

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

In the Matter of)
)
Reexamination of Roaming Obligations of) **WT Docket No. 05-265**
Commercial Mobile Radio Service Providers)

To: The Commission

**COMMENTS
OF THE RURAL TELECOMMUNICATIONS GROUP, INC. AND THE
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

Pursuant to Section 1.429 of the Federal Communications Commission’s (FCC or Commission) Rules and Regulations, the Rural Telecommunications Group, Inc.

(“RTG”)¹, by its attorneys, and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)² submit comments in support of the

¹RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education in a manner that best represents the interests of its membership. RTG’s members have joined together to speed delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG’s members are small, rural businesses serving or seeking to serve secondary, tertiary and rural markets. RTG’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies.

² OPASTCO is a national trade association representing over 520 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

five Petitions for Reconsideration of the FCC’s Report and Order and Further Notice of Proposed Rulemaking³ submitted in this proceeding.⁴ Each Petitioner urged the FCC to reconsider and eliminate the home roaming exclusion to the automatic roaming rules. RTG and OPASTCO fully support elimination of the home roaming exclusion to the automatic roaming rule, as the exclusion is discriminatory, inconsistent with the FCC’s longstanding treatment of roaming and the underlying purpose of the roaming rule, and contrary to the public interest.

I. BACKGROUND

In its *Report and Order*, the FCC reaffirmed that automatic roaming is a common carrier obligation subject to the protections outlined in Sections 201 and 202 of the Communications Act of 1934, as amended (the “Act”). Specifically, the Commission confirmed that if a commercial mobile radio service (“CMRS”) carrier receives a “reasonable” request for automatic roaming, pursuant to Section 332(c)(1)(B) and Section 201(a), it is desirable and serves the public interest for that CMRS carrier to provide automatic roaming service on reasonable and non-discriminatory terms and conditions. The FCC thus codified the automatic roaming obligation into a rule that imposes an affirmative obligation on carriers to provide automatic roaming.

³ *In re Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket No. 00-193, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 (2007) (“*Report and Order*”).

⁴ See Public Notice of October 12, 2007 (Report No. 2837). The five parties that submitted Petitions are: SpectrumCo, LLC (“SpectrumCo”), Sprint Nextel Corporation (“Sprint Nextel”), T-Mobile USA, Inc. (“T-Mobile”), MetroPCS Communications, Inc. (“MetroPCS”) and Leap Wireless International, Inc. (“Leap”)(collectively referred to as “Petitioners”).

In adopting the rule, the FCC determined that the automatic roaming obligation does not include an in-market or home roaming requirement. Specifically, the FCC does not require a CMRS carrier to provide automatic roaming to a requesting CMRS carrier in a market where that CMRS carrier holds a wireless license or spectrum usage rights (e.g., spectrum leases) in the same geographic location as the would-be host CMRS carrier. The FCC's sole justification for this home roaming exclusion is that it does not serve the public interest goal of encouraging facilities-based service.

II. THE HOME ROAMING EXCLUSION MUST BE ELIMINATED AS IT IS DISCRIMINATORY, INCONSISTENT WITH BOTH THE FCC'S LONGSTANDING TREATMENT OF ROAMING AND THE UNDERLYING PURPOSE OF THE RULE, AND CONTRARY TO THE PUBLIC INTEREST.

a. The Home Roaming Exclusion is Discriminatory.

The home roaming exclusion benefits only the large nationwide carriers at the expense of regional and small carriers, and is therefore discriminatory. The FCC's exclusion gives large carriers a right to deny roaming to a carrier in the home market, no matter how reasonable the request, based solely on having rights to spectrum in a market. Thus, even where a carrier has not yet built out its system, a large carrier may deny roaming. The exclusion will foster anticompetitive conduct in roaming negotiations by enabling incumbents with market power to disadvantage new entrants, contrary to the reasons for the FCC adopting a roaming requirement in the first place.

In its *Report and Order*, the FCC clearly reaffirmed that roaming is a common carrier service. Accordingly, wireless carriers are required to provide roaming pursuant to a reasonable request. Oddly, the FCC's adoption of the home roaming exclusion

causes the common carrier obligations of a host carrier to disappear merely because the requesting carrier does not yet serve the area where roaming services are sought.

The FCC has recognized the importance of roaming to the development of new networks in the context of its manual roaming requirements. In 1996, the FCC specifically extended the manual roaming requirement to PCS and Covered SMR providers because they were entering a market after cellular carriers were licensed to do so. In so doing, the FCC recognized that market conditions alone may not produce a competitive market.⁵ Recognizing the anticompetitive incentive for established cellular carriers to deny roaming capability to new entrants, the FCC required cellular, broadband PCS and covered SMR licensees to provide manual roaming service upon reasonable request to any subscriber.⁶ The same public interest principles that apply to manual roaming apply to automatic roaming. As feared by the Commission in the context of manual roaming, the home roaming exclusion to the automatic roaming requirement will allow the large established carriers to use their market power to prevent new carriers from entering the market. Because the home roaming exclusion shields nationwide carriers from competition and undermines the effective growth of the nation's wireless infrastructure, it should be eliminated.

The FCC has recognized time and again that roaming is necessary to foster appropriate investment in infrastructure.⁷ However, the home roaming exclusion

⁵ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, Second Report and Order and Third Notice of Proposed Rulemaking, 11 FCC Rcd 9462 (August 13, 1996) (“*Interconnection and Resale Second R&O*”).

⁶ *Id.*

⁷ *Interconnection and Resale Second R&O* at par. 11. The FCC has also recognized concerns that small businesses face practical difficulties in providing service and that designated entity licensees may not be able to provide service to the public if they lack

unfairly results in the denial of roaming to new entrants. Nationwide carriers have had the ability to roam on other networks as they built their nationwide systems, and now the FCC seeks to prevent other carriers from following suit. The home roaming exclusion discriminates against new entrants, inhibiting competition that is necessary for maintenance and growth of multiple facilities-based networks.

b. The Home Market Exclusion is Inconsistent With the Commission's Longstanding Treatment of Roaming.

The FCC's adoption of the home market exclusion represents a dramatic departure from the previous treatment of roaming and is inconsistent with the FCC's purpose in imposing a roaming requirement.⁸ In 1981, when the FCC first established policies for cellular service, the FCC determined that the public interest would best be served by implementing a nationwide high-capacity mobile communications service capable of providing both local and roaming mobile telephone users the ability to place

the ability to enter into operational contracts, such as roaming, interconnection, and switch-sharing, with other, often large, providers. *See Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, 21 FCC Rcd 4753 (2006) ("CSEA Implementation Order").

⁸The FCC has determined that Section 22.911(b) of the Rules clearly requires that base stations render roaming service to all properly licensed roamers. The FCC found that there was no merit to a licensee's claim that it could not provide roamer service in extension areas because it was not authorized to provide any service in those areas. The FCC concluded that by grant of its application, service in the extension areas was authorized and the privilege of extending a service contour by agreement imposes a duty on the extending licensee, in the extension area, to assume all of the obligations of the adjacent licensees, including roaming service. *See Baton Rouge MSA Ltd. Partnership*, 72 RR 2d 1125 [*Common Car. Bur.*, 1993].

and receive calls.⁹ In 1996, the FCC extended the roaming rules to cover all CMRS carriers. In so doing, the FCC confirmed that the availability of roaming is important to the development of a nationwide ubiquitous and competitive wireless telecommunications service.¹⁰ The Commission concluded that market forces alone are not sufficient to ensure that roaming will become widely available. Indeed, the FCC expanded the roaming requirements to include the newly licensed PCS carriers because it was concerned that a carrier building out its network to compete with other carriers would be the party most in need of roaming, but the party least likely to acquire roaming from its competitors.¹¹ The FCC's home roaming exclusion effectively reverses this longstanding policy while ignoring the FCC's reason for implementing roaming requirements.¹²

c. The Home Market Exclusion Will Not Achieve its Stated Purpose and is Contrary to the Public Interest

The FCC's stated purpose for excluding the broadly defined home markets from the automatic roaming requirement is to encourage carriers to deploy networks and

⁹ See *An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems*, 86 FCC 2d 469 (1981).

¹⁰ *Interconnection and Resale Second R&O. See also CSEA Implementation Order* at par. 22.

¹¹ *Interconnection and Resale Second R&O.*

¹² Not only does the FCC reverse its prior policy, it creates a situation where the rules require incumbents to offer roaming in areas where market forces are most likely to work, while withdrawing the right in those situations where market forces are least likely to work. For new entrants, competitors have no incentive to offer roaming agreements on reasonable and non-discriminatory terms while the new entrant deploys its network.

services in their licensed areas.¹³ However, contrary to the Commission's intent, the exclusion will actually delay rather than accelerate facilities-based competition.

The home market exclusion effectively reduces rather than enlarges roaming rights. The FCC has clearly recognized that roaming rules have an impact on fostering competition,¹⁴ but it completely disregards this finding and takes action that will harm, not encourage, new entry. With the home market exclusion, the FCC has created a regime whereby new entrants will have to build out to all parts of their licensed areas before they can serve anybody, if they wish to sell a geographically ubiquitous service. The FCC found this unreasonable in other contexts in that it could delay by years the ability of a new entrant to offer service in any market and a disincentive to enter the wireless market at all.¹⁵ Thus, the prohibition on in-market roaming creates significant barriers to entry and deters the very facilities-based competition sought by the FCC. Moreover, the exclusion will harm consumers by reducing competition and thus undermine the FCC's objective to promote ubiquitous communications service, protect life and promote public safety.

The home roaming exclusion ignores the practical, economic realities of operating a wireless network. New entrants face significant impediments to immediate use of the spectrum including spectrum clearing, incumbent relocation, and legal ability to use spectrum (i.e., 700 MHz). Small carriers do not have unlimited financial resources and must roll out service over time so that income generated in initial service areas can fund expansions. Such carriers have every intention of becoming facilities-based competitors

¹³ *Report and Order* at par. 49.

¹⁴ *See Interconnection and Resale Second R&O.*

¹⁵ *Id.*

but are limited by the financial realities. Due to these economic, technical, legal and practical obstacles, a CMRS carrier often cannot feasibly construct a network that completely covers every portion of its licensed areas. Carriers therefore rely on roaming to fill in coverage gaps and expand the geographic areas in which their customers can obtain service.¹⁶

The home market exclusion will not have the desired effect of promoting facilities-based competition; it will prevent it. As T-Mobile stated, when carriers are forced through regulatory fiat to build out in areas where it is neither efficient nor economical to do so, vital resources are directed away from pro-consumer features and services to the detriment of customers.¹⁷ The FCC has provided an insufficient basis for dispensing with a wireless carrier's common carrier obligations, and the automatic roaming requirement should therefore apply without exception.

The FCC's concern that if a carrier is allowed to piggy-back on the network coverage of a competing carrier in the same market, both carriers lose the incentive to build out into high-cost areas¹⁸ is misplaced. A carrier has no right to get free access to the host carrier network. Rather the host carrier is able to assess a reasonable charge and ascertaining what is reasonable is left to the carrier as the FCC expressly declined to adopt a default rate, a benchmark rate or a rate cap. The reason the FCC declined to limit roaming rates was because regulation to reduce roaming rates has the potential to deter

¹⁶ The fact that a licensee relies on roaming in no way serves as a deterrent to a timely buildout of its network. Licensees have ample economic incentive to deploy their networks as expeditiously as possible.

¹⁷ See *Petition for Reconsideration of T-Mobile USA, Inc.*

¹⁸ *Report and Order* at par. 49.

investment in network deployment and reduce incentives to expand.¹⁹ Further, it is simply not economically feasible for a carrier to pursue a strategy based on roaming when acquiring spectrum at auction proceedings at market price.

The home market exclusion will clearly harm consumers. Consumers looking for wireless service do not look to a licensed area; rather, they look to a geographical service area. The home market exclusion will reduce geographical coverage. No consumer should see the words “no service” when there is a compatible network available. Yet, a denial of access to a compatible network is exactly what occurs with the FCC’s in-market roaming exclusion. The FCC has sacrificed important public safety benefits in hopes of promoting further facilities-based competition. The public interest is better served by improved coverage through broader roaming rights. Such a process ensures important communications coverage, and safety services.

Because the FCC has opted to assign spectrum on the basis of large market areas, it should not retain an in-market roaming exclusion that applies from the moment of licensing without regard to the nature and extent of system development. The result will accelerate the consolidation of the industry into the hands of a few carriers. In sum, the exclusion will have negative unintended consequences of reducing competition which does not promote the public interest.²⁰

¹⁹ *Id.* at par. 37-40.

²⁰ The exclusion will also diminish the value of spectrum licenses. For example, parties that acquire 700 MHz licenses must wait until 2009 when the spectrum will be cleared to begin utilizing their licenses. The home market exclusion denies roaming rights to these licensees even though they are not yet able to use the spectrum. This restriction will harm both 700 MHz licensees and their future customers and makes no sense.

For the foregoing reasons, RTG and OPASTCO respectfully request that the FCC reconsider and eliminate the home roaming exclusion.

Respectfully submitted,

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