

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of	)		
	)		
Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers	)	WT Docket No. 05-265	
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**COMMENTS OF  
METROPCS COMMUNICATIONS, INC.  
ON THE FURTHER NOTICE OF PROPOSED RULEMAKING**

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## SUMMARY

MetroPCS Communications, Inc. (“MetroPCS”) respectfully submits its comments in response to the *Further Notice of Proposed Rulemaking* in which the Commission seeks comment on whether the existing obligation to provide automatic roaming on a non-discriminatory basis should be extended to non-interconnected services or features or to services that are not classified as CMRS, including information services.

MetroPCS submits that the Commission should extend automatic roaming rights to all wireless services – regardless of whether they are interconnected or non-interconnected, CMRS or non-CMRS, information services or telecommunications services – provided that roaming is technologically feasible and economically reasonable. Roaming rights should not be based upon arcane regulatory classifications, speed of service, or upon the nature of the underlying technology platform. According robust roaming rights to wireless data services will benefit consumers, enhance competition and promote public safety and homeland security. Denying wireless data roaming based upon hyper-technical regulatory classifications will cause confusion and violate important principles of regulatory parity.

The Commission has the legal authority to extend roaming rights to wireless data services and there are no insurmountable technical implementation issues. Furthermore, the Commission should not limit wireless data roaming to situations where the requesting carrier is offering identical services in its home market, and no in-market roaming restriction should be added to the data roaming right.

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ON THE FURTHER NOTICE OF PROPOSED RULEMAKING**

MetroPCS Communications, Inc. (“MetroPCS”),<sup>1</sup> by its attorneys, hereby respectfully submits its comments in response to the *Further Notice of Proposed Rulemaking*, FCC 07-143, released August 16, 2007 (the “*Data Roaming FNPRM*”) in the above-captioned proceeding. The following is respectfully shown:

**I. Introduction**

In the *Data Roaming FNPRM* the Commission seeks comment on whether the roaming obligations of commercial mobile radio service (“CMRS”) carriers, which were clarified in the *Roaming Order*,<sup>2</sup> should be extended to various wireless data services, including information services. Specifically, in the *Roaming Order* the Commission extended automatic roaming requirements only to services offered by CMRS carriers that are real-time, two-way switched voice or data services that are interconnected with the public switched network, and to push-to-talk and text messaging. However, based upon evidence that the demand for all mobile data

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<sup>1</sup> For purposes of this Petition, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

<sup>2</sup> See In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 07-143 (rel. Aug. 16, 2007) (the “*Roaming Order*”).

services is growing,<sup>3</sup> and comments by a number of interested parties that all such services should be included as part of the automatic roaming obligation, the Commission decided to seek comment in the further notice portion of the order on the legal and policy basis for extending the automatic roaming obligation to non-interconnected services and features and non-CMRS services, including information services.

MetroPCS has a substantial interest in whether the existing roaming obligation is extended to wireless data services, including information services. MetroPCS is a CMRS carrier which has been an active participant throughout the Commission proceedings dealing with automatic roaming. MetroPCS provides a variety of wireless services, including data services. For example, MetroPCS acquired PCS spectrum for the Dallas/Ft. Worth and Detroit, Michigan markets from Cingular Wireless and it constructed a combined 1XRTT EV-DO network on the spectrum capable of supporting data services. MetroPCS also is planning to upgrade these networks to EV-DO, Revision A with Voice-over-Internet-Protocol (“VoIP”) in the future. Similar data services will be offered in other MetroPCS markets depending upon the available spectrum resources and the local demand. Existing and future data services include:

- Services provided through the Binary Runtime Environment for Wireless, or BREW, platform, including ringtones, games and content applications;
- Text messaging services (domestic and international), which allow the customer to send and receive alphanumeric messages that the handset can receive, store and display on demand;
- Multimedia messaging services, which allow the customer to send and receive messages containing photographs;
- Mobile Internet browsing; and
- Push e-mail.

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<sup>3</sup> See, e.g., *Record Wireless Subscriber Increase Drives AT&T Third Quarter*, Comm. Daily, Oct. 24, 2007, at 10-11; *Wireless Data Service Revenue Rose to \$10.5 Billion*, Comm. Daily, Oct. 24, 2007 at 16-17.

At present, MetroPCS is party to certain automatic roaming agreements with other CMRS carriers which cover broadband voice services, but do not extend to data services. Consequently, MetroPCS is directly affected by whether the roaming obligation is extended to wireless data services, including information services, and has a substantial basis in experience for informed comment in this proceeding.

For the reasons set forth below, the Commission should extend the automatic roaming obligation to all wireless data services including information services, offered by a wireless carrier regardless of speed, technology, or platform. The Commission has an obligation under Section 1 of the Communications Act of 1934, as amended,<sup>4</sup> “to make available, so far as possible, to all the people of the United States... a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.”<sup>5</sup> Notably, the obligation to foster this network extends to all wire and radio communication services regardless of whether they are classified as CMRS, telecommunications service or information service, regardless of the speed, technology, or platform, and regardless of whether or not they are interconnected. Consequently, MetroPCS submits that extending the automatic roaming obligation to all data services including information services, is not merely authorized by the Act, but rather is compelled by the mandate contained in Section 1 of the Act.

Also, as is set forth in greater detail below, drawing distinctions with respect to roaming rights and obligations based upon hyper-technical regulatory classifications -- which are largely incomprehensible from the typical consumer’s point of view and which may change over time -- does not serve the public interest.

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<sup>4</sup> 47 U.S.C. § 151 *et. seq.* (the “Act”)

<sup>5</sup> *Id.* at § 151.

## **II. Consumers Should Not be Denied Beneficial Services Based Upon Arcane Regulatory Classifications**

In many instances, broadband wireless voice services and wireless data services are substitutes for one another in the marketplace. Broadband mobile data services - - that enable subscribers to browse customized websites, send text and multimedia messages, download ring tones and games, and access other content on their wireless devices - - provide an obvious alternative to using broadband voice services to secure and access information. Since data services are growing in their own right, it is important for the Commission to provide a level playing field.

Further, in the future more and more voice applications will move to VoIP which will be offered over high speed data facilities. Since data and voice services are converging at a rapid rate, any distinction based on historical regulatory classifications should be avoided. Just as data services have revolutionized the wireless voice business, mobile data will do the same for mobile voice telephony. And with the development of new technologies such as EV-DO Rev. A with VoIP, voice and data will become intermixed, creating even further difficulty in sustaining a distinction between voice and data.

In its *Eleventh CMRS Competition Report*,<sup>6</sup> the Commission noted that the adoption of mobile data services by U.S. mobile telephone subscribers has continued to rise, and cited estimates, based on consumer billing records, that mobile data usage reached approximately fifty percent of U.S. mobile subscribers in the fourth quarter of 2005.<sup>7</sup> The obvious popularity and rapid growth of mobile data services is impressive, particularly in light of the current roaming

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<sup>6</sup> *Implementation of §§ 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), 21 FCC Rcd. 10947 (2006).

<sup>7</sup> *Id.* at para. 162. See also, *Record Wireless Subscriber Increase Drives AT&T Third Quarter*, Comm. Daily, Oct. 24, 2007, at 10-11; *Wireless Data Service Revenue Rose to \$10.5 Billion*, Comm. Daily, Oct. 24, 2007 at 16-17.

restrictions that apply to such services. Unfortunately, there is a serious lack of regulatory parity among and between voice services and data services with respect to roaming which can hinder competition.

**A. Competition is Enhanced by Regulatory Parity**

The Commission repeatedly has cited the benefits of a regulatory environment that promotes “competitive neutrality” and “principles of regulatory parity” because “regulatory certainty is created through application of uniform rules to all similarly-situated providers.”<sup>8</sup> The Commission also has found that regulatory parity is appropriate whenever uneven treatment “forces...carriers to incur costs and burdens not assumed by other CMRS licensees despite the similarity of services provided.”<sup>9</sup> For example, earlier this year the Commission sought to enhance competition between incumbent telephone companies, incumbent cable companies and new entrants into the voice, video and data markets by taking steps to assure that new entrants seeking to compete with incumbent service providers in multiple dwelling units (“MDUs”) have appropriate access to inside wiring. The purpose of these steps was to “achieve regulatory parity by applying a consistent regulatory framework across platforms.”<sup>10</sup> Similarly, in General Docket No. 94-90, the Commission lifted a ban on the provision of dispatch service by cellular licensees in order to create regulatory parity. In doing so, the Commission concluded that “allowing certain providers to achieve operating and spectrum efficiencies and competitive benefits while leaving regulatory obstacles for other CMRS providers conflicts with our ongoing goal to

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<sup>8</sup> See Service Rules for the 698-746, 747-762 and 777-792 MHz bands, (WT Docket 06-150) *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064, para. 131 and n. 311 (2007).

<sup>9</sup> Sunset of the Cellular Radio Telephone Service Analogue Service Requirement and Related Matters (RM 11355) *Memorandum Opinion and Order*, 22 FCC Rcd 11243, para. 22 (2007).

<sup>10</sup> Telecommunications Services Inside Wiring: Customer Premises Equipment (CS Docket No. 950185), *Report and Order and Declaratory Ruling*, 22 FCC Rcd. 10640 at Statement of Chairman Kevin J. Martin (2007).

provide regulatory parity for commercial mobile services as mandated by Congress.”<sup>11</sup> The consistent theme of these earlier decisions is that the Commission should not allow its regulatory classifications and regulatory policies to create competitive disparities among and between potentially substitutable services. This is especially true when the respective technological services are converging. This sound regulatory policy mandates that the Commission expand the automatic roaming obligation to include non-interconnected services and features and non-CMRS services, including information services.

The principles of competitive neutrality and regulatory parity have been applied in the past to equalize the treatment accorded to competing services that happened to fall into different regulatory classifications. For example, historically the Commission’s regulations created different regulatory schemes and permissible service classifications for wireless services classified as “common carrier” services and wireless services classified as “private carrier” services. Maintaining these distinctions resulted in a number of competitive anomalies in which carriers competing for the same customers were subject to vastly different regulatory schemes. Ultimately, this disparity resulted in a Congressional directive, embodied in the Omnibus Budget Reconciliation Act of 1993<sup>12</sup> which created the new category of Commercial Mobile Radio Service and amended the Communications Act to add Section 332<sup>13</sup> which requires that providers of like services be treated under similar regulatory strictures. The same sorts of policy considerations require that both voice and data wireless services enjoy similar roaming rights.

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<sup>11</sup> Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications (GN Docket No. 94-90) *Memorandum Opinion and Order*, 12 FCC Rcd. 9962, para. 8 (1997).

<sup>12</sup> Pub. L. No. 103-66, Codified at 47 U.S.C. §332.

<sup>13</sup> 47 U.S.C. § 332.

## **B. Consumers Will Benefit With Data Roaming**

Several of the separate statements issued by the Commissioners in support of the adoption of the automatic roaming requirement for real-time, two-way interconnected switched voice and data CMRS services apply with equal force to non-interconnected and non-CMRS wireless data services. For example, Commissioner Adelstein sounded a decidedly pro-consumer note when he said that “no customer should have to see the words ‘No Service’ on their wireless device when there is a compatible network available.”<sup>14</sup> Commissioner Copps made a similarly astute observation that “[c]onsumers should not have to be amateur engineers or telecom lawyers to figure out which mobile services they can expect to work when they travel.”<sup>15</sup> Both of these comments recognize that services should be seamless from the consumers’ point of view and the Commission should not adopt policies which cause or will perpetuate consumer confusion or complaints. Any rule that treats voice and data roaming rights differently based upon regulatory classifications that are largely foreign to consumers and difficult to comprehend from a layman’s point of view do not serve the public interest.

Consumers also will be disadvantaged when multiple applications and functionalities are incorporated into a single device -- some of which enjoy roaming privileges and others of which do not. For example, a single mobile device may incorporate both a blackberry service and a two-way voice telephone service. Consumers would naturally expect both services to work in comparable areas especially since many consumers use the blackberry service as a way to know that a telephone call needs to be made or as a substitute for a voice call. While having both functionalities work may not always be technically feasible, consumers would not expect regulatory policies to discriminate between services that are bundled services in a single device,

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<sup>14</sup> *Roaming Order*, statement of Commissioner Jonathon S. Adelstein, approving in part, concurring in part.

<sup>15</sup> *Id.* at statement of Commissioner Michael J. Copps, approving in part, concurring in part.

offered in the same service plan, and are clearly complementary and substitutes for each other. Further, certain data services, such as search engines, can be used as substitutes for voice services -- such as searching for a telephone number or finding directions to an unknown location. Indeed, in certain instances, such as the iPhone, the integrated data functionality is a major draw for customers to purchase the device and the related services. A consumer who is used to accessing the Internet utilizing a mobile device in his or her home area will be unpleasantly surprised when this functionality ceases when traveling outside of the carrier's home service area. No doubt Commissioner Adelstein had this anomaly in mind when he said that "consumers place great value on their ability to seamlessly access their wireless broadband services and it is our job here at the Commission to step in and ensure that consumers have access to both voice and data when they leave their home service area."<sup>16</sup>

### **C. Public Safety Will Be Enhanced**

Commissioner Tate correctly noted in her comments to the *Roaming Order* that there "may be benefits to public safety, or even homeland security, in having mobile subscribers connected at all times, even when they are outside their home networks."<sup>17</sup> Public safety considerations of this nature are extremely important since one of the core objectives of the "rapid, efficient, Nation-wide... service" to be fostered by Section 1 of the Act is to promote the "national defense" and "safety of life".<sup>18</sup> Here, the important public safety ramifications of

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<sup>16</sup> *Roaming Order*, Statement of Commissioner Jonathon S. Adelstein, Approving in Part, Concurring in Part.

<sup>17</sup> *Id.* at Statement of Commissioner Deborah Taylor Tate.

<sup>18</sup> 47 U.S.C. § 151.

roaming are not limited to real-time, two-way, interconnected switched voice services. Data services implicate public safety as well.<sup>19</sup>

Indeed, many of the comments filed in the 700 MHz allocation proceeding<sup>20</sup> pertaining to the 700 MHz public/private partnership designed to foster a nationwide interoperable broadband network capable of serving public safety requirements, made clear that the shared wireless broadband network needed to provide not just advanced voice services, but also advanced broadband data services. Ultimately, these comments resulted in a Commission rule setting forth the minimum features that must be incorporated in the shared public/private wireless broadband network. New Section 90.1405(a) of the rules requires the shared network, at a minimum, to incorporate a design “for operation over a broadband technology platform that provides mobile voice, video *and data* capability that is *seamlessly interoperable across* public safety local and state agencies, *jurisdictions and geographic areas...*”<sup>21</sup> This network requirement conclusively demonstrates that public safety considerations require both voice and data capabilities and that such services need to be available over broad geographic areas. This being the case, it follows that consumers, who have their own role to play in public safety and homeland security matters, also have needs for both voice and data services across broad areas. Consequently, important public safety requirements can only be met fully if seamless roaming services are extended to data services.

Public safety and homeland security also will be adversely affected if location-based information services are denied roaming rights comparable to those offered to voice services.

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<sup>19</sup> For example, many of the data and video services contemplated in the 700 MHz D block are or will be available on existing networks. Allowing roaming for these services will allow interoperability between different public safety groups much sooner.

<sup>20</sup> In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz bands (WT Docket No. 06-150), *Second Report and Order*, 22 FCC Rcd. 8064 (2007).

<sup>21</sup> 47 C.F.R. § 90.1405(a) (emphasis added).

Location-based services may prove to be as important as E-911 services in assisting subscribers during emergencies. For example, consumers may access location-based services to locate the nearest hospital or police station in the event of a disaster or an emergency. It would, indeed, be unfortunate for these services to be rendered inoperable in areas where technical compatibility exists simply because the FCC used an arcane information services classification to deny automatic roaming rights with respect thereto.

#### **D. Competition Will Flourish**

The Commission should not be deterred from mandating automatic roaming for data services based upon claims that doing so will “undercut incentives to differentiate products...chill innovation [and] discourage build out of facilities for facilities-based competition.”<sup>22</sup> In reality, just the opposite is true. Allowing roaming for data services will encourage carriers to implement innovative data services within their markets with the knowledge and expectation that their customers will be able to receive those services outside the home market just as they do for their voice services. Thus, innovation and competition will flourish, and not be stifled. And, as MetroPCS has demonstrated previously in this proceeding<sup>23</sup> the availability of roaming services does not deter the construction of competing networks. This is because the economics of roaming are such that the requesting carrier is paying the host carrier a rate that includes a profit to the host carrier. Consequently, the requesting carrier always will be incented to build a competing network provided that there is spectrum available which can be built out on a cost-effective basis.

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<sup>22</sup> *Data Roaming FNPRM* at para. 78.

<sup>23</sup> See Petition for Reconsideration of MetroPCS Communications, Inc., WT Docket No. 05-265, filed October 1, 2007 (“*MetroPCS Roaming Petition for Reconsideration*”).

Providing automatic roaming rights for data services actually will encourage market entry. An existing carrier providing voice services in a market will have the economic incentive to acquire additional spectrum and to initiate innovative data services in that market knowing that subscribers to those services will be entitled to roam in other technically-compatible areas served by other carriers. In effect, the Commission will be promoting new entry and increased competition by expanding the roaming rights as recommended by MetroPCS. Ultimately, consumers will benefit.

### **III. Denying Roaming For “Information Services” is Unworkable**

In the *Broadband Wireless Internet Access Order*<sup>24</sup> the Commission defined wireless broadband Internet access service as a service that uses spectrum, wireless facilities and wireless technologies to provide subscribers with high-speed (broadband) Internet capabilities.<sup>25</sup> The Commission then proceeded to define high-speed broadband services as those delivered at a speed in excess of 200 kilobits per second (“kbps”) in at least one direction.<sup>26</sup> This definition was adopted in order to create parity between wireless and wireline broadband Internet access services.<sup>27</sup> However, drawing regulatory distinctions between the roaming rights enjoyed by services delivered at speeds greater than 200 kbps (i.e. information services) and services delivered at speeds lesser than 200 kbps (non-information services) turns out to be completely impractical in the wireless world.

An integrated wireless network may deliver data at dramatically different speeds in one area as compared to another and in the same area at different times of the day. Typically,

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<sup>24</sup> In the Matter of Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks (WT Docket No. 07-53), 22 FCC Rcd. 5901 (2007).

<sup>25</sup> *Id.* at para. 19.

<sup>26</sup> *Id.* at Note 55.

<sup>27</sup> See Appropriate Framework for Broadband Access to the Internet Over Wireless Facilities; Universal Service Obligations of Broadband Providers (CC Docket No. 02-33), Order, 20 FCC Rcd. 14853 para. 5 (2005).

carriers put higher speed technology such as EV-DO and HSDPA, in the major metropolitan downtown areas because that is where the capacity needs to be maximized. Further, since speed is a function of distance between the user and the base station, high speed base station are typically located more closely together. Lower speed technology (e.g., 1XRTT) is used in the less densely populated areas and where coverage, and not capacity, needs to be maximized. This means that a wireless Internet access service offered over a single integrated wireless network in a region could take on a different regulatory classification in two nearby service areas in the same metropolitan area at different times during the session while a customer is moving in the market. Moreover, even in areas served by high speed mobile technology, actual delivery speeds can vary dramatically depending upon the number of users accessing the cell site simultaneously, the distance of the mobile user from the cell site, the types of applications being used, and other factors. This means that the regulatory classification of the same service in the same area could differ from time to time depending upon variables over which the end-user has little or no control. This means that setting roaming rights based upon differentials in the speed at which information is delivered over a wireless network will create confusion and produce anomalous results and thus is unworkable. A carrier should not be asked to determine that roaming is available or unavailable based upon the speed of service where speeds are variable and unpredictable. Further, limiting roaming to only “low speed” data could cause users to be denied service in congested downtown areas but to receive service in rural areas. This will result in substantial consumer confusion and dissatisfaction.

Notably, in other contexts the Commission has properly decided that telecommunications services and information services should get equivalent regulatory treatment in order to create a

level playing field. Thus, for example, in the *IP-Enabled Services Order*<sup>28</sup> the Commission adopted rules to require providers of interconnected VoIP phone services to make E-911 emergency calling capabilities available to their customers as a standard feature. The Commission reached this conclusion despite the fact that it had never classified VoIP service as a telecommunications service under the Act.<sup>29</sup> Basically, the Commission concluded that the public interest and considerations of regulatory parity required equivalent regulatory treatment without regard to the regulatory classification of the underlying services. The same conclusion should be reached here with regard to non-interconnected, non-CMRS data services.

#### **IV. The FCC Has the Legal Authority Under Title I of the Act to Grant Automatic Data Roaming Rights**

The *Data Roaming FNPRM* asks commenters to address the extent to which the Commission has legal authority to extend automatic roaming services to non-CMRS services such as mobile wireless broadband Internet access service (which is an information service). The Commission clearly has the authority under Title I of the Act to impose roaming requirements on non-interconnected, non-CMRS services, including information services.

Based on Sections 1 and 2(a) of the Act,<sup>30</sup> and the definition of “Radio Communication” set forth in Section 3(33), the Commission must find that data roaming services are covered by the Commission’s general jurisdictional grant. Specifically, Section 1 states that the Commission is created “[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States... a rapid, efficient, nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges.” Section 2(a), in turn, confers on the

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<sup>28</sup> *IP-Enabled Services* (WC Docket No. 04-36), 20 FCC Rcd. 10245 (2005).

<sup>29</sup> *Id.* at para. 20.

<sup>30</sup> 47 U.S.C. §151 and 152.

Commission regulatory authority over all interstate communication by wire or radio. In this case the data services at issue clearly are covered by the statutory definitions of “radio communication” or “communication by radio” because they involve “the transmission by radio of writing, signs, signals, pictures and sounds of all kinds...”<sup>31</sup> Thus, jurisdiction is conferred by Title I.

## V. Technical Implementation Challenges Should Not Preclude Data Roaming Rights

In the *Data Roaming FNPRM*, the Commission asks whether there are any issues regarding network capacity, network integrity, or network security pertaining to the proposed extension of roaming rights to data services.<sup>32</sup> The *Data Roaming FNPRM* also asks whether roaming rights should be restricted to situations where it is “technically feasible” and “economically reasonable.”<sup>33</sup> MetroPCS respectively submits that the Commission need not be concerned about these issues so long as the data roaming standard is identical to the previously-adopted automatic roaming standard with regard voice and push-to-talk services.

The *Roaming Order* adopted new section 20.12(d) of the rules that reads as follows:

(d) *Automatic roaming* Upon a *reasonable* request, it shall be the duty of each host carrier subject to paragraph (a)(2) of this section to provide automatic roaming *to any technologically compatible* home carrier, outside of the requesting home carrier’s home market, on *reasonable* and non-discriminatory terms and conditions.<sup>34</sup>

This rule section makes clear that the obligation to provide automatic roaming services only extends to circumstances where it is technically feasible and economically reasonable.

MetroPCS respectfully submits that nothing more is needed for data roaming. While MetroPCS

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<sup>31</sup> *Id.* at § 153(33).

<sup>32</sup> *Data Roaming FNPRM* at para. 80.

<sup>33</sup> *Id.*

<sup>34</sup> 47 C.F.R. § 20.12(d)(emphasis added). MetroPCS does not support the home market exclusion contained in the existing Commission rule and has requested that the Commission reconsider this exclusion. *See MetroPCS Roaming Petition for Reconsideration.*

has been a strong and consistent supporter of automatic roaming services, it never has expected host carriers to have to change technology or dramatically reconfigure their networks in order to provide service. The harm that MetroPCS has been seeking to address arises in those circumstances where the host carrier is willing to serve a select group of roaming partners, some of whom may be affiliated, but is unwilling to serve other carriers even though there are no technological or economical barriers to doing so.

There may be certain technical interface issues that must be resolved in order to permit seamless data roaming. MetroPCS believes that these issues can be resolved expeditiously by carriers who are working in good faith to facilitate roaming. If problems arise, the requesting carrier can object to particular practices by a host carrier by invoking the complaint procedures under Section 208 of the Act. Thus, there are existing mechanisms in place for dealing with issues of technical compatibility and economic reasonableness and no new ones need be created by the Commission. Consequently, there should be no blanket denial of data roaming rights based upon implementation issues of this nature.<sup>35</sup>

MetroPCS also is confident that mandating automatic roaming for data services will spur the development of implementation solutions for any technical issues that arise. Carriers and manufacturers will have a much greater incentive to invest resources in the development of technological solutions that facilitate seamless data roaming when they know that carriers are obligated to provide roaming. Again this consideration argues in favor of granting automatic roaming rights for the wireless data services at issue in this proceeding.

MetroPCS also sees no difference between voice roaming and data roaming insofar as issues of network capacity, network integrity or network security are involved. The *Data*

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<sup>35</sup> MetroPCS believes, however, that the Commission should adopt a presumption that if a host carrier offers automatic roaming for data services to third parties, then offering it to a requesting carrier using the same technology should be deemed to be technically feasible and if offered at the same rates, economically reasonable.

*Roaming FNPRM* offers no basis to conclude that data roaming raises unique issues in these regards. This being the case, the Commission should be governed by the principle of regulatory parity among and between voice and data services, and not create a discriminatory roaming scheme.

**VI. Data Roaming Should Not be Limited to Situations Where Comparable Services Are Offered in the Requesting Carrier's Home Market**

The Commission asks whether it should require that the requesting carrier offer the requested wireless data service or feature to its subscribers on its own home network before being entitled to roaming rights.<sup>36</sup> MetroPCS submits that a distinction of this nature would be impracticable and would foster unnecessary litigation.

There are diverse reasons why a carrier might not offer a particular service in one or more of its home markets. For example, a carrier may have access to greater bandwidth in one market than another, which enables it to offer a fuller compliment of services in that market. In these markets where a carrier may have less spectrum, it may face challenges in providing certain data services that are not faced in other markets where it has access to greater amounts of spectrum. It also may use a different technology. The ability of a customer to receive data roaming services when traveling outside of the home market should not be restricted simply because external constraints have restricted the home offering.

The Commission must keep in mind that data roaming is only required in situations where it is technically feasible. This means that the customer must have a mobile unit capable of accessing data services in remote markets. The customer is only likely to secure such a unit if it perceives a substantial consumer benefit in the additional functionality since it will not be used

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<sup>36</sup> *Data Roaming FNPRM* at para. 79.

in the whole market. The Commission should not limit its automatic data roaming rules in a way that will frustrate the legitimate service desires of customers of this nature.

Finally, MetroPCS also submits that no “home roaming” restriction should be added to the data roaming right. On October 1, 2007, MetroPCS filed a petition for reconsideration<sup>37</sup> of the *Roaming Order* challenging the home roaming prohibition with respect to voice services that was put in place by the Commission.<sup>38</sup> Many others filed similar petitions.<sup>39</sup> The MetroPCS petition for reconsideration demonstrated that restrictions on in-market roaming cannot be reconciled with the finding that automatic roaming is a common carrier service. MetroPCS also demonstrated that the public interest analysis in the *Roaming Order* that led to the home roaming restriction was flawed in many respects.<sup>40</sup> All of the arguments made by MetroPCS in opposition to the in-market restriction for voice services apply with equal or greater force to data roaming services and are incorporated herein by reference. The Commission should not compound its error in the *Roaming Order* by incorporating an in-market roaming restriction when it extends roaming rights to data roaming services.

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<sup>37</sup> See *MetroPCS Roaming Petition for Reconsideration*.

<sup>38</sup> See 47 C.F.R. § 20.12(d) (limiting the automatic roaming requirement to service outside of the requesting home carrier’s home market).

<sup>39</sup> See, e.g., Petition for Reconsideration of Sprint Nextel Corporation, WT Docket No. 05-265, filed October 1, 2007; Petition for Reconsideration of SpectrumCo LLC, WT Docket No. 05-265, filed October 1, 2007; Petition for Partial Reconsideration of T-Mobile USA, Inc., WT Docket No. 05-265, filed October 1, 2007; and Petition for Reconsideration of Leap Wireless International, Inc., WT Docket No. 05-265, filed September 28, 2007.

<sup>40</sup> See *MetroPCS Roaming Petition for Reconsideration* at § IV. MetroPCS demonstrated that the Commission’s home roaming restriction was based upon certain mistakes of fact, which caused substantial harm to consumers, that it raised substantial public safety issues, that it would actually discourage facility-based competition by creating a significant barrier to entry, and that it would be unworkable and have negative unintended consequences.

## VII. CONCLUSION

The foregoing premises having been duly considered, MetroPCS respectfully requests that the Commission adopt a requirement that CMRS carriers are obligated to provide data roaming services to any requesting carrier using compatible technology when such roaming is technically feasible and economically reasonable -- without regard to whether such services are interconnected or non-interconnected, CMRS or non-CMRS, and/or information services or telecommunications services.

Respectfully submitted,

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