Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS OF SPRINT CORPORATION

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Sprint Corporation ("Sprint") respectfully submits the following reply comments in support of T-Mobile USA, Inc.'s ("T-Mobile") Petition for Expedited Declaratory Ruling ("Petition"),[1] which requests that the Federal Communications Commission ("Commission") issue prospective guidance and predictable enforcement criteria for determining whether the terms of a given data roaming agreement or proposal meet the "commercially reasonable" standard adopted in the Commission's *Data Roaming Order* and as set forth in Section 20.12(e) of the Commission's rules.[2]

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[1] *See* Petition for Expedited Declaratory Ruling of T-Mobile USA, Inc., WT Docket No. 05-265 (filed May 27, 2014) ("*Petition*"); *see also Wireless Telecommunications Bureau Seeks Comment on Petition for Expedited Declaratory Ruling Filed by T-Mobile USA, Inc. Regarding Data Roaming Obligations*, Public Notice, WT Docket No. 05-265, DA 14-798 (rel. June 10, 2014).

[2] *See* 47 C.F.R. §20.12(e)(2). The data roaming rule, which requires facilities-based providers of commercial mobile data services to offer commercially reasonable data roaming arrangements, provides that commercial reasonableness is determined on a case-by-case basis, taking the totality of the circumstances into consideration. *Id.* The *Data Roaming Order* provides initial guidance around the rule's implementation, including a list of seventeen factors that may be considered in evaluating commercial reasonableness. *See 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 ¶ 86 (2011) ("*Data Roaming Order*"), *aff'd sub nom. Cellco P'ship v. FCC*, 700 F.3d 534 (D.C. Cir. 2012).

I. EXECUTIVE SUMMARY

It comes as no surprise that AT&T and Verizon, the two carriers with the greatest control over the roaming market, are the only carriers to oppose T-Mobile's Petition. They express concern that T-Mobile's modest requests for clarification and guidance will make "sweeping changes" to the data roaming regime and "undo the careful balance" it has created in the marketplace.[3]

The current data roaming marketplace, however, is not simply unbalanced, but substantially skewed in AT&T and Verizon's favor. AT&T and Verizon's sheer size and scale is unmatched. Through the purchase of smaller carriers, AT&T and Verizon have effectively eliminated alternative roaming partners and further strengthened their overwhelming competitive advantage in the wireless marketplace. Their tremendous resources place them in a superior bargaining position, which enables them to demand wholesale data roaming rates that significantly exceed competitive levels.

Contrary to AT&T's assertion, competitive carriers have no choice but to obtain roaming services and pay AT&T and Verizon's extraordinary rates. In many geographic areas, it is simply not economically feasible to install duplicative network facilities. Although competitive carriers invest heavily in their networks and actively pursue innovative commercial arrangements among themselves to reduce their reliance on AT&T and Verizon, they are unable to replicate the AT&T and Verizon footprints largely built through acquisition. With no other remaining option to provide the broad coverage customers demand, competitive providers must acquiesce to AT&T and Verizon's high data roaming rates. These rates are so exorbitant, however, that competitive providers must resort to restricting customer access to data roaming to avoid

[3] AT&T Comments at 16; Verizon Comments at 1.

operating at a loss. Limiting consumer access to seamless data service as the direct result of high wholesale data roaming rates undermines the key purpose of the data roaming rule – a rule that AT&T and Verizon vehemently opposed.

Accordingly, it is to AT&T and Verizon's benefit to advocate for the *status quo*. Contrary to their assertions, T-Mobile requests simple guidance that would neither impose rate regulation, nor otherwise modify or expand the existing data roaming rule, but would at most stem the flow of harm to competition and ultimately consumers. AT&T and Verizon also argue that competitive carriers should take their issues up with the Commission, but they ignore the need for clarity around the commercial reasonableness standard to ensure that carriers can make effective use of the Commission's data roaming dispute resolution mechanism. In sum, granting T-Mobile's request for guidance will help remove the cloud of uncertainty that has only served carriers with excessive market power and provide a necessary step toward a more level playing field for all providers.

II. DATA ROAMING RATES OFFERED BY AT&T AND VERIZON REMAIN EXCESSIVE DESPITE THE ADOPTION OF THE DATA ROAMING OBLIGATION.

A. AT&T and Verizon Continue to Dominate the Wireless Market.

AT&T and Verizon maintain that additional Commission data roaming guidance is unnecessary given that wholesale data roaming rates have fallen. Specifically, both carriers cite Dr. Farrell's analysis that wholesale data roaming rates across the industry have decreased.[4] In particular, AT&T states that the rates it charges T-Mobile have dropped significantly and

[4] AT&T Opposition at 11; Verizon Comments at 8.

compare favorably to the rates T-Mobile pays other providers.[5] In addition, Verizon asserts that the average data roaming rates it charges have declined by more than 40 percent.[6]

While roaming rates are trending downward among many roaming partners, the roaming rates imposed by AT&T and Verizon remain exorbitant relative to the rest of the industry as they continue to exert market power in almost every aspect wireless service. This market power exhibits itself in countless ways. For example, among the nationwide carriers, as of year-end 2013:

- ***Connections:*** AT&T and Verizon together accounted for over **68 percent** of all wireless connections.[7] Of postpaid connections, AT&T and Verizon together served **76 percent**.[8]
- ***Revenues:*** AT&T and Verizon together reaped over **80 percent** of total operating revenues[9] and **73 percent** of total wireless operating revenues.[10]
- ***Profits:*** Their combined take of industry profits (measured in total EBITDA) is **92 percent** and of wireless sector profits (measured in wireless EBITDA), **87 percent**.[11]

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[5] AT&T Opposition at 11.

[6] Verizon Comments at 8-9.

[7] Based on calculations from data reported in AT&T Inc., *Financial Review 2013* ("*AT&T 2013 Annual Report*"), Feb. 21, 2014; Verizon Communications, Inc., *2013 Annual Report* ("*Verizon 2013 Annual Report*"), Feb. 27, 2014; Sprint Corporation, *The Sprint Quarterly Investor Update -- 4Q13*, Feb. 11, 2014 ("*Sprint 2013 Annual Report*"); T-Mobile US, Inc., *2013 Annual Report* ("*T-Mobile 2013 Annual Report*"), Feb. 25, 2014. Based on CTIA numbers, AT&T and Verizon's share of the total industry wireless connections is approximately 64 percent. *Id.*; CTIA, *Annual Year-End 2013 Top-Line Survey Results* ("*CTIA 2013 Industry Report*").

[8] Based on calculations from data reported in *AT&T 2013 Annual Report*; *Verizon 2013 Annual Report; Sprint 2013 Annual Report*, and *T-Mobile 2013 Annual Report*.

[9] *See id.* Sprint is at a distant third with 18 percent, followed by T-Mobile at 15 percent. *Id.*

[10] *See id.* Sprint represents 16 percent, followed by T-Mobile at 12 percent. AT&T and Verizon's share of the industry total wireless service revenues based on total industry numbers from CTIA is approximately 69 percent. *See id.; CTIA 2013 Industry Report*.

Furthermore, AT&T and Verizon enjoy an extremely wide wireless EBITDA margin of 36.3 percent and 42.2 percent, respectively, as opposed to Sprint and T-Mobile with only 12.3 percent and 18.9 percent, respectively.[12]

- ***Infrastructure:*** Together, AT&T and Verizon control **86 percent** of net plant, property and equipment.[13]

No other provider in the industry comes close to these levels, and the gap is so wide that market analysts describe AT&T and Verizon as operating in an "economic moat."[14] With size and scale of this immense magnitude, AT&T and Verizon have tremendous resources at their disposal, which they leverage to further entrench their dominant position.[15]

They also exercise market power in the specific context of roaming, which allows them to dictate wholesale data roaming rates without competitive restraint. According to Dr. Farrell, a provider that operates the only technologically compatible facilities-based network in a given

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[11] *See AT&T 2013 Annual Report*; *Verizon 2013 Annual Report; Sprint 2013 Annual Report*, and *T-Mobile 2013 Annual Report*.

[12] *AT&T 2013 Annual Report*; *Verizon 2013 Annual Report; Sprint 2013 Annual Report*, and *T-Mobile 2013 Annual Report.*

[13] *See id.*

[14] *See e.g.*, Morningstar, *AT&T Inc. Analyst Report*, June 3, 2014; Morningstar, *Verizon Communications Inc. Analyst Report*, July 22, 2014. In addition to the pervasive advantages they enjoy, AT&T and Verizon together control most of the advantageous spectrum below 1 GHz. *See Implementation of Section 6002(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,* 28 FCC Rcd. 3700 ¶¶ 117-118, Table 17 (2013) (*"Sixteenth Wireless Competition Report"*).

[15] Morningstar "expect[s] the scale that AT&T and Verizon Wireless enjoy will allow these firms to continue spending far more aggressively on networks, marketing, additional wireless spectrum, and customer service than anyone else in the industry." Morningstar, *AT&T Inc. Analyst Report*, June 3, 2014. "These firms both generate fantastic cash flow while simultaneously investing heavily in marketing, network improvements, and wireless spectrum that other rivals can't match." Morningstar, *Verizon Communications Inc. Analyst Report*, July 22, 2014.

geographic area wields market power in that area.[16] Consequently, even where two networks may be present, a provider will have only one potential roaming partner if only one of the networks is technologically compatible.[17] Furthermore, as T-Mobile notes, LTE deployment will not eliminate this problem, since LTE handsets will continue to revert to 2G/3G for voice calls and for data sessions where the LTE signal is unavailable for the foreseeable future, even after the deployment of VoLTE.[18]

AT&T and Verizon, each the dominant GSM/UMTS (HSPA) and CDMA network operators respectively, are the only available roaming partners for competitive carriers in many locations.[19] There are numerous areas across the country where it is not economically feasible for multiple carriers to build multiple networks. In particular, less densely populated areas do not generate the revenue necessary to sustain several networks. And, in many areas where there may have been alternative roaming partners, AT&T or Verizon have acquired and thus eliminated them, thereby converting those once competitive roaming areas into zones under their exclusive control.[20] Providers seeking to offer their customers service in locations served by a single

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[16] *See* Declaration of Joseph Farrell, D.Phil., In Support of Petition for Declaratory Ruling of T-Mobile USA, Inc. Petition, attached as Ex. 2 to Petition ("*Farrell Decl.*") at ¶¶ 34-5.

[17] *Id.* at ¶ 35.

[18] Declaration of Dirk Mosa, attached as Ex, 2 to Petition ("*Mosa Decl.*") at ¶ 22.

[19] *See e.g., id.* at ¶ 14. Mr. Mosa explains that even if multi-mode handsets were consistent with consumer demand, their use to solve technical incompatibilities would be cost-prohibitive. *Id.*

[20] *See* NTELOS Comments at 8-9; CCA Comments at 4-5; RWA Comments at 5. Most recently, AT&T acquired Leap Wireless International, Inc., including the Cricket brand, which has removed an alternative roaming provider in a number of key areas. *Applications of Cricket License Company LLC et al., Leap Wireless International, Inc., and AT&T Inc. for Consent to Transfer Control of Authorizations et al.*, Memorandum, Opinion and Order, WT Docket No. 13-393, DA 14-349, (rel. Mar. 13, 2014). As the Commission feared, "[c]onsolidation in the mobile wireless industry has reduced the number of potential roaming partners for some of the smaller,

technologically compatible network run by AT&T or Verizon have no choice but to seek roaming services from one megacarrier or the other, which gives each significant market power.

B. Competitive Carriers Affirm that AT&T and Verizon Leverage their Market Power to Demand Exorbitant Wholesale Data Roaming Rates.

Every carrier and carrier association participating in this proceeding affirm that AT&T and Verizon exercise their market power in the data roaming arena. As must-have data roaming partners in many areas, they hold a vastly superior bargaining position, which gives them both the incentive and ability to demand anti-competitive rates. As Dr. Farrell states, a provider of wholesale data roaming services with market power "has an incentive to exercise this market power by raising wholesale prices above what they would be in a competitive environment." [21] He adds that this is true especially where such carriers compete directly for retail customers.[22] Furthermore, Dr. Farrell warns that such price hikes do not necessarily apply to a particular non-competitive area, but as a blended rate across all covered areas, which would be higher than they would be if all areas were competitive.[23] Moreover, he cautions that price increases may be structured as ancillary volume commitments or other contract provisions requiring a roaming carrier to meet certain volume thresholds at high rates before slightly lower rates would begin to apply.[24]

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regional and rural providers . . . and simultaneously reduced the incentives of the two largest providers to enter into such agreements by reducing their need for reciprocal roaming." *Data Roaming Order* at ¶ 27.

[21] *Farrell Decl.* at ¶ 38.

[22] *Id.* at ¶ 44.

[23] *Id.* at ¶ 40.

[24] *Id.*

Counter to AT&T and Verizon's claims, competitive carriers confirm that AT&T and Verizon are engaging in these anti-competitive tactics and abusing their market power to charge exorbitant wholesale data roaming rates. Since non-disclosure provisions in roaming agreements prevent carriers from disclosing the specific rates AT&T and Verizon charge, they have tried to relay their enormity as best they can. T-Mobile attests that AT&T's roaming rates remain "significantly higher than a commercially reasonable rate"[25] and are six times higher than AT&T's retail rates.[26] NTELOS states that it was offered data roaming rates ranging from $0.10 to $0.25 per MB of data or approximately $100-$250 per GB, which is "a stunningly high price" compared to the $7.50 per GB or the $10 for 10 GBs that AT&T offers its retail customers or the $16 per GB that Verizon offers its retail customers.[27] NTELOS notes that certain roaming rates it was offered are "approximately 10 to 25 times higher" than what AT&T and Verizon charge their retail customers.[28]

Several other carriers and their representative associations concur, describing the rates they have been offered as "outrageous,"[29] "absurdly high,"[30] "too high,"[31] as well as "predatory

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[25] *Mosa Decl.* at ¶ 16.

[26] *Farrell Decl.* at ¶ 86.

[27] NTELOS Comments at 12. In practical terms, at the rates NTELOS indicates, a single two-hour movie download made while roaming would cost NTELOS thousands of dollars. According to *Wikipedia,* the minimum speed supported by Netflix is 1.5 Mbps. Thus, a two hour movie would use a total of about 10,800 MB, which converted to GB amounts to 10.55 GB. (1.5 Mbps divided by 1024 = .0014 GB *60 sec * 60 min * 2 hrs = 10.55 GB.) At a rate of $100 per GB, the roaming cost would be $1055 and at a rate of $250 per GB, the roaming cost would be $2637.

[28] *Id.* at 13.

[29] NTCH, Inc. *et al.,* Comments at 2 (relaying the experience of Flat Wireless LLC).

and anticompetitive."[32] In the same vein, the Competitive Carriers Association ("CCA"), representing the interests of more than 100 competitive wireless carriers, has reported to the Commission that since the adoption of the *Data Roaming Order*, its members "have been unable to obtain reasonable data roaming rates, particularly for 4G LTE roaming, from the two largest carriers, AT&T and Verizon."[33] CCA cites the example of one CCA member offered data roaming rates as much as ***33 times*** the retail rates charged to retail customers for data access.[34] The Commission has taken note of these difficulties, stating that "although the Commission adopted the *Data Roaming Order* in 2011, the ability to negotiate data roaming agreements on non-discriminatory terms and at reasonable rates remains a concern of providers."[35]

Sprint is charged the highest data roaming rates in locations where there is no competitive alternative. Excluding the two carriers that charge Sprint the highest roaming rates, the average data roaming rates Sprint pays have declined by 35 percent since 2012 alone. That same year, the average data roaming rates of Sprint's two most expensive roaming providers were 62 percent higher than the average data roaming rates that Sprint's other data roaming partners offered. Today, these same two providers' rates averaged together are ***139 percent higher*** than the average rates of other roaming providers. This stark contrast becomes more pronounced

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[30] *Id.* at 2 (recounting the experience of Buffalo-Lake Erie Wireless Systems Co., LLC. (Blue Wireless)).

[31] Limitless Comments at 3.

[32] NCTA Comments at 3.

[33] *See* Ex Parte Presentation filed by CCA in WT Docket No. 13-193, at 3 (filed Dec. 12, 2013).

[34] CCA Comments at 5.

[35] *Sixteenth Wireless Competition Report* at ¶ 210.

when comparing the rates of these outliers with those of Sprint's carrier partners participating in the Rural Roaming Preferred Program (R2P2).[36] Indeed, in several cases, these two providers' data roaming rates are more than ***2000 percent higher*** than the rates negotiated with Sprint's R2P2 partners. Under the R2P2, the parties recognize they are each seeking something from the other in order to improve the services they can each offer. Thus, they are incentivized to work together and come to a mutually beneficial arrangement to the benefit of their respective customers. Such market incentives between parties with balanced negotiating power help produce lower data roaming rates.

Conversely, AT&T and Verizon approach negotiations as an unwelcome obligation. Those striving to compete with AT&T and Verizon come to the negotiating table with no choice and real needs to fill. The megacarriers, however, need relatively nothing from other providers and therefore lack any incentive other than minimizing potential competition. Consequently, competitive carriers, with no alternative roaming partner in many geographic areas, must agree to AT&T and Verizon's exorbitant rates. Like many carriers, Limitless explains that although it was unable to reach a commercially reasonable agreement with AT&T, it felt pressured to enter into the agreement nonetheless because AT&T provided wireless data coverage in adjacent markets.[37] Moreover, carriers faced with commercially unreasonable data roaming rate proposals do not turn to the Commission's complaint process for recourse, given the confusion

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[36] *See Sprint to Expand 4G LTE Roaming Through 12 New Agreements with Carriers Covering a Population of Over 34 Million*, News Release, Sprint (June 16, 2014) *available at* http://newsroom.sprint.com/news-releases/sprint-to-expand-4g-lte-roaming-through-12-new-agreements-with-carriers-covering-a-population-of-over-34-million.htm?previousArticle=11455&nextArticle=11452&gotoArt=%2Fnews-releases%2Fsprint-to-expand-4g-lte-roaming-through-12-new-agreements-with-carriers-covering-a-population-of-over-34-million.htm.

[37] Limitless Comments at 3.

around the commercially reasonable standard, as discussed in greater detail below.[38] Consequently, many competitive carriers are trapped in commercially unreasonable data roaming agreements that have the ultimate effect of harming consumers and limiting the availability of data connections.

III. EXCESSIVE DATA ROAMING RATES ARE HARMING COMPETITION AND CONSUMERS.

A. Competitive Carriers Cannot Immediately Replicate AT&T and Verizon's Entire Footprint.

AT&T claims that high roaming rates, including those that exceed retail rates, preserve build out incentives and maximize deployment of mobile broadband networks for the benefit of consumers.[39] In particular, AT&T asserts that "[t]here is no reason why T-Mobile cannot build out that spectrum just as AT&T did,"[40] and that T-Mobile is "substituting roaming for economically feasible build-out."[41] In other words, AT&T contends that if competitive carriers like T-Mobile build-out their own networks, they would not have to pay AT&T's exorbitant roaming rates.

Excessive wholesale data roaming rates have the opposite effect – they have diverted otherwise available resources from network investment and impeded consumer access to seamless service, directly counter to the Commission's public interest goals.

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[38] *See* Section IV.B. *infra.*

[39] *See* AT&T Opposition at 27.

[40] *Id.* at 4. As noted above, AT&T and Verizon have relied largely on acquisitions for their rural footprint so it is at best disingenuous to suggest that AT&T "built-out" this spectrum.

[41] *Id.* at 22. Verizon implies the same citing concerns about investment incentives and noting that the data roaming obligation does not create a mandatory resale obligation. Verizon Comments at 7, n. 23.

To justify its astronomical rates, AT&T essentially claims that competitive carriers are always presented with the choice to either build out network facilities or obtain roaming. AT&T's assertion, however, fails to acknowledge the host of advantages it has enjoyed in the construction of its network -- spectrum licenses granted under the original government sanctioned wireless duopoly, ubiquitous landline infrastructure constructed during a century of government sanctioned monopoly, preferential access to rights-of-way, billions of dollars in explicit government subsidy programs (universal service) and implicit subsidies granted through inflated access charges.

Wireless carriers vying to compete with AT&T and Verizon are not so lucky. Contrary to AT&T's assertion, and as the Commission has recognized, there are areas where constructing another network is "economically infeasible or unrealistic."[42] Where AT&T and Verizon were either part of the original duopoly, or have purchased the original carrier, they hold the same advantage of incumbency as they have exercised in other markets. Moreover, devoting the entire capital budgets of competitive wireless carriers over several years to try to duplicate the consolidated networks of AT&T and Verizon would leave nothing for these carriers to pursue other innovation opportunities, including the deployment of higher speeds in more populated areas.

Even AT&T and Verizon realize that constructing a duplicate network is not always economically rational. For example, despite the fact that Verizon held spectrum licenses in the areas served by legacy Alltel, Verizon chose to acquire Alltel instead of investing in building a network to duplicate Alltel's network.

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[42] *Data Roaming Order* at ¶ 34. *See also Farrell Decl.* at ¶ 3 (highlighting that "[i]n many parts of the country, it likely is economically infeasible and/or undesirable to build out multiple networks because of high fixed costs relative to the low density of potential users.").

Even if smaller carriers choose to invest their entire capital budget to expand their footprints, they still could not match the vast resources that megacarriers AT&T and Verizon have at their disposal.[43] Deploying new infrastructure in new geographic areas demands substantial capital.[44] The combined value of the existing infrastructure of AT&T (over $110 billion) and Verizon ($89 billion) is almost $200 billion as compared to Sprint at $16 billion and T-Mobile at $15 billion.[45] Based on these numbers, Sprint and T-Mobile would have to spend almost $170 billion to replicate what AT&T and Verizon have acquired.[46] Smaller carriers with even less infrastructure would have to spend even more.

Moreover, given their superior financial position -- with 80 percent of the revenue, 92 percent of the profits, and 86 percent of the infrastructure among national carriers -- AT&T and Verizon enjoy favorable financing relative to their competitors. For example, AT&T and Verizon's average interest rates for long term borrowing are 42 percent and 32 percent lower

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[43] According to Morningstar, "[f]ollowing the acquisition of Alltel in early 2009, Verizon Wireless also offers the most comprehensive geographic coverage of any wireless carrier in the nation, a position that would be very difficult for any other carrier to match." Morningstar, *Verizon Communications Inc. Analyst Report*, July 22, 2014.

[44] For example, "[r]egional wireless providers typically have hundreds or thousands of sites and national providers have tens of thousands of sites. A new entrant would therefore need to invest tens or hundreds of millions of dollars in capital expense for a regional network (depending on the size of the regions) and billions of dollars for a national network." *Sixteenth Wireless Competition Report* at ¶ 81. Further, the Commission recognizes that "it may be significantly more costly to build out when the carrier only has access to higher spectrum frequencies where propagation characteristics are less advantageous." *Data Roaming Order* at ¶ 15, n. 51.

[45] Based on data reported in *AT&T 2013 Annual Report*; *Verizon 2013 Annual Report; Sprint 2013 Annual Report*; and *T-Mobile 2013 Annual Report*.

[46] Based on calculations from data reported in *AT&T 2013 Annual Report*; *Verizon 2013 Annual Report; Sprint 2013 Annual Report*; and *T-Mobile 2013 Annual Report*. Looking at replicating the networks of technologically compatible partners, Sprint would have to spend approximately $73 billion to match Verizon's $89 billion, and T-Mobile would have to spend approximately $95 billion to match AT&T's $110 billion.

(respectively) than the rates Sprint pays, and 29 percent and 18 percent lower (respectively) than the rates T-Mobile pays.[47] Their extraordinary profits combined with cheap access to financing, easily allow them to outspend Sprint and T-Mobile, let alone smaller carriers, on capital. Indeed, in 2013, AT&T and Verizon accounted for 65 percent of the wireless industry capex among national carriers,[48] and 62 percent relative to the entire industry[49] with an extra $15.6 billion left over to pay out to their shareholders.[50]

Yet in spite of these financial disadvantages relative to AT&T and Verizon, competitive carriers aggressively continue to invest the vast majority of their profits back into their networks where it makes economic sense. For example, in 2013, Sprint spent 172 percent of its profit on capital expenditures and T-Mobile spent 95.3 percent, whereas AT&T and Verizon spent only 42.9 percent and 34.2 percent, respectively.[51] Furthermore, as discussed in greater detail below, competitive carriers are working on innovative arrangements with each other to close gaps in coverage where possible.[52] Despite this high level of network investment and these unique

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[47] *Id.*

[48] *Id.*

[49] Based on calculations from data reported in *CTIA 2013 Industry Report*, *AT&T 2013 Annual Report*; *Verizon 2013 Annual Report; Sprint 2013 Annual Report*; and *T-Mobile 2013 Annual Report*.

[50] Based on data reported in *AT&T 2013 Annual Report* and *Verizon 2013 Annual Report*.

[51] Based on calculations from data reported in *AT&T 2013 Annual Report*; *Verizon 2013 Annual Report; Sprint 2013 Annual Report*; and *T-Mobile 2013 Annual Report*.

[52] *See* Section III.C. *infra*.

commercial arrangements, competitive carriers still need the wider footprint that only AT&T and Verizon can provide to satisfy consumer expectation for service.[53]

B. Exorbitant Wholesale Data Roaming Rates Restrict Consumer Access to Mobile Broadband.

With network deployment not an economically feasible option in many areas where consumers expect coverage, competitive carriers have no choice but to agree to AT&T and Verizon's exorbitant, commercially unreasonable data roaming rates. Confronted with these unreasonable rates, competitive carriers may either (1) raise customer rates, resulting in less attractive service offers relative to AT&T and Verizon[54] or (2) restrict customer access to data roaming in some way, which negates the Commission's goal of providing seamless service for consumers and also results in less attractive service offers.[55]

As competitive carriers understand, "in the current marketplace, it is a practical impossibility for a carrier to attempt to pass through domestic roaming charges to its customers," so they must find ways to restrict consumer access to data roaming.[56] For example, after several months of roaming under new AT&T data roaming rates, Limitless decided "to severely 'restrict' its customers from accessing the AT&T network for the sole reason that AT&T's data roaming rates are too high and by continuing roaming access, Limitless could not maintain a

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[53] *See Farrell Decl.* at ¶ 32.

[54] As CCA notes, "monopoly power in the market for roaming can increase costs and prices to competitors, which in turn may be passed on to retail customers as a special charge for roaming or as part of the overall price for service." CCA Comments at 6.

[55] CompTel notes that "providers unable to obtain reasonable data roaming rates may be forced to pass along charges to customers in the form of higher retail prices and/or to limit their customers' data roaming usage." CompTel Comments at 4.

[56] NTCH, Inc. *et al.*, Comments at 4.

commercially competitive retail wireless data offering to the general public."[57] NTELOS "has also limited its customers' ability to roam on certain networks."[58] Even larger competitive carriers such as T-Mobile and Sprint must restrict access. T-Mobile stated that it "has been forced to throttle and cap its customers' ability to roam on AT&T's data network due to AT&T's unreasonably high roaming rates."[59] Sprint also must restrict customer access to data roaming to reduce cost. For example, pursuant to its terms and conditions, Sprint reserves the right to suspend service if data roaming usage in a month exceeds 100 megabytes, 300 megabytes or a majority of kilobytes (depending upon plan terms).[60]

Restricting data roaming access as a result of exceedingly high data roaming rates negates the primary purpose of the data roaming obligation – to provide seamless, ubiquitous access for consumers.[61] As the Public Interest Commenters caution, "[a]ggressive bandwidth caps have a negative impact on the willingness of subscribers to use their mobile broadband connections"

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[57] Limitless Comments at 4; *See also id.* at 6-7.

[58] NTELOS Comments at 16. NTELOS adds that "[i]f NTELOS had to enter into such an unreasonable roaming arrangement in an attempt to offer competitive services to customers, it may quickly find itself actually losing money on any customers that used their devices on such roaming partner's network." *Id.* at 16-17.

[59] Petition at 10; *See also Mosa Decl.* at ¶ 10.

[60] Sprint Terms and Conditions, *available at* https://shop2.sprint.com/en/legal/os_general_terms_conditions_popup.shtml.

[61] *Data Roaming Order* at ¶ 1 (noting that "[w]idespread availability of data roaming capability will allow consumers with mobile data plans to remain connected when they travel outside their own provider's network coverage areas by using another provider's network, and thus promote connectivity for and nationwide access to mobile data services, such as email and wireless broadband Internet access.").

and reduced usage spirals downward into reduced investment.[62] Also, RWA warns that rural carriers unable to provide the seamless nationwide data roaming coverage their customers expect "will be forced to operate at a loss and will eventually cease to exist,"[63] thereby further reducing competition.

Excessive data roaming rates not only restrict consumer access to mobile broadband, but also divert the limited resources of smaller competitors away from competitive investment and innovation and into the already large coffers of the megacarriers.[64] Even the customers of AT&T and Verizon are not immune from harm. As the Public Interest Commenters state, "impos[ing] artificially high data roaming costs on rivals allows AT&T and Verizon to maintain artificially high prices for their own customers."[65] Accordingly, excessive roaming rates harm consumers by suppressing competition, barring investment, and restricting their access to mobile broadband services.[66]

C. Contrary to the Assertions of AT&T and Verizon, Lower Data Roaming Rates Spur Investment and Innovation.

On the other hand, as Sprint and other competitive carriers have demonstrated, and the Commission has repeatedly acknowledged, commercially reasonable roaming arrangements help "provide greater assurance to service providers that, if they make the investment to expand or upgrade their facilities, they will be able to offer competitive service options to their customers. .

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[62] Public Knowledge, Open Technology Institute at the New America Foundation, and Benton Foundation, and Common Cause ("Public Interest Commenters") Comments at 7-8.

[63] RWA Comments at 6.

[64] *See* NTCH, Inc. *et al.*, Comments at 5. *See also* RWA Comments at 8.

[65] Public Interest Commenters Comments at 5.

[66] CompTel Comments at 4.

. ."[67] Access to commercially reasonable roaming rates ensures that their limited investment dollars will secure a positive return.

A prime example of this effect is the R2P2, which provides rural carriers low cost access to Sprint's nationwide 4G LTE network.[68] Agreements under the R2P2 have resulted in significantly lower data roaming rates.[69] Under this program, rural operators have the incentive to build out advanced LTE networks because they know they will be able to offer their customers low-cost, seamless access to LTE service outside of their service areas. It helps them "accelerate the deployment and utilization of 4G LTE across America where the cost of building such networks and the roaming costs are often prohibitively expensive."[70] As this program

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[67] *Data Roaming Order* at ¶ 17. As the Commission has repeatedly observed, roaming "can also provide additional incentives to enter a market by allowing network providers without a presence in an area a competitive level of local coverage during the early period of investment and buildout." *Id.* at ¶ 18. The Commission also acknowledged that the "data roaming obligation is necessary to provide an acceptable level of risk for the investment in data capabilities for their network, as it increases their chances of being able to offer their subscribers the nationwide coverage needed for a viable product offering. *Id.* at ¶ 30. *See also*, "[r]oaming can increase network coverage by allowing the entrant's customers to have network coverage when they travel outside of the range of the entrant's own network." *Sixteenth Wireless Competition Report* at ¶ 81.

[68] AT&T Opposition at 15. In addition, R2P2 complements the Small Market Alliance for Rural Transformation ("SMART") initiative by Sprint and the NetAmerica Alliance, which provides participating rural communications service providers the capabilities to help reduce roaming costs and accelerate the deployment and utilization of 4G LTE across rural America. *Sprint, Competitive Carriers Association and NetAmerica Alliance Join Forces to Accelerate Deployment and Utilization of 4G LTE across the United States*, News Release, Sprint (Mar. 27, 2014) *available at* http://newsroom.sprint.com/news-releases/sprint-competitive-carriers-association-and-netamerica-alliance-join-forces-to-accelerate-deployment-and-utilization-of-4g-lte-across-the-united-states.htm.

[69] *See* Section II.B. *supra.*

[70] *Sprint to Expand 4G LTE Roaming Through 12 New Agreements with Carriers Covering a Population of Over 34 Million*, News Release, Sprint (June 16, 2014) *available at* http://newsroom.sprint.com/news-releases/sprint-to-expand-4g-lte-roaming-through-12-new-agreements-with-carriers-covering-a-population-of-over-34-

demonstrates, Sprint and other competitive wireless carriers will pursue opportunities to incrementally reduce exposure to excessive roaming rates. For the foreseeable future, however, there will continue to be large areas of the country where such opportunities are not available.

IV. T-MOBILE'S MODEST PROPOSALS FOR CLARIFICATION WILL HELP REMOVE ROADBLOCKS TO COMMERCIALLY REASONABLE DATA ROAMING AGREEMENTS.

A. T-Mobile's Petition Asks for Guidance, Not Rate Regulation.

AT&T and Verizon claim that T-Mobile's request for guidance around the commercially reasonable standard amounts to a request for rate regulation. Specifically, AT&T maintains that the clarifications would significantly restrict providers' discretion in rates they could offer and the benchmarks would become *de facto* price caps.[71] Likewise, Verizon denounces T-Mobile's "transparent objective" as "convert[ing] the existing data roaming rules into an intrusive rate regulation regime."[72]

AT&T and Verizon's assertions are overblown. T-Mobile is asking merely for guideposts available for consideration along with other relevant factors, not price caps or other forms of rate regulation as applied or otherwise. The proposed benchmarks would simply generate additional data to help inform the data roaming rule's established commercial reasonableness analysis and would not result in any deviation from the Commission's case-by-case totality of the

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million.htm?previousArticle=11455&nextArticle=11452&gotoArt=%2Fnews-releases%2Fsprint-to-expand-4g-lte-roaming-through-12-new-agreements-with-carriers-covering-a-population-of-over-34-million.htm.

[71] AT&T Opposition at 34-5.

[72] Verizon Comments at 16.

circumstances approach.[73] Furthermore, providers would still be free to negotiate agreements on an individualized basis in line with the Commission's established roaming framework.

Moreover, the two requested clarifications regarding existing agreement terms and the build-out factor seek guidance on the Commission's intentions around the rule's implementation as outlined in the *Data Roaming Order*. By no means do such simple clarifications amount to rate regulation. Given that all three proposals are well rooted in the established data roaming rule, the requested guidance would remain safely within the bounds of the Commission's jurisdictional authority.

B. The Complaint Process is Not Yet a Viable Path for Dispute Resolution.

AT&T and Verizon call for T-Mobile and other carriers to file complaints with the Commission if they think roaming rates are too high.[74] However, the fact that competitive carriers are not shy in expressing their views about AT&T and Verizon's excessive data roaming rates at every opportunity, but have not yet filed multiple complaints, is telling and clearly indicates that they do not consider the complaint process to be an effective mechanism for recourse.

Without further guidance on the commercial reasonableness standard, it is unclear what it would take to file a viable complaint for the Commission's review and consideration.[75] The simple clarification and guidance T-Mobile requests would give competitive carriers a better sense of the standard and thus allow them to gauge whether a complaint has a chance of success

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[73] NTCH, Inc. *et al.*, Comments at 5.

[74] AT&T Opposition at 19; Verizon Comments at 9.

[75] NTELOS noted that the Commission's complaint process is not an option for recourse because "there is no compelling legal constraint on AT&T's ability to charge high rates . . . ." NTELOS Comments at 10.

and thus is worth filing, saving both competitive carriers' and the Commission's time and money. Moreover, T-Mobile's proposals would serve to provide Commission staff additional points of reference to help inform their analysis of commercial reasonableness as between two parties in a complaint proceeding. Until these two issues are resolved, the Commission's data roaming dispute resolution process fails to provide competitive carriers with an effective path for assistance.

V. CONCLUSION

For the foregoing reasons, Sprint respectfully requests that the Commission grant T-Mobile's Petition for Expedited Declaratory Ruling and provide industry express guidance on the commercial reasonableness standard to ensure that the data roaming rule serves the public interest.

Respectfully submitted,

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