

LUKAS, NACE, GUTIERREZ & SACHS

CHARTERED

1650 TYSONS BOULEVARD, SUITE 1500
MCLEAN, VIRGINIA 22102
703 584 8678 • 703 584 8696 FAX

WWW.FCCLAW.COM

RUSSELL D. LUKAS
DAVID L. NACE
THOMAS GUTIERREZ*
ELIZABETH R. SACHS*
GEORGE L. LYON, JR.
PAMELA L. GIST
DAVID A. LAFURIA
B. LYNN F. RATNAVALE*
TODD SLAMOWITZ*
STEVEN M. CHERNOFF*

CONSULTING ENGINEERS
ALI KUZEHKANANI
LEILA REZANAVAZ
OF COUNSEL
JOHN J. MCAVOY*
J.K. HAGE III*
LEONARD S. KOLSKY*
HON. GERALD S. MCGOWAN*
TAMARA DAVIS-BROWN*

*NOT ADMITTED IN VA

Writer's Direct Dial
(703) 584-8661
dnace@fcclaw.com

July 18, 2007

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, DC 20554

**Re: Notice of Oral *Ex Parte* Communications:
WT Docket Nos. 06-150, 06-169; and 96-86; PS Docket No. 06-229
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; and**

**Docket No. 05-265 - Reexamination of Roaming Obligations of CMRS
Providers**

Dear Madam Secretary:

On behalf of Rural Cellular Association ("RCA"),¹ and in accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. Section 1.1206, we hereby provide you with notice of oral *ex parte* presentations in connection with the above-captioned proceedings.

Presentations occurred on July 17, 2007 in meetings with the following Commission personnel:

Barry Ohlson and Renee Crittendon, advisors to Commissioner Jonathan S. Adelstein;
and

Angela E. Giancarlo, advisor to Commissioner Robert M. McDowell.

¹ RCA is an association representing the interests of nearly 100 small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing wireless service providers.

July 18, 2007

Page 2

Attending the meetings on behalf of RCA were the undersigned and Adam Thomas, Summer Associate employed by this law firm.

700 MHz Issues

In the referenced meetings RCA's representatives requested that the 700 MHz auction and service rules to be adopted by the Commission:

- A. Include a license for paired spectrum in the Upper 700 MHz Band that would be offered with EA or CMA-sized service areas and without "Open Access" obligations.
- B. Provide for geographic build-out requirements in both the Lower and Upper 700 MHz Bands that have a "keep-what-you-use" standard combined with construction milestones with proper incentives for carriers to make prompt use of 700 MHz spectrum acquired in the auction. The standards should not allow a licensee that misses the first or subsequent milestones to have a second chance to meet them late in the initial license term.
- C. Include a "Rural Market Bidding Credit" to promote broadband service availability in rural markets, such as the following: Bidders for Block B CMA licenses in the Lower 700 MHz Band would qualify for a 20% (or larger) bid credit for any of the 428 Rural Service Areas if they certify that (i) they are not a "large wireless carrier" or a "large cable operator" (i.e., companies with average gross revenues exceeding \$5 billion for the three years preceding the auction) and (ii) that they do not have a "material relationship" with a "large wireless carrier" or a "large cable operator."

Automatic Roaming Issues

In the same meetings RCA's representatives discussed the need for Commission rules to promote the availability of automatic roaming agreements between carriers for voice and all forms of data services, including wideband data. Consumers need and should have access to voice and data services at all levels, including 3G and higher, when they leave their home carrier's service area. RCA members have constructed EVDO facilities in some portions of their service areas but have been rebuffed by larger carriers with compatible networks whenever an automatic roaming agreement has been requested. Where the market fails, as it has here, the Commission must step in to allow consumers to use their wireless equipment to access other carriers' high speed networks.

RCA requests that the Commission act promptly to require licensees to negotiate in "good faith" to enter into automatic roaming agreements where it is technically feasible to do

July 18, 2007

Page 3

so. RCA proposed the good faith negotiation standard in comments filed November 28, 2005 in WT Docket No. 05-265.²

While the Commission can and should exercise its Title I ancillary jurisdiction as necessary to protect consumer interests to promote the availability of automatic roaming (“AR”), the Commission also should exercise its Title II jurisdiction over AR. Roaming (i) should be treated as a wholesale service, and (ii) when AR is analyzed at the wholesale level, it is a telecommunications service that is subject to the Commission’s Title II authority.³ This classification is consistent with past Commission rulings regarding cable modem, wireline and wireless broadband Internet access services as well as the *Brand X* case.⁴

A. Under Title II, The Regulatory Status of Roaming Must be Analyzed at the Wholesale Level

Because the transaction and contractual relationship for the service is between two carriers, the provision of AR is a wholesale service, and the classification of the retail service provided to the ultimate end-user via automatic roaming is irrelevant.⁵ Analysis of AR must focus on the nature of the service provided at the wholesale, not the retail, level.

B. Under Title II, Roaming is a Telecommunications Service

When carriers enter into AR agreements the relationship involves each carrier purchasing from the other service on a wholesale basis. The carrier is the user under that relationship, not the retail subscriber. The Carrier/user’s expectation is that the service provided will be transport by the host carrier of communications over its system to and from the requesting [carrier/user]’s roaming subscriber.⁶ AR meets the definition of “Telecommunications”: “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” 47 U.S.C. § 153(43). The host carrier does not change

² RCA’s Comments listed certain actions or practices by carriers that would be viewed as a violation of the duty of a service provider to negotiate roaming agreements in good faith. See Comments at 4-5.

³ See SouthernLINC Wireless *Ex Parte* Communication, WT Docket No. 05-265 (filed July 2, 2007) pp. 4-10 (“SouthernLINC Ex Parte”)

⁴ *National Cable Telecommunications Association v. Brand X Internet Services*, 545 U.S. 967 (2005).

⁵ *Time Warner Cable Request for Declaratory Ruling the 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, 3520-3521 at para. 15 (2007).

⁶ See *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) at para. 30

July 18, 2007

Page 4

the form or content of the information sent to or received by the roaming customer (any changes that do occur are part of routing the message, thus specifically exempted from classification of an "information service" for these variances. 47 U.S.C. § 153(20).) And AR meets the definition of "Telecommunications Service" -- "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available immediately to the public, regardless of the facilities used." 47 U.S.C. § 153(46). Because it is properly classified as a telecommunications service, the provision of wholesale AR is subject to the provisions of Title II.

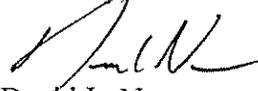
In addition to its authority to under Titles I and II, the Commission may also act pursuant to its plenary authority under Title III to impose roaming obligations on radio licensees for voice or data services transmitted over their networks. In this respect it would not be necessary for the Commission to determine whether the data service offered is a "telecommunications" service or an "information" service, or if it is interconnected with or otherwise "touches" the public switched telephone network.⁷

Summary

The Commission has before it a unique opportunity to expedite the availability of broadband services to rural America. RCA respectfully urges the Commission to adopt 700 MHz auction and service rules with (A) a mix of geographic license sizes in both the Upper and Lower 700 MHz Bands, including an EA or CMA-sized area in the Upper Band without Open Access conditions, (B) geographic area build-out requirements for all 700 MHz licenses that require prompt construction with no second chance to satisfy an earlier benchmark by a showing of construction later in the license term, and (C) a "Rural Market Bidding Credit" to promote broadband service availability in rural markets.

With regard to automatic roaming RCA requests that the Commission require licensees to negotiate in good faith to enter into automatic roaming agreements for all forms of voice and data services where it is technically feasible to do so. In particular there is an urgent need to facilitate automatic roaming for wideband data. The Commission should exercise its Title I, Title II and/or Title III jurisdiction to protect consumers and assure that no carrier unreasonably denies consumers the benefits of data services when they leave their home carrier's service area.

Sincerely,



David L. Nace

Attorney for Rural Cellular Association

cc: Chairman Kevin Martin (by email)
Commissioner Michael Copps (by email)

⁷ See, SouthernLINC Ex Parte at 11-14.

July 18, 2007

Page 5

Commissioner Jonathan Adelstein (by email)

Commissioner Deborah Tate (by email)

Commissioner Robert McDowell (by email)

Erika Olsen (by email)

Bruce Gottlieb (by email)

Barry Ohlson (by email)

Aaron Goldberger (by email)

Angela Giancarlo (by email)

Renee Crittendon (by email)

Fred Campbell (by email)

John Branscome (by email)

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