

Before the
Federal Communications Commission
Washington DC 20554

In the Matter of)
)
Automatic and Manual Roaming)
Obligations Pertaining to Commercial) WT Docket No. 00-193
Mobile Radio Services)

To: The Commission

**COMMENTS OF
CORR WIRELESS COMMUNICATIONS, L.L.C.**

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SUMMARY

Corr Wireless Communications, LLC, is a rural cellular/PCS carrier which is sandwiched between larger carriers. It has been Corr's unfortunate experience that the carriers with large footprints use – or, more properly, abuse – their larger serving area and customer bases to extract roaming concessions from smaller carriers. Because automatic roaming is an essential communications access feature for roamers, the threat of withdrawing automatic roaming privileges is a very powerful weapon which the larger carriers can and do use. The subscribers of small carriers, the small carriers themselves, and indeed, the subscribers of large carriers all suffer when large carriers play the automatic roaming card.

Corr urges the Commission to make the provision of automatic roaming, on request of the participating carriers, mandatory. This is consistent with the seamless nationwide character of CMRS service, and it also serves in economic terms to expand the beneficial network externalities of the wireless communications network.

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Corr Wireless Communications, L.L.C. (“Corr”) hereby submits its comments on the Commission’s proposal to mandate automatic roaming in the CMRS services. For the reasons set forth below, Corr believes that the imposition of an automatic roaming rule is essential to prevent anti-competitive abuses which currently redound to the detriment of subscribers.

I. Background

Corr is a small, independently owned and operated cellular and PCS carrier in rural Alabama. Its cellular RSA is situated between the Huntsville and Birmingham BellSouth/Cingular markets. There is considerable roaming traffic both ways: our subscribers travel to and from these major markets and roam while they are there; subscribers from those markets roam on our system while they travel through our territory. Because these adjacent markets are larger, they also have larger customer bases. As a natural consequence of this size differential, there are more roaming minutes on our system from the larger carrier's subscribers than our subscribers generate in the larger markets. It has historically been a source of

continuing irritation to the larger carriers that their customers (or they themselves, if they “buy down” the roaming rate¹) must pay to roam in our market.

The Commission’s NPRM is correct in noting that roaming rates have declined markedly over the years. When the Alabama 1 RSA was first turned on in 1992, roaming rates were 99 cents per minute with a \$3.00 per day surcharge. These rates have gradually declined by agreement over the years, in part because of increased efficiency of handling roaming traffic and in part because of competitive pressures. Roaming rates between Corr and BellSouth/Cingular have reached an all-time low of 25 cents per minute with no daily surcharge as of last year. The rates have always been reciprocal: we have never demanded a roaming rate from others that we were not willing to pay ourselves. With these agreements in place, we have each set our switches to permit automatic roaming by each other’s customers. That is, our switches recognize each other’s customers as authorized roamers and perform call set-up and customer verification and billing functions automatically without any intervention by the customer.

It should be stressed that “manual” roaming is, and has been for some years, a procedure of last resort. Today’s CMRS customer has gotten so accustomed to automatic roaming that the availability of an automatic connection to a carrier wherever the customer roams is a practical necessity. Most customers don’t even know how to initiate a manual roam and would not want to do so even if they did. It was the very cumbersomeness of that process that drove the industry to go to automatic roaming as much as possible. Manual roaming is simply not in

¹ A CMRS carrier will sometimes “buy down” a roaming rate for the benefit of its own customers. That is, although the home carrier is assessed the roaming rate by the foreign carrier for the calls incurred while a customer was roaming, the home carrier will only charge its customer the regular airtime charges. In effect, the home carrier eats the roaming charges in order to create a virtual wide-area network that is invisible to the customer. This tends to be done most often where the home carrier’s own coverage area is smaller than its home competitor’s. The roaming rate buy down simulates a larger coverage area. In this case, of course, the

any sense a viable option. That is why customers tend universally to roam on the system to which they are automatically directed rather than going through a complex clearance process every time they want to make a call, even when a system with broader or better coverage is manually available. Most customers would not even know that a better system was available since they are by definition only transient in the market. Thus, while the availability of manual roaming should certainly be maintained as a last resort means of accessing the nationwide network, it is not in any sense a day-to-day workable solution for a customer who requires roaming access.

At the same time, roaming itself is an essential element of CMRS service. While one could conceivably fashion a special cut-rate service plan for stay-at-home customers which did not permit roaming, Corr's experience is that any cellular carrier must have roaming available as a feature. The whole point of mobile communications, particularly in a market like ours which is between two larger markets, is that it's *mobile*; that is, it's available while the customer is moving. It is not an exaggeration to say that no cellular business could survive without roaming capability.

Unfortunately, over the course of the last six months, we have experienced increasing pressure from Cingular to drastically reduce our roaming charges to Cingular. Cingular advised us that unless we accept their terms, they would set their switches to direct automatic roaming onto the A-side cellular block rather than the B-side block on which both Corr and Cingular operate. This action would have had the effect of eliminating, in one swoop, a significant part of our revenue. Corr would have been left with significant stranded investment in equipment

purchased in order to keep up with the traffic demand from roamers out of the neighboring cities. It would also have had the effect of putting the roaming customer onto an analog system which is markedly inferior in terms of coverage. Cingular briefly implemented its threat, and we received many complaints from *their* subscribers who are wondering why their cellular service has suddenly gotten worse. Cingular did ultimately agree to continue to permit automatic roaming, but only if Corr changed its SID codes at certain cell sites.

Previously, market conditions seemed to restrain BellSouth from taking just this step; it had to be concerned about the negative reaction of its own customers. Now those market conditions no longer serve to protect the customer. The largest cellular carriers can use their dominant position in the adjacent markets to attempt to squeeze price and technical concessions out of small companies, even when it means sacrificing their own customers' needs to achieve that goal. Significantly, Cingular and Corr are not competitors in the 850 mhz markets. Thus, the large carriers are not using their control over automatic roaming privileges to gain a competitive advantage; they are simply using that power to extort lower roaming charges and usurp territory.

This experience, or the threat of it, has hung over Corr's head like a sword ever since it began operations. We believe that other independent operators experience similar pressures from the increasingly large, dominant, and predatory adjacent operators. We suspect that the rapid consolidation in the cellular industry has given the largest operators such broad nationwide footprints of their own that they no longer feel the need to be reasonable in their roaming arrangements with others. In other words, while roaming was a necessity that every carrier had

to reckon with, every carrier had an incentive to be reasonable in the roaming arrangements it made with others. The extreme consolidation has eliminated that constraint. It is interesting to note that negotiations between Corr and BellSouth had occurred periodically over the years, with workable solutions reached each time. It was only after the merger of the two supercarriers, that such a hard line was taken.

II. **The Economic Framework**

Economists have developed the concept of “network externalities” to describe the situation presented here. This concept was well defined in a recent Commission white paper²:

Network externalities arise when the value, or utility, that a consumer derives from a product or service increases as a function of the number of other consumers of the same or compatible products or services. They are called network externalities because they generally arise for networks whose purpose is to enable each user to communicate with other users; as a result, by definition, the more users there are, the more valuable the network. These benefits are externalities because a user, when deciding whether to join a network (or which network to join), only takes into account the private benefits that the network will bring her, and will not consider the fact that joining the network increases the benefit of the network for other users. This latter effect is an externality...The phone system is a classic example of a system providing direct network externalities. The only benefit of such a system comes from access to the network of users.

² *The Digital Handshake: Connecting Internet Backbones*, Michael Kende, Director of Internet Policy Analysis, OPP Working Paper No. 32

OPP Working Paper at p. 3-4. The Working Paper goes on to summarize the history of common carrier regulation as a necessary check on the power of monopoly service providers to deny access to their networks and thus bar entry into their markets. The duty of a carrier to interconnect with other carriers which is set forth in section 201 of the 1934 Act was an absolutely fundamental element of the development of the national communications network as we know it today. Without such a duty, AT&T could have, and did, threaten to deny interconnection to the independent telephone companies which were outside its power³. *Ibid.* at p.10.

The problem of automatic roaming raises very similar issues. Automatic roaming provides in a mobile context the very network externalities which interconnection with the larger wired network provides. Not only is a mobile customer who is denied automatic connection while he is roaming denied the benefit of being able to communicate, but all other users of the system are denied the benefit of communicating with *him*. The entire economic community suffers when carriers impose artificial barriers to interconnection. As with AT&T in its early monopoly days, larger carriers today must be constrained by regulation or antitrust pressures not to abuse their position as monopoly service providers in the largest urban areas.

III. **Legal Issues**

Because the Commission has previously found that the provision of roaming is a common carrier function, the jurisdictional basis for regulating roaming is plainly established. While aggrieved carriers like Corr could conceivably file individual complaints under Section 208 of the Act each time they are denied automatic roaming, it makes far more sense for the

³ AT&T was forced by the Justice Department in 1913 to enter into the Kingsbury Commitment obligating Corr Wireless, Inc. to interconnect with independent carriers for long distance calls. That became the basis for the duty to January 5, 2001 found in Section 201.

Commission to establish the basic duty to provide automatic roaming in a rulemaking context rather than in case by case adjudications. This is especially necessary to prevent patchwork interconnection obligations around the country with different carriers and different obligations dependent on the posture of individual complaints pending or processed by the Commission. From the very inception of the cellular industry, the Commission has treated cellular as a nationwide service requiring a unified nationwide regulatory scheme. "Throughout the cellular proceeding, an essential objective has been for cellular service to achieve nationwide compatibility. In this regard, we expressly stated that a cellular subscriber traveling outside of his or her local service area should be able to communicate over a cellular system in another city." *Domestic Public Cellular Radio Communications Service*, 49 RR 2d 809, 833 (1981). See also, *Telephone Number Party*, 13 FCC Rcd 21204, 21228 (1998) requiring CMRS carriers to enable nationwide roaming capability; *CTIA Forebearance Petition*, 14 FCC Rcd 3092 (1999). (Inability to roam on other networks would not be in the public interest.) Any policy adopted for automatic roaming should therefore be consistent for all carriers in all parts of the country. Reliance on piecemeal administrative litigation will create confusion and inconsistency among carriers – exactly what the Commission should try to avoid in establishing roaming policy.

As the background section above indicates, the market is clearly *not* working on its own to prevent abuses of market power. Small independent carriers do not have the economic clout to bargain with large carriers who have their own wide-area footprints for automatic roaming. This permits large carriers to engage in the very sort of bullying abuses which led to the

Kingsbury Commitment and Section 201 of the Act. The Commission should therefore adopt an automatic roaming rule that tracks the basic interconnection obligations of common carriers under the Act. That is, every CMRS carrier should have a duty to provide automatic roaming on just and reasonable terms⁴, and 2) CMRS carriers should be required to permit automatic roaming on terms no less favorable than they provide to other carriers, including their own affiliates. Such a rule is essential to ensuring that customers of all systems have fair and reasonable access to the nationwide network when they are outside their home market.

We do not see such a requirement as imposing any new or additional costs on any carrier. Every cellular carrier, to our knowledge, has automatic roaming capability now. The only issue is: to whom will this benefit be available. While there are certainly competitive benefits to having automatic roaming access when your competitor does not, these benefits are far outweighed by the overall network externalities which benefit everyone in the network by having universal access. To illustrate, in the early days of cellular the wireline carriers could have claimed a competitive edge by refusing to interconnect their wired networks to their non-wireline competitors. But the Commission correctly reasoned that interconnection was so fundamental to the entire cellular scheme that carriers would not be permitted to compete on that basis; wireline carriers *had* to permit interconnection. The same principle applies here: automatic roaming is so fundamental to contemporary CMRS services that its availability should not be a basis for competition.

⁴ The Commission's NPRM at Paragraph 21 proposed adoption of a rule which would only require carriers, if they permit roaming, to provide it on a non-discriminatory basis. The proposed rule would not require them to provide roaming at all. No carrier should be permitted not to permit roaming. This is especially necessary in the current environment where the largest carriers have nationwide footprints in the major markets. They could exploit their positions by not permitting customers of other carriers to roam in their territories or charge exorbitant rates for the privilege. As noted above, the Commission has always required that roaming be permitted to ensure that customers had access to service wherever service was available. That bedrock

Corr does not contend that automatic roaming should be free. To the extent that there are any administrative and network costs involved in providing this service – and clearly there are some – the participating carriers should bear those costs. This has never been a serious issue in reaching automatic roaming arrangements in the past, in large part because the process is always reciprocal so both carriers must undertake similar burdens to benefit each other.

Implicit in such a formulation is the concept that there could potentially be differences in costs associated with providing automatic roaming. It might be more difficult or costly, for example, to have automatic roaming with a distant carrier who did not participate in a subscriber data-clearing house. A carrier could plainly assess an extra charge for the provision of the service in that case. This would be fine as long as the additional charge fairly reflected the additional costs.

Similarly, we anticipate no problems with the availability of the necessary technology to permit automatic roaming. As indicated above, automatic roaming is presently ubiquitously available. By *requiring* automatic roaming to be available, however, the Commission would prevent carriers from deliberately installing systems or equipment which would preclude automatic roaming by non-favored carriers.

Finally, Corr sees no basis at this time for establishing any sunset term on the automatic roaming obligation. As we have seen, the problem has gotten worse over time, not better, and there is no present reason to believe that it will change. While the industry remains dominated by a few monstrous carriers, the protection of subscribers to the smaller independents will be needed for the indefinite future.

IV. Conclusion

For the reasons set forth above, Corr strongly urges the Commission to adopt a rule requiring that automatic roaming be provided and purchased on just, reasonable and non-discriminatory terms. Because there is currently considerable uncertainty about whether automatic roaming can properly be denied, abuses are already developing. It is therefore imperative that the Commission implement this rule as soon as possible to prevent losses of service.

Respectfully submitted,

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