

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Automatic and Manual Roaming	)	WT Docket <u>00-193</u>
Obligations Pertaining to	)	
Commercial Mobile Radio Services	)	

**Comments of the Rural Cellular Association**

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Comments of the Rural Cellular Association  
January 5, 2001

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## **SUMMARY**

The Rural Cellular Association (“RCA”) opposes the elimination of the manual roaming requirement. This requirement protects the subscribers of all carriers offering CMRS services, is pro-competitive and is not burdensome to carriers. RCA also opposes the imposition of an automatic roaming rule that would require carriers to execute agreements with one another. No evidence exists that current practices of carriers unreasonably hinder the operation of the market to the detriment of consumers. Additionally, such a requirement would disserve the public interest by increasing administrative and operational expenses. Finally, RCA urges the Commission to stop discriminatory and anti-competitive behavior by large carriers against small and rural carriers. RCA recommends that the Commission establish a streamline procedure for its immediate intercession when large carriers refuse to negotiate reasonable roaming agreements and urges the Commission to scrutinize closely the exercise of market power by the large carriers.

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To: The Commission

**Comments of the Rural Cellular Association**

The Rural Cellular Association (“RCA”),<sup>1</sup> by its attorneys, hereby submits comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding in which the Commission considers whether it should adopt an “automatic” roaming rule that would apply to Commercial Mobile Radio Service (“CMRS”) systems and whether it should sunset the “manual” roaming requirement that currently applies to those systems.<sup>2</sup>

RCA opposes elimination of the “manual” roaming requirement and opposes the imposition of an “automatic” roaming rule. In addition, the Commission should act swiftly and decisively to stop the discriminatory and anti-competitive activity of larger carriers in their

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<sup>1</sup> RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. Formed in 1993 to address the distinctive issues facing rural cellular service providers, the membership of RCA currently includes rural PCS carriers, as well.

<sup>2</sup> *Notice of Proposed Rulemaking*, WT Docket 00-193, FCC 00-361 (rel. Nov. 1, 2000) (“*Notice*”).

roaming arrangements with small and rural carriers.

### **I. The Current “Manual” Roaming Requirement Must be Maintained**

The Commission has found that roaming “is one of the attributes that prominently sets mobile telephony apart from landline service” and that it is vital to the development of the “network of networks.”<sup>3</sup> In order for a subscriber to roam, a relationship must either be established between the “home” carrier and the “host” carrier (“automatic roaming”) or between the “host” carrier and the individual subscriber (“manual roaming”). To maintain the benefits of competitive nationwide wireless networks, mandatory roaming is required where no roaming agreement exists among all home carriers and all host carriers. Maintenance of the “network of networks” is also required to promote competition and to protect the subscribers of all carriers offering CMRS services.<sup>4</sup> Mandatory maintenance of the policy of mandatory roaming fulfills these goals.

Mandatory manual roaming is not burdensome to carriers. The manual roaming rule that is currently in place has been tailored specifically by the Commission to “avoid placing an undue burden” on CMRS providers.<sup>5</sup> Indeed, little is required of carriers to activate manual roamers as

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<sup>3</sup> *In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services: Second Notice of Proposed Rulemaking*, 10 FCC Rcd 10666, 10693 (1995) (Second Notice).

<sup>4</sup> The Commission has recognized that newer entrants into the marketplace “may be at a competitive disadvantage vis-a-vis incumbent wireless carriers if their subscribers have no ability to roam on other networks.” *In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services: Second Report and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd 9462, 9470 (1996).

<sup>5</sup>*Id.*

calls that cannot be placed due to an absence of a roaming agreement are routed typically to the customer service representatives that are in place to attend the needs of the host carrier's own subscribers or have made arrangements with third-party customer care providers. Carriers recover costs associated with the provision of the manual roaming services through self-established roaming rates and by charging activation fees. Fraud exposure is minimized by routine verification procedures. Finally, as the Commission has recognized, the manual roaming rule does not require licensees to modify their systems in order to provide manual roaming service to end users.<sup>6</sup>

## **II. Automatic Roaming Requirements Are Burdensome and Present the Opportunity for Discrimination**

Mandatory manual roaming would continue to promote the public interest by requiring host carriers to provide service to individuals upon a reasonable request.<sup>7</sup> In contrast, an automatic roaming rule that would require carriers to execute agreements with one another would disserve the public interest by increasing administrative and operational expenses.

The Commission itself has stated that it should not adopt an automatic roaming rule unless "it is clear that providers' current practices are unreasonably hindering the operation of the market to the detriment of consumers."<sup>8</sup> No evidence exists that the current practices present a significant problem. Additionally, such an automatic roaming rule would be expensive to

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<sup>6</sup>See *In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket 94-54, FCC 00-251 at para. \_\_ (rel. Aug. 28, 2000).

<sup>7</sup>See Section 201(a) of the Communications Act of 1934, as amended regarding the duties of common carriers.

<sup>8</sup>See *Notice* at para. 18.

implement, prohibits carriers from designing or defining service to suit the market. Also, such a requirement would be an unreasonable government intrusion on market development.

As shown in Section III below, current discriminatory practices are affecting the ability of carriers to compete, but these practices have not yet risen to the level to require the Commission to regulate or mandate contracts between carriers. The public interest weighs strongly in favor of allowing wireless carriers the freedom to negotiate roaming agreements with other carriers of their choice.

The imposition of an automatic roaming rule would disserve the public interest by disrupting current practices that have yielded public benefits. Such practices include: carriers choosing to execute roaming agreements with targeted carriers to ensure that the roamers in their system are technologically compatible; carriers choosing not to execute agreements with carriers in markets where a high rate of fraud exists; carriers choosing to execute agreements with “more favorable” rates with neighboring systems to create a regional or national calling area with minimal or no roaming fees; and carriers choosing not to execute roaming agreements with competitors or potential competitors for marketing or antitrust reasons. To disrupt these and other strategic decisions made by carriers and force them to execute roaming agreements with all carriers would result in rate increases, decline in the quality of service, and fewer choices to consumers.

### **III. The FCC Must Stop Discriminatory and Anti-Competitive Behavior by Large Carriers Against Small and Rural Carriers**

The Commission should take this opportunity to examine closely the behavior of the large carriers in their peremptory dealings with smaller carriers. Appropriate sanctions should be

assessed against carriers found to be refusing reasonable requests for roaming agreements or engaging in anti-competitive behavior. In its Second Notice, the Commission stated:

we will continue to police actively any denials of reasonable requests for roaming agreements. As with general interconnection, we stand ready to intercede should the parties be unable to reach reasonable private agreements and will closely scrutinize any exercise of market power or engagement in other forms of anti-competitive conduct designed to raise rivals' costs and thwart competition, or to charge unjust or unreasonable prices for roaming service.<sup>9</sup>

RCA members have experienced a wide variety of discriminatory and anti-competitive behavior from large carriers ranging from the inability to obtain a response when requesting the initiation of roaming negotiations, to a large carrier's refusal to enter an arrangement unless its customers receive discriminatory favorable treatment. RCA urges the Commission to establish a streamlined procedure for its immediate intercession when large carriers refuse to negotiate reasonable roaming agreements. The Commission must scrutinize closely the exercise of market power by the large carriers and take action to prevent anti-competitive and discriminatory conduct.

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<sup>9</sup>*Second Notice* at 10694.

#### IV. Conclusion

RCA commends the Commission for its previous decision to impose a pro-competitive manual roaming rule and urges the Commission to not allow the manual roaming rule to expire. RCA likewise commends the Commission for its previous decision to not impose an automatic roaming requirement and urges it, for the advancement of the public interest, not to adopt such a rule in this proceeding. Finally, RCA urges the Commission to closely review the behavior of the large carriers as it is recorded in this proceeding and take action where appropriate to eliminate discriminatory and anti-competitive conduct.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

By:  \_\_\_\_\_

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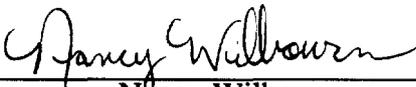
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January 5, 2001

## CERTIFICATE OF SERVICE

I, Nancy Wilbourn, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of the Rural Cellular Association" was served on this 5th day of January 2001, via hand delivery, to the following parties:

  
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