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

In the Matter of	)	
	)	
Petition for Expedited Declaratory Ruling filed by T-Mobile USA, Inc., Regarding Data Roaming Obligations	)))	WT Docket No. 05-265
	)	
Petition for Expedited Declaratory Ruling of T-Mobile, USA, Inc.	))	DA 14-798

REPLY COMMENTS OF BROADPOINT, LLC, CENTRAL LOUISIANA CELLULAR, LLC, AND TEXAS 10, LLC

Broadpoint, LLC, Central Louisiana Cellular, LLC, and Texas 10, LLC, all registered and doing business as Cellular One (collectively, "Cellular One") respectfully file these Reply Comments in response to the Commission's request for comments on the Petition for Expedited Declaratory Ruling filed by T-Mobile USA, Inc. ("T-Mobile") on May 27, 2014. Cellular One provides cellular service in portions of Louisiana and Texas, and through its Broadpoint network, provides wireless service up to more than one hundred miles offshore in the Gulf of Mexico.

Cellular One agrees with the numerous commenters who have expressed the importance of ensuring that every carrier, particularly smaller carriers, has access to reasonable roaming agreements. However, Cellular One strongly urges the Commission to recognize that the effect of benchmarking data roaming rates to retail, MVNO, or foreign carrier rates would have the unavoidable consequence of putting significant downward pressure indiscriminately on all roaming rates, which would be inappropriate and harmful. Importantly too, this would disadvantage smaller carriers in negotiations with larger roaming partners. Wholesale rates today are set through bi-lateral negotiations, which Cellular One believes is an appropriate and effective mechanism based upon its direct experience with all four national carriers and the more than 26 additional bi-lateral roaming agreements it currently has in effect. Further, in many areas served by small or rural operators, including areas served by Cellular One, competition exists between wholesale carriers, which ensures roaming rates properly reflect market-based pricing. Rather than establishing a benchmark that sets a starting point for negotiations at a level inappropriate for many situations, Cellular One urges the Commission to rely upon the combination of market based pricing and its Data Roaming Order, which already provides an avenue for carriers to address rate-related concerns.[1]

Wholesale rates are not set based on the same factors as retail, MVNO, and foreign carrier rates, and at times are very different for valid economic reasons, in the absence of which small businesses operating in rural areas could not maintain solid business plans. Retail rates tend to be low in order to compete with the rates of the lowest cost carrier in a marketplace. Moreover, they frequently reflect other aspects of the economic relationship between the carrier and the customer, such as device subsidy levels, expected customer life cycle considering credit risks, competitive strategies, marketplace positioning, and more. [2] Carriers with low cost structures are often large corporations with economies of scope and scale that lower their costs in key purchasing and leasing agreements, or are carriers serving primarily more lucrative, densely populated areas. Rural areas require more investment to serve[3] because they have fewer

[1] / *See* Second Report and Order, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, 26 FCC Rcd. 5411, ¶ 81 (2011) ("*Data Roaming Order*").

[2] / Like retail rates, rates charged to foreign carriers and MVNO rates can be low for reasons unrelated to the costs and benefits of wholesale data roaming. For example, foreign rates may need to attract reciprocity in a foreign market where the domestic carrier has no licenses. MVNO rates may be designed to supplement a carrier's marketing for name recognition purposes but unworkable as a means of accruing margin needed for any material network investments.

[3] / *See, e.g.*, Mingliu Zhang and Richard S. Wolff, Montana State University, "Crossing the Digital Divide: Cost-Effective Broadband Wireless Access for Rural and Remote Areas," IEEE Communications Magazine, at 99,

potential customers and service revenues to offset network construction and ongoing operations costs.[4]

The Commission is interested in deployment of broadband in remote areas.[5] Impairing the ability of the carriers that serve such areas to negotiate fair rates, which consider the higher costs of building and operating in such areas, can only serve to negatively impact their ability to continue to do so.

Wholesale rates of small carriers serving such areas should and typically do reflect the higher costs of building and maintaining cell sites and backhaul in atypical parts of the nation, such as the Gulf of Mexico, state and national forest areas, less populated agricultural areas, state-designated tribal lands, and other remote rural areas, in the case of Cellular One. Smaller carriers serving such areas should not be forced to contend with the initial presumption of a low cost buildout and operating structure based on the economics of nationwide carriers, then be forced to argue before the Commission why that benchmark should not apply. Such an arbitrary and one-sided starting point does not exist today and Cellular One urges the Commission not to

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available at http://www.coe.montana.edu/ee/rwolff/Divide-rev4.pdf (February 2004) ("[T]here are still vast geographic regions where broadband services are either prohibitively expensive or simply unavailable at any price."); Sten, Peter, Economic Research Service/USDA,"Broadband Internet's Value for Rural America," available at http://www.ers.usda.gov/media/155154/err78_1_.p (describing "higher costs associated with providing service to smaller populations") (August 2009), *referenced in* NTIA, Broadband Availability / Beyond the Rural/Urban Divide: Broadband Brief No. 2," at 5 n. 10, available at http://1.usa.gov/1brdQNT (May 2013). *See also, e.g.,* Statement of John C. Padalino, Administrator, Rural Utilities Service, United States Department of Agriculture, *Coordinating Future Investments in Broadband,* before the House Agriculture Subcommittee on Livestock, Rural Development and Credit, at 5 (July 29, 2014).

[4] / *See* Sten, *supra* n.2, at 15 (August 2009) ("Rural telecommunications service providers must spend more per customer for maintenance and repair crews than urban providers. …[they] cover a larger territory than urban crews, resulting in more overtime, more travel expenditures, and all the other resultant expenditures that crews face when they are not near their home base (National Telephone Cooperative Association, 2000). Rural providers also need more resources per customer than urban telecommunications service providers, including duplicate facilities and backup equipment, to ensure network reliability (Egan, 1996).").

[5] / *See, e.g.,* Connecting America: The National Broadband Plan (Mar. 16, 2010); Statement of FCC Chairman Tom Wheeler, *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, DOC-328170A2, available at http://www.fcc.gov/article/doc-328170a2 (July 14, 2014) ("Just last week, I visited the Pueblo of Acoma in central New Mexico, my second visit to Indian Country this year. The visit illustrated the promise of broadband connectivity to overcome geographic isolation and put a world of information and economic opportunity at the fingertips of citizens in even the most remote communities.").

establish one now. Allowing the continuation of the current market-driven approach will better ensure that companies whose roamers use networks in these areas pay a rate that fairly compensates the network operator for the costs of providing service in areas, particularly since it may well be and frequently is the case that the roaming partner has spectrum holdings but has decided not to utilize them, perhaps specifically for economic reasons. Pressuring wholesale rates downward would unfairly disadvantage the carriers that do utilize their spectrum holdings, that do invest their time and capital, and that do bring much needed service to higher cost underserved areas. Conversely, facilitating the ability of a carrier with spectrum holdings in a market to instead obtain an artificially low roaming rate will create a disincentive for that carrier to invest any further to serve or better serve that market

In addition, wholesale rates generally reflect appropriate consideration of factors that are not relevant for retail, MVNO, or foreign carrier rates, such as each carrier's relative volumes of roaming and home traffic, the technologies and technical capabilities deployed, and variations among roaming administration costs, each of which may vary with any two potential roaming partners. Other common terms of roaming agreements also can affect rates, such as performance standards, quality and scope of services to roaming customers, any services or platforms the carrier agrees to dedicate to hosting roaming traffic, and any costs of supplemental backhaul to support the roaming partner's traffic, as well as business terms such as preferences, length of agreement term, reciprocity, and numerous others. There are unique issues to wholesale agreements and complexities that make the establishment of any benchmark rates inappropriate to apply to all carriers, all markets, and all situations.

Each carrier's rates are set by its circumstances and markets; other carriers' rates may bear no relationship to the costs an individual carrier's rates must address. Small and rural carriers endure higher costs and fewer benefits of scale than large urban-focused companies. Taking actions that will result in indiscriminately pushing down all rates will necessarily negatively impact the ability of small, rural carriers such as Cellular One to negotiate the rates needed to cover their costs and adequately maintain their network operations. If this occurs, ultimately the interests of consumers, businesses, and public safety in higher cost, more remote markets will suffer due to diminished network investment, service, and competition.

CONCLUSION

Cellular One respectfully urges the Commission to maintain the ability of individual carriers to negotiate wholesale rates and terms,[6] rather than adopting factors that will push rates down and make them more uniform, to the disadvantage of rural and small businesses, which are least equipped to argue for rates that depart from any Commission established benchmarks.

Wholesale pricing needs vary by carrier and market situation. Relevant factors are often unique to individual carriers and relate to the capital investment in licenses and network, network operating costs, which are considerably higher in more remote areas, roaming administration costs, balance of roaming traffic, costs of supporting traffic of a roaming partner, performance metrics and other roaming agreement terms. Retail rates, conversely, consider the rates of all carriers providing service in an area, some of which may be nationwide or for other reasons have lower costs of providing service than the two parties negotiating roaming rates. Similarly, rates charged to foreign carriers and MVNO rates are set for different markets and relationships, with different costs and benefits.

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[6] / Please note also that in *Cellco Partnership v. FCC*, 700 F.3d 534 (*D.C. Cir. 2012*), the D.C. Circuit Court of Appeals upheld the data roaming rule specifically in reliance upon the "considerable flexibility" the Commission had left for individualized negotiation, and observed that the rule permits carriers to negotiate terms tailored to "individualized circumstances without having to hold themselves out to serve all comers indiscriminately on the same or standardized terms." *Id., citing Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile-data services*, 26 F.C.C.R. 5411, 5432 ¶ 43, 5433 ¶ 45 (2011) ("*Data Roaming Order").*

Cellular One urges the Commission to recognize that companies must continue to be able to negotiate wholesale terms addressing their "individualized circumstances," without having to fight uphill against arbitrary and inappropriate benchmark rates, in order to permit the maintenance of sound business plans and networks serving customers throughout the country, including in rural areas.

Respectfully submitted,

/s/ Julia K. Tanner

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