

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)	WT Docket No. 05-265
Communications Act of 1934)	
)	

COMMENTS OF NTCH, INC.

NTCH, Inc., the original petitioner, submits these brief comments to further support the need for prompt action on its Petition. Since the filing of NTCH's petition, there has been an expression of across the board support for a Petition filed by T-Mobile for clarification of the "commercially reasonable" standard as it applies to data roaming rates. WT Docket 05-265. The requested guidelines would effectively place broad limits on the ability of carriers to impose unreasonable roaming rates on less powerful carriers by relating them to other metrics for similar services, such as retail rates, MVNO rates and foreign roaming charges. Predictably, all carriers, including national carriers like Sprint, supported the T-Mobile petition, with AT&T and Verizon Wireless being the only exceptions. Numerous carriers echoed T-Mobile's complaints about exorbitant data roaming rates, providing broad confirmation of the fact that there is a serious market failure in the roaming market. When even carriers as large as T-Mobile and Spring cannot negotiate fair and reasonable rates, the ability of smaller carriers to do so is nil.

Significantly, however, none of the commenting carriers were in a position to discuss what the actual rates are. As NTCH pointed out in its own comments on the T-Mobile petition, it is a bizarre situation indeed when the agency charged with ensuring the reasonableness of rates has no idea what the rates being charged actually are. The Commission is flying as much in the dark as the hapless carriers who are trying to negotiate rates without any sense of what the "market price" for rates might be. The absolute non-transparency of rates is especially

problematic since the *Data Roaming Order*¹ expressly contemplates that the commercial reasonableness of rates can be assessed in part on the rates charged by the roaming partner to other carriers. How is a carrier to know whether the rate is being offered is reasonable under the Commission's stated standards if it does not have access to the rates being charged to others? And how can the Commission know whether the market solution it has relied upon is working if it doesn't know the rates? Certainly the anecdotal information supplied in the T-Mobile complaint and seconded by other parties strongly suggests that the rates currently being negotiated are *not* reasonable due to the huge imbalance of negotiating power between AT&T and Verizon Wireless.

We also note the publication of rate information does not in any way upset the Commission's current regulatory paradigm for data roaming as an information service. Everything in the *Data Roaming Order* could remain as is, including the right of carriers to negotiate individualized rates with carriers without regard to discrimination, except that everyone would now know what rates were being charged to others. Transparent, publicly available rates, as the Commission seemed to understand, would serve as a solid basis for arriving at mutually agreeable commercially reasonable rates. By contrast, there is no countervailing benefit whatsoever to concealing rates.

The need for open rates is obviously even more critical in mobile services such as voice roaming that are currently regulated under Title II. Here, where obligations not to discriminate unreasonably and to offer reasonable rates are statutory obligations, public access to rates is essential both for contracting parties and the Commission. The entire justification for publishing rates as required by Section 211 of the Act was to ensure that no unreasonable discrimination occurs. But without public access to such rates, the statutory obligations are effectively nullified.

Secrecy of roaming rates has helped to create the crisis which the CMRS industry now finds itself in. While not a panacea in itself, requiring rates to be public will go a long way to bring rationality to the current roaming rate structure, both by putting rate negotiations on a more

¹ *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 at ¶86 (2011).

fair and open footing and by removing the blindfold from the regulators so they can realistically monitor the situation.

Respectfully submitted,

NTCH, Inc.

By: _____/s/_____

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