

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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

REPLY COMMENTS OF
UNITED STATES CELLULAR
CORPORATION

United States Cellular Corporation ("USCC") hereby submits its Reply Comments in the above-referenced proceeding.

In its Comments, filed January 5, 2001, USCC opposed FCC action to require "automatic" roaming between and among cellular, PCS and covered SMR licensees. However, USCC also noted that it had become concerned about the potential for anti-competitive abuses growing out of the establishment of national wireless systems. USCC urged the FCC to maintain a careful, vigilant watch over the national roaming issue and revisit it if small, mid-sized, or rural carriers were prevented from obtaining acceptable roaming contracts from national carriers.

In its Comments, USCC also stressed the emergence of new wireless data services provided by wireless carriers, including small, mid-sized, and rural carriers. Such data services will require roaming capabilities in order to be effective. USCC noted the FCC's yearly reports on the state of competition in the wireless industry and stated that they might furnish an excellent vehicle by which the FCC could survey trends in roaming practices to ensure that all carriers continue to be able to secure roaming contracts.

As will be discussed below, the other comments filed in the proceeding lend support to USCC's arguments.

I. The Factual Circumstances
Of Wireless Carriers Are
Too Varied To Support
An Automatic Roaming
Requirement

The comments filed by other wireless carriers demonstrate that a uniform automatic roaming requirement would not now serve the purposes of competition, innovation or improved service to customers.

Cingular points out that an automatic roaming requirement might harm wireless carriers' ability to "differentiate" their products from each other by offering varied rate plans and coverage areas and might reduce incentives to reduce rates.¹

Verizon describes the many "competitive factors" which may legitimately influence the terms of specific roaming agreements and demonstrates how imposing uniformity on this process through an automatic roaming requirement might reduce CMRS competition and thus disserve the public interest.²

Leap Wireless, an "entrepreneur's block" PCS licensee, describes its "Cricket" service, an offering which provides unlimited local airtime for an attractive price – with no roaming. Leap argues that an automatic roaming requirement would be "at odds with [its] service and business plan and might result in "higher costs to Leap and dissatisfaction and churn among its customers."³

¹ Comments of Cingular Wireless, LLC ("Cingular"), p.7. USCC would point out, however, that product "differentiation" should not constitute a reason not to sign roaming agreements, only a reason that such agreements have to be individual in nature.

² Comments of Verizon Wireless ("Verizon"), pp 5-10.

³ Comments of Leap Wireless International, Inc. ("Leap Wireless") pp. 5-7.

Finally, the Rural Cellular Association ("RCA"), speaking for rural cellular and PCS licensees in 135 markets, and the National Telephone Cooperative Association ("NTCA"), representing over 500 small and rural local exchange carriers (many of whom have wireless interests), whose members would be the intended beneficiaries of an automatic roaming rule, have both rejected such a rule.⁴ RCA argues that an automatic roaming rule would "disrupt" current practices which are beneficial to rural carriers including: (a) their right to sign roaming agreements only with technically compatible systems; (b) their ability to refuse agreements with systems in which fraud is inadequately monitored; and (c) their strategy of using roaming agreements with "favorable" rates to create wide area calling systems. NTCA stresses the desirable "flexibility" of the present system and its members' present ability to secure acceptable roaming agreements.

In sum, the comments demonstrate that the wireless free market has generated a complex, and ever changing variety of interests and relationships which the FCC must approach with caution and which no simplistic automatic roaming requirement will be adequate to regulate.

II. The FCC Should Require Carriers To Share Technology in Negotiating Roaming Agreements

In arguing against an automatic roaming requirement, Nextel argues that such a requirement might create disincentives for carriers to adopt new and

⁴ Comments of Rural Cellular Association ("RCA"), pp. 1-4; National Telephone Cooperative Association ("NTCA") pp 1-6.

complex "3G" technologies with which it would be difficult for other systems to interconnect for roaming purposes.⁵

Nextel's point, while valid insofar as technological incompatibility would preclude roaming agreements between carriers, nonetheless highlights the need for the FCC to require carriers to share the technology necessary for roaming interfaces.

The emergence of new technologies and wireless products is obviously desirable. However, it should not be allowed to become a barrier to wireless customers being able to roam nationwide. And it is especially important that national carriers be mindful of their obligation to facilitate roaming for the customers of smaller systems, especially those smaller systems willing to make the investments in technology necessary for their customers to roam.

The FCC, by rule or other appropriate means, should act to require carriers to facilitate roaming by means of appropriate sharing of technology. The FCC has, for example, required various types of technology sharing to facilitate competition among wireline telephone companies. As CMRS technology becomes more differentiated, the FCC should exercise similar vigilance to ensure that the principle of competitive fairness is also maintained in the new wireless environment.

III. The FCC Should Regulate Roaming Abuses Through The Complaint Process

In its Comments, USCC supported the use of the complaint process authorized by Section 208 of the Communications Act to combat potential abuses of

⁵ Comments of Nextel Communications, Inc. ("Nextel"), pp 1-6.

market power by national carriers. Sections 201 and 202 of the Communications Act require that "charges" for "communications services" be "just and reasonable" and forbid "unreasonable discriminations" in such charges or other "carrier practices."

Applied with intelligence, these time honored sections of the Act can provide a basis for action, perhaps coupled with the type of "technology sharing" safeguards referred to in the prior section, if carriers, particularly large national carriers, begin to act in an anti-competitive manner.

In the roaming context, the varying circumstances and interests of carriers will make it difficult to determine whether a given practice is "unreasonably discriminatory." But it is precisely that variety of circumstances which makes it essential that inquiries into alleged discrimination be carried out on a case by case basis. However, such inquiries and FCC action should be swift and thorough. And, it should certainly not be impossible for the FCC to determine if one carrier's practices toward another are unreasonable, anti-competitive, or predatory in specific circumstances.⁶

Many commenters agree with this approach, at least in principle. RCA, Verizon, and the Cellular Telephone and Internet Association ("CTIA"), for example, all note the availability of the Section 208 process as an appropriate means of coping with anti-competitive abuses.⁷

⁶ It might be appropriate to designate a specific person or group within the Enforcement Bureau to deal with such complaints, partly as a means of emphasizing their importance.

⁷ See Comments of RCA, pp. 5-6, Verizon Wireless, pp. 10-11; Cellular Telephone and Internet Association ("CTIA"), p. 5;

But USCC would stress that the FCC must act on such complaints if the process is to work. To the knowledge of undersigned counsel, neither the FCC, the Wireless Bureau nor the Common Carrier Bureau has ever issued a written ruling on the reasonableness of a roaming rate, despite many complaints having been filed.⁸

However, for the above reasons and those to be described in Section IV below, in light of the emergence of national carriers, such a passive and/or informal approach to this problem will no longer be adequate to deal with future complaints.

IV. The Comments Also Point Out The Need To Be Vigilant Against Anti-Competitive Abuse

In its Comments (pp 6-7), USCC, while opposing the present imposition of any automatic roaming rule, nonetheless also noted that the emergence of the six "nationwide" wireless providers, namely AT&T Wireless, Sprint PCS, Nextel, Cingular, Verizon, and Voicestream, has created the possibility of unprecedented anti-competitive abuse in the wireless industry.

Judging by the comments, this is a worry shared by many small, mid-sized and rural CMRS carriers, including those carriers opposed to an automatic roaming rule at this time. RCA notes a "wide variety of discriminatory and anti-competitive behavior from large carriers" and urges "immediate" FCC "intercession when large carriers refuse to negotiate reasonable roaming agreements."⁹

⁸ USCC is aware that the FCC and relevant bureaus have sometimes worked to resolve such disputes informally.

⁹ RCA Comments, p. 5.

NTCA urges continued FCC "monitor[ing]" of the situation, noting the inherent advantages which large carriers have in relation to small carriers and asks the FCC to ensure that "small and rural CMRS providers are not forced out of the market."¹⁰

Corr Wireless Communications, LLC, a small cellular and PCS carrier in rural Alabama, does support an automatic roaming requirement because of what it considers to be unfair demands in the roaming context by its neighboring carrier, Cingular. Corr argues that an unrestricted free market will not prevent abuses of market power by national carriers against small, independent operators.¹¹

While USCC does not share Corr's belief that an automatic roaming rule is necessary at this time, it certainly shares its concern that nationwide carriers must deal fairly with small, mid-sized and rural CMRS licensees and that the FCC must act quickly when roaming complaints arise.

Verizon, by contrast, argues that there is nothing to be concerned about. CMRS carriers, it maintains, do not discriminate unreasonably in negotiating roaming agreements, but only vary the terms of such agreements in accordance with market realities. Verizon states that it enters into roaming agreements with all technically compatible carriers on reasonable terms and will continue to do so.¹² We applaud Verizon's commitment to sign roaming agreements with technically compatible systems, with its implied corollary that Verizon will make available the necessary technical information for voice and data compatibility.

¹⁰ NTCA Comments, p.7

¹¹ Comments of Corr Wireless Communications, LLC ("Corr"), pp. 1-9.

¹² Verizon Comments, pp.3-8

However, USCC, like NCTA, RCA, and Corr, also continues to believe that there is a serious potential threat of anti-competitive abuse arising from the creation of nationwide systems and the market power they have obtained, which will only increase over time.

That potential threat is well illustrated by the comments of Pacific Wireless Technologies, Inc. ("PWT") and Southern LINC ("Southern"). PWT and Southern are regional "digital" SMR carriers in California (PWT) and Georgia, Alabama, Florida and Mississippi (Southern). Both carriers allege that Nextel, the nationally dominant digital SMR carrier, has refused to enter into any roaming agreements with them, whether manual or automatic.

Nextel may seek to respond to these charges in Reply Comments and USCC has no wish to prejudge the facts. However, in its comments, Nextel appears to defend its practices, in part, by arguing that it paid for its national network, that the national scope of the network is a major selling point for Nextel's service, and that it has no obligation to let the customers of any other carriers use that network, lest those carriers be given incentives not to build out their own networks.¹³ Considered as a theoretical issue, and without discussing any of the specific issues involving technical incompatibility which Nextel may discuss on reply, USCC would not consider that type of argument to be an adequate justification for failing to sign a roaming agreement, provided such an agreement were otherwise commercially reasonable for both sides. Such an argument, if successful, would allow customers' rights to roam to be determined solely by individual carriers' calculations of commercial advantage, which is not acceptable.

While there are certain differences between SMR and cellular/PCS market structures, with one being the existence of FCC-defined market areas for cellular/PCS licensees and the absence of such definitions in the SMR service, nonetheless it is not difficult to foresee one or more national CMRS carriers making similar arguments, if they believed the FCC would not act to protect the right to roam. National wireless carriers, while desirable in fulfilling some market needs, can easily, if left unchecked, turn toward predatory attempts to eliminate competitors by unfair abuses of their market power.

Thus far, USCC has not seen or experienced such behavior from nationwide cellular and PCS carriers and has said so in its comments. As long as that remains the case, USCC will maintain its current position on automatic roaming.

If, however, USCC does experience one or more nationwide carriers refusing to sign roaming agreements on terms that fall within the broad parameters of commercial fairness or refusing to sign them at all, then it will bring the issue to the FCC and believes the FCC must be prepared to act quickly and effectively.

Conclusion

For the foregoing reasons and those given previously, USCC continues to oppose the imposition of an automatic roaming rule at the present time but urges renewed FCC vigilance to ensure that nationwide CMRS carriers do not abuse their undoubted and growing market power in the roaming context. Also, all national

carriers should be required to share the technology necessary to facilitate roaming agreements with smaller, mid-sized, and rural carriers.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION

By: /s/ Peter M. Connolly
Peter M. Connolly
Holland & Knight, LLP
2099 Pennsylvania Avenue, NW
7th Floor
Washington, DC 20006
Phone: (202) 862-5989
FAX: (202) 955-5564
e-mail: pconnoll@hklaw.com

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