

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

In the Matter of)	
)	
Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993)	
)	
Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless Including Commercial Mobile Services)	WT Docket No. 09-66
)	

COMMENTS OF CINCINNATI BELL WIRELESS LLC

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COMMENTS OF CINCINNATI BELL WIRELESS LLC

Cincinnati Bell Wireless LLC (“CBW”) hereby submits comments in response to the Notice of Inquiry in the above-captioned proceeding in which the Commission seeks comment on its assessment of the state of competition in the mobile wireless market “ecosystem,” including the analytic framework and data sources to be used and the evaluation of new market segments.¹ In particular, CBW responds to the Commission’s invitation to comment on the proper treatment of roaming services and the effect of roaming on retail competition in the wireless market.²

BACKGROUND

CBW is an Ohio limited liability company which holds licenses for Broadband PCS, AWS and 700 MHz services covering the greater Cincinnati and Dayton, Ohio metropolitan areas as well as several counties in northern Kentucky and Indiana. As a regional wireless provider, CBW competes with five national providers—AT&T, Verizon, T-Mobile, Sprint and Cricket— to provide retail service to over 500,000 subscribers using GSM and 3G technologies.

¹ See, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless Including Commercial Mobile Services*, WT Docket 09-66, Notice of Inquiry (rel. Aug. 27, 2009) (“NOI”).

² *Id.* at ¶ 21-22.

However, CBW relies on roaming agreements with larger, national providers to offer its subscribers national and international voice and data roaming.

WHOLESALE ROAMING MARKET

While previous annual CMRS Competition Reports have included data on the amount of resale and roaming revenue in the CMRS market, these reports have not analyzed the competitiveness of the wholesale roaming market, particularly the wholesale data market, nor the impact of the roaming market on competition in the retail voice and data services markets. CBW welcomes the Commission's examination of the competitiveness of the wholesale roaming market in this proceeding, particularly the wholesale broadband data roaming market.

The Commission has clearly recognized the importance of roaming on wireless subscribers' ability to use their wireless services seamlessly, wherever they may be located. For example, in mandating automatic roaming for CMRS voice and data services that are interconnected to the public switched telephone network ("PSTN"), the Commission acknowledged the need to "safeguard wireless consumers' reasonable expectations of receiving seamless nationwide commercial wireless telephone services through roaming."³ The Commission also recognized that CMRS providers must offer their subscribers nationwide service in order to effectively compete in the marketplace.⁴ More recently, however, the Commission concluded that "the mobile telephone industry is in the process of transitioning from the provision of interconnected mobile voice services and mobile data services over legacy mobile wireless networks to the provision of mobile voice and data services over mobile wireless broadband networks" and that "customers who use their handsets for data services typically

³ *In the Matter of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rulemaking (August 16, 2007), at ¶ 3.

⁴ *Id.* at ¶¶ 3, 27-28.

purchase mobile voice and mobile data services bundled together in various ways.”⁵

Unfortunately, as the wireless marketplace moves toward these converged services, the existing automatic roaming requirement is increasingly irrelevant because it does not encompass broadband data service.

If small and regional carriers cannot offer customers seamless nationwide data roaming in the converged marketplace, their service offerings will be severely limited: they will only be able to serve a small percentage of consumers who desire voice services only and/or who are satisfied with a small, localized data footprint. More and more consumers are demanding smartphones, and these consumers expect them to operate nationwide as seamlessly for data as for voice services. So even if a small or regional carrier such as Cincinnati Bell that has deployed a 3G network can get access to the smartphones that consumers demand (an increasingly difficult task given the prevalence of exclusive handset agreements⁶), the value of CBW’s 3G service to its customers is diminished if it cannot secure 3G roaming agreements with the major national providers. In other words, if competition in the wholesale roaming market is allowed to languish, the ultimate result will be that smaller competitors are marginalized or driven out of operation as a duopoly wireless market is created.

Prior to the wave of acquisitions over the past several years by the two major nationwide wireless providers (AT&T and Verizon), all carriers, including AT&T and Verizon, had a vested interest in entering into reasonable roaming agreements because virtually every carrier needed to fill out its footprint in some parts of the country. However, as AT&T and Verizon have acquired

⁵ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless Including Commercial Mobile Services*, WT Docket 08-27, Thirteenth Report, DA 09-54, at para 30 (rel. WTB Jan. 16, 2009)(“13th Annual CMRS Report”).

⁶ See, CBW’s comments in Commission’s proceeding, *Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, RM No. 11497, filed Feb. 2, 2009.

a number of smaller competitors to complete their nationwide footprints over the past several years, they no longer have any incentive to enter into roaming agreements, with the remaining small and regional carriers, particularly for broadband data services. In fact, an AT&T representative recently said that while AT&T has been able to reach roaming agreements with other carriers when the terms are mutually beneficial (for example, agreements for roaming on the carriers' respective 2G networks), AT&T has not entered into any agreements for 3G roaming despite receiving several requests. In a nutshell, the AT&T representative acknowledged that 3G roaming was not "mutually beneficial" to AT&T since the smaller carriers had not deployed 3G services.⁷ However, because AT&T has licenses that enable it to offer its broadband data service nationwide, it is hard to imagine that AT&T would ever find it mutually beneficial to enter into an agreement for any broadband services with a small or regional carrier, even where the carrier has deployed 3G or other advanced data service in its regional market. In short, it appears likely that the only carriers with which AT&T might negotiate an advanced data services roaming agreement would be other nationwide carriers.

At the present time, the wholesale data market is defined by whether a carrier has deployed GSM or CDMA technology. GSM carriers cannot practically offer their customers roaming on CDMA systems and vice versa, so competitors and services that are substitutes for one another at the retail level are not substitutes at the wholesale level. Thus, competition in the wholesale market is far more limited than it is at the retail level. CBW, for example, provides service using GSM, so CBW can only obtain nationwide roaming from AT&T and T-Mobile which are also GSM-based. Sadly, CBW's roaming opportunities are further constrained by the

⁷ See, TR Daily article published September 16, 2009, "Panelists Cite Challenges of Roaming on 4G Wireless Networks," reporting on remarks of Joan Marsh, Vice President, Federal Regulatory for AT&T, Inc. at the Wireless Communications Association International's 15th Annual International Symposium.

fact that T-Mobile's coverage area is significantly less than that of AT&T.⁸ Prior to AT&T's acquisition of several regional GSM wireless carriers, a small carrier like CBW could negotiate roaming agreements with these regional providers to fill in gaps in its coverage that may not have been covered by, for example, T-Mobile. CDMA carriers find themselves in a similar situation following Verizon's acquisition of regional CDMA carriers. With most of these regional carriers now gone, however, there are few if any alternatives to AT&T or Verizon for a small carrier seeking a roaming agreement.

The only prospect for enhancing the number of competitors in the wholesale data roaming market is the full deployment of Long Term Evolution ("LTE") by multiple carriers throughout the country. If LTE is successful, it will eliminate the technology-delimited character of the current roaming marketplace. However, with so few regional carriers remaining, even LTE deployment will only add one national carrier, Verizon, as a possible roaming partner for GSM carriers and two national carriers, AT&T and T-Mobile, as possible roaming partners for CDMA carriers. Unfortunately, based upon comments from small and rural CDMA carriers with prior experience seeking data roaming agreements with Verizon, Verizon does not appear to be any more likely to enter into LTE roaming agreements than AT&T.⁹ With the 700 MHz licenses that AT&T and Verizon won and/or acquired, each will be able to serve 95 to 100 percent of the U. S. population, and they will have no incentive to negotiate with other carriers for reciprocal roaming agreements.¹⁰ From this vantage, the future for the wholesale data roaming market, even after the rollout of LTE, looks no different than the current 3G market.

⁸ Compare T-Mobile voice and data coverage maps at <http://coverage.tmobile.com/default.aspx?pageType=idealer> with AT&T coverage maps at <http://www.wireless.att.com/coverageviewer/>. Note that the maps show that in many areas the competitive disparity is compounded by the fact that T-Mobile's signal strength is not strong.

⁹ Reply Comments of Rural Cellular Association, WT Docket No. 09-66, filed July 13, 2009, pp. 9 – 13.

¹⁰ Motorola eZine, October 2008 at <http://www.ezine.mototola.com/serviceprovider>; Verizon 10-K Report for fiscal year ended December 31, 2008, p. 5.

Essentially, the smaller carriers will find themselves in a “Catch 22” situation without mandatory data roaming. They will not be able to justify the expense of acquiring and building out broadband spectrum without the ability to offer customers nationwide roaming for the broadband service. In other words, smaller carriers will not realize a return on their capital investment in broadband wireless spectrum because consumers will not be willing to pay more for data service that works only on the smaller carrier’s network when they could buy nationwide data coverage elsewhere. Without roaming and the ability to offer nationwide data services, smaller carriers will be resigned to provide voice services only, a market that is quickly eroding and unsustainable in the increasingly converged voice/data marketplace. Moreover, the lack of nationwide data roaming will devalue the spectrum for anything other than nationwide licenses. As a result, without an automatic data roaming requirement, the Commission will ensure that only the existing nationwide carriers bid in future auctions.

Finally, although not all wireless consumers demand smartphones today, the obvious trend is toward fully integrated voice and data services. The Commission itself has stressed the growing importance of mobile broadband and other data services based on the 28 percent increase in mobile Internet access subscribers between the first quarter of 2007 and first quarter of 2008 and a 73 percent increase in active mobile Internet users from May 2006 to May 2007.¹¹ Moreover, the number of U.S. mobile subscribers with 3G enabled devices was up by 80 percent from mid-2007 to mid-2008.¹² As Congress and the Commission develop the national broadband plan and consumers realize the ever increasing value of mobile broadband, the percentage of consumers who desire voice only wireless service will quickly diminish. As a

¹¹ 13th Annual CMRS Competition Report at ¶ 201

¹² *Id.* at ¶ 206.

consequence, the viability of small and regional wireless providers will also deteriorate if they cannot offer their customers access to seamless nationwide voice and data services.

For the foregoing reasons, CBW urges the Commission to thoroughly evaluate the competitiveness of the wholesale mobile broadband data market in this proceeding and its implications on the long-term competitiveness of the retail wireless marketplace.

Respectfully submitted,

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September 30, 2009