

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

_____)	
In the Matter of)	
)	
Petition to Rescind Forbearance from)	RM-11723
Application of Section 211 of the)	
Communications Act of 1934)	
)	
)	
Reexamination of Roaming Obligations of)	WT Docket No. 05-265
Commercial Mobile Radio Service Providers and)	
Other Providers of Mobile Data Services)	
_____)	

**COMMENTS OF NTELOS HOLDINGS CORP. IN SUPPORT OF PETITION TO
RESCIND FORBEARANCE AND INITIATE RULEMAKING OF NTCH, INC.**

NTELOS Holdings Corp. (“NTELOS”),¹ by its attorneys, hereby respectfully submits these comments in support of certain proposals in the *Petition To Rescind Forbearance and Initiate Rulemaking* filed by NTCH, Inc. (“NTCH”) in the above-captioned proceeding (the “Petition”).² In support, the following is respectfully shown:

I. INTRODUCTION

NTELOS is a regional provider of high-speed voice and data services to businesses and approximately 464,000 retail subscribers in most areas of Virginia and West Virginia, and select

¹ For purposes of these Comments, the term “NTELOS” refers to NTELOS Holdings Corp. and all of its FCC-licensed subsidiaries.

² *Wireless Telecommunications Bureau Seeks Comment on Petition by NTCH, Inc. To Rescind Forbearance and Initiate Rulemaking To Make Inter-Provider Roaming Rates Available*, RM-11723, WT Docket No. 05-265, Public Notice, DA 14-997 (rel. July 14, 2014); NTCH, Inc., *Petition to Rescind Forbearance and Initiate Rulemaking*, DA 95-317, Docket No. 93-252 (“NTCH Petition”).

areas of Maryland, Ohio, Kentucky, North Carolina and Pennsylvania. NTELOS' licensed territories have a total population of approximately 8.0 million residents, of which its wireless network covers approximately 6.0 million residents. NTELOS competes in its service areas against the nationwide wireless carriers, and it actively innovates and offers competitive services to its customers.

NTELOS agrees that requiring carriers to file their data roaming agreements with the Commission will aide the Commission in reviewing whether unfair practices are occurring in the roaming market and also help prevent competitive carriers from being further subjected to unreasonably discriminatory rates.

II. NTELOS AGREES THAT CURRENT ROAMING PRACTICES BY THE TWO DOMINANT WIRELESS CARRIERS NECESSITATE COMMISSION ACTION

The Petition highlights the substantial competitive shift that the overall cellular marketplace has undergone in the past 20 years. In 1994, the Commission chose to forbear from requiring CMRS carriers to file their rates and terms with the Commission due, in part, to its finding that “the cellular marketplace was sufficiently competitive to ensure that inter-carrier contracts would not be used to harm consumers.”³ NTELOS agrees with NTCH that this certainly “is not the case now.”⁴ This shift has allowed the largest carriers to dictate high roaming rates to competitive carriers, a practice that has hindered the provision of competitive services to consumers and is contrary to the public interest.

The effective dominance of the wholesale roaming market by two carriers, AT&T and Verizon, demonstrates that there is not “sufficient competition” in the wholesale roaming

³ NTCH Petition, 2.

⁴ *Id.*

marketplace.⁵ Verizon and AT&T continue to maintain (and increase) their dominant position due to their extensive resources, spectrum and coverage and have every incentive to prevent competitive carriers from providing competitive nationwide offerings to consumers. Recently, NTELOS filed comments in support of T-Mobile's Petition for additional guidance and clarification on the "commercially reasonable" standard adopted in the *Data Roaming Order*.⁶ In these comments NTELOS underscored the current roaming market duopoly held by Verizon and AT&T:

As AT&T and Verizon continue to surpass other carriers in terms of spectrum holdings, subscribers and revenues, they continue to lose any incentive they might have had enter into a commercially reasonable roaming agreement. Indeed, with each transaction that is approved, the greater the negotiating power of AT&T and Verizon grows, and the smaller the bargaining power of a competitive carrier becomes.⁷

The dominance of Verizon and AT&T has resulted in "power positions" within the uneven playing field during roaming negotiations.⁸ Due to their overwhelming amount of spectrum resources, these powerhouses have less of a need for roaming partners than competitive carriers that must rely on roaming partners to provide competitive nationwide services to their customers. As a result, Verizon and AT&T can charge almost any rates and impose almost any terms and

⁵ In fact, in the most recent competition report, the Commission recognizes a recent survey conducted by NTCA that finds that the majority of its respondent members found that "negotiating roaming agreements" was a major area of concern. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Sixteenth Report, 28 FCC Rcd. 3700, ¶ 210 (2013).

⁶ Comments of NTELOS Holdings Corp. in Support of Petition for Expedited Declaratory Ruling of T-Mobile USA, Inc., in WT Docket No. 05-265 (filed July 10, 2014) ("NTELOS TMO Petition Comments").

⁷ *Id.* at 9-10.

⁸ NTCH Petition, 5 ("Power positions" result from entities having "the most ubiquitous coverage and the least need for reciprocal roaming access.").

conditions they wish on carriers for wholesale roaming services – despite the Commission’s welcomed efforts via the *Data Roaming Order*.⁹ This is because these agreements, as NTCH correctly points out, are negotiated “under the heavy cloak of a non-disclosure agreement” and “there is no way for other carriers to verify the rates offered, nor to determine whether the rates offered to different parties are unreasonably discriminatory.”¹⁰

Currently, due to these non-disclosure agreements and other public concealment of wholesale roaming rates, it is understandably difficult for the Commission to acquire a full understanding of the broken wholesale roaming market. Therefore, the Commission needs to take this opportunity to ensure that it has an accurate view of the market as a whole. As the Petition has suggested, if the Commission were to request and review all data roaming agreements, it would likely confirm what competitive carriers have reported for years: the roaming market is broken. Such access to roaming rates and conditions would help shine a light on the ability of the dominant carriers to act in an anti-competitive manner with respect to roaming.

III. NTELOS SUPPORTS A REQUIREMENT FOR WIRELESS CARRIERS TO FILE THEIR ROAMING AGREEMENTS WITH THE COMMISSION IN A CONFIDENTIAL MANNER

NTELOS agrees with NTCH that exposing roaming rates to the Commission will better allow for enforcement of the prohibition against rates that are unreasonably discriminatory.¹¹ As noted above, most, if not all, roaming negotiations and agreements are founded under strict non-

⁹ See generally *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*”), *aff’d sub nom. Cellco P’ship v. FCC*, 700 F.3d 534 (D.C. Cir. 2012).

¹⁰ NTCH Petition, 2.

¹¹ See 47 U.S.C. § 202.

disclosure agreements. Therefore, a competitive carrier may find itself unable to determine whether or not an offered rate is unreasonably discriminatory. As a result, it is difficult for the Commission to verify these issues concerning both individual circumstances and the wholesale roaming market as a whole. Therefore, procedures should be established to allow for wholesale roaming agreements to be made available to the Commission. Such procedures could include the confidential submission of actual roaming agreements to the Commission. NTELOS agrees with NTCH that any such requirements would not push the Commission's data roaming rules toward common carriage, as carriers would still be able to individually negotiate rates and terms. Rather, such rules would help the Commission determine the commercial reasonableness of any particular roaming offer that was the subject of a dispute.

NTELOS recognizes that the terms and conditions of such agreements may be commercially sensitive, and therefore should be submitted under the Commission's confidential treatment procedures. Adopting this requirement would provide the Commission with reference points to assist in a determination of whether rates are unreasonably discriminatory, and thus, will likely help develop the Commission's understanding of just how broken and uneven the wholesale roaming market truly is.

By adopting the above proposed checkpoint, the Commission would be ensuring that carriers are held accountable for their offered roaming rates and terms and conditions. To further guarantee that there are no loopholes, the Commission should also adopt a rule that prohibits carriers from entering into or enforcing non-disclosure agreements that prevent the disclosure of roaming rates to the Commission, as suggested by the Petition.¹² Adopting these practices

¹² NTCH Petition, 9.

should influence the current discriminatory practices of the two dominant carriers and encourage fair and reasonable roaming rates for competitive carriers.

IV. CONCLUSION

Based on the foregoing reasons, NTELOS respectfully requests that the Commission grant NTCH's *Petition to Rescind Forbearance and Initiate Rulemaking* and adopt the rules detailed herein to require carriers to make their wholesale roaming agreements available to the Commission.

Respectfully submitted,

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August 18, 2014

CERTIFICATE OF SERVICE

I, Jessica DeSimone, hereby certify that on the 18th day of August 2014, I caused a true and correct copy of the foregoing Comments in Support of Petition to Rescind Forbearance and Initiate Rulemaking to be sent by electronic mail to:

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/s/ Jessica L. DeSimone 8/18/14

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