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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Reexamination of Roaming Obligations of Commercial Mobile Radio Service
Providers, WT Docket No. 05-265; *Ex Parte* Presentation

Dear Ms. Dortch:

On December 6, 2007, representatives of SouthernLINC Wireless met with the Wireless Telecommunications Bureau to discuss issues raised in the Commission's *Further Notice of Proposed Rulemaking (FNPRM)* in the above referenced proceeding.¹ Through this letter, SouthernLINC Wireless hereby elaborates on its analysis of the appropriate regulatory treatment of automatic roaming services in response to a question raised by Bureau staff during the meeting.

In its comments and reply comments on the *FNPRM*, SouthernLINC Wireless explained that automatic roaming is a wholesale carrier-to-carrier service that is properly considered a "telecommunications service" under the Communications Act.² During the December 6, 2007, meeting, SouthernLINC Wireless stated that automatic roaming services are thus subject to regulation as common carrier services, even if the particular automatic roaming service in question is a non-interconnected service and therefore would not be considered a "commercial mobile radio service" (CMRS) as defined in Section 332(c) of the Communications Act and the

¹ / Notice of *Ex Parte* Presentation, WT Docket No. 05-265 (filed Dec. 7, 2007).

² / See Comments of SouthernLINC Wireless, WT Docket No. 05-265 (filed Oct. 29, 2007) at 32 – 43; Reply Comments of SouthernLINC Wireless, WT Docket No. 05-265 (filed Nov. 28, 2007) at 14 – 17 and 21 – 22.

Commission's implementing regulations.³ In other words, CMRS carriers can provide service in multiple categories, and the Commission can regulate each accordingly. SouthernLINC Wireless would like to expand on this response as set forth below.

In order to be classified as CMRS, a mobile service must meet three criteria. Specifically, the service must be (1) provided for a profit; (2) interconnected; and (3) available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public.⁴ Section 332 of the Communications Act further provides that a person engaged in the provision of CMRS shall, insofar as such person is engaged, be treated as a common carrier.⁵

In the *Wireless Broadband Internet Access Order*, the Commission found that "mobile wireless broadband Internet access service does not fit within the definition of 'commercial mobile service' because it is not an 'interconnected service' within the meaning of section 332 of the Act and the Commission's 'commercial mobile radio service' rules."⁶ Under this interpretation, wholesale automatic roaming for data and other non-interconnected services arguably would also not "fit within the definition" of CMRS because such automatic roaming services are not "interconnected." As explained below, however, an entity can have CMRS status for some services, and also be providing "telecommunication services" and/or "information services" which are subject to their own regulatory conditions.

The central point of SouthernLINC Wireless' analysis is that automatic roaming services are *telecommunications services*, irrespective of whether those services would be classified as CMRS or not.⁷ Therefore, the question of the appropriate regulatory regime for wholesale automatic roaming does not begin and end with a determination of whether or not it meets the definition of CMRS.

³ / See *Appropriate Regulatory Treatment for Broadband Internet Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901, 5915-5919 ¶¶ 37-47 (2007) ("*Wireless Broadband Internet Access Order*").

⁴ / 47 U.S.C. § 332(d)(1); 47 C.F.R. § 20.3.

⁵ / 47 U.S.C. § 332(c)(1)(A). It is nonsensical to interpret the "insofar as such person is engaged" provision to mean that no matter what service a CMRS carrier provides it can only be regulated as a common carrier for its CMRS services, and the Commission says as much in the *Wireless Broadband Internet Access Order* discussed herein.

⁶ / *Wireless Broadband Internet Access Order*, 22 FCC Rcd at 5916 ¶ 41.

⁷ / Wholesale data roaming meets the threshold definition of "telecommunications" under 47 U.S.C. § 153(43) ("the transmission between or among points specified by the user of information of the user's choosing, without change in the format or content of the information as sent and received"). See also Comments of SouthernLINC Wireless at 35-37.

The statutory and regulatory definitions of “telecommunications service” and “telecommunications carrier” are much broader in scope than the definitions for CMRS.⁸ Significantly, unlike the narrower definitions of CMRS, neither of these definitions include any requirement that the service in question be “interconnected.” In addition, as the Commission has previously observed, Congress noted when adopting these definitions that its definition of “telecommunications service” was “intended to include commercial mobile service.”⁹

This demonstrates that CMRS is only a sub-set of services that are considered telecommunications services. Accordingly, a mobile service that is not “CMRS” may nevertheless be a telecommunications service, and the provision of that service would therefore be subject to common carrier regulation. Furthermore, a CMRS carrier can provide services in multiple categories – *i.e.*, “traditional” CMRS service, information services, and other telecommunications services. The Commission, in fact, recognized these very points in the *Wireless Broadband Internet Access Order*:

Should the facility provider choose to offer the transmission component of wireless broadband Internet access as a telecommunications service, the regulatory regime appropriate to the nature of the telecommunications service will apply. For example, if a wireless broadband Internet access provider chooses to offer the telecommunications transmission component as a telecommunications service, then it is a common carrier service subject to Title II. In addition, a mobile wireless Internet access provider that chooses to offer the telecommunications transmission component as a telecommunications service may *also* be subject to the “commercial mobile service” provisions of the Act, depending on whether that transmission service falls within the definition of CMRS in the Act.¹⁰

⁸ / The Act sets forth the following definitions for these terms:

Telecommunications service “means the offering of telecommunications for a fee directly to the public, or to such classes of the public as to be effectively available directly to the public, regardless of the facilities used.” 47 U.S.C. § 153(46).

Telecommunications carrier “means any provider of telecommunications services [excluding aggregators]. A telecommunications carrier shall be treated as a common carrier to the extent that it is engaged in providing telecommunications services. . .” 47 U.S.C. § 153(44); *See also* 47 C.F.R. §§ 51.5 and 54.5.

⁹ / *See Wireless Broadband Internet Access Order*, 22 FCC Rcd at 5916 ¶ 40 (citing H.R. Conf. Report 104-458).

¹⁰ / *Id.*, 22 FCC Rcd at 5913-5914 ¶ 33 (emphasis added) (internal citations omitted). An example of a situation where a mobile service that is not CMRS may nevertheless be considered a common carrier service can be found in the treatment of private mobile radio service (PMRS)

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Accordingly, because wholesale automatic roaming services are telecommunications services, they are subject to regulation as common carrier services even if they do not meet the definition of CMRS.

Finally, as SouthernLINC has already demonstrated in its comments in this proceeding, the definitional issues discussed herein do not in any way restrict the Commission's plenary authority under Title III to condition radio licenses.¹¹

In accordance with the Commission's Rules, one copy of this *ex parte* notice is being filed electronically for inclusion in the record of the above-referenced proceeding.

Very truly yours,



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cc: Christina Clearwater
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providers. Under the Act, any mobile service that does not meet all three of the definitional criteria for CMRS – or is not the “functional equivalent” of CMRS – is PMRS. However, the Commission's rules explicitly anticipate that, in some circumstances, a PMRS provider can be a “telecommunications carrier” even if it is not providing CMRS. *See* 47 C.F.R. § 51.5 (“... Private Mobile Radio Service providers are telecommunications carriers to the extent they provide domestic or international telecommunications for a fee directly to the public.”)

¹¹ / *See* Comments of SouthernLINC Wireless at 23 – 31; Reply Comments of SouthernLINC Wireless at 22 – 23; *See also* *Wireless Broadband Internet Access Order*, 22 FCC Rcd at 5914-5915 ¶ 36.