



**TABLE OF CONTENTS**

	<b><u>Page</u></b>
SUMMARY .....	iii
I. <b><u>INTRODUCTORY STATEMENT AND BACKGROUND</u></b> .....	2
A. Since The FCC Did Not Issue Nationwide Licenses, Roaming Is A Critical Component Of The Industry .....	2
B. Customers Are Entitled To Convenient Access .....	3
C. Independent Carriers Must Be Able To Obtain Automatic Roaming Agreements In Order To Effectively Compete .....	4
II. <b><u>COMMENTS</u></b> .....	6
A. The Commission Has Authority to Regulate Roaming Arrangements. ....	6
B. Manual Roaming Is A Technological Dinosaur Which Only Facilitates Carriers' Ability To Deny Customers Access To Wireless Networks. ....	8
C. Automatic Reciprocal Roaming Is The Only Means Of Providing Reasonable Access To Wireless Networks .....	10
D. Automatic Roaming Is A Form Of Interconnection and Must Be Regulated As Such. ....	11
E. Stated Concerns About Roaming Pricing Are a Red Herring. ....	12
F. Automatic Roaming Will Not Result In More Regulation, Nor Will It Lessen Competition .....	14

	<u>Page</u>
G. Automatic Roaming Will Not Increase Complexity For Carriers. . . . .	15
H. Carriers Regularly Threaten To Cancel Roaming Agreements In Negotiations, Often For Improper Reasons. . . . .	16
I. There are No Public Interest Bases to Support Manual-Only Roaming. . . . .	17
J. An Automatic Roaming Requirement Can Be Implemented With Minimal Regulation and Without Sunset. . . . .	18
CONCLUSION . . . . .	19

## SUMMARY

The Commission asks two primary questions in its *Second Report and Notice*. First, is action necessary? Second, if so, what action should be taken? Unquestionably, the answer to the first question is yes. AIW believes that, at a minimum, the Commission must adopt a rule which requires all wireless carriers to enter into an automatic roaming agreement with a carrier that requests such an agreement.

The central question presented in this proceeding is whether customers or carriers will ultimately dictate who carries non-local roaming calls. The central theme of AIW members' position is that all wireless customers are entitled to conveniently access the networks of service providers operating on the same frequency band throughout the nation.

Manual interconnection via credit card or other third party arrangements fails to make use of technologically sophisticated intercarrier roamer clearinghouse arrangements currently in place. The process of making a manual roaming call is so cumbersome that most subscribers simply prefer not to place calls rather than accept the inherent difficulties.

When one accepts that automatic roaming is the only means of providing convenient and meaningful access to wireless networks, carriers' objections to an automatic roaming requirement become transparent. Larger carriers' concerns about roaming pricing ignore marketplace realities which continue to drive down roaming prices.

The minimal regulations sought by AIW will not burden carriers and in any event, any potential regulatory burden would be more than offset by relief from the administrative burdens which will be thrust upon carriers required to implement manual roaming on a wide scale. Additionally, mandating the opening of wireless networks will not harm any carrier's ability to differentiate its service offerings. A carrier offering interconnected telephone service has no economic incentive to deny access to properly licensed roamers. On the other hand, a roaming subscriber will have no desire to roam on a system which is not configured to accept roamer traffic.

The automatic roaming clearinghouse system now in effect for cellular is accurate, efficient and cost effective. The marginal additional cost of establishing automatic roaming agreements and adding them to the clearinghouse is minimal.

As described herein, AIW members have been subject to abusive and perhaps anticompetitive practices with respect to roaming negotiations. Implementing automatic roaming on demand will put an end to these practices and level the playing field for small independent carriers. An even playing field is all that AIW desires so that its members can effectively compete in an industry increasingly dominated by giant carriers.

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

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

To: The Commission

**COMMENTS OF THE ALLIANCE OF INDEPENDENT WIRELESS OPERATORS**

The Alliance of Independent Wireless Operators ("AIW"),<sup>1</sup> by its attorney and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby submits its comments in response to the Commission's *Second Report and Order and Third Notice of Proposed Rulemaking* ("*Second Report and Notice*") in the above-captioned proceeding.<sup>2</sup> AIW's members are independent entrepreneurs who actively operate wireless systems in predominantly rural areas across the country. They have acquired and constructed markets through the FCC's lottery and auction processes, as well as through acquisition.<sup>3</sup> In its *Second Report and Notice*, the Commission announced that it was expanding the scope of its existing "manual" roaming rule and requested comment on whether it should define cellular, broadband PCS and covered SMR

---

<sup>1</sup> A list of AIW members is attached hereto as Exhibit A.

<sup>2</sup> *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 11 FCC Rcd 9462 (1996).

<sup>3</sup> AIW members all meet the Commission's broadband PCS definition of a small business contained in Section 24.720 (b) and are entitled to any benefits available under the Commission's *Section 257 Proceeding* (Notice of Inquiry), 11 FCC Rcd 6280 (1996) and *The Small Business Regulatory Flexibility Act*, P.L. 104-121 (1996).

providers' obligations to include the provision of "automatic" roaming service to other carriers.<sup>4</sup> In formulating final rules, the Commission must decide the central question whether customers or carriers will ultimately dictate who carries non-local roaming calls. Consistent with mandates adopted in Telecommunications Act of 1996, AIW believes customer choice should be maximized to the extent technically feasible. The Commission must adopt policies in this proceeding, consistent with those promulgated elsewhere, which will result in roaming customers having automatic access to other carriers' systems operating on the same frequency band throughout the nation. Specifically, the commission should require a wireless carrier to enter into an automatic roaming agreement with another wireless carrier upon request.

## **I. INTRODUCTORY STATEMENT AND BACKGROUND**

### **A. Since The FCC Did Not Issue Nationwide Licenses, Roaming Is A Critical Component Of The Industry**

When the Commission determined to license cellular service using MSA and RSA geographic service areas, it recognized roaming to be a critical component.<sup>5</sup> In adopting technical specifications, the Commission demanded certain critical uniform standards for base station and mobile equipment, largely to assure customers the ability to conveniently place calls anywhere that service is available.<sup>6</sup> The Commission devoted special focus to allocating

---

<sup>4</sup> *Second Report and Notice*, at 9464. AIW submits that the Commission's existing roaming rule, Section 22.901 does not mandate manual roaming and should not be interpreted to do so since automatic roaming is the only means of providing reasonable access to wireless networks. *See* Section II, C, *infra*.

<sup>5</sup> *See, Cellular Communications Systems*, 86 FCC 2d 469 (1981); 89 FCC 2d 58 (1982).

<sup>6</sup> *Id.*, 86 FCC 2d at 473, 505; 89 FCC 2d at 95.

sufficient spectrum to assure that carriers would be able to provide roaming service.<sup>7</sup> When the Commission justified its overall licensing strategies, the overriding authority cited by the Commission was its Section I mandate to "make available, as far as possible, to all the people of the United States a rapid, efficient nationwide...wire and communications service".<sup>8</sup>

The Commission has never wavered in its commitment to make roaming service available nationwide. Section 22.901 of the rules, as it was initially drafted and as it remains today, requires all cellular carriers to make service available to properly licensed roamers. Similarly, the creation of a nationwide, seamless network remains a preeminent goal of the Commission.<sup>9</sup> Broadband PCS has also been licensed in discrete geographic allocations. The same rationale for promoting automatic cellular roaming also applies to broadband PCS.

**B. Customers Are Entitled To Convenient Access**

All wireless customers are entitled to conveniently access the networks of service providers operating on the same frequency band throughout the nation. Automatic reciprocal roaming agreements have been the primary vehicle behind the rapid development of a nationwide

---

<sup>7</sup> The Commission stated, "[I]n establishing policies for cellular service we have intended to serve the public interest by implementing a nationwide high-capacity mobile communications service capable of providing both local and roaming mobile telephone users the ability to place and receive calls." *Cellular Communications Systems*, 86 FCC 2d at 502-503.

<sup>8</sup> *Cellular Communications Systems*, 89 FCC 2d at 70, quoting 47 U.S.C. §151.

<sup>9</sup> *See Filing and Processing of Applications for Unserved Areas*, 6 FCC Rcd 6185, 6187 (1991) ("The most important goal is the creation of a seamless and integrated nationwide cellular service, so that subscribers can receive high quality cellular service throughout the nation."). *See, also*, Sections 22.913(a)(6) and 22.923(a)(6) of the Commission's rules which require cellular applicants to demonstrate how roamers will be served.

cellular network. This week's rollout by AT&T Wireless of a nationwide digital PCS network<sup>10</sup> is strong evidence of the value PCS carriers place on the marketing power of a wide area footprint. Even before acquiring broadband PCS licenses at the Commission's auctions, several companies including Sprint and PCS PrimeCo announced their intent to form seamless nationwide networks.

Genuine access to roaming via reciprocal automatic roaming agreements benefits all components of the wireless industry. For subscribers, it extends the freedom from the confines of wired communication beyond their local market and throughout the nation. Even for subscribers who do not regularly roam into other markets, the mere availability of such service provides both flexibility and security. It is worth noting that as industry standards supporting greater roamer functionality have been developed and implemented, subscribers' expectations with respect to what constitutes an acceptable level of roamer service have increased accordingly.

**C. Independent Carriers Must Be Able To Obtain Automatic Roaming Agreements In Order To Effectively Compete**

In order for independent wireless carriers to compete on a meaningful basis, government policies which foster the development of nationwide networks must be established. Multi-system operators with vast cellular holdings, augmented by PCS licenses in non-cellular areas, can roll out nationwide networks on their own spectrum, offering customers dual mode phones which work automatically (i.e., without preregistration) in both cellular and PCS service areas. Independent wireless operators must be able to offer their customers a competitive footprint of convenient access on a wide area basis in order to be competitive. Otherwise customers's choice

---

<sup>10</sup> Jared Sandberg and John J. Keller, *AT&T Launches New Wireless Service*, *Wall Street Journal*, October 2, 1996 at p. A1.

will be limited to the handful of carriers who are capable of constructing vast networks and ultimately operating in cartel fashion. The only method of accomplishing convenient access is through implementation of reciprocal automatic roaming agreements.

Although all cellular carriers benefit from reciprocal automatic roaming, different types of carriers derive significantly different benefits from roaming. In large markets, both high population density and years of operational experience have permitted carriers to build large local subscriber bases, making roaming revenue a secondary revenue source. For these carriers, efficient roaming is primarily viewed as a powerful marketing tool to increase their footprint.

In contrast, small market and rural market carriers focus proportionately greater attention on providing roaming to foreign subscribers who travel into their markets. In fact, many Rural Service Area ("RSA") systems are specifically designed to serve roamers because market analysis has shown that roamers are the dominant group of users in these markets.<sup>11</sup> In rural markets, the cost per subscriber of constructing and operating a new cell site and communications relay facilities can be astronomical. Roaming revenues are the only possible economic justification for constructing otherwise essential communications facilities in these remote areas. Since many rural markets may never achieve home subscriber levels sufficient to justify development of competitive services such as digital, short messaging, or data, the impact of roamer rates and the availability of automatic roaming are of proportionately greater economic importance. Notwithstanding the overall more-challenging economic environment in which rural carriers must operate, and their greater need for reasonable roaming revenues, the Communications Act,

---

<sup>11</sup> AIW believes that while roaming revenues may account for only approximately 10% of total revenues in a developed urban market, they are frequently as high as 50% of total revenues in rural markets.

competition, and cost/benefit economics serve as effective safeguards that prevent rural carriers from being able to charge too much for roaming service.

## II. COMMENTS

### A. The Commission Has Authority to Regulate Roaming Arrangements

In its *Second Report and Notice*, the Commission did not break any new ground in determining that it has jurisdictional authority over roaming. Through its various interconnection policy statements,<sup>12</sup> the Commission has also recognized that its authority and responsibility to establish federal policy regarding cellular service is particularly appropriate in view of the fact that it has "made a commitment to promote nationwide compatibility in the cellular service." *FCC Interconnection Policy Statement II*, 2 FCC Rcd at 2913. Moreover, it is well established that the Commission may establish policy governing any critical component of wireless service based upon its general authority over the service.<sup>13</sup>

---

<sup>12</sup> The Commission first issued a Policy Statement addressing only cellular and radio common carrier interconnection in *Radio Common Carrier Services (Post-Divestiture BOC Practices)*, 59 Rad. Reg. 2d (P&F) 1275 (1986) ("FCC Interconnection Policy Statement I"). The Commission next issued a major policy statement on cellular interconnection in 1987, in the form of a declaratory ruling. *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 2 FCC Rcd 2910 (1987) ("FCC Interconnection Policy Statement II"). One year later, the Commission clarified its FCC Interconnection Policy Statement II, by rendering a decision on reconsideration in that same proceeding. *Memorandum Opinion and Order on Reconsideration*, 4 FCC Rcd 2369 (1988) ("FCC Interconnection Policy Statement III") (collectively "the FCC Interconnection Policy Statements").

<sup>13</sup> See, also, *FCC Interconnection Policy Statement II*, 2 FCC Rcd at 2911. The Commission has authority to create rules and regulations as may be necessary to assure that a validly established federal communications service (such as cellular or PCS) would not be frustrated, without a nationwide policy either by conflicting state regulation or the total absence of regulation. *Cellular Communications Systems*, 86 FCC 2d at 505.

Commission pronouncements in its Interconnection Policy Statements lay to rest any suggestion that automatic roaming may not be a "service", and is therefore outside the Commission's plenary jurisdiction in this area.

The Commission has also specifically ruled that screening and validation functions are Title II services as defined by the Act.<sup>14</sup> Like local exchange carriers, the home wireless cellular carrier has a virtual monopoly over the essential data needed to provide validation and screening data to the foreign carrier. *Id.* "Anything less than full access to validation and screening data will...discourage the placement...of calls" and would thus frustrate federal policy. *Id.* Thus, the Commission properly found such services to be common carrier services and rightfully exercised jurisdiction.

The Commission's discussion of its jurisdiction over NXX codes in its FCC Interconnection Policy Statements provides further proof of the already unassailable proposition that the Commission has jurisdiction over roaming service. *FCC Interconnection Policy Statement III*, 4 FCC Rcd at 2370. There, the Commission recognized that where a function is "integrally intertwined" to the provision of a common carrier function, the Commission has jurisdiction over it. Jurisdiction is especially critical since the function at issue (there NXX codes; here automatic roaming data) cannot be obtained from competitive sources.<sup>15</sup>

---

<sup>14</sup> *Policy and Rules Concerning Local Exchange Carrier Validation and Billing*, 7 FCC Rcd 3528, 3532 (1992).

<sup>15</sup> Most recently, the Commission has ruled that carriers must provide non-discriminatory access to validation data. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, (Second Report and Order)* ("Local Competition Order"), FCC No. 96-333, (released August 8, 1996)(recon. pending); *Cincinnati Bell Tel. Co.*, 4 FCC Rcd 5033 (CCB, 1989); 4 FCC Rcd 5735 (CCB, 1989); 5 FCC Rcd 805 (1990); 6 FCC Rcd 3501 (1991) (*recon granted in part, denied in part*, 8 FCC Rcd 4409

In sum, AIW agrees with the Commission's conclusion that it has plenary authority to regulate in this area and unequivocally rejects any suggestion, that roaming is merely a billing and collection arrangement.

**B. Manual Roaming Is A Technological Dinosaur Which Only Facilitates Carriers' Ability To Deny Customers Access To Wireless Networks**

Manual interconnection via credit card, or other third party arrangements, does not make use of the technologically sophisticated intercarrier roaming clearing house arrangement currently in place. The process of making a manual roaming call is so cumbersome that most subscribers simply prefer not to place calls rather than accept it.

After placing a call, a subscriber is sometimes forwarded to a manual roaming clearinghouse which begins a series of voice mail prompts to enter into the roaming process. Sometimes the subscriber is simply given a number to dial to reach the manual roaming operator, requiring a second call. The subscriber must read information to the operator, including name, credit card number, expiration date and the mobile telephone number, then wait for approval. This process often takes over five minutes and must be repeated each time a subscriber enters into a new manual roaming only market.

These limitations inevitably lead to the conclusion that it should be in carriers' collective interests to move away from manual roaming arrangements. For example:

- \* Based on AIW's experience, it is believed that when a roaming customer is forced to "preregister", approximately 95% of customers decline this service usage drops by as much as 95%
- \* Limitations such as short battery life in portable cellular units make multiple preregistrations impractical, if not impossible, causing customers to choose more

---

(1993).

convenient access such as wireline facilities or switching to a carrier offering a bigger footprint.

- \* The price of a manual roaming call is generally more expensive than an automatic roaming call.<sup>16</sup>
- \* Manual roaming arrangements waste innovative technological advancements. For example, a manual cellular roamer cannot take advantage of automatic call delivery and other IS-41 features available to automatic roamers.
- \* Manual roaming is inherently less safe than automatic roaming, as a customer is required to locate a credit card and read the numbers for validation, often while driving.
- \* The potential for fraud generally is not reduced by credit card roaming, as stolen credit card numbers may be used to place manual roaming calls and the reading of credit card numbers over the air may be picked up by illegal radio scanners.
- \* As mentioned above, when a mobile subscriber passes through multiple markets, multiple preregistrations become a frustrating waste of time.

Despite the obvious inconveniences to the customer and drastically reduced roaming usage, and despite the fact that it is not in their long term economic interest, many large carriers insist, against their own apparent long term economic interest, that they should only be required to offer manual roaming to another carrier which seeks an automatic reciprocal agreement.

What then, are the short term benefits to be derived by advocating a policy which is adverse to a carrier's long term interests? By only being required to offer manual roaming, large carriers can exert significant pressure on small carriers to establish roaming rates which suit the large carrier, in effect dictating to small rural carriers what they can charge for services provided in their own market. Such practices have numerous benefits to large carriers, and, as discussed

---

<sup>16</sup> Most manual roaming clearinghouses charge a "set up fee" of approximately \$2.25 and impose a per minute charge of approximately \$2.00.

below, their motives may be predatory, especially where a large carrier surrounds, or holds large territory adjacent to, a small carrier.<sup>17</sup>

**C. Automatic Reciprocal Roaming Is The Only Means Of Providing Reasonable Access To Wireless Networks**

At the heart of AIW's position stands the proposition that automatic roaming is the only means of providing meaningful access to wireless networks and it is the customer who is entitled to access. The validity of this portion is attested to by the fact that all cellular carriers are signatories to roaming agreements that govern almost all major markets and, based on AIW's experience, at least 97% of roamer calls are placed pursuant to such agreements.

When one accepts that reciprocal roaming agreements are necessary for wireless subscribers to have reasonable access to foreign systems, the fallacies put forth by many carriers with respect to the virtues of manual roaming become clear. On the issue of what constitutes reasonable access, both the courts and the Commission have spoken with admirable clarity. In the Modified Final Judgment involving the AT&T divestiture, the Court formally recognized that *convenient* access is the only genuine access to telecommunications service. *See U.S. v. Western Electric Co., Inc.*, 698 F. Supp. 348, 361-362 (DDC 1988). The Commission has formally recognized this fact in several important instances.

*In the Matter of Pay Telephone Presubscription*, 65 Rad. Reg. 2d 1853 (Com. Car. Bur. 1989), the Commission determined that true access must be convenient access that is not arbitrarily restricted. It reiterated longstanding policy that in assessing the propriety of restrictions on subscribers rights generally, the overall test is whether the restrictions are an

---

<sup>17</sup> As the Chairman noted in a recent Commission meeting when the *Second Report and Notice* was adopted, such predatory practices can form the basis for an antitrust action.

unwarranted interference on subscribers' rights to use their telephone in ways that are privately beneficial without being publicly detrimental.<sup>18</sup> The Commission has also adopted this basic policy in the context of cellular.<sup>19</sup> Most recently, in its most detailed pronouncement yet, the Commission's *Local Competition Order, supra*, was not merely an implementation of Congress' will in the Telecommunications Act of 1996, but it was also a logical outgrowth of the Commission's longstanding movement toward opening markets by promoting access to networks and interconnection policies which will lead to a network of networks. Permitting a wireless carrier to only offer manual roaming to another wireless carrier which desires an automatic roaming promotes anticompetitive activity, stifles industry growth, and leaves small carriers with only expensive and complicated antitrust litigation to fall back on.

**D. Automatic Roaming Is A Form Of Interconnection and Must Be Regulated As Such**

In August, the Commission set forth a detailed regulatory plan for interconnection of wireline networks, implementing Section 251(c)(2) of the Act which requires incumbent LECs, *inter alia*, to provide interconnection to any requesting telecommunications carrier at least equal in quality to that provided by the incumbent LEC to itself or its affiliated companies.<sup>20</sup> LECs

---

<sup>18</sup> The Commission initially adopted this position more than three decades ago. *See Hush-A-Phone Corp. v. U.S.*, 238 F.2d 266 (D.C. Cir. 1956).

<sup>19</sup> *See FCC Interconnection Policy Statement II*, 2 FCC Rcd at 2913, n. 14, where, speaking on the subject of interconnection, the Commission stated that if a particular form of access is technically feasible, it should be provided. In addition, it is Commission policy to "foster interconnection arrangements most favorable to the end user." *FCC Interconnection Policy Statement I*, 59 Rad. Reg. 2d (P&F) at 1284.

<sup>20</sup> Local Competition Order, supra.

are also required to enter into reciprocal compensation arrangements with CMRS providers for the transport and termination of traffic on each other's networks pursuant to Section 251(b)(5).

Roaming is simply an access and interconnection issue. The Commission's longstanding goals of promoting a network of networks, and nationwide seamless wireless service, are fostered by requiring a company to enter into an automatic reciprocal roaming agreements when requested to do so. Customers and carriers are entitled to access other networks and given the available statistical evidence concerning manual roaming, a manual only roaming requirement retards the achievement of the very goals the Commission espouses in similar proceedings.

Some commenters will undoubtedly seek to differentiate automatic roaming from access and interconnection. As a practical matter, the differences are minimal and certainly not sufficient to adopt a policy that is diametrically opposed to the goals which drove the adoption of the Telecommunications Act of 1996 and the regulations flowing therefrom.

**E. Stated Concerns About Roaming Pricing Are a Red Herring**

Some carriers have opposed automatic roaming on the theory that small carriers would have leverage in negotiations resulting in high roaming prices. In fact, mandating automatic roaming upon request will have the very same effect as mandating interconnection - the playing field will level and the parties will be forced to reach agreement. The obvious, but often unstated concern of larger carriers is the possibility that if automatic roaming becomes the rule, they will be unable to dictate pricing to neighboring carriers by refusing an automatic roaming agreement. Notwithstanding that large carriers never voluntarily lowered their prices until it suited their own economic interests, and notwithstanding the potentially predatory motives behind such tactics

discussed below, the idea that one party should be able to dictate the price a service provider charges and deny service to a willing customer turns fundamental economics on its head.

As a practical matter, roamer pricing does not present a problem for the industry. Marketplace forces drive pricing and there are several reasons why small wireless carriers will continue the current trend of lowering roaming prices generally:

1. The implementation of PCS and ESMR systems will force wireless carriers to compete on price, as customers will switch to carriers with the most competitive overall offering;
2. There is no reason for a cellular customer to be uninformed about the cost of a roaming call. If properly educated by their home carrier, subscribers know to dial \*611 or a similar access code in order to receive pricing information from the host carrier. If pricing is too high, they will choose less expensive alternatives, as they currently do when forced to manually roam;
3. The marketplace provides options for carriers, as well as customers. For example, a cellular carrier which believes that a neighboring market's roaming prices are too high can enter into a roaming agreement with the neighbor's competitor and notify its customers of the advantageous pricing available if they roam on the other system. This can be especially effective in metropolitan areas where high use commuters are forced to roam every day.
4. Significant industry research has shown that lowering prices stimulates an offsetting increase in minutes of use;
5. Section 201 of the Communications Act prohibits unjust or unreasonable charges for services and the Commission's Section 208 complaint procedures provide available remedy for abusive practices; and

In sum, the market forces shown above will set roaming prices and the proposition that an automatic roaming requirement will somehow inhibit market forces is misguided. In fact, the absence of an automatic roaming requirement fosters artificial marketplace economics, much as the absence of an interconnection requirement has for years with respect to LEC-CMRS interconnection. Requiring carriers to enter into automatic roaming agreements with other

requesting carriers operating on the same frequency band will promote competition by, among other ways, enabling small wireless carriers to compete with larger carriers on footprint.

**F. Automatic Roaming Will Not Result In More Regulation,  
Nor Will It Lessen Competition**

The Commission expresses concern that an automatic roaming requirement is at odds with its deregulatory, pro-competitive approach. To the contrary, AIW believes implementation of this requirement is equivalent to requiring LECs to offer nondiscriminatory interconnection. The additional regulatory burden such a requirement would entail is minimal and more than offset by corresponding benefits.

Potential regulatory burdens are also offset by relief from administrative burdens borne by carriers who must implement manual roaming on any scale. Unless a carrier subcontracts its manual roaming out to one of the few companies providing the service, the internal costs of manual roaming are staggering. The staff time needed to intercept calls, validate credit card numbers, validate subscriber data, bill calls to the appropriate home carrier, and collect each is extreme and there are no economies of scale available, i.e., as calls increase, proportionally more staff is required. Additionally, the other costs of manual roaming (physical space, telephone lines, PCS, furniture, etc.) force companies to subcontract to companies which have little incentive to offer competitive prices. Whether manual roaming is done in house or subcontracted, it cannot be done economically and the customer pays for the increased costs.

Concerns about a carrier's inability to differentiate its service offerings are also misplaced. If Carrier A wishes to offer a local service that excludes roaming, it will obviously not request automatic roaming agreements with other carriers. If Carrier B, which has customers on the same frequency band, wishes to enable its customers to automatically roam on Carrier A's network,

it should have the right to do so. Carrier A has no economic incentive to deny Carrier B's customers from roaming on its network. If Carrier A's network is not designed such that a roamer would obtain suitable service, Carrier B will not enter into an agreement. Nothing in the automatic roaming policy affects Carrier A's ability to differentiate its service offering.

**G. Automatic Roaming Will Not Increase Complexity For Carriers**

The fact that 97% of all cellular calls are placed pursuant to automatic roaming agreements evidences that establishing such agreements has not presented insurmountable complexity for carriers. Once established, the roamer clearinghouse method is extremely efficient, accurate, and cost effective. AIW does not advocate a requirement that all carriers be required to enter into agreements with all other carriers - only that a carrier be required to enter into an agreement upon request. Since most agreements are already in place, this requirement will prevent carriers from cancelling automatic roaming agreements as a means of improperly exerting leverage. Most certainly, a carrier would not request an automatic roaming agreement with another carrier unless it has sufficient traffic to deliver to that market to justify the effort of negotiating an agreement. The marginal additional cost of establishing automatic roaming agreements and adding them to the clearinghouse system is minimal, in that the terms contained in the standard intercarrier roamer services agreement are rarely negotiated at length. This minimal requirement will be beneficial to the customer without markedly increasing the regulatory or administrative burden on carriers.

## **H. Carriers Regularly Threaten To Cancel Roaming Agreements In Negotiations, Often For Improper Reasons**

When one carrier seeks to dictate terms to another carrier, it routinely threatens to cancel its roaming agreement and cut off service to all roamers between the subject systems.<sup>21</sup> AIW members routinely encounter larger carriers demanding a price change on the threat of cancellation of the roaming agreement. In one instance, a large nonwireline operator located adjacent to an independent rural carrier steadfastly refused to enter into an automatic roaming agreement for 19 months, demanding "home" roaming rates. During the same time period, this operator had in place an automatic roaming agreement with the independent carrier's wireline competitor on exactly the same terms as those refused to the independent!

There are many possible reasons for this conduct. Most often, it is simply the desire to dictate what another carrier can charge for services provided in its own market. Some carriers, under the guise of demanding a lower roaming rate (ostensibly to "protect" their customers), have in fact "marked up" the requested low roaming rates to their own customers.<sup>22</sup> This conduct is grossly unfair to smaller carriers, who depend on roaming revenue for system expansion, especially in areas where the resident population density will never support the cost of deploying a cell site.

---

<sup>21</sup> AIW's members have specific evidence of this and would be pleased to present it to the Commission, however to do so publicly in this proceeding only invites further antagonism between AIW members and their neighboring systems. Moreover, AIW's position is not one which would be contested.

<sup>22</sup> This is vividly illustrated by the fact that carriers who strenuously argue for artificially low prices in nearby markets are quick to charge far higher prices pursuant to agreements with distant carriers where no competitive concerns are present.

At worst, a carrier's refusal to enter into a roaming agreement and its desire to seek federal protection for such conduct, may be motivated by a desire to economically collapse a neighboring carrier. As discussed above, the footprint is an essential marketing advantage to a metropolitan carrier. The chance to acquire a neighboring system at a distress sale price is simply too tempting for the Commission to turn its back at this late stage.

**I. There are No Public Interest Bases to Support Manual-Only Roaming**

The simple question is whether this Commission should adopt a policy that restricts subscribers ability to direct dial calls without preregistering or taking other cumbersome preliminary steps. AIW submits that efficient roaming that makes use of existing technologies is an essential component of the Commission's wireless policy, and that the Commission should not encourage or condone restrictive activity which frustrates and inhibits the development of technology and service offerings and is inconsistent with well established Commission policy goals.

The FCC's nationwide set-aside of frequency blocks,<sup>23</sup> the industry's standardization of base station and customer equipment, and the development of nationwide roamer validation and clearinghouse capabilities, have enabled most roaming users to efficiently interconnect into the Public Switched Telephone Network ("PSTN") from any physical location. Manual only roaming stands for the proposition that federal policy should be developed which would make it significantly more difficult for subscribers to place calls. There is simply no valid public policy reason for adopting such a position. If a subscriber deems the rates in a particular market

---

<sup>23</sup> See *Land Mobile Radio Service*, 46 FCC 2d 752, 766 (1974); *New Personal Communications Services*, 9 FCC Rcd 4957 (1994) wherein the Commission established the final broadband PCS frequency blocks.

to be too high, it will use the service less, or seek alternatives, demonstrating marketplace economics, pure and simple. Sooner rather than later, rates will adjust in response to subscriber demand.

Finally, contrary to some assertions, the existence of an automatic reciprocal roaming agreement cannot itself "require" anyone to pay higher roaming rates. Rather, it only provides (and is the only effective way to provide) customers with the option of receiving convenient roaming service in a given market. Manual roaming actually reduces customer choice, especially where a dual-mode handset is in use, as its design purpose is to facilitate convenient access to foreign networks.

**J. An Automatic Roaming Requirement Can Be Implemented With Minimal Regulation and Without Sunset**

Establishing rules which entitle wireless carriers to have the right to interconnect with other wireless carriers via automatic roaming agreements will not only foster PCS-cellular and ESMR-cellular roaming, but it will protect the roughly 30 million analog cellular subscribers, most of whom will not convert to a digital or dual mode phone for the foreseeable future. This simple rule will not impose any undue regulatory burdens on carriers. If a carrier requests an automatic roaming agreement, one must be promptly given. The Telecommunications Act of 1996 mandates that LECs must open their networks to other carriers; there is nothing inconsistent with requiring wireless carriers to do the same.

The very limited relief proposed above should not be subject to a "sunset" provision.<sup>24</sup> The relief sought by AIW members herein will be for naught if it sunsets in a few short years.

---

<sup>24</sup> *Second Report and Notice*, at paras. 31-32.

The playing field will once again tilt sharply in favor of larger carriers, who will be free to pull roaming agreements, and the current status quo will return. There is no compelling reason for sunseting the limited relief requested above, and given that it will be pro-competitive and pro-consumer, it should remain in effect until larger carriers can carry the burden of proving why it should be eliminated, just as AIW is forced to prove why it should be implemented.

### **CONCLUSION**

Adoption of a manual only roaming requirement is antithetical to the Commission's plan to foster a nationwide wireless service. It will create manual roaming "dead zones" covering entire markets where roaming service is virtually non-existent. Given close scrutiny, the reasons given for implementing a manual only roaming requirement are transparent in that they fail to mask underlying motives to gain unfair advantages over small independent carriers.

This Commission has always promoted opportunities for small entrepreneurs. All AIW asks is that it receive a level playing field so that its members can effectively compete in this challenging wireless industry.

Respectfully submitted,

INDEPENDENT CELLULAR ALLIANCE

By:   
J.K. Hage  
Its Counsel

Hage & Hobaica  
610 Charlotte Street  
Utica, NY 13501

October 4, 1996

**Exhibit A**

**MEMBERS OF ALLIANCE OF INDEPNDENT WIRELESS OPERATORS**

El Dorado Communications, L.L.C.

Kent S. Foster

American Rural Cellular, Inc.

Mercury PCS, LLC

Metacomm Cellular Partners

Smith Bagley, Inc.

KO Communications, Inc.

Wendy C. Coleman d/b/a WCC Cellular