Before the
Federal Communications Commission
Washington, DC 20554

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

REPLY COMMENTS

United States Cellular Corporation ("USCC") hereby files its Reply Comments in the above-captioned proceeding.[1]

In the Roaming Order, the FCC extended the automatic roaming obligation 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," as well as to "push to talk" and text messaging services.[2] In the Further Notice, the Commission sought comment on whether the automatic roaming obligation "should be extended to non-interconnected services and features, including services that have been classified as information services, such as wireless broadband Internet access service," and the legal and policy basis for doing so.[3] In our Comments, USCC strongly supported broadening the "data roaming" obligation to include digital services not interconnected with the public switched telephone network. We reiterate that request in these Reply Comments.

[1] Reexamination of Roaming Obligations of Commercial Mobile Radio Service Provider, 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. 50069 (August 30, 2007); ("Roaming Order" or "Further Notice," See also Public Notice), Petitions For Reconsideration of Action in Rulemaking Proceedings, Report No. 2837, released October 17, 2007.
[2] Roaming Order, ¶ 54.
[3] Further Notice, ¶ 77.

I. The Public Interest Would Be Served By Expanding The Data Roaming Obligation.

Central to the public interest case for data roaming is the point that consumers should not be denied beneficial services based on arcane regulatory classifications such as the distinction between information services and telecommunications services. MetroPCS, for example, notes the convergence of voice and data applications, as in the case of VOIP, which is offered over high speed data facilities, as well as the extraordinary growth of mobile data services, and argues that their obvious popularity and rapid growth make it essential to include mobile data in any roaming mandate if there is to be regulatory parity among different categories of telecommunications service providers.[4] MetroPCS further argues that consumers will be disadvantaged without data roaming where multiple applications and functionalities are incorporated into a single device. They note that smartphones such as Rim's Blackberry support applications classified as information services as well as traditional voice services.[5]

MetroPCS attacks the fallacy that mandating data roaming would undercut incentives to differentiate products, chill innovation or discourage buildout by facilities-based competitors. It shows that the opposite is true, that allowing roaming for data services will encourage carriers to implement innovative data services within their markets with the knowledge and expectation that their customers will be able to receive those services outside their home markets as well.[6]

MetroPCS offers the original argument that denying roaming for "information services" is based on an unworkable distinction. Information services are defined in this context as data services delivered at speeds faster than 200 kilobytes per second. However, the speed with which a given service is delivered is often a function of the type of terrain and technology used rather than any quality inherent in the information transmitted. For example, relatively low

[4] Comments of MetroPCS Communications, Inc. filed October 24, 2007, pp. 4-8.
[5] Ibid, pp. 7-8.
[6] Ibid, pp. 10-11.

speed 1xRTT technology is often used in less densely populated areas where coverage needs to be maximized as opposed to capacity. MetroPCS argues that limiting roaming only to low speed data could cause users to be denied service in congested downtown areas but receive service in rural areas. Such distinctions, it rightly says, are irrational.[7]

MetroPCS also successfully refutes arguments that there are legitimate network capacity, integrity or security reasons to oppose the proposed extension of roaming rights to data services. MetroPCS shows that such issues, to the extent they arise, can be dealt with by limiting the automatic roaming obligation to technically compatible systems and by requiring reasonable and nondiscriminatory terms and conditions.[8]

MetroPCS finally argues that the data roaming right should not be limited to situations where comparable services are offered in the requesting carrier's home market. It argues that a distinction of this nature would also be impractical and would foster unnecessary litigation. The Commission is asked to "keep in mind that data roaming is only required in situations where it is technically feasible."[9] That means that the customer must have a mobile unit capable of accessing data services in roamed-upon markets. The customer is only likely to purchase such a unit if he perceives a substantial consumer benefit in the additional functionality, even if his home system can't provide the service. MetroPCS argues that the Commission should not write its data roaming rules in a way which would undermine improved service to customers, which such a restriction would do.

USCC agrees with MetroPCS. The main arena of competition for carriers are their home markets. Carriers would not refrain from providing data services to customers in their home markets because customers could obtain such services when they roam.

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[7] Ibid, pp 11-12.
[8] Ibid, pp.14-16
[9] Ibid, p. 16

SouthernLINC focuses on the productivity gains which will result from expanded use of wireless data services. It also argues that mobile data services can save lives in emergency situations when voice networks may not be available due to traffic congestion or other factors, an argument also made by MetroPCS.[10] SouthernLINC further notes that the lifesaving capabilities of wireless data will not be limited to large scale emergencies, but could also be used in individual emergencies where voice services are not accessible. SouthernLINC refers to data roaming's possible contribution to the Emergency Alert Services ("EAS"), which the FCC will consider next year. SouthernLINC also cites the Commission's recent hearing aid compatibility report and notes that text and video communications technology will fill a need by providing much needed mobility and freedom for the deaf and hard of hearing.[11]

SouthernLINC also notes that data roaming is essential for increasing broadband deployment, tying data roaming to the Commission's frequently noted support for the rapid deployment and ubiquitous availability of broadband services across the country.[12] Leap offers a related argument, referring to its "Cricket" service, to the effect that data roaming will promote innovation and foster investment in network facilities, as well as helping to bridge the digital divide. Leap points out that many of its customers are low income and minority Americans and that a refusal to include data roaming in the roaming obligation will thus be especially harmful to those communities.[13]

SouthernLINC rightly opposes the idea that whether a data service is interconnected with the PSTN should be the crucial distinction between inclusion and exclusion in the data roaming mandate. It notes that the PSTN is no longer the sole communications platform used by many

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[10] Comments of SouthernLINC, filed October 29, 2007, pp. 5-11; MetroPCS Comments, pp.8-9.
[11] SouthernLINC Comments, p. 10.
[12] SouthernLINC Comments, p. 22.
[13] Leap Comments, pp. 5-7.

consumers and that the different types of networks are rapidly converging, with old lines and distinctions blurring and blending together.[14]

SouthernLINC argues that automatic roaming and data roaming will promote innovation. It also demonstrates that a "market failure," often mentioned as the only possible justification for the adoption of a given regulation by those opposed to the regulation, has in fact occurred with respect to data roaming, citing the refusal of SprintNextel and its predecessor companies to provide any data roaming services to SouthernLINC, despite SouthernLINC's repeated requests.[15]

Echoing MetroPCS, SouthernLINC argues that there are no significant technical issues preventing the provision of data roaming which do not already exist with respect to voice roaming. While the technical issues may be different, those technical questions can be worked out efficiently by carriers in the same manner that voice roaming was accomplished. As USCC noted in our earlier comments, an FCC mandate converts such technical challenges into a problem to be solved, rather than an excuse for inaction.

Commenters representing rural interests also line up solidly in favor of extending the automatic roaming right to include data. RCA strongly opposes the idea that requiring access to non-interconnected data services would undermine carriers' incentives to innovate.[16] Conversely, RCA members report that the absence of available roaming agreements has discouraged investment in mobile wireless facilities and has undermined the ability of rural carriers to be innovative in their own service offerings. RCA also urges the FCC not to permit carriers to deny or unreasonably delay requests for roaming agreements for reasons such as limited network capacity or alleged risk to network integrity or security. Carriers should be

[14] SouthernLINC Comments pp. 12-14.
[15] SouthernLINC Comments, p. 19.
[16] Comments of Rural Cellular Association ("RCA"), filed October 29, 2007, pp. 1-2.

encouraged to expand network capacity as required to serve customers and roamers and to make any necessary improvements to network integrity or security to do this.[17] RTG/OPASTCO echo those arguments, and stress the fact that rural consumers rely to a greater degree that urban consumers on roaming and thus demonstrate that this is a matter of urban/rural equality.[18]

II. The Nationwide Carriers Fail To Make The Case Against Expanding The Data Roaming Obligation.

As perhaps could be expected, the main opposition to expansion of the data roaming obligation comes from the largest wireless carriers, AT&T, Inc., SprintNextel, and Verizon Wireless. They offer both policy and legal arguments. None are convincing.

AT&T argues that the imposition of mandatory data roaming requirements would be contrary to the deregulatory purposes of the Communications Act and would harm consumers, by diverting investment from mobile broadband networks into other telecom sectors, where the national carriers could be more certain of receiving a reasonable return on their investment. As with their earlier opposition to the roaming obligation itself, AT&T urges that a mobile data roaming requirement would be anti-competitive, in that it would require carriers to subsidize their "competitors."[19] AT&T also argues that there has been no "market failure" and accordingly there is no justification to impose these roaming burdens on wireless carriers.[20]

AT&T submits no financial or other evidence to support any of those claims, which are farfetched in the extreme. The idea that carriers would be deterred from making network investments they would otherwise make by the possibility of having to provide (profitable) services to roamers is not credible. Also, AT&T's assumption that the FCC should not ever

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[17] Ibid., pp 3-5.
[18] Comments of Rural Telecommunications/Group/Organization For The Protection and Advancement of Small Telecommunications ("RTG/OPASTCO"), filed October 29, 2007, pp. 6-7.
[19] Comments of AT&T, Inc., filed October 29, 2007, pp. 1-10.
[20] Ibid.

require carriers to assist "competitors" is particularly questionable. Public policy has long recognized a compelling public interest to require "competitors" to interconnect with one another. If there were no data or other roaming requirements, smaller carriers, including those operating in markets in which AT&T is not a competitor, would not be in a position to compete for customers seeking national calling plans. By requiring automatic roaming and data roaming, the FCC is not requiring AT&T to assist its own current competitors.[21] Rather, the FCC is creating the possibility of new competition across the country, to the undoubted benefit of consumers, with, at most, a slight indirect effect on AT&T and other national carriers. Moreover, the national carriers could themselves rely on the data roaming obligation in those markets in which they still require the roaming services of regional and smaller carriers.

Moreover, the very existence of wireless competition itself is dependent on the survival of regional and smaller carriers. AT&T and the other national carriers are happy to cite the existence of such carriers when they are attempting to demonstrate to the FCC and the Department of Justice that their frequent proposed mergers will not be anti-competitive. But they appear unwilling to do anything, however minimal and non-injurious to themselves, to help such carriers survive.

Verizon Wireless also argues that imposing an expanded data requirement would discourage investment, as well as maintaining that competition will itself ensure that non-interconnected voice and data roaming will occur to the extent that consumers may demand it. Further, it argues a data roaming obligation would still be a bad idea even if the FCC were to require carriers to implement in their own markets the type of data service for which they sought roaming rights, as requesting carriers could conceivably install a "minimal" system in their

[21] Indeed, if the FCC's "in market" exception to the roaming obligation remains, AT&T would never have to assist an in market competitor.

markets to obtain access to the "advanced" data services provided by such carriers as Verizon Wireless.[22]

The "investment" and "minimal system" arguments are also offered without empirical support and are completely implausible. There is simply no evidence to suggest that the buildout and network development plans of Verizon Wireless or other carriers will be influenced by any type of roaming consideration. Also, there is no reason to believe that the public interest in the provision of data roaming would be perfectly congruent with Verizon Wireless' corporate self interest in voluntarily entering into a few such agreements with selected carriers. The public interest should come first.[23]

AT&T, SprintNextel and Verizon Wireless also attempt to demonstrate, at some length, that the FCC lacks statutory authority under the Communications Act to apply data roaming requirements to wireless carriers.[24] They argue that wireless broadband Internet access services have been declared to be "information services" and hence are exempt from mandatory Title II common carrier regulation. Moreover, given that conclusion, they maintain that the FCC should not exercise its ancillary jurisdiction under either Title I or Title III of the Act to regulate such services, lest it render its earlier determination meaningless.

Those arguments are, however, comprehensively refuted in the comments of MetroPCS and SouthernLINC, among others. Those filings demonstrate that the FCC certainly does have "ancillary authority" under either Title I or Title III of the Act to impose the requested regulations.[25] The FCC's comprehensive Title I jurisdictional grant of authority over "radio

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[22] Comments of Verizon Wireless, filed October 29, 2007, pp. 8-10.
[23] We would also note Verizon Wireless's recent announcement that it plans to open its network to third party devices, software and applications next year. A technological adjustment of that magnitude would also strongly suggest that Verizon Wireless could accommodate more advanced forms of data roaming.
[24] See AT&T Comments, pp. 13-14; Comments of SprintNextel, filed October 29, 2007, pp. 1-9; Verizon Wireless Comments, pp. 1-8.
[25] See MetroPCS Comments, p. 13; SouthernLINC Comments, pp. 23-32.

communications," expressed in Sections 1 and 2(a) of the Act, and its plenary Title III authority over "radio transmissions," confer ample authority to adopt a data roaming obligation. Pursuant to Titles I and III, the FCC is clearly authorized to regulate mobile data services, as part of its overall responsibility for the nation's radio spectrum. Moreover, unlike some of the FCC's recent forays into regulation of corporate behavior under its ancillary jurisdiction authority, some of which did not involve actual use of the public airwaves,[26] roaming indisputably involves the use of the wireless spectrum, a direct responsibility of the FCC. As SouthernLINC points out, the FCC's recent action imposing an "open access" requirement on the C Block spectrum to be auctioned in the 700 MHz auction and the cases cited therein provide strong precedential support for the requested ruling.[27] That action reflected a far broader use of ancillary authority, affecting carrier business models, than what is proposed here.

Moreover, SouthernLINC makes a strong case that the Commission can also take the requested action pursuant to Title II of the Act, owing to automatic roaming's status as a wholesale relationship between carriers, as opposed to the type of "retail" Internet access service arrangement between end users and ISPs which the Commission sought to deregulate.[28] Taken together, those arguments make an irrefutable case for the FCC's power to take the requested actions. And given the strength of the public interest arguments to include non-interconnected data in the roaming obligation, the Commission should act quickly to do so, as requested by USCC and other commenters.

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[26] See, e.g., American Library Association v FCC, 406 F.3d 689 (D.C. Cir. 2005).
[27] SouthernLINC Comments, pp. 24-25.
[28] Ibid., pp. 32-43.

Conclusion

For the foregoing reasons, the FCC should expand the data roaming obligation to include services not interconnected with the public switched telephone network.

Respectfully submitted,

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