

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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| In the Matter of  | ) |                      |
|   | ) |                      |
| Reexamination of Roaming Obligations of<br>Commercial Mobile Radio Service Providers<br>and Other Providers of Mobile Data Services | ) | WT Docket No. 05-265 |
|   | ) |                      |
| Petition for Expedited Declaratory Ruling of<br>T-Mobile USA, Inc.  | ) | DA 14-798            |
|   | ) |                      |

**To: Chief, Wireless Telecommunications Bureau**

**REPLY COMMENTS OF THE BLOOSTON RURAL CARRIERS**

The law firm of Blooston Mordkofsky Dickens Duffy & Prendergast, LLP (“Blooston”), on behalf of its rural telephone and wireless carrier clients (the “Blooston Rural Carriers”), respectfully submits these reply comments in support of T-Mobile USA’s Petition for Expedited Declaratory Ruling and request for prospective guidance on the “commercially reasonable” standard in the context of data roaming. Aside from comments by AT&T and Verizon (a.k.a., the “Big Two”), which urge the Commission to preserve the status quo (to their tremendous advantage), the record in this proceeding shows unanimous support for the modest and reasonable clarification of the Commission’s Rules that is sought by T-Mobile. Because the guidance sought by T-Mobile is desperately needed by a wide range of rural and competitive wireless carriers, and because the availability of commercially reasonable terms and conditions for 4G data roaming services from the Big Two is essential to any carrier that wishes to participate in the Mobility Fund Phase II proceeding, the FCC should promptly grant T-Mobile’s Petition and issue much needed guidance on the commercially reasonable standard. In addition, the Commission should adopt a “shot clock” for data roaming negotiations so that the Big Two

cannot simply ignore requests from small carriers, and it should strongly consider RWA's proposal to require all carriers to confidentially file their data roaming agreements with the FCC so that the Commission's staff can have a better understanding of the rates, terms and conditions that are being forced on small carriers.

### **I. Competitive Carriers Unanimously Support the T-Mobile Petition**

Upon review of the comments in this proceeding, the record shows unanimous support for the Commission to adopt four benchmarks for assessing the commercial reasonableness of data roaming agreements that were proposed by T-Mobile.<sup>1</sup> Those benchmarks include: (1) whether the wholesale data roaming rate substantially exceeds the retail rate; (2) whether the wholesale data roaming rate substantially exceeds roaming rates charged to foreign carriers when their customers roam in the United States (and vice versa); (3) whether the wholesale data roaming rate substantially exceeds the price for wholesale service charged to MVNOs; and (4) how the proposed wholesale roaming rate compares to other competitively negotiated wholesale roaming rates. The data roaming market has not developed as the Commission intended when it adopted its *Data Roaming Order* in 2011, and a lack of access to data roaming services on commercially reasonable terms and conditions is hampering the ability for small, mid-tier and regional carriers to compete in the marketplace as the FCC intended.

The Blooston Rural Carriers agree with commenters that have characterized the commercially reasonable standard of the data roaming rule as "toothless, vague and very difficult

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<sup>1</sup> See, e.g., July 10 Comments of COMPTTEL (COMPTTEL Comments) at p. 3; July 10 Comments of NTCA – The Rural Broadband Association (NTCA Comments) at pp. 5-6; July 10 Comments of Cellular South, Inc. (C Spire Comments) at pp. 6-8; July 10 Comments of NTELOS (NTELOS Comments) at pp. 14-19; July 10 Comments of Rural Wireless Association, Inc. (RWA Comments) at p. 4; July 10 Comments of Sprint Corporation (Sprint Comments) at pp.2-4.

to enforce.”<sup>2</sup> Competitive carriers should not be forced into years of pleading and unreturned phone calls, or the prospect (and expense) of filing a formal complaint with the FCC, just to get the prospect of data roaming discussions with the Big Two. A persistent inequity in bargaining power has left small and regional wireless carriers with little hope of securing data roaming agreements, much less reasonable data roaming terms and conditions. In those instances where small and regional carriers have been successful in securing data roaming rights, the likelihood that most carriers have been forced to accept data roaming terms and conditions on a “take it or leave it” basis rather than true arms-length negotiation means that existing agreements cannot be used as a basis for what is commercially reasonable in future agreements. That only preserves the status quo, and overwhelming competitive advantages enjoyed by the Big Two. For this reason, the Blooston Rural Carriers also agree with T-Mobile and commenters who believe that the terms of existing data roaming agreements cannot and should not be viewed as a benchmark for what is deemed commercially reasonable in future roaming negotiations.<sup>3</sup>

## **II. Opponents of T-Mobile’s Request for Clarification of the “Commercially Reasonable” Standard Fail to Show Why Prospective Guidance is Not in the Public Interest**

In contrast to the overwhelming weight of industry opinion, the Big Two are the only entities that are content with the current vagaries of the “commercial reasonableness” standard. They claim that the rules are working,<sup>4</sup> and that T-Mobile’s requested rate benchmarks are improper.<sup>5</sup> However, quite the opposite is true. The record shows that competitors to the Big

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<sup>2</sup> Comments of NTCH, Inc., Flat Wireless, LLC and Buffalo-Lake Erie Wireless Systems Co (NTCH/Blue Comments) at p. 2.

<sup>3</sup> See, e.g., T-Mobile Petition at pp. 16-22; Comments of NTELOS at p. 18.

<sup>4</sup> See July 10 Opposition of AT&T (AT&T Opposition) at pp. 7-16, July 10 Comments of Verizon (Verizon Comments) at pp. 7-9.

<sup>5</sup> See AT&T Opposition at pp. 26-32; Verizon Comments at pp. 9-14.

Two are faced with little or no choice for roaming partners due to increasing concentration in the wireless market, and the ever-increasing size and scope of the Big Two's businesses (*i.e.*, such as through AT&T's proposed acquisition of DirecTV) only magnifies the disparities between the industry's largest and smallest carriers, and heightens the ability (and likelihood) for the Big Two to cause anticompetitive harm. Small and rural carriers have significant incentive to construct and operate high quality networks in their home markets, to attract and maintain a loyal customer base. However, these entities cannot provide nationwide service in markets where they don't have spectrum, and in areas where they have spectrum but have not yet been able to extend service. Even nationwide carriers such as Sprint and T-Mobile have areas where demand from their customers may be limited, and where buildout by multiple carriers may not be the best use of limited resources.

T-Mobile is not urging the Commission to make "sweeping changes" to its *Data Roaming Order*, as Verizon suggests,<sup>6</sup> or to "unlawfully *rewrite*, rather than clarify, those rules in ways that would limit marketplace flexibility", as AT&T argues,<sup>7</sup> but rather seek modest and reasonable clarifications that will help parties to better evaluate the commercial reasonableness of data roaming terms offered. The Blooston Rural Carriers agree with T-Mobile that this will facilitate the negotiation process and ability competitive carriers to secure data roaming agreements for the benefit of their customers.

Contrary to the Big Two's assertions that "the existing rules are working,"<sup>8</sup> the record in this proceeding shows that the status quo is clearly not working. T-Mobile and competitive

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<sup>6</sup> Comments of Verizon at p. 1.

<sup>7</sup> AT&T Opposition at p. 2.

<sup>8</sup> See AT&T Opposition at pp. 7-16, Verizon Comments at pp. 7-9.

carriers have presented a compelling case for measured action by the Commission. Verizon argues that T-Mobile should use the remedies provided in the *Data Roaming Order* to resolve its dispute with AT&T. However, a petition for declaratory ruling was not only one of the remedies that the Commission mentioned in the *Data Roaming Order*, it was the very first remedy that the Commission offered.<sup>9</sup> The Blooston Rural Carriers applaud T-Mobile seeking clarification of the Commission's Rules in a manner that involves other carriers to contribute to the record, and that if granted, will have the force of precedent.

Finally, the guidance sought by T-Mobile, competitive carriers and consumer advocates is not rate regulation, as Verizon and AT&T each assert, and it is appropriately sought in the context of a petition for declaratory ruling. T-Mobile and supporting commenters are not asking the FCC to rewrite any existing rules, but rather to provide prospective guidance on what constitutes "commercially reasonable terms and conditions" as called for in Section 20.12(e) of the Commission's Rules.

### **III. The Commission Can Further Assist the Ability of Small and Rural Carriers to Initiate Negotiations and Secure Data Roaming Agreements by Adopting "Shot Clock" Procedures**

In their initial comments, both the Blooston Rural Carriers and NTCA urged the Commission to adopt "shot clock" procedures to promote meaningful negotiations for data roaming agreements. The comments of NTCA provided the Commission with empirical evidence of the challenges that small and rural service providers have faced in seeking to negotiate roaming agreements with national carriers. In this regard, a 2013 survey of NTCA's

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<sup>9</sup> See *Data Roaming Order*, 26 FCC Rcd 5411 at 5412 (2011). In the second paragraph of the *Data Roaming Order*, the FCC stated: "To resolve disputes arising pursuant to the rule we adopt here, we provide that parties may file a petition for declaratory ruling under Section 1.2 of the Commission's rules or file a formal or informal complaint under the rule established herein depending on the circumstances specific to each dispute" (*emphasis added*).

member companies (which include many of the Blooston Rural Carriers) found that 41% of respondents cited the ability to negotiate roaming agreements with national carriers as a major concern, and that more than half of those that attempted to negotiate data roaming and/or in-market roaming agreements with other providers characterized the process as “moderately to extremely difficult.”<sup>10</sup> This prevalence of delay has substantially hindered the ability of small and rural carriers to launch service with a competitive wireless offering. Despite the Wireless Bureau’s recent decision not to adopt a “shot clock” in the context of a June 2011 Petition for Reconsideration of the *Data Roaming Order* filed by Blanca Telephone Company, the Blooston Rural Carriers believe that significant changes in the wireless marketplace and burgeoning consumer demand for mobile data services make a more compelling case for the Commission to include a “shot clock” in its interpretation of what is commercially reasonable under the data roaming rule in 2014.

#### **IV. The FCC Should Consider Imposing a Requirement for Carriers to File All Data Roaming Agreements with the FCC**

In its comments, RWA made a compelling case for the Commission to require carriers to file their domestic data roaming agreements with the FCC.<sup>11</sup> While this is beyond the scope of relief sought by T-Mobile in its Petition, the Blooston Rural Carriers agree with RWA and other commenters<sup>12</sup> that confidentiality has been a barrier to market transparency and a disincentive to seeking FCC guidance on data roaming agreements. Requiring carriers to file their roaming agreements with the Commission would be an effective way to educate the Commission about the domestic roaming marketplace and provide the Commission with context for determine which contract terms and company practices are, and which are not, commercially reasonable.

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<sup>10</sup> NTCA Comments at p. 3 (citing to NTCA’s 2013 Wireless Survey Report (*released* January 2014)).

<sup>11</sup> RWA Comments at pp. 9-10.

<sup>12</sup> *See, e.g.*, Comments of Limitless Mobile, LLC (Limitless Comments) at pp. 6, 8-9.

**CONCLUSION**

The Blooston Rural Carriers reiterate their request that the Commission clarify the data roaming rules as requested herein, on an expedited basis.

Respectfully submitted,

**THE BLOOSTON RURAL CARRIERS**



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