

May 18, 2006

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Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
455 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: Re-Examination of Roaming Obligations of Commercial Mobile Radio Services Providers (WT Docket No. 05-265); Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services (WT Docket No. 00-193), Ex Parte Submission

Dear Ms. Dortch:

United States Cellular Corporation ("USCC"), a participant in the above-referenced proceeding, hereby comments on the petition for a "Section 403" Commission inquiry filed by certain parties and to the responses to that petition filed by others.<sup>1</sup>

In our Comments and Reply Comments in the above dockets, USCC argued that the FCC should adopt a policy statement requiring that: (a) wireless carriers continue to make available their networks to the customers of other carriers for "automatic" roaming on reasonable terms and conditions; and (b) wireless carriers make reasonable accommodations to the "data roaming" needs of other carriers. USCC further argued that the present roaming marketplace did not justify a new prescriptive rule regarding automatic roaming or direct FCC supervision of a multitude of individual roaming arrangements. USCC would note that both the petition and oppositions unwittingly demonstrate the wisdom of USCC's cautious and incremental approach to this issue.

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<sup>1</sup> See "Petition for Section 403 Inquiry" ("Petition") filed April 25, 2006 by AIRPEAK Communications, LLC; Airtel Wireless L.L.C.; Cleveland Unlimited Inc.; Leap Wireless International, Inc.; Metro PCS Communications, Inc.; Punxsutawny Communications; Rural Telecommunications Group, Inc. and SouthernLinc Wireless ("Petitioners") and the May 6, 2006 Oppositions to the petition filed by Cingular Wireless, LLC ("Cingular"); Verizon Wireless ("Verizon"); and Sprint Nextel ("Oppositions").

The petition would require all wireless carriers to prepare and submit to the Commission a list of all of their roaming agreements, which would also disclose the parties to the agreements, the terms of such agreements, the territories covered by them and the rates charged. The FCC would then require that a representative sample of the agreements be submitted and would evaluate those agreements to determine whether discrimination in rates or other terms and conditions was occurring as part of its consideration of the need to act on automatic roaming in these dockets.

To this proposal, a variety of objections have been made. The record, it is argued, is already sufficient<sup>2</sup> and does not demonstrate a need for FCC action. The data collection would be unduly burdensome and would risk the disclosure of trade secrets and other confidential information.<sup>3</sup> Requiring such a "Section 403" submission is unprecedented in a rulemaking proceeding and might also violate the Paperwork Reduction Act.<sup>4</sup> Disparity in roaming rates is not in and of itself evidence of "unreasonable" and thus unlawful discrimination.<sup>5</sup> Finally, disparities between roaming charges may be due to other, legitimate reasons which the agreements would obviously not discuss.<sup>6</sup>

Thus, it would appear that the FCC is facing a dilemma. There is reason to believe there has been unlawful discrimination in the roaming practices of some of the larger carriers toward smaller carriers. However, such discrimination is difficult to prove and the Commission does not now have sufficient evidence to adopt a prescriptive automatic roaming rule, let alone a rule which includes a "default" roaming rate, the upper limit of which would be the lowest rate offered to a carrier's own customers. However, the Section 403 inquiry requested by the Petitioners, while it might obtain useful evidence, would certainly also be burdensome and would threaten to expose confidential information, might not be lawful and could not prove discrimination in particular circumstances without a careful consideration of other factors, which the inquiry would not elicit.

USCC submits once again that the appropriate way resolve this dilemma is a forward looking policy statement, rather than a rule or set of rules, along the lines it has previously described. USCC asks the FCC to adopt a policy statement which would essentially require the larger carriers to make their networks available to smaller carriers for inbound roaming on reasonable terms and conditions. Allegations of discrimination in roaming rates or other terms and conditions could be dealt with pursuant to Sections 201 and 202 of the Communications Act, with

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<sup>2</sup> Petition, pp. 7-8 Verizon Opposition, pp. 2-4; Cingular Opposition, passim.

<sup>3</sup> Sprint Nextel Opposition, pp. 1-7.

<sup>4</sup> Sprint Nextel Opposition, pp. 6-8.

<sup>5</sup> Verizon Opposition, pp. 6-8.

<sup>6</sup> Ibid.

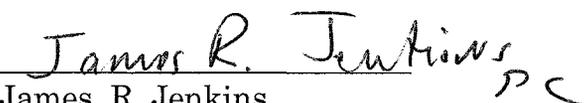
the knowledge that the FCC had issued a policy statement dealing specifically with roaming in this context. USCC believes the FCC should not regulate roaming rates but should be free to consider too great a disparity among the roaming rates offered by a carrier in the same market as evidence of discrimination, which evidence could also be rebutted by an appropriate showing. However, we also believe that after the FCC had made its expectations clear there would be few actual complaints.

To the extent the national carriers are now offering smaller carriers the right to roam in their markets at rates comparable to those they offer to other carriers, they would be in compliance with the policy statement. In the last decade, roaming rates have declined. That trend would also not be affected by the policy statement, as long as smaller carriers received the same opportunity to have lower roaming rates as did larger carriers. We also agree that the FCC should not prop up roaming rates, and that smaller carriers should not be allowed to charge larger carriers grossly asymmetrical rates either.

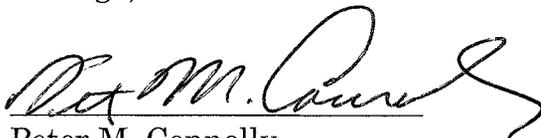
USCC believes that a Section 403 inquiry, while well intended, would be ill advised because it could not prove discrimination in particular cases and thus could not be the basis for a "national" rule. As we envision the proposed policy statement, it would be prospective in nature and would require nothing more and nothing less than preserving the opportunity for "inbound" voice and later data roaming for smaller carriers or larger carriers' systems on reasonable and non-discriminatory terms.

A policy statement offers the FCC a way out of its current impasse and should thus be carefully considered.

Very truly yours,

  
James R. Jenkins

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