

July 18, 2007

VIA ELECTRONIC SUBMISSION

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Reexamination of Roaming Obligations of Commercial Mobile Radio Service
Providers; WT Docket No. 05-265

Dear Chairman Martin:

As the FCC proceeds with its evaluation of the issues presented in the above referenced Roaming Docket, the undersigned carriers and organizations wish to highlight for the Commission the importance of consumers having access to data roaming. We believe that roaming for data services is a critical component of CMRS service. As you are undoubtedly aware, data services may eclipse voice services in the not too distant future. Therefore, it is essential for the Commission to address full and fair access to data as well as voice roaming in this proceeding.

The market for data services is enormous and growing. The 11th CMRS Market Competition Report shows, for example, that SMS traffic volume doubled just from 2004 to 2005 (2006 data not yet available), and the volume of photo messaging and other multimedia messaging services is also increasing rapidly (carriers reported a tripling in volume from 2004 to 2005).¹ Industry studies also demonstrate that data services will have a significant impact on the US economy. For example, the CTIA-sponsored Ovum report in 2005 stated that wireless data services are projected to generate over \$600 billion in productivity gains in the US over the next decade.²

Practical considerations also dictate that the Commission not limit its roaming policy to voice services. Data services are typically bundled in a single handset with voice services and are usually marketed in combination with mobile voice service. Consumers demand and expect both

¹ / *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 06-17, Eleventh Report, 21 FCC Rcd 10947, 11014, paras. 170 – 171 (2006) (“11th CMRS Market Competition Report”).

² / *See David Lewin & Roger Entner, Ovum, “Impact of the US Wireless Telecom Industry on the US Economy: A Study for CTIA – The Wireless Association,”* (2005), p. 5.

voice and data services in a single handset. It makes no sense from a policy perspective to attempt to bifurcate these mobile services.

The BlackBerry and its counterparts are good examples of how data services have become indispensable business tools. For example, the BlackBerry service provides retail customers with the ability to exchange email and to access the internet combined with the ability to make phone calls. iDEN BlackBerry also allows users to communicate via push-to-talk. Text messaging has been shown to be important during emergencies when it can be the best (and sometimes the only) means of communications available, and the 911 community is also contemplating how to incorporate text-messaging into emergency communications. Furthermore, certain segments of the population – such as the hearing and speech impaired – depend more on wireless data services. Consequently, data service is a basic element of wireless service rather than an extra feature, and consumers demand and expect nationwide access. There are still many areas where regional and rural carriers are the only service provider option. These consumers would be particularly disadvantaged if there was no automatic roaming for data services in these areas.

Now is the time to set the clear, unambiguous regulatory framework for all roaming services. Accordingly, we believe that a regulatory policy that requires carriers to provide inbound automatic roaming for all services that a carrier is currently offering (voice, data or dispatch) to any requesting carrier that has a technologically compatible air interface is in the public interest. These services should be provided under rates, terms and conditions that are just, reasonable and non-discriminatory. We understand that there may be technical issues associated with data roaming that have not been fully worked out. Technical issues frequently arise in Commission proceedings but have seldom presented insurmountable impediments to advancing the public interest. Nevertheless, carriers in this proceeding have indicated that they are working on these solutions. We believe it is reasonable to presume that if a carrier is already providing data, voice or dispatch roaming to other carriers using the same air interface, the roaming service is technically feasible (thereby shifting the burden of proving it is not technically feasible to the carrier refusing service).

Finally, we believe that the Commission's jurisdiction over data roaming falls under Title II of the Communications Act since data roaming, like voice roaming, at the wholesale level is a telecommunications service. Because the transaction and contractual relationship for the service is between two carriers, the provision of automatic roaming is a wholesale service that must be analyzed at the wholesale level.³ Thus, the nature of the Commission's authority depends on the

³ / See e.g., *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3513, 3517, note 19 (2007) ("*Time Warner Order*") ("To resolve the confusion over the meaning of 'wholesale,' we affirm the longstanding Commission usage of a wholesale transaction of a service or product as an input to

statutory classification of wholesale automatic roaming, and the classification of the retail service provided to the ultimate end user via automatic roaming is irrelevant.⁴ This analytical framework was most recently employed in the *Time Warner Order* adopted in March 2007 by the Wireline Competition Bureau. The Commission also has expansive Title III jurisdiction to impose regulations on services using radio spectrum, and voice and data roaming rules can be enacted consistent with this authority. Under Title III, it is irrelevant whether the service being provided is voice or data, whether it is a “telecommunications” or “information” service.⁵ Therefore, pursuant to its statutory mandate under Section 301, the FCC is empowered to enact roaming obligations that encompass data as well as voice services – as a means of efficiently managing the use of the nation’s radio spectrum.

This issue is an important one which, if not addressed in this proceeding, will require almost immediate reexamination. Thus, the Commission should take this existing opportunity to advance the policy of broad access for all consumers to these needed services.

Respectfully submitted,

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a further sale to an end user, in contrast to a retail transaction for the customer’s own personal use or consumption.”).

⁴ / See *Time Warner Order* 22 FCC Rcd at 3520-3521, para. 15.

⁵ / See, e.g., *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, FCC 07-30 (rel. March 23, 2007), paras. 35 – 36 (“*Wireless Broadband Internet Access Declaratory Ruling*”) (holding that the classification of wireless broadband Internet access service as an “information service” does not affect the general applicability of Title III to this service, since the service is using radio spectrum).

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