T-Mobile®

October 1, 2004

Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, D.C. 20554

Re: **EX PARTE**
WT Docket No. 04-70

Dear Ms. Dortch:

T-Mobile USA, Inc. ("T-Mobile") submits in the above-referenced proceeding its response to the "Talking Points" attached to multiple *ex parte* notices of meetings with the Commissioners and their staff by Public Service Communications, the National Telecommunications Cooperative Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies (collectively, "PSC").[1] PSC improperly requests the Commission to impose conditions upon T-Mobile's roaming activities. The *ex partes*, as they pertain to T-Mobile, are procedurally defective and factually baseless and should be rejected.

As an initial matter, the *ex partes* were filed in the proceeding to consider certain license transfer of control applications filed by Cingular Wireless Corporation ("Cingular") and AT&T Wireless Services, Inc. ("AWS"). Because T-Mobile is not an applicant in that proceeding, the Commission cannot properly impose conditions upon T-Mobile in connection with its review of the Cingular/AWS transfer of control applications. Accordingly, the Commission must reject PSC's request that the Commission impose regulatory requirements on T-Mobile's roaming practices. To the extent PSC asks the Commission to change its oversight of roaming practices in the wireless industry, it should raise the issues in the pending rulemaking proceeding addressing wireless roaming issues (WT Docket No. 00-193).[2]

In light of the fatal procedural deficiencies of PSC's requests that the Commission impose conditions on T-Mobile, a substantive response to the issues raised in the *ex partes* is not required. Nevertheless, in the interest of clarification, T-Mobile responds briefly to certain

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[1] *See* Letter from Michael K. Kurtis, Counsel, PSC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 04-70 (filed Sept. 27, 2004) ("PSC Sept. 27 *Ex Parte*"); Letters from Michael K. Kurtis, Counsel, PSC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 04-70 (filed Sept. 7, 8, and 9, 2004) ("PSC Sept. 7-9 *Ex Partes*").

[2] *See Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, Notice of Proposed Rulemaking, 15 FCC Rcd 21628 (2000).

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assertions made by PSC. In particular, T-Mobile disputes the unsubstantiated and inaccurate claims that T-Mobile "*appears* to be preferring the combined AT&T Wireless and Cingular networks" and that "[i]n many cases, T-Mobile has been unwilling to even enter into roaming agreements with rural wireless carriers."[3] In fact, T-Mobile frequently enters into roaming arrangements with rural carriers and has roaming agreements with many domestic wireless carriers that have compatible networks, a great majority of which are rural or regional carriers. T-Mobile enters into these agreements when they best serve its customers' needs. In other words, T-Mobile's decision to enter into a roaming agreement is based on whether the agreement offers competitive market rates, provides superior network quality, and covers areas that offer important coverage enhancements. The decision is not based on any preferential treatment in favor of Cingular or AWS.

Moreover, the opportunities for T-Mobile to enter into roaming arrangements with certain rural carriers have to date been limited by incompatible networks. T-Mobile operates a fully digital Global System for Mobile Communications ("GSM") network in the 1900 MHz band, which is incompatible with networks operating on other standards (*e.g.*, TDMA, CDMA, analog) or in other frequency bands (*e.g.*, the 850 MHz cellular band). Because many rural carriers have not deployed GSM technology or operate only in the 850 MHz band, they cannot offer roaming services to T-Mobile. PSC acknowledged this when it stated that T-Mobile "is almost exclusively a 1900 MHz service provider" and therefore "does not provide a meaningful competitive alternative as a roaming partner to many cellular carriers."[4] As the number of rural carriers operating GSM networks in the 1900 MHz band increases, T-Mobile will consider additional roaming arrangements based on rates, coverage requirements, and network quality.

Finally, PSC requests the Commission to require the merged Cingular/AWS to deal with T-Mobile as a "true competitor," but it is unclear what this requirement would entail. In any event, contrary to PSC's suggestion, T-Mobile deals with all of its roaming partners, including Cingular and AWS, as "true competitors."[5] In particular, T-Mobile has not contractually agreed to "prefer" Cingular or AWS by shifting roaming traffic to either carrier's network to the exclusion of other available networks.[6]

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[3] *See* Talking Points at 1 (emphasis added) attached to PSC Sept. 7-9 *Ex Partes*.

[4] Talking Points at 1 attached to PSC Sept. 27 *Ex Parte*,

[5] *Id.* at 2.

[6] T-Mobile believes that there is nothing anticompetitive or otherwise inappropriate about having preferences in roaming agreements and that this is not an area the Commission should seek to regulate. As part of its negotiations for roaming services in various parts of the country, T-Mobile has agreed to roaming preferences in certain circumstances with a small number of carriers, all of which are rural and regional carriers.

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For the foregoing reasons, the Commission should reject PSC's proposal to impose roaming restrictions on T-Mobile. Pursuant to Section 1.1206(b) of the Commission's rules, an electronic copy of this letter is being filed.

Respectfully submitted,

/s/ Thomas J. Sugrue
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Vice President, Government Affairs

cc : Jennifer Manner, Barry Ohlson, Sheryl Wilkerson, Paul Margie, Sam Feder, John Muleta, Kathy Harris, William Kunze, David Furth, Scott Delacourt, Martin Perry

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