

**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
)	
Joint Petition for Commission Inquiry Pursuant to Section 403 of the Communications Act)	

OPPOSITION OF VERIZON WIRELESS

Pursuant to Section 1.45 of the Commission’s Rules, Verizon Wireless hereby submits its opposition to the Joint Petition For Commission Inquiry Pursuant to Section 403 of the Communication Act (“Joint Petition”) filed in the above-captioned proceeding by a group of eight wireless carriers and a small carrier trade association (“Petitioners”). In the Joint Petition, the Petitioners ask the FCC to invoke its authority under Section 403 of the Communications Act to compel wireless carriers to submit for FCC inspection detailed information about wireless carrier roaming agreements.¹

In particular, Petitioners ask the FCC to require all wireless providers to create and submit a list of all the roaming agreements to which it is a party. Carriers would also have to identify the date, term, parties, rates and geographic scope of each agreement as well as indicate whether the agreement is reciprocal and symmetrical (although what Petitioners mean by those terms is not clear). Petitioners ask the FCC to review the carrier lists and require carriers to submit to the Commission certain agreements of its choosing as well as agreements with Mobile

¹ 47 U.S.C. § 403.

Virtual Network Operators (“MVNOs”) and/or resellers, agreements with affiliates, and schedules of their retail rates. Petitioners envision that the FCC would use the data and agreements submitted by carriers to formulate a report on the state of the marketplace that would assist the FCC in its decision making in the roaming docket.²

As discussed below, Verizon Wireless opposes the Joint Petition and any effort to require carriers to submit carrier agreements to the FCC in this proceeding.

I. OPPOSITION

A. **There is no basis for the Commission to determine that the record in this proceeding is incomplete.**

Verizon Wireless opposes the effort by some carriers to enlist the Commission in a fishing expedition that would force other carriers to create and submit detailed roaming-related reports and agreements. The FCC should deny the petition primarily because requiring carriers to file roaming agreements is not necessary. Petitioners’ request is based on the faulty premise that carriers have failed to respond to the FCC’s request for information that will enable the FCC to evaluate the market for roaming services and determine if a market failure exists.

Petitioners state, for example, that the industry largely failed to respond to the FCC’s request for specific roaming agreement data in the FCC’s *Notice of Proposed Rulemaking* issued in 2000.³ However, the 2000 NPRM did not ask carriers to submit “specific roaming agreement data” as alleged by the Joint Petitioners. Moreover, at no point in closing the 2000 NPRM

² Joint Petition at 7-8.

³ Joint Petition at 3, *citing* Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, *Notice of Proposed Rulemaking*, WT Docket No. 00-193, 15 FCC Rcd 21628 (2000) (hereinafter “2000 NPRM”).

proceeding did the Commission indicate that the lack of information from carriers was a reason for terminating that proceeding without action. Rather, in the instant *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, the Commission stated only that the record had become stale.⁴

Similarly, in the instant proceeding, there is absolutely no indication that carriers have failed to provide the FCC with the type of information it requested or that it needs to make a determination as to whether there is any market failure. To the contrary, Verizon Wireless submitted comments and reply comments that were each over twenty pages long. These filings contained a detailed analysis of the market, an explanation of the factors Verizon Wireless considers in negotiating automatic roaming agreements, technical analysis about automatic roaming, and specific information about Verizon Wireless' automatic roaming agreements with certain carriers. Several other carriers on both sides of the issue submitted similarly detailed comments and reply comments. Indeed, the record in this proceeding includes 21 sets of initial comments and 24 sets of reply comments comprising literally hundreds of pages from a number of industry participants, as well as detailed studies from multiple economists.

Moreover, some of the same parties who now want to expand the proceeding through a mandatory data collection previously took the contrary position that the record was so voluminous and detailed that they needed more time to file replies. On December 5, 2005, various carriers and trade associations submitted a joint request to the FCC for additional time to

⁴ 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 and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 15047, 15055 (2005) (Hereinafter "2005 MO&O and NPRM").

file reply comments.⁵ As part of that request, the requesting parties cited the need “to review and analyze the voluminous record submitted in the initial comment round . . .” The requesting parties stated:

The Commission [in this proceeding] placed significant emphasis on the need to establish a thorough record in this proceeding and requested specific, granular information on a variety of issues that raise complex economic and technical considerations [citation omitted]. Commenters have responded accordingly, as numerous parties filed comments totaling hundreds of pages and containing detailed factual data and economic and technical analyses.⁶

Among the parties that signed the Extension Request were the Rural Telecommunications Group and Leap Wireless, two of the parties that are now petitioning the FCC to collect roaming agreement information under Section 403 of the Act, arguing that the record does not contain sufficiently detailed information. Moreover, in granting the Request for Petition, the Wireless Telecommunications Bureau stated, “We believe that all parties will benefit from an extension of the reply comment deadline by allowing parties sufficient time to review the complex technical, economic and competitive issues being raised in this proceeding.”⁷

It is clear from the record amassed in this proceeding and the statements about the record made by parties signing in the Extension Request, as well as by the Wireless Telecommunications Bureau in the Extension Order, that the record already includes detailed

⁵ Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Request for 30-Day Extension of Reply Comment Deadline, WT Docket No. 05-265, filed December 5, 2005 (hereinafter “Extension Request”).

⁶ *Id.* [Emphasis added].

⁷ Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Request for 30-Day Extension of Reply Comment Deadline, WT Docket No. 05-265, DA 05-3183, *Order* (released December 14, 2005) (hereinafter “Extension Order”).

factual information and economic and technical analysis. There is therefore no basis for now finding that the record is in any way deficient.

Even if the record were deficient, however, the Commission would not need to invoke its Section 403 powers to compel the production of record evidence. Section 403 of the Communications Act is almost always invoked by the FCC in the context of an enforcement investigation into an alleged violation of the Communications Act or FCC rules. While the Commission has used Section 403 to require entities to submit information in a rulemaking proceeding, using the Section 403 investigatory powers in that manner is very rare. In fact, to Verizon Wireless's knowledge, the Commission has not previously invoked Section 403 in a rulemaking proceeding months after the completion of the comment cycles. At a minimum, therefore, the Joint Request raises significant questions of first impression for the Commission. Section 403 orders are rare in the rulemaking context because, in a rulemaking proceeding, the Commission has other very effective means of obtaining information. Notably, participants in a rulemaking proceeding have an incentive to provide information to the Commission in order to avoid a particular result. Thus, all the FCC staff needs to do is let it be known that it needs information of a particular type to help convince FCC staff to recommend a particular decision. This type of give and take happens quite often in *ex parte* meetings and is effective in securing additional data.

B. Carrier Roaming Agreements Would Not Provide Evidence of Unreasonable Discrimination.

In support of their request to compel production of carrier agreement data, Petitioners state that “[t]he best evidence to resolve this dispute is the agreements themselves.”⁸ Verizon Wireless disagrees. Even if roaming agreement data and/or the underlying agreements were submitted to the FCC, that information would not be dispositive or even necessarily relevant on the issue of discrimination. Section 202 of the Communications Act only prohibits *unreasonable* discrimination. In order to make a determination as to whether a contract rate, term or condition constitutes unreasonable discrimination, the Commission would need to know the circumstances that led to that particular rate, term or condition being put in an agreement and the circumstances of the agreement or agreements to which it is being compared.

To illustrate this point, assume two carriers operate in the same geographic market and that Verizon Wireless needs coverage in that market. One might expect in these circumstances that the terms of the agreements with each carrier would be the same. However, one carrier may offer superior coverage in a part of the market where Verizon Wireless customers have a desire to roam. In this situation, therefore, it is perfectly reasonable that Verizon Wireless would be willing to pay more and/or charge less for roaming to a carrier that offers superior coverage. Yet the circumstances that make that rate difference reasonable may not be evident to the FCC on the face of the roaming agreements with each carrier.

⁸ Joint Petition at 5.

In this example, therefore, even if the FCC were to get copies of both agreements, it could not draw any conclusions as to the existence of unreasonable discrimination based on those documents alone. It would also have to examine the details of each negotiation, the circumstances surrounding the deals, and other information before it could assess the reasonableness of such discrimination.⁹ For this reason, requiring carriers to submit roaming agreements would not help the FCC determine if unreasonable discrimination exists and could actually lead to misleading conclusions about carrier roaming practices.¹⁰

A carrier that believes its roaming agreement includes unreasonably discriminatory terms has a remedy under the complaint provisions of the Communications Act and the FCC's rules. The discovery rules for complaint proceedings provide ample vehicles for the carrier to obtain confidential information, without creating the undue burden and legal issues that would be raised were the Commission to order massive production of data from the industry in a rulemaking

⁹ In addition, Verizon Wireless provides automatic roaming service to some carriers under old agreements, sometimes negotiated by its predecessors in interest, that have not been renegotiated in some time. Most often, this is because there is a small amount of traffic exchanged between the carriers and neither has the incentive to negotiate a new agreement. While the rates in these "legacy agreements" may be out of line with agreements negotiated more recently, and Verizon Wireless' roaming partner has been content with the existing arrangement, forcing disclosure of the terms of that roaming arrangement would provide an obvious target for advocates of new regulation to seize on and (mistakenly) use as the basis for "proving" unreasonable discrimination.

¹⁰ Similarly, as Verizon Wireless argued in its Reply Comments, retail and resale rates are established based on an entirely different set of criteria than roaming rates. As such, differences between roaming rates and retail and resale rates are entirely reasonable and lawful under Section 202 of the Act. *See* Verizon Wireless Reply Comments at 17-19. Accordingly, requiring carriers to submit lists of retail rates and/or wholesale agreements would not assist the Commission in determining if automatic roaming practices are unreasonably discriminatory.

proceeding. For this reason as well, there is absolutely no justification for invoking Section 403 to compel data in a generic rulemaking proceeding.

C. Requiring Carriers to Submit Roaming Agreement Data Would Place A Significant Burden on Carriers and Jeopardize Confidential Information.

Even if submitting carrier roaming agreements were necessary and would provide reliable evidence of discrimination, requiring carriers to submit carrier agreement data and/or carrier agreements would be very burdensome and would jeopardize confidential information. Large carriers like Verizon Wireless have upwards of 100 or more automatic roaming agreements with other carriers. Requiring Verizon Wireless to sift through each agreement in order to submit data about each agreement to the FCC would place a significant burden on its resources. Given that Verizon Wireless has demonstrated in this Opposition that carrier agreement data is not necessary and could be misleading, the Commission should determine that the burden imposed by the proposed requirement is not justified.

Carriers are also reluctant to submit roaming agreements due to concerns that confidential information would be released. As the Petitioners acknowledge, carrier roaming agreements are treated as confidential information and often have clauses preventing parties from revealing contract terms. While the Commission can offer some protection from public release of information collected under Section 0.459 of the Commission's Rules, the Commission cannot guarantee that any request for confidential treatment will be granted or that information deemed confidential by the carrier will not be publicly released in response to a Freedom of Information Act request. Moreover, if the Commission is to use any of the information provided in an order in the proceeding, it will necessarily have to make the information public, potentially compromising carriers' legitimate interests in confidentiality. Alternatively, if the Commission

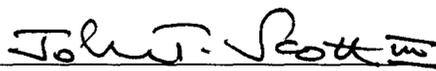
bases any new rules or requirements on confidential information that it is not able to discuss in its order adopting such requirements, the Commission would create serious Administrative Procedures Act issues that would make any such order subject to challenge.

II. CONCLUSION

For the reasons stated above, the Commission should reject the Joint Petition and deny Petitioners' request to require carriers to submit carrier roaming agreement data to the FCC in the context of the above-captioned rulemaking proceeding.

Respectfully submitted,

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