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

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

REPLY OF METROPCS COMMUNICATIONS, INC. TO THE OPPOSITIONS TO AND COMMENTS ON THE PETITION FOR RECONSIDERATION

MetroPCS Communications, Inc. ("MetroPCS"),[1] by its attorneys and pursuant to Section 1.429(g) of the Commission's Rules,[2] hereby respectfully replies to certain oppositions to and comments on the MetroPCS Communications, Inc. Petition for Reconsideration of the Commission's in-market exclusion to its automatic roaming rules, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 07-143, released August 16, 2007 (the "*Roaming Order*")[3] in the above-captioned proceeding. In reply, the following is respectfully shown:

[1] For purposes of this Petition, the term "MetroPCS" refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

[2] This Petition is being filed in accordance with Commission rules; the deadline for replies to oppositions to petitions for reconsideration is 10 days after the deadline for filing such oppositions, which were due on November 6, 2007. *See* 72 FR 59532-33 (Oct. 22, 2007). Thus, this reply is timely under Sections 1.4(b) and 1.429(g) of the FCC Rules. 47 C.F.R. Sections 1.4(b) and 1.429(g).

[3] *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) ("*Roaming Order*").

I. A BROAD CROSS-SECTION OF CARRIERS SUPPORT THE REMOVAL OF THE IN-MARKET ROAMING EXCLUSION WHILE ONLY AT&T AND VERIZON ARGUE IN FAVOR OF THE EXCLUSION

In separate Petitions for Reconsideration filed in this proceeding, a broad cross-section of the wireless industry, including national carriers, regional carriers, rural carriers and new entrants, advocates the removal of the in-market roaming exclusion from the automatic roaming service obligations placed on commercial mobile radio service ("CMRS") carriers in the *Roaming Order*.[4] Significantly, in several instances, parties which previously opposed any automatic roaming requirement now support an automatic roaming requirement.[5] And, several important organizations - - including the Rural Telecommunications Group, Inc. ("RTG"), the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"), and the Blooston Rural Carriers ("BRC") - - filed comments supporting these Petitions for Reconsideration and urging the Commission to eliminate the in-market roaming exclusion.[6] Interestingly, these petitioners and commenters often disagree on wireless policy issues, but they all agree that the in-market restriction should be eliminated.

Despite the diversity of their businesses and business plans, these petitioners and commenters all support removal of the in-market roaming exclusion because it is improper and

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[4] *See* MetroPCS, *Roaming Order* Petition for Reconsideration, filed Oct. 1, 2007 ("MetroPCS Petition"); SpectrumCo LLC, *Roaming Order* Petition for Reconsideration, filed Oct. 1, 2007 ("SpectrumCo Petition"); Sprint Nextel Corporation, *Roaming Order* Petition for Reconsideration, filed Oct. 1, 2007 ("Sprint Nextel Petition"); T-Mobile USA, Inc., *Roaming Order* Petition for Reconsideration, filed Oct. 1, 2007 ("T-Mobile Petition"); and Leap Wireless International, Inc., *Roaming Order* Petition for Reconsideration, filed Oct. 1, 2007 ("Leap Petition") (collectively, the "Petitions for Reconsideration").

[5] *See, e.g.*, Comments of T-Mobile USA, Inc. and Sprint Nextel Corporation ("Sprint Nextel"), filed Nov. 28, 2005, *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265.

[6] *See* RTG and OPASTCO, *Roaming Order* Comments, filed Nov. 6, 2007 ("RTG and OPASTCO Comments"); and BRC, *Roaming Order* Comments, filed Nov. 6, 2007 ("BRC Comments").

ill-conceived based on a variety of legal and public interest arguments. Among other things, the petitioners and commenters point out that maintaining the in-market roaming prohibition will result in: (1) discriminatory application of Sections 201 and 202 of the Communications Act of 1934, as amended (the "Act"); (2) harmful barriers to market entry and unnecessary deterrence of facilities-based competition; (3) an inappropriate *post hoc* amendment of the construction and build-out requirements associated with wireless licenses; (4) encouragement of anti-competitive roaming practices by large, incumbent carriers; and (5) potential public safety harms to consumers.[7]

Notably, only two carriers have come out in opposition of the Petitions for Reconsideration of the in-market roaming restriction - - Verizon Wireless ("Verizon") and AT&T, Inc. ("AT&T"). These two carriers - - who repeatedly have refused to supply the Commission with evidence of the terms of their existing roaming agreements - - make the unsupported arguments that there is no evidence demonstrating that requesting carriers will be unable to secure in-market roaming arrangements despite the in-market roaming exclusion,[8] or that the current practices are unreasonably hindering the operation of the market to the detriment of customers.[9] These arguments are non-sensical. Why would MetroPCS, and a whole host of other experienced carriers and new entrants, argue to secure in-market roaming rights if, as Verizon suggests, in-market roaming arrangements are or will be readily available in the market, and consumer needs are being met? The reality is that such arrangements are not being offered

[7] *See, e.g.,* Petitions for Reconsideration; RTG and OPASTCO Comments; and BRC Comments.

[8] *See* Verizon Wireless, *Opposition*, filed Nov. 6, 2007 at 7 ("Verizon Opposition").

[9] AT&T Inc., *Opposition*, filed Nov. 6, 2007 at 8-9 ("AT&T Opposition").

on fair and reasonable terms and consumers who want to roam are being disadvantaged.[10] The greatest concern is that the situation is getting worse. The petitioners who support the inclusion of in-market roaming in the automatic roaming obligation have provided a plethora of evidence to support the findings that the roaming marketplace is not working and that the in-market exclusion to the automatic roaming requirement only exacerbate this problem.[11]

AT&T argues that the Commission has the right, under Sections 201 and 202 of the Act, to determine that it is reasonable for carriers to deny in-market roaming.[12] While it is true in principle that the Commission has the authority to determine the "reasonableness" of an in-market roaming restriction, this does not mean that such a restriction makes sense or is in the public interest and that any such restriction is supported by a legally sustainable rationale.[13] In this particular case, as explained in detail in the MetroPCS Petition, the roaming market - - which includes both out-of-market and in-market roaming - - is not working. The *Roaming Order* fails to provide a legally sustainable rationale for differentiating the legal roaming rights that should attach in these two segments of the roaming market so as to continue to permit a host carrier to deny home roaming.[14] Indeed, from a customer's perspective, both in-market and out-of-market roaming are the same - - the phone will not work where the consumer wants and they do not understand why. As Commissioner Copps observed, "Consumers should not have to be amateur engineers or telecom lawyers to figure out which mobile services they can expect to work when

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[10] *See, e.g.*, SpectrumCo Petition at 7-9; Leap Petition at 14-15; MetroPCS Petition at 22-23. With the continuing drumbeat of consolidation in the wireless industry, the number of roaming partners is diminishing making it less and less likely that leaving in-market roaming arrangements strictly to the market will result in in-market roaming arrangements.

[11] *See, e.g.*, SpectrumCo Petition at 7-9; Leap Petition at 14-15; MetroPCS Petition at 22-23.

[12] AT&T Opposition at 10.

[13] *See* MetroPCS Petition at 5.

[14] *See* MetroPCS Petition at 4-6.

they travel. They should be able to assume that their phones will work to the fullest extent that technology permits, wherever they happen to be."[15] Further, from a competitive standpoint, roaming allows the new entrant to be competitive with all carriers in the market - - not just the host carrier - - which will benefit all consumers.

It is not surprising that long time incumbents Verizon and AT&T are the only ones who have weighed in to support the in-market roaming exclusion. These carriers hold many licenses granted decades ago before licensees were required to pay for spectrum at auction. As a result, they naturally enjoy coverage superiority having had over 20 years to build, in many cases on "free" spectrum. Given this natural advantage these carriers stand to gain a great deal competitively by preventing other carriers from roaming on their networks. In its Opposition, Verizon acknowledges that it, and other similarly situated incumbent carriers, receives a competitive advantage from the in-market exclusion.[16] And despite Verizon's and AT&T's efforts to shield the Commission from the details of their efforts to stifle competition by denying roaming, the petitioners supporting the abolition of the in-market roaming exclusion have provided a wealth of evidence that the incumbents are refusing reasonable roaming requests to the detriment of consumers.[17]

Interestingly, Verizon states that it has "some agreements that allow competing carriers to roam on Verizon Wireless' network in places where the requesting carrier holds spectrum rights."[18] This assertion misses the point. Whether Verizon has one or two in-market roaming agreements does not answer whether the market generally is functioning properly. Indeed, since

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[15] *See Roaming Order*, Statement of Commissioner Michael J. Copps, Approving in Part, Concurring in Part.

[16] Verizon Opposition at 9.

[17] *See, e.g.*, SpectrumCo Petition at 7-9; Leap Petition at 14-15; MetroPCS Petition at 22-23

[18] Verizon Opposition at 7.

Verizon admits that it only has "some" agreements, Verizon essentially proves the point that there is no general industry-wide availability of in-market agreements. This shows that the in-market roaming market is dysfunctional and not working. Before giving any serious consideration to Verizon's Opposition, the Commission would have to request that Verizon provide all of its in-market roaming agreements in order to allow the Commission to determine whether these are true arms-length market driven agreements, or rather are a result of other circumstances which Verizon is not disclosing to the Commission which may show that a general market does not exist.[19]

Importantly, as set forth in detail in the MetroPCS Petition, no party is claiming that in-market roaming services should be provided for free.[20] All requesting carriers are ready and willing to pay fair and reasonable fees for both in-market and out-of-market roaming rights. No free rides are being requested by the petitioners.

Also, as noted in the Petitions for Reconsideration, not only will consumers benefit in a myriad of ways from an automatic roaming obligation that incorporates in-market roaming, but the safety of the public will be protected by ensuring that consumers will be able to use their wireless devices in their home network area, even during periods of time when their service

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[19] Interestingly, the in-market market exclusion also affects Verizon and AT&T because rural carriers can deny them roaming services where they hold spectrum. It may be sheer coincidence that AT&T and Verizon entered into agreements to acquire rural carriers roughly contemporaneous with the Commission's issuance of the Roaming Order with the in-market market exclusion. What it does say is that since Verizon and AT&T continue to support such exclusion, that they have significant market power to dictate terms of any roaming arrangement – something many of the smaller carriers do not have. What Verizon and AT&T want the Commission to do is to send a clear competitive message – the Commission's policies favors large dominant carriers over smaller new entrants and rural carriers. This is something the Commission should refuse to do.

[20] *See* MetroPCS Petition at 10-12.

providers might not be able to provide service through their own facilities.[21] Indeed, such a use is one of the statutory purposes of the Act.[22]

Moreover, allowing automatic roaming will promote the public interest and is in accord with the Act. Section 1 of the Act outlines the purpose of the Act is to "make available, so far as possible, to all people of the United States ... a Nation-wide ... radio communications service ... at reasonable prices." The path proposed by AT&T and Verizon will not serve this statutory policy and in fact would prevent consumers from enjoying nationwide radio communications service. Only allowing automatic roaming on an unrestricted basis will serve this statutory policy.

Simply put, the Verizon and AT&T Oppositions are a transparent attempt to protect their market positions and gain an even greater competitive advantage, all to the detriment of the consumer and the marketplace. The Commission saw through these efforts in adopting the out-of-market roaming requirement and should see through this latest attempt to lock up the marketplace. The Commission should foster a level playing field by removing the in-market roaming exception from its automatic roaming rules.

II. THE COMMISSION SHOULD ACT QUICKLY SO THAT CARRIERS ARE NOT DETERRED FROM PARTICIPATING IN THE UPCOMING 700 MHz AUCTIONS

Failing to act promptly to eliminate the in-market restriction will have a chilling effect on the upcoming 700 MHz auctions. As noted in the MetroPCS Petition, the in-market roaming exclusion has an unintended impact on MetroPCS because the company paid almost $1.4 billion to acquire multiple REAG licenses in the AWS auction. MetroPCS is not alone. T-Mobile and Leap Wireless also paid billions of dollars to acquire substantial amounts of spectrum in Auction

[21] *See* MetroPCS Petition at 13.

[22] 47 U.S.C. § 151.

66 and existing carriers would now be able to refuse to renew their existing roaming arrangements in substantial portions of the United States.[23] Due to the AWS clearing requirements and the need to set construction priorities within the confines of the available MetroPCS financial resources, it will be some time before construction of its newly acquired AWS licenses will be completed. In the meantime, however, the company will be precluded from invoking automatic roaming rights in the entire Northeast and Northwest regions of the United States as a direct result of the in-market roaming exclusion.

If this in-market roaming restriction is not removed prior to the upcoming 700 MHz auctions, then MetroPCS and other similarly situated carriers will be deterred from buying 700 MHz licenses covering broad new market areas since the result will be the immediate loss of roaming rights with respect to the newly licensed but as yet unserved area. In effect, the unintended consequence of the in-market roaming restriction will be a less robust and less competitive 700 MHz auction.

III. CONCLUSION

Nothing in the Oppositions to the Petitions for Reconsideration justifies retaining the in-market exclusion to the automatic roaming obligation. The limitations should be lifted.

[23] In addition, other carriers such as Sprint Nextel face similar issues as a result of other spectrum holdings.

Respectfully submitted,

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November 16, 2007

CERTIFICATE OF SERVICE

I, Lisa E. Roberts, hereby certify that a true and correct copy of the foregoing "Reply of MetroPCS Communications, Inc. to Oppositions to the Petition for Reconsideration" was delivered first-class mail this 16th day of November 2007 to the individuals on the following list:

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