

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

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

**REPLY COMMENTS OF SPECTRUMCO LLC  
IN SUPPORT OF PETITIONS FOR RECONSIDERATION**

SpectrumCo LLC (“SpectrumCo”) hereby submits its reply comments in support of the Petitions for Reconsideration (“Petitions”) in the above-captioned proceeding.<sup>1</sup>

**I. INTRODUCTION**

Petitioners represent a broad swath of the wireless industry – from new potential entrants such as SpectrumCo to mid-size carriers such as Leap and MetroPCS to larger national providers such as T-Mobile and Sprint Nextel – yet they all seek the same end: revocation of the home roaming exception.<sup>2</sup> Despite this broad support for revoking the home roaming exception, Verizon Wireless and AT&T oppose this reasonable step.<sup>3</sup> Their arguments should be rejected. As SpectrumCo demonstrated in its Petition, a decision by the Commission to revoke the home

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<sup>1</sup> *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817 (2007) (“2007 Roaming Order” or “2007 Roaming Further Notice,” as appropriate).

<sup>2</sup> Leap Wireless Petition for Reconsideration, WT Dkt. No. 05-265 (filed Sept. 28, 2007); Sprint Nextel Petition for Reconsideration, WT Dkt. No. 05-265 (filed Oct. 1, 2007); T-Mobile Wireless Petition for Reconsideration, WT Dkt. No. 05-265 (filed Oct. 1, 2007); MetroPCS Petition for Reconsideration, WT Dkt. No. 05-265 (filed Oct. 1, 2007); SpectrumCo Petition for Reconsideration, WT Dkt. No. 05-265 (filed Oct. 1, 2007).

<sup>3</sup> Verizon Wireless Opposition to Petitions for Reconsideration, WT Dkt 05-265 (filed Nov. 6, 2007) (“VZW Opposition”); AT&T Opposition to Petitions for Reconsideration, WT Dkt 05-265 (filed Nov. 6, 2007) (“AT&T Opposition”).

roaming exception will foster additional efficient competition to the benefit of the public interest. Accordingly, the Commission should revoke the home roaming exception and it should redefine the automatic roaming right to include services that may not necessarily traverse the PSTN. Doing so will ensure that the roaming rules continue to meet consumer expectations and maximize consumer benefits.

## **II. REVOKING THE HOME ROAMING EXCEPTION WILL ENCOURAGE COMPETITION AND NEW ENTRY.**

The arguments put forward by AT&T and Verizon Wireless in opposition to revoking the home roaming exception fall into two categories: first, they argue that revoking the home roaming exception will harm competition because it will eliminate network coverage as an important point of competitive differentiation; and, second, they argue that roaming carriers will have no incentive to deploy networks if they can “piggy-back” on existing networks.<sup>4</sup> As an initial matter, these arguments are contradicted by the fact that home roaming agreements are generally the norm in this marketplace. More fundamentally, however, these arguments miss (or ignore) one crucial point – roamed-on carriers will be able to charge for roaming, subject to the well-established just and reasonable requirements of Sections 201 and 202. The Commission’s decision to refrain from particularized regulation of roaming rates, therefore, will protect the incumbent carriers’ “head start”, and ensure that they are adequately compensated for the facilities they have deployed.

As AT&T’s Opposition inadvertently but plainly shows, the Commission’s efforts to codify a general industry practice has had the perverse effect of threatening to diminish its

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<sup>4</sup> More generally, both Verizon Wireless and AT&T argue that the Petitions should be dismissed because they fail to present new facts for the Commission’s consideration. This argument is baseless. The Commission clearly did not consider the impact that its ruling would have on new potential entry. If it had, it would not have adopted the home roaming exception.

availability. AT&T correctly observes that “in the absence of a regulatory mandate, numerous carriers have entered into home roaming agreements where justified by market forces.”<sup>5</sup> In short, an industry norm favoring automatic roaming has developed, albeit a norm with notable and aggravated exceptions. The existence of industry norms, of course, informs the determination of whether practices are “just and reasonable” for purposes of Section 201 and similar provisions grounded on conceptions of the public interest. But as AT&T also correctly observes, the *2007 Roaming Order* “constitutes a Commission determination that it is reasonable for carriers to deny home roaming.”<sup>6</sup> This reduction in expectations for intercarrier cooperation in appropriate circumstances plainly harms the competitive process and ultimately the welfare of consumers.

Both AT&T and Verizon Wireless argue that network coverage is an important competitive advantage that will lose its significance if the Commission revokes the home roaming exception.<sup>7</sup> But other statements by these carriers suggest that home roaming is already a generally accepted industry norm, casting some doubt as to the relative significance of their underlying premise. Furthermore, their concern is misplaced. The Commission’s decision to refrain from particularized regulation of roaming rates ensures that roamed-on carriers will be able to capitalize on their “head start” by charging a reasonable rate for allowing other carriers’ subscribers to roam on their networks. Clearly, whatever “head start” these carriers may have will not be nullified by the elimination of the home roaming exception.

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<sup>5</sup> AT&T Opposition at 8.

<sup>6</sup> *Id.* at 10.

<sup>7</sup> *See id.* at 7-10; VZW Opposition at 8-9.

AT&T and Verizon Wireless also contend that revoking the home roaming exception will serve as a disincentive to build-out.<sup>8</sup> SpectrumCo thoroughly refuted these arguments in its Petition, but the points bear repeating. First, the Commission's decision to refrain from regulating roaming rates ensures that carriers will have significant economic incentives to have as few subscribers as possible roaming. Customers who roam often will have significant incentives to subscribe to carriers with greater coverage, everything else equal. Second, carriers have operational incentives to limit roaming as much as possible. Carriers cannot ensure the quality of a subscriber's communication when the subscriber is using another carrier's network. Third, and perhaps most importantly, the Commission already imposes build-out obligations on licensees. There is no need for the Commission to use the denial of home roaming as a stick to encourage further build-out.

The primary impact of the home roaming exception is to hamper new entry and hamstring the growth of competition. This may well help AT&T and Verizon Wireless, but it will harm consumers. As such, the Commission should reconsider its previous determination and revoke the home roaming exception.

### **III. USE OF THE PUBLIC SWITCHED TELEPHONE NETWORK AS A "JURISDICTIONAL" DEVICE IS ANACHRONISTIC**

AT&T takes issue with SpectrumCo's observation that the Commission should reconsider its decision to use the public switched telephone network ("PSTN") as a "jurisdictional" device or delimiter of the automatic roaming right.<sup>9</sup> AT&T's argument misses the point – in today's world, the distinction that AT&T claims as "self-evident" is largely anachronistic. AT&T may be perfectly comfortable with the Part 20 rules as they exist today,

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<sup>8</sup> See VZW Opposition at 7-8; AT&T Opposition at 4-7.

<sup>9</sup> See AT&T Opposition at 10-11.

but the rules must stay current -- what may have been acceptable in a 2G world may not be workable in a 4G world.<sup>10</sup> The Commission properly and quite understandably recognized that some services that today do not touch the PSTN -- push-to-talk and SMS services -- should be covered by the automatic roaming right.<sup>11</sup> The Commission's proffered justification for including these services -- that consumers increasingly see these services as complementary to their voice services -- applies just as surely to other, non-interconnected services and will even more so in the future.<sup>12</sup> If the Commission intends for its roaming rules to keep up with consumer expectations and maximize consumer benefits, it makes no sense to use the 19<sup>th</sup> century PSTN as a jurisdictional device.

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<sup>10</sup> AT&T's apparent presumption that the placement of the automatic roaming rules in Part 20 the Code of Federal Regulations is a function of jurisprudential requirement is plainly incorrect, to put the matter charitably. The Commission is free to insert the automatic roaming rules wherever it wishes.

<sup>11</sup> *See 2007 Roaming Order* ¶ 37.

<sup>12</sup> *Id.*

#### IV. CONCLUSION

The Commission's decision to clarify that automatic roaming is a common carrier right is an important step forward. Contrary to the arguments put forward by Verizon Wireless and AT&T, the beneficial impact of that step has been dampened by the Commission's concurrent decisions to create exceptions for services that do not touch the PSTN and for home roaming. These exceptions are contrary to industry norms and years of Commission policy and warrant swift reconsideration. The Commission should revoke the home roaming exception, and should redefine the automatic roaming right to include services that may not necessarily touch the PSTN.

Respectfully Submitted,

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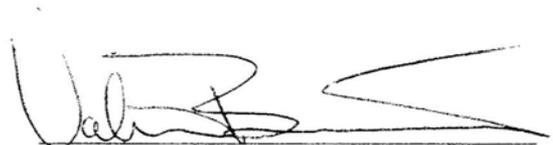
November 16, 2007

**CERTIFICATE OF SERVICE**

I, Valerie Burris, do hereby certify that on their 16<sup>th</sup> day of November, 2007, a copy of the foregoing Reply Comments of SpectrumCo LLC in WT Dkt. No. 05-265 was served by U.S. Mail, first class postage pre-paid, to the following:

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