Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition to Rescind Forbearance from	)	RM 14-105
Application of Section 211 of the	)	
Communications Act of 1934	)	WT Docket No. 05-265

COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION

NTCA–The Rural Broadband Association ("NTCA")[1] hereby submits its comments in response to the Public Notice[2] seeking comment on a petition[3] filed by NTCH, Inc. on July 2, 2014. In the Petition, NTCH asks the Commission to "rescind its blanket forbearance of the rate publication requirement for roaming rates offered by CMRS carriers" and to "[a]mend Section 20.15(b) of the rules to delete the CMRS exemption from filing roaming rates, whether for data roaming or voice roaming."[4] NTCA herein expresses its support for the Petition and urges the Commission to rescind its 1994 forbearance from Section 211 of the Communications Act, as it applies to wholesale wireless roaming rates, and require all CMRS providers to make their wholesale roaming rates publicly available.

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[1] NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and/or long distance services as well.

[2] Wireless Telecommunications Bureau Seeks Comment on Petition Filed By NTCH, Inc. To Rescind Forbearance and Initiate Rulemaking to Make Inter-Provider Roaming Rates Available, RM 14-105, WT Docket No. 05-265, Public Notice, DA 14-997 (rel. Jul. 14, 2014).

[3] Petition of NTCH, Inc. to Rescind Forbearance and Initiate Rulemaking, WT Dkt No. 93-252 (fil. Jul. 11, 2014) ("Petition").

[4] *Id.*, p. 10.

NTCA's members offer a wide range of wireless services to their customers. One hundred percent of respondents to NTCA's latest wireless survey[5] offer their wireless customers voice mail and text messaging. Ninety-five percent of survey respondents providing wireless offer Internet access, 90 percent unlimited local calling, family plans and caller ID, 85 percent three-way calling, and 80 percent free long distance. These carriers face significant challenges, the ability to access wholesale mobile wireless roaming services at reasonable rates chief among them. Forty-one percent cited the ability to negotiate roaming agreements with national carriers as a major concern. More than half of those who attempted to negotiate data roaming and/or in-market roaming agreements with other providers categorized the experience as moderately to extremely difficult.

NTCH correctly states in its Petition that the decision to forbear from Section 211, made two decades ago, was during a time when the cellular marketplace was very different than it is today.[6] Consolidation in the mobile wireless industry has significantly winnowed down the number of carriers.[7] More importantly, roaming has become much more important to consumers in the intervening twenty years, as consumers now expect to have the ability to use their wireless

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[5] NTCA's 2013 Wireless Survey Report (released January 2014) can be found online at http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2013ntcawirelesssurvey.pdf.

[6] *Id*., p. 2 (stating that the Commission granted forbearance "based on its view that at that time the cellular marketplace was sufficiently competitive to ensure that inter-carrier contracts would not be used to harm consumers. While that may have been the case in 1994 when there were still multiple RBOCs and hundreds of independent non-wireline and wireline carriers offering cellular service, it is not the case now.").

[7] The nation's two largest wireless providers account for approximately 67 percent of all wireless revenue and have extensive spectrum holdings. *See*, Implementation of Section 65002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions Wire Respect to Mobile Wireless, Including Commercial Mobile Services, Sixteenth Report, 28 FCC Rcd. 3700, ¶¶ 52 & 118 (2013).

devices wherever they work, live, or travel.[8] Thus, the vastly different wireless marketplace and vastly different consumer expectations merit reconsideration of the Commission's previous determination.

As NTCH demonstrates in its Petition, the three elements prescribed by Section 322(c) of the Communications Act necessary to support a grant of forbearance no longer exist. Indeed, it cannot be truly said that enforcement of Section 211 as it applies to wholesale wireless roaming rates "is not necessary to ensure that charges, practices, classifications or regulations by, for or in connection with that telecommunications carrier or telecommunications service are just, reasonable and are not unjustly or unreasonably non-discriminatory."[9] In fact, just the opposite is now true. As NTCH states in its Petition, and as NTCA members report, roaming rates offered by available roaming partners "are sometimes so high as a practical matter they preclude roaming on their systems altogether."[10] Additionally, as NTCA recently stated, while the *Data Roaming Order*[11] was intended "to create an environment where all mobile wireless operators, regardless of size and location, can enter into commercially reasonable data roaming agreements…that goal has not been realized [and] the wholesale roaming marketplace remains

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[8] *See*, Pew Research Internet Project, Mobile Technology Fact Sheet, January 2014 (finding, among other things that 58% of American adults have a smartphone, 29% of cell owners describe their cell phone as "something they can't imagine living without" and 34% of cell internet users go online mostly using their phones**,** and not using some other device such as a desktop or laptop computer.) available at: http://www.pewinternet.org/fact-sheets/mobile-technology-fact-sheet/

[9] 47 U.S.C. § 332(c)(1)(A)(i).

[10] Petition, p. 5.

[11] *In the Mater of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, WT Docket No 05-265, FCC 11-52 (rel. Apr. 7. 2011) ("*Data Roaming Order")*.

unchanged and no more competitive than it was when the Commission adopted its order."[12] Moreover, the fact that roaming rates are subject to non-disclosure agreements, and the fact that the Commission's 1994 decision to forbear from Section 211 keeps these rates secret, renders the complaint process all but fruitless.[13] As a result, neither carriers nor the Commission have the opportunity to even consider whether the "charges, practices…are not unjustly or unreasonably non-discriminatory."[14]

In addition, as it stands today, small, rural wireless carriers have no effective recourse and little alternative but to pay whatever the price may be for wireless roaming and to then pass these rates on to consumers. Such a result only harms consumers, undermines the workings of a more properly competitive marketplace, and is antithetical to the intent of Section 322(c), which is to forbear from a regulation if it "is not necessary for the protection of consumers."[15] Indeed, it is only the nation's largest wireless carriers that enjoy any protection today.

Finally, it can no longer be considered in the public interest to forbear[16] from Section 211 of the Communications Act as it applies to wholesale wireless roaming rates. The public interest would be far better served by increasing transparency in this marketplace, enabling small, rural wireless carriers to accurately judge the reasonableness of wholesale roaming rates available to them. The public interest would also be served by the Commission having these rates at their

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[12] Comments of NTCA, WT Docket No. 05-265 (fil. Jul. 10, 2014), p. 3

[13] The complaint process is also onerous and expensive, particularly for the small rural wireless carriers that are part of NTCA's membership. Add to that the fact that the complainant in such a process must also continue to negotiate with the party against whom they have filed a complaint, and it is no surprise that very few complaints are filed.

[14] 47 U.S.C. § 332(c)(1)(A)(i).

[15] 47 U.S.C. § 332(c)(1)(A)(ii).

[16] 47 U.S.C. § 332(c)(1)(A)(iii).

disposal for the purposes of considering whether consumers are bearing the brunt of unjust or unreasonable roaming rates.

The Commission's decision to forbear from Section 211 of the Communications Act as it applies to wholesale wireless roaming rates was rooted in a wireless marketplace that no longer exists. The intervening two decades since that decision have seen both the market and consumers' demands for mobile wireless services change quite drastically. As NTCA recently noted, "[t]here is empirical and anecdotal evidence showing that the wholesale roaming rates offered by the largest mobile wireless operators are predatory and anticompetitive in nature and have no relation to what the largest operators' own retail customers are paying."[17] In the end, rescinding forbearance from Section 211 is not about heavy-handed regulation; it is instead driven by a common-sense look at a twenty-year-old rule that bears no relation to the actual state of the market today, and granting the NTCH Petition would simply introduce transparency to help ensure this market functions well. Shining light on wholesale roaming rates will only serve to ensure the market functions more effectively and thereby benefit consumers who bear the brunt of any unjust and unreasonable rates in this market.

Respectfully submitted,

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[17] Comments of NTCA, WT Docket No. 05-265 (fil. Jul. 10, 2014), p. 3.