

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

In the Matter of	)	
	)	
Wireless Telecommunications Bureau Seeks Comment on	)	RM 14-105
Petition Filed By NTCH, Inc. to Rescind Forbearance and	)	
Initiate Rulemaking to Make Inter-Provider Roaming	)	
Rates Available	)	
	)	
Reexamination of Roaming Obligations of	)	WT Docket No. 05-265
Commercial Mobile Radio Service Providers and	)	
Other Providers of Mobile Data Services	)	

To: The Wireless Telecommunications Bureau

**COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.**

The Rural Wireless Association, Inc. (“RWA”)<sup>1</sup>, by its attorneys, respectfully submits these Comments in response to the Federal Communications Commission (“FCC” or “Commission”) Wireless Telecommunications Bureau’s *Public Notice*<sup>2</sup> seeking comment on NTCH, Inc.’s (“NTCH”) Petition to Rescind Forbearance and Initiate Rulemaking.<sup>3</sup> RWA

---

<sup>1</sup> RWA is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education in a manner that best represents the interests of its membership. RWA’s members have joined together to speed the delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. RWA’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies.

<sup>2</sup> *Wireless Telecommunications Bureau Seeks Comment on Petition Filed by NTCH, Inc. to Rescind Forbearance and Initiate Rulemaking to Make Inter-Provider Roaming Rates Available*, DA 14-997, Public Notice, RM 14-105, WT Docket No. 05-265 (rel. July 14, 2014) (“*Public Notice*”).

<sup>3</sup> *In the Matter of Petition of NTCH, Inc. to Rescind Forbearance from Application of Section 211 of the Communications Act of 1934*, WT Docket No. 93-252 (filed July 11, 2014) (“*Petition*”).

supports NTCH's petition requesting that the Commission, with respect to roaming agreements: (1) rescind its decision to forbear from enforcement of the Communications Act of 1934 ("the Act") provision requiring common carriers to file their rates and terms with the Commission; and (2) conform its rules to reflect this change.<sup>4</sup> In particular, RWA continues to urge the FCC to collect roaming agreements and rates confidentially.<sup>5</sup>

## **I. BACKGROUND**

American consumers expect their wireless devices to work from coast-to-coast and everywhere in between. The fulfillment of such expectation is dependent upon the availability of nationwide roaming. The availability of roaming is critical to rural mobile wireless carriers, who are more reliant upon roaming than nationwide and regional carriers. Nationwide carriers, with deep spectrum resources and nationwide networks, rely less on roaming to fill in their coverage gaps. In contrast, small and rural carriers with modest spectrum holdings in smaller geographic markets and with fewer economies of scale need voice and data roaming access to other carriers' mobile networks in order to offer nationwide service to their current and prospective customers.

Voice and data roaming regulatory schemes differ. The Commission has ruled that, pursuant to Title II of the Act, mobile-voice providers have a common carrier obligation to provide voice roaming to other carriers.<sup>6</sup> Carriers must offer voice roaming to other carriers on a

---

<sup>4</sup> See 47 U.S.C. § 211; see also 47 C.F.R. § 20.15(b) (exempting Commercial Mobile Radio Services ("CMRS") carriers from filing copies of contracts between carriers with the Commission).

<sup>5</sup> See *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, Comments of the Rural Wireless Association, Inc. (filed July 10, 2014).

<sup>6</sup> *Cellco P'ship v. FCC*, 700 F.3d 534 (D.C. Cir. 2012).

just, reasonable, and nondiscriminatory basis.<sup>7</sup> Section 211 of the Act generally requires common carriers to file their rates and terms with the Commission, but in 1994 the Commission forbore from requiring CMRS carriers to file their rates and terms. This means that CMRS carriers are under no obligation to file voice roaming agreements with the FCC.<sup>8</sup>

Title II common carrier obligations applicable to voice roaming do not extend to data roaming because wireless internet service is an information service, and not a commercial mobile service.<sup>9</sup> However, in order to promote consumer access to nationwide mobile broadband services, the Commission adopted rules in 2011 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>10</sup> Although these carriers are required to make data roaming services available to other carriers, they are not required to make roaming agreements public or file them with the FCC.<sup>11</sup>

---

<sup>7</sup> *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817, 15818 ¶¶ 1–3 (2007).

<sup>8</sup> *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, FCC 94-31, 9 FCC Rcd 1411, ¶ 181 (1994); *see also* 47 C.F.R. § 20.15(b)(1) (stating that CMRS providers are not required to “[f]ile with the Commission copies of contracts entered into with other carriers...”).

<sup>9</sup> *See Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, FCC 07-30, WT Docket No. 07-53, 22 FCC Rcd 5901, 5915-21 ¶¶ 37-56 (2007); *see also Cellco P’ship v. FCC*, 700 F.3d 538.

<sup>10</sup> *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 26 FCC Rcd 5411 at ¶ 1 (2011).

<sup>11</sup> *Id.* at ¶ 62.

## **II. THE FCC SHOULD REQUIRE CARRIERS TO CONFIDENTIALLY FILE DOMESTIC ROAMING AGREEMENTS WITH THE COMMISSION.**

RWA strongly encourages the Commission to direct all carriers to confidentially file their domestic roaming agreements with the Commission. Doing so would provide the Commission with a complete record from which it can ascertain the health of the roaming market. The Commission would have the information it needs to determine whether the rates, terms and conditions of voice roaming agreements are in fact “just, reasonable, and nondiscriminatory” and that data roaming terms and conditions are “commercially reasonable” as required.

RWA also supports NTCH’s recommendation that the Commission disallow the use of nondisclosure agreements in roaming negotiations, which has significantly limited the ability of rural carriers to discuss with the Commission the difficulties carriers face when attempting to negotiate just and reasonable roaming agreements. For years, RWA has shed light on the difficulties faced by rural wireless providers in the roaming market. In 2012, RWA and the National Telecommunications Cooperative Association filed an *ex parte* in the FCC’s Roaming Docket that offered anonymized/aggregated evidence that small and rural mobile wireless operators are charged wholesale data roaming rates that are typically five to ten times higher than the retail rates that Tier 1 customers pay.<sup>12</sup>

Carriers often cite to confidentiality agreements to hide from the public the problems that requesting carriers face when attempting to negotiate “just, reasonable, and nondiscriminatory” voice roaming agreements and “commercially reasonable” data roaming agreements. As soon as a requesting carrier starts roaming discussions with another carrier, the requesting carrier

---

<sup>12</sup> *Reexamination of Roaming Obligations of CMRS Providers, Ex Parte* Letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, from Caressa D. Bennet, General Counsel, Rural Telecommunications Group, Inc., and Jill Canfield, Director, Legal and Industry, National Telecommunications Cooperative Association, WT Docket No. 05-265 (Nov. 9, 2012).

typically must enter into a nondisclosure agreement that treats all discussions between the parties as confidential. As a result, the FCC and the public are largely in the dark about issues underlying roaming negotiations and the final agreements. Rural carriers need roaming through nationwide carriers to provide consumers with nationwide service. They have no choice but to sign the nondisclosure agreements in order to obtain, and then offer to existing and prospective consumers, a nationwide footprint. The nondisclosure agreements essentially keep carriers from seeking Commission intervention to enforce the requirement that roaming rates be “just, reasonable, and nondiscriminatory” or “commercially reasonable.”

### **III. CONCLUSION**

RWA strongly encourages the Commission to require carriers to confidentially file their voice and data roaming agreements with the Commission and disallow the use of nondisclosure agreements in roaming negotiations. Removing the shroud of secrecy from roaming negotiations would assist efforts to level the competitive playing field, encourage competition, and improve service to rural consumers.

Respectfully submitted,

**RURAL WIRELESS ASSOCIATION, INC.**

By: */s/ Daryl A. Zakov*

---

Daryl A. Zakov, Assistant General Counsel  
Erin P. Fitzgerald, Asst. Regulatory Counsel  
10 G Street, NE, Suite 710  
Washington, DC 20002  
(202) 551-0010

August 18, 2014