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

In the Matter of)
)
Reexamination of Roaming Obligations of) WC Docket No. 05-265
Commercial Mobile Radio Service Providers)
)
To: The Commission)

OPPOSITION TO PETITION FOR RECONSIDERATION

Paul K. Mancini
Gary L. Phillips
Michael P. Goggin
1120 20th Street, NW
Washington, DC 20036
(202) 457-2055

Counsel for AT&T Inc.

November 6, 2007

SUMMARY

AT&T Inc., on behalf of AT&T Mobility LLC and its wholly-owned and controlled wireless affiliates (collectively “AT&T”) hereby opposes the Petitions for Reconsideration (“Petitions”) filed by Leap Wireless International, Inc., MetroPCS Communications, Inc., SpectrumCo LLC, Sprint Nextel Corporation, and T-Mobile USA, Inc. (“Petitioners”).

As a threshold matter the Petitions are defective and should be dismissed. The Commission has recognized that petitions for reconsideration should be based on new facts or new arguments which could not have been made during the proceeding. It is well established that “the Commission will not reconsider arguments that have already been considered.” The central argument, albeit flawed, underlying the Petitions is that a failure to require automatic home roaming would undermine competition. The Commission, however, has already considered and rejected this very argument, reaching the opposite conclusion — that *imposing* a home roaming requirement would impair competition.

Petitioners claim that competition will be lessened unless home roaming is included within the new automatic roaming requirement is counter-intuitive. The *Report and Order* got it right — the decision not to require home roaming will have positive effects on competition. A company should not be able to take advantage of its competitor’s investment in network infrastructure and build-out in areas where it could have made the same investments.

Moreover, adoption of a home roaming requirement would have violated the de-regulatory mandate of the Telecommunications Act of 1996. The Commission previously has recognized that automatic roaming regulations should be imposed only if “it is clear that providers’ current practices are unreasonably hindering the operation of the market to the detriment of consumers.” No such showing has been made in the context of home roaming.

Contrary to the claims of MetroPCS and Sprint, home roaming is not required pursuant to Sections 201 and 202 of the Communications Act. Section 201 merely requires carriers to act reasonably and Section 202 only prohibits “unjust and unreasonable” discrimination. The Commission has effectively determined that it is reasonable for carriers to deny home roaming.

Further, the Commission should not reconsider its decision to apply the automatic roaming requirement only to wireless services that are interconnected with the public switched telephone network. SpectrumCo claims that the Commission provided “no basis or justification for this distinction,” but the basis for the distinction is self-evident. The roaming requirement is codified in Part 20 of the Commission’s rules, which governs CMRS carriers. Interconnection is a fundamental component of CMRS. The Commission has made clear in its *Wireless Broadband Order* that when a CMRS licensee provides a non-interconnected service, such as broadband Internet access, that service does not meet the definition of CMRS. Accordingly, a CMRS-specific roaming policy should not apply to non-interconnected service offerings.

Finally, extension of the automatic roaming requirement to non-interconnected services is the subject of a pending rulemaking and should not be decided in response to the Petitions.

TABLE OF CONTENTS

SUMMARY i

I. THE PETITIONS FOR RECONSIDERATION SHOULD BE DISMISSED..... 2

II. THE FCC CORRECTLY DETERMINED THAT A HOME ROAMING REQUIREMENT WOULD UNDERMINE FACILITIES-BASED SERVICE AND DISCOURAGE COMPETITION BASED ON COVERAGE 3

 A. The Home Roaming Exemption Will Encourage Build-Out and Will Not Discourage New Entry 4

 B. Head Start Arguments Do Not Justify a Home Roaming Requirement 7

 C. Home Roaming Exemption Does Not Unfairly Alter the Bargaining Power of CMRS Licensees 8

III. A HOME ROAMING REQUIREMENT WOULD VIOLATE THE DE-REGULATORY MANDATE OF THE COMMUNICATIONS ACT 8

IV. REGULATION OF ROAMING AS A COMMON CARRIER SERVICE DOES NOT PRECLUDE ADOPTION OF THE HOME ROAMING EXEMPTION..... 10

V. THE AUTOMATIC ROAMING REQUIREMENT WAS PROPERLY LIMITED TO INTERCONNECTED SERVICES..... 10

CONCLUSION..... 12

Before the
Federal Communications Commission
Washington, DC 20554

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

To: The Commission

OPPOSITION TO PETITIONS FOR RECONSIDERATION

AT&T Inc., on behalf of AT&T Mobility LLC and its wholly-owned and controlled wireless affiliates (collectively “AT&T”), pursuant to Section 1.429(f) of the Commission’s rules, hereby opposes the Petitions for Reconsideration (“Petitions”) filed by Leap Wireless International, Inc. (“Leap”), MetroPCS Communications, Inc. (“MetroPCS”), SpectrumCo LLC (“SpectrumCo”), Sprint Nextel Corporation (“Sprint”), and T-Mobile USA, Inc. (“T-Mobile”) (collectively “Petitioners”).¹ As discussed below, AT&T opposes the Petitioners’ requests that the Commission reconsider its decision in the *Report and Order*² not to require automatic “home roaming”³ and to limit the automatic roaming requirement to interconnected services.⁴

¹ Petition for Reconsideration of Leap Wireless International, Inc., WT Docket No. 05-265 (filed Sept. 28, 2007) (“Leap Petition”); Petition for Reconsideration of MetroPCS Communications, Inc., WT Docket No. 05-265 (filed Oct. 1, 2007) (“MetroPCS Petition”); Petition for Reconsideration of SpectrumCo LLC, WT Docket No. 05-265 (filed Oct. 1, 2007) (SpectrumCo Petition”); Petition for Reconsideration of Sprint Nextel Corporation, WT Docket No. 05-265 (filed Oct. 1, 2007) (“Sprint Petition”); Petition for Reconsideration of T-Mobile USA, Inc., WT Docket No. 05-265 (filed Oct. 1, 2007) (“T-Mobile Petition”).

² *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, 22 F.C.C.R. 15817 (2007), 72 Fed. Reg. 50064 (Aug. 30, 2007) (“*Report and Order*”).

³ See Leap Petition at 5-19; MetroPCS Petition at 4-22; SpectrumCo Petition at 3-13; Sprint Petition at 7-10; T-Mobile Petition at 3-9.

⁴ SpectrumCo Petition at 14-15.

I. THE PETITIONS FOR RECONSIDERATION SHOULD BE DISMISSED

Petitioners seek reconsideration of the *Report and Order* pursuant to Section 1.429 of the Commission's rules.⁵ Such petitions must present "very substantial reasons" in order to warrant consideration.⁶ The Commission has recognized that such petitions should be based on new facts, new arguments which could not have been made during the proceeding, or a substantial shift in the state of the law.⁷ It is well established that "the Commission will not reconsider arguments that have already been considered."⁸

The central argument, albeit flawed, underlying the Petitions is that a failure to require automatic home roaming would undermine competition.⁹ The Commission, however, has already considered and rejected this very argument, reaching the opposite conclusion — namely, that *imposing* a home roaming requirement would impair competition.¹⁰

Petitioners have presented no arguments to support a home roaming requirement that could not have been raised in their original comments or elsewhere in the record before the

⁵ T-Mobile Petition at 1.

⁶ See *In the Matter of Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, 15 F.C.C.R. 12315 (2000); accord *Amendment of Section 73.202(b), FM Table of Allotments, FM Broadcast Stations, Memorandum Opinion and Order*, 16 F.C.C.R. 2272 (2001).

⁷ *Id.*

⁸ *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, MM Docket No. 93-228, Memorandum Opinion and Order*, 10 F.C.C.R. 6108, ¶ 5 (PRD 1995) (citing *Eagle Broadcasting Co. v. FCC*, 514 F.2d 852 (D.C. Cir. 1975)); accord *Hill & Welch and Myers Keller Communications Law Group*, 22 F.C.C.R. 5271, ¶ 8 (2007) (stating that reconsideration was properly denied because the arguments set forth in the Petition were "merely repetitions of the same arguments [Petitioner] has made before and are not based on any new fact or changed circumstance").

⁹ Leap Petition at 8-18; MetroPCS Petition at 10-22; SpectrumCo Petition at 3-13; Sprint Petition at 7-10; T-Mobile Petition at 5-7. Sprint also seeks reconsideration of the Commission's decision to subject PTT services to the automatic roaming requirement. Sprint Petition at 1-7. Sprint argued against this requirement in its reply comments in this proceeding. Sprint Reply Comments at 15-18.

¹⁰ *Report and Order* at ¶ 49 (citing comments of Leap and MetroPCS). See Sprint Petition at 7-10. T-Mobile argued in its reply comments that a home roaming exemption should be limited to areas where at least one carrier actually has facilities. T-Mobile Reply Comments at 21. Its Petition is limited to this very issue. T-Mobile Petition at 8 (stating that "the Commission should redefine 'home market' in Section 20.3 so that for purposes of automatic roaming, a CMRS carrier's home market is limited to any geographic location where the home carrier has an operating network that can be used to provide CMRS").

Commission.¹¹ Accordingly, there is no basis to reconsider the home roaming issue and the Petitions should be denied to the extent they seek reconsideration of this matter.

II. THE FCC CORRECTLY DETERMINED THAT A HOME ROAMING REQUIREMENT WOULD UNDERMINE FACILITIES-BASED SERVICE AND DISCOURAGE COMPETITION BASED ON COVERAGE

Petitioners claim that competition will be lessened unless home roaming is included within the new automatic roaming requirement.¹² Leap, MetroPCS, SpectrumCo, and Sprint claim that the failure to require home roaming will undermine competition by either discouraging build-out or new entry.¹³ Leap and SpectrumCo also claim that in-market, automatic roaming is necessary to eliminate the head start advantage large carriers have over smaller carriers and new entrants.¹⁴ Further, Leap, T-Mobile, and Sprint claim that the failure to require home roaming will undermine competition by altering the value of existing licenses and the negotiating positions of licensees.¹⁵

These arguments do not warrant reconsideration.¹⁶ The *Report and Order* itself fully addresses the effect of a home roaming requirement on competition:

Contrary to certain carriers' contentions, we find that an automatic roaming request in the home area of a requesting CMRS carrier, the area where the requesting CMRS carrier has the spectrum to compete directly with the would-be host carrier, does not serve our

¹¹ SpectrumCo was not a participant in the rulemaking, but raises the same argument that the home roaming exemption will discourage competition. Moreover, SpectrumCo has failed to demonstrate why it could not have presented its arguments to the Commission in the rulemaking. Although it claims that it was not an interested party at the time of the rulemaking (SpectrumCo Petition at n.1), SpectrumCo implies that its decision to enter the AWS Auction was premised upon the availability of automatic and home roaming. SpectrumCo Petition at 4-10. Of course, SpectrumCo's decision could not have been based on the availability of either because the Commission had never before required carriers to offer automatic or home roaming.

¹² Leap Petition at 8-18; MetroPCS Petition at 10-22; SpectrumCo Petition at 3-13; Sprint Petition at 7-10; T-Mobile Petition at 5-7.

¹³ Leap Petition at 11-14; MetroPCS Petition at 10-22; SpectrumCo Petition at 3-13; Sprint Petition at 8-9.

¹⁴ Leap Petition at 8-11; SpectrumCo Petition at 3-10.

¹⁵ Leap Petition at 14-15, 16-18; Sprint Petition at 9-10; T-Mobile Petition at 4-8.

¹⁶ See *Report and Order* at ¶ 49.

public interest goals of encouraging facilities-based service and supporting consumer expectations of seamless coverage when traveling outside the home area. We agree with Cingular that, if a carrier is allowed to “piggy-back” on the network coverage of a competing carrier in the same market, then both carriers lose the incentive to build-out into high cost areas in order to achieve superior network coverage. If there is no competitive advantage associated with building out its network and expanding coverage into certain high cost areas, a carrier will not likely do so. Consequently, consumers may be disadvantaged by a lack of product differentiation, lower network quality, reliability and coverage. In other words, we believe that requiring home roaming could harm facilities-based competition and negatively affect build-out in these markets, thus, adversely impacting network quality, reliability, and coverage.¹⁷

The Commission got it right. As shown in the following sections, the decision not to require home roaming will have positive effects on competition and there is no justification for allowing a company to take advantage of its competitor’s investment in network infrastructure and superior in-market coverage.

A. The Home Roaming Exemption Will Encourage Build-Out and Will Not Discourage New Entry

CMRS carriers compete based on rates, coverage, innovative features, and service quality¹⁸ and the Commission has found that CMRS carriers must develop “strategies designed to differentiate their brands based on attributes such as network coverage and service quality.”¹⁹ The Commission also has recognized that a carrier’s success “should be driven by technological innovation, service quality, competition-based pricing decisions, and responsiveness to consumer needs — and not by strategies in the regulatory arena.”²⁰

¹⁷ *Report and Order* at ¶ 49 (citing Leap and MetroPCS).

¹⁸ *See Annual Report and Analysis of Competitive Market Conditions With Respect to CMRS*, WT Docket No. 05-71, *Eleventh Report*, 21 F.C.C.R. 10947, ¶¶ 89-135 (2006) (“*11th CMRS Competition Report*”); *accord Tenth Report*, 20 F.C.C.R. 15908, ¶¶ 3, 96-138 (2005) (“*10th CMRS Competition Report*”).

¹⁹ *11th CMRS Competition Report* at ¶ 133; *10th CMRS Competition Report* at ¶¶ 3, 134.

²⁰ *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, *Second Report and Order*, 9 F.C.C.R. 1411, 1420 (1994) (“*CMRS Second Report and Order*”); *accord Orloff v. FCC*, 352 F3d 415, 419 (D.C. Cir. 2003) (citing *CMRS Second Report and Order*).

Consistent with both the realities of the competitive marketplace and the Commission's recognition that facilities-based competition is preferable to regulatory intervention, carriers filed comments demonstrating that an unlimited automatic roaming requirement would eliminate the ability of carriers to tout coverage distinctions and therefore reduce build-out incentives.²¹ One commenter noted that:

Requiring home roaming would remove incentives for carriers to build out networks. A home roaming requirement would largely eliminate network quality, reliability, and coverage as facets of CMRS competition.²²

Leap and MetroPCS contested these arguments,²³ but the Commission weighed the evidence and concluded that home roaming should not be required because it would allow "a carrier to 'piggy-back' on the network coverage of a competing carrier in the same market" and therefore reduce "the incentive to build-out into high cost areas in order to achieve superior network coverage."²⁴ The Commission correctly concluded that a home roaming requirement would not serve the public interest because it could create a disincentive for network buildout.

There is no basis for revisiting this determination. If the first carrier providing coverage in a given area were required to provide automatic home roaming service to its competitors' customers, there would be no reason for competitors to build out their own networks in that area. The absence of a home roaming requirement, in contrast, may spur them to engage in true facilities-based competition. Moreover, carriers would steer clear of expanding coverage into rural and high-cost areas if they are deprived of the coverage advantage gained from the

²¹ Cingular Comments at 26; Edge Wireless Communications Comments at 9; Verizon Wireless Comments at 17-18; *see* T-Mobile Comments at 21.

²² Verizon Wireless Comments at 17; *accord* Verizon Wireless Reply Comments at 19-23; *see* Cingular Comments at 26.

²³ *See* MetroPCS Comments at 29; Leap Comments at 15-16; RTG Comments at 12; RTG/OPSASTCO Reply Comments at 3; Leap Reply Comments at 5, n.12.

²⁴ *Report and Order* at ¶ 49.

investments in network expansion. A home roaming requirement thus would disserve the public interest by inhibiting both facilities-based competition *and* network buildout.

The argument that a home roaming exemption will deter new entrants is similarly unavailing.²⁵ Neither automatic roaming nor home roaming has ever been required. As the Commission recognized in adopting the *Report and Order*:

Until our actions today, the Commission has not expressly addressed whether, under Sections 201 and 202 of the Act, it is desirable and necessary to provide automatic roaming upon reasonable request. Nor has it expressly stated that automatic roaming is a common carrier service. Moreover, it has not adopted an automatic roaming rule.²⁶

Further, in a variety of proceedings over the last decade, the Commission had sought comment on whether automatic roaming is required.²⁷ Yet, until adoption of the *Report and Order*, no such requirement was imposed.

Nevertheless, in the absence of an automatic roaming requirement, numerous auctions have been held and new entrants have acquired licenses to provide CMRS. There was no guarantee that Leap, MetroPCS, SpectrumCo or any other entity would have been entitled to automatic roaming prior to adoption of the *Report and Order*. They certainly cannot claim that their decisions to enter the CMRS market were based on an automatic roaming requirement. If they were willing to enter the market without such a requirement, they cannot legitimately claim

²⁵ Leap Petition at 14-15; MetroPCS Petition at 19-20; SpectrumCo Petition at 3-10.

²⁶ *Report and Order* at ¶ 24.

²⁷ See *Interconnection and Resale Obligations Pertaining to CMRS*, CC Docket No. 94-54, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11 F.C.C.R. 9462 (1996) (“*Roaming Second Report*” or “*Third NPRM*”); *Automatic and Manual Roaming Obligations Pertaining to CMRS*, WT Docket 00-193, *Notice of Proposed Rulemaking*, 15 F.C.C.R. 21628, 21628 (2000) (“*2000 NPRM*”); see also *2002 Biennial Regulatory Review*, WT Docket No. 02-310, *Wireless Telecommunications Bureau Staff Report*, 18 F.C.C.R. 4243, 4287 (2002); *Federal Communications Commission 2004 Biennial Regulatory Review*, WT Docket No. 04-180, *Wireless Telecommunications Bureau Staff Report*, 20 F.C.C.R. 124, 169 (2005).

that new entry will be deterred now that automatic roaming is now required, albeit with a limited home roaming exemption.

B. Head Start Arguments Do Not Justify a Home Roaming Requirement

MetroPCS and SpectrumCo claim reconsideration is warranted because home roaming is necessary to eliminate the “head start” advantage of larger carriers.²⁸ In essence, they seek the ability to resell the service of facilities-based carriers in the markets in which they hold licenses.

The Commission previously required incumbents to permit new entrants to resell their services to eliminate the head start advantage in the cellular duopoly environment, but this requirement was eliminated along with the cellular duopoly once PCS systems were fully deployed.²⁹ Unlike the cellular duopoly, the CMRS market today is fully competitive. Nevertheless, MetroPCS and SpectrumCo effectively seek to utilize the new automatic roaming obligations as a replacement for the old resale policy. However, in adopting the automatic roaming requirement, the Commission clearly stated:

[T]he automatic roaming obligation . . . and the home roaming exclusion are not intended to resurrect CMRS resale obligations. CMRS resale entail’s a reseller’s purchase of CMRS service by a facilities-based CMRS carrier in order to provide resold service within the same geographic market as the facilities-based CMRS provider. . . . [T]he Commission’s mandatory resale rule was sunset in 2002, and *automatic roaming obligations cannot be used as a backdoor way to create de facto mandatory resale obligations or virtual reseller networks.*³⁰

²⁸ MetroPCS Petition at 7-9; SpectrumCo Petition at 9-10. A better way to look at a so-called “head start advantage” is to recognize that it describes the competitive benefit earned by investing in unserved areas. This pro-competitive incentive would be lost if a home roaming obligation is imposed.

²⁹ *Interconnection and Resale Obligations Pertaining to CMRS*, CC Docket No. 94-54, First Report and Order, 11 F.C.C.R. 18455, ¶¶ 25-30 (1996).

³⁰ *Report and Order* at ¶ 51 (emphasis added).

C. Home Roaming Exemption Does Not Unfairly Alter the Bargaining Power of CMRS Licensees

Some Petitioners claim reconsideration is warranted because the home roaming exemption would unfairly alter the bargaining power of CMRS licensees.³¹ As discussed above, however, neither automatic nor home roaming has ever been required. Thus, the adoption of a new automatic roaming requirement for the first time is what altered the negotiating position of CMRS licensees, not the exemption of home roaming from this requirement.

Moreover, in the absence of a regulatory mandate, numerous carriers have entered into home roaming agreements where justified by market forces. T-Mobile seeks reconsideration *not* because it has been unable to obtain agreements that permit home roaming, but rather because the exemption of home roaming will somehow alter the bargaining power of carriers for home roaming.³² This argument is difficult to fathom, however, given that neither automatic roaming nor home roaming has ever been required.

III. A HOME ROAMING REQUIREMENT WOULD VIOLATE THE DEREGULATORY MANDATE OF THE COMMUNICATIONS ACT

The Commission has recognized that any roaming regulations must be narrowly tailored to avoid conflicts with the deregulatory mandate of the Telecommunications Act of 1996:

[I]mposing such a requirement is inconsistent with our general policy of allowing market forces, rather than regulation, to shape the development of wireless services. Similarly, it could be viewed as at odds with Congress' goal in adopting the Telecommunications Act of 1996 of creating a "pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry.³³

Thus, the Commission previously has recognized that automatic roaming regulations should be imposed only if "*it is clear that providers' current practices are unreasonably hindering the*

³¹ See Leap Petition at 14-15, 16-18; Sprint Petition at 9-10; T-Mobile Petition at 4-8.

³² See T-Mobile Petition at 3-7.

³³ *Roaming Second Report*, 11 F.C.C.R. at 9477 (citation omitted).

operation of the market to the detriment of consumers.”³⁴ This showing cannot be made in the context of home roaming.

Home roaming involves the ability of a carrier’s subscribers to obtain service in an area that their own carrier is authorized to serve, but has not deployed the facilities to do so. If the carrier is unable to negotiate a home roaming agreement, it retains the ability to build facilities to serve the area in question. This is the very essence of competition — one carrier expands coverage into a particular area and its competitors decide how to respond. There is no evidence of market failure to justify Commission intervention.

A home roaming requirement also would interfere with market forces by altering the way inter-carrier business arrangements are established. Currently, automatic roaming takes place based on the free-market negotiation of a roaming agreement based on mutual benefit. If home roaming were required, a carrier that has made fewer investments and has a smaller coverage area would be entitled to have its customers roam on the network of a competitor that has made greater investments to produce superior coverage. A home roaming requirement would mean that the carrier that has made the greater investments receives no competitive benefit, while the carrier that has an inferior network suffers no detriment in the marketplace. The regulation would skew incentives in a way clearly inconsistent with the public interest in a vibrantly competitive CMRS marketplace.

Further, even if carriers refuse to enter into home roaming agreements, regulation would be justified only if this refusal would harm consumers.³⁵ The Commission has reached the opposite conclusion — a home roaming requirement would harm consumers by discouraging build-out.³⁶

³⁴ *2000 NPRM*, 15 F.C.C.R. at 21635-36 (emphasis added).

³⁵ *See 2000 NPRM*, 15 F.C.C.R. at 21635-36.

³⁶ *Report and Order* at ¶¶ 48-51.

IV. REGULATION OF ROAMING AS A COMMON CARRIER SERVICE DOES NOT PRECLUDE ADOPTION OF THE HOME ROAMING EXEMPTION

MetroPCS and Sprint claim that reconsideration of the home roaming exemption is warranted because the Commission has deemed roaming to be a common carrier service subject to Sections 201 and 202 of the Act — statutory provisions they claim would preclude the home roaming exemption.³⁷ These arguments are based on an incorrect premise. As MetroPCS recognizes, Section 201 merely requires carriers to act reasonably and Section 202 only prohibits “unjust and unreasonable” discrimination.³⁸ The home roaming exemption thus constitutes a Commission determination that it is reasonable for carriers to deny home roaming.

V. THE AUTOMATIC ROAMING REQUIREMENT WAS PROPERLY LIMITED TO INTERCONNECTED SERVICES

SpectrumCo seeks reconsideration of the Commission’s decision to apply the automatic roaming requirement only to wireless services that are interconnected with the public switched telephone network (“PSTN”).³⁹ SpectrumCo claims that the Commission provided “no basis or justification for this distinction.”⁴⁰

The basis for the distinction is self-evident. The roaming requirement is codified in Part 20 of the Commission’s rules, which governs CMRS carriers.⁴¹ The purpose of Part 20 is to “set forth the requirements and conditions applicable to commercial mobile radio service providers.”⁴² CMRS is defined as: “A mobile service that is: (a)(1) provided for profit . . . (2) An interconnected service; and (3) available to the public or such classes of eligible users as to

³⁷ MetroPCS Petition at 4-10; Sprint Petition at 9-10.

³⁸ MetroPCS Petition at 4-5.

³⁹ SpectrumCo Petition at 14-15.

⁴⁰ SpectrumCo Petition at 14.

⁴¹ See 47 C.F.R. § 20.12.

⁴² 47 C.F.R. §20.1.

be effectively available to a substantial portion of the public.”⁴³ Given the definition of CMRS, it is inherently reasonable for the Commission to limit the roaming requirement to services that are interconnected—an essential component of CMRS. The Commission has made clear in its *Wireless Broadband Order* that when a CMRS licensee provides a non-interconnected service, such as broadband Internet access, that service does not meet the definition of CMRS.⁴⁴ Accordingly, a CMRS-specific roaming policy should not apply to non-interconnected service offerings.

Further, the automatic roaming requirement merely amends Section 20.12 which was always limited to carriers that offered “two-way switched voice or data service that is interconnected to the public switched telephone network.”⁴⁵ In expanding the roaming rule to require automatic roaming, it certainly was reasonable to retain the existing limitation to interconnected services.

Finally, extension of the automatic roaming requirement to non-interconnected services is the subject of a pending rulemaking and, therefore, does not form the basis for reconsideration of the current rule.⁴⁶ The merits of this proposal are more appropriately addressed in the context of the rulemaking proceeding.

⁴³ 47 C.F.R. §20.3.

⁴⁴ *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, *Declaratory Ruling*, FCC 07-30, 22 F.C.C.R. 5901, ¶¶ 41-47 (2007).

⁴⁵ 47 C.F.R. §20.12(a).

⁴⁶ *Report and Order* at ¶ 79 (stating that the Further Notice seeks comment on “whether we should extend the automatic roaming obligations to non-interconnected services and features. . .”).

CONCLUSION

For the foregoing reasons, as well as those set forth in Cingular's Comments and Reply Comments in this docket, the Petitions should be denied.

Respectfully submitted,

AT&T INC.

By: /s/ Michael P. Goggin

Paul K. Mancini

Gary L. Phillips

Michael P. Goggin

1120 20th Street, NW

Washington, DC 20036

(202) 457-2055

Its Attorneys

November 6, 2007

CERTIFICATE OF SERVICE

I, Paula Lewis, do hereby certify that on this 6th day of November 2007, a copy of the foregoing Opposition to Petition for Reconsideration was served by U.S. Mail, first-class postage prepaid to the following:

Laura H. Carter
Charles W. McGee
Sprint Nextel Corporation
2001 Edmund Halley Drive
Reston, WA 20191

William F. Maher, Jr.
Jennifer L. Kostyu
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, DC 20006

Thomas J. Sugrue
Kathleen O'Brien Ham
Sara F. Liebman
Patrick T. Welsh
T-Mobile USA, Inc.
401 9th Street, NW, Suite 5500
Washington, DC 20004

James H. Barker
Barry J. Blonien
Jeffrey A. Pojanowski
Latham & Watkins LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004-1304

Robert J. Irving, Jr.
Leap Wireless International, Inc.
10307 Pacific Center Court
San Diego, CA 92121

Carl W. Northrop
Lisa E. Roberts
Paul, Hastings, Janofsky & Walker LLP
875 15th Street, NW
Washington, DC 20005

Mark A. Stachiw
MetroPCS Communications, Inc.
8144 Walnut Hill Lane, Suite 800
Dallas, TX 75231

Philip L. Verveer
Daniel K. Alvarez
Willkie Farr & Gallagher LLP
1875 K Street, NW
Washington, DC 20006-1238


Paula Lewis