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Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: **EX PARTE**
Reexamination of Roaming Obligations of Commercial Mobile Radio
Service Providers, WT Docket No. 05-265

Dear Ms. Dortch,

Verizon Wireless hereby responds to two recent *ex parte* filings seeking to modify or eliminate the “home roaming exception” that the Commission included in the automatic roaming rule.¹ These filings fail to show why the Commission’s action was improper and in fact underscore why the exception benefits consumers.

Last summer, the Commission adopted an automatic roaming requirement but was careful to limit the obligation to markets where the requesting carrier does not have spectrum to compete directly with the would-be host carrier. In particular, the Commission appropriately concluded that an automatic roaming mandate in overlap markets would undermine the goal of facilities-based competition, “negatively affect[ing] build-out in these markets, thus adversely impacting network quality, reliability and coverage.”² The arguments presented in the recent filings are unavailing, and the Commission should retain the home roaming exception.

¹ *Ex Parte* Letter filed by T-Mobile USA, Inc., WT Docket No. 05-265 (Mar. 7, 2008) (“T-Mobile Letter”); *Ex Parte* Letter filed jointly by Leap Wireless International, Inc.; the Organization for the Promotion and Advancement of Small Telecommunications Companies; the Rural Telecommunications Group, Inc.; Southern LINC Wireless; SpectrumCo LLC; Sprint Nextel Corporation; T-Mobile USA, Inc.; and United States Cellular Corporation, WT Docket No. 05-265 (Feb. 29, 2008) (“Joint Filer Letter”).

² Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, 22 FCC Rcd 15817 ¶ 49 (2007) (“*Roaming Order*”).

As an initial matter, it is important to emphasize just what the *Roaming Order* did and did not do:

- The Commission did not take away any licensee rights or upset any licensee expectations – it established a new right, upon reasonable request, to obtain automatic roaming in non-“home markets.” The *Roaming Order* merely retained the status quo with regard to home roaming.
- The Commission did not impose a prohibition against home roaming agreements and, in fact, “continue[s] to encourage” all CMRS carriers to enter roaming arrangements including automatic roaming in home markets.³
- The Commission found that “automatic roaming is currently widespread,”⁴ and the market reflects that carriers enter into home roaming arrangements in many circumstances.
- The Commission nonetheless adopted an automatic roaming requirement to facilitate roaming arrangements because wireless subscribers “expect to roam automatically on other carriers’ networks *when they are out of their home service area.*”⁵

The Joint Filers’ primary argument is that the “recently-created” home roaming exception “eliminates the existing ‘safety net’ for consumers to access seamless wireless coverage in many geographic areas[.]”⁶ This claim upends reality. Prior to the *Roaming Order* there was no “safety net” that provided a right for one carrier to demand that another provide automatic roaming in any market, let alone markets where they overlap.⁷ Further it is misleading to refer to the home roaming exception as “recently created”; rather, the automatic roaming rule itself was “recently created,” and the home roaming exception simply retains the status quo.

Similarly, T-Mobile’s claim that the home roaming exception “harms competition and consumers” is without basis.⁸ The T-Mobile filing itself belies the claim. T-Mobile cites to an analysis by Dr. Harold Furchtgott-Roth and concludes that “U.S. consumers currently enjoy some of the lowest wireless service rates in the world and are unaware of roaming boundaries under existing arrangements.”⁹ Indeed, consumers enjoy more service options and features at lower rates than ever before and many service plans exist which enable customers to obtain unlimited roaming services essentially free-of-charge. These laudable industry developments all occurred in a regulatory environment *without any automatic roaming obligation, let alone an in-market roaming requirement*. There is, therefore, no basis to conclude that the home roaming exception will have the adverse impact that T-Mobile suggests.

³ *Id.*

⁴ *Id.* ¶ 27.

⁵ *Id.* (emphasis added); *see also id.* ¶ 49.

⁶ Joint Filer Letter at 1-2.

⁷ *Roaming Order* ¶ 24 (“Until our actions today, the Commission has not expressly addressed whether, under Sections 201 and 202 of the Act, it is desirable and necessary to provide automatic roaming upon reasonable request. Nor has it expressly stated that automatic roaming is a common carrier service. Moreover, it has not adopted an automatic roaming rule.”).

⁸ T-Mobile Letter, Attachment at 3.

⁹ *Id.* Attachment at 10.

T-Mobile is also off the mark in arguing that the home roaming exception “punishes facilities-based carriers despite the tremendous upfront investments made in spectrum and initial build out.”¹⁰ As the Commission convincingly established, where CMRS licensees’ markets overlap, an automatic roaming mandate would distort market-based incentives to build out networks. The *Roaming Order* appropriately concluded that “an automatic roaming request in the home area of a requesting CMRS carrier...does not serve our public interest goals of encouraging facilities-based service and supporting consumer expectations of seamless coverage when traveling outside the home area.”¹¹ The Commission found that, “if a carrier is allowed to ‘piggy-back’ on the network coverage of a competing carrier in the same market, then both carriers lose the incentive to build-out into high cost areas in order to achieve superior network coverage.”¹² In particular, a carrier is less likely to build in high cost areas unless there is a competitive advantage associated with that investment; likewise, a carrier is less likely to build in high cost areas if it can obtain service by means of a mandated roaming arrangement. Consumers would be disadvantaged, the Commission found, from the resulting “lack of product differentiation, lower network quality, reliability and coverage.”¹³

Finally, the filers’ argument that the home roaming exception undercuts the common carrier obligations set forth in Section 201 and 202 of the Act is likewise erroneous.¹⁴ These statutory provisions prohibit unjust and unreasonable discrimination. The Commission is well within its authority to decide what practices are “reasonable” in a particular context. A notable example involves the Commission’s decision to sunset the CMRS resale rule despite the fact that resale had been deemed a common carrier obligation.¹⁵ Furthermore, T-Mobile’s argument that the current policy eliminates regulatory parity fails to comprehend the fundamental point that the automatic roaming policy is to support “seamless coverage when traveling outside the home area,”¹⁶ not to recreate a resale obligation within the home market. Indeed, the Commission noted in the *Roaming Order* that the “mandatory resale rule was sunset in 2002, and automatic roaming obligations can not be used as a backdoor way to create *de facto* mandatory resale obligations or virtual reseller networks.”¹⁷

¹⁰ *Id.* Attachment at 5.

¹¹ *Roaming Order* ¶ 49.

¹² *Id.*

¹³ *Id.*

¹⁴ Joint Filer Letter at 1; T-Mobile Letter, Attachment at 4.

¹⁵ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, First Report and Order, 11 FCC Rcd 18455 (1996).

¹⁶ *Roaming Order* ¶ 49.

¹⁷ *Id.* ¶ 51.

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For the reasons discussed above, we urge the Commission to maintain the appropriate incentives to facilitate facilities-based competition and reject the claims to eliminate the home roaming exception.

Respectfully submitted,

/s/

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