

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

In the Matter of	)	
	)	
Petition Filed By NTCH, Inc. To Rescind	)	RM-11723
Forbearance And Initiate Rulemaking To Make	)	
Inter-Provider Roaming Rates Available	)	WT Docket No. 05-265
	)	

**REPLY COMMENTS OF AT&T**

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September 15, 2014

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**REPLY COMMENTS OF AT&T**

Pursuant to the Public Notice released on July 14, 2014 in RM-11723 and WT Docket No. 05-265 (DA 14-997), AT&T respectfully submits these reply comments on the Petition Filed By NTCH, Inc. To Rescind Forbearance And Initiate Rulemaking To Make Inter-Provider Roaming Rates Available.<sup>1</sup>

NTCH's petition is procedurally improper because NTCH is seeking new rules that could only be imposed after a full rulemaking proceeding, but has failed to make the showings required to initiate a rulemaking.<sup>2</sup> Even if the Commission were to consider NTCH's petition as a request to initiate a new rulemaking, the petition is substantively without merit because it fails to provide any legitimate basis for the Commission to revisit its conclusions in the 2007<sup>3</sup> and 2011<sup>4</sup> roaming orders that public disclosure of roaming rates would be contrary to the public interest.<sup>5</sup>

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<sup>1</sup> NTCH, Inc., Petition To Rescind Forbearance From Application of Section 211 of the Communications Act of 1934, RM-11723 & WT Docket No. 93-252 (filed July 2, 2014) ("Pet.").

<sup>2</sup> See Opposition of AT&T, WT Docket No. 05-265, at 3-7 (filed Aug. 18, 2014) ("Opposition of AT&T").

<sup>3</sup> Report and Order and Further Notice of Proposed Rulemaking, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, 22 FCC Rcd. 15817 ¶ 62 (2007) ("Voice Roaming Order").

The brief comments supporting NTCH's petition<sup>6</sup> sidestep these critical issues because they merely parrot NTCH's assertions that the roaming market is dysfunctional (without presenting any supporting facts) and that rate transparency is desirable, without addressing – much less refuting – any of the myriad procedural flaws with the petition: (1) no statute or Commission rule authorizes the Commission to rescind an earlier forbearance ruling; (2) reversing the ruling that NTCH challenges would not provide the relief it seeks because the requirement it wants to “bring back” is merely a filing requirement, not a public disclosure requirement; (3) Section 211's filing requirement could not apply to data roaming in any event, because Section 211 applies only to common carrier services, and data roaming is not a common carrier service; and (4) NTCH is really requesting that the Commission impose entirely new rules on voice and data roaming carriers, but its filing does not meet the most basic requirements for initiating a new rulemaking.

Nor do the comments provide any substantive basis for the Commission to revisit its reasons for rejecting public rate disclosure requirements in the 2007 and 2011 roaming orders. Indeed, the comments do not grapple with any of the Commission's concerns about public disclosure: (1) roaming rates are highly proprietary information; (2) a public disclosure requirement would have a severe chilling effect on future roaming negotiations because publication of rates creates substantial disincentives for providers to offer discounts or other innovative arrangements; and (3) with respect to data roaming, imposing a *de facto* tariffing

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<sup>4</sup> Second Report and Order, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, 26 FCC Rcd. 5411 ¶ 68 (2011) (“*Data Roaming Order*”).

<sup>5</sup> See Opposition of AT&T at 7-13.

<sup>6</sup> See Comments of NTELOS Holdings Corp. (“NTELOS”) (Aug. 18, 2014); Comments of the Rural Wireless Association, Inc. (“RWA”) (Aug. 20, 2014); Comments of NTCA – The Rural Broadband Association (“NTCA”) (Aug. 20, 2014).

regime on data roaming rates would move the data roaming regime over the line into prohibited common carriage regulation, in violation of the D.C. Circuit's decision in *Cellco Partnership v. FCC*, 700 F.3d 534 (D.C. Cir. 2012).

Moreover, although NTELOS and RWA nominally support the petition, they actually argue for different relief than NTCH is seeking: NTELOS and RWA argue that roaming rates should be filed on a confidential basis with the Commission, not (as NTCH argues) that the rates should be made publicly available.<sup>7</sup> These commenters' lack of support for NTCH's proposed public filing regime underscores that public disclosure is not necessary to solve any purported problem in the roaming market. It also shows that these commenters recognize the importance of maintaining confidentiality for this highly proprietary information.<sup>8</sup> The scant support for the actual relief that NTCH seeks confirms that its petition should be denied.

The Commission also should reject the alternative proposals of NTELOS and RWA that it require roaming rates to be filed with the Commission. NTCH's petition is not a proper vehicle for considering this request because NTCH has not asked for such a ruling. In addition, since providers of data roaming have never been subject to Section 211's filing requirements, the relief these commenters seek would require an entirely new rulemaking. In any event, NTELOS and RWA do not offer any substantive arguments in their pleadings as to why the Commission should now adopt a filing requirement for roaming agreements, when it declined to do so in the 2007 and 2011 roaming orders. The Commission noted in the 2007 *Voice Roaming Order* that filing requirements "impose administrative costs on the carriers" and found that there was no

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<sup>7</sup> See NTELOS at 5 (urging the Commission to require "the confidential submission of actual roaming agreements to the Commission"); see RWA at 4 (urging the Commission "to direct all carriers to confidentially file their domestic roaming agreements with the Commission").

<sup>8</sup> See NTELOS at 5 ("NTELOS recognizes that the terms and conditions of [roaming] agreements may be commercially sensitive, and therefore should be submitted under the Commission's confidential treatment procedures.")

regulatory need to impose this “burden,” given the Commission’s rejection of rate regulation in favor of marketplace negotiation and the availability of the complaint procedure to address disputes.<sup>9</sup> NTELOS and RWA do not show any regulatory need or countervailing benefits that would justify imposing this additional burden now. This is particularly true with respect to data roaming, because it is not a common carrier service and the Commission gave “providers flexibility to negotiate the terms of their [data] roaming arrangements on an individualized basis” to “ensure[] that the data roaming rule best serves [the Commission’s] public interest goals . . . .”<sup>10</sup>

### CONCLUSION

For the foregoing reasons and those presented in AT&T’s Opposition, the Commission should reject NTCH’s petition.

Respectfully Submitted,

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Dated: September 15, 2014

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<sup>9</sup> *Voice Roaming Order* ¶ 62.

<sup>10</sup> *Data Roaming Order* ¶ 45.