

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

To: The Commission

**REPLY COMMENTS OF AT&T INC.**

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November 28, 2007

## SUMMARY

Several parties to this proceeding have submitted comments arguing in favor of imposing an automatic roaming rule on non-interconnected services, including wireless broadband Internet access services. These commenters rely principally on the claim that roaming in the wireless broadband context involves only the transmission of data, and is therefore a telecommunications service directly subject to regulation under Title II. Pursuant to well-established and judicially affirmed Commission precedent – including the Supreme Court’s landmark *Brand X* decision – the host carrier in a wireless broadband roaming session provides functionality to the roaming user that qualifies as an information service, rather than a telecommunications service, under the Communications Act.

Moreover, even if wireless broadband roaming involves no more than the provision of data transmission by the host provider as some parties contend, the Commission made clear in the *Wireless Broadband Order* that the transmission component of a wireless broadband Internet access service is not a telecommunications service, even if offered separately as an input to another ISP’s Internet access service. Indeed, absent a decision by the host provider to affirmatively offer such a transmission service on a common carrier basis, the transmission service is simply private-carriage telecommunications, not a telecommunications service.

Because wireless broadband roaming thus involves the provision of an information service, or, alternatively, the transmission of private-carriage telecommunications, the automatic roaming rule at issue here could be implemented, if at all, only under the Commission’s general Title I or Title III authority. As AT&T demonstrated in its initial comments, and Sprint Nextel Corporation and Verizon Wireless demonstrated in their initial comments, several provisions of the Communications Act and the Telecommunications Act of 1996, as well as the Commission’s own broadband precedent, preclude the Commission from exercising such authority here. Regulation would in fact run counter to the goals and mandates of these Acts because it would stifle investment in and deployment of wireless broadband Internet access services as well as undermine mobile broadband network management. The Commission should therefore refrain from regulating, and instead allow parties to reach wireless broadband roaming agreements privately. Indeed, as carriers continue to do so, consumers will continue to enjoy the benefits of widespread mobile broadband access that parties in favor of extending the automatic roaming rule claim regulation is needed to secure.

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**REPLY COMMENTS**

In August, the Federal Communications Commission (“the Commission”) determined that commercial mobile radio service (“CMRS”) carriers are required to provide “automatic roaming service on reasonable and non-discriminatory terms and conditions” to other carriers upon “a reasonable request.”<sup>1</sup> The Commission made clear that the automatic roaming requirement extends only to “real-time, two-way switched voice or data services that are interconnected with the public switched network,” including “push-to-talk” and SMS services.<sup>2</sup> In a Further Notice of Proposed Rulemaking, the Commission sought comment on whether an automatic roaming requirement should extend to non-interconnected

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<sup>1</sup> *In re Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, at ¶ 26, FCC 07-143 (2007) (“Roaming Order”).

<sup>2</sup> *Roaming Order* at ¶ 54-60.

features and services, “such as wireless broadband Internet access service, or other non-CMRS services offered by CMRS carriers.”<sup>3</sup>

On October 29, 2007, AT&T submitted comments arguing that an automatic roaming requirement should not be imposed on non-interconnected features and services, such as mobile broadband Internet access service. AT&T argued that regulation would stifle investment in and deployment of wireless broadband Internet access services as well as undermine mobile broadband network management. Rather than regulating, therefore, the Commission should allow market-based agreements to determine the circumstances under which wireless broadband roaming agreements between carriers are reached. In addition, AT&T argued that the classification of wireless broadband Internet access service as an information service, in light of various provisions in the Communications Act (“the Act”), meant that a roaming rule could not be applied under the Commission’s Title I or Title III jurisdiction.

Several other parties to the proceedings submitted comments arguing in favor of imposing an automatic roaming rule on non-interconnected services, including wireless broadband Internet access services. AT&T respectfully submits these comments in reply.

Commenters that are in favor of extending the roaming requirement rely principally on the claim that roaming in the wireless broadband context involves only the transmission of data. On this basis, they assert, wireless broadband

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<sup>3</sup> *Id.* at ¶ 77-81.

roaming is a telecommunications service, and thus directly subject to regulation under Title II. These commenters, however, neglect to examine carefully the extended discussion undertaken by the Commission when it first considered the appropriate regulatory classification of Internet access services in the high-speed cable-modem service context. Under the conclusions that the Commission reached there, and incorporated into its subsequent determinations governing broadband Internet access services – including, most recently, the *Wireless Broadband Order* – it is evident that the capabilities that the host carrier provides in a wireless broadband roaming arrangement qualify as “information services” under the Act. As such, the appropriate regulatory treatment for roaming in the wireless broadband context should be the same as it is for information services generally – deference to market forces.

Even assuming *arguendo* that wireless broadband roaming involves the provision of only pure data transmission, that does not mean, as the commenters casually assume, that regulation should follow as a matter of course. Nobody has suggested that broadband Internet access service is not an information service. In the recent *Wireless Broadband Order*, the Commission made clear that any transmission component of wireless broadband Internet access service *does not* become a telecommunications service, even if offered separately as an input to another ISP’s Internet access service, unless the provider voluntarily provides the transmission indiscriminately on a common carrier basis.

The upshot of the Commission's determinations in the *Wireless Broadband Order* is that wireless broadband roaming does not involve the provision of a telecommunications service by the host carrier. As a result, the roaming rule at issue here is appropriate, if at all, under the Commission's general Title I or Title III authority. As AT&T demonstrated in its initial comments, however, there is no basis for the exercise of such jurisdiction. Rather, the Commission should allow parties to negotiate efficient wireless broadband roaming agreements in the free market, as they have successfully done up until now.

Indeed, in light of this success, the remaining arguments proffered by the parties in favor of extending the roaming rule lose all of their force. The commenters make much of the notion, for instance, that wireless customers expect to be able to access non-interconnected services to which they have subscribed when they are outside their home networks. But this expectation would hardly be frustrated if the Commission declined to impose the automatic roaming rule at issue here. In fact, just the opposite is true – if the market continues to foster commercially negotiated wireless broadband roaming agreements, as it is doing now, customers will enjoy the kind of seamless access to these services that they expect, without all the potential pitfalls associated with regulation.

AT&T therefore reiterates that extending the roaming regulation to wireless broadband Internet access services is both unnecessary and contrary to the deregulatory approach to such services that pervades the Act and has informed the Commission's treatment of broadband Internet access services generally.

## DISCUSSION

### **I. Wireless Broadband Roaming Involves The Provision Of Information Services To The Roaming Customer**

The Act defines “telecommunications service” as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used” and “telecommunications” as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”<sup>4</sup> An “information service,” by contrast, is “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications ....”<sup>5</sup>

In arguing in favor of imposing an automatic roaming rule on wireless broadband Internet access services, a number of commenters assert that the host carrier in a wireless broadband roaming relationship offers only a telecommunications service to the roaming carrier’s customer. This argument is grounded on the claim that a wireless broadband roaming relationship involves no more than the transmission of data by the host carrier, without the kind of additional functionality that the Act describes for information services. Rural Cellular Association states, for instance, that the roaming carrier’s “expectation is that the service provided will be transport by the host carrier of communications

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<sup>4</sup> 47 U.S.C. § 153(46); § 153(43).

<sup>5</sup> *Id.* § 153(20).

over its system to and from the requesting [carrier/user]'s roaming subscriber."<sup>6</sup>

Leap Wireless International, Inc. likewise claims that it is only the "transmission component" of wireless broadband Internet access service "that is required for the purpose of roaming arrangements."<sup>7</sup> SouthernLINC Wireless purports to explain that,

[t]hrough a roaming agreement, the requesting carrier – *i.e.*, the carrier that is purchasing the automatic roaming service – specifies that traffic be transmitted between its network and the roaming subscriber's device .... The host carrier does not change the form or content of the information sent to or received by the roamer, nor does the host carrier provide additional services or functionalities.<sup>8</sup>

In elaborating on these claims, SouthernLINC states that the host carrier "does not provide the roamer with any service or functionality that generates, processes, or stores information. Rather, it is [] the roaming retail customer's home carrier [] that is providing the customers with these services and functionalities via the transmission path provided by" the host carrier to the roaming carrier.<sup>9</sup>

According to SouthernLINC, wireless broadband roaming is thus "properly classified as a telecommunications service" giving the Commission "ample legal basis to take action regarding automatic roaming for all mobile services under Title II of the Communications Act ...."<sup>10</sup>

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<sup>6</sup> Comments of Rural Cellular Association at 7.

<sup>7</sup> Comments of Leap Wireless International, Inc. at 2.

<sup>8</sup> Comments of SouthernLINC Wireless at 36.

<sup>9</sup> *Id.* at 37.

<sup>10</sup> *Id.* at 35, 32.

SouthernLINC and the other parties making these arguments offer little to support their characterization of how the services of two carriers interact when wireless broadband roaming occurs. SouthernLINC cites only to an *ex parte* letter filed by Verizon Wireless in these proceedings. That letter was in fact intended to demonstrate that “data roaming is an integrated *information* service provided to the end user through the cooperative efforts of host and home operators.”<sup>11</sup> In the letter, Verizon Wireless explained that “the provision of data roaming involves complex arrangements between the host and home operator resulting in a single integrated offering.” Verizon Wireless elaborated that “[d]ata roaming is not something that a home operator can assemble unilaterally for sale to its customers using ‘dumb pipe’ telecommunications capacity bought from the host operator.” Rather, the host carrier provides functionality to the wireless broadband roaming user that is sufficient to render the service provided an information service under the Act and Commission rules.<sup>12</sup>

The same is true when the customer of one of AT&T’s roaming partners accesses non-interconnected services such as wireless broadband Internet access services over AT&T’s network. In particular, when a roaming user requests access to the Internet, AT&T as the host provider uses the Domain Name System (DNS)<sup>13</sup>

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<sup>11</sup> *Ex Parte* Letter from Andre J. Lachance, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed July 20, 2007) (cited in comments of SouthernLINC Wireless at 37 & n.82) (emphasis added).

<sup>12</sup> *Id.* at 1-2.

<sup>13</sup> As the Commission has explained, “[a] DNS is an Internet service that enables the translation of domain names into IP addresses. When queried about a domain name, a DNS server provides the querier with the IP address of the domain name or the IP address of another DNS server that may

to process the request. AT&T queries the DNS to determine the IP address of the roaming partner's Gateway GPRS Support Node (GGSN) to obtain routing instructions so that AT&T can route traffic between the roaming partner and its end user. AT&T's use of the DNS is thus a critical and necessary step in ensuring that the roaming end user successfully initiates a roaming session, and is unquestionably the provision of an "information service" under the Act as it involves "the generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications."<sup>14</sup>

Indeed, in the *Cable Modem Declaratory Ruling*,<sup>15</sup> the Commission itself specifically found that the DNS "encompasses the capability for 'generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.'" As the Commission explained,

Internet Access service generally includes using the DNS. The DNS is an online data retrieval and directory service. The DNS is a distributed system,

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provide the IP address of the domain name if the original DNS server does not how to translate a particular domain name. Thus, in effect, a DNS acts as its own network. See Webopedia, *DNS*, at <http://www.webopedia.com/TERM/D/DNS.html> (visited Feb. 19, 2002). This translation process is necessary because routing of traffic over the Internet is based on IP addresses, not domain names. As a result, before a browser can send a packet to a website, it must obtain the address for the site. See Webopedia, *Domain Name*, at [http://www.webopedia.com/TERM/D/domain\\_name.html](http://www.webopedia.com/TERM/D/domain_name.html) (visited Jan. 10, 2002). A "domain name" is a "name that identifies one or more IP addresses. For example, the domain name microsoft.com represents about a dozen IP addresses. Domain names are used in URLs to identify particular web pages." For example, in the URL <http://www.fcc.gov>, the domain name is fcc.gov. *Id.*; see also 47 U.S.C. § 1127 ("The term 'domain name' means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet")." *In re Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17 FCC Rcd. 4798, 4810 n.74 (2002).

<sup>14</sup> 47 U.S.C. § 153(20).

<sup>15</sup> See *In re Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17 FCC Rcd. 4798 ¶ 38 (2002).

where the data may be replicated in multiple, geographically dispersed server systems. The administration of the DNS is hierarchical, and is routinely delegated among a great many independent organizations. It is most commonly used to provide an IP address associated with the domain name ... of a computer; however, the DNS is also routinely used to perform reverse address-to-name lookups and to identify and locate e-mail servers. In addition, the DNS is flexible and can be enhanced, so that it is capable of supporting new functionality. The DNS constitutes a general purpose information processing and retrieval capability that facilitates the use of the Internet in many ways.

The Commission went on to conclude that the use of the DNS, in conjunction with the other applications often associated with broadband Internet access, was sufficient to “constitute an information service, as defined in the Act.”<sup>16</sup>

In subsequently upholding the *Cable Modem Declaratory Ruling*, the Supreme Court specifically addressed the Commission’s findings regarding the DNS.<sup>17</sup> After comparing the functionality provided by DNS to the statutory definition of an information service, the Court held that it is “reasonable” to conclude that the DNS is “part of the information service cable companies provide.”<sup>18</sup>

Given this precedent explaining how the DNS meets the definition of an information service under the Act, it therefore follows that, to the extent a host provider uses the DNS to offer the customer of a roaming partner the ability to

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<sup>16</sup> *Id.* at 4828 ¶ 37-38.

<sup>17</sup> *See Nat’l Cable Telecomms. Ass’n v. Brand X Internet Services*, 545 U.S. 967, 998-1000 (2005).

<sup>18</sup> *Id.* at 999.

access the Internet and/or other IP-based services, the host provider is providing an information service to the roaming partner and its end user customer.

**II. Wireless Broadband Roaming Is Not A Telecommunications Service Even If It Involves No More Than Data Transmission**

In any event, disputes concerning the precise characterization of the kind of functionality provided by the host carrier in a wireless broadband roaming arrangement are nothing but a red herring. The commenters that are in favor of extending the roaming requirement simply assume that, if wireless broadband roaming does indeed involve only the transmission of data, then it is necessarily a telecommunications service directly subject to the general provisions of Title II and the particular requirement that it must be offered indiscriminately to all other carriers. The Commission, however, has concluded otherwise. In the *Wireless Broadband Order* itself, the Commission determined in no uncertain terms,

that neither the Communications Act nor relevant precedent mandate that broadband transmission be a 'telecommunications service' when provided to an ISP as a wholesale input for the ISP's own broadband Internet access service offering. Indeed, neither the Communications Act nor relevant precedent require a wireless broadband Internet access provider to offer the transmission component of wireless broadband Internet access service as a telecommunications service to anyone. However, the wireless broadband Internet access provider may choose to offer the transmission component as a telecommunications service. *We note that the transmission component of wireless broadband Internet access service is a telecommunications service only if the entity that provides the transmission voluntarily*

*undertakes to provide it indifferently on a common carrier basis.*<sup>19</sup>

The clear implication of the last sentence of this excerpt from the *Wireless Broadband Order* is that if “the entity that provides transmission” does *not* “voluntarily undertake[] to provide” “the transmission component” “indifferently on a common carrier basis,” then the transmission is *not* a “telecommunications service.”<sup>20</sup> Instead, wireless broadband providers are free to offer the transmission component of any broadband Internet access service on a private-carriage basis to other ISPs, without such transmission component being classified as a telecommunications service.

Not one of the commenters in favor of extending the automatic roaming rule address this preceding holding from the *Wireless Broadband Order*. Indeed, SouthernLINC misleadingly states that the Commission “pointed out” in that Order, “that if a wireless broadband Internet access provider chooses to offer the transmission component as a stand-alone service, ‘then it is a common carrier service subject to Title II.’”<sup>21</sup> But the excerpt from the Order that SouthernLINC quotes was preceded by the Commission’s reiteration that transmission is only a “common carrier service” “if a wireless broadband Internet access provider

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<sup>19</sup> *In the Matter of Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, at ¶ 32, FCC 07-30 (2007) (emphasis added).

<sup>20</sup> *Id.*; see also *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd. 14853 ¶ 94 (holding that “to enable facilities-based wireline Internet access providers to maximize their ability to deploy broadband Internet access services and facilities in competition with other platform providers, under a regulatory framework that provides all market participants with the flexibility to determine how best to structure their business operations, facilities-based carriers are able to choose whether to offer wireline broadband Internet access transmission as non-common carriage or common carriage”).

<sup>21</sup> Comments of SouthernLINC Wireless at 41 (quoting *Wireless Broadband Order* at ¶ 33).

chooses to offer the telecommunications transmission component as a telecommunications service.”<sup>22</sup> And this qualification must be read in light of the Commission’s conclusion, in the immediately preceding paragraph, that even pure transmission remains a telecommunications component of an information service unless it is “voluntarily” offered “indiscriminately on a common carrier basis.”<sup>23</sup> There is no evidence in the record to suggest that wireless providers are holding out broadband transmission services on a common carrier basis. Rather, as AT&T previously explained, such transmission services are being offered on a private carriage basis as the result of commercial negotiations in a competitive marketplace.

Given this marketplace reality, the proposal to extend the automatic roaming rule is in effect a request to force wireless broadband service providers to separate out the transmission component of their wireless broadband Internet access services, and to offer that component as a stand-alone telecommunications service on a common carrier basis. This would be tantamount to reinstating for wireless broadband the *Computer Inquiry* regime that previously governed enhanced services in the wireline context.<sup>24</sup> But the Commission already rejected imposing such a regime, which it described as “radical surgery,” on cable modem

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<sup>22</sup> *Wireless Broadband Order* at ¶ 33.

<sup>23</sup> *Id.* at ¶ 32.

<sup>24</sup> See generally *In the Matter of Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services and Facilities, Final Decision and Order*, 28 FCC 2d 267 (1971); *In the Matter of Amendment of Section 64.702 of the Commission’s Rules and Regulations, Final Decision*, 77 FCC 2d 384 (1980); *Computer III Further Remand, Report and Order*, 14 FCC Rcd 4289 (1999).

providers and, more recently, repudiated that same regime in the wireline broadband context. Those decisions, moreover, were affirmed by the courts.

The commenters that favor extending the roaming rule are thus not only seeking to undermine this Commission and judicial precedent deregulating information services, they are seeking to do so for one information service platform alone – wireless. Indeed, Leap Wireless is quite candid about this aspect of its comments, citing the *Second Computer Inquiry* final decision in support of its argument for extending the automatic roaming requirement.<sup>25</sup> Just as the Commission flatly rejected the imposition of a *Computer Inquiry*-style mandate on wireless broadband providers in the *Wireless Broadband Order*, the Commission should reject similar calls by Leap Wireless and others for unwarranted broadband roaming regulations in this proceeding.<sup>26</sup>

### **III. Imposing A Roaming Requirement On Non-Interconnected Wireless Services Would Be Inconsistent With The Commission’s Goals Under Section 706 And Other Statutory Provisions**

The clear result of the Commission’s precedent is thus that wireless broadband roaming does not involve the provision of a telecommunications

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<sup>25</sup> See Comments of Leap Wireless International, Inc. at 2 n.3.

<sup>26</sup> Some commenters suggest that the Commission’s recent order regarding Time Warner’s request for a declaratory ruling supports the extension of the roaming rule here. See, e.g., Comments of SouthernLINC Wireless at 38-39. That proceeding, however, was under the interconnection provisions of Title II. See *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 (2007). The Commission found it significant that Time Warner sought interconnection to provide wholesale transmission service to third-party VoIP providers. See *id.* at 3520. Here, by contrast, the carriers in favor of extending the roaming rule intend to use the services of host carriers not to provide wholesale inputs to other providers, but instead to provide retail services to their own customers.

service, but instead involves the provision of an information service, or at most the provision of telecommunications on a private-carriage basis. It is therefore not directly subject to the provisions of Title II, but is instead to be regulated, if at all, only under the Commission's general Title I or Title III authority.

As AT&T demonstrated in its initial comments, however, regulation under the general provisions of Title I or Title III is only appropriate when it does not contradict other, more particular, statutory directives contained in the Act.<sup>27</sup> And a number of provisions in the Act preclude the imposition of a roaming requirement on wireless broadband Internet access service.<sup>28</sup> Section 706 of the Telecommunications Act of 1996 ("the '96 Act") instructs the Commission to encourage the deployment of advanced telecommunications capabilities by removing barriers to infrastructure development.<sup>29</sup> Section 230(b)(2) of the Act provides that the policy of the United States includes the preservation of "the vibrant and competitive free market that presently exists for the Internet and other

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<sup>27</sup> See *FCC v. Midwest Video Corp.*, 440 U.S. 689 (1979); *American Library Ass'n v. FCC*, 406 F.3d 689 (D.C. Cir. 2005). Sprint Nextel Corporation and Verizon Wireless also argue that exercise of Title I or Title III jurisdiction would be inconsistent with particular provisions of the Act. AT&T endorses this aspect of the arguments made by Sprint Nextel and Verizon Wireless.

<sup>28</sup> Several commenters claim that the Commission's regulation of VoIP supports the Commission's authority under Title I to impose the roaming regulation at issue here. See, e.g., Comments of Leap Wireless International, Inc. at 3; Comments of United States Cellular Corporation at 9-10. In the VoIP proceedings, however, the Commission has applied only "public policy" regulations, such as E911 requirements, see *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers, First Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 10245 (2005), universal service fund contributions, see *Universal Service Contribution Methodology, Report and Order and Notice of Proposed Rulemaking*, 21 FCC Rcd 7518 (2006), CPNI requirements, see *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Report and Order and Further Notice of Proposed Rulemaking*, FCC 07-22 (2007), or access for people with disabilities, see *Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, Report and Order*, FCC 07-110 (2007). The Commission has not imposed on VoIP the kind of economic regulation that a roaming requirement would represent.

<sup>29</sup> Pub.L. 104-104. Title VII, § 706, codified at 47 U.S.C.A. § 157, Note.

interactive computer services, unfettered by Federal or State regulation,”<sup>30</sup> and other statutory provisions promote similar goals.<sup>31</sup>

All of these statutory provisions are designed to foster the deployment of advanced services and technologies. A roaming requirement for mobile broadband services would have the opposite effect. For one thing, as AT&T explained in its initial comments, such a requirement would impose costs on carriers that offer mobile broadband services by forcing them to modify their networks to absorb non-voice roaming traffic in accordance with a regulatory regime.

The commenters in favor of extending the roaming requirement generally downplay the seriousness of network management issues that an extension of the roaming rule would entail. Corr Wireless Communications, LLC, for instance, states that “because home users will impose a much greater burden on network capacity than roamers, whatever system works for home customers should control roamer usage as well.”<sup>32</sup> Rural Cellular Association likewise claims that “the Commission should not permit carriers to deny or unreasonably delay requests for roaming agreements for reasons such as limited network capacity or risk to

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<sup>30</sup> 47 U.S.C. § 230(b)(2).

<sup>31</sup> See Preamble, Telecommunications Act of 1996, P.L. 104-104, 100 Stat. 56 (1996) (stating the purpose of the Act “to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies”); 47 U.S.C. § 309(j)(3)(A), (D) (requiring the Commission to encourage “the development and rapid deployment of new technologies, products, and services for the benefit of the public ... without administrative or judicial delays” and the “efficient and intensive use of the electromagnetic spectrum”).

<sup>32</sup> Comments of Corr Wireless Communications, LLC, at 4.

network integrity or security.”<sup>33</sup> Rather, Rural Cellular Association claims, “[i]f a particular roamer’s use of another carrier’s network presents a problem, the remedy should be limited to suspension or denial of service to that particular roamer.”<sup>34</sup>

These remarks evidence a fundamental misapprehension of the nature of the network management problems that an extension of the roaming rule will entail. As AT&T demonstrated in its initial comments, the effects of network overload on account of unanticipated roaming demand are felt diffusely across all users – voice and data users alike, roaming and home users alike. It is simply not feasible to suggest that individualized denial of service is an adequate protection against these pernicious effects. Indeed, under the “solution” that Rural Cellular Association proposes, carriers would be left in the untenable position of trying to determine the identity of the roaming user who tipped the network over capacity as all the other users experienced busy signals or transmission rates that had slowed to a crawl.

To guard against such disastrous consequences, carriers will, as AT&T noted, be forced either to undertake costly capacity expansions in the face of an automatic data roaming rule, or to run the risk of a reduction in quality of service for all users on their networks. Neither of these options is palatable, and, as a consequence, extending the automatic roaming rule will necessarily dampen the

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<sup>33</sup> Comments of Rural Cellular Association at 5.

<sup>34</sup> *Id.*; see also Comments of SouthernLINC Wireless at 21.

incentives for carriers to upgrade and expand their wireless broadband offerings. Indeed, the comments filed by the Wireless Communications Association International, Inc., whose membership includes new entrants to the wireless market that are in the process of building out broadband networks, confirm that this concern regarding the effects of extending the roaming rule is not limited to established carriers.<sup>35</sup>

Imposition of a roaming requirement on wireless broadband Internet access services will also pose difficult technical compatibility issues. A number of commenters in favor of extending the automatic roaming rule acknowledge this fact and concede that it would be improper to require a carrier to make modifications in order to host technically-incompatible roamers.<sup>36</sup>

Other commenters, however, suggest that regulation of wireless broadband services should go forward despite these technical issues, on the casual assumption that they will be resolved out of a necessity. United States Cellular Corporation, for example, states that “a data roaming requirement would make [technological] challenges problems to be solved, rather than excuses for inaction.”<sup>37</sup> But this would turn the Commission’s usual approach to network modification on its head. In the past, the Commission has refrained from regulating when doing so would require carriers to alter network management

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<sup>35</sup> See Comments of The Wireless Communications Association International, Inc., at 1-3.

<sup>36</sup> See, e.g., Comments of MetroPCS Communications, Inc. at 14-15; Comments of Rural Cellular Association at 5; Comments of SpectrumCo LLC at 10.

<sup>37</sup> Comments of United States Cellular Corporation at 9.

measures.<sup>38</sup> United States Cellular Corporation, by contrast, endorses regulation as a means to force carriers to modify their networks. But such forced modification is costly, and carriers will be less likely to upgrade their service offering in the future and expand their deployments of advanced services if they are forced to absorb the costs of giving other carriers access to such upgrades.

Apart from the network management and technical compatibility issues explained above, AT&T in its initial comments described another manner in which an automatic roaming rule would undermine the incentives for network buildout. Under a mandatory roaming regime, existing carriers would have little incentive to expend resources in building out a network in areas outside of their existing spectrum coverage – after all, they could simply piggyback on the efforts of other carriers. In addition, carriers may not make upgrades in rural areas even within their existing spectrum footprints out of concern that such upgrades would be subject to roaming obligations. Such an outcome would undermine competition and broadband availability in clear contravention of the statutory directives with respect to broadband services.

In a tacit concession that this drawback of extending the roaming rule is a genuine concern, several commenters who are in favor of such an extension claim that carriers already have reason to upgrade their offerings to broadband and other non-interconnected services in order to comply with licensing conditions.

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<sup>38</sup> See, e.g., *In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Report and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd 9462 at ¶ 29 (1996).

SouthernLINC, for instance, states that “the Commission’s concern regarding whether carriers would have sufficient incentives to invest in the deployment [of] mobile wireless broadband networks overlooks the fact that wireless carriers already have build-out requirements attached to their licenses.”<sup>39</sup>

To be sure, the Commission attached a “substantial service” buildout condition to licenses issued in the AWS auction.<sup>40</sup> However, none of the commenters cite any authority – and none exists – for the proposition that a licensee will run afoul of these requirements if it neglects to offer broadband service in its license areas. Indeed, if this were in fact the case, as SouthernLINC appears to assume, one wonders why several other carriers in favor of extending the roaming rule disavow the notion that a wireless provider must first offer broadband service in its home market before being eligible to roam on the broadband services of other providers.<sup>41</sup>

**IV. The Remaining Arguments In Favor Of Extending The Roaming Requirement Are Premised On The Groundless Assumption That The Market Will Not Support Robust Roaming Agreements Between Carriers**

The commenters that are in favor of extending the roaming requirement to cover non-interconnected services such as wireless broadband Internet access service offer a number of further arguments to this end. All of these arguments

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<sup>39</sup> Comments of SouthernLINC Wireless at 14; *see also* Comments of SpectrumCo at 22-23.

<sup>40</sup> *See In the Matter of Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, 18 FCC Rcd 25162 at ¶ 75 (2003), modified on reconsideration, 20 FCC Rcd 14058 (2005).

<sup>41</sup> *See* Comments of MetroPCS Communications, Inc. at 16; Comments of Leap Wireless International, Inc. at 10.

are without merit, however, chiefly because they assume that market forces will not support robust roaming agreements to cover non-interconnected services.

Commenters make much of the notion that wireless customers expect to access non-interconnected services to which they have subscribed when they are outside their home network. SpectrumCo LLC, for instance, argues that “[l]egitimate expectations of ‘seamless nationwide’ wireless service are increasing, as consumers come to rely more and more on mobile services to meet their personal, professional, and safety needs, wherever they may happen to be.”<sup>42</sup> But there is every indication that market forces are already providing extensive and robust roaming coverage for non-interconnected services. Indeed, it is remarkable that in all the comments in favor of extending the roaming requirement, only one concrete allegation of market failure is identified.<sup>43</sup> Apart from this one claim, the most that the commenters can muster in this regard are vague or incomplete allegations. Rural Cellular Association, for instance, claims that “some carriers” have “improper competitive motivations” not to enter into roaming agreements and relays “report[s] that” its member carriers’ “inability to obtain a data roaming agreement with large CMRS carriers using CDMA technology has caused [the member carriers] to delay or slow down progress in

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<sup>42</sup> Comments of SpectrumCo LLC at 2; *see also* Comments of the Rural Telecommunications Group, Inc. and the Organization for the Promotion and Advancement of Small Telecommunications Companies at 3; Comments of Rural Cellular Association at 1-2; Comments of Corr Wireless Communications, LLC, at 2; Comments of MetroPCS Communications, Inc. at 7.

<sup>43</sup> The one concrete allegation of market failure is in the comments of SouthernLINC Wireless. SouthernLINC describes “the ongoing refusal by Sprint Nextel and its predecessor companies (Nextel and Nextel Partners) to provide any data roaming services to SouthernLINC Wireless, despite SouthernLINC Wireless’ repeated requests.” Comments at 19.

upgrading networks to support AWS.”<sup>44</sup> But these vague, self-serving allegations do not indicate some type of systemic market failure that would warrant Commission intervention in the robustly competitive wireless marketplace. And, in the absence of a more concrete, sustained showing of market failure, there is no reason to believe that consumers’ expectation of seamless coverage with respect to non-interconnected wireless service will be thwarted.

Some commenters also claim that failure to extend the roaming requirement will imperil public safety.<sup>45</sup> However, the Commission’s E911 rules apply to voice services. Whether the Commission’s roaming requirement is extended to non-interconnected services will have no bearing on whether roaming customers will be able to avail themselves of E911 services while traveling outside their home networks. In addition, as the market continues to support data roaming agreements between carriers, users will continue to have access to such services and any public safety functions that they provide.

Finally, it is important to remember that the preceding arguments are based on the assumption that the imposition of an automatic roaming rule on non-interconnected services will not dampen the incentives for network buildout—otherwise any benefits in terms of consumer expectations and public safety that the commenters associate with imposing such a rule would be offset by a decrease in coverage across the nation as a whole. Yet, as AT&T explained in its initial

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<sup>44</sup> Comments of Rural Cellular Association at 4 & n.4.

<sup>45</sup> *See, e.g.*, Comments of MetroPCS Communications, Inc. at 9-10.

comments and reiterates in Section III above, there is good reason to believe that extending the roaming rule to cover non-interconnected services will have just such a dampening effect.

Respectfully submitted,

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