

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

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

**REPLY COMMENTS OF METROPCS COMMUNICATIONS, INC.**

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## Summary

MetroPCS Communications, Inc. (“MetroPCS”) is filing reply comments in response to the *Further Notice of Proposed Rulemaking* in the roaming proceeding.

The MetroPCS reply demonstrates that there is substantial support in the record from a broad-cross section of interested parties for the Commission to extend the automatic roaming requirement to non-interconnected wireless services including services that have been classified as information services such as wireless broadband Internet access service and other Non-CMRS services (collectively, “Non-CMRS Data Services”). The carriers which oppose this extension - - a small number of national carriers who have the most to gain competitively from denying roaming access - - have failed to provide any public interest justification for the Commission to exempt these services from the roaming requirement.

Contrary to the assertions of some opponents, the Commission has ample authority under Title I of the Communications Act to extend the roaming obligation to Non-CMRS Data Services as recommended by MetroPCS and others.

The opponents also fail in their effort to claim that there are unique aspects of the nascent broadband data market that merit differential roaming treatment for these emerging services. The opposite is the case. The Commission has a statutory obligation to foster emerging technologies. Promoting roaming - - which will benefit consumers and spur innovation and development - - is the best way to accomplish this objective.

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**REPLY COMMENTS OF METROPCS COMMUNICATIONS, INC.**

MetroPCS Communications, Inc. (“MetroPCS”),<sup>1</sup> by its attorneys, hereby respectfully submits its reply comments in response to the *Further Notice of Proposed Rulemaking*, FCC 07-143, released August 16, 2007 (the “*Data Roaming FNPRM*”) in the above-captioned proceedings. In reply, the following is respectfully shown:

**I. INTRODUCTION**

The comments filed by interested parties in this proceeding follow a familiar pattern. Prior proponents of a robust automatic voice roaming requirement for CMRS services and adjunct services (push-to-talk (“PTT”) and SMS) and the elimination of any in-market roaming prohibition generally support the extension of the roaming requirement to non-interconnected services, including services that have been classified as information services, such as wireless broadband Internet access service, and other non-CMRS services (collectively, this category of

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<sup>1</sup> For purposes of these Reply Comments, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

wireless services is referred to herein as “Non-CMRS Data Services”). The commenters in this category include a broad cross-section of industry representatives including rural carriers, carriers serving small, mid-sized and large markets, privately-held and publicly traded companies and industry associations.<sup>2</sup> Opponents of the recently adopted automatic roaming mandate for CMRS and adjunct services generally oppose extending the requirement to Non-CMRS Data Services. This category of commenters includes a very small number of very large incumbent nationwide carriers who have the most to gain competitively now that they have consolidated, or are in the process of consolidating, most of the industry.<sup>3</sup>

Many of the arguments being made also contain echoes of the earlier debate. Advocates of automatic roaming rights for Non-CMRS Data Services cite the consumer benefits and the enhanced competition that will occur if such roaming is fostered, and claim that reliance on market forces will not suffice.<sup>4</sup> Opponents of a roaming mandate for Non-CMRS Data Services claim that facility-based competition and innovation will be deterred, technical issues abound,

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<sup>2</sup> See, e.g., MetroPCS Communications, Inc. Comments on the Further Notice of Proposed Rulemaking, filed October 29, 2007 (“MetroPCS Comments”); Comments of Leap Wireless International, Inc. filed October 29, 2007 (“Leap Comments”); Comments of SouthernLinc Wireless filed October 29, 2007 (“SouthernLinc Comments”); Comments of Corr Wireless Communications, LLC filed October 29, 2007 (“Corr Comments”); Comments of Rural Cellular Association filed October 29, 2007 (“RCA Comments”); Comments of the Rural Telecommunications Group, Inc. and the Organization for the Promotion and Advancement of Small Telecommunications Companies filed October 29, 2007 (“RTG/OPASTCO Comments”); Comments of MTA Wireless, Inc. on Further Notice of Proposed Rulemaking filed October 29, 2007 (“MTA Wireless Comments”). The only notable exception is Sprint who disagrees that PTT should be subject to an automatic roaming requirement and who also opposes an extension of automatic roaming to Non-CMRS Data Services.

<sup>3</sup> See, e.g., Comments of AT&T Inc. filed October 29, 2007 (“AT&T Comments”); Comments of Verizon Wireless filed October 29, 2007 (“Verizon Comments”); Sprint Nextel Corporation Comments filed October 29, 2007 (“Sprint Nextel Comments”).

<sup>4</sup> See, e.g., MetroPCS Comments at p. 4-11; SouthernLinc Comments at p. 4-22; Leap Comments at p. 5-9; MTA Wireless Comments at p. 5-9; RTG/OPASTCO Comments at p. 6-7; Corr Comments at p. 2-4; RCA Comments at p. 3-6.

and that there is no need for Government intervention at this time.<sup>5</sup>

Having reviewed the latest exchanges, MetroPCS respectfully submits that there is absolutely no reason for the Commission to reach a different conclusion on this policy debate with respect to Non-CMRS Data Services roaming than it reached in the context of voice and SMS/PTT services. As MetroPCS and the rest of the supporters of expanding the automatic roaming requirements to Non-CMRS Data Services demonstrated in their comments, all of the public interest considerations which led the Commission to mandate automatic roaming for CMRS and adjunct services apply with equal or greater force to Non-CMRS Data Services.<sup>6</sup> No useful purpose would be served by MetroPCS restating or summarizing these showings again here. Rather, MetroPCS focuses in this reply primarily on issues raised in the comments that purport to be unique to the Non-CMRS Data Services.<sup>7</sup> Specifically, MetroPCS responds in Section II below to comments which contend that the Commission lacks the legal authority to extend the automatic roaming requirement to Non-CMRS Data Services. The Commission clearly has the authority. MetroPCS also responds in Section III below to various arguments that unique aspects of the Non-CMRS Data Services market make it inappropriate to mandate automatic roaming, notwithstanding the earlier determination with respect to CMRS and adjunct services. Those assertions also do not withstand scrutiny.

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<sup>5</sup> *See, e.g.*, Verizon Comments at p. 8-12; AT&T Comments at p. 4-11. Incredibly, both Verizon and AT&T claim that roaming for information services is “commonplace” and that there are “numerous” data roaming agreements in place. *See, e.g.*, Verizon Comments at p. 10; AT&T Comments at p. 8. While MetroPCS disagrees with these assertions, they do undermine any argument that insurmountable technical challenges exist.

<sup>6</sup> *See, e.g.*, MetroPCS Comments at p. 4-11; SouthernLinc Comments at p. 4-22; Leap Comments at p. 5-9; MTA Wireless Comments at p. 5-9; RTG/OPASTCO Comments at p. 6-7; Corr Comments at p. 2-4; RCA Comments at p. 3-6.

<sup>7</sup> In Verizon’s comments, Verizon seeks to extend any broadband internet rule to non-broadband 1xRTT services. Since Verizon has indicated that roaming agreements for 1xRTT are “common place”, Verizon should have no reason to lump 1x RTT services into the same category as broadband Internet service.

## **II. THE COMMISSION HAS THE LEGAL AUTHORITY UNDER THE ACT TO MANDATE THE EXTENSION OF AUTOMATIC ROAMING TO NON-CMRS DATA SERVICES**

Perhaps recognizing that they will lose the debate regarding the public interest balance with regard to an automatic roaming requirement for Non-CMRS Data Services, certain commenters claim that the Commission lacks the statutory authority to extend the automatic roaming requirement to such services. For example, Verizon argues that the Commission lacks authority under either Titles I, II or III of the Communications Act of 1934, as amended (the “Act”)<sup>8</sup> to extend an automatic roaming obligation to Non-CMRS Data Services. AT&T argues that the Commission is legally precluded from imposing roaming requirements on wireless broadband Internet access services and other information services.<sup>9</sup> Sprint Nextel contends that the Commission cannot use its ancillary jurisdiction to impose common carrier-type regulation on non-common carrier services.<sup>10</sup>

These positions are simply wrong. The Commission has ample authority to extend the automatic roaming requirement to the Non-CMRS Data Services. As MetroPCS noted in its earlier comments in this proceeding, the Commission clearly has the authority under Title I of the Act to impose roaming requirements on non-interconnected, Non-CMRS Data Services, including information services. Based on Sections 1 and 2(a) of the Act,<sup>11</sup> and the definition of “Radio Communication” set forth in Section 3(33), the Commission must find that roaming for Non-CMRS Data Services is covered by the Commission’s general jurisdictional grant.

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<sup>8</sup> See Verizon Comments, Sections I and II. Since the Commission has clear authority under Title I, as demonstrated by MetroPCS herein, the arguments with respect to Titles II and III can be disregarded.

<sup>9</sup> See AT&T Comments, Section II.B.

<sup>10</sup> See Sprint Nextel Comments, Section III.

<sup>11</sup> 47 U.S.C. §151 and 152.

Specifically, Section 1 states that the Commission is created “[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States... a rapid, efficient, nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges.”

Section 2(a), in turn, confers on the Commission regulatory authority over all interstate communication by wire or radio. In this case the Non-CMRS Data Services clearly are covered by the statutory definitions of “radio communication” or “communication by radio” because they involve “the transmission by radio of writing, signs, signals, pictures and sounds of all kinds...”<sup>12</sup> As Leap noted in its Comments, automatic Non-CMRS Data Services roaming is intimately related to the Commission’s responsibility to make available rapid and efficient communication services to the American people.<sup>13</sup>

The Commission affirmed the positions taken by MetroPCS and Leap in its recent *Katrina Order*,<sup>14</sup> which contains a robust discussion of the circumstances in which it is appropriate for the Commission to exercise ancillary jurisdiction under Title I of the Act. Ancillary jurisdiction is called for when (i) the Commission’s general jurisdiction grant under Title I covers the subject of the regulations and (ii) the regulations are reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities.<sup>15</sup> This two-part

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<sup>12</sup> *Id.* at § 153(33).

<sup>13</sup> Leap Comments at p. 3-4.

<sup>14</sup> *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, FCC 07-177, *Order on Reconsideration*, EB Docket No. 06-119, WC Docket No. 06-63 (rel. Oct. 4, 2007) (“*Katrina Order*”) (citing *United States v. Southwestern Cable Co.*, 392 US 157, 177-78 (1968) (“*Southwestern Cable*”)).

<sup>15</sup> *Id.* at ¶ 16

test for ancillary jurisdiction was developed by the Supreme Court in *Southwestern Cable*.<sup>16</sup> To fulfill the first prong of the ancillary jurisdiction test, the subject of the regulation must be covered by the Commission's general grant of jurisdiction under Title I of the Act, which encompasses "all interstate and foreign Communication by wire or radio."<sup>17</sup> The second prong of the ancillary jurisdiction test requires that the subject of the regulation must be reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities.<sup>18</sup> The analysis offered by MetroPCS and Leap clearly establishes that each part of this two part test is met with respect to Non-CMRS Data Services.

Verizon cites the *Brand X* case as support for its claims that Non-CRMS Data Services roaming is classified as an information service and, therefore, not subject to Commission oversight pursuant to its Title I ancillary jurisdiction.<sup>19</sup> However, in the *Brand X* case itself, the Supreme Court made it clear that the Commission has discretion under Title I to apply common carrier obligations to information services.<sup>20</sup> Indeed, as both MetroPCS and Leap pointed out in their comments, the Commission has exercised its discretionary authority to apply common carrier obligations to information services on several occasions for the purpose of regulating VoIP services.<sup>21</sup> Southern Communications Services, Inc. d/b/a SouthernLINC Wireless ("SouthernLinc") likewise cites to a variety of recent circumstances in which the Commission

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at ¶ 17 (citing *Southwestern Cable* at 167); 47 U.S.C. § 152(a).

<sup>18</sup> *Katrina Order* at ¶ 17 (citing *Southwestern Cable* at 178).

<sup>19</sup> Verizon Comments at p. 6; *Nat'l Cable Telecomms. Ass'n v. Brand X Internet Services*, 454 U.S. 967 (2005) ("*Brand X*").

<sup>20</sup> *Brand X* at 996 (stating that "the Commission remains free to impose special regulatory duties on facilities-based ISPs under its Title I jurisdiction.").

<sup>21</sup> See MetroPCS Comments at p. 12-13; Leap Comments at p. 3 and n. 8 (pointing out that the Commission decided it was unnecessary to determine whether to classify VoIP as a telecommunications service subject to Title II obligations, because Title I provided sufficient authority to regulate such services).

has exercised its Title I authority on interconnected VoIP services and service providers – including obligations regarding Enhanced 911 services, universal service contributions, customer proprietary network information, and disability access and TRS. These determinations were made with respect to VoIP services even though no determination has yet been made as to whether these services are information services or telecommunications services under the Communications Act.<sup>22</sup> Thus, the claims that the Commission cannot use its ancillary jurisdiction to impose common carrier-like regulations on non-common carriers are belied by a long line of recent Commission decisions. And, these decisions have consistently been upheld by the U.S. Court of Appeals for the District of Columbia Circuit.<sup>23</sup>

Notably, effectively AT&T concedes that the Commission has ancillary jurisdiction under Title I to regulate information services by arguing that the Commission should choose not to exercise its jurisdiction in this case because automatic Non-CMRS Data Services roaming is somehow “disfavored.”<sup>24</sup> MetroPCS wholeheartedly disagrees. AT&T relies, among other things, on (i) Section 706 of the Telecommunications Act of 1996 (the “’96 Act”), which instructs the Commission to encourage the removal of infrastructure investment barriers, (ii) on

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<sup>22</sup> SouthernLinc Comments at p. 46 and nn. 107-111 (citing *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-35, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005), *aff’d sub nom. Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006); *Universal Service Contribution Methodology*, WC Docket No. 06-122, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, NSD File No. L-00-72; CC Docket Nos. 99-200, 95-116, 98-170, WC Docket No. 04-36, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006), *aff’d in relevant part, Vonage Holdings Corp. v. FCC*, 2007 WL 1574611 (D.C. Cir. June 1, 2007); *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-22 (rel. April 2, 2007); *VoIP Disabilities Access Order*, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123, CC Docket No. 92-105, Report and Order, FCC 07-110 at ¶¶ 21-24 (rel. June 15, 2007)).

<sup>23</sup> See *Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006); *Vonage Holdings Corp. v. FCC*, 2007 WL 1574611 (D.C. Cir. June 1, 2007).

<sup>24</sup> AT&T Comments at p. 13.

Section 230(b)(2) of the Communications Act, which encourages the preservation of the free market, and (iii) on the preamble to the '96 Act, which states that the Act's purpose is to promote competition and reduce regulation in order to secure lower prices and higher quality services for American consumers and to encourage the rapid deployment of new telecommunications technologies.<sup>25</sup> The provisions cited by AT&T, however, do not support their view but rather demonstrate that there is an urgent need for the Commission to exercise its ancillary jurisdiction over Non-CMRS Data Services. Not only does the Commission clearly have the authority to mandate automatic roaming for Non-CMRS Data Services, the public interest demands it.

The exclusion of Non-CMRS Data Services from the automatic roaming obligation would result in anticompetitive consequences and harm the consumer. An automatic Non-CMRS Data Services roaming obligation will promote competition and the free market by allowing small and regional carriers to institute their unique business plans of incremental service in the short-term in order to attract investment funds and build-out to compete with the larger carriers in the long-term. As Commissioner Copps pointed out when the Commission exempted data roaming from the automatic roaming requirement,

These [anomalous results between voice and data roaming] are precisely the type of confusing, consumer-unfriendly results that led me to object to the Commission's reclassification of data services under Title I in the first place .... Consumers should not have to be amateur engineers or telecom lawyers to figure out which mobile services they can expect to work when 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.<sup>26</sup>

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<sup>25</sup> See AT&T Comments at pp. 15-16 (citing Pub. L. 104-104, Title VII, § 706, codified at 47 U.S.C.A. § 157, Note; and Preamble, Telecommunications Act of 1996, Pub.L. 104-104, 100 Stat. 56 (1996)).

<sup>26</sup> *Roaming Order*, Statement of Commissioner Michael J. Copps, Approving in Part, Concurring in Part.

Commissioner Adelstein also pointed out that the public interest would be better served if the Commission were to consider how best to frame the roaming requirement to include broadband.<sup>27</sup> MetroPCS agrees that erecting a distinction between Non-CMRS Data Services and CMRS services for automatic roaming makes no sense, will not serve the public interest, and may ultimately be the exception that swallows the rule.<sup>28</sup> As wireless carriers continue to implement higher speed data services they will combine these data services with VoIP services. Wireline carriers have seen tremendous efficiency improvements with the use of broadband facilities for converged voice and data services, and wireless carriers will adopt a similar approach. The Commission stands on the threshold of this change. Too often in the past, the Commission has found itself reacting after the fact rather than leading by its regulatory policies. If the Commission decides not to extend the automatic roaming obligation to Non-CMRS Data Services, it will be turning a blind eye to the inevitable transformation of the wireless industry and the steady drumbeat of convergence of data and voice services. If the Commission, however, takes a forward-looking approach and adopts a pro-consumer roaming requirement now, the industry will be able to build in the necessary technology to ensure that automatic roaming will be available for these data services which, over time, will become indistinguishable from CMRS services offered today to which automatic roaming does apply. If the Commission misses this opportunity, like Bill Murray in “*Groundhog Day*,”

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<sup>27</sup> *Roaming Order*, Statement of Commissioner Jonathan S. Adelstein, Approving in Part, Concurring in Part.

<sup>28</sup> The technical challenges raised by Verizon, AT&T and Sprint also should not deter the Commission. The rule always has been that the requesting carrier have compatible technology to the providing carrier, not the other way around. Although MetroPCS believes these technical issues are red-herrings, the main issue is that, if the requesting carrier wants roaming, it will have to design its network and customer services to be compatible with the providing carrier, which will not raise any of the harms claimed by Verizon, AT&T or Sprint.

it will repeatedly wake up and be forced to deal with the issue again in the not too distant future.

### **III. THERE IS NO DISTINGUISHING FACTOR ABOUT NON-CMRS DATA SERVICES THAT JUSTIFIES DENYING AUTOMATIC ROAMING RIGHTS**

The Wireless Communications Association (“WCA”) makes a series of arguments suggesting that the nascent state of the wireless broadband data network market justifies avoiding the imposition of an automatic roaming requirement. The Commission should reject these arguments.

WCA expresses concern that imposing a roaming requirement may slow down deployments since the operator of a nascent wireless broadband network may be less likely to construct facilities in new markets where automatic roaming on other networks is available.<sup>29</sup> As MetroPCS and many other opponents of the in-market roaming exclusion have pointed out, this argument is fundamentally flawed because it fails to adequately acknowledge that the host carrier is entitled to earn a profit on its roaming services.<sup>30</sup> This means that there are substantial economic costs to a requesting carrier which opts to serve viable areas by roaming rather than by building. Supporters of roaming rights for Non-CMRS Data Services are not demanding free access to the host carrier network, nor any right to gain access at cost or at a cost-based or TELRIC rate. Rather, the host carrier is able to assess a reasonable charge and, in ascertaining what is reasonable, the Commission can allow the host carrier to earn a sufficient profit to assure the host carrier and requesting carrier have adequate economic incentives to build out high cost areas. This fact, coupled with the right of a host carrier to earn a profit on its roaming services,

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<sup>29</sup> WCA Comments at p. 6; *see also* Verizon Comments at p. 8-9 and AT&T Comments at p. 6-10.

<sup>30</sup> *See, e.g.*, MetroPCS Comments at p. 10-11; Leap Comments at p. 8-9.

makes it diseconomic in the long run for MetroPCS and similarly-situated carriers to opt to serve viable areas by roaming rather than by building. Their ability to offer a fully competitive rate would always be hindered if they were paying the host carrier a fee that included a profit margin. Indeed, as MetroPCS' costs are among the lowest in the industry, in some instances by 50% or more, MetroPCS is incented to build everywhere it makes economic sense. The reliance on automatic data roaming will reduce in the short-term the requesting carrier's profits and increase their prices to their customers. Nevertheless, the long-term benefits will be worthwhile - - additional market players will be able to remain in the game, investing funds in research and development of new technologies and building out their infrastructure over time - - ultimately benefiting the consumer with more options and improved technologies at lower prices. Further, allowing automatic roaming for Non-CMRS Data Services serves to encourage new entrants and small businesses that otherwise would not have the wherewithal to buy, build and operate large regional networks. Many of the success stories in wireless have been the result of encouraging new entrants through policies such as roaming, and MetroPCS strongly believes that following WCA's argument would deter such new entrants.<sup>31</sup>

WCA also argues that there is no reason to doubt that "if and when" there is a demand for automatic roaming among users of nascent wireless broadband networks, it will be addressed via marketplace forces without the need for regulatory mandates.<sup>32</sup> Not only does MetroPCS believe that the demand for automatic roaming already is upon us, but its experience with automatic

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<sup>31</sup> Indeed, in its review of merger transactions, the Commission examines whether new entrants can enter the market. *See In the Matter of Applications of AT&T Inc. and Dobson Communications Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 07-153, *Memorandum Opinion and Order*, FCC 07-196 at ¶ 16 (rel. Nov. 19, 2007) ("*Dobson Order*"). If new entrants are not able to offer the latest services in roaming arrangements, they will be deterred and the Commission will need to reexamine whether merger transactions such as AT&T-Dobson are in the public interest.

<sup>32</sup> WCA Comments at p. 6.

voice roaming makes it clear that marketplace forces alone do not suffice. While the opponents of a Non-CMRS Data Services roaming obligation claim that the market will produce agreements without Government intervention, none cite to any existing agreements that would prove this point.<sup>33</sup> The fact that the Commission felt compelled to issue automatic roaming rules for CMRS and adjunct services reflects a recognition that the free market alone will not generate robust roaming arrangements when a few dominant national carriers have so much to gain competitively by denying access to their networks. As noted by Commissioner Adelstein, the competitiveness of the retail CMRS market does not mean that the wholesale roaming market is competitive.<sup>34</sup> A set of minimum basic standards is required, not only for voice roaming (in-market and out-of-market), but for data roaming as well.

Even if WCA was correct in characterizing the Non-CMRS Data Services market as an emerging market, the case for Government intervention would remain, and perhaps be even stronger. Congress has expressly stated that “[i]t shall be the policy of the United States to encourage the provision of new technologies and services to the public.”<sup>35</sup> This means that the Commission should be even more inclined to take regulatory actions to promote data roaming because doing so will cause new services to proliferate.

The exclusion of any Non-CMRS Data Service roaming requirements from the automatic roaming rules allows, and may even encourage, nationwide carriers to act unjustly, unreasonably and in a discriminatory manner with regard to the negotiation and execution of data roaming agreements. If the Commission excludes Non-CMRS Data Services roaming agreements from

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<sup>33</sup> Although Verizon and AT&T both claim that such agreements are numerous and commonplace, they have not provided any evidence of this.

<sup>34</sup> *Roaming Order*, Statement of Commissioner Jonathan S. Adelstein, Approving in Part, Concurring in Part.

<sup>35</sup> See Leap Comments at p. 4 (citing 47 U.S.C. § 157(a)).

the new automatic roaming rules, the Commission essentially would be providing the large incumbent carriers with *carte blanche* government-endorsed authority to discriminate and price-gouge. And, just as is the case with the in-market roaming exclusion in the *Roaming Order*, which currently is under reconsideration, incumbents will use this as an opportunity to disadvantage the most competitively disruptive carriers in the market, including new entrants. Having already concluded that the free market is not working to foster fair roaming arrangements, it makes no sense for the Commission to assume that the voluntary Non-CMRS Data Services roaming agreement approach will foster anything other than contention in the marketplace.

WCA also makes the argument that a Non-CMRS data Services roaming mandate would require operators of nascent wireless broadband network to repurpose their limited financial and other resources in order to properly accommodate roamers. Concern is expressed that wireless broadband network operators must balance capacity against subscriber demands, since demand would also be coming from beyond the operator's own subscriber base. This would, in WCA's view, force such carrier's to make a Hobson's Choice between overbuilding capacity, undertaking sophisticated bandwidth management solutions to afford priority to the operator's own subscribers, or do neither and risk alienation of its own customers due to reduced network speeds from overburdened use.<sup>36</sup>

WCA's concerns are unfounded. A host carrier would only be compelled to provide automatic Non-CMRS Data Services roaming to a requesting carrier in circumstances where it is technically feasible and economically reasonable to do so. A host carrier would not be required

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<sup>36</sup> WCA Comments at p. 4-5.

to add capacity solely to facilitate roaming. And, to the extent that capacity is added, the carrier would be entitled to be compensated for the cost. Thus, the obligation to serve roamers on a non-discriminatory basis brings with it opportunities to earn revenue, not just to sustain costs. In addition, since roaming customers do not require marketing, selling or customer care by the host carrier, operators with limited capital will find this as a very attractive revenue source.<sup>37</sup>

Equally unfounded is the suggestion by AT&T that imposing roaming requirements on wireless broadband Internet access services would unfairly single them out for economic regulation while their cable, wireline and BPL counterparts remain unfettered by such regulation, driving investment away from mobile broadband services and toward the non-regulated broadband services.<sup>38</sup> This argument misperceives the nature and scope of the roaming obligation that is under consideration. The Commission specifically determined that it would not impose rate regulation on CMRS and adjunct service roaming agreements.<sup>39</sup> In effect, the agency decided to adopt a light regulatory touch that merely obligated carriers to provide roaming services upon reasonable request on just, reasonable and non-discriminatory terms. These obligations will not skew the competitive market. Indeed, the opponents argue that carriers will have powerful incentives to provide these services even in the absence of regulation, which clearly undermines the claim that the obligations are so burdensome as to upset the competitive playing field.<sup>40</sup> Further, wireline and wireless services are different and are not

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<sup>37</sup> Indeed, the Commission recently changed its designated entity rules for the D Block in the upcoming 700 MHz auction to allow for wholesale of services, which are economically very similar to roaming.

<sup>38</sup> AT&T Comments at p. 10-11.

<sup>39</sup> *Roaming Order* at Section III.A.2.

<sup>40</sup> AT&T in fact argued in its recent application to acquire Dobson Communications that the market for wireless services is nationwide and by implication its competitors are the nationwide carriers. *See Dobson Order* at ¶ 24. The fact is that if one nationwide wireless provider offers wireless broadband services the rest in a competitive

(continued...)

subject to easy comparison. For example, wireless services require carriers to receive licenses via a government-run auction while wireline information services are provided over facilities and through franchises that were awarded in many cases for free and the facilities paid for in many instances when a monopoly existed. Wireless carriers also offer mobility which wireline carriers do not. Thus, the fact that wireless information service providers have this obligation while wireline providers do not, will have no significant regulatory impact on other services.

#### IV. CONCLUSION

In separate comments filed in this proceeding, a broad cross-section of the wireless industry -- including regional carriers, rural carriers and new entrants -- advocate the extension of the automatic roaming obligations to Non-CMRS Data Services.<sup>41</sup> Interestingly, these commenters often disagree on other wireless policy issues, but they all agree that the automatic roaming obligations should include Non-CMRS Data Services. Despite the diversity of their businesses and business plans, these commenters all support such an extension based on a variety of legal and public interest arguments. Among other things, the commenters point out that exclusion of Non-CMRS Data Services from the automatic roaming obligations will result in: (i) disincentives for innovation; (ii) competitive harm to small, rural, and regional carriers; (iii) harmful barriers to market entry and unnecessary deterrence of facilities-based competition; (iv) encouragement of anti-competitive roaming practices by large, incumbent carriers; and (v) potential public safety harms to consumers.<sup>42</sup>

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(...continued)

market will be forced to do the same. The only time this would not be the case is if the entire industry (or at least the national carriers) colluded to not offer the services - - something the existing Commission rules preclude.

<sup>41</sup> See, e.g., MetroPCS Comments; SouthernLinc Comments; Leap Comments; MTA Wireless Comments; RTG/OPASTCO Comments; Corr Comments; RCA Comments.

<sup>42</sup> *Id.*

Not surprisingly, the incumbent carriers opposing the inclusion of data roaming are those who stand the most to gain from limiting competition - - namely, Verizon Wireless, AT&T, Inc., and Sprint Nextel Corporation. Verizon again argues that competition alone will ensure that non-interconnected service roaming occurs, and that marketplace forces alone should address any evolving technical complexities attending automatic roaming for advanced data services.<sup>43</sup> Similarly, AT&T argues that maintaining the “deregulatory tenor” of the Commission’s policies should trump any bothersome market failures occurring in the automatic roaming arena.<sup>44</sup> These arguments must be seen for what they really are - - blatant attempts to guard market share and hinder fair competition - - and the Commission should not follow this siren call.

Respectfully submitted,

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<sup>43</sup> Verizon Comments at p. 9-10, 12-14.

<sup>44</sup> AT&T Comments at p. 6-10.