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 ALLTEL CORPORATION

Alltel Corporation ("Alltel") hereby replies to comments filed in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.[1] The Commission sought comment on the nature of the CMRS roaming market, whether carriers can obtain reasonable automatic roaming agreements, and whether customers can enjoy service when they travel beyond their carriers' service areas. The record demonstrates convincingly that the roaming market is functioning properly – there is no widespread evidence that carriers are unable to enter roaming agreements, roaming prices are dropping, and consumers are benefiting through expanded coverage, rate plan offerings that include no roaming charges, and robust competition in the CMRS marketplace.

Alltel's experience confirms these findings. It has entered into over 100 roaming arrangements with CMRS carriers of all sizes, it continues to enter into new roaming deals, and roaming prices continue to drop. While some small carrier interests complain about the loss of roaming revenues, lower roaming rates are the result of a competitively functioning market and

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[1] *See* Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, *Notice of Proposed Rulemaking,* FCC 05-160 (rel. Aug. 31, 2005) ("*NPRM*").

inure to the benefit of consumers. The Commission should refrain from intervening in the CMRS roaming market given the absence of evidence suggesting market failure.

I. THE RECORD DEMONSTRATES THAT THE ROAMING MARKET IS PROPERLY FUNCTIONING TO THE BENEFIT OF CONSUMERS

The Commission recently concluded that "U.S. consumers continue to benefit from robust competition in the CMRS marketplace."[2] According to the *Tenth CMRS Competition Report*, 97 percent of all Americans live in counties with access to at least three different CMRS providers.[3] By year end 2004, subscribership was up to 185 million – approximately 62 percent penetration – and the price of mobile service had dropped to approximately 9 cents per minute.[4] Providers vie for customers in this intensely competitive market on a number of fronts, including the offering of new and innovative services, quality of service, price, and plan. The fact that carriers offer nationwide or near-nationwide plans with more minutes at lower rates that include no charges for long distance and roaming is due in no small measure to the ability to enter reasonable roaming arrangements.[5]

A. The Roaming Market is Highly Competitive and Does Not Exhibit Evidence of Market Failure

The initial round of comments reflects that roaming arrangements are necessary for any CMRS providers to achieve nationwide coverage.[6] Despite speculative allegations to the

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[2] Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Tenth Report*, FCC 05-173, at ¶ 204 (rel. Sept. 30, 2005).

[3] *Id.* at Table 5.

[4] *Id.* at Table 1, Table 5, Table 8.

[5] Comments of T-Mobile USA, Inc., WT Docket No. 05-265, at 6 (filed Nov. 28, 2005) ("T-Mobile Comments").

[6] *See, e.g., id*. at 2 ("T-Mobile relies on extensive roaming agreements … to fill out its national footprint, especially in rural areas.") (footnote omitted); Comments of Verizon Wireless, WT Docket No. 05-256, at 11 (filed Nov. 28, 2005) ("Verizon Wireless Comments") ("Roaming is a
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contrary, large and regional carriers have a compelling incentive to negotiate mutually agreeable roaming arrangements. As a regional carrier, Alltel relies heavily on roaming arrangements – with larger carriers and smaller carriers alike – to provide its customers with as extensive coverage as possible. To that end, Alltel has entered roaming agreements with many cellular and Broadband PCS licensees – over 100 agreements in all. Alltel does not refuse new roaming agreement opportunities and continues to enter into new agreements.

Under the current market-based system, moreover, roaming rates have declined significantly in recent years. In the past four years, Alltel's average roaming rates have dropped over fifty percent. Gregory L. Rosston observes in his economic analysis, "[t]he reduction in roaming costs has been substantial. Over the past 10 years, CTIA data … indicate a reduction of more than a factor of ten."[7] The evidence demonstrates that the CMRS roaming market "is functioning efficiently," as "carriers can obtain CMRS roaming agreements at reasonable rates and … customers throughout the country can benefit from nationwide calling plans."[8]

Despite the inflated rhetoric by some commenters, the roaming market does not exhibit market failure. There is no evidence of widespread inability to obtain roaming agreements. As ACS Wireless states, "[a]utomatic roaming for wireless voice services is now commonplace, largely because industry groups promoted such measures and carriers, national and small, alike, willingly entered into automatic roaming arrangements."[9] There is no evidence of larger carriers

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necessary component of nationwide service and will continue to be for the foreseeable future.").

[7] Gregory Rosston, "An Economic Analysis of How Competition Has Reduced High Roaming Charges," at 7 (Nov. 2005) *filed as an attachment to* Comments of Sprint Nextel, WT Docket No. 05-265 (file Nov. 28, 2005).

[8] Verizon Wireless Comments at 1-2.

[9] Comments of ACS Wireless, Inc., WT Docket No. 05-265, at 5 (filed Nov. 28, 2005); *see also* Comments of Centennial Communications Corp., WT Docket No. 05-265, at 5 (filed Nov. 28,

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"price gouging" smaller carriers.[10] Although the record contains claims asserting "egregious and anticompetitive behavior" in the roaming market,[11] Alltel is not aware of any carriers having pursued complaints before the Commission asserting violations of Section 201 and 202 with respect to either rates or practices.[12]

Further, there is no evidence that consolidation has been harmful to the roaming market. Since the Commission's decision approving the merger of Alltel and Western Wireless Corporation ("Western"), Alltel has entered into new roaming agreements with additional rural roaming partners and honored legacy Western roaming deals despite some parties' concerns that Alltel would refuse to do so post-merger.[13] These carriers' customers have benefited because they now have access to the combined Alltel's expanded network. In addition, former Western and legacy Alltel subscribers now have "on-net" access to the combined Alltel network.

In large measure, the small carrier commenters' position is dictated by concerns of declining roaming revenues. Lower roaming rates, however, are not attributable to improper actions by larger carriers, as some commenters suggest. Rather, they are a direct result of a well-functioning competitive market. Revenues have diminished for a number of reasons. With the transition from analog to multiple digital technologies, the pool of potential roaming partners diminished. In addition, carriers have expanded their networks into rural markets, thereby

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2005) ("As far as Centennial is aware, there is no industry-wide problem with roaming arrangements today.").

[10] *See* Comments of MetroPCS Communications, Inc., WT Docket No. 05-265, at 10 (filed Nov. 28, 2005).

[11] *See* Comments of the Rural Telecommunications Group, Inc., WT Docket No. 05-265, at 10 (filed Nov. 28, 2005) ("RTG Comments").

[12] *See* Comments of Cingular Wireless, LLC, WT Docket No. 05-265, at 21 (filed Nov. 28, 2005) ("Cingular Comments").

reducing their reliance on roaming. As other carriers have built out, the supply of roaming options has increased, again putting downward pressure on roaming rates. Such actions are representative of a well-functioning market, where purchasers pursue more attractive alternatives competing in the marketplace. It is important to note, however, that although roaming preferences are often based on rates, in Alltel's experience pricing is not the single most important driver – other key (and often determinative) factors include coverage, service quality, and similar customer experience on the roaming network.

Finally, Alltel must respond to three Alltel-related claims the Rural Telecommunications Group ("RTG") made in an effort to assert that the roaming market is not competitive.[14] These claims are inaccurate.

- Iowa example. RTG asserted that, due to a litigation matter, Alltel placed some rural Iowa carriers on a list of prohibited roaming partners even though Alltel had no coverage in the carriers' areas, thereby denying Alltel's customers access to communications, "including emergency services." Alltel did no such thing. As an initial matter, it is notable that RTG's claim is about Alltel's treatment of its own customers and has nothing to do with the rural carriers' customers, who have consistently been able to roam on Alltel's network at reasonable rates pursuant to the existing agreement. With respect to the specific allegations, the Iowa market in question was home to a casino, and Alltel received numerous complaints that its customers could not obtain service in and nearby the casino. Upon investigation, Alltel learned that the rural carrier in question did not have coverage at the casino. As a result, Alltel dropped the carrier from its "preferred roaming list" ("PRL"), shifting its roaming traffic to another carrier that serves the casino area. Alltel's action served consumer interests without detriment. First, Alltel's customers receive better service at or near the casino. Second, Alltel's action did not deny its customers access to communications elsewhere in the market, as RTG alleged. Alltel customers' handsets first seek out the carriers on the PRL, but in the event no sufficient signal is found, the handset continues searching and will link up with networks not listed on the PRL if a signal is available. Third, to clarify any misconception with regard to access to emergency services, the Commission's E911 rules already require that carriers must transmit any 911 call from compatible

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[13] *See NPRM* at ¶ 14.

[14] *See* RTG Comments at 12.

handsets to the appropriate PSAP – and this is without regard to whether there is a roaming agreement in place between the caller's provider and the roamed-on network.

- Kansas example. RTG asserted that Alltel refused to allow its customers to roam with a rural carrier in a Kansas market. This claim is wrong. Once again, the claim has nothing to do with the rural carrier customers' ability to roam – Alltel provides roaming on its network pursuant to the carriers' existing arrangement. Further, both Alltel and the rural carrier provide service in the market in question. Oftentimes a carrier may choose to restrict in-market roaming on a competitor's network, but in this case Alltel concluded the rural carrier provided more coverage in the market and thus continued to send traffic to the rural carrier's network. It is not Alltel's practice to curtail roaming where customers would otherwise have no service.

- Midwest example. RTG states that a Midwest rural carrier has no choice but to pay Alltel and Verizon \$0.99 per minute to roam. This is not so. The \$0.99 rate is an industry-wide symmetric default rate where an agreement is in place but there is no preferred pricing arrangement. The overwhelming majority of Alltel's roaming arrangements involve rates far below \$0.99, and Alltel is open to negotiating more competitive roaming rates.

B. The Roaming Market is Functioning to the Benefit of Consumers

Cingular correctly observes, "[a]s the Commission has noted, the analysis of roaming obligations must focus on consumers, not private carriers."[15] The record evidence reflects that consumers have benefited significantly from the current market-based roaming environment. Market forces have reduced rates dramatically – ten fold in the past decade, as noted above. In turn, CMRS providers offer customers nationwide or near-nationwide plans with more minutes at lower rates that include no charges for long distance and roaming. Alltel customers can roam nationwide, and Alltel is not aware of any situation in its markets in which another carrier's customers are unable to roam. In RTG's Kansas case noted above, for example, the rural carrier's customers have been able to roam on Alltel's network throughout, and at a rate much

[15] Cingular Comments at 20-21 *citing* Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, *Notice of Proposed Rulemaking*, 15 F.C.C.R. 21628, 21635-36 (2000).

lower than Alltel's already low average rate. Indeed, as long as a roaming arrangement is in place, a roaming partner's customers can obtain service on the Alltel network regardless of the amount of Alltel traffic roaming on the partner's network. Simply put, consumers benefit from the market-based roaming system.

II. REGULATORY INTERVENTION IN THE ROAMING MARKET CONTRAVENES THE PUBLIC INTEREST

As T-Mobile states, "[a]dopting regulations that would themselves thwart competition based on mere allegations of possible anti-competitive conduct does not serve the public interest."[16] The Commission should reject any calls for an automatic roaming rule or a non-discrimination or "most-favored nation" requirement. Instead the Commission should heed the guidance of the D.C. Circuit, which stated that "[a] carrier's success 'should be driven by technological innovation, service quality, competition-based pricing decisions, and responsiveness to consumer needs – and not by strategies in the regulatory arena.'"[17]

Alltel's practice has long been to enter into a roaming agreement with any interested domestic CDMA-based CMRS carrier. But an automatic roaming requirement would restrict the competitive nature of the roaming marketplace. Carriers today rely on roaming and thus are incented to negotiate mutually agreeable arrangements, which are subject to Sections 201 and 202. Given the record here, with declining rates that have resulted in rate plans that include no-charge roaming, there is no basis to intervene. In the absence of market failure, the Commission should refrain from regulation.

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[16] T-Mobile Comments at 8 (citation omitted).

[17] Orloff v. FCC, 352 F3d 415, 419 (D.C. Cir. 2003) *quoting* Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, *Second Report and Order*, 9 FCC Rcd 1411, 1420 (1994).

Further, a non-discrimination roaming arrangement requirement would severely hamper the competitive nature of the CMRS market. As U.S. Cellular states, the Commission "should not assume that all unlike terms are unreasonable."[18] As noted above, there are numerous commercial factors that carriers take into account in negotiating roaming arrangements, including pricing, volume of traffic, coverage area, feature and service offerings, and other roaming options in the market. As just one example, Verizon Wireless notes that market forces spur deployment of advanced services, as carriers with 2.5G or 3G networks "are willing to give favorable roaming terms to other carriers that have implemented similar advanced technology in their networks so that when customers roam they can use these same advanced services."[19] A properly functioning marketplace accounts for these material distinctions.

Finally, a "most-favored nation" requirement would eradicate the dynamic roaming market that exists today and straightjacket it for years to come. As one commenter noted, rates "would likely migrate to the average roaming rates a carrier now charges, and many roaming rates would necessarily increase."[20] These inevitable increases in roaming costs, in effect subsidizing smaller carriers, would jeopardize the continued viability of no-charge roaming plans, a result clearly contrary to the public interest.

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[18] Comments of the United States Cellular Corp., WT Docket No. 05-265, at 11 (filed Nov. 28, 2005)

[19] Verizon Wireless Comments at 10.

[20] *Id.* at 19.

For these reasons, the Commission should reject calls to intervene in the highly competitive roaming market.

Respectfully submitted,

ALLTEL CORPORATION

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