

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the matter of)
)
Reexamination of Roaming Obligations of Commercial) **WT Docket No. 05-265**
Mobile Radio Service Providers and Other Providers)
of Mobile Data Services)

COMMENTS OF COMPTTEL

COMPTTEL, through undersigned counsel, hereby submits these comments in support of T-Mobile USA, Inc.’s Petition for Expedited Declaratory Ruling.¹ The data roaming rules require facilities based providers of commercial mobile data services to offer data roaming arrangements to other mobile data service providers on “commercially reasonable” terms and conditions. When the Commission adopted the data roaming rules, it invited parties to file petitions for declaratory ruling to resolve disputes arising out of the new provisions.² The Commission committed to address expeditiously any such petitions that are filed.³ T-Mobile has taken the Commission up on its invitation and has asked the Commission to provide additional clarification with respect to the meaning of the “commercially reasonable” standard in

¹ Petition for Expedited Declaratory Ruling of T-Mobile USA, Inc. filed May 27, 2014 in WT Docket No. 05-265.

² *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket 05-265, Second Report and Order, FCC 11-52, 26 FCC Rcd 5411 at ¶¶ 74-87 (2011), *aff’d sub nom.*, *Cellco Partnership v. FCC*, 700 F.3d 534 (D.C. Cir. 2012) (“*Data Roaming Order*”).

³ *Id.* at ¶ 77.

the data roaming context.⁴ COMPTTEL supports T-Mobile’s Petition and its request for expedited relief.

As the Commission recognized in the *Data Roaming Order*, access to roaming services is critical to the ability of consumers to fully realize the benefits of commercial mobile data service.⁵ Only through the use of data roaming services can providers that do not serve the entire country on their own networks ensure that their customers are able to use the data features of their wireless devices when they are outside their providers’ service areas. A data roaming rule can serve “the public interest by promoting connectivity for and nationwide access to mobile data services and by promoting investment in and deployment of mobile broadband networks.”⁶ While the Commission adopted a non-exhaustive list of factors it would consider in determining the commercial reasonableness of terms and conditions proffered for data roaming arrangements, it also made clear that providers were free to argue that the Commission should consider other relevant factors, including price.⁷

Smaller wireless carriers have brought to the Commission’s attention the difficulties they continue to experience in negotiating reasonable data roaming arrangements with Verizon and AT&T, even after the adoption of the data roaming rules.⁸ T-Mobile asserts that its inability to

⁴ Petition at 1-2.

⁵ *Data Roaming Order* at ¶¶ 13-15.

⁶ *Id.* at ¶42. COMPTTEL wholeheartedly agrees with T-Mobile’s assertion of the need for clarification, but also submits that as an overarching matter, the “commercially reasonable” standard is too vague to adequately protect the public interest.

⁷ *Id.* at ¶¶86-87.

⁸ *In the Matter of Application of Cricket License Company, LLC, et al., Leap Wireless International, Inc. and AT&T, Inc. for Consent to Transfer Control of Authorizations*, WT Docket No. 13-193, Memorandum Opinion and Order at ¶104, DA 14-349 (rel. Mar. 13, 2014); Petition at 6-9.

obtain commercially reasonable roaming rates from certain carriers has forced it to throttle and cap its customers' roaming data usage on those carriers' networks.⁹ Grant of T-Mobile's request that the Commission provide additional guidance as to the meaning of commercially reasonable, especially with respect to rate parameters,¹⁰ will facilitate the negotiation of data roaming arrangements that are fair to all parties and will promote competition, consumer welfare and nationwide broadband connectivity.

T-Mobile proposes four benchmarks the Commission should use in determining whether proffered roaming rates are commercially reasonable: (1) whether the wholesale roaming rate offered to a competitor greatly exceeds the retail price charged by the host provider; (2) whether the wholesale roaming rate substantially exceeds roaming rates charged to foreign carriers when their customers roam in the U.S.; (3) whether the wholesale roaming rate substantially exceeds the price for wholesale data service that a host provider charges its mobile virtual network operator (MVNO) customers; and (4) how the proposed wholesale rate compares to other competitively negotiated wholesale roaming rates.¹¹ These proposed benchmarks are extremely generous especially since it is difficult to contemplate a legitimate commercially reasonable basis for a host provider's wholesale roaming rates to exceed its retail pricing to any degree.

The Commission has appropriately determined that the availability of data roaming arrangements is critical to a provider's ability to remain competitive in the mobile services marketplace and to enable consumers to have a choice of providers offering nationwide access to

⁹ Petition, Exhibit 1, Declaration of Dirk Mosa, at ¶10.

¹⁰ Petition at 12-16.

¹¹ Petition at 11.

commercial mobile data services.¹² As T-Mobile demonstrated, a provider requesting wholesale roaming arrangements competes with the host provider for customers at the retail level, giving the host provider an incentive to raise its rival's costs by charging unreasonable roaming rates that will be passed on to customers in the form of higher retail prices.¹³ In the alternative, providers unable to obtain reasonable data roaming rates may be forced to limit their customers' data roaming usage. Contrary to the purpose of the data roaming rules, neither of these choices would promote a provider's ability to remain competitive or enable consumer choice in providers offering nationwide access to mobile data services. Instead, permitting a host provider to exact unreasonably high data roaming rates from its retail rivals would suppress competition, limit customer choice and discourage the use of mobile broadband services.

Adoption of the rate benchmarks proposed by T-Mobile may relieve some of the difficulties smaller carriers experience in negotiating data roaming arrangements with AT&T and Verizon by defining worst-case parameters against which reasonableness may be judged. At the same time, the Commission must remain vigilant because even these benchmarks, standing alone, may not offer a test sufficient to determine whether roaming charges are indeed commercially reasonable. The continuing inability of smaller carriers to obtain reasonable data roaming rates from the largest providers, especially in areas where alternative roaming partners do not exist, undercuts the value of the data roaming rules and provides grounds for further clarification.

For the foregoing reasons and those stated in T-Mobile's Petition for Expedited Declaratory Ruling, the Commission should grant the Petition and the relief requested therein.

¹² *Data Roaming Order* at ¶15.

¹³ Petition, Exhibit 2, Declaration of Joseph Farrell, at 13-14.

Respectfully submitted,

/s/

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