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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, DC 20554

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

Dear Ms. Dortch:

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless (“SouthernLINC Wireless”) hereby replies to the *ex parte* letter filed by Verizon Wireless in response to SouthernLINC Wireless’ analysis of the appropriate legal framework for addressing data roaming.¹ In its letter, Verizon makes several points regarding data roaming that, ultimately, do not affect its status as a wholesale telecommunications service subject to the provisions of Title II of the Communications Act.

The Nature of Data Roaming

Verizon either misunderstands or mischaracterizes the fundamental nature of data roaming by incorrectly focusing on an “integrated” service that is being provided to the retail end user, rather than on the underlying wholesale service that is being provided to the requesting carrier – *i.e.*, the actual customer purchasing automatic roaming through an automatic roaming agreement. Verizon’s approach thus runs directly counter to established Commission precedent, as well as the Supreme Court’s decision in the *Brand X* case.

In *Brand X*, the Supreme Court held that the definition of a service or product offered by a company is determined by what the purchaser “perceives to be the integrated finished product”

¹ / Letter from Andre J. Lachance, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed July 20, 2007) (“Verizon Letter”) (responding to the Letter from Christine M. Gill, Counsel for SouthernLINC Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed July 2, 2007)).

that is being provided.² In this case, the service in question – wholesale automatic roaming – is being offered to and purchased by another carrier, not the carrier’s end-user retail customers. The finished product being offered to and purchased by the carrier customer is transmission, without additional service or functionality of the type identified by the Commission as characteristics of an information service component, such as generating, acquiring, storing, transforming, processing, retrieving, or utilizing information. These “information service” components are offered not by the “host” carrier, but by the carrier customer to its own retail subscribers – a point that Verizon itself acknowledges in its letter.

Specifically, Verizon states that “services requiring access to specific data applications on the home operator’s network need to be routed back to the home network content providers’ application servers by the host operator.”³ In other words, according to Verizon, the host carrier must transport traffic to the home carrier’s network, because it is the *home carrier* that provides the information service sought by the retail end user – the very point made by SouthernLINC Wireless in its July 2 letter.

Verizon Simply Describes Authentication and Routing Functions

Verizon seeks to distinguish the Commission’s holding in the *Time Warner* case by describing data roaming as involving “complex arrangements between the host and home operator” in which the host operator is “actively engaged” in providing the retail roaming customer with access to information services.⁴ However, the functions described by Verizon as necessary for the provision of data roaming services – including the use of Simple IP (“SIP”) and Mobile IP (“MIP”) in conjunction with Layer 2 Tunneling Protocol (“L2TP”)⁵ – are essentially addressing, registration, and authentication functions such as those used in the routing of any roaming call, whether voice, data, or dispatch.

For example, Verizon states that “[w]ith MIP and SIP utilizing L2TP, the host operator engages in the set up and authorization process and provides the end user with access to the home operator’s network” and that “[a]ll methods require interaction between the host operator and the home operator to determine the nature of the data services for which a roaming customer is

² / *Nat’l Cable Telecomms. Ass’n v. Brand X Internet Services*, 545 U.S. 967, 990 (2005) (“*Brand X*”).

³ / Verizon Letter at 2.

⁴ / Verizon Letter at 2 – 3 (citing *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 (2007) (“*Time Warner Order*”).

⁵ / Verizon Letter at 1 – 2.

eligible.”⁶ The process described by Verizon is no different than the process that occurs when any call is made through automatic roaming – each call likewise requires a process of authentication and authorization between the host carrier and the home carrier to determine whether the caller is eligible to receive the service he or she is requesting.⁷

Time Warner Supports the Application of Title II to Wholesale Roaming Services

Verizon also seeks to distinguish *Time Warner* on the basis that, in *Time Warner*, “the ILEC provided TWC with pure transport and had no involvement with the end user.”⁸ However, this exactly describes the scenario involved in the provision of wholesale automatic roaming. Specifically, the host carrier transports the roamer’s traffic and has no involvement with the end user beyond the addressing, registration, and authorization functions inherent in the transmission of any traffic. The host carrier has no direct relationship with the retail end user, nor does the host carrier directly offer or provide the end user with any service.⁹ Therefore, consistent with the Commission’s decision in *Time Warner*, there is no basis to consider the nature of the service provided to the end user.

Verizon’s reliance on the Commission’s 1996 decision establishing the manual roaming rule is inapposite with respect to automatic roaming.¹⁰ As Verizon noted, the Commission did at that time reject a classification based on the relationship between the two carriers¹¹ – however, this was because manual roaming requires the end user to establish a direct relationship with the host carrier in order to place a call, meaning that the host carrier provides the service directly to the

⁶ / *Id.* at 2.

⁷ / *See Reexamination of Roaming Obligations of Commercial Mobile Service Providers*, WT Docket No. 05-265, Memorandum Opinion & Order and Notice of Proposed Rulemaking, 20 FCC Red 15047, 15049, note 9 (2005) (“*Roaming NPRM*”) (“Before a subscriber can complete an originating call under an automatic roaming arrangement, the host system first identifies the subscriber’s home carrier... verifies that it has an automatic roaming arrangement with that carrier, and queries the home carrier to verify that the subscriber’s account is current (and in some instances to obtain information about the subscriber, such as his or her preferred service features).”).

⁸ / Verizon Letter at 2.

⁹ / *See Time Warner Order*, 22 FCC Rcd at 3517, note 19 (“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 a further sale to an end user, in contrast to a retail transaction for the customer’s own personal use or consumption.”).

¹⁰ / Verizon Letter at 3 (citing *Interconnection and Resale Obligations Second Report and Order*, 11 FCC Rcd 9462 (1996)).

¹¹ / *Id.*

retail end user.¹² With automatic roaming, however, there is no contractual or other service arrangement between the roamer and the host carrier. Rather, “[a]utomatic roaming requires a pre-existing contractual arrangement between the [roamer’s] home [carrier] and the roamed-on host system.”¹³ In other words, a retail end user can obtain access to automatic roaming only if the end user’s home carrier has an agreement with the host carrier for the provision of wholesale automatic roaming services.

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. And, as SouthernLINC Wireless demonstrated in its July 2 letter, this analysis clearly results in a finding that wholesale automatic roaming is a telecommunications service subject to the provisions of Title II of the Act.

Title I and Title III Provide Additional Authority Over All Automatic Roaming Services

Verizon argues that the Commission does not have authority to regulate data roaming under Title III of the Act, asserting that “no section of Title III gives the FCC general authority over the business relationships between radio licensees.”¹⁴ With this statement, Verizon dismisses or ignores the Commission’s plenary authority under Title III of the Act to regulate the use of radio spectrum pursuant to the statutory mandate of Section 301, as well as the Commission’s licensing authority under Sections 303(r) and 309. As SouthernLINC Wireless explained in its July 2 letter, the Commission has previously found ample authority under Title III to impose common carrier obligations – including Section 201 and 202 obligations – to data and other non-Title II services provided by CMRS carriers.¹⁵

Finally, according to Verizon, “[t]he law is clear ... that [Title I] ancillary authority cannot be used to impose common carrier regulation on the provision of information services.”¹⁶ Yet the Commission has consistently found ample authority under Title I to impose certain “traditional common carrier” obligations on interconnected Voice over Internet Protocol (VoIP) services, even though no determination has yet been made as to whether these services are information services or telecommunications services under the Act.

¹² / See *Roaming NPRM*, 20 FCC Rcd at 15049 ¶ 3 (describing manual roaming).

¹³ / *Id.*

¹⁴ / Verizon Letter at 3 – 4.

¹⁵ / See, e.g., *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, First Report and Order, 11 FCC Rcd 18455, 18459 – 18460 (1996) (“*First Resale Report and Order*”) (“Accordingly, we condition existing and future cellular, broadband PCS and covered SMR licenses upon compliance with our resale rule pursuant to our authority under Title III of the Act.”) (citing 47 U.S.C. §§ 303(r) and 309).

¹⁶ / *Id.*

Conclusion

Verizon's letter makes several points regarding data roaming, none of which affect the analysis or alter the clear conclusion that data roaming is a wholesale telecommunications service subject to the provisions of Title II of the Act – in particular, the provisions of Sections 201, 202, and 208 regarding just and reasonable rates, terms, and conditions and nondiscrimination. Accordingly, the Commission possesses ample legal authority under Title II of the Communications Act to adopt a clear, coherent, and “future-proof” roaming policy that will make these services available to all U.S. consumers at reasonable rates and under reasonable and nondiscriminatory terms and conditions.

Moreover, the law is clear that, Verizon's conclusory and unsupported assertions notwithstanding, the Commission has additional, and independent, authority to take the necessary action under its plenary Title III jurisdiction over the use of radio spectrum, as well as under its ancillary Title I jurisdiction over communications services in general.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christine M. Gill". The signature is written in a cursive style with a large, looping initial "C".

Christine M. Gill

Counsel for SouthernLINC Wireless

cc: Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell
Erika Olsen
Bruce Gottlieb
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