

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Reexamination of Roaming Obligations of) WT Docket No. 05-265
Commercial Mobile Radio)
Service Providers)
)

To: The Commission

**REPLY COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP,
INC. AND THE ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

The Rural Telecommunications Group, Inc. (“RTG”),¹ by its attorneys, and the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”),² hereby submit reply comments in response to numerous comments filed in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Notice of Proposed Rulemaking* (“*Notice*”) seeking comment on whether

¹ RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education in a manner that best represents the interests of its membership. RTG’s members have joined together to speed the delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG’s members provide wireless telecommunications services, such as cellular telephone service and Personal Communications Services, among others, to their subscribers. RTG’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. RTG’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies.

² OPASTCO is a national association representing more than 560 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, collectively serve over 3.5 million consumers. All of its members are “rural telephone companies” as defined in 47 U.S.C. §153(37). Nearly one half of OPASTCO’s members provide some type of wireless service.

the Commission's current rules regarding roaming requirements applicable to Commercial Mobile Radio Service ("CMRS") providers should be modified.³

RTG and OPASTCO are not surprised by the opposition to an automatic roaming rule by nationwide carriers or their assertion that the CMRS market is robustly competitive and in no need of regulatory intervention.. However, large, nationwide carriers have confused the market for retail CMRS service with the market in wholesale roaming. As the record demonstrates, while the retail CMRS market is subject to healthy competition, the market for wholesale roaming service has failed to result in such competition. This wholesale market failure harms consumers and is detrimental to the public safety. The record indicates an acute need for in-bound automatic roaming services under rates, terms and conditions that are just, reasonable and non-discriminatory.

I. The Wholesale Roaming Market Has Failed

The large, nationwide carriers, in spite of massive industry consolidation in recent years, assert that automatic roaming is unnecessary and that market forces alone will protect consumers.⁴ The record argues otherwise. Verizon argues that the CMRS roaming market is "functioning efficiently,"⁵ yet the current market allows carriers to disrupt the market by denying roaming to consumers who roam just outside of their "home" territory. For example, Verizon has a policy to exclude what it calls "home

³ *In re Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket No. 00-193, Memorandum Opinion & Order and Notice of Proposed Rulemaking, FCC -5-160 (August 31, 2005) ("*Notice*").

⁴ See generally Cingular Wireless LLC (Cingular) Comments, Sprint Nextel Comments, and Verizon Wireless (Verizon) Comments.

⁵ Verizon Comments at 1.

roaming,” forbidding certain other carriers from entering into roaming agreements with Verizon in the same market.⁶ Verizon also argues that “carriers can obtain CMRS roaming agreements at reasonable rates,”⁷ yet Verizon has been known to charge smaller carriers \$0.99 a minute for roaming services.⁸ Verizon’s apparent need to deny roaming to other carriers’ customers where they roam the most (just outside of their “home” territories) and its ability to extract excessive roaming rates from smaller carriers reflects neither an efficient roaming market, nor evidence of reasonable rates. Verizon’s predatory behavior reflects a failed market for roaming services. As the only available supplier of roaming services in many rural regions, Verizon still admits that a carrier in such a market situation “can demand a higher price for roaming on its network than a carrier in a market with multiple sources of supply.”⁹ SouthernLINC Wireless (SouthernLINC), an iDEN-based carrier, notes the difficulty it has experienced in trying to obtain a reasonable roaming agreement from Sprint Nextel, realistically the only available provider of iDEN-based roaming services.¹⁰ These examples amply demonstrate a wholesale roaming market that has failed.

It seems the nationwide carriers have confused competitive retail CMRS options available to consumers with wholesale roaming options available to other carriers. Sprint Nextel supports its statement that there is “no basis” for small carriers to assert that their roaming options are dwindling by citing the FCC’s *Tenth Annual CMRS Competition*

⁶ *Id.* at 17

⁷ *Id.* at 1.

⁸ RTG and OPASTCO Comments at 12.

⁹ Verizon Comments at 5 (footnote omitted).

¹⁰ SouthernLINC Comments at 11.

*Report*¹¹ statistic that metropolitan areas contain, on average, 5.5 competitors.¹² The fact that *metropolitan* consumers can choose between approximately 5.5 potential retail CMRS providers has very little to do with the availability of wholesale roaming providers in *rural* areas.

Verizon makes this same mistake when it argues that the “market continues to function.”¹³ Verizon references the *Tenth Annual CMRS Competition Report* and the fact that there are still numerous areas with “three or more, four or more, and five or more” providers in spite of industry consolidation.¹⁴ Cingular also cites to these statistics.¹⁵ Again, these statistics reflect good news for metropolitan consumers as they choose a provider at a retail level, but they do not necessarily indicate that the wholesale market for rural roaming services is as competitive. In fact, as the United States Cellular Corporation (US Cellular) points out, the *Tenth Annual CMRS Competition Report* also discerns a potential danger to competition from a “more concentrated” market structure.¹⁶ Further, the *Tenth Annual CMRS Competition Report* does not reflect the 2005 mergers of Sprint with Nextel and Alltel with Western Wireless.¹⁷ With rural areas having less potential roaming partners,¹⁸ the retail market structure that the large carriers trumpet is not a persuasive argument against FCC intervention where the large carriers, as discussed

¹¹ *Tenth Annual CMRS Competition Report*, WT Docket No. 05-71, FCC 05-173 at ¶ 94 (September 30, 2005).

¹² Sprint Nextel Comments at 14.

¹³ Verizon Comments at 8.

¹⁴ *Id.*

¹⁵ Cingular Comments at 11.

¹⁶ US Cellular Comments at 4 (citing *Tenth Annual CMRS Competition Report* at ¶¶ 5 and 97).

¹⁷ *Id.* at 4.

¹⁸ Rural areas have just 3.7 potential roaming partners. See *Tenth Annual CMRS Competition Report* at ¶ 94.

infra, have charged smaller carriers excessive and discriminatory roaming rates even while the roaming rates charged by the majority of carriers have declined.

Leap Wireless International, Inc. (Leap) notes that most “markets have at best a duopoly and at worst a monopoly” within compatible digital formats.¹⁹ Thus, the number of competitive retail options does not mirror wholesale roaming options since wireless consumers can only roam on other networks with the same format as the network to which the consumer is subscribed.²⁰ RTG and OPASTCO members have experienced the market failure that Leap alludes to when it notes that small or rural carriers must attempt to negotiate with only one or two nationwide carriers “wielding considerable market power” when they attempt to obtain automatic roaming services for their customers.²¹ SouthernLINC notes that the market for wholesale iDEN roaming services is essentially a monopoly market and that the wholesale CDMA and GSM roaming markets are “only slightly less concentrated.”²² This inefficient market²³ allows monopoly and duopoly providers of wholesale roaming services “to engage in anticompetitive conduct.”²⁴ As discussed *infra*, the record contains numerous examples of these duopolies and monopolies abusing their wholesale roaming market power.

¹⁹ Leap Comments at 10.

²⁰ *Id.*

²¹ *Id.* at 11.

²² SouthernLINC Comments at 34.

²³ Cingular, citing ten-year-old RTG comments from 1996, notes that RTG, at that time, opposed automatic roaming requirements “[w]here market forces are sufficient.” *See* Cingular Comments at 6. Today, in 2006, RTG and OPASTCO point out that the record has shown that wholesale roaming market forces are insufficient to ensure just and reasonable roaming rates.

²⁴ SouthernLINC Comments at 34.

II. The Record Reveals that Large Carriers Can and Have Abused Their Market Power

While the large carriers argue that market forces have brought roaming rates down, they continue to gouge small and rural carriers by charging above-market rates. They are able to do so since, as discussed *supra*, the number of wholesale roaming options is limited to one or two options. RTG and OPASTCO do not dispute that, generally, the market has brought roaming rates down.²⁵ RTG and OPASTCO are not seeking Commission intervention to artificially increase roaming rates, nor as Cingular asserts, to “insulate” small and rural carriers from legitimate market forces.²⁶ All RTG and OPASTCO are seeking are the same, healthy market-based rates enjoyed by the large, nationwide carriers.

Verizon accurately observes that roaming rates are, in general, roughly ten percent of what they were ten years ago due to market forces.²⁷ Sprint Nextel also argues that the market has caused roaming charges to decrease substantially.²⁸ However, the large carriers charge smaller carriers rates that, on their face, do not reflect these market forces. As the record demonstrates, large carriers tend to charge these market rates to one another and then turn around and charge unjustifiably high rates to smaller competitors.²⁹ As Leap points out in its economic study, large carriers charge smaller carriers wholesale roaming rates that exceed retail service rates.³⁰ Leap notes that presumably market-based

²⁵ See, e.g., Cingular Comments at 11 (noting that roaming rates have “plummeted.”)

²⁶ Cingular Comments at 20.

²⁷ Verizon Comments at 11.

²⁸ Sprint Nextel Comments at 3.

²⁹ See RTG and OPASTCO Comments at 11 and 12.

³⁰ Leap Comments, *Wholesale Pricing Methods of Nationwide Carriers Providing Commercial Mobile Radio Service: An Economic Analysis*, ERS Group (November 28, 2005) at 10 (“Leap/ERS Group Study”).

rates typically range between \$0.04 and \$0.08 per minute for roaming rates that MVNOs pay to large carriers, and that large carrier affiliates enjoy rates between \$0.05 and \$0.10 per minute.³¹ Leap, however, reports that it pays, on average, \$0.28 per minute for its customers to roam on large carrier networks.³² The reported average rates of \$0.28 from Leap³³ and \$0.52 from RTG members,³⁴ plus reported rates as high as \$0.99³⁵ are certainly not the lower, market-based rates that the large carriers tout in their comments. In markets where these “discriminatory”³⁶ rates are being charged, the market is no longer ensuring just and reasonable rates and, as discussed *infra*, regulatory intervention is required to protect rural consumers.

The argument from large carriers that they should be able to charge higher rates for access to their nationwide networks since roamers are getting access to their entire network is disingenuous and no excuse for above-market rates of up to \$0.99 per minute.³⁷ Most rural roamers, as discussed in the RTG and OPASTCO Comments,³⁸ are simply roaming in the immediate areas outside of their “home” areas and *not* trekking about the country in order to roam in every state. When customers roam, it is generally along the edges of their “home” network.

³¹ *Id.* at 11.

³² *Id.*

³³ *Id.*

³⁴ RTG and OPASTCO Comments at 10.

³⁵ *Id.*

³⁶ *See Leap/ERS Group Study* at 16 and 17.

³⁷ *See, e.g., Sprint Nextel Comments* at 15.

³⁸ RTG and OPASTCO Comments at 4 and 5.

III. Consumers Are Harmed by Large Carriers' Above-Market Roaming Rates and Discriminatory Roaming Practices

The record demonstrates that the customers of smaller CMRS providers are being harmed by the denial of roaming services by large carriers and by the imposition of excessively high roaming rates. As Leap notes, the large carrier practice of setting wholesale roaming prices above more competitive retail rates limits competition and limits the options available to consumers.³⁹ The record shows that the “benefits of reduced” competition is the main economic rationale for discriminatory roaming practices.⁴⁰ Consumers must not only endure higher roaming rates when large carriers set their roaming rates above-market, they must also deal with fewer competitive choices since these non-market-based rates are intended to quash competition rather than to increase revenue.⁴¹

The large carriers' excessive roaming rates and denial of “home” roaming are detrimental to public safety. SouthernLINC's observations concerning the lack of roaming availability for emergency workers during Hurricane Katrina and other emergency communications situations are especially compelling.⁴² Market forces alone did not and will not bring needed roaming for vital emergency communications to emergency workers or citizens fleeing their “home” regions. Roaming services are another vital link in the national emergency communications network and consumer access to reasonable and available roaming services is in the public interest.

³⁹ *Leap/ERS Group Study* at 16.

⁴⁰ *Id.* at 22.

⁴¹ *See id.* and RTG and OPASTCO Comments at 13.

⁴² *See* SouthernLINC Comments at 25 and 27.

IV. Manual Roaming Is No Longer Viable

The record shows that commenters overwhelmingly agree that manual roaming is hardly ever utilized by consumers. Manual roaming has been called “inefficient”⁴³ and an unsatisfactory and essentially non-existent substitute for seamless automatic roaming.⁴⁴ As Verizon states at the beginning of its comments, “customers increasingly demand the ability to use their wireless services as they travel outside of their home carriers’ networks.”⁴⁵ Seamless, automatic roaming is what customers expect, is an essential component of mobile telecommunications services, and fulfills an important public safety role. Ensuring that consumers have near ubiquitous access to roaming services, no matter where they travel, is in the public interest.

V. An Automatic Roaming Rule Is Needed to Address the Market Failure in the Wholesale Roaming Market

Since automatic roaming is vital to consumers, the FCC should adopt rules to facilitate automatic roaming for all wireless customers. Having reviewed the comments in this proceeding, both for and against automatic roaming, RTG and OPASTCO believe the record supports the adoption of automatic roaming rules⁴⁶ to address the failure of the marketplace to regulate the wholesale roaming market. RTG and OPASTCO suggest the following automatic roaming principles.

First, carriers must provide in-bound automatic roaming (*i.e.*, permitting another carrier’s customers to roam onto its network) to any requesting carrier with a technologically compatible air interface. Second, carriers must provide in-bound

⁴³ *Id.* at 30.

⁴⁴ US Cellular Comments at 7.

⁴⁵ Verizon Comments at 2.

⁴⁶ *See, e.g.*, Leap Comments at 23, SouthernLINC Comments at 48 – 50, and US Cellular Comments at 3 and 8.

automatic roaming services under rates, terms and conditions that are just, reasonable and non-discriminatory. Finally, automatic roaming complaints should be placed on the Enforcement Bureau's Accelerated Docket. In implementing these principals, the FCC should incorporate (1) a reasonable rate presumption whereby the FCC would presume that a just and reasonable wholesale rate for roaming is equivalent to the rate charged to MVNOs or affiliates; and (2) a technical feasibility presumption (*i.e.*, if a carrier is already providing roaming service to other carriers using the same air interface, then the roaming service will be presumed to be technically feasible).

VI. Conclusion

For the reasons stated herein, RTG and OPASTCO respectfully request that the Commission adopt the suggested automatic roaming proposals discussed in Section V, *supra*.

Respectfully submitted,

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Certificate of Service

I, Linda Braboy, hereby certify that copies of RTG and OPASTCO's reply comments were sent on this, the 26th day of January, 2006 by first class United States mail, postage prepaid, or via electronic mail, to those listed on the attached sheet.

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