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

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In the Matter of)
)
Automatic and Manual Roaming)
Obligations Pertaining to)
Commercial Mobile Radio Services)

WT Docket No. 00-193

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS

CINGULAR WIRELESS LLC

Joaquin R. Carbonell
Carol Tacker
5565 Glenridge Connector
Suite 1200
Atlanta, GA 30342
(404) 236-6140

Its Attorneys

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To: The Commission

COMMENTS OF CINGULAR WIRELESS

Cingular Wireless LLC (collectively “Cingular”), by its attorneys, hereby submits these comments in response to the Commission’s *Notice of Proposed Rule Making*, FCC 00-361 (Oct. 4, 2000) (“*NPRM*”), *summarized*, 65 Fed. Reg. 69891 (Nov. 21, 2000) in this docket.

INTRODUCTION AND SUMMARY

As discussed below, Cingular opposes the adoption of an automatic roaming rule for the following reasons:

- the prevalence of automatic roaming agreements demonstrates that there is no need for an automatic roaming requirement;
- nationwide operators have an incentive to pursue automatic roaming agreements to fill the holes in their nationwide “footprints;”
- the adoption of an automatic roaming requirement will undermine competition;
- an automatic roaming rule will increase costs to consumers;
- an automatic roaming rule will eliminate incentives for certain carriers to lower rates and improve coverage; and
- mandating an automatic “in market” roaming requirement will discourage facilities-based competition.

Cingular supports the proposal to sunset the manual roaming rule at the end of each PCS licensee’s initial five-year build-out period.

DISCUSSION

I. THE PREVALENCE OF AUTOMATIC ROAMING AGREEMENTS DEMONSTRATES THAT THERE IS NO NEED FOR AN AUTOMATIC ROAMING REQUIREMENT

In 1996, Congress amended the Communications Act to create a “pro-competitive deregulatory national policy framework.”¹ Consistent with this framework, the FCC's general policy is to allow the marketplace, rather than regulation, to shape the development of wireless services.² The FCC has recognized that “all regulation[] necessarily implicates costs, including administrative costs, which should not be imposed *unless clearly warranted*.”³ Cingular supports the Commission's tentative conclusion to refrain from adopting 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.”⁴ The record developed in this proceeding will clearly demonstrate that the marketplace is not failing to protect consumers. Thus, there is no need for the Commission to adopt an automatic roaming requirement.

The prevalence of automatic roaming arrangements among different CMRS providers demonstrates that Commission imposition of an obligation on CMRS providers is unnecessary. In recent years, despite the lack of an automatic roaming requirement, CMRS providers have negotiated

¹ Pub.L. No. 104-104, 110 Stat. 56 (1996) (“1996 Act”); H.R. Rep. No. 104-458 at 1 (1996).

² See *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11 F.C.C.R. 9462, 9477 (1996) (“*Third NPRM*”).

³ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *First Report and Order*, 3 Comm. Reg. (P&F) 895, ¶ 14 (1996).

⁴ *NPRM*, at ¶ 18.

roaming arrangements with one another. Cingular currently has domestic and international roaming agreements with 188 cellular providers and 12 GSM PCS providers. Similarly, VoiceStream has roaming agreements with over 125 operators worldwide providing service in 70 countries.⁵

A number of smaller cellular carriers have successfully entered into roaming agreements with nationwide carriers. Cingular has agreements with companies including AWZ Cellular, Bluegrass Cellular, Copper Valley Cellular, Farmers Cellular Telephone, Larsen Cellular, Panhandle Telecommunications, Sagebrush Cellular, Ubet Wireless, and XIT Cellular. Likewise, Sprint PCS has entered into agreements with companies such as AirGate PCS, Inc.,⁶ AirLink PCS,⁷ and US Unwired Inc.⁸ Smaller companies have also been able to offer extensive roaming capabilities through their participation in alliances. Currently, through their participation in the North American Cellular Networks, companies like AmeriCell, Dominion Cellular, Kodiak Wireless, and Unitel can provide customers with roaming capabilities in over 7,500 cities throughout the United States.⁹

In recent years, new entrants such as PCS carriers have created vast automatic roaming networks without FCC intervention. The Sprint PCS network serves over 4,000 cities and

⁵ Business Wire, *VoiceStream Wireless Announces Completion of Exchange with Cook Inlet Region, Inc.*, Business Wire, Inc., (Dec. 14, 2000).

⁶ Business Wire, *AirGate PCS, Inc., a Sprint PCS Network Partner, Announces Commercial Launch of Advanced Wireless Communications Service in Greenwood, South Carolina*, Business Wire, Inc. (Aug. 31, 2000).

⁷ Elizabeth V. Mooney, *Filling the Gaps, Rural Carriers Maintain Value*, Radio Comm. Report, Apr. 26, 1999.

⁸ Business Wire, *US Unwired Inc. Announce Availability of Wireless Communications Service in Pensacola, Florida*, Business Wire, Inc. (Oct. 10, 2000).

⁹ *The Network that Makes Automatic Roaming Possible*, at http://www.nacn.com/home_page/home_body.jsp (last visited Dec. 18, 2000).

communities throughout the 50 states, Puerto Rico, and the U.S. Virgin Islands, covering nearly 270 million people.¹⁰ Nearly 20% of the population in its coverage area is reached through franchise and roaming agreements with independent carriers that have built out digital networks.¹¹ Many PCS carriers utilizing GSM technology have also entered into arrangements for roaming and other competitive purposes. Powertel subscribers are able to use their phones in over 3,786 cities and suburbs through a GSM consortium.¹² Similarly, VoiceStream Wireless Corp. is a member of The GSM Alliance, L.L.C., which gives the companies in the alliance access to coverage in over 5,500 U.S. and Canadian cities and towns.¹³

II. NATIONWIDE OPERATORS HAVE AN INCENTIVE TO PURSUE AUTOMATIC ROAMING AGREEMENTS TO FILL THE HOLES IN THEIR NATIONWIDE “FOOTPRINTS”

Cingular is among a growing group of carriers that have expanded their holdings to achieve nationwide “footprints.” Despite this expanded reach, these carriers still have holes in their licensed footprints.¹⁴ As such, there is a strong incentive for companies like Cingular to negotiate automatic roaming agreements with small and rural carriers in order to fill in coverage holes and, in turn, provide better coverage and services than their competitors. Rural cellular operators are already

¹⁰ *US Unwired Inc. Announce Availability of Wireless Communications Service in Pensacola, Florida*, *supra* note 8.

¹¹ Mobile Communications Report, *PCS Carriers Project Subscriber Growth with Strategy Shifts*, Warren Publishing, Inc. (Mar. 22, 1999).

¹² *Roam in North America*, at http://www.powertel.com/htm/lea/lea_roa.asp (last visited Dec. 18, 2000).

¹³ *VoiceStream Wireless Announces Completion of Exchange with Cook Inlet Region, Inc.*, *supra* note 5.

¹⁴ Margo McCall, *The Strong (and Merged) Survive*, *Wireless Week*, Oct. 23, 2000, at 35.

reaping large roaming revenues from nationwide operators as nationwide and one-rate calling plans “are leading customers to use their phones in rural areas where they wouldn't have before.”¹⁵ As companies like AT&T Wireless develop the ability to “move” minutes from one carrier to another,¹⁶ some rural carriers may be incented to reduce their roaming rates. Nevertheless, such actions ultimately may result in lower roaming rates for consumers.

III. THE ADOPTION OF AN AUTOMATIC ROAMING REQUIREMENT WILL UNDERMINE COMPETITION

Cellular carriers are licensed to provide service within relatively small geographic areas known as metropolitan service areas (“MSAs”) and rural service areas (“RSAs”). Because of the small service areas associated with cellular service, “cellular carriers . . . compete for customers based on the extent of their roaming networks and their roaming rates and features.”¹⁷ In the PCS docket, the majority of commenters, argued that MSAs and RSAs should be used as the definition of PCS service areas.¹⁸ The Commission disagreed, however, and decided that larger PCS service areas were warranted.¹⁹ The Commission determined that larger service areas were more

¹⁵ Lynnette Luna, *Roaming Drives Need for Rural Partners*, Radio Comm. Report, Oct. 11, 1999.

¹⁶ *Id.*

¹⁷ *Third Notice of Proposed Rulemaking*, 11 F.C.C.R. at 9474.

¹⁸ *See Amendment of the Commission's Rules to Establish New Personal Communications Services*, GN Docket No. 90-314, *Second Report and Order*, 8 F.C.C.R. 7700, 7732 (1993) (“*Second Report and Order*”); BellSouth Comments, GN Docket No. 90-314, at 30-39 (Nov. 9, 1992).

¹⁹ *Second Report and Order*, 8 F.C.C.R. at 7732. PCS service areas are defined according to Rand McNally's Major Trading Areas (“MTAs”) and Basic Trading Areas (“BTAs”). *Id.*

advantageous than MSAs and RSAs and could “facilitate regional and nationwide roaming.”²⁰ In essence, the Commission determined that larger service areas would make it easier for PCS licensees to establish roaming agreements on a regional and national level than it was for cellular licensees.

Currently, cellular carriers are not required to offer automatic roaming to one another. The only roaming requirement imposed on cellular carriers was a manual roaming requirement. As discussed above, market forces have driven cellular carriers to enter into alliances and agreements to create extensive automatic roaming networks. Cellular subscribers still must manually roam in some areas, however, because none of these networks offer nationwide, seamless automatic roaming.

If an automatic roaming rule were adopted, consumers would be disadvantaged by a lack of product differentiation, and carriers would be unable to take credit, in marketing their services, for certain advantages their systems may have over others. A consumer evaluating whether to purchase cellular or PCS service will compare coverage areas and rate plans. The consumer will note that the PCS system has a larger “home” area, but may have incomplete coverage of that home area and a limited automatic roaming network. Thus, the consumer might decide to subscribe to cellular service because of the associated roaming network or the more complete coverage within the home market. Alternatively, the consumer may choose to subscribe to the PCS system because he or she does not travel outside of the core of the PCS “home” service area very often.²¹ A critical question for the consumer may be whether a larger home area coupled with manual roaming is more desirable

²⁰ *Second Report and Order*, 8 F.C.C.R. at 7732.

²¹ *See Communications Week, Trying to Conquer Roam From Coast to Coast*, CMP Publications, Inc. at T22 (Aug. 4, 1997) (“What we have been trying to do is sell primarily to customers who don’t have the need for coverage in rural areas — we call it ‘fishing in the right pond.’”) (quoting John Stanton, president of Western Wireless Corporation).

than a smaller home area and automatic roaming. With an automatic roaming rule, it would be difficult for consumers to distinguish between PCS and cellular carriers. Instead of a variety of competitors differentiated in product quality, coverage, and features, all the competitors would appear more or less alike.

The Commission has required cellular licensees to offer manual roaming to all PCS subscribers. Thus, automatic roaming is not necessary to ensure that PCS subscribers can receive out-of-market service. Select PCS carriers are clamoring for an automatic roaming requirement, including home roaming, merely to gain a marketing advantage. Cellular carriers have expended considerable resources in expanding coverage to rural areas and some PCS licensees may not want to spend the resources to build out in such areas.²² Thus, if the Commission adopts a rule requiring CMRS carriers to offer automatic roaming to any requesting CMRS provider, PCS carriers may not have an incentive to build out their networks in rural areas.

Rather than adopt a rule discouraging build-out in rural areas, the Commission should merely reaffirm that PCS subscribers are entitled to manually roam in areas where PCS service is not available, provided they have compatible equipment. Cellular and PCS carriers compete based on coverage, rates, features, and roaming footprints. PCS carriers want automatic roaming so that coverage and roaming footprints will not be a competitive factor. PCS systems are digital and most cellular systems are analog, or in the process of converting to digital. Thus, PCS systems would

²² See Mobile Phone News, *AT&T's True PCS Launches on East Coast Will Bring More Revenue to Incumbent Cellular Carriers*, Phillips Business Information, Inc. (Oct. 20, 1997); Betsy Harter, *Top 25 Carriers*, Wireless Review (Sept. 1, 1999); see also PCS Week, *GSM Turns to Analog Roaming to Expand Outside Urban Cores*, Phillips Business Information, Inc. (Dec. 3, 1997); Lynnette Luna, *Intelligent Roaming to Transform Industry*, Radio Comm. Report (Mar. 8, 1999).

have a clear marketing advantage if coverage and roaming footprints were not a factor for consumers.

IV. AN AUTOMATIC ROAMING RULE WILL INCREASE COSTS TO CONSUMERS

Adoption of an automatic roaming rule would result in increased costs to consumers. Implementation of additional automatic roaming agreements also would impact consumers. An automatic roaming requirement will increase the administrative costs shouldered by carriers, who would be required to negotiate roaming agreements with all-comers and establish billing and other procedures for the additional roaming traffic on their network. In order to execute an automatic roaming agreement, carriers must load each others' numbers on their switches. These switches have a limited capacity. Thus, if a carrier's switch is "at capacity," the carrier will have to purchase and install new equipment that is capable of accommodating the numbers served by all of the additional carriers requesting automatic roaming agreements. These costs will be borne by consumers in the form of increased roaming rates.

V. AN AUTOMATIC ROAMING RULE WILL ELIMINATE INCENTIVES FOR CERTAIN CARRIERS TO LOWER ROAMING RATES AND IMPROVE COVERAGE

Under the current regulatory framework, carriers enter into automatic roaming agreements based on reciprocity. That is, carriers will enter into an agreement if the agreement would permit their subscribers to receive service at lower rates or in areas where they previously were unable to automatically roam. Meanwhile, carriers have an incentive to enter into these agreements in order to provide subscriber benefits that another carrier does not offer. Thus, if a PCS carrier requests an automatic roaming agreement from a cellular carrier, the cellular carrier will enter into such an agreement if many of its subscribers have, or are likely to acquire, dual-mode phones compatible

with the PCS carrier's technology choice,²³ and (i) its subscribers cannot currently roam automatically in the markets served by the PCS carrier; *or* (ii) the PCS carrier's automatic roaming rate is less than the rate currently available to the cellular carrier. In the absence of such reciprocity, the cellular carrier receives no significant benefit for its subscribers from entering into an automatic roaming agreement.

Mandated automatic roaming would eliminate reciprocity by providing guaranteed roaming traffic to all-comers regardless of what the carrier benefiting from the increased roaming traffic has to offer. This, in turn, will take away the incentive of smaller carriers to lower their roaming rates or provide better services in an effort to obtain an automatic roaming agreement.

VI. MANDATING AN AUTOMATIC "IN MARKET" ROAMING REQUIREMENT WILL DISCOURAGE FACILITIES-BASED COMPETITION

Under the current manual roaming rule, a subscriber is entitled to roam but is notified that its carrier does not provide service in the area and service is available from a competitor. To ensure that their subscribers did not learn that a competitive provider had superior coverage in certain areas, some CMRS providers have rapidly built out their systems. An automatic roaming requirement would have an opposite effect, creating a disincentive for carriers to build out because failure to build out comes at little consequence to the CMRS carrier that can rely on the superior coverage of its competitor. Thus, in a market where multiple carriers have the right to provide coverage, and a number of carriers are allowed to "piggy-back" on the superior coverage of their competitor, the

²³ Dual mode phones are needed to enable subscribers of one type of CMRS to roam on a different type of CMRS.

carrier with superior coverage receives no benefit from its effort to provide extensive coverage and its competitive position in the marketplace is diminished.

VII. ANY ROAMING REQUIREMENT SHOULD SUNSET AFTER FIVE YEARS

A. All Manual or Automatic Roaming Requirements Should Sunset after Five Years

Cingular supports the Commission's tentative conclusion that all roaming regulations should sunset once broadband PCS providers' initial five-year build-out periods are completed. Any perceived need to require mandated roaming must be balanced against the public interest of encouraging the aggressive build-out of new networks. A mandated automatic roaming requirement gives a new entrant both the opportunity and incentive to delay building out its system. Rather than expend the resources necessary to promptly build out its system, the new entrant can build a minimal system because its customers will be able to roam on other compatible CMRS systems in the area.

As discussed above, the manual roaming requirement provides new entrants with the initial impetus to quickly build out their systems, rather than have their subscribers notified that they are unable to provide coverage in certain areas. Moreover, the industry as a whole has been moving away from manual roaming arrangements, opting instead to pursue automatic roaming agreements that would allow carriers to provide seamless coverage. As PCS carriers mature the manual roaming requirement is becoming obsolete in the current marketplace, and thus should be allowed to sunset.

B. Only Facilities-Based Carriers Should be Entitled to Automatic Roaming

If the Commission ultimately determines that an automatic roaming requirement is clearly warranted, the rule should be narrowly tailored. The Commission's focus has been whether carrier-

to-carrier automatic roaming should be required.²⁴ Any roaming requirement should make clear that CMRS licensees are only required to provide automatic roaming to other facilities-based CMRS providers.

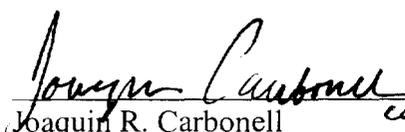
A CMRS licensee should not be required to provide automatic roaming to resellers and other non-facilities-based providers. When facilities-based carriers enter into automatic roaming agreements, each receives the right to offer automatic roaming on the other's system. A CMRS provider (and its subscribers) receives no benefit by entering into such agreements with resellers or other non-carriers because non-carriers have no roaming rights to offer in return.

CONCLUSION

For the foregoing reasons, the Commission should not adopt an automatic roaming requirement and should allow the manual roaming requirement to sunset at the end of a PCS licensee's initial five-year build-out period.

Respectfully submitted,

CINGULAR WIRELESS LLC

By: 
Joaquin R. Carbonell
Carol Tacker
5565 Glenridge Connector
Suite 1200
Atlanta, GA 30342
(404) 236-6140

Its Attorneys

January 5, 2001

²⁴ NPRM, ¶¶17-27.