

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

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

**REPLY COMMENTS OF THE  
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)<sup>1</sup>**

CCIA respectfully submits these reply comments in support of T-Mobile’s Petition for Expedited Declaratory Ruling.<sup>2</sup> T-Mobile’s proposed benchmarks will provide necessary guidance in applying the “commercially reasonable” standard set out in the *Data Roaming Order* by the Federal Communications Commission (“the Commission”).<sup>3</sup> Additionally, the requested clarifications are procedurally appropriate. Granting T-Mobile’s Petition will not amend the *Data Roaming Order* in any way, but instead help the Commission realize the goals initially sought in its adoption.

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<sup>1</sup> CCIA is an international nonprofit membership organization representing companies in the computer, Internet, information technology, and telecommunications industries. Together, CCIA’s members employ more than 600,000 people and generate annual revenues in excess of \$465 billion. CCIA promotes open markets, open systems, open networks, and full, fair, and open competition in the computer, telecommunications, and Internet industries. A list of CCIA’s members, which includes T-Mobile, is available online at <http://www.ccianet.org/members>.

<sup>2</sup> See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Public Notice, WT Docket No. 05-265 (rel. June 10, 2014).

<sup>3</sup> 47 C.F.R. § 20.12(e); *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd. 5411, ¶¶ 40-41 (2011) (“*Data Roaming Order*”).

**I. The guidance T-Mobile has requested will serve the public interest.**

The importance of data roaming will only continue to grow as data usage increases exponentially.<sup>4</sup> As cited in the Competitive Carriers Association’s comments, the Commission adopted data roaming requirements based on overwhelming evidence that the “public interest would be served by promoting consumer access to seamless mobile data coverage nationwide and fostering competition among mobile service providers.”<sup>5</sup> However, due to lack of guidance as to what constitutes “commercially reasonable” terms and conditions in the context of the data roaming rule, the intended purpose of the new requirements has not been realized. Favorable action on the Petition for Declaratory Ruling will promote *more* roaming under *more reasonable* terms, which will benefit consumers and promote competition as the Commission originally envisioned the data roaming requirements would do.

Access to data roaming on commercially reasonable terms will also facilitate the expansion of advanced wireless services in areas currently unserved or underserved and provide increased customer choice in areas of the country where few carrier options are available today. However, carriers are currently facing substantial difficulties in providing affordable data services to their customers. Dominant carriers are leveraging their market power to impose prohibitive higher rates at the expense of small carriers. Verizon asserts that there is no demonstrated market harm to justify the need for T-Mobile’s proposed clarifications<sup>6</sup>, but evidence presented in the comments submitted by smaller carriers suggests otherwise. NTCH

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<sup>4</sup> See Cisco, *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update* (2013), available at [http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/white\\_paper\\_c11-520862.pdf](http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/white_paper_c11-520862.pdf), at 1,10 (stating that global mobile data traffic grew 81 percent in 2013, and the United States is going to lead the world in terms of its share of the total global 4G connections with 23 percent of global 4G connections).

<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 Competitive Carriers Association (filed July 10, 2014) (“Competitive Carriers Comments”), at 2.

<sup>6</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 Verizon (filed July 10, 2014) at 9.

Inc. stated that it was forced to file a formal complaint with the Commission just last year after being unable to reach an agreement with Verizon Wireless.<sup>7</sup> PinPoint Inc. cited its recent negotiations with Viaero, an essential adjacent local carrier, which resulted in excessively higher rates than retail that they had no choice but to pay.<sup>8</sup> Limitless Mobile, while able to reach a favorable agreement with T-Mobile, could not do the same with AT&T and stated they felt pressured to enter into a commercially unreasonable agreement (which they later were forced to abandon because it proved to be prohibitively expensive).<sup>9</sup>

Increasing consolidation by the two dominant mobile carriers and their vertical integration with essential wireline facilities has created a stark inequality in bargaining power that exacerbates the need for commercially reasonable roaming arrangements. Even if AT&T's argument that it is a "net purchaser" of roaming services were true when viewed in terms of its roaming volume with *all other carriers collectively*, AT&T is far and away the dominant party, and the one holding pricing power, in negotiations with any one carrier.

After AT&T started the process of acquiring Cricket, a small and "once outspoken critic of the roaming rates offered by the majors," it immediately began imposing AT&T's exorbitant rates at the expense of carriers like Blue Wireless.<sup>10</sup> Consolidation also disincentivizes the two largest carriers from entering into data roaming agreements at all due to the lack of reciprocity.

The Rural Wireless Association observed that while rural carriers rely on the "Twin Bell duopoly

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<sup>7</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 NTCH Inc. et al. (filed July 10, 2014) ("NTCH Comments"), at 2.

<sup>8</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 PinPoint Wireless, Inc. (filed July 10, 2014) ("PinPoint Comments"), at 6.

<sup>9</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 Limitless Mobile, LLC (filed July 10, 2014) ("Limitless Comments"), at 3.

<sup>10</sup> PinPoint Comments at 6.

of AT&T and Verizon Wireless,” the reverse is not true and must-have carriers do not need reciprocal agreements to allow their own customers to roam in the rural areas.<sup>11</sup> This further adds to the largest carriers’ negotiation power.

Whatever downward trend in roaming rates there may be does not address the fact that the rates remain unreasonably high and are anti-competitive. The rates are predatory and have no relation to what customers of the largest operators are paying for retail services.<sup>12</sup> The benchmarks T-Mobile has proposed will help the Commission and the parties better evaluate the commercial reasonableness of offered terms.

**II. Contrary to AT&T’s contention, carriers who seek access to roaming on commercially reasonable terms are not doing so as an excuse to avoid building out networks.**

All carriers rely on roaming to some degree to provide their customers with nationwide coverage that consumers have come to expect, and “no single mobile service provider has deployed a wireless network that covers all people in all places across the country.”<sup>13</sup> Providers may have substantially built out facilities, and their inability to provide their own network coverage in one specific area should not preclude them from obtaining commercially reasonable agreements to provide customers coverage in that area.<sup>14</sup>

Commenters, especially small and rural carriers, have described in detail the challenges of obtaining data roaming in precisely those regions of the country where roaming is most

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<sup>11</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 Ass’n (filed July 10, 2014) (“Rural Wireless Comments”), at 6.

<sup>12</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 NTCA Rural Broadband Ass’n (filed July 10, 2014) (“NTCA Comments”), at 3.

<sup>13</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 Sprint Corp. (filed July 10, 2014) (“Sprint Comments”), at 8.

<sup>14</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 Cellular South (filed July 10, 2014), at 8.

needed – where network build-out is difficult and customer choice is limited. NTCA states that the rural consumers, underserved by larger carriers, rely on small carriers to provide mobile data service wherever they are and this requires roaming agreements with the dominant players in the wireless market.<sup>15</sup> Most carriers do not have the financial and spectrum resources available to them to build-out their networks to the same extent as the dominant carriers, and many face prohibitive burdens including “zoning limits, limited access to backhaul, and other cost challenges, including the inability to recoup investment costs”.<sup>16</sup>

These small carriers are reluctant to go to battle with “must have”<sup>17</sup> roaming partners when the attendant expense and delay is not accompanied by a reasonable likelihood of success. According to a NTCA survey, 41 percent of its rural members identified the ability to negotiate data roaming agreements with national carriers as a “major concern” and more than half characterized the experience as “moderately to extremely difficult.”<sup>18</sup> Even of those who were successful in negotiation attempts, a third were paying higher rates.<sup>19</sup>

AT&T contends that AT&T and Verizon are hardly “must have” roaming partners and there are plenty of other legacy GSM networks available to T-Mobile outside of AT&T.<sup>20</sup> But AT&T is simply wrong on this point—there are enormous swaths of the United States where AT&T is the only available GSM roaming partner, and where other competing GSM carriers have no choice of roaming partner at all. Additionally, with AT&T and Verizon collecting over

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<sup>15</sup> NTCA Comments at 2.

<sup>16</sup> T-Mobile USA, Inc., Petition for Expedited Declaratory Ruling of T-Mobile USA, Inc., *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265 (filed May 27, 2014), at 22.

<sup>17</sup> Limitless Comments at 2. A “must-have carrier” is the sole wireless carrier that is able to provide the requesting carrier with data roaming services in an area that adds significant value to a carrier’s network by satisfying the demand of the carrier’s customers.

<sup>18</sup> NTCA Comments at 3.

<sup>19</sup> *Id* at 3.

<sup>20</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 AT&T (filed July 10, 2014) (“AT&T Comments”), at 14.

67 percent of all wireless service revenue<sup>21</sup> and holding a significant enough share of low-band spectrum holdings that the FCC thought it necessary to constrain their participation in the broadcast incentive auction,<sup>22</sup> it is hard to see how choices are not significantly limited to AT&T and Verizon.

Faced with paying AT&T's and Verizon's unreasonable roaming charges in these areas, rather than build out, the alternative for other carriers may be to not serve customers in these areas at all, which is an anti-consumer and anti-competitive outcome. PinPoint said they have been forced to choose between either paying commercially unreasonable rates, which they would then be forced to pass on to their customers potentially driving them out of business, or blocking subscribers' access to data services in areas where roaming is required.<sup>23</sup> When high roaming rates affected their ability to maintain a commercially competitive wireless data plan for consumers, Limitless Wireless was forced to abandon its agreement with AT&T and consequently severely restrict its customers' data use in the affected areas.<sup>24</sup> Building out was not an option.

The purpose of the *Data Roaming Order* enacted almost three years ago was to level the playing field, where *all* wireless carriers could enter into commercially reasonable data roaming agreements. Granting T-Mobile's Petition will serve to realize this purpose.

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<sup>21</sup> NTCA, *NTCA 2012 Wireless Survey Report*, at 3 (Sept. 2012), available as app'x of *In the Matter of Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition*, WT Docket No. 13-135, Reply Comments of NTCA Rural Broadband Ass'n (filed July 1, 2013).

<sup>22</sup> Press Release, FCC, *FCC Adopts Rules for First Ever Incentive Auction: Will Make Available Additional Airwaves, Increase Competition for Mobile Broadband* (May 15, 2014), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-327100A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-327100A1.pdf). See also Alina Selyukh, *FCC votes to restrict AT&T, Verizon in 2015 spectrum auction*, REUTERS, May 15, 2014, available at <http://www.reuters.com/article/2014/05/15/us-usa-wireless-fcc-idUSBREA4E0RF20140515>.

<sup>23</sup> PinPoint Comments at 6.

<sup>24</sup> Limitless Comments at 3-4.

### III. A Petition for Declaratory Ruling is procedurally appropriate.

As the comments overwhelmingly confirm, there are still industry-wide problems obtaining roaming on commercially reasonable terms and they are best addressed through a Declaratory Ruling, intended to remove such uncertainty.<sup>25</sup>

As many commenters agree<sup>26</sup>, the Commission can act on the Petition without a rulemaking; the Petition does not seek to change or modify the *Data Roaming Order* in any matter, but merely supplements and adds clarity to previous FCC guidance in light of current market circumstances. The D.C. Circuit has held the data roaming mandate to be within the Commission's authority under Title III of the Communications Act<sup>27</sup>, and adopting the benchmarks would not constitute common carrier regulation, even if the rule "bears the marks of common carriage."<sup>28</sup> As stated by Sprint, the requested clarification will "serve to improve the rule's implementation and effectiveness, not extend or change the rule in any way".<sup>29</sup>

AT&T asserts that the benchmarks, serving as evidence in a complaint proceeding, would inevitably result in the equivalence of a formally mandated rate level cap that would not leave any substantial room for individualized bargaining; therefore amounting to common carriage regulation.<sup>30</sup> This is not the case. Instead, the benchmarks are "simply market circumstances

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<sup>25</sup> 47 C.F.R. §1.2 (stating that the Commission may issue a declaratory ruling terminating a controversy or removing uncertainty).

<sup>26</sup> Competitive Carriers Comments at 7; *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 Public Knowledge et al. (filed June 10, 2014) ("Public Knowledge et al. Comments") at 11; Sprint Comments at 9.

<sup>27</sup> *Cellco P'ship v. FCC*, 700 F.3d 534, 537 (D.C. Cir. 2012) (rejecting Plaintiff Verizon's arguments that the Commission lacks statutory authority to issue the Data Roaming Rule and that the rule unlawfully treats mobile-internet providers as common carriers).

<sup>28</sup> Public Knowledge et al. Comments at 12 (stating that "the Commission has broad latitude to define what does and does not constitute 'common carriage' and the 'proposed benchmarks clearly do not rise to the level or requiring carriers to treat all requests for data roaming identically, which the D.C. Circuit has identified as the hallmark of common carriage.'").

<sup>29</sup> Sprint Comments at 9.

<sup>30</sup> AT&T Comments at 35.

that are nearly certain to be present in any case evaluated” and appropriate to evaluate when determining the commercial reasonableness.<sup>31</sup> This is harmonious with the Commission’s current case-by-case approach, leaving ample room for individualized negotiations.<sup>32</sup>

Because the Commission has clear authority to remove uncertainty, and the Petition seeks to do just that, a Declaratory Ruling is procedurally appropriate.

#### **IV. Conclusion**

CCIA respectfully requests that the Commission act affirmatively on the instant petition.

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Respectfully submitted,

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<sup>31</sup> NTCH Comments at 5.

<sup>32</sup> *Id.*