RECEIVED

OCT 4 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

In the Matter of	)	
	)	
Interconnection and Resale	)	CC Docket No. 94-54
Obligations Pertaining to	)	
Commercial Mobile Radio Services	)	

COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

DOCKET FILE COPY ORIGINAL

James H. Barker
Susan E. McNeil
LATHAM & WATKINS
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505
(202) 637-2200

Richard C. Rowlenson
Senior Vice President and General Counsel
VANGUARD CELLULAR SYSTEMS, INC.
2002 Pisgah Church Road
Suite 300
Greensboro, North Carolina 27455
(910) 545-2223

No. of Copies rec'd 0+9
List A B C D E

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY 1

II. THE COMMISSION SHOULD CONTINUE TO FOLLOW A MARKET-ORIENTED APPROACH TO ROAMING ISSUES AT THIS STAGE OF DEVELOPMENT IN THE CMRS MARKETPLACE 3

A. THE CMRS MARKETPLACE IS STILL TOO NASCENT TO INTRODUCE REGULATORY DISTORTIONS AND INCREASED COSTS WHEN THERE IS NO EVIDENCE OF A PROBLEM 4

B. THE UNCERTAIN NEED FOR MANDATORY AUTOMATIC ROAMING IS OUTWEIGHED BY THE COSTS SUCH AN OBLIGATION WOULD IMPOSE ON CURRENT AND EMERGING WIRELESS PROVIDERS 6

III. IF IMPLEMENTED, ANY AUTOMATIC ROAMING OBLIGATIONS SHOULD BE NARROWLY TAILORED, AND SHOULD SUNSET AFTER FIVE YEARS 8

IV. CONCLUSION 10

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
Interconnection and Resale	)	CC Docket No. 94-54
Obligations Pertaining to	)	
Commercial Mobile Radio Services	)	

COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

Vanguard Cellular Systems, Inc.[1] ("Vanguard") hereby submits the following Comments in response to the above-captioned *Second Report and Order and Third Notice of Proposed Rule Making*.[2]

I. INTRODUCTION AND SUMMARY

In the *Second R&O and Third NPRM*,[3] the Commission continued its examination of issues concerning the offering of roaming services by commercial mobile radio service

---

[1] Vanguard operates 28 A block MSA and RSA cellular systems in the Eastern United States, serving more than 450,000 subscribers.

[2] *See* Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, *Second Report and Order and Third Notice of Proposed Rulemaking*, CC Docket No. 94-54 (rel. Aug. 15, 1996) (*Second R&O and Third NPRM*).

[3] The Commission initiated this proceeding in a *Notice of Proposed Rulemaking and Notice of Inquiry* that addressed a broad array of CMRS regulatory issues, including roaming, and subsequently refined its proposals concerning roaming in a *Second Notice of Proposed Rulemaking*. *See* Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *Notice of Proposed Rulemaking and Notice of Inquiry,* 9 FCC Rcd 5408 (1994); Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *Second Notice of Proposed Rulemaking*, 10 FCC Rcd 10666 (1995) (*Second Notice of Proposed Rulemaking*).

("CMRS") providers.[4] Based upon the record it has already established in this proceeding, the Commission has concluded that the imposition of certain "manual" roaming requirements will foster the development of nationwide, ubiquitous and competitive CMRS services.[5] Accordingly, the Commission has expanded the scope of its existing cellular rule, which required cellular carriers to serve individual roamers, to include other CMRS providers that offer competitive mobile telephony services,[6] provided that a CMRS provider is technically able to do so.[7] Vanguard has not opposed the Commission's manual roaming requirement.

The Commission has also requested comment on whether additional "automatic" roaming requirements may be warranted.[8] The Commission has observed that the record established in this proceeding does not provide a basis for adopting such a requirement,[9] but has decided to "freshen" the record on this issue in view of the dramatic changes that have recently developed in the wireless marketplace.

---

[4] The Commission has observed that "roaming" occurs when the subscriber of one CMRS provider utilizes the facilities of another CMRS provider with which the subscriber has no direct preexisting service or financial relationship to place an outgoing call, to receive an incoming call, or to continue an in-progress call. *See Second R&O and Third NPRM* at ¶ 3; 47 C.F.R. § 22.99.

[5] "Manual" roaming provisions permit a subscriber to initiate or terminate a call when there is no pre-existing contractual relationship between the subscriber and the CMRS provider. In order to make or receive a call, a manual roamer usually must provide a valid credit card number to the carrier providing service. *Id.* at ¶ 2.

[6] *See* 47 C.F.R. § 22.901.

[7] *Second R&O and Third NPRM* at ¶ 13.

[8] "Automatic" roaming allows a roaming subscriber to originate or terminate a call without taking any action other than turning on the telephone. *Id.* at ¶ 16.

[9] *Id.*

As explained more fully below, Vanguard believes that the imposition of additional roaming requirements is not warranted at this time. As the CMRS marketplace continues to exhibit a trend of dynamic expansion, with a proliferation of cellular, PCS, and other wireless competitors, there is every indication that market forces will escalate ubiquitous roaming coverage by and among all CMRS providers. Thus, absent a pressing need for Commission intervention -- and Vanguard perceives there to be none -- a market-driven resolution of roaming issues is the appropriate policy course for the Commission to adopt at this phase of the development of CMRS services. In addition, such an approach will minimize onerous and potentially unnecessary costs that an automatic roaming requirement would otherwise impose on small to mid-sized carriers like Vanguard.

However, to the extent that the Commission determines that an automatic roaming requirement may be necessary to promote CMRS competition, Vanguard urges the Commission to ensure that such an obligation is reasonable and narrowly tailored to accommodate business realities and costs of automatic roaming implementation, which may not be apparent except to experienced facilities-based CMRS providers. Vanguard also agrees that an automatic roaming obligation, if implemented, should sunset five years after the remaining broadband PCS licenses have been granted.

II. THE COMMISSION SHOULD CONTINUE TO FOLLOW A MARKET-ORIENTED APPROACH TO ROAMING ISSUES AT THIS STAGE OF DEVELOPMENT IN THE CMRS MARKETPLACE

In its earlier comments, Vanguard has advocated a market-based approach to roaming issues, with continued monitoring by the Commission for anticompetitive behavior. This is the approach the Commission should continue to take.

A. The CMRS Marketplace Is Still Too Nascent To Introduce Regulatory Distortions And Increased Costs When There Is No Evidence Of A Problem

The changes that have been sweeping the wireless industry with respect to roaming service through private negotiations have been dramatic. Regional and nationwide CMRS systems and marketing agreements are rapidly evolving, and the trend in roaming service and pricing is already validating the Commission's hope that CMRS providers will implement nationwide seamless roaming networks (*e.g.* the North American Cellular Network utilized by A block cellular carriers) and offer roaming service to subscribers at attractive, cost-based rates. There is no evidence to date that suggests that automatic roaming requirements are needed in this dynamic and increasingly competitive CMRS environment.

The Commission has recognized that cellular carriers have had significant incentives to enter into roaming agreements with other providers to offer ubiquitous coverage.[10] These roaming agreements have developed without Commission intervention, and with more facilities-based cellular and PCS providers competing for roaming revenues, there is every indication that cellular providers will have an incentive to offer ubiquitous roaming capability across CMRS systems. This is particularly likely in view of the substantial number of broadband PCS licensees with cellular affiliates.[11]

In addition, the Commission has acknowledged that the need to sign roaming agreements for PCS providers may be somewhat less urgent due to their larger geographic

---

[10] *See Second Notice of Proposed Rulemaking*, 10 FCC Rcd 10666 at ¶ 55 (noting that the cellular industry independently developed and implemented the IS-41 standard and the backbone network architecture -- *e.g.* the North American Cellular Network -- needed to provide roaming).

[11] Nearly all of the large broadband PCS A and B block auction winners have cellular affiliates.

licensed service areas,[12] and to the extent that many broadband PCS licensees have aggregated licenses to form national and regional footprints, the need for automatic roaming agreements is further diminished.[13] Indeed, other PCS licensees have already entered into agreements using compatible technologies to provide seamless service.[14]

In view of such developments, market forces appear to be more than sufficient to satisfy the demand for automatic roaming, and the Commission has already imposed the "safety net" of a manual roaming obligation on all carriers. Given that this is so, the Commission correctly observes that the imposition of an additional mandatory automatic roaming obligation would be inconsistent with its own general preference for market-oriented solutions, as well as the Telecommunications Act of 1996's call for a "procompetitive, de-regulatory national policy framework" for the telecommunications industry.[15] The substantial number of voluntary

---

[12] *Second R&O and Third NPRM* at ¶ 19.

[13] Wireless Co., for example, acquired 22 MTA licenses in the broadband PCS A and B block auction, virtually spanning coast-to-coast. In the broadband PCS C block auction, Chase Telecommunications acquired 17 licenses in the South to complement its strong broadcast presence in that region.

[14] *See* "Proponents at PCS '96 Push GSM to Highlight Technology's Growth, Capabilities," Communications Daily (Sept. 20, 1996) (noting that "GSM companies hope to have roaming agreements by year-end so customers can use PCS in each other's territories."); "Pacific Bell Mobile Services Signs Roaming Agreements with Four GSM-based Carriers," M2 Communications Presswire (Sept. 19, 1996) (noting that Pacific Bell's agreement with APC, BellSouth Mobility PCS, Western Wireless and Omnipoint will provide coverage to 80 million people); "Wireless Nation: Using Digital Technology as the Fuel, PCS Contenders Are Giving Their Network Engines the Power to Transport Wireless Coast to Coast," Telephony (Mar. 4, 1996) (noting that Sprint Spectrum, AT&T Wireless and PCS PrimeCo. have developed partnerships in order to create regional and national footprints).

[15] *Second R&O and Third NPRM* at ¶ 26-27.

negotiations and agreements that are occurring or that have taken place simply belie any need for the Commission to take regulatory action with respect to roaming at this time.

At the same time, Vanguard also reiterates its continued support for diligent monitoring by the Commission of the development of the CMRS marketplace, and Vanguard would support appropriate regulatory action, as needed, to prevent anticompetitive behavior by or among CMRS providers. As Vanguard previously has indicated, for example, broadband PCS MTA licensees initially may have an incentive to develop ubiquitous roaming capability across cellular and PCS systems, but also eventually may have incentives not to enter into roaming agreements with other carriers in different markets once they achieve a nationwide wireless footprint.[16] If such discrimination were to occur, the justification for Commission intervention in the roaming area would become more compelling. Until there is evidence of such anticompetitive behavior, however, Vanguard believes that competitors in the wireless marketplace are best able to decide whether to pursue roaming agreements, balancing cost considerations, alternative roaming options and business strategies.

B. The Uncertain Need For Mandatory Automatic Roaming Is Outweighed By The Costs Such An Obligation Would Impose On Current And Emerging Wireless Providers

A market-oriented approach to automatic roaming is especially warranted since, as the Commission has acknowledged, mandatory automatic roaming requirements would

---

[16] For example, where a broadband PCS provider also holds cellular properties in one of Vanguard's markets, that carrier may be incented more to develop PCS/cellular roaming capability across its own systems, and correspondingly less inclined to enter into or maintain a pre-existing reciprocal roaming agreement with Vanguard to allow Vanguard subscribers to roam on its system. *See* Vanguard Comments at 9-10 (June 14, 1995) .

impose significant network and administrative costs on CMRS carriers -- and particularly on small to mid-sized companies like Vanguard.[17] For example, in order to provide automatic roaming capability across all CMRS systems, Vanguard would be required to load numbering data on each of its switch tables for all CMRS providers that may potentially seek to roam on its system and also would need to increase its system capacity significantly and at substantial cost.[18] Moreover, under an automatic roaming obligation, Vanguard would be required to load such information and incur these costs whether or not customers of different providers actually sought access to Vanguard's system.

Vanguard would also need to make similar enhancements to its billing system in order to accommodate an automatic roaming requirement. Data for each CMRS provider that potentially may seek to roam on Vanguard's system would need to be entered into Vanguard's billing system.[19] In addition, Vanguard would need to coordinate with its switch, billing and network providers to develop the hardware and software enhancements needed to provide automatic roaming. Under an automatic roaming obligation, Vanguard would be required to provide automatic call delivery for all cellular and PCS providers seeking to roam on its system. The costs associated with the development of a system with such capabilities would be substantial.[20] Indeed, the cost of financial and personnel resources is difficult to fully comprehend unless one has experience in the development of such a system first hand.

---

[17] *See Second R&O and Third NPRM* at ¶29 (noting that "imposition of an automatic roaming requirement could be costly and burdensome.")

[18] *See* Declaration of Cynthia Clayton (Clayton Declaration). The Clayton Declaration is attached hereto as Attachment 1.

[19] *See* Clayton Declaration.

[20] *See* Clayton Declaration.

Competitors in the CMRS marketplace, like Vanguard, should have the opportunity to balance the significant costs of automatic roaming with marketplace demand in deciding whether to pursue an automatic roaming strategy. Vanguard believes that the marketplace is best-suited to make such determinations, given no demonstrated need for mandatory automatic roaming at this time.

III. IF IMPLEMENTED, ANY AUTOMATIC ROAMING OBLIGATIONS SHOULD BE NARROWLY TAILORED, AND SHOULD SUNSET AFTER FIVE YEARS

If the Commission decides to impose an automatic roaming obligation, it should be narrowly tailored and should sunset after five years. For example, as with the manual roaming obligation, any automatic roaming requirement should apply only when it is technically feasible to do so. As discussed *supra*, significant network enhancements will be needed in order to provide automatic roaming capabilities. In addition, small and mid-sized carriers like Vanguard must rely on equipment vendors to develop the upgrades necessary to satisfy such capabilities. The Commission therefore should not mandate automatic roaming -- if it determines such an obligation is warranted at all -- until a CMRS provider has had a reasonable opportunity to implement any necessary network enhancements.

Any automatic roaming requirements should also reasonably accommodate CMRS providers' urgent business need to guard against fraud. Specifically, the Commission should permit CMRS providers to temporarily "pull" numbers, as needed, where evidence of fraud has been documented without having to worry about running afoul of any automatic roaming requirements.[21]

---

[21] For example, cellular providers on occasion have been forced to suspend roaming agreements with certain cellular providers in order to prevent against the widespread problem of

Finally, as the Commission indicated in its *Second R&O and Third NPRM*, the need, if any, for automatic roaming obligations, is temporary.[22] Once broadband PCS licensees have satisfied their initial build-out requirements, sufficient wireless capacity will be available in the market to obviate any need for mandatory automatic roaming obligations, absent anti-competitive conduct by large CMRS carriers. Accordingly, Vanguard supports the Commission's proposal to terminate all roaming requirements within five years after the initial round of licensing broadband PCS providers has been completed, subject to reimposition of appropriate roaming requirements ranging all the way to mandatory automatic roaming in the event that large CMRS carriers engage in anticompetitive or otherwise inappropriate conduct.[23]

---

fraud, which CTIA estimates cost U.S. cellular providers more than $650 million in 1995, a 32.9% increase over the previous year. Communications Daily (Mar. 28, 1996). These losses represented 3.8 percent of industry revenue, up from 3.7 percent a year ago. *Id.* In addition, it is sometimes important for home carriers to retain the flexibility to refuse to enter into a roaming arrangement in situations where another CMRS provider is proposing to unreasonably overcharge the home carrier's customers for roaming service.

[22] *See Second R&O and Third NPRM* at ¶¶ 31-32.

[23] *Id.* at ¶ 32.

IV. CONCLUSION

For the reasons set forth above, the Commission should not adopt an automatic roaming requirement at this time. The Commission's preference for market-based solutions is the best policy to promote the continuing emergence of competition in the CMRS marketplace. If the Commission decides to impose an automatic roaming requirement, it should be narrowly tailored and sunset after five years.

Respectfully submitted,

VANGUARD CELLULAR SYSTEMS, INC.

James H. Barker
Susan E. McNeil*
LATHAM & WATKINS
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505
(202) 637-2200
*Admitted in Maryland only

and

Richard C. Rowlenson
Senior Vice President and General Counsel
VANGUARD CELLULAR SYSTEMS, INC.
2002 Pisgah Church Road
Suite 300
Greensboro, North Carolina 27455
(910) 545-2223

October 4, 1996

Attachment 1

DECLARATION OF CYNTHIA CLAYTON

I, Cynthia Clayton, hereby declare as follows:

1. I received a Bachelor of Arts from the University of North Carolina at Greensboro in 1988. I have been employed at Vanguard Cellular Systems, Inc. ("Vanguard") since October 2, 1989 and my title is Manager of Roaming. My responsibilities include analyzing roaming rates, revenues and expenses and maintaining numbering databases.

2. In an effort to estimate the costs associated with the imposition of an automatic roaming requirement, I conducted a needs analysis to determine what system enhancements would be required in order to provide automatic roaming.

3. First, in order to accommodate an automatic roaming requirement, Vanguard would have to add numbering data for all cellular and PCS providers to its switches and billing system, including numbering plan area (NPA) and central office (NXX) codes. Vanguard currently has 8,000 NPA/NXX codes loaded on its system to accommodate existing roaming partners. I estimate that an additional 40,280 NPA/NXX codes would need to be added in order to provide automatic roaming service to subscribers of all PCS and cellular providers. In making this calculation, I have assumed that PCS NPA/NXX code requirements are similar to those of cellular.

4. Each entry of a NPA/NXX code on Vanguard's system takes approximately 1 to 5 minutes to load. In order to load codes for all cellular and PCS providers, I estimate that it would take between 4 and 21 months of 8 hours/day during a 40 hour work week. Vanguard would also require additional switch capacity in order to load the required numbering data. Specifically, I estimate that Vanguard would need to increase the table space at each of our 7 switches at a cost of approximately $25,000 per switch, for a total cost of approximately $175,000, in order to satisfy an automatic roaming requirement.

5. Second, Vanguard would need to coordinate with its switch, billing and network providers to develop the hardware and software enhancements needed to provide automatic roaming. Under an automatic roaming obligation, Vanguard would be required to provide automatic call delivery for all cellular and PCS providers seeking to roam on its system. Vanguard currently does not have the ability to offer such service across all spectrum blocks, and being forced to do so would cause Vanguard to incur significant costs. I am not aware that other CMRS providers have this capacity either.

6. By way of example, Vanguard developed the system enhancements needed to provide automatic roaming to all A band cellular providers in order to become a member of the North American Cellular Network. It took Vanguard and its vendors approximately two years to develop the necessary system enhancements at a cost of approximately $4 million. I believe that the time and costs could be significantly higher if Vanguard were required to provide automatic roaming capabilities to cellular and PCS licensees across all spectrum blocks.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.

October 4, 1996

Cynthia Clayton

Cynthia Clayton