BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
The Commission's Consultative Role in	)	
the Broadband Provisions of the	)	GN Docket No. 09-40
Recovery Act	)	
	)	
	)	

To: The Commission

COMMENTS OF SOUTHERNLINC WIRELESS

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EXECUTIVE SUMMARY

SouthernLINC Wireless submits that the Commission should, through its consultative role, work with NTIA to ensure that BTOP grant recipients' non-discrimination and network interconnection obligations include an explicit obligation to provide automatic roaming for all mobile wireless services – including broadband data services – to any technologically compatible requesting service provider at a reasonable rate and on reasonable terms and conditions. The inclusion of such an automatic roaming obligation for all mobile wireless services as a contractual condition of BTOP grants would promote the important public interests and explicit statutory purposes of the Recovery Act and would be consistent with Congressional intent.

One of the key platforms for delivering broadband and other advanced communications services – not just to unserved and underserved areas, but to all consumers throughout the United States – is mobile wireless. The Commission has recognized the essential role of wireless in expanding the reach of broadband services to rural and underserved areas, and mobile wireless data services have become indispensable business tools and are a key driver of economic growth. For example, industry research firm Ovum recently projected that the productivity gains resulting from the deployment and use of wireless broadband services "will generate almost $860 billion in additional GDP over the next decade" and that "small businesses and the health care sector in particular are realizing significant benefits from the implementation and use of wireless broadband."

Additionally, wireless data services provide critical communications in times of emergency. Moreover, these services also provide essential accessibility to communications services for certain segments of the population, such as the hearing and speech impaired.

Unfortunately, consumers in rural and underserved areas throughout America are being effectively denied access to these important mobile services due to the unavailability of automatic roaming for wireless data services, including broadband. Without roaming, these consumers will suffer from a "wireless divide" similar to (and even compounding) the "digital divide" in broadband services that the Recovery Act is seeking to eliminate.

The Commission and NTIA should therefore ensure that the purposes of the BTOP are not inhibited or thwarted by the current uncertainty regarding the availability of roaming for wireless data services. This shortcoming can be addressed by including an automatic roaming obligation for all mobile wireless services as a part of BTOP grant recipients' contractual conditions on non-discrimination and network interconnection.

Although separate proceedings remain pending before the Commission on extending automatic roaming obligations to wireless data services, there is no reason to wait when it comes to projects and services that will rely in whole or in significant part on the receipt of public funding, whether through the BTOP or other taxpayer-funded program. In fact, Congress has made explicitly clear in the Recovery Act that NTIA not only may, but in fact *must* demand certain commitments from BTOP grant recipients beyond the minimum required by current federal regulations, such as adherence to the Commission's broadband policy statement. BTOP grant recipients therefore should be expected to accept as a condition of public funding an obligation to provide automatic roaming for all mobile wireless services – including broadband data services – to any technologically compatible requesting service provider at a reasonable rate and on reasonable terms and conditions.

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Southern Communications Services, Inc. d/b/a SouthernLINC Wireless ("SouthernLINC Wireless") hereby submits its comments in response to the Federal Communications Commission's March 24, 2009 *Public Notice* requesting comment on the Commission's consultative role in the broadband provisions of the Recovery Act.[1]

Pursuant to the Recovery Act, the National Telecommunications and Information Administration (NTIA) will administer the Broadband Technologies Opportunities Program (BTOP) to provide grants for developing and expanding broadband services. Congress has further directed NTIA to consult with the Commission on certain specific terms and concepts as it establishes the BTOP, including the non-discrimination and network interconnection obligations that will be contractual conditions of BTOP grants.[2] SouthernLINC Wireless

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[1] / Comment Procedures Established Regarding the Commission's Consultative Role in the Broadband Provisions of the Recovery Act, GN Docket No. 09-40, Public Notice, DA 09-668 (rel. March 24, 2009) ("*Public Notice*"), *citing* American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) ("Recovery Act").

[2] / Recovery Act § 6001(j).

submits that the Commission should, through its statutory consultative role, work with NTIA to ensure that BTOP grant recipients' non-discrimination and network interconnection obligations include an explicit obligation to provide automatic roaming for all mobile wireless services – including broadband data services – to any technologically compatible requesting service provider at a reasonable rate and on reasonable terms and conditions.

As discussed below, the inclusion of such an automatic roaming obligation for all mobile wireless services as a contractual condition of BTOP grants would promote the important public interests and explicit statutory purposes of the Recovery Act and would be consistent with Congressional intent. The proposed automatic roaming obligation would furthermore be consistent with the long-standing public interest and policy goals of the Commission as well as those of Congress and the Executive Branch. For these reasons, the Commission should advise NTIA to include the proposed automatic roaming obligation as a part of BTOP grant recipients' contractual conditions on non-discrimination and network interconnection.

I. THE PURPOSE AND GOALS OF THE BTOP AND THE AMERICAN REINVESTMENT AND RECOVERY ACT

As set forth in the Recovery Act, the purposes of the BTOP include:

- Providing access to broadband service to consumers residing in unserved areas;
- Providing improved access to broadband services to consumers residing in underserved areas;
- Providing broadband education, training, access, equipment, and support to educational institutions, healthcare providers, libraries, and other community support organizations;
- Improving access to, and the use of, broadband service by public safety agencies; and
- Stimulating the demand for broadband, economic growth, and job creation.[3]

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[3] / Recovery Act § 6001(b).

The statutory purposes of the BTOP reflect Congress' understanding of the essential role of broadband services in contemporary society. As one public interest group recently stated, "Broadband is no longer a luxury but a vital service necessary to fully participate in the nation's democracy, economy, culture, and society. As the nation moves forward in new ways with advanced digital communications, broadband access becomes a fundamental human right."[4]

II. THE ROLE OF MOBILE WIRELESS AND AUTOMATIC ROAMING

One of the key platforms for delivering broadband and other advanced communications services – not just to unserved and underserved areas, but to all consumers throughout the United States – is mobile wireless. As Commissioner Adelstein noted when the Commission adopted its Notice of Inquiry on a national broadband plan, "[O]f course we recognize that any effective effort will rely heavily on wireless broadband as the wave of the future, and a key element to reach hard to serve areas. Considering America's ever-increasing appetite for reliable broadband services and applications from mobile devices, the role that wireless will play is huge and undeniable."[5]

Congress also noted the particular benefits and significance of mobile wireless when it adopted the 2008 Farm Bill, stating in its accompanying conference report:

> The Managers expect the Secretary [of Agriculture] to consider the unique way of life in rural America and to be mindful that mobile broadband technologies are applicable to farmers, ranchers, and small rural business owners. Fixed broadband service will continue to be important in rural homes and offices, but mobile technologies also may have a role to play in expanding broadband access to rural residents.[6]

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[4] / *Report on Rural Broadband Strategy*, GN Docket No. 09-29, Comments of the Center for Rural Strategies, et al., filed March 25, 2009, at 4.

[5] / *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Notice of Inquiry, FCC 09-31 (rel. April 8, 2009), Separate Statement of Commissioner Jonathan S. Adelstein.

[6] / H.R. REP. NO. 110-627, at 834 (2008), *reprinted in* 2008 U.S.C.C.A.N. 536, 674.

Unfortunately, as numerous participants in the Commission's recent proceedings on automatic roaming have made clear, consumers in rural and underserved areas throughout America are being effectively denied access to these important mobile services due to the unavailability of automatic roaming for wireless data services, including broadband.

In 2007, the Commission adopted an automatic roaming obligation for voice, short text-messaging (SMS), and push-to-talk (PTT) services.[7] However, the Commission has yet to act on a still-pending proceeding on whether to extend these obligations to data services, and until it does so, regional and rural service providers will remain severely constrained in their ability to bring the full benefits of mobile wireless broadband to consumers in rural and underserved parts of the country.[8] Moreover, the Commission's 2007 order also included an "in-market exception" that allows service providers to impose territorial restrictions on automatic roaming – even in areas where the requesting carrier has had neither the time nor the opportunity to build out newly-acquired spectrum licenses – which has had the unintended consequence of further constraining the availability of mobile wireless services for rural and underserved consumers. Although several petitions have been filed with the Commission urging the rescission or

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[7] / *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 (2007) ("*2007 Roaming Order*").

[8] / When the *2007 Roaming Order* was adopted, Commissioner (now Acting Chairman) Copps wrote in his separate statement:

> I happen to think that the record we have before us right now is more than sufficient to support imposing an automatic data roaming rule today. Doing that would have provided some much-needed certainty to consumers and businesses alike, channeling technology development in a consumer-friendly way. But I do look forward to considering this issue in the weeks and months ahead, and I hope we can reach a consensus that consumers should have the same roaming expectations in the future when it comes to data services that they have for voice services starting today.

2007 Roaming Order, 22 FCC Rcd at 15885.

modification of the "in-market exception," these territorial restrictions remain in place to the continued detriment of consumers.

As discussed below, automatic roaming for mobile wireless data services would promote the public interests that Congress intended to address through the BTOP provisions of the Recovery Act. The Commission has recognized the essential role of wireless in expanding the reach of broadband services to rural and underserved areas, and mobile wireless data services have become indispensable business tools and are a key driver of economic growth. Additionally, wireless data services provide critical communications in times of emergency. Moreover, these services also provide essential accessibility to communications services for certain segments of the population, such as the hearing and speech impaired.

The Commission and NTIA should therefore ensure that the purposes of the BTOP are not inhibited or thwarted by the current uncertainty regarding the availability of roaming for wireless data services. This shortcoming can be addressed by including an automatic roaming obligation for all mobile wireless services as a part of BTOP grant recipients' contractual conditions on non-discrimination and network interconnection.

III. AUTOMATIC ROAMING PROMOTES THE PUBLIC INTEREST PURPOSES OF THE BTOP

A. The Development and Expansion of Broadband Services

One of the purposes of the BTOP is to provide access to broadband service to consumers in unserved areas and to provide improved access to those in underserved areas through the development, deployment, and expansion of broadband infrastructure and services.[9] The Commission has long had a similar goal. According to the Commission, "Rapid deployment and ubiquitous availability of broadband services across the country are among the Commission's

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[9] / Recovery Act § 6001(b)(1) and (2).

most critical policy objectives."[10] The Commission has further recognized the essential role of wireless services in the deployment of broadband to rural and underserved areas, advising Congress that the Commission "has tried to ensure these areas have the same access to broadband enjoyed elsewhere in the country."[11]

However, the Commission has also long recognized that access to spectrum is not enough to promote the construction of new network infrastructure and the entry of wireless service providers into any given area or market. For example, just over a decade ago, the Commission stated "we conclude that the availability of roaming on broadband wireless networks is important to the development of nationwide, ubiquitous, and competitive wireless voice telecommunications, and that, during the period in which broadband personal communications services (PCS) systems are being built, market forces alone may not be sufficient to cause roaming to be widely available."[12] At this time, broadband PCS was a new, advanced wireless service that was expected to compete with existing cellular services and to bring new and

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[10] / *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones; Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services; Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010; Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule*, WT Docket No. 06-150, CC Docket No. 94-102, WT Docket Nos. 01-309; 03-264; 06-169, PS Docket No. 06-229, WT Docket Nos. 96-86; 07-166, Second Report and Order, FCC 07-132 (rel. Aug. 10, 2007) ("*700 MHz Order*") at ¶ 196.

[11] / Written Statement of Chairman Kevin J. Martin Before the Committee on Small Business, U.S. House of Representatives, Oct. 10, 2007 at 3.

[12] / *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, Second Report and Order and Third Notice of Proposed Rulemaking, 11 FCC Rcd 9462, 9464 at ¶ 2. (1996).

innovative advanced communications services to the public. However, the first broadband PCS systems were just starting to be built, and the Commission recognized not only that these licensees would need access to roaming as they deployed their new networks, but also that incumbents would have ample incentive to impose additional costs and burdens on the new entrants by charging them unreasonably high roaming rates or denying them access to roaming altogether. The same situation exists today, and it should be addressed in the same manner.

B. Economic and Societal Interests

American society is highly mobile, and – whether by design or by circumstance – the American public travels frequently. With the rapidly changing and ever-expanding market for data services (including broadband services), along with the increasing role such services play in facilitating communication, access to mobile wireless data services is equally critical to all members of American society.

The availability of automatic roaming for wireless data services is particularly important for consumers in rural and underserved areas, many of whom have few (perhaps only one) wireless service provider options. These consumers should be able to have the benefits of wireless data services through roaming when they leave their home provider's footprint. Without roaming, these consumers will suffer from a "wireless divide" similar to (and even compounding) the "digital divide" in broadband services that the Recovery Act is seeking to eliminate.[13]

Wireless data services have rapidly become a highly valued and indispensable aspect of the wireless world, and consumer use of – and reliance on – mobile data services is rapidly expanding. The Commission has recognized that "[b]roadband technology is a key driver of

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[13] / *See* Recovery Act § 6001(b).

economic growth" and that "[w]ireless service is becoming an increasingly important platform for broadband access."[14]

Furthermore, industry studies consistently demonstrate that wireless data services will have a significant impact on the US economy. For example, CTIA recently announced the results of a comprehensive research study it conducted in conjunction with Harris Interactive to determine the impact of wireless services on the overall business strategies of American businesses of all sizes.[15] According to this study, 45 percent of business decision makers "state that wireless applications are important or absolutely essential to remaining competitive in today's highly competitive marketplace."[16] In addition, a 2008 report by industry research firm Ovum projected that the productivity gains resulting from the deployment and use of wireless broadband services "will generate almost $860 billion in additional GDP over the next decade"[17] and that "small businesses and the health care sector in particular are realizing significant benefits from the implementation and use of wireless broadband."[18] The same report also projects that, "by 2016, the value of the combined mobile wireless voice and productivity gains to the US economy – $427 billion per year – will exceed today's motor vehicle manufacturing and pharmaceutical industries combined."[19]

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[14] / *700 MHz Order* at ¶¶ 196 – 197.

[15] / "Wireless Means Business: The Wireless Road to Prosperity," available on the CTIA website at http://www.ctia.org/content/index/cfm/AID/11531 (last viewed April 13, 2009).

[16] / *Id.*

[17] / Roger Entner, Ovum, *The Increasingly Important Impact of Wireless Broadband Technology and Services on the U.S. Economy: a Follow-up to the 2005 Ovum Report on the Impact of the U.S. Wireless Telecom Industry on the U.S. Economy: A Study for CTIA – The Wireless Association,* 2008 ("2008 Ovum Report") at 4.

[18] / *Id.* at 2.

[19] / *Id.*

However, one of the key factors underlying these staggering economic and productivity benefits is the "mobility" inherent in wireless technology. Consumers in rural and underserved areas should not lose these mobility aspects because they cannot avail themselves of roaming for data services when traveling outside their home provider's network. Without access to automatic roaming for all mobile wireless services, consumers in these areas will be effectively isolated and cut off from the social and economic benefits these services are bringing elsewhere in the nation.

Moreover, for those consumers with few wireless service provider options, the unavailability of data roaming can effectively isolate them whenever they travel to or through areas with substantial wireless coverage. As with mobile voice telephony and SMS, consumers expect the same seamless connectivity with respect to all mobile data services offered by wireless service providers. For example, millions of consumers who use (and rely on) mobile devices such as the BlackBerry and other "smart phones" to send and receive e-mails expect to have access to e-mail communication capabilities whenever they travel, even if they are outside their home providers' service area, just as they have access to mobile voice or SMS. Consumers likewise expect seamless access and connectivity to other data services and applications that they utilize as well, including, but not limited to, instant messaging (IM), mapping and navigation services, web browsing, Internet access, and so forth.

C. Public Safety

But mobile data is more than an indispensable business tool – as users of BlackBerry and like services will attest – or a source of personal and economic productivity. It is also fulfilling an increasingly important, multi-faceted role in addressing vital public interest needs.

As the Commission well knows, mobile data services can save lives. In emergency situations when voice networks may not be available due to traffic congestion or other factors,

wireless data services offer a critical, even life-saving, alternative means of communication. The Katrina Panel established by the Commission in 2006 recognized that emergencies can result in significant disruption to PSTN-based communications services, and thus it recommended that readiness checklists for the communications industry should include, among other things, the identification of "alternate communications channels, such as alpha pagers, Internet, satellite phones, VoIP, private lines, BlackBerry devices, etc."[20] Without data roaming, the value of such "alternate" communications channels is significantly diminished.

The life-saving capabilities of mobile data services are not limited to large-scale emergencies, however, as these services can – and have been – used in individual emergencies when voice services are not accessible. Without access to roaming for mobile wireless data services, people caught in emergencies may be cut off from potentially life-saving communications.

D. Providing Access For Key Segments of the Population

In addition, certain segments of the population depend to a greater degree on wireless data services, making these services an indispensable communications tool.[21] The benefits that mobile wireless data services confer on the hearing impaired provide a compelling example of the need to make such services as widely accessible as possible.

In its 2007 *Hearing Aid Compatibility Report*, the Commission found that "[t]oday, modern text and wireless video communication technology fills a void by providing much

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[20] / Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, *Report and Recommendations to the Federal Communications Commission*, June 12, 2006, at 31.

[21] / *See generally Commission's Consultative Role in the Broadband Provisions of the Recovery Act*, GN Docket No. 09-40, Comments of the Coalition of Organizations for Accessible Technology, filed April 10, 2009.

needed mobility and freedom for the deaf and hard of hearing community."[22] According to the Commission, wireless data services that provide accessibility go beyond text messaging (which is already covered by the current automatic roaming rule) to include "deaf-friendly instant messaging and relay" applications, real-time messaging services with a web interface to wireless phones, and IP relay, which "functions like a TTY-based call except that the Internet functionality allows the deaf or hard of hearing caller to use a web-enabled mobile device instead of a TTY."[23] The Commission also reported that "[t]he deaf and hard of hearing community highly values video communication" and that "researchers are currently developing technologies to incorporate video communication into the wireless world."

The Commission further found that "the role of wireless technology reaches beyond personal communication" for the deaf and hard of hearing community.[24] According to the Commission:

> Mobile web connections allow deaf and hard of hearing customers to access real-time news reports and stay informed about their environments. For example, deaf persons in New York reported that their mobile multimedia access helped them understand and react appropriately during the September 11 attacks. Some fortunate deaf persons have used mobile web connections to e-mail 911 emergency services when they could not access TTY services. Day-to-day life is also improved as deaf and hard-of-hearing persons enjoy conveniences usually reserved for hearing persons, such as ordering pizza for delivery while still in transit. The development and improvement of mobile Internet services and devices will continue to bridge the gap between the deaf and hard of hearing community and mainstream society.[25]

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[22] / *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, WT Docket Nos. 01-309, 06-203, Report on the Status of Implementation of the Commission's Hearing Aid Compatibility Requirements, DA 07-4151 (rel. Oct. 5, 2007) at ¶ 57.

[23] / *Id.* at ¶¶ 62, 64.

[24] / *Id.* at ¶ 63.

[25] / *Id.* (internal citations omitted).

However, unless the broadband infrastructure and services envisioned by the BTOP include automatic roaming obligations for all mobile wireless services, deaf and hard of hearing persons – especially those who live or work in rural or underserved areas with few wireless service provider options – could well find that their ability to access such important services is significantly restricted, or entirely unavailable, if they should travel outside of their home service provider's service area. The Commission should thus work with NTIA to ensure that a lack of roaming for data services does not become another barrier to the ability of persons with disabilities to communicate.

IV. PUBLIC FUNDING SHOULD COME WITH COMMITMENTS THAT FURTHER THE PUBLIC INTEREST

As demonstrated above, there is as compelling a public interest in ensuring that mobile broadband infrastructure and services deployed through the BTOP provide all consumers with full and fair access to automatic roaming for all mobile wireless services. Although separate proceedings remain pending before the Commission on extending automatic roaming obligations to wireless data services and either rescinding or modifying the "in-market exception," there is no reason to wait when it comes to projects and services that will rely in whole or in significant part on the receipt of public funding, whether through the BTOP or other taxpayer-funded program.

For example, in the fall of 2008, Representative Henry Waxman introduced a bill entitled the "Universal Roaming Act of 2008" (110th Congress, H.R. 7000) that would have required any eligible telecommunications carrier (and any affiliates of such carriers) receiving federal universal service support to offer automatic roaming services "without territorial limitation or restriction on just and reasonable terms" to any requesting, technologically-compatible carrier. Although the press of election season and other urgent legislation prevented further consideration

of the bill at that time, its introduction highlighted an important concept – namely, that public support entails shouldering certain obligations – and demonstrated continued Congressional support for that concept.

Moreover, Congress has made explicitly clear in the Recovery Act that NTIA not only may, but in fact *must* demand certain commitments from BTOP grant recipients beyond the minimum required by current federal regulations. For example, Congress directed NTIA to include adherence to the Commission's broadband policy statement as a contractual condition of grants awarded under the BTOP.[26] Similarly, BTOP grant recipients should be expected to accept as a condition of public funding an obligation to provide automatic roaming for all mobile wireless services – including broadband data services – to any technologically compatible requesting service provider at a reasonable rate and on reasonable terms and conditions.

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[26] / Recovery Act § 6001(j).

WHEREFORE, THE PREMISES CONSIDERED, SouthernLINC Wireless respectfully requests the Commission to take action in this docket consistent with the views expressed herein.

Respectfully submitted,

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