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June 2, 2006

57739.00013

**VIA ELECTRONIC FILING (ECFS)**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Notice of *Ex Parte* Communication  
Reexamination of Roaming Obligations of Commercial Mobile Radio  
Service Providers (WT Docket No. 05-265)

Dear Ms. Dortch:

On June 1, 2006, David Siddall, Liz Sachs, Jim Barker, David Rines, Barry Blonien, J. Steven Rich, and Samantha Mortlock, representing the parties petitioning the Commission for a Section 403 Inquiry in this proceeding, met with the following members of the Wireless Telecommunications Bureau staff: David Furth, Walter Strack, Paul Murray, Nese Guendelsberger, Christine Clearwater, John Branscome and Eugenie Barton.

The purpose of this meeting was to discuss issues raised in the Petition for Section 403 Inquiry and the Reply to the Oppositions. A summary of the issues presented was handed out and is attached to this Notice.

In compliance with Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, this letter is being filed electronically in the above docket and sent by email to each participant.

Very truly yours,



David R. Siddall  
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

DRS:dfr  
Attachment

## PRESENTATION REGARDING THE REQUEST FOR A SECTION 403 INQUIRY TO REVIEW A SAMPLING OF ROAMING AGREEMENTS

- Automatic roaming is vitally important to the customers of the non-national CMRS carriers in today's marketplace.
- Competition is lacking in the wholesale automatic roaming market.
  - As a practical matter, national carriers often have a monopoly or duopoly for roaming because roaming partners must use the same technical standard.
  - Market power allows national carriers to engage in unjust and unreasonable discriminatory practices, such as extracting higher rates or unreasonable terms from smaller carriers that have no other option for their customers.
- In the *2000 CMRS Roaming NPRM* the Commission committed to considering an automatic roaming requirement if practices by some carriers were hurting consumers.
  - Higher rates and unjust discrimination directly harm consumers.
  - Smaller carriers consistently made claims of unjust discriminatory treatment in the record of the 2000 proceeding, in the record of subsequent wireless carrier merger proceedings, and in the record of this proceeding.
- The current NPRM calls for evidence of discriminatory practices. The three large national carriers make significant admissions in their oppositions that confirm the existence of discrimination.
- The admitted existence of such discrimination demands further inquiry by the Commission to examine whether such discrimination is reasonable or permissible under the Act.
  - It would be arbitrary and capricious for the Commission to conclude hastily that the discrimination must be reasonable because there is a perception of CMRS competition in the downstream market.
  - It should be the burden of the nationwide carriers to demonstrate some efficiency or procompetitive explanation for their discrimination, and the corresponding harm to consumers, in light of Sections 201 and 202 of the Act.
- The best means to determine whether the discrimination is unreasonable is through review of sample roaming agreements. However,
  - confidentiality provisions often prevent submission of the agreements, and
  - in some instances carriers may fear retaliation.

- Consequently, a diverse group of carriers filed a petition for a Section 403 Inquiry to obtain FCC review of actual representative roaming agreements. Notwithstanding the objections of three of the national carriers:
  - Petitioners agreed that full protection should be extended to protect the agreements pursuant to the Commission's confidentiality rules; and
  - the agreements would be protected from disclosure under the Freedom of Information Act because they contain sensitive confidential business information.
- No small or regional carrier opposed the request.
- Petitioners suggested a two-step process.
  - Each carrier would first file a list of its roaming agreements, identifying (1) date of the agreement; (2) its term; (3) the parties thereto; (4) the geographic area covered; and (5) whether the rates and services set forth in the agreement are reciprocal and symmetrical.
  - After reviewing the summary information, the Commission would identify a representative sample of agreements to review and compel their production.
- Especially given the admissions set forth in the Oppositions, the Commission should adopt a protective order and request a representative sample of roaming agreements so that it can make a determination based on facts.
- Petitioners are confident that any impartial review of a fair sample of such agreements inevitably will confirm that widely disparate terms and conditions for the same product – automatic roaming – exist and that in most markets there usually is only a single carrier, or at most two, from which automatic roaming is available due to the necessity to match technological standards.
- To remedy these circumstances, the Commission should adopt rules governing automatic roaming.