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(202) 551-1862  
michaellazarus@paulhastings.com

August 14, 2008

57739-00015

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Reexamination of Roaming Obligations of  
Commercial Mobile Radio Service Providers (WT Docket No. 05-265)

Dear Ms. Dortch:

On August 13, 2008, Carl W. Northrop of Paul, Hastings, Janofsky & Walker LLP ("Paul Hastings"), representing MetroPCS Communications, Inc. ("MetroPCS"), participated in a conference call with Angela Giancarlo, Senior Legal Advisor to Commissioner Robert McDowell to discuss the above-referenced proceeding. The oral presentation during this conference call was consistent with the pleadings and *ex partes* filed on behalf of MetroPCS in the above-referenced proceeding, as well as the attached handout, which was initially filed with the Commission in the MetroPCS *ex parte* of August 13, 2008 in this docket.

Kindly refer any questions in connection with this letter to the undersigned.

Respectfully submitted,



Michael Lazarus  
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: (via email) Angela Giancarlo

**PRESENTATION OF  
METROPCS COMMUNICATIONS, INC.**

Reexamination of Roaming Obligations of  
Commercial Mobile Radio Service Providers

WT DOCKET NO. 05-265

**METROPCS COMMUNICATIONS, INC.**  
2250 Lakeside Boulevard  
Richardson, Texas 75082

## **RECONSIDERATION OF THE ROAMING ORDER IS ESSENTIAL AND JUSTIFIED**

- In-Market Roaming Restrictions Harm Consumers
  - Current roaming rights will be lost, and future roaming opportunities will be limited, due to the Commission's In-Market roaming exclusion
  - Consumer confusion will occur when roaming proves to be impossible in areas where a compatible network exists and where roaming may have been available in the past
  - The wholesale roaming market is broken - - the large national carriers have no incentives to enter into roaming agreements for In-Market roaming - - and with the Alltel merger, the outlook is even worse
  - The In-Market roaming restriction limits local retail service competition since roaming restrictions hobble the ability of non-nationwide carriers to compete
  - The seriousness of the problem is demonstrated by the fact that only the two most dominant national carriers (AT&T and Verizon Wireless) support the In-Market restriction, while everyone else, including Sprint, T-Mobile, SpectrumCo, MetroPCS, Leap, US Cellular, rural telcos, etc., opposes the In-Market restriction
    - It is significant that two of the national carriers (Sprint/Nextel and T-Mobile) that previously opposed automatic roaming now oppose the In-Market exclusion

- In-Market Roaming Restrictions Pose Substantial Public Safety Risks
  - The FCC is obligated under Title I to promote “safety of life”; this mandate is violated when the ability of a customer to roam on a technically-compatible network is curtailed
  - The In-Market roaming restriction flies in the face of Commission efforts to promote effective communications during National Emergencies
  
- The In-Market Roaming Restriction Has A Particularly Devastating Effect On Regional, Local And Rural Carriers
  - Small, regional and mid-tier carriers have had a positive pro-competitive impact on the broadband market, but their ability to survive and to compete will be compromised if their customers’ roaming rights are curtailed
  - The FCC recently has allocated spectrum in larger market areas (*e.g.*, REAGs) than requested by the rural and regional carriers; as a consequence, the loss of In-Market roaming rights throughout an entire license area will have a substantial adverse effect
  - In-Market roaming restrictions are not necessary to foster facility-based competition
    - The In-Market Rule has the perverse effect of deterring facilities-based competition by incenting carriers not to purchase spectrum in new market areas, thus thwarting competition
  - Small carriers and new entrants must use a phased approach to constructing a market; the In-Market exclusion creates arbitrary government-imposed deadlines which prevent cost control and deter new entrants

- The In-Market Roaming Restriction Is Not Legally Sustainable
  - The restrictions on In-Market roaming cannot be reconciled with the correct legal conclusion that automatic roaming is a “common carrier service”
  - The blanket finding that In-Market roaming requests are inherently unreasonable is incorrect as a matter of fact and as a matter of law
  - The In-Market roaming restriction violates the Commission’s statutory mandate under Title I to foster efficient nationwide networks

**A NARROWLY-DRAWN TRANSITION RULE GRANTING IN-MARKET ROAMING RIGHTS IN MARKETS ONLY FOR A BRIEF TIME WHILE ENCUMBERED SPECTRUM IS BEING CLEARED WILL NOT CURE THE PROBLEMS WITH THE IN-MARKET ROAMING RESTRICTION**

- The Negative Effect Of The In-Market Roaming Rule -- Though Particularly Acute And Immediate In The Recently Licensed And Encumbered AWS And 700 MHz Markets -- Extends To All Markets and to All Licenses
- The Legal Infirmities In The *Roaming Order* Are Not Limited To The Newly Licensed Markets
- Carriers Who Buy Spectrum At Auction Have Powerful Market Incentives To Become Facility-Based Competitors And Do Not Need An In-Market Roaming Restriction To Do So
  - In effect, the In-Market roaming restriction converts the Commission's build-out standard to a 100% requirement
- Once Services Are Offered to Customers It Is Not In the Public Interest To Deny Them Continued Service - - A Brief Transition Period Offers No Meaningful Relief
- Existing Carriers Who Have Long-Standing Roaming Arrangements May Have Them Disappear On Short Notice
  - Customers of those carriers will cease receiving roaming – which will cause significant issues

**IN-MARKET ROAMING SHOULD BE UNIVERSALLY MANDATED;  
ALTERNATIVELY, THE COMMISSION SHOULD ADOPT A PRESUMPTION IN FAVOR  
OF IN-MARKET ROAMING AND PUT THE BURDEN ON ANY CARRIER WHO IS  
SEEKING TO DENY OR TERMINATE AUTOMATIC ROAMING**

- The Commission Must Guard Against Allowing A Nationwide Carrier To Deny In-Market Roaming Based Upon Anti-Competitive Motivations
  - This is especially true as wireless consolidation continues and the number of suitable roaming partners declines
- Placing The Burden On The Carrier Seeking To Deny Or Restrict Roaming Rights Is Consistent With The Commission's Statutory Public Interest Mandate
- Small, Rural And Mid-Tier Carriers Can Ill-Afford To Bear The Burden Of Fighting The Large Incumbent Carriers To Maintain Needed Roaming Rights
- The Loss Of Automatic Roaming Rights After A Transition Period Will Create Market Confusion And Consumer Dissatisfaction; The Presumption Should Be In Favor Of Continuing Services, Not Discontinuing Them

**THE COMMISSION SHOULD MAKE SURE THAT IT HAS A COMPLETE RECORD BEFORE FINALIZING THE IN-MARKET RULES FOR AUTOMATIC ROAMING**

- There Has Been Significant Consolidation In The Wireless Market Since The Pleading Cycle Closed On The *Roaming Order* Reconsideration Petitions In November of 2007
- The Commission Should Consider The Roaming-Related Evidence Presented In Opposition To The Verizon Wireless/Alltel Merger With Respect To The Current State Of The CDMA Roaming Market Before Finally Resolving The Automatic Roaming Rule
- MetroPCS Favors An Early Resolution Of The Important Automatic Roaming Issue But Does Not Want The Commission To “Rush To Judgment” When Material Changes In The Wholesale Roaming Market, And In The Record Evidence, Are Underway

## **AUTOMATIC ROAMING RIGHTS MUST BE EXTENDED TO NON-CMRS DATA SERVICES**

- Beneficial Roaming Services Should Not Be Denied Based Upon Arcane Hyper-Technical Regulatory Classifications
  - Consumers will be harmed if services that it considers to be competitive substitutes are subject to different roaming rights based upon technical regulatory classifications
  - Customers should not have to understand the arcane differences between data, 3G data, SMS and voice – roaming should just work
- Promoting Roaming For Non-Interconnected Data Services, Including Information Services Such As Wireless Broadband Internet Access Services, Will Foster Innovation And Competition In Emerging Technologies, And Reduce Discrimination
- Technical Implementation Issues Can And Will Be Resolved Voluntarily As Long As The Legal Entitlement To Data Roaming Where Technically Feasible Is Clearly Established