

**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)	WT Docket No. 09-66
)	
Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services)	

**REPLY COMMENTS OF COLUMBIA CAPITAL AND
M/C VENTURE PARTNERS**

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SUMMARY

As long-time investors in the wireless market, Columbia Capital and M/C Venture Partners (hereinafter the “Investors”) take this opportunity to offer their perspective of the state of competition in the mobile wireless market. The Investors have significant interests in two regional facilities-based wireless providers: Cleveland Unlimited Inc., d/b/a Revol Wireless (“Revol”), with facilities in Ohio and Indiana; and Coral Wireless LLC d/b/a Mobi PCS (“Mobi”), with facilities in Hawaii. Both of these carriers have experienced significant problems negotiating roaming agreements as they endeavor to fill out their national footprint. These comments describe the anticompetitive actions they have encountered from the major national wireless carriers, such as being denied roaming arrangements, or only being offered unreasonable wholesale roaming rates that are significantly above the retail rates charged by the national carriers. Further, they have been denied roaming access to critical new data and other services demanded by today’s consumers. The overall effect has been to stymie competition, and make less attractive investments in the wireless marketplace.

There is a fundamental competitive problem when a national carrier charges a roaming rate that is multiples of its own retail rate and the rate it charges to MVNOs. Such anticompetitive pricing has had a material impact on existing market competition and will continue absent Commission intervention. The Investors therefore recommend the Commission take steps to increase the competitiveness of the wireless market. For instance, the Investors urge the Commission to investigate wholesale roaming rates, mandate automatic roaming for voice and data services, and allow in-market roaming.

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Columbia Capital and M/C Venture Partners (hereinafter the “Investors”), by their attorneys, hereby submit their reply comments in connection with the above-captioned *Notice of Inquiry* (“NOI”).¹ In the NOI, the Federal Communications Commission (“FCC” or “Commission”) sought input on the state of competition in the entire mobile wireless market ecosystem, and its net effects on the American consumer. As long-time investors in the wireless market, the Investors take this opportunity to offer their own perspective of the state of competition in this market. In particular, these comments address one critical factor to a competitive wireless market -- roaming -- and how anticompetitive practices in the roaming marketplace have detrimentally affected the state of competition. The result being small and regional carriers have been significantly disadvantaged in the marketplace, making it significantly harder for them to compete and receive necessary funding to build-out new

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*, Notice of Inquiry, WT Docket No. 09-66, FCC 09-67 (rel. Aug. 27, 2009).

facilities. Ultimately it is consumers that will suffer as the number of competitive carriers diminish.

I. BACKGROUND

Columbia Capital and M/C Venture Partners are both venture capital firms focused on investing in wireless, broadband, media, and enterprise information technology companies. Together, the Investors have infused billions of dollars into a number of competitive communications providers allowing them to build-out new networks and effectively compete against the dominant providers in the communications industry, including the wireless market. In particular, the Investors have significant interests in two regional facilities-based wireless providers: Cleveland Unlimited Inc., d/b/a Revol Wireless (“Revol”), with facilities in Ohio and Indiana; and Coral Wireless LLC d/b/a Mobi PCS (“Mobi”), with facilities in Hawaii. Both of these carriers have experienced many of the same problems negotiating roaming agreements raised in comments filed by other small and regional wireless carriers in this docket, and in response to the Commission’s pending Further Notice of Proposed Rulemaking on roaming.² These comments will describe the problems Revol and Mobi have encountered in negotiating roaming agreements, the resulting effect on investment decisions in the wireless marketplace, and some proposed remedies that the Commission should consider in order to increase the competitiveness of the wireless market.

II. THE FUNDAMENTALS OF THE WIRELESS MARKETPLACE HAVE CHANGED

In the Roaming Order, the Commission recognized that small, regional and rural carriers have difficulty negotiating automatic roaming agreements, and addressed that concern by

² *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, statement of Commissioner Michael J. Copps, approving in part, concurring in part, WT Docket No. 05-265, FCC 07-143, 22 FCC Rcd 15817 (2007) (“Roaming Order” and “Further Notice”).

clarifying that automatic roaming was a common carrier service, and subscribers should receive automatic voice roaming pursuant to just, reasonable and non-discriminatory terms as required by Section 201 of the Communications Act.³ At that time, the Commission declined to impose any form of rate regulation on the roaming market, finding no evidence that the existing level and structure of roaming rates harm consumers, and declined to impose Section 201 obligations on in-market roaming or data roaming.⁴ Unfortunately for small, regional and rural wireless carriers, the Commission's reliance on market forces and Section 201 safeguards to governing the roaming market has not been sufficient to assure reasonable roaming rates and its decision not to impose such obligations on data and in-region roaming have adversely affected competition in the retail marketplace as well, especially given the increasing importance of retail data plans. Arguably the protections cited by the Commission were never sufficient, but with the fundamentals of the marketplace changing since 2007, there is no doubt that additional protections are urgently needed in this area.

Since the Commission's 2007 Roaming Order, there has been significant consolidation in the marketplace. The largest wireless carriers such as AT&T and Verizon Wireless ("Verizon") have filled out their national footprint by buying smaller regional carriers. This has had a dramatic effect on the ability of regional carriers like Revol and Mobi to obtain reasonable roaming agreements in order to be able to offer their customers national roaming at rates comparable to their larger national competitors. Prior to consolidation in the marketplace, all carriers had a need to enter into reasonable roaming agreements with each other to be able to offer their respective customers the ability to use their telephones in each other's service area. Even the largest carriers needed to negotiate with regional carriers to gain coverage in areas they

³ *Id.* at 15828-9.

⁴ *Id.* at 15833, 15835 and 15839.

missed, and regional carriers also had a variety of other regional carriers with whom to negotiate for roaming coverage. As a result, there was a mutual need by all carriers for reasonable roaming agreements. But as AT&T and Verizon have acquired a number of smaller competitors and additional spectrum to complete their nationwide footprints, they no longer have an incentive to enter into roaming agreements (and indeed, the incentive is now quite the reverse).

Today, Revol and Mobi have seen a dramatic shift in the way the national carriers have negotiated roaming agreements. As detailed below, these carriers have had a very difficult time getting the large national carriers to even negotiate with them, and when they are willing to negotiate, the rates they offer are so much higher than the retail rates they offer their own customers, or the rates they charge affiliates and MVNOs, that it is extremely difficult to be an effective competitor. In fact the rates recently being offered by new MVNOs of Verizon or Sprint are so low that either Verizon and Sprint are grossly gouging Revol and Mobi, or they are engaging in predatory pricing.

Therefore, in examining the state of competition in the wireless marketplace, the Commission needs to understand that the market has continued to consolidate since 2007, and the significant consolidation has even further hindered the ability of small and regional wireless carriers to compete with the national carriers. As competition has decreased, the ability of the Commission to rely on market forces to protect smaller carriers has likewise decreased. And, as described below, there is no better example of this than in the roaming market.

III. RETAIL RATES ARE A FRACTION OF WHOLESALE RATES

In the Roaming Order, the Commission declined to take any action to regulate wholesale rates for roaming services. The Commission believed that rate regulation would distort carriers'

incentives and behavior with regard to pricing and investment in network build-out.⁵ The Commission rejected roaming rate caps that would tie rates to a benchmark based on larger carriers' retail rates, stating that such caps would diminish those carriers' incentives to lower retail prices paid by their customers, and instead encourage them to raise retail rates. Likewise, the Commission indicated that a reduction in roaming rates might deter investment in network deployment by impairing build-out incentives facing both small and large carriers.⁶ However, the last two years have shown us that the wholesale roaming market is not competitive, and is getting less so, and therefore the absence of rate regulation has had a devastating effect on the ability of carriers to get reasonable roaming agreements.

Because the four major national carriers use a combination of different technologies, there are not four providers to choose from for wholesale services. In fact, generally there are only two, and sometimes only one, carrier that offers compatible service in an area that is needed to complete a regional carrier's national coverage. Even though the Commission has stated that Section 201 requirements to offer reasonable and just rates should protect a regional carrier in this situation, the realities of the marketplace show otherwise. If a regional carrier is able to get a national carrier to even negotiate with it, the wholesale rates they offer are generally very high, reflecting the lack of competition.

For instance, it has been very difficult for Revol, a CDMA carrier, to negotiate down a high wholesale roaming rate with the national CDMA carriers, Verizon and Sprint. While non-disclosure clauses in Verizon's contract preclude Revol from divulging the wholesale rate it was finally able to negotiate, Revol can say that the rate was significantly above the retail rate advertised by Verizon and its MVNO partners. Revol cannot quote Sprint's wholesale rate

⁵ *Id.*
⁶ *Id.* at 15833.

either, but that is because Sprint wouldn't even be willing to negotiate a wholesale rate. The result in both cases has been material damage inflicted on Revol and its ability to offer its customers competitive roaming services.

In the case of Mobi, Mobi has approached Verizon since September 2006 on three occasions to negotiate roaming rates. Mobi has also approached Sprint and two smaller regional carriers. Thus far Sprint has shown little interest in establishing a roaming agreement with Mobi. The rates Mobi has been able to negotiate with smaller regional carriers such as Leap Wireless International (Cricket) and MetroPCS have generally been reasonable. Unfortunately these regional carriers' service footprint is not ubiquitous.

With regard to Verizon, the rates negotiated and paid on a per minute of use basis have decreased somewhat. But when compared to the rates Verizon and Sprint retail customers pay on a minutes of use ("MOU") basis (see tables below), the roaming rates paid by Mobi are substantially higher, and remain substantially higher even if one assumes that their average usage in each plan is below the plan flat rate maximum.

VERIZON WIRELESS		
Minutes	Plan Price	Rate Per Minute
450	\$79.99	\$0.18
900	\$99.99	\$0.11
1,350	\$119.90	\$0.09
Unlimited ⁷	\$139.99	\$0.07

SPRINT		
Minutes	Plan Price	Rate Per Minute
450	\$39.99	\$0.09
900	\$59.99	\$0.07
Unlimited	\$99.99	\$0.05

BOOST MOBILE (Sprint Affiliate)		
Minutes	Plan Price	Rate Per Minute
Unlimited	\$50.00	\$0.02 - \$0.03

⁷ The average rate for unlimited minutes plans is derived by using a proxy based on the publicly reported usage of around 2,000 minutes a month by customers of Leap and MetroPCS subscribing to an unlimited minutes plan.

As a roaming partner with Verizon, Mobi is essentially a wholesale customer. As such it is impossible for Investors to fathom a legitimate business reason why the roaming rates should not be rates less than those offered to large Verizon retail customers. The situation is akin to the arguments surrounding the resale discount for unbundled network elements in implementation of the FCC's local competition order. As a wholesale customer, Verizon's overhead to serve, support, and bill Mobi is substantially less than it is for an individual retail subscriber. Yet Verizon charges Mobi significantly more. On its face, this practice appears to result in rates that are far from just and reasonable as required by Section 201 of the Act. These high rates seem to serve no purpose other than to attempt to stifle competition and drive competitors from the marketplace. Ultimately it is the consumers who suffer because as competition dwindles, rates will inevitably climb unabated.

Further, recently several MVNOs have begun to offer service or have announced that they intend to do so using Verizon or Sprint services. Based upon their advertised retail rates, as detailed below, it appears that these MVNOs are receiving rates as low as \$0.02/MOU from Verizon or Sprint. More troublesome is the fact that for an MVNO to cover its own overhead and generate a reasonable operating profit, they must operate at a 30% to 50% margin. When the necessary margin is factored into the analysis, even if the average usage was lower than the maximum, it would seem that the MVNOs are receiving service at rates at or below \$0.02/MOU – again, multiples less than the roaming rate available to Mobi and Revol.

PAGE PLUS (Verizon MVNO)		
Minutes	Plan Price	Rate Per Minute
2,200	\$39.95	\$0.02

STRAIGHT TALK (Verizon MVNO)		
Minutes	Plan Price	Rate Per Minute
1,000	\$30.00	\$0.03
2,200	\$45.00	\$0.02

PLATINUMTEL (Sprint MVNO)		
Minutes	Plan Price	Rate Per Minute
Unlimited	\$50.00	\$0.02 - \$0.03

While the Investors lack all of the information necessary to do a complete rate analysis, given the cursory analysis set forth above, one quickly begins to develop concerns that the retail rates offered to national carrier customers, as well as the MVNO offerings, indicate an attempt by the national carriers to competitively harm smaller regional carriers.

In light of situations such as detailed above, and in the record of this proceeding, the Commission should have sufficient information to realize that there are valid concerns about the state of competition in the wireless market today. Therefore, the Commission should act promptly to investigate the status of roaming rates. Because of standard non-disclosure clauses required by the national carriers, it is impossible to know in detail what are the standard wholesale roaming rates being offered. The Commission, however, has the power to find out. The Investors encourage the Commission to require wireless carriers to provide copies of their roaming agreements to develop a factual record. Rates should be made available to the Commission to ensure they are reasonable and nondiscriminatory, and made available to third parties under protective order in certain circumstances when necessary to promote competition. We believe that based on retail rates seen in the marketplace, there is no doubt that the dominant

wireless providers will be found to have offered cut rate wholesale rates to their partner MVNOs and affiliates, while offering inflated rates to those seeking wholesale roaming agreements.

After completing its investigation, the Commission and the industry will be in a better position to assess what corrective measures should be taken. New build-out requirements associated with the latest auctions should allay any concerns about carriers using roaming to get around building out new facilities – even if the roaming rate were pegged at the retail rate charged by the carrier, there would be a tremendous incentive to build-out facilities to lower the cost structure rather than trying to compete on a retail basis with the starting point cost of a competitor’s retail rate.

Although the Commission in the past rejected a wholesale rate benchmark based on retail rates, that remains a viable and simple solution to the problem. The concerns raised by the Commission before about retail rates being kept high to keep the benchmark for wholesale rates high seems more like a red herring thrown out by the large national carriers, than anything based on reality. Competition in the marketplace does effectively keep retail rates lower, and having lower wholesale rates will only increase that competition, driving rates down further.

IV. THE COMMISSION MUST BROADEN AUTOMATIC ROAMING OBLIGATIONS TO INCLUDE DATA SERVICES AND 3G/4G VOICE AND DATA SERVICES

There has been another crucial change in the dynamics of the marketplace since the Commission’s Roaming Order that has had a profound effect on wireless competition. That is the widespread availability and uptake in consumer demand for smartphones and new data services. Being able to offer a variety of data services in conjunction with voice services has become crucial for any wireless provider seeking to compete in today’s retail wireless market. Customers expect to be able to use their wireless devices for more than just voice or other

traditional services interconnected to the public switched network (“PSTN”). Wireless phones today, including wireless modems or smartphones, can download multiple applications, including critical real-time news, health, emergency services and other information, as well as entertainment. Yet under current rules, none of these non-traditional voice services are subject to automatic roaming requirements.

As broadband services become more and more the standard in the retail wireless marketplace, it will be impossible for smaller regional carriers to compete with the national carriers without mandatory data roaming. Not only will the customers of the smaller carriers demand that the voice services functions of their phones work while traveling outside of their home market, they will also expect the data functions of their phones to work as well. The Commission has recognized in the past that wireless carriers must provide their customers with nationwide service in order to compete effectively in today’s CMRS marketplace.⁸ Therefore, a competitive wholesale market for data roaming services also is essential for real competition in the retail market.

Not having mandatory data roaming also affects small and regional wireless carriers’ decisions to build-out 4G networks. If a regional wireless carrier builds out a 4G network in its home market but its customers cannot roam on another carriers’ 4G network, the regional carrier will not be able to attract customers to sign up for its service. Therefore, the regional customer will not have any incentive to upgrade its network. Even now, carriers like AT&T refuse to allow 3G voice and data roaming since it is not “mutually beneficial” to AT&T on the theory that smaller carriers have not deployed 3G services.⁹ Therefore, the Commission should exercise

⁸ *Id.* at 15819.

⁹ *See* Comments of Cincinnati Bell Wireless LLC, filed Sep. 30, 2009, WT Docket No. 09-66, at p. 4.

its Title I authority under the Communications Act to find that automatic roaming applies to data and 3G/4G voice and data services because it is integral to CMRS service.

V. THE COMMISSION SHOULD ELIMINATE THE “IN-MARKET” EXCEPTION

The Commission has stated that its automatic roaming rules only apply to roaming outside of a carrier’s home market. This requirement has stymied both competition, and has had the unintended effect of hindering new carriers from building out in their home markets. As demonstrated herein, “in-market” roaming actually promotes competition between new wireless licensees who are still building out their networks, in competition with established national carriers. The Commission has stated that allowing in-market roaming may encourage new carriers to not build-out their facilities, but instead rely on the facilities of existing carriers. While this might have been the case back when carriers were first licensed, it is not the case today with the new carriers that have won spectrum in recent auctions. The new licensees face strict build-out requirements under the Commission’s rules, so there is less of a concern with spectrum being left fallow.

Instead, what has happened with the lack of in-market roaming is that public safety issues have occurred. When a new carrier begins building out its network, there are necessarily gaps in its home market coverage, and if it cannot obtain roaming agreements to cover them, the new carrier’s customers are hurt. Customers expect to be able to use their wireless phone wherever they are – in or out of a carrier’s region – and especially in cases of emergency. But without full coverage roaming agreements in place, these customers will not be able to use their phones when traveling in an area that is still being built out.

In addition, the lack of in-market roaming forces new entrants to choose between automatic roaming and purchasing additional spectrum to build their own facilities. For

instance, Revol successfully bid on spectrum and has licenses that cover geographic areas where it has yet to construct a network. But because the in-market restriction permits carriers to refuse to provide any roaming services in any of these geographic areas, regardless of Revol's actual network coverage, Revol faces a significant barrier to expand or enter into these new market areas. With barriers like this, Revol and other similarly situated regional carriers have no incentive to make further spectrum investments. This is because there is little incentive to add spectrum to an existing carrier's network if doing so means a recent auction winner will bear increased roaming costs or complete denial of service for the time it takes to complete their network construction. Just because a wireless carrier has spectrum rights in a certain area, it does not mean that the new entrant can immediately build facilities to cover the entire area.

Sometimes the new entrant is hindered by zoning restrictions or lack of tower space, or needs to spend time clearing the spectrum of previous users. What these new entrants need to succeed, therefore, is the ability to fill the gaps while they build-out their facilities. In particular, new spectrum grants often cover large areas, and denying in-market roaming prevents new carriers from building out their market incrementally. As a result, they cannot start to build a customer base that will help fund the complete build-out since until they complete a build-out, if they offer services during the construction phase, their customers will be limited to the few areas where construction has been completed. Therefore, the Investors encourage the Commission to eliminate the in-market exception.

VI. INVESTMENT DECISIONS ARE BASED ON THE STATE OF COMPETITION

The various roaming issues described above have not only affected small and regional wireless carriers' ability to compete in the marketplace, but also their ability to attract necessary capital to operate and build-out their networks. The Investors, and other companies that provide

capital and loans to wireless companies, base their investment decisions on the state of competition in the marketplace. If regional wireless carriers are unable to obtain roaming agreements on reasonable terms, it hurts their ability to compete, making them less attractive investments. The state of competition in the U.S. wireless market has made investment in small and regional carriers significantly less attractive due to problems in the roaming marketplace.

As noted above, the largest carriers have amassed a national footprint through mergers and spectrum acquisitions, resulting in small and regional wireless carriers becoming increasingly unable to obtain agreements for wholesale roaming services at reasonable rates. They are unable to fill holes in their own service areas due to restrictions on in-market roaming. They have not been able to negotiate roaming agreements for most advanced data services, and voice and data 3G and 4G services. The end result being that they cannot effectively compete with the major national carriers. And unless the Commission changes its regulation of roaming services, small and regional wireless carriers will not be able to obtain the capital they need to build-out their networks and effectively compete.

VII. THE COMMISSION CAN LEARN FROM THE CANADIAN EXPERIENCE

Recently, the Investors have been looking for favorable competitive markets in which to invest. As long-time investors in the wireless marketplace, the Investors can attest that because of the more favorable competitive environment for wireless competitors outside of the United States, there has been more capital investment there when compared to the U.S. wireless market and its lack of satisfactory roaming rights. For instance, this more favorable environment was a material factor in M/C Ventures' most recent decision to invest in a competitive Canadian wireless carrier, rather than in the U.S. wireless sector.

