

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Petition for Expedited Declaratory	)	WT Docket No. 05-265
Ruling of T-Mobile USA, Inc.	)	

**COMMENTS OF NTCA–THE RURAL BROADBAND ASSOCIATION**

**I. INTRODUCTION**

NTCA–The Rural Broadband Association<sup>1</sup> (“NTCA”) hereby submits these comments in response to Wireless Telecommunications Bureau’s (“Bureau”) Public Notice seeking comment on T-Mobile USA Inc.’s (“T-Mobile”) Petition for Expedited Declaratory Ruling regarding data roaming obligations.<sup>2</sup> In its Petition, T-Mobile asked the Federal Communications Commission (“Commission”) to issue a declaratory ruling that provides prospective guidance and predictable enforcement criteria for determining whether the terms of any given data roaming agreement or proposal meet the “commercially reasonable” standard adopted by the Commission. NTCA supports T-Mobile and agrees that guidance is necessary to provide clarity in individualized negotiations and to help parties better evaluate the commercial reasonableness of offered terms and to reach agreements. In addition to supporting the guidance requested by T-Mobile, NTCA

---

<sup>1</sup> 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.

<sup>2</sup> Wireless Telecommunications Bureau Seeks Comment on Petition for Expedited Declaratory Ruling Filed by T-Mobile USA, Inc. Regarding Data Roaming Obligations, WT Docket No. 05-265, DA 14-798 (June 10, 2014).

reiterates its request that the Commission impose a roaming negotiations “shot clock” to avoid unnecessary delays in roaming negotiations that may be motivated by anticompetitive objectives.

## II. THE WHOLESALE ROAMING MARKET IS NOT COMPETITIVE

As T-Mobile points out, every wireless carrier utilizes roaming.<sup>3</sup> NTCA’s members are small, rural mobile wireless providers that operate in discrete areas, typically unserved or underserved by the larger carriers. These small providers do not, and in fact cannot, offer a national or regional footprint, but their rural consumers, like most mobile wireless consumers, rely on mobile data and expect to be able to use their devices for mobile data service wherever they are. Small providers must rely on data roaming to offer their customers reliable, competitive coverage. However, the market for data roaming is not competitive. Despite the Commission’s Second Report and Order in April 2011 which requires serving operators to offer to requesting operators wholesale data roaming rates that are “commercially reasonable,”<sup>4</sup> the industry’s small and rural operators are still hampered by the actions of the nation’s largest carriers. Consolidation in the wireless market has led to fewer potential roaming partners and increasingly unequal bargaining positions.<sup>5</sup> Commission action is needed to address roaming requirements and offer certainty to all providers.

NTCA’s members offer a wide range of wireless services. One hundred percent of respondents to NTCA’s latest wireless survey offer their wireless customers voice mail and text

---

<sup>3</sup> T-Mobile Petition, p. 2.

<sup>4</sup> *In the Matter 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 (released April 7, 2011) (“*Data Roaming Order*”)

<sup>5</sup> The nation’s two largest wireless providers account for approximately 67% 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 with Respect to Mobile Wireless, Including Commercial Mobile Services*, Sixteenth Report, 28 FCC Rcd. 3700 ¶¶ 52,118 (2013).

messaging. Ninety-five percent of those providing wireless offer Internet access, 90% unlimited local calling, family plans and caller ID, 85% three-way calling, and 80% free long distance.<sup>6</sup> However, they face significant challenges. 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. And, perhaps most tellingly, for those who were ultimately “successful” in negotiating roaming agreements, one out of three is paying more to the national carrier for the service than it is paid for the same service from the same carrier.

The purpose of the *Data Roaming Order* was to create an environment where all mobile wireless operators, regardless of size and location, can enter into commercially reasonable data roaming agreements. Unfortunately, more than 3 years later, that goal has not been realized. T-Mobile’ Petition is just the most recent of many complaints and studies in the record that demonstrate that the wholesale roaming marketplace remains unchanged and no more competitive than it was when the Commission adopted its order.<sup>7</sup> There 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.

---

<sup>6</sup> NTCA’s 2013 Wireless Survey Report (released January 2014) can be found online at <http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2013ntcawirelessurvey.pdf>

<sup>7</sup> See e.g., *Ex Partes* in WT Docket No 05-265 of Information Age Economics (filed February 19, 2014); Leap Wireless International and Cricket Communications (filed January 23, 2013); the Rural Telecommunications Group (“RTG”) and NTCA (filed November 9, 2012); RTG (filed March 9, 2011).

### III. REASONABLE ROAMING IS NECESSARY TO ENABLE PROVIDERS TO MEET THEIR CONNECT AMERICA FUND OBLIGATIONS

When the Commission reformed the regulations surrounding the universal service fund to create a Connect America Fund, it did so in recognition that mobile broadband has become crucial to the nation's economic growth, global competitiveness and civic life.<sup>8</sup> Concluding that mobile voice and broadband services provide unique consumer benefits, and that promoting the universal availability of such services is a vital component of the Commission's universal service mission and a useful complement to fixed services, it created the Mobility Fund, the first universal service mechanism dedicated to ensuring availability of mobile broadband networks in areas where a private-sector business case is lacking and dedicated mechanisms to support mobility and close gaps in rural mobile coverage.<sup>9</sup>

In order to receive Mobility Fund Support, recipients must certify annually that they offer services in areas with support at rates that are within a reasonable range for similar service plans offered by mobile wireless providers in urban areas.<sup>10</sup> Unfortunately, the lack of reciprocal roaming arrangements and the inability to reach agreement according to reasonable timetables jeopardizes providers' ability to meet this requirement. It is simply not possible for a small, rural provider to offer a comparable service that is comparably priced to an urban product when it is unable take advantage of comparable wholesale and reciprocal roaming rates. Not only does this

---

<sup>8</sup> *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663, ¶ 2 (2011).

<sup>9</sup> *Id.* at ¶ 8.

<sup>10</sup> *Id.* ¶¶ 383-385, *see also*, FCC Form 690.

create a situation in which rural consumers lack access to the portable mobile broadband service of their urban counterparts, it removes a potential source of funding in the form of roaming revenues and increases rural provider reliance on universal service funding. The higher roaming rates demanded by large providers undermines the goals of universal service, further exacerbating any urban-rural divide.

#### **IV. CLARIFYING THE “COMMERCIALLY REASONABLE” STANDARD IN THE DATA ROAMING CONTEXT WILL HELP ACHIEVE THE COMMISSION’S GOALS BY CREATING A MORE COMPETITIVE ROAMING MARKET**

The *Data Roaming* Order sought to address inequities in the data roaming marketplace by requiring facilities-based providers of commercial mobile data services to offer data roaming arrangements to other providers of such services on “commercially reasonable terms and conditions.” But even in the wake of the adoption of that *Order*, three years later, as T-Mobile accurately states, “the roaming market is dysfunctional.”<sup>11</sup> Greater clarity as to the meaning of “commercially reasonable” in the context of data roaming is needed. Clarification will help parties understand their rights and obligations, spur negotiations and provide the basis for the resolution of disputes.

NTCA therefore supports the four benchmarks for the industry proposed by T-Mobile. As explained fully in T-Mobile’s petition, the industry should consider “commercial reasonableness” by looking at the following: (1) whether a wholesale roaming rate offered to a retail competitor greatly exceeds a “suitable measure” of retail price; (2) whether a wholesale roaming rate substantially exceeds roaming rates charged to foreign carriers when their customers roam in the U.S.; (3) whether a wholesale roaming rate substantially exceeds the price

---

<sup>11</sup> T-Mobile Petition, p. 10.

for wholesale data service that a seller charges to MVNO customers; and (4) how the proposed wholesale roaming rate compares to other competitively negotiated wholesale roaming rates.

NTCA also agrees that existing roaming agreements often reflect unequal bargaining power and offer no basis for the presumption that the terms of such agreements meet the commercial reasonableness standard. The principles outlined above should provide the basis for *all* future roaming agreements.

## V. A “SHOT CLOCK” FOR ROAMING NEGOTIATIONS IS APPROPRIATE

Although not part of the instant T-Mobile request, NTCA urges the Commission to consider the imposition of a roaming negotiations “shot clock.” While the *Data Roaming Order* admonished carriers to “avoid actions that unduly delay or stonewall the course of negotiations,”<sup>12</sup> the order failed to put any regulatory teeth into such arguments by refraining from setting any timing benchmark for the negotiations. The burden is on the carrier requesting roaming to demonstrate inordinate delay by the carrier from which roaming is sought. It is difficult for a requesting carrier to prove stonewalling given language in the *Data Roaming Order* indicating that some roaming negotiations may be so complex or fact-intensive that a negotiating timetable could be inappropriate.<sup>13</sup> As commenters in this proceeding in 2011 noted, “In some instances, requestors have waited more than 8 months for an initial response, and between 2 and 12 months for a substantive rate proposal. And, more often than not, the wholesale data roaming rate that is offered after considerable delay is orders of magnitude higher than the offering carrier’s retail rates to its own data customers.”<sup>14</sup> Larger carriers have every

---

<sup>12</sup> *Data Roaming Order* at ¶ 42.

<sup>13</sup> *Id.* at 84.

<sup>14</sup> *In the Matter of Reexamining of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Comments of in Support of the Blanca

incentive to delay agreement for as long as possible. The inability of small and rural carriers to accommodate their customers' requests for data services when they travel severely inhibits their ability to compete, even in their home markets.

Imposed shot clocks have proven to be an effective tool for fostering negotiations and agreements in circumstances where the parties have unequal bargaining power, even in complex negotiating situations. For example, prior to the amendment of the Communications Act (the "Act") by the Telecommunications Act of 1996, telecommunications carriers were having recurring difficulty negotiating interconnection agreements with incumbent local exchange carriers ("ILECs"). To remedy this situation, Congress amended the Act by adding Section 252, which established "Procedures for Negotiation, Arbitration, and Approval of Agreements."<sup>15</sup> In effect, ILECs were accorded 135 days to negotiate in good faith and reach agreement, at which point they were subject to mandatory arbitration before state commissions in the absence of an agreement.<sup>16</sup>

Shot clocks have also been effectively utilized by the Commission in circumstances analogous to the one at hand. Tower sites, like data roaming agreements, are a critical input in the wireless marketplace. The inability of a carrier to secure access to a necessary site can severely disadvantage a wireless carrier from effectively participating in the wireless market.<sup>17</sup>

---

Telephone Company Petition for Reconsideration, WT Docket No. 05-265, p. 7 (filed December 16, 2011)

<sup>15</sup> 47 C.F. R. § 252.

<sup>16</sup> Pursuant to Section 252, between the 135th and 160th day after which a request for negotiation has been made, a carrier may petition a state commission to arbitrate any open issues. 47 U.S.C. § 252(b)(1).

<sup>17</sup> See *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, WT Docket No. 08-165, Declaratory Ruling, FCC 09-99 (rel. Nov. 18, 2009) ("*Tower Siting Shot Clock Ruling*").

Nonetheless, the Commission found that wireless service providers “often faced lengthy and unreasonable delays [from state agencies] in the consideration of their facility siting applications, and that the persistence of such delays [was] impeding the deployment of advanced and emergency services.”<sup>18</sup> The Commission concluded that the unreasonable delays obstructed the provision of wireless services and were subjecting wireless providers to unreasonably lengthy and costly processes.<sup>19</sup> Therefore, the FCC adopted rules that imposed a 90-day deadline to process applications for colocations, and 150 days for new tower applications.<sup>20</sup>

A similar shot clock is appropriate for data roaming negotiations. There should be a rebuttable presumption that negotiations will conclude within the established time frame. If the negotiation is particularly complex or time consuming, the host carrier should have the ability to make the argument for more time to the regulators. The burden to prove that additional time is appropriate or necessary should fall to the party requesting it. A shot clock will help ensure that roaming negotiations proceed according to a reasonable timetable and counter any anticompetitive actions of providers who use delay tactics to undermine competitive forces.

## VI. CONCLUSION

For the above mentioned reasons, NTCA supports the Petition for Expedited Declaratory Ruling filed by T-Mobile requesting that the Commission make clear that the commercial reasonableness of all data roaming agreement will be considered by looking at the following: (1) whether a wholesale roaming rate offered to a retail competitor greatly exceeds a “suitable measure” of retail price; (2) whether a wholesale roaming rate substantially exceeds roaming rates charged to foreign carriers when their customers roam in the U.S.; (3) whether a wholesale

---

<sup>18</sup> *Id.* at ¶ 32.

<sup>19</sup> *Id.* at ¶ 34.

<sup>20</sup> *Id.* at ¶ 32.



roaming rate substantially exceeds the price for wholesale data service that a seller charges to MVNO customers; and (4) how the proposed wholesale roaming rate compares to other competitively negotiated wholesale roaming rates. NTCA further requests that the Commission establish a “shot clock” for data roaming negotiations. These actions will help parties understand their rights and obligations, spur negotiations and provide the basis for the resolution of disputes.

Respectfully submitted,



By: /s/ Jill Canfield

Jill Canfield

Vice President of Legal and Industry, Assistant  
General Counsel

4121 Wilson Boulevard, Suite 1000

Arlington, VA 22203

[jcanfield@ntca.org](mailto:jcanfield@ntca.org)

703-351-2000 (Tel)

703-351-2036 (Fax)

July 10, 2014