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## Summary

United States Cellular Corporation ("USCC") supports the Commission's decision to declare automatic roaming a common carrier service, but believes the FCC should eliminate the exception made in its automatic roaming order for "in market" roaming. USCC also supports broadening the automatic roaming obligation to include digital services not interconnected with the public switched telephone network.

The FCC's belief that excluding "in market" roaming from the automatic roaming obligation will promote competition is mistaken. In market roaming will promote competition between new licensees, with large but unserved licensed areas, and established national carriers. It is justified by wireless precedent, which permitted in market resale by non-wireline carriers of their wireline competitors' services. Further, roaming is essential in markets in which established carriers are already licensees and thus have an incentive to stifle new competition. Home roaming will not discourage system buildout, which is required by strict 700 MHz buildout requirements and is economically rational in any case.

USCC also supports broadening the automatic roaming right to include advanced data services. Such services are an increasingly important aspect of wireless service and the technological challenges involved in incorporating them into the roaming obligation can be met with good faith negotiations between requesting and host carriers.

The public interest supports both in market and advanced data roaming.

**Before the  
Federal Communications Commission  
Washington, DC 20554**

<b>In the Matter of</b>	)	
	)	
<b>Reexamination of</b>	)	<b>WT Docket No. 05-265</b>
<b>Roaming Obligations</b>	)	
<b>Of Commercial Mobile</b>	)	
<b>Radio Service Providers</b>	)	

**COMMENTS ON PETITIONS FOR RECONSIDERATION  
AND FURTHER NOTICE OF PROPOSED RULEMAKING OF  
UNITED STATES CELLULAR CORPORATION**

United States Cellular Corporation ("USCC") hereby files its Comments on the Petitions for Reconsideration of the Report and Order in the above captioned proceeding.<sup>1</sup> USCC also hereby files its Comments on the Further Notice of Proposed Rulemaking ("Further Notice") portion of the Roaming Order. USCC strongly supports eliminating the "in market" restriction on carriers' rights to obtain "automatic roaming." USCC also favors broadening the obligation to provide "data roaming" to include digital services not interconnected with the public switched telephone network.

**I. The FCC Should Reconsider Its Exclusion of In Market Roaming From the Automatic Roaming Service Obligation.**

In the Roaming Order, the Commission held that automatic roaming is a common carrier obligation and that Commercial Mobile Radio Service ("CMRS") carriers are required to provide automatic roaming services to requesting carriers on reasonable request. USCC supports that decision, which will be of great value to regional carriers such as USCC and to smaller carriers

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<sup>1</sup> 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. August 16, 2007) summarized at 72 Fed. Reg. 50 064 (August 30, 2007) ("Roaming Order"); see also Public Notice, "Petitions For Reconsideration of Action in Rulemaking Proceedings," Report No. 2837, released October 12, 2007.

generally. However, the FCC also determined that there would be no right to automatic roaming where a "requesting" wireless carrier "holds wireless licenses or spectrum usage rights (e.g. spectrum leases) in the same geographic location as the would-be host CMRS carrier."<sup>2</sup> The FCC's exclusion of "in market" roaming from the automatic roaming requirement applies "regardless of whether the requesting carrier is providing no service, limited service, or state of the art service" in its defined service area.<sup>3</sup> The Commission's support for this hugely consequential ruling consisted of one paragraph, which essentially states that in market automatic roaming would not "encourage [] facilities based service" and thus would not "support[] consumer expectations of seamless coverage when traveling outside the home area."<sup>4</sup> However, for the reasons given below and in the cited Petitions for Reconsideration, this claim is incorrect and therefore the in market exclusion should be rescinded.

**A. In Market Roaming Is Justified In Circumstances Where It Would Obviously Promote Rather Than Undermine Competition.**

USCC agrees with the FCC regarding the value of fostering facilities-based competition. However, the Petitions of MetroPCS, Leap and SpectrumCo demonstrate conclusively that in market roaming will promote, rather than undermine, such competition.

The crucial reason why this is the case now is the competitive disparity between established wireless licensees, especially nationwide carriers, and newly licensed carriers. During the eighties, when the cellular service was initiated, and in the nineties when PCS systems were licensed to compete with cellular systems, new licensees did not have to confront established carriers with national footprints. The nationwide carriers have less need of roaming

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<sup>2</sup> Roaming Order, ¶ 48.

<sup>3</sup> Ibid, ¶ 50.

<sup>4</sup> Ibid, ¶ 49.

partners than previously, thus creating an incentive to stifle new competitors. The in market exclusion, in essence, reinforces and legitimizes that anti-competitive incentive.

Also, incumbent carrier behavior is not the only barrier to competition. For example, auction winners acquiring spectrum now will not be able to use it for years, owing to outgoing incumbent operations. This is the case, for example, with respect to both the Advanced Wireless Service ("AWS") spectrum licensed in Auction 66, where the spectrum is still encumbered by existing government operations, and the 700 MHz spectrum to be auctioned in Auction 73 next January, which cannot be used until February 2009 at the earliest, pursuant to the DTV transition.<sup>5</sup> In such circumstances, it would certainly be pro-competitive to require automatic roaming, to help new licensees establish a presence in the marketplace when they cannot provide facilities-based service.

There is wireless precedent for requiring wireless automatic roaming in these circumstances. Between 1983 and 1992, cellular licensees were required to permit their in market competitors to "resell" their services during the initial five year "buildout" period, largely owing to the "headstart" wireline licensees, who already had a "presence" in the relevant market, enjoyed in the cellular licensing process.<sup>6</sup> Generally, the wireline "headstart" at the time was a few months to a year or so. The present "headstart" of established wireless carriers is measured in decades. In light of present circumstances, that FCC precedent is strong support for wireless licensees being accorded in market roaming rights.

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<sup>5</sup> See MetroPCS Petition, p. 7.

<sup>6</sup> See, Petitions For Rulemaking Concerning Proposed Changes to the Commission's Cellular Resale Policies, Report and Order, 7 FCC Record 4006 (1992). It should be noted that both wireline and non-wireline licensees were required to permit their competitors to resell their services, but it was undisputed that it was a right that was far more valued by non-wireline than wireline licensees.

**B. Changes In The Structure of The Wireless Industry Justify A More Pro-Active Approach To Competition On The Part of The Commission.**

The Commission's argument that CMRS providers should build their own systems and not "piggyback" on each other has an intuitive appeal and would make sense if all CMRS carriers were in an identical developmental stage of providing wireless service, and were licensed for comparable service areas with similar or identical buildout requirements. However, that is far from the environment carriers actually face. New 700 MHz licensees, for example, must make their way in a wireless environment dominated by huge national carriers that have been building and augmenting their systems for twenty years. The development of these national networks has created a huge competitive imbalance between the national carriers and new entrants. Moreover, it is generally far more difficult than it was decades ago to construct wireless base stations, owing to increased regulatory scrutiny from all levels of government and increased opposition to wireless towers by some members of the public.<sup>7</sup>

As is pointed out by Leap and is acknowledged in the Roaming Order, "under current market conditions, it is also getting more difficult for small and rural carriers to obtain access to nationwide carriers' networks through automatic roaming agreements."<sup>8</sup> Indeed it was precisely this combination of structural factors which the Roaming Order was intended to address. However, the in market roaming exclusion substantially weakens the actions taken in the Roaming Order, and returns many carriers to the pre Roaming Order status quo. This is because of the size of the market areas won by many of the AWS and 700 MHz licensees at auction but not yet in service. Leap, for example, is deemed to have a "home market" covering the vast majority of the area of the United States (Leap Comments, p. 7). MetroPCS will be precluded from invoking roaming rights throughout the northeast and northwest regions of the United

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<sup>7</sup> MetroPCS Comments, p. 8.

<sup>8</sup> Roaming Order, ¶ 28, quoted in Petition For Reconsideration of Leap Wireless International, Inc. ("Leap"), p. 9.

States by its newly won markets. (MetroPCS Comments, p. 16). The 700 MHz auction will only exacerbate this situation.

If there is to be a chance of fair competition between the AWS and 700 MHz licensees and the entrenched national carriers a "home roaming" right is essential. SpectrumCo's Petition does an excellent job of demonstrating both that the promotion of competition has always been FCC policy with respect to the wireless industry and that competition will be promoted in the present context by removing the in market exception.<sup>9</sup> SpectrumCo makes the vital point that the Roaming Order effectively requires automatic roaming in areas where market forces are most likely to work to promote roaming, i.e. in areas where the requesting carriers is not a potential competitor, and permits anti-competitive conduct by refusals to permit roaming in areas where the new licensee is a potential competitor, i.e. where market forces would not support automatic roaming.<sup>10</sup> The Commission did not intend such a perverse result but that is what its action will produce. We submit that pro-competitive goals will be best served by rescinding the in market exception.

**C. Home Roaming Will Not Discourage System Buildout.**

The "home roaming" prohibition is intended to promote system buildout by all CMRS licensees, which in turn will promote facilities-based competition among those licensees.<sup>11</sup> If that argument were correct, there would be a case for the Commission's position, even though the in market exception would still place a huge obstacle in the path of new wireless licensees. However, it is not correct.

Certainly with respect to the 700 MHz licenses to be auctioned in January 2008, the Commission's draconian four and ten year buildout requirements would make any roaming based

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<sup>9</sup> Petition For Reconsideration of SpectrumCo, LLC, ("SpectrumCo Petition"), pp. 4-10.

<sup>10</sup> Petition For Reconsideration of SpectrumCo LLC ("SpectrumCo Petition"), p. 8.

<sup>11</sup> Roaming Order, ¶ 49.

long term strategy suicidal.<sup>12</sup> Such licensees must build out their systems based on the FCC's area or population based buildout schedules or endure loss of territory or worse sanctions.<sup>13</sup>

AWS buildout requirements are admittedly somewhat more flexible, but it has been demonstrated in the petitions that wireless carriers would always prefer to construct their own systems rather than engage in permanent resale or roaming operations. Roaming makes it possible to establish a position in the market until carriers' newly constructed systems are sufficiently well developed to function in the fiercely competitive wireless environment.<sup>14</sup> One need only watch a brief amount of television advertising to notice that every incumbent wireless carrier has made network coverage and quality a critical competitive issue. New entrants will be at a high risk of failure without some "bridge" between launch and full development.

It should also be remembered that providing roaming is a profit making service and that the Commission has expressly declined to impose any form of price control on roaming rates.<sup>15</sup> Therefore, host carriers suffer no financial detriment from permitting roaming. We would add also that resellers and carriers pursuing a roaming model have generally not succeeded in the wireless marketplace.<sup>16</sup>

We believe that the FCC's fears for competition are misplaced. However, if the Commission is still concerned about the potential impact on system buildout of in market roaming, it could limit the in market roaming right to a reasonable fixed period. We would suggest that in market roaming be permitted during the initial ten year license year term.<sup>17</sup> That

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<sup>12</sup> SpectrumCo Petition, p. 11.

<sup>13</sup> In the Matter of service Rules for the 698-746, 747-762, and 777-792 MHz Bands, et al. Second Report and Order, ¶¶ 140-178, released August 10, 2007.

<sup>14</sup> MetroPCS Petition, p. 8.

<sup>15</sup> See e.g. MetroPCS Petition, pp 8-12; Leap Petition, pp. 10-16.

<sup>16</sup> MetroPCS Comments, p. 11.

<sup>17</sup> That period could be extended when a licensee did not have access to its spectrum for an extended period of time owing to incumbent operations, as has been the case with some AWS spectrum.

would provide adequate time for competitive system buildout, and give incoming licensees a chance to establish their presence in the relevant market.

**II. The Commission Should Extend The Roaming Requirement To Non-Interconnected Services And Features, Including Information Services.**

In the Roaming Order, the FCC extended the automatic roaming requirement 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."<sup>18</sup> In the Further Notice, the Commission has sought comment on whether the automatic roaming requirement "should be extended to non-interconnected services and features, including information services, and the legal and policy basis for doing so."<sup>19</sup>

USCC has endorsed the broadest possible inclusion of data in the FCC's roaming mandate and renews that endorsement now.<sup>20</sup> The July 18, 2007 Carrier Group Ex Parte, to which USCC is a signatory, succinctly demonstrates how crucial data services will be to the wireless future. It notes the "enormous" growth in the market for "data services," including "photo messaging" and other multimedia messaging services, as well as SMS.<sup>21</sup> It cites an authoritative report predicting that wireless data services are "projected to generate over \$600 billion in productivity gains for the US over the next decade."<sup>22</sup> The Carrier Group Ex Parte notes the bundling of all data services, including those not interconnected with the PSTN, with voice services on the same wireless handsets and describes the combination of information and voice services provided by such devices as Blackberry and its competitors.<sup>23</sup>

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<sup>18</sup> Roaming Order, ¶ 54.

<sup>19</sup> Roaming Order, ¶ 77.

<sup>20</sup> See, e.g., USCC Comments, filed November 28, 2005, pp. 12-13; See also Carrier Group Joint Letter Ex Parte, filed July 18, 2007, at 1-2. ("Carrier Group Ex Parte")

<sup>21</sup> Carrier Group Ex Parte, p. 1.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid., pp 102.

The pace of those data service developments makes it appropriate for the FCC to act now. USCC, for example, currently offers many wireless data products, through CDMA 1xRTT technology. It is now experimenting with CDMA 1xEV-DO technology. The majority of USCC customers now have 1xRTT equipped phones, wireless modems or PDAs that can download multiple applications, including games, news, sports information, ring tones and stock quotations. Other carriers are developing their own wireless data products. Such products represent a meaningful part of wireless usage and revenues today and the proportion will increase in the future. Thus, it is urgently necessary that carriers, and especially national carriers, be required to facilitate the use of such data applications for roamers. The Commission should make it clear that it believes carriers must work to develop appropriate interfaces to ensure that data roaming can take place with voice roaming. USCC is now seeking to negotiate data roaming agreements with larger carriers, and has negotiated such an agreement for 1xRTT technology with Verizon Wireless. Similarly situated regional, mid-sized and small carriers are certainly seeking to do likewise. However, 1xRTT technology is only one step along a path of continual technological evolution. EV-DO and other technologies are already being deployed in carrier networks and the FCC's rule should clearly apply to each step of future technology evolution. Therefore, while USCC would acknowledge that the development of data roaming is in its beginning stages, nonetheless we believe that the FCC should now adopt a clear rule in support of data roaming on fair terms.

The Commission, in the Further Notice, asks many questions about adopting such a rule which indicate a certain skepticism on its part about expanding the data roaming obligation. The Further Notice seeks information, for example, about the possible negative impact of data

roaming on "network capacity, network integrity, or network security."<sup>24</sup> The Further Notice also poses the question of whether "broadband" data, being an information service, should be included in a roaming rule and if so, on what legal basis.<sup>25</sup> And the Commission takes careful note of the arguments that "forced roaming" would undermine "market forces" by allegedly "benefiting only those providers that have opted to invest less in their systems."<sup>26</sup>

Concerning those points, USCC would respond as follows. Implementing a broader roaming obligation involving non-interconnected services will no doubt involve technological challenges. However, a data roaming requirement would make those challenges problems to be solved, rather than excuses for inaction. Carriers can and should protect their networks' integrity and security. But they also can, if they try, do so in a manner which permits roaming to take place. We reiterate our acknowledgement that arriving at satisfactory mutual technological arrangements to facilitate data roaming will not always be easy and we understand that a rule cannot require that such arrangements be entered into overnight. But it is vital that the FCC establish a broad data roaming obligation, which will constitute a goal toward which all carriers must work in good faith.

In our view, a carrier should also not have to add capacity to facilitate roaming unless it is compensated for the cost. However, the FCC must be vigilant in a compliance context to ensure that a temporary refusal of roaming by a larger carrier based on "lack of capacity" is not a pretext for an anticompetitive denial of access to a smaller carrier.

We submit that there are no legal or jurisdictional impediments to extension of this mandate. In its 2006 universal service order, for example, the FCC imposed universal service

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<sup>24</sup> Roaming Order, ¶ 80.

<sup>25</sup> Roaming Order, ¶81.

<sup>26</sup> Ibid, ¶ 81.

contribution obligations on VOIP providers based, in part, on its Title I ancillary jurisdiction.<sup>27</sup> Title III of the Act has also been interpreted to provide a solid basis for Commission action in recent decisions.<sup>28</sup> The preservation and enhancement of a competitive wireless market is surely important enough for the Commission to use its full regulatory power.

The last objection cited by the Commission to a broader data roaming requirement, namely the alleged threat to "market forces" posed by requiring broader data roaming, is related conceptually to its opposition to "in market" roaming. The latter objection is based on a fear that carriers will not build out their markets and the former objection is drawn from a belief that carriers will not offer customers the latest technology if roaming is required. Both beliefs are equally fallacious. Just as carriers have every economic motivation to build their own networks, they have every incentive to add data features to their service offerings. Moreover, it is difficult to see how a rule which required that a requesting carrier's service offerings be carried by a "host carrier" would discourage the requesting carrier from adopting such offerings in systems it has already constructed.

Lastly, many of the objections cited by the Commission refer to the convenience of host carriers, rather than the broader public interest. The public interest clearly supports wireless customers being allowed to use all of their data services while roaming, just as it supports those customers being allowed to roam in areas in which their own carrier currently has a license but has not yet built a network.

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<sup>27</sup> In the Matter of Universal Service Contribution Methodology, Report and Order and Notice of Proposed Rulemaking, 21 FCC Record 7518, ¶¶ 46-49 (2006).

<sup>28</sup> See, e.g., In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting The Conversion to Digital Television, Second Report and Order, 22 FCC Record 8776, ¶ 15 (2007).

Conclusion

The competitive imbalance between the dominant, long established wireless carriers and new wireless carriers is the essential reason why the FCC should require in market automatic roaming. It is vitally important to the maintenance of a competitive wireless market place. In furtherance of the same objective, the FCC should broaden the obligation to provide data roaming to include services not interconnected with the public switched telephone network.

Respectfully submitted,

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