

FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Market Disputes Resolution Division
445 12th St., S.W.
Washington, DC 20554

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Email and First-Class Mail

Donald J. Evans
Jonathan R. Markman
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street
Suite 1100
Arlington, VA 22209
Counsel to Complainants

Andre J. Lachance
Tamara Preiss
Verizon Wireless
1300 I Street, NW
Suite 400-West
Washington, DC 20005
Counsel to Defendant

Re: *NTCH, Inc. v. Cellco Partnership d/b/a/Verizon Wireless*, EB Docket No. 14-212,
File No. EB-13-MD-006

Dear Counsel:

On April 3, 2015, Complainant, NTCH, Inc. (“NTCH”) filed a letter seeking clarification of, and/or contesting, certain discovery rulings made in our April 2, 2015, Discovery Order¹ in the above-referenced proceeding.² In order to resolve any confusion regarding the bases for the discovery rulings identified by NTCH, we clarify those rulings as set forth below.

NTCH primarily contests the rulings denying requests for discovery of information relating to Verizon’s costs; specifically, NTCH Interrogatory Numbers 4, 7, and 8, and the second half of NTCH Interrogatory Number 3.³ Under the Commission’s formal complaint rules, “[r]equests for interrogatories ... may be used to seek discovery of any non-privileged matter that is relevant to the material facts in dispute in the pending proceeding.”⁴ Such requests must contain an explanation of why the information

¹ See Letter to Counsel for NTCH and Verizon from Rosemary McEnery, EB Docket No. 14-212, File No. EB-13-MD-006 (dated April 2, 2015) (“Discovery Order”).

² See Letter to Rosemary McEnery, FCC, from Donald J. Evans, Counsel for NTCH, EB Docket No. 14-212, File No. EB-13-MD-006 (filed April 3, 2015) (“April 3rd Letter”). We treated NTCH’s April 3rd Letter as a motion under Commission rule 1.727(a), 47 C.F.R. §1.727(a). See E-mail from Rosemary McEnery, FCC, to Counsel for NTCH and Verizon (April 6, 2015, 2:12 p.m. EDT). Defendant, Cellco Partnership d/b/a Verizon Wireless (“Verizon”) filed an opposition. See Opposition of Verizon Wireless, EB Docket No. 14-212, File No. EB-13-MD-006 (filed April 10, 2015) (“Opposition”).

³ See April 3rd Letter at 1.

⁴ See 47 C.F.R. §1.729(a).

sought in each interrogatory is “necessary to the resolution of the dispute.”⁵ NTCH’s interrogatories, however, did not provide an explanation for its requests.⁶ This omission is particularly significant given that the cost of delivering service is not among the factors the Commission has indicated that it will consider in evaluating the reasonableness of proffered rates in the context of voice roaming⁷ and data roaming disputes.⁸ Here, Verizon has agreed to produce other information, including the per unit rates paid under each of its existing roaming agreements for voice, toll, SMS, and data services in response to NTCH Interrogatory Number 1, as modified by the parties. Based on the foregoing, we find that NTCH has not satisfactorily explained why the extensive cost information sought is both relevant and necessary to the resolution of this dispute.⁹

We denied NTCH Interrogatory Number 2 for similar reasons. Interrogatory Number 2 requests information regarding providers with which Verizon has “offered to enter into a roaming agreement,” as well as the rates offered, where “an agreement on the offered terms is not in effect.” This interrogatory is denied because it requests information that may well have no relevance to the material issues in dispute. In particular, the fact that a roaming agreement “is not in effect” may be attributable to numerous factors unrelated to the reasonableness of a host provider’s proffered terms. Moreover, we find that the term “offered to enter into a roaming agreement” is vague and ambiguous, and given that Verizon has agreed to produce information regarding its existing roaming agreements in response to Interrogatory Number 1, we find that the requested information is not necessary to resolution of the parties’ dispute.¹⁰

Finally, NTCH seeks a further ruling on our decision to deny its request for discovery of international roaming rate information, arguing that its request for this information was contained in Interrogatory Number 1 of its initial discovery requests.¹¹ Verizon is correct that NTCH did not make clear at any point in this proceeding, until a March 30th conference call, that it intended its Interrogatory

⁵ See 47 C.F.R. §1.729(b).

⁶ See Interrogatories of NTCH, Inc., EB Docket No. 14-212, File No. EB-13-MD-006 (filed July 2, 2014).

⁷ See *Reexamination of Roaming Obligations of CMRS Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Order on Reconsideration, 25 FCC Rcd 4181, 4200-01, para. 39 (2010) (“*Voice Roaming Order on Reconsideration*”) (setting out factors the Commission may consider in evaluating whether proffered voice roaming arrangements are reasonable and not unreasonably discriminatory).

⁸ See *Reexamination of Roaming Obligations of CMRS Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Second Report and Order, 26 FCC Rcd 5411, 5452-53, para. 86 (2011) (“*Data Roaming Order*”) (setting out factors the Commission may consider in evaluating commercial reasonableness of proffered data roaming arrangements); *Reexamination of Roaming Obligations of CMRS Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Declaratory Ruling, 2014 WL 7220023 at **3-8, paras. 8-23 (WT 2014) (“*T-Mobile Ruling*”) (providing guidance on commercial reasonableness standard and identifying potential reference points that the Commission may consider in resolving such disputes).

⁹ See 47 C.F.R. §1.729(a), (b).

¹⁰ See 47 C.F.R. § 1.729(a), (b). We similarly denied Interrogatory Number 6, which seeks the average monthly volume of each Service Category (*i.e.*, voice, toll, SMS, and data) used or “expected to be used” by a “typical” Verizon customer where the customer’s services are bundled into packages that include flat rates. We find that the term “typical” Verizon customer is vague and ambiguous and that NTCH has not sufficiently demonstrated that this information is necessary to the resolution of the parties’ dispute.

¹¹ April 3rd Letter at 2.

Number 1 to serve as a request for both domestic *and* international roaming rate information.¹² Nowhere in the interrogatory itself or in the related definitions, and at no point during the discussions regarding the scope of Interrogatory Number 1 that took place at the March 24th status conference, did NTCH state that it was seeking international roaming rates. Thus, while NTCH is correct that the *T-Mobile Ruling* permits consideration of international roaming rates in certain circumstances, that ruling does not relieve NTCH of its obligation, under Commission rule 1.729(b), to clearly explain what information it is requesting and why the information sought is necessary to the resolution of the parties' dispute.¹³

To the extent that the April 3rd Letter requests reconsideration of our Discovery Order, it is denied. Under the Commission's rules, any requests for reconsideration of interlocutory orders will not be entertained prior to the issuance of a Commission ruling on the merits.¹⁴

We issue this letter ruling under sections 4(i), 4(j), and 208 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, sections 1.3, 1.106, and 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.106, 1.720-1.736, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311.

Sincerely,



Rosemary McEnery
Deputy Chief, Market Disputes Resolution Division
Enforcement Bureau

cc: Christopher Killion, Chief, Market Disputes Resolution Division
Lisa Boehley

¹² Opposition at 3.

¹³ Discovery is not a matter of right in a formal complaint proceeding. *See, e.g.*, 47 C.F.R. §§ 1.729(d), (h); *see also Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497, 22549-50, paras. 115-20 (1997) ("*Formal Complaints Order*").

¹⁴ *See* 47 C.F.R. § 1.106(a)(1). *See also Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers*, Order on Reconsideration, 16 FCC Rcd 5681, 5697, para. 38 (2001) ("[T]he Commission generally will not consider applications for review of interlocutory staff rulings in the context of section 208 complaint proceedings except in conjunction with the ruling on the merits of the complaint.").