and also significantly higher than the wholesale rates that PinPoint pays to other carriers. While the parties did not ultimately come to an official agreement on roaming rates, Viaero began billing PinPoint at the new rate anyway. Because Viaero is the only wireless data provider in nearby markets, and is therefore a "must have" carrier for PinPoint, PinPoint pays the rate.

## **II. THE COMMISSION SHOULD RULE THAT DOMESTIC, WHOLESALE, INTER-CARRIER DATA ROAMING RATES THAT EXCEED SPECIFIC BENCHMARKS ARE *DE FACTO* COMMERCIALLY UNREASONABLE.**

When the Commission promulgated its data roaming rules, it concluded that it was in the public interest to ensure that "providers of commercial mobile data services [] offer data roaming

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<sup>7</sup> See 47 C.F.R. § 1.2. See also *Petition* at ¶ 82 ("We note that the Wireless Telecommunications Bureau has delegated authority to resolve other disputes with respect to the data roaming rule adopted herein. We also note that whether or not the appropriate procedural vehicle is a complaint under Section 20.12(e) or a petition for declaratory ruling under Section 1.2 may vary depending on the circumstances of each case.").

arrangements on commercially reasonable terms and conditions.”<sup>8</sup> However, the ambiguity surrounding the definition of “commercially reasonable,” which has lingered since the release of the *Data Roaming Order* in 2011, has created two completely divergent viewpoints on what exactly constitutes “commercially reasonable,” with “must-have” carriers like AT&T and Viaero on one side and public interest groups, consumers, and small, rural carriers (and now even T-Mobile) on the other side.

T-Mobile proposes in its *Petition* that the Commission adopt four benchmarks for assessing the commercial reasonableness of data roaming agreements. These benchmarks include:

- (1) whether a wholesale roaming rate offered to a retail competitor substantially exceeds the relevant retail rate;
- (2) whether a wholesale roaming rate substantially exceeds roaming rates charged to foreign carriers when their customers roam in the U.S.;
- (3) whether a wholesale roaming rate substantially exceeds the price for wholesale data service that a seller charges to MVNO customers; and
- (4) how the proposed wholesale roaming rate compares to other competitively negotiated wholesale roaming rates.<sup>9</sup>

PinPoint supports the general intent underlying the benchmark “concept” introduced by T-Mobile. PinPoint also supports T-Mobile’s request for clarification that the inclusion of the “extent and nature of providers’ ‘build-out’” in the *Data Roaming Order*, as one of a number of non-exclusive factors intended to inform determinations of commercial reasonableness, “was not intended to allow a host carrier to deny roaming, or to charge commercially unreasonable rates for roaming, in a particular area where the otherwise built-out requesting provider has not built-

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<sup>8</sup> *Data Roaming Order* at ¶13.

<sup>9</sup> *Petition* at p. ii-iii. T-Mobile also asks the Commission to clarify that: (1) the “presumption that the terms of an existing roaming agreement are commercially reasonable applies only with respect to challenges to the terms of *that agreement*, and not to the reasonableness of *future* roaming agreements or proposed agreements.”; and (2) the inclusion of “the extent and nature of providers’ build-out’ in the *Data Roaming Order* as one of a number of non-exclusive factors was not intended to allow a host carrier to deny roaming in a particular area where the otherwise built-out requesting provider has not built-out.”

out.”<sup>10</sup> While PinPoint supports T-Mobile’s request that the Commission clarify that the rates, terms and conditions of already-executed agreements should not be presumed commercially reasonable for future negotiations and agreements, PinPoint urges the Commission to reconsider its original determination that the rates, terms and conditions of already-executed agreements are presumed to be commercially reasonable. PinPoint, and likely other requesting carriers, pay unreasonable data roaming fees under duress. With no competition in the provision of data roaming services, carriers like PinPoint find themselves presented with “take-it or leave-it” data roaming fee proposals, which they have no choice but to take.

While the four benchmarks proposed by T-Mobile are a good start, they do not provide the clarity needed by carriers to determine whether a particular rate is commercially reasonable. To provide such clarity, the Commission should draw definitive lines-in-the-sand that clearly separate rates, terms, and conditions that qualify as commercially reasonable from rates, terms and conditions that are commercially unreasonable. PinPoint strongly urges the Commission to create three new benchmarks that allow for direct comparison and an easier determination as to whether a roaming rate is commercially reasonable. Specifically, the Commission should find that a domestic, inter-carrier, wholesale data roaming rate is commercially unreasonable:

- (1) if it exceeds the relevant retail rate;<sup>11</sup> or
- (2) if it exceeds roaming rates charged to foreign carriers when their customers roam in the U.S.; or
- (3) if it exceeds the price for wholesale data service that a seller charges to MVNO customers.

The Commission should make clear that if inter-carrier, wholesale data roaming rates are higher than any of those three benchmarks, then they are commercially unreasonable.

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<sup>10</sup> *Petition* at p. 22.

<sup>11</sup> The retail roaming rate that the wholesale carrier offers to its own data customers.

As discussed below, the confidentiality provisions that govern most, if not all, domestic roaming agreements prevent open and honest public debate about commercial reasonableness. Indeed, these same confidentiality provisions prevent PinPoint from explaining here in detail just how divergent the various data roaming rates are to which it has been forced to agree. To facilitate such a discussion, PinPoint proposes in Section III below that the Commission require that all such agreements be filed with the Commission. Given PinPoint's restrictions on what it can discuss publicly with respect to its current roaming relationships and the rates it pays for the data services acquired through those relationships, it is forced to restrict its discussion here to roaming rates in the abstract.

PinPoint, due to its rural location and reliance upon adjacent "must-have" roaming coverage by Viaero, has been forced to choose between paying for that roaming coverage at rates which it considers commercially unreasonable and blocking the ability of its own subscribers to access that Viaero roaming coverage and thus reduce the coverage area available through its wireless retail offerings. PinPoint chose to allow roaming on Viaero at what it considers to be commercially unreasonable rates. Because the licensed and network service area of PinPoint is almost completely surrounded by Viaero, and there are no other GSM/LTE carriers covering these adjacent markets, PinPoint had (and continues to have) no choice but to pay whatever roaming rates Viaero proposes. It should also be noted that, like PinPoint, Viaero is a recipient of Mobility Fund Phase I funding. Recipients of Mobility Fund Phase I support must provide voice and data roaming on networks built with the support consistent with the requirements of Section 20.12 of the Commission's rules.<sup>12</sup>

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<sup>12</sup> *Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901*; AU Docket No. 12-25, Public Notice, DA 12-641, at ¶ 31 (rel. May 2, 2012).

It is well documented that data consumption by mobile users is skyrocketing.<sup>13</sup> Unlike in a “home” market where high data usage can be offset by reliance on Wi-Fi hotspots in the home or school or workplace, there are no realistic alternatives when a consumer is mobile and roaming. Therefore, companies like PinPoint routinely expect that a certain percentage of their subscribers’ usage will fall onto must-have roaming partners. PinPoint, because it is surrounded by Viaero’s coverage and no other GSM/LTE service providers, is much more reliant upon off-network roaming than other carriers. The dependency of smaller carriers on the roaming coverage provided by larger, must-have roaming partners (whether it is a regional carrier like Viaero, or a nationwide carrier like AT&T) and the cost structure associated with that reliance on roaming, reveals that small and rural carriers are often in a no-win situation.

If PinPoint, solely because of its reliance upon must-have data roaming, continues to pay excessive data roaming rates, it will be forced to do one of two things. First, it could maintain a competitive retail price just as Viaero does to attract customers, but be forced on a per-customer basis to pay excessive roaming costs to Viaero, which makes offering a robust roaming footprint absolutely unprofitable. Second, PinPoint could pass along that increase in wholesale roaming costs and offer the comparable retail offering to the consumer for a much higher retail price in order to sustain revenue and offset roaming costs. By maintaining such a retail rate, PinPoint would gradually lose money and be forced to go out of business. If PinPoint offers a retail rate plan that is intended to cover excessive roaming costs, no right-minded consumer would be willing to pay more each month for PinPoint when there are less expensive and nearly comparable services available from Viaero. This is true even if PinPoint were somehow to

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<sup>13</sup> See, e.g., *Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket Nos. 12-269, 12-268, Report and Order, FCC 14-63 (rel. Jun 2, 2014) (Noting that “skyrocketing” consumer demand for high speed data is increasing providers’ need for spectrum and that today’s consumers expect mobile broadband at home, at work, and while “on the go.”).

distinguish itself through other means such as stellar customer service, better coverage in overlap markets, higher data speeds, a varied portfolio of data-capable devices, or some other distinguishing characteristic.

PinPoint has reason to believe that inter-carrier data roaming rates in the domestic mobile industry are five-times or perhaps even ten-times the prevailing retail rates for comparable data services. Such rates are clearly commercially unreasonable. At the end of the day, the choice a consumer makes is heavily dictated by coverage and price, and PinPoint loses on both accounts. This is a no-win predicament, and it can only be remedied by the FCC taking action to prevent roaming partners from charging commercially unreasonable rates as mandated by the *Data Roaming Order*.

**III. TO ENSURE THAT INTER-CARRIER, WHOLESALE DATA ROAMING RATES, TERMS AND CONDITIONS ARE COMMERCIALY REASONABLE, THE FCC SHOULD REQUIRE ALL DOMESTIC CARRIERS TO CONFIDENTIALLY FILE THEIR ROAMING AGREEMENTS WITH THE COMMISSION.**

PinPoint has dozens of data roaming partners, including similarly-situated small and rural GSM/LTE carriers in the United States, larger GSM/LTE carriers like Viaero, nationwide GSM/LTE carriers like AT&T and T-Mobile, and international GSM/LTE carriers. What distinguishes all existing and/or potential GSM/LTE roaming partners is their relative importance to PinPoint to achieving its goal of cobbling together a compelling mobile wireless service offering to consumers in Southwest Nebraska. For example, a data roaming partner covering just a small portion of a domestic market like northern Alaska or an international market is not a “must-have” carrier. On the other hand, data roaming partners like Viaero, with its adjacent coverage surrounding PinPoint’s service territory, or AT&T, with its expansive domestic coverage, are absolutely crucial to PinPoint.

The reasons behind the varying importance of particular roaming partners are not complex. For example, the aggregate amount of traffic on that sole, rural Alaskan carrier may be insignificant and there may be more than one mobile operator to choose from in another country. These differences affect the ability of PinPoint to remain competitive. For example, if the Alaskan or international carrier has excessively high data roaming rates, PinPoint could make changes to its retail offerings (*i.e.*, add a reasonable retail surcharge for roaming in Alaska or prefer a less expensive roaming partner in the affected country) and still be competitive. But the same is not true when it comes to Viaero and AT&T.

Viaero is a must-have carrier for PinPoint because it covers immediately adjacent cities, towns, and rural roads in the area that no other GSM/LTE carrier covers. PinPoint must be able to roam on Viaero's network because Viaero is the only provider that serves the rural area surrounding PinPoint's territory. It is precisely those must-have markets in nearby areas that distinguish Viaero from every other PinPoint roaming partner. AT&T is also a must-have carrier for PinPoint because it covers vast, non-urban markets throughout the United States that no other carrier covers, not even T-Mobile.

For at least three years, there has been no transparency in the domestic roaming marketplace to allow the FCC to determine what constitutes a commercially reasonable data roaming rate and what constitutes a commercially unreasonable data roaming rate. PinPoint strongly believes that the *only* effective way to educate the Commission on just how chaotic the domestic roaming marketplace has become and, more to the point, spotlight just how commercially unreasonable must-have carriers have been acting, is to require that *all* domestic, inter-carrier data roaming agreements be filed with the Commission.

#### IV. CONCLUSION

PinPoint agrees with the T-Mobile *Petition* that there is ambiguity in the meaning of “commercially reasonable” inter-carrier, domestic data roaming rates and that this confusion is detrimental to the public interest. However, unlike T-Mobile, PinPoint strongly believes that the proposed benchmarks should be modified and serve as an absolute ceiling for what constitutes commercially reasonable roaming rates. The FCC should require all domestic carriers to file their data roaming agreements with the Commission so that it has all the relevant information to make an informed decision.

Respectfully submitted,

**PINPOINT WIRELESS, INC.**

By: */s/ Daryl A. Zakov*

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