

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

In the Matter of)

Reexamination of Roaming Obligations of)
Commercial Mobile Radio Service Providers)

WT Docket No. 05-265

REPLY COMMENTS OF T-MOBILE USA, INC.

Cheryl A. Tritt
William F. Maher, Jr.
Jennifer L. Kostyu
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, D.C. 20006

Counsel to T-Mobile USA, Inc.

Thomas J. Sugrue
Vice President, Government Affairs

Kathleen O'Brien Ham
Managing Director, Federal Regulatory Affairs

Patrick Welsh
Corporate Counsel, Federal Regulatory Affairs

T-Mobile USA, Inc.
401 9th Street, N.W.
Suite 550
Washington, D.C. 20004

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Exhibit A: Reply Declaration of Harold W. Furchtgott-Roth

SUMMARY

Based on the record compiled in this proceeding, the Commission should not impose any new regulations on CMRS roaming or roaming agreements at this time. If anything, the record demonstrates that the current manual roaming rule is unnecessary and should be repealed. Several commenters, including smaller CMRS providers, acknowledge that roaming is being provided in an efficient, reasonable way. This is consistent with T-Mobile's experience. T-Mobile, as one of four nationwide facilities-based CMRS providers and as the second largest GSM/GPRS operator in the United States, has entered into more than 45 roaming agreements, largely on reciprocal terms. T-Mobile and its roaming partners negotiate on an equal footing because roaming plays an important role in expanding T-Mobile's nationwide coverage area, which is critical to T-Mobile's ability to compete against larger wireless service providers.

Under any reasonable market definition, the record provides no indication of overarching problems with current automatic roaming arrangements. As Dr. Harold Furchtgott-Roth explains in the attached reply declaration, the record does not support the imposition of broad rules governing automatic roaming arrangements. Although parties to this proceeding criticize specific actions or practices of some CMRS providers, the Commission already has enforcement and complaint mechanisms to address such specific allegations. In any event, T-Mobile has not been the subject of specific criticism and should not be subjected to broad regulations regarding issues that do not apply to it. Nor should the Commission adopt complex and wasteful rules or arbitration procedures when existing enforcement mechanisms are sufficient.

As the record shows, the high level of competition in today's marketplace between T-Mobile and other CMRS providers makes regulation of roaming arrangements unnecessary. The presence of a larger national GSM carrier as well as numerous other carriers exerts competitive

discipline on T-Mobile's roaming rates, terms, and conditions. More broadly, if consumers are dissatisfied with the service – including roaming service – provided by T-Mobile or other GSM/GPRS carriers, they can easily switch to CDMA, iDEN, or other service. CMRS end users' ability to choose among competitors disciplines T-Mobile's roaming arrangements. With such choices available to consumers today, the Commission cannot and should not adopt roaming rules that favor individual competitors as some commenters demand.

Contrary to some claims by commenters, an automatic roaming requirement would be detrimental to the public interest. Automatic roaming has developed throughout the United States without a Commission mandate. Competition will continue to provide the best incentives for carriers to offer automatic roaming. In contrast, attempts to mandate automatic roaming will harm wireless development and ultimately consumers.

The record also shows that the Commission should not regulate carriers' roaming agreements at this time. Some arguments for the regulation of roaming agreements seek protection for certain CMRS providers from the working of a healthy competitive environment. "Nondiscrimination" requirements would create perverse incentives that will limit CMRS innovation while distorting rates. Similarly, the Commission should not create a new "Tier IV" of rural CMRS providers because to do so would undoubtedly benefit those providers at the expense of consumers nationally. Nor should CMRS providers be required to file roaming agreements with the Commission or otherwise make them publicly available.

The record provides no reason to retain a manual roaming requirement. Service providers are almost unanimous about consumers' lack of interest in manual roaming. Manual roaming capability should be subjected to the test of the marketplace like any other wireless

feature. It should not be a Commission requirement simply to benefit one party's business interests.

The comments show that regulating the roaming aspects of new technologies would hinder technical development. As documented in the comments, wireless "multimode" handsets are being developed that can use more than one digital standard (*e.g.*, handsets that can operate on GSM and CDMA networks). Such developments underscore the fundamental point that further roaming regulation is unnecessary at this time. The analog roaming rule is scheduled to sunset in 2008. The record supports a finding that this sunset does not justify an automatic roaming rule or other additional roaming regulations.

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REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”) replies to initial comments on the above-captioned Notice of Proposed Rulemaking (“NPRM”)¹ to show that the record and the present competitive wireless marketplace support the elimination of outmoded roaming regulations and continued reliance on competition to govern roaming and roaming negotiations between commercial mobile radio service (“CMRS”) carriers.

I. INTRODUCTION.

T-Mobile has evaluated the record in this proceeding from its perspective as the fourth-largest nationwide wireless carrier and as the second-largest GSM/GPRS operator in the United States.² As an independent GSM/GPRS provider, T-Mobile competes vigorously with larger

¹ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, 20 FCC Rcd 15047 (2005) (“NPRM”). All comments filed in response to the NPRM on or before November 28, 2005 are referenced herein as “Comments” except as otherwise noted.

² T-Mobile holds licenses covering more than 275 million people in 46 of the top 50 U.S. areas and currently serves more than 20 million customers. Via its HotSpot service, T-Mobile also provides Wi-Fi (802.11b) wireless broadband Internet access in more than 6000 convenient public locations, such as Starbucks coffee houses, airports, and airline clubs, making it the largest carrier-owned Wi-Fi network in the world.

nationwide wireless carriers and many regional and smaller wireless carriers. As T-Mobile explained in its initial comments, to fill out its nationwide network – especially in rural areas – T-Mobile relies on roaming agreements with other carriers that are compatible with T-Mobile’s GSM/GPRS network.³ In fact, because of its relative size, T-Mobile relies more on roaming than the other larger nationwide carriers to expand its coverage area.⁴ Successful roaming relationships therefore are essential to T-Mobile’s competitive strategies for retaining existing subscribers and attracting new ones. T-Mobile noted in its comments that at that time it had entered into more than 45 automatic roaming agreements nationally with other GSM/GPRS carriers with whom roaming is technically possible.⁵ Since that time, several additional carriers have activated their GSM/GPRS networks, and T-Mobile is in negotiations with those carriers or already has entered into roaming agreements with them.⁶ Because of the competitive importance of roaming to T-Mobile, it has strong incentives to negotiate fairly with all carriers – regardless of whether they operate on a nationwide, regional, or local basis – to obtain the most efficient and widespread coverage for its customers. T-Mobile seeks to deal with its roaming partners in a

³ See Declaration of James Martinek ¶ 5 (“Martinek Declaration”), attached to T-Mobile Comments as Exhibit A.

⁴ T-Mobile expanded its coverage area by 56 percent in 2005 due to new automatic roaming agreements and building out its facilities-based network. See Kelly Hill, *T-Mobile Secures Roaming Deals to Expand Range*, RCR Wireless News, Jan. 23, 2006, at 1.

⁵ Martinek Declaration ¶ 6.

⁶ There are several active GSM/GPRS carriers that in the past have not sought, or currently do not seek, roaming agreements with T-Mobile due to technical limitations or business decisions (e.g., they have facilities-based networks that substantially overlap with T-Mobile’s network and already have favorable roaming agreements with other nationwide carriers). In those cases T-Mobile will negotiate roaming agreements whenever mutually agreeable.

reasonable manner so that not only can T-Mobile's customers roam on its partners' networks, but its partners' customers can roam on T-Mobile's network as well.⁷

To assist the Commission in analyzing the record in this proceeding, attached as Exhibit A is the reply declaration of economist and former Commissioner Harold Furchtgott-Roth.⁸ Dr. Furchtgott-Roth's conclusions, discussed in detail below, support the basic premise that the Commission should not adopt further rules to regulate roaming or roaming agreements at this time. The record also shows that automatic roaming already is widely available in the marketplace today and that there are no problems regarding roaming affecting the industry generally. Moreover, the Commission should eliminate the outmoded so-called "manual roaming" requirement that currently is codified at Section 20.12(c) of its rules.⁹ If there are specific competitive or contractual issues between individual carriers, the Commission's existing enforcement and complaint procedures are available. Thus, continued reliance on competition, rather than regulation, should guide Commission policies regarding roaming.¹⁰

⁷ Martinek Declaration ¶¶ 10-14.

⁸ See Reply Declaration of Harold W. Furchtgott-Roth, attached hereto as Exhibit A ("Furchtgott-Roth Reply Declaration").

⁹ 47 C.F.R. § 20.12(c).

¹⁰ Although T-Mobile already has entered into multiple roaming agreements with other GSM/GPRS carriers in the United States, it still would be adversely affected by any additional roaming requirements adopted by the Commission. As noted above, T-Mobile actively considers entering into additional roaming arrangements as the number of carriers operating GSM/GPRS networks increases and multimode handsets (*i.e.*, handsets that can operate across multiple digital standards, such as GSM and CDMA) are increasingly available. Further, as discussed herein, any roaming regulations will have a detrimental affect on the CMRS industry as a whole, regardless of how many roaming arrangements T-Mobile already has in place.

II. THE COMMENTS DEMONSTRATE THAT THE COMMISSION SHOULD NOT USE RULE MAKING TO INTERVENE IN ROAMING ARRANGEMENTS.

As Dr. Furchtgott-Roth concludes, neither Commission precedent nor the record in this case provides a basis for the Commission to promulgate new rules regarding automatic roaming at this time.¹¹ The record contains little, if any, evidence that would justify new Commission rules. Under any reasonable market definition, the record provides no indication of overarching problems with current automatic roaming arrangements.¹²

According to Dr. Furchtgott-Roth, neither the economic theory nor the empirical information in the record provides an unambiguous definition of the markets that are relevant for roaming services.¹³ Some commenters make assumptions about the types of markets that should be considered when examining roaming issues, without explaining or supporting their assumptions.¹⁴ Others rely on unrealistic market definitions that the Commission has already rejected.¹⁵ As a result, the economic concepts in the record related to those markets are also ambiguous.¹⁶

Dr. Furchtgott-Roth states that only the economic analysis attached to Sprint Nextel's comments uses a clear analytical framework to define the relevant market, which it finds broadly to be retail CMRS services.¹⁷ Some commenters argue against such a definition because retail

¹¹ *See generally* Furchtgott-Roth Reply Declaration at 6-14.

¹² *See generally id.* at 14-18.

¹³ *See id.* at 9-14.

¹⁴ *See id.* at 6-14.

¹⁵ *See id.*

¹⁶ *See id.*

¹⁷ *See* Furchtgott-Roth Reply Declaration at 10, *citing* G. Rosston, An Economic Analysis of How Competition Has Reduced Roaming Charges at 11-14, attached to Sprint Nextel

customers or end users with handsets based on one technology, such as GSM, cannot roam on networks that use another technology, such as CDMA.¹⁸ However, this view is too narrow. As Dr. Furchtgott-Roth notes, in today's competitive environment, end users can switch carriers (*e.g.*, between GSM and non-GSM carriers) to obtain better roaming coverage. Since the Commission's introduction of wireless local number portability, there are few if any regulatory or technical barriers to switching wireless service providers and digital standards.¹⁹ If sufficient switching occurs, roaming using a single digital standard cannot be a separate market.²⁰ Dr. Furchtgott-Roth observes further that evidence in the record regarding price differences among wholesale roaming charges, wholesale mobile virtual network operator ("MVNO") rates, and retail rates neither helps to define markets nor indicates price discrimination.²¹

Even without a clear definition of markets containing roaming services, the record shows that currently most roaming arrangements work well and that customers benefit from those arrangements. As Dr. Furchtgott-Roth states, "dissatisfaction with such arrangements is the exception rather than the norm."²² The Commission neither requires nor regulates automatic roaming, but automatic roaming is available today to consumers throughout the United States based on multiple private contracts between wireless carriers. Dr. Furchtgott-Roth explains that

Comments. As Dr. Furchtgott-Roth explains, Dr. Rosston interprets the Commission's findings in approving the Cingular-AT&T Wireless merger transaction in 2004.

¹⁸ *See, e.g.*, Leap Comments at 8-11; MetroPCS Comments at 10 n.13; RTG/OPASTCO Comments at 7; SouthernLINC Comments at 33-34.

¹⁹ *See* Furchtgott-Roth Reply Declaration at 11, 18.

²⁰ Moreover, as T-Mobile has explained, multimode handsets are already being developed that have the potential to allow roaming across digital standards. *See* T-Mobile Comments at 11; *infra* Section VI.

²¹ *See* Furchtgott-Roth Reply Declaration at 11-13.

²² *Id.* at 14.

voluntary agreements enhance social welfare, and observes that “in this proceeding alone individual carriers describe hundreds of such contracts.”²³ According to Dr. Furchtgott-Roth, roaming rates and revenues have fallen substantially over the past decade.²⁴ The record in this proceeding shows the wisdom of the Commission’s focus on consumers in addressing roaming issues. As Dr. Furchtgott-Roth discusses, the Communications Act of 1934, as amended (the “Act”), is silent on the topic of roaming, and the Commission should not seek to intervene in current marketplace arrangements without a very solid record for doing so.²⁵

Strikingly, numerous commenters, including regional and smaller carriers, acknowledge that roaming arrangements are functioning efficiently. ACS Wireless agrees that CMRS providers have widely and successfully implemented voice automating roaming agreements.²⁶ Centennial Communications also concludes that there is no systemic problem regarding roaming agreements.²⁷ U.S. Cellular further states that larger, Tier I carriers have for the most part treated smaller carriers fairly in roaming negotiations.²⁸

T-Mobile’s experience in developing roaming relationships is instructive for the industry as a whole. As T-Mobile has shown, the high level of competition between T-Mobile and other

²³ *Id.* at 15.

²⁴ *See id.* at 15.

²⁵ *See id.* at 18-19.

²⁶ *See* ACS Wireless Comments at 1.

²⁷ *See* Centennial Communications Comments at 5.

²⁸ *See* U.S. Cellular Comments at 2. Other national wireless carriers also state that the CMRS marketplace is functioning normally and has resulted in mutually-beneficial automatic roaming arrangements and declining roaming rates, all without regulation. *See* Cingular Wireless Comments at 21-22; Sprint Nextel Comments at 9-10; Verizon Wireless Comments at 8-10.

CMRS providers currently makes regulation of roaming arrangements unnecessary.²⁹ The presence of Cingular, the larger national GSM/GPRS carrier, as well as numerous other carriers exerts competitive discipline on T-Mobile's roaming rates, terms, and conditions. More broadly, Dr. Furchtgott-Roth explains, if customers are dissatisfied with the service provided by T-Mobile or other GSM carriers, including roaming services and roaming charges, customers can easily switch to carriers that rely on CDMA or iDEN technology. This freedom to switch carriers disciplines T-Mobile's (and other carriers') roaming arrangements.³⁰

Although a limited number of commenters – including some smaller carriers – complain about some roaming issues, they generally highlight concerns that are specific to their business plans, and none focus on T-Mobile.³¹ Some disputes are to be expected in any commercial setting that involves hundreds of contractual arrangements between multiple carriers that also compete for customers. The concerns expressed by these companies focus on anecdotal evidence of some larger carriers failing to negotiate with some small carriers automatic roaming agreements³² and some large carriers charging wholesale roaming rates that exceed retail rates or retail average revenue rates and/or are allegedly discriminatory.³³ Dr. Furchtgott-Roth, however, points out that these anecdotes never are claimed to apply to *all* small companies.³⁴

²⁹ See T-Mobile Comments at 4-5, 7.

³⁰ See Furchtgott-Roth Reply Declaration at 11-18.

³¹ See, e.g., ACS Wireless Comments at 4; Airpeak/Airtel Comments at 5-7; Leap Comments at 13-14; MetroPCS Comments at 3, 28; NTCH Comments at 3-4; RTG/OPASTCO Comments at 11-13; SouthernLINC Comments at 12-14.

³² See, e.g., *supra* n.30.

³³ See Furchtgott-Roth Reply Declaration at 12-13; see also Leap Comments at 19-20; SouthernLINC Comments at 35-37, 47, 49-50; Unicom Reply Comments at 3 (Dec. 20, 2005).

³⁴ See Furchtgott-Roth Reply Declaration at 16-17.

Such individualized concerns should not be the basis for industry-wide regulation. The Commission's policy should continue to focus on protecting consumers' access to services at fair prices, which it has done by promoting competition, not regulation, in the wireless environment. Further, as discussed in more detail below, the Commission should not adopt rules that would favor individual classes of competitors as some commenters effectively demand. Such rules do nothing to protect consumers, who, if they are dissatisfied with a carrier's service, can easily switch to another provider. Such rules will distort build-out incentives of those "favored" carriers and result in inefficient business decisions. For example, if new rules were to provide special roaming rights to certain carriers that are not available to others, the favored carriers will tend to exploit their advantages by entering into roaming agreements rather than building out their networks to the benefit of consumers. Although parties to this proceeding criticize some CMRS providers, T-Mobile has not been the subject of specific criticism.³⁵ T-Mobile should not be subjected to regulations that seek to address issues that do not apply to it, particularly because current roaming arrangements have benefited so many consumers.

The Commission should not adopt complex and wasteful arbitration or dispute resolution procedures when its existing enforcement mechanisms are sufficient.³⁶ For example, the complex, time-consuming, and expensive arbitration-type procedures of Sections 251 and 252 of the Act are totally unnecessary and ill-structured to graft onto the unregulated contractual system of roaming arrangements that is functioning well at present. The record shows that, to the extent

³⁵ Dr. Furchtgott-Roth states that "The individual complaints in the comments are not lodged against *all* large carriers. None of the comments contain specific complaints about T-Mobile. Nothing in the record supports a conclusion that T-Mobile discriminates in the provision of roaming. Even the carriers that request the Commission to regulate roaming make no specific allegation regarding T-Mobile." *Id.* at 17-18.

³⁶ *See, e.g.*, ACS Wireless Comments 6-7; MetroPCS Comments at 17, 26; Rural Cellular Association Comments at 6-7; SouthernLINC Comments at 35-36, 46, 50-53.

individual carriers or groups of carriers have grievances about their roaming relationships with other carriers, the Commission's existing enforcement and complaint processes pursuant to Title II and Section 208 of the Act are more than adequate to address them.³⁷ Dr. Furchtgott-Roth recognizes that the Commission has many methods under Title II to help parties with complaints of the kinds raised in this proceeding without resorting to the writing of new rules,³⁸ and that antitrust remedies are available as well.³⁹ T-Mobile supports the efficient resolution of Commission enforcement proceedings. For example, the Commission has established "Accelerated Docket" procedures designed to adjudicate certain complaints within relatively short timeframes.⁴⁰ More efficiently employing the Accelerated Docket procedures would help ensure that any roaming-related complaints are addressed thoroughly and quickly, without burdening the entire wireless industry with unnecessary and harmful regulation.

³⁷ See, e.g., T-Mobile Comments at 18-19; Centennial Communications Comments at 2; Nextel Partners Comments at 5-6; Verizon Wireless Comments at 16.

³⁸ See Furchtgott-Roth Reply Declaration at 18-19.

³⁹ See *id.* at 23.

⁴⁰ See 47 C.F.R. § 1.730. The Accelerated Docket provides resolution of certain formal complaint proceedings within 60 days. The FCC's rules also require settlement discussion requirements to expedite the accelerated docket process. See *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to be Followed When Formal Complaints Are Filed Against Common Carriers*, 13 FCC Rcd 17018 (1998) (subsequent history omitted). The Accelerated Docket is "particularly well suited for cases involving difficult factual disputes," which may be the case in the roaming context. *Federal Communications Commission Biennial Regulatory Review 2000*, Updated Staff Report, ¶ 174 (Jan. 17, 2000), attached to *The 2000 Biennial Review*, CC Docket No. 00-175, FCC 00-456 (rel. Jan. 17, 2001).

III. CONTRARY TO SOME CLAIMS BY COMMENTERS, AN AUTOMATIC ROAMING REQUIREMENT WOULD BE DETRIMENTAL TO THE PUBLIC INTEREST.

Despite the claims of some parties that urge the Commission to require wireless carriers to provide automatic roaming,⁴¹ the record shows that such a requirement would harm U.S. consumers significantly. These commenters ignore the fact that competitive forces already have led to the wide availability of automatic roaming services and have created incentives for wireless carriers to offer and procure automatic roaming services at reasonable rates.

A. Automatic Roaming Has Developed Throughout The United States Without A Commission Mandate.

T-Mobile and several other parties describe the startling growth and development of the wireless industry since the advent of competition.⁴² Multiple commenters agree that among these positive developments is the nationwide implementation of automatic roaming arrangements without regulatory intervention.⁴³ The nationwide carriers collectively report hundreds of automatic roaming arrangements with other carriers.⁴⁴

⁴¹ See, e.g., ACS Wireless Comments at 2, 6; Airpeak/Airtel Comments at 5; Centennial Communications Comments at 2, 5; Leap Comments at 17; MetroPCS Comments at 3, 6; NTCA Comments at 1, 3; NTCH Comments at 6; RTG/OPASTCO Comments at 3-4 (arguing that automatic roaming must be required in rural areas); SouthernLINC Comments at 46-48 (arguing that all carriers must provide automatic inbound roaming); Unicom Reply Comments at 3.

⁴² See, e.g., T-Mobile Comments at 5-6; Cingular Comments at 10; Sprint Nextel Comments at 4-9; Verizon Wireless Comments at 7-12; ACS Wireless Comments at 3, 5; Centennial Communications Comments at 3-5.

⁴³ See, e.g., Cingular Wireless Comments at 10-11; Nextel Partners Comments at 5-6; Sprint Nextel Comments at 4-9; Verizon Wireless Comments at 7-12; T-Mobile Comments at 5-6; ACS Wireless Comments at 1, 4 (regarding voice roaming); U.S. Cellular Comments at 2.

⁴⁴ See T-Mobile Comments at 3; Cingular Comments at 11; Verizon Wireless Comments at 11; *Nextel Communications, Inc. and Sprint Corporation*, 20 FCC Rcd 13967, 14011 (2005) (“*Sprint Nextel Merger Order*”).

The development of extensive automatic roaming is due primarily to the competitive nature of the current CMRS marketplace. As T-Mobile and other carriers explain in their comments, wireless carriers presently compete strenuously based upon multiple criteria, including coverage area.⁴⁵ Wireless carriers are under continuous pressure to develop and deploy new technologies and service offerings over larger areas in response to consumer demand. T-Mobile and other carriers rely on economically efficient roaming arrangements to expand their coverage areas where they do not own or cannot reasonably build facilities.⁴⁶ In fact T-Mobile, like Verizon Wireless, pays more in roaming fees than it collects from other carriers.⁴⁷

The wide availability of automatic roaming services and the sheer number of roaming arrangements in the United States contradict some commenters' claims that the Commission must adopt an automatic roaming requirement. Some commenters assert with no factual basis that an automatic roaming rule is necessary at the present time to ensure that larger carriers do not abuse their "market power" or otherwise harm competition.⁴⁸ As Dr. Furchtgott-Roth observes, commenters present no evidence that automatic roaming is not widely available to consumers at this time.⁴⁹ Rather, the comments demonstrate that an automatic roaming rule is

⁴⁵ See, e.g., T-Mobile Comments at 15; Cingular Comments at 23; Verizon Wireless Comments at 18-19.

⁴⁶ See, e.g., T-Mobile Comments at 2; ACS Wireless Comments at 2-3; Cingular Comments at 11; Leap Comments at 5; MetroPCS Comments at 3; SouthernLINC Comments at 17; Verizon Wireless Comments at 11-12.

⁴⁷ Verizon Wireless Comments at 11.

⁴⁸ See, e.g., Airpeak/Airtel Comments at 5; Leap Comments at 10-14; MetroPCS Comments at 4-12; NTCA Comments at 2-3; NTCH Comments at 3-4; Rural Cellular Association Comments at 3; SouthernLINC Comments at 33-35; Safe Competition Coalition Comments at 3.

⁴⁹ See Furchtgott-Roth Reply Declaration at 16.

not necessary for carriers to compete in today's wireless marketplace or for consumers to use automatic roaming services. At most, the comments indicate specific instances in which a carrier has had or is having difficulty negotiating a roaming arrangement with another carrier, or complaints about the policies of specific carriers.⁵⁰ Such individual cases do not warrant imposing overbroad and unnecessary regulations on the entire CMRS industry at this time.⁵¹

B. Competition, If Permitted To Continue, Will Provide The Proper Incentives For Carriers To Offer Automatic Roaming.

Competition in the wireless industry motivates wireless carriers to offer automatic roaming to other wireless carriers and their subscribers. Several commenters argue that the recent mergers will significantly reduce competition and limit the availability of automatic roaming arrangements.⁵² These claims, however, are without factual support⁵³ and are contrary to T-Mobile's experience to date as an independent wireless competitor. As Dr. Furchtgott-Roth notes, the conclusion that market forces alone are not enough to ensure competitive roaming arrangements is based on flawed assumptions and market definitions.⁵⁴

⁵⁰ See, e.g., RTG/OPASTCO Comments at 11-13 (alleging that certain wireless carriers have charged unreasonably high roaming rates or refused to enter into roaming arrangements); SouthernLINC Comments at 3, 12-14 (describing difficulties negotiating roaming agreements with other iDEN carriers); see also ACS Wireless Comments at 4; Airpeak/Airtel Comments at 5-7; Leap Comments at 13-14; MetroPCS Comments at 3, 28; NTCH Comments at 3-4.

⁵¹ See, e.g., T-Mobile Comments at 18-19; Cingular Comments at 22; Verizon Comments at 16.

⁵² See, e.g., MetroPCS Comments at 6-7; Rural Cellular Association Comments at 2-3; RTG/OPASTCO Comments at 3-4.

⁵³ See *Sprint Nextel Merger Order*; *AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, 19 FCC Rcd 21522 (2004); *Western Wireless Corporation and ALLTEL Corporation*, 20 FCC Rcd 13053 (2005).

⁵⁴ See, e.g., Leap Comments at 11-12; MetroPCS Comments at 7; NTCA Comments at 1-3; see also Furchtgott-Roth Reply Declaration at 6-14.

Further, Dr. Furchtgott-Roth explains that the ability of subscribers to switch carriers – regardless of the digital standard in the handset used by the subscriber – ensures the continuing competitive nature of roaming services.⁵⁵ Limiting an economic or competitive analysis to a single digital standard (*i.e.*, GSM, CDMA or iDEN) does not reflect accurately market conditions and the availability of wireless services. If T-Mobile or any other wireless carrier cannot satisfy a customer’s service and coverage needs, that customer will seek out another service provider that meets those needs, regardless of the digital standard. Wireless carriers will continue to compete and distinguish themselves based upon coverage area, as well as other factors. This in turn will motivate wireless carriers to enter into automatic roaming arrangements.

Some commenters also erroneously assume that the national scope of the larger carriers means that they no longer need or want to enter into roaming agreements with regional and rural service providers.⁵⁶ No CMRS carrier has ubiquitous facilities-based coverage throughout the United States. The comments show that so-called “nationwide” carriers still have substantial gaps in their facilities-based coverage area, and all but one have made the business decision to use roaming arrangements to fill those gaps. As noted above, T-Mobile generally relies more on roaming to expand its coverage area than other nationwide carriers. In cases where a larger carrier has facilities-based service covering the same geographic area of a smaller carrier, the record also demonstrates that the larger carrier often offers a unilateral automatic roaming arrangement that will benefit the smaller carrier. The smaller carrier’s customers therefore are able to roam on the larger carrier’s network, even though the larger carrier and its customers do

⁵⁵ See Furchtgott-Roth Reply Declaration at 11, 18.

⁵⁶ See, *e.g.*, MetroPCS Comments at 6-12; NTCA Comments at 1-3.

not require reciprocal roaming capability in the overlapping area.⁵⁷ The record shows that there is no systemic problem of larger carriers as a class refusing to offer automatic roaming capabilities to smaller carriers and their customers.

T-Mobile also disagrees with the assumption implicit in some commenters' claims that regional and smaller carriers cannot be profitable or competitive simply because of their size. Many of T-Mobile's smaller roaming partners are successful and profitable, in large part because they are serving customers well, based on reasonable business plans.⁵⁸ Moreover, regional and smaller carriers have the opportunity to expand their facilities-based networks through transactions such as leases, secondary market agreements, or partnerships as T-Mobile and other carriers have done in the past, assuming they have the business acumen to do so.

C. Attempts To Mandate Automatic Roaming Will Harm Wireless Development And Consumers.

Several commenters erroneously assert that an automatic roaming requirement will not discourage investment in improving and expanding facilities-based networks.⁵⁹ The record, however, shows that imposing an automatic roaming rule on today's competitive marketplace disserves the public interest by hindering the further development of wireless services and harming consumers. Specifically, commenters identify multiple disadvantages to a mandatory automatic roaming rule, all of which are based on the negative effects of such a rule on investment incentives among wireless carriers.

⁵⁷ See, e.g., T-Mobile Comments at 8-9; Cingular Comments at 29.

⁵⁸ Similarly, Sprint Nextel describes how several smaller carriers are improving and expanding their networks to enhance their competitive position. Sprint Nextel Comments at 6-7, 10-12.

⁵⁹ See, e.g., MetroPCS Comments 27-29; NTCA Comments at 1, 3; SouthernLINC Comments at 20, 32.

Thus, an automatic roaming requirement would reduce carriers' incentives to build out their networks, including larger carriers' incentives to expand their facilities into rural and high-cost regions.⁶⁰ It also would tend to deter investment in improving existing networks while penalizing those carriers that implement network advances and developments.⁶¹ At the same time, such a requirement would lessen smaller carriers' incentives to reduce roaming costs or provide better roaming services in order to attract roaming partners.⁶² An automatic roaming requirement also could increase carriers' administrative costs associated with providing and billing for roaming services and equipment costs in order to accommodate larger roaming volume, which also will result in increasing costs to consumers.⁶³ Further, an automatic roaming rule could remove competitive distinctions based on coverage areas, thereby reducing product differentiation among carriers and discouraging innovation.⁶⁴

Even nominal supporters of an automatic roaming rule recognize these infirmities.⁶⁵ For example, North Dakota Network acknowledges that mandatory automatic roaming will create disincentives to build out networks. NTCH similarly admits that automatic roaming will result in a reduction in the number of cell sites in rural areas. SouthernLINC attempts to minimize the harm of an automatic roaming rule by proposing to limit it to inbound roaming only (*i.e.*, a larger

⁶⁰ See, e.g., T-Mobile Comments at 15; Cingular Comments at 26; Sprint Nextel Comments at 20; Nextel Partners Comments at 8-9; Verizon Wireless Comments at 18-19.

⁶¹ See, e.g., T-Mobile Comments at 15; Cingular Comments at 24; Sprint Nextel Comments at 20; Verizon Wireless Comments at 22.

⁶² See, e.g., Cingular Comments at 25, 27.

⁶³ See, e.g., T-Mobile Comments at 14; Cingular Comments at 25, 27.

⁶⁴ See, e.g., T-Mobile Comments at 14-15; Cingular Comments at 26; Sprint Nextel Comments at 20.

⁶⁵ See, e.g., North Dakota Network Comments at 3; NTCH Comments at 6-7.

carrier must provide smaller carriers with roaming capability, but does not have to allow its customers to roam on the smaller carriers' networks).⁶⁶ However, this proposal also distorts carriers' investment incentives, thereby failing to allow the CMRS marketplace to serve consumers efficiently.

IV. THE RECORD SHOWS THAT THE COMMISSION SHOULD NOT REGULATE WIRELESS CARRIERS' ROAMING AGREEMENTS.

A. The Commission Should Reject Arguments To Regulate Roaming Agreements.

Roaming agreements vary significantly from carrier to carrier and area to area. Proposals to standardize the rates, terms, or conditions of roaming agreements through government regulation are no more than attempts by some wireless carriers to insulate themselves from the risks of negotiating agreements in a competitive setting. The Commission should reject such proposals. The record includes no evidence that, at present, there is any sort of wide-spread inability of wireless carriers to obtain roaming agreements, that consumers are being harmed without such regulation, or that there is a systemic problem regarding roaming arrangements.⁶⁷ According to Dr. Furchtgott-Roth, restricting by regulation potential terms and conditions of contracts generally will lead to fewer, not more, voluntary contracts, because such requirements would lead to fewer negotiation options. The wider the range of terms that can be negotiated between parties, the more likely they are to find areas of mutual benefit through one or more contracts.⁶⁸

⁶⁶ See SouthernLINC Comments at 46-48.

⁶⁷ See, e.g., Centennial Communications Comments at 5; U.S. Cellular Comments at 2 (stating that Tier I carriers largely treat smaller carriers fairly in roaming negotiations); see also Cingular Comments at 21-22; Nextel Partners Comments at 10; Sprint Nextel Comments at 3, 5, 10; Verizon Wireless Comments at 8-10.

⁶⁸ See Furchtgott-Roth Reply Declaration at 14-15.

Moreover, Dr. Furchtgott-Roth notes that broad forms of regulation could harm existing automatic roaming agreements. Regulatory restrictions on roaming agreements could potentially render many of the hundreds of existing roaming agreements unlawful or at least subject to substantial revision. If these revisions were mutually beneficial, they already would have been written into contracts. As a result, Commission-mandated revisions would harm one or even both parties to existing agreements. Restricting mutually beneficial contracts harms the contracting parties, and more broadly harms social welfare.⁶⁹

It always is possible, of course, that individual carriers may have differences or disputes with their roaming partners or other carriers about their relationships, including roaming arrangements. Such disputes, however, do not justify the imposition of national rules for the entire wireless industry at this time. Rather, carriers should use the Commission's existing complaint and enforcement process and other means of resolving their differences, as Dr. Furchtgott-Roth explains.⁷⁰

Several commenters urge the Commission to take the extreme step of imposing price caps or benchmarks for roaming rates. For example, Leap suggests that the Commission should set a price cap using a carrier's estimated average revenue per unit, but notes that the price cap would not apply in markets with three or more roaming partners.⁷¹ SouthernLINC similarly

⁶⁹ *See id.*

⁷⁰ *See id.* at 18-19.

⁷¹ *See Leap Comments at 19-20; see also Unicom Reply Comments at 3.* Leap takes out of context a statement that Dr. Furchtgott-Roth made while serving as Commissioner to support its argument that automatic roaming regulations are unnecessary only in markets in which a carrier has three or more potential roaming partners. *See Leap Comments at 20, citing Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance For Broadband Personal Communications Services*, 13 FCC Rcd 16857, 16936 (1998). In that case, the Commission decided not to forbear from certain resale obligations. Dr. Furchtgott-Roth said in his dissenting statement that he would have

argues that it is prima facie unjust and unreasonable if a carrier's roaming rates exceed its lowest prevailing retail rate in a particular market.⁷² NTCH suggests that roaming rates should not exceed the same price offered to mobile virtual network operators.⁷³ Similarly, several commenters argue that roaming rates should be deemed just and reasonable only if they are "cost-based."⁷⁴ As Dr. Furchtgott-Roth explains, these proposals share the fundamental flaw of rate regulation in a competitive environment:

At least in the wide range of circumstances where voluntary automatic roaming agreements are working well, it is impossible to find any potential benefit to rate regulation. Of all forms of regulation, rate regulation is perhaps the most invasive and the least likely to be beneficial, either to businesses or consumers.⁷⁵

Dr. Furchtgott-Roth explains further that the specific recommendation of capping roaming rates at retail average revenue per subscriber is inappropriate.⁷⁶ Because roaming rates and retail average revenue per subscriber are, at best, only coincidentally related where competition exists, a cap on roaming rates based on the retail rates would only coincidentally be the proper competitive price.⁷⁷

supported forbearing altogether from the Commission's mandatory resale obligations, but he noted that the existence of four facilities-based competitors would support a showing that sufficient competition exists in a market to justify forbearance.

⁷² See SouthernLINC Comments at 5, 35-37, 47, 49-50.

⁷³ See NTCH Comments at 6.

⁷⁴ See, e.g., MetroPCS Comments at 15; NTCA Comments at 3; RTG/OPASTCO Comments at 14.

⁷⁵ Furchtgott-Roth Reply Declaration at 22.

⁷⁶ See *id.*, citing Leap Wireless Comments.

⁷⁷ See Furchtgott-Roth Reply Declaration at 12-13, 22-23 (discussing lack of relationship between these factors).

According to Dr. Furchtgott-Roth, capping roaming rates at average retail revenues per subscriber minute would have at least two perverse results on current contractual roaming agreements.⁷⁸ First, many currently negotiated roaming agreements would result in *both* parties being out of compliance with the cap. Second, because average revenue per subscriber minute varies by carrier, the capped roaming rates would lead to *asymmetric* maximum roaming rates. Although some proponents of regulation attack asymmetric rates, this form of regulation could result in one carrier paying more to the other for roaming based, not on a mutually beneficial negotiated contract, but on the randomness of the unrelated average revenue per subscriber minute mandated by the Commission. This type of regulation predictably could lead to higher negotiating costs between carriers for roaming rights and fewer voluntary contracts.⁷⁹

The other varieties of rate regulation discussed in the record have similar flaws, and would face many of the infirmities that have bedeviled wireline regulation even when such regulation is justified, as in the case of incumbent local exchange carriers (“ILECs”). For example, mandating that roaming rates be “cost-based” is unnecessary in a highly competitive environment such as today’s U.S. wireless industry, where competition, not regulation, drives prices to cost. Such a requirement, however, would require the Commission to select a cost standard that carriers would apply to develop their regulatory costs. Depending on the cost standard used, such a regulation could harm small and rural carriers as well as other carriers because the roaming revenue upon which they rely heavily could be decreased.⁸⁰ Consumers would ultimately suffer.

⁷⁸ *See id.*

⁷⁹ *See id.* at 22-23.

⁸⁰ *See, e.g.*, NTCA Comments at 2-3 (noting that rural carriers depend on roaming revenue to provide wireless services to subscribers); RTG/OPASTCO Comments at 7-10 (same).

The Commission also should reject arguments that roaming rates must be symmetrical and roaming agreements reciprocal.⁸¹ As Dr. Furchtgott-Roth explains, most roaming agreements are not unilateral but specify roaming rates for both parties.⁸² These agreements very often establish similar rates and even reciprocal rates between the parties in roaming agreements, thus already reflecting a degree of fairness and symmetry in roaming arrangements. However, Sprint Nextel also demonstrates in its comments that asymmetrical rates also are consistent with competitive environments, where they typically reflect differences in carrier size, regions and competitive incentives.⁸³

Furthermore, there are several valid reasons why roaming agreements may not be reciprocal.⁸⁴ As T-Mobile explains in its comments, it does not seek roaming rights where it has network facilities in the same area as its roaming partner because T-Mobile's customers can remain on their home network.⁸⁵ In those cases, however, T-Mobile often enters into unilateral agreements so customers of its roaming partner have the benefit of roaming on T-Mobile's network.

Some commenters also argue that roaming agreements should be required to allow for in-market roaming (*i.e.*, roaming privileges in areas in which roaming partners have overlapping

⁸¹ See, e.g., Centennial Communications Comments at 13; North Dakota Network Comments at 2-3; NTCH Comments at 6; RTG/OPASTCO Comments at 9-10, 13-14; U.S. Cellular Comments at 11, 13-14.

⁸² See Furchtgott-Roth Reply Declaration at 22-23.

⁸³ See Sprint Nextel Comments at 14-15; see also Rural Cellular Association Comments at 5; Verizon Wireless Comments at 6, 19.

⁸⁴ See RTG/OPASTCO Comments at 9-10, 13 (asserting that the only purpose of non-reciprocal roaming agreements is to harm competitors).

⁸⁵ See T-Mobile Comments at 17-18; see also Verizon Wireless Comments at 17.

networks).⁸⁶ Verizon Wireless accurately notes that there is no basis to mandate a right to in-market roaming if both carriers have facilities in the same area.⁸⁷ At present, where networks overlap, each carrier's customers always have the ability to remain on their respective home networks. Because network and service quality are factors by which the carriers can distinguish themselves, if one carrier's network or service is superior to that of the other, the carrier with the superior service should be able to reap the benefits of its investments. The current arrangement thus provides competitors with strong incentives to improve network and service quality.

The record also contains some misplaced criticism of GSM/GPRS carriers' use of local calling areas (denoted by their location area codes or "LACs") to limit overlapping roaming areas.⁸⁸ There are often cases in which two GSM/GPRS carriers hold CMRS licenses in the same license area (*e.g.*, each may hold a license in the same BTA), but whose facilities-based networks do not cover the entire license area. Thus, the carriers have overlapping networks in only parts of their licensed area. GSM/GPRS carriers can redefine LACs to carve out the areas where there are overlapping networks so that each carrier's subscribers stay on their respective home networks (and thus do not incur additional roaming costs) where networks overlap, but roam where there are no overlapping networks. This approach benefits both carriers because each receives roaming revenue from the other carrier and their customers have expanded roaming capability. In fact, there is no downside to this use of LACs.

The vast majority of roaming agreements, like most other private contractual agreements in the United States economy, have been negotiated successfully and routinely between the

⁸⁶ *See, e.g.*, Leap Comments at 15-16, NTCA Comments at 3; RTG/OPASTCO Comments at 6.

⁸⁷ *See* Verizon Wireless Comments at 17-18.

⁸⁸ *See* RTG/OPASTCO Comments at 6.

roaming partners. Accordingly, there is no need to establish rules with specific negotiation requirements, such as the negotiating standards set forth in the Satellite Home Viewer Act of 1999 (“SHVIA”).⁸⁹ The reasons for establishing the SHVIA negotiating standards are completely inapposite to the roaming context. The SHVIA standards were mandated by Congress, which is not the case here.⁹⁰ Further, SHVIA authorizes satellite carriers to add certain programming to their lineups and to make that programming available to customers who had been prohibited previously from receiving it under compulsory licensing provisions of copyright law. In contrast, there has been and currently is no equivalent prohibition against roaming. Rather, as discussed above, automatic roaming has become the norm in the wireless industry and is widely available to U.S. consumers at present.

B. “Nondiscrimination” Requirements Would Create Perverse Incentives That Limit CMRS Innovation And Competition While Distorting Rates.

Based on existing marketplace conditions, the Commission should not entertain arguments for “nondiscrimination” requirements⁹¹ that would require wireless carriers to offer all other carriers that request automatic roaming the same rates, terms and/or conditions that are offered to another carrier, including affiliates.⁹² Such a requirement at this time would not permit carriers to adjust to changing competitive conditions and it would discourage the development of innovative coverage plans and service offerings that benefit consumers. The

⁸⁹ See Rural Cellular Association Comments at 4-5.

⁹⁰ 47 U.S.C. § 325(b)(3)(C).

⁹¹ The NPRM refers to some of these arrangements as those that carriers may have with “most-favored” roaming partners. NPRM, 20 FCC Rcd at 15062.

⁹² See, e.g., Leap Comments at 17-19; MetroPCS Comments at 15, 24-25; NTCA Comments at 3-4; North Dakota Network Comments at 3; NTCH Comments at 6; Rural Cellular Association at 5; RTG/OPASTCO Comments at 4, 14; Safe Competition Coalition Comments at 2; Unicom Reply Comments at 3.

only purpose for such a rule would be to favor individual competitors, at least some of which would be able to increase roaming rates or obtain better terms than would otherwise be possible in today's competitive wireless industry. The increased costs associated with such government intervention ultimately would be passed through to consumers.

Nondiscrimination requirements for roaming agreements in the current competitive environment would lead to inefficient investment and product decisions by wireless carriers.⁹³ Roaming agreements would no longer reflect the myriad of factors that often affect the rates, terms and condition of those agreements, such as geographic location, volume commitments, network and service quality, negotiations for other non-roaming services, and many other complex issues.⁹⁴ Agreements would become standardized, with formulaic rates, terms and conditions. Carriers would have little incentive to bargain or compete for better contract terms. Furthermore, carriers would have no incentive to improve and expand their networks to attract the best roaming rates if those roaming rates are inflexible.

Similarly, there is no basis for regulating roaming agreements simply because some carriers may be losing roaming traffic, which a few commenters blame in part to alleged "sweetheart" deals between larger carriers.⁹⁵ The Commission should reject the related argument that one set of carriers should be able to obtain the same roaming rates, terms and conditions to which other carriers agree because those rates, terms and conditions must reflect

⁹³ See, e.g., T-Mobile Comments at 17; Nextel Partners Comments at 6; Verizon Wireless Comments at 18-19; Sprint Nextel Comments at 20, Rosston Declaration at ¶¶ 78-82.

⁹⁴ See T-Mobile Comments at 15; Verizon Wireless Comments at 18-19

⁹⁵ See RTG/OPASTCO Comments at 7-10; see also NTCA Comments at 2-3. Verizon Wireless notes that carriers in rural areas often can demand higher roaming rates from national carriers that seek to expand their service areas, and that the highest roaming rates are often paid to rural carriers. See Verizon Wireless Comments at 4-6.

“competitive” roaming conditions.⁹⁶ This claim does not take into consideration all the factual circumstances and variations that are reflected in roaming agreements concluded with different carriers in diverse areas.⁹⁷

C. The Commission Should Not Create A New “Tier IV” Of Rural CMRS Providers.

The Commission should not create a fourth tier of CMRS carriers, which would include those with 100,000 customers or less, for purposes of roaming regulation. One party suggests that new roaming regulations should specifically benefit this new class of Tier IV carriers, *i.e.*, Tier IV carriers would have the right to demand automatic roaming and certain roaming rates, terms and conditions from larger wireless carriers but not vice versa.⁹⁸

Creating a new tier of wireless carriers would provide preferential regulatory treatment to a subset of carriers by shielding them from competitive forces. Sheltering through regulation a class of CMRS carriers from the economic forces of competition would conflict with Congress’s mandate that “similar commercial mobile radio services be accorded similar regulatory treatment under the Commission’s Rules... to ensure that economic forces – not disparate regulatory burdens – shape the development of the CMRS marketplace.”⁹⁹ Such regulatory favoritism would be inefficient, unfair, and harmful to customers.

⁹⁶ See RTG/OPASTCO Comments at 4, 14.

⁹⁷ Cingular also accurately explains that any loss of roaming traffic, and thus roaming revenue, is often due to competition and a properly functioning marketplace. Reduced roaming revenue of an individual carrier should be considered a sign that competition is working and that the individual carrier may not be adjusting to the evolving, competitive marketplace. See Cingular Comments at 18-19; see also Verizon Wireless Comments at 15; Sprint Nextel Comments at 9-12.

⁹⁸ RTG/OPASTCO Comments at 4 n.9, 14 n.18.

⁹⁹ *Implementation of Sections 3(n) and 332 of the Communications Act*, 9 FCC Rcd 7988, 7994 (1994).

D. Roaming Agreements Should Not Be Required To Be Filed Or Made Publicly Available.

The Commission should reject some commenters' assertions that roaming agreements be filed with the Commission or otherwise made publicly available.¹⁰⁰ There is no public policy reason for this requirement. Commenters supporting such a requirement contend that wireless carriers cannot determine whether another carrier is "unjustly" discriminating against them without reviewing such agreements. This reasoning is unsound. In a competitive environment with multiple providers, such as today's U.S. wireless industry, anti-competitive conduct, if any, is detected initially by observing the behavior of competitors in the marketplace. The Commission's enforcement and complaint procedures contain ample provisions for the disclosure of roaming agreements and other evidence in such cases.¹⁰¹

The Commission has generally sought to limit the types of carrier agreements that must be made publicly available, concluding that contract filing requirements are unnecessary in a competitive environment and can have a chilling effect on negotiations.¹⁰² Since the 1980s, for example, the Commission has worked to eliminate tariff filing requirements for non-dominant wireline carriers, reasoning in part that such requirements were not required to protect the

¹⁰⁰ MetroPCS Comments at 16-19; NY3G Comments at 4 (arguing that EBS/BRS CMRS providers should publish their roaming agreements); RTG/OPASTCO at 4 (asserting that larger carriers should file roaming agreements with the Commission); Unicom Reply Comments at 3.

¹⁰¹ See 47 C.F.R. § 1.729; see also 47 U.S.C. § 211(b).

¹⁰² See, e.g., *International Settlements Policy Reform*, 19 FCC Rcd 5709, 5735-37 (2004) (eliminating the requirement that carriers file their contracts for telecommunications services with foreign carriers with market power on U.S.-international routes that are competitive and no longer subject to the Commission's international settlements policy). In fact, public availability of roaming agreements may increase the potential for collusion on rates, terms and conditions.

public.¹⁰³ The Commission should not make the mistake of imposing filing requirements on an industry that has succeeded through competition.¹⁰⁴

Nor should the Commission adopt a filing requirement similar to that imposed on the interconnection agreements of ILECs pursuant to Sections 252(h) and (i) of the Act.¹⁰⁵ There are no such statutory obligations imposed on wireless providers, and with good reason. Wireless carriers operate in a competitive environment, not the monopoly conditions that ILECs enjoyed when Section 252 was added to the Act in 1996.

V. THE RECORD PROVIDES NO REASON TO RETAIN A MANUAL ROAMING REQUIREMENT.

The Commission should reject suggestions to retain the so-called manual roaming rule.¹⁰⁶ The Wireless Telecommunications Bureau acknowledged in 2002 that manual roaming “has become an option of last resort” and questioned even at that time whether retention of the manual roaming rule was necessary.¹⁰⁷ More than three years later, commenters are almost unanimous

¹⁰³ See *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order, 11 FCC Rcd 20730 (1996); *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Order on Reconsideration, 12 FCC 15014 (1997); *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004 (1999), *aff'd*, *MCI WorldCom, Inc. v. FCC*, 209 F.3d 760 (D.C. Cir. 2000).

¹⁰⁴ Some of these commenters appear to assume that any deviation from the terms of another roaming agreement would be *per se* unlawful. Rather, the Court of Appeals for the District of Columbia has determined that offering a variety of services and charging varying rates, terms and conditions is not *per se* or unjust under the Act and, in fact, is quite reasonable and expected in a competitive environment. See *Orloff v. FCC*, 352 F.3d 415, 419-21 (D.C. Cir. 2003).

¹⁰⁵ See MetroPCS Comments at 16-17.

¹⁰⁶ See, e.g., Airpeak/Airtel Comments at 2; MetroPCS Comments at 20-21; Unicom Reply Comments at 3.

¹⁰⁷ *Federal Communications Commission 2002 Biennial Regulatory Review*, Staff Report, 18 FCC Rcd 4243, 4287 (2002).

about consumers' lack of interest in manual roaming.¹⁰⁸ U.S. Cellular reports that less than one percent of its roaming revenues are derived from manual roaming.¹⁰⁹ As explained above and by Dr. Furchtgott-Roth, market forces, not regulation, have successfully led to the wide availability of automatic roaming. The GSM standard precludes the need for manual roaming. The Commission's reasons for originally adopting the so-called manual roaming rule – *i.e.*, to promote nationwide, ubiquitous, competitive wireless voice services – have been satisfied through the use of automatic roaming.¹¹⁰ Moreover, several commenters note that prepaid wireless plans and disposable handsets are often a less expensive alternative to manual roaming.¹¹¹ Thus, there is no need to retain the so-called manual roaming rule.

It may be the case that a “manual roaming” capability may still be beneficial to some subset of consumers. If so, manual roaming should be subjected to the test of the marketplace like any other wireless feature, rather than mandated by an administrative rule. The Commission has long recognized that the public interest is benefited more by the results of a competitive marketplace rather than regulations that do not reflect or adjust to changes in the marketplace.¹¹² To the extent that consumers want to retain some manual roaming capability, market forces will ensure that wireless carriers respond to those consumers' needs and demands, just like any other

¹⁰⁸ See, e.g., T-Mobile Comments at 10-13; Centennial Communication Comments at 5-6; Leap Comments at 5 n.9; MetroPCS Comments at 5; RTG/OPASTCO Comments at 5-6; SouthernLINC Comments at 30-31; Safe Competition Coalition at 3; U.S. Cellular Comments at 9-10.

¹⁰⁹ U.S. Cellular Comments at 10.

¹¹⁰ See, e.g., Cingular Comments at 12-13.

¹¹¹ See, e.g., Cingular Comments at 14-15; Nextel Partners Comments at 9.

¹¹² See, e.g., *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, 12 FCC Rcd 9972, 9980 (1997).

wireless capability. Moreover, the Commission should not retain the so-called manual roaming rule simply to protect the business interests of individual parties.¹¹³ Consumers would not benefit from such a requirement.

VI. THE RECORD SHOWS THAT THE COMMISSION SHOULD NOT HAMPER INNOVATION BY REGULATING NEW TECHNICAL DEVELOPMENTS.

Some commenters erroneously contend that the Commission must regulate roaming because wireless carriers are limited to roaming on the networks of partners that share the same digital standard.¹¹⁴ However, the record shows that some multimode handsets have been developed that can operate using more than one digital standard (*e.g.*, a handset that can operate on both GSM and CDMA networks) and that such handsets are beginning to be deployed.¹¹⁵ Consumers increasingly are demanding multimode handsets to increase their service coverage and to be able to use their existing handsets outside the United States. The marketplace – not regulation – is the driving force behind the development of these handsets and their associated increased roaming capabilities. As evidenced by the rapid evolution of handsets in the last decade, in time multimode handsets also will become more widely available and affordable.

In contrast, additional roaming regulation likely would impede the development and availability of new multimode handsets. The record shows that imposing regulation on wireless roaming would hinder efficient innovation and technological development.¹¹⁶ Roaming

¹¹³ *See, e.g.*, Verisign Comments.

¹¹⁴ *See, e.g.*, Leap Comments at 8-11; MetroPCS Comments at 10 n.13; SouthernLINC Comments at 43; Safe Competition Coalition Comments at 2.

¹¹⁵ *See, e.g.*, T-Mobile Comments at 20; Nextel Partners Comments at 4, 11 (noting that competitive pressures required Nextel Partners to offer international roaming through the development of handsets that can operate on iDEN and GSM networks).

¹¹⁶ *See, e.g.*, T-Mobile Comments at 19-21; Cingular Comments at 23; Sprint Nextel Comments at 19; Verizon Wireless Comments at 22.

regulations would have the likely effect of diverting industry attention and incentives away from development of such innovative handsets and toward implementation of, and compliance with, the regulations. In the current environment, it is possible that a carrier may obtain a competitive advantage by deploying such handsets and offering improved roaming or better service quality because of its increased technical capabilities. But if carriers are required to enter into roaming agreements with all other networks for which roaming is technically feasible, the incentives for developing and deploying multimode handsets could be sharply reduced. Consequently, regulation would likely stifle the development of the very multimode handsets that would remove existing technological barriers to roaming on networks with different standards.

The record also supports a finding that the sunset of the Commission's analog service rule in 2008 does not justify an automatic roaming rule or other additional roaming regulations. No commenter argued that the upcoming sunset necessitates roaming regulations or that the sunset of the analog service rule would significantly harm consumers. Rather, Verizon Wireless, the only party other than T-Mobile to address this issue, assures the Commission that it still relies on analog roaming in some markets and intends to continue to offer analog roaming capability.¹¹⁷ Accordingly, there is no basis for the Commission to adopt roaming rules simply based on the sunset of the analog service rule.

¹¹⁷ See Verizon Wireless Comments at 23.

VII. CONCLUSION.

The record in this proceeding shows the wisdom of continuing to rely on competition to govern wireless roaming arrangements at this time. The Commission should repeal Section 20.12(c) of its rules and refrain from imposing new roaming regulations that might distort the benefits of competition in the wireless marketplace.

Respectfully submitted,

/s/ Thomas J. Sugrue

Cheryl A. Tritt
William F. Maher, Jr.
Jennifer L. Kostyu
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, D.C. 20006

Thomas J. Sugrue
Vice President, Government Affairs

/s/ Kathleen O'Brien Ham

Counsel to T-Mobile USA, Inc.

Kathleen O'Brien Ham
Managing Director, Federal Regulatory Affairs

/s/ Patrick Welsh

Patrick Welsh
Corporate Counsel, Federal Regulatory Affairs

T-Mobile USA, Inc.
401 9th Street, N.W.
Suite 550
Washington, D.C. 20004

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