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VIA ELECTRONIC FILING

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:

MetroPCS Communications, Inc. (“MetroPCS”) understands that the Commission will consider at the April open meeting the reconsideration requests of MetroPCS and others relating to carriers’ obligations to provide automatic voice roaming. In particular, the Commission is considering whether to eliminate the “home roaming” or “in-market roaming” exclusion which currently allows carriers to deny a request for automatic voice roaming in markets where the requesting carrier holds a spectrum license or has access to spectrum. MetroPCS strongly supports the elimination of the in-market exclusion for automatic voice roaming. Specifically, MetroPCS recommends that the Commission simply eliminate the in-market exception and make home roaming requests subject to the same general Section 201 and 202 common carrier obligations that apply to out-of-market automatic voice roaming requests.

MetroPCS is concerned that there could be substantial negative unintended consequences if the Commission goes beyond simply eliminating the home roaming exclusion by enumerating “factors” that may be taken into consideration in determining whether a denial of a roaming request is reasonable in particular circumstances. For example:

(1) Conduct by the two largest carriers – Verizon Wireless (“Verizon”) and AT&T Mobility (“AT&T”) – demonstrates that they often oppose roaming requests of smaller carriers and plan to continue to do so. While virtually the entire commercial mobile radio service (“CMRS”) industry is united in support of both in-market and out-of-market

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roaming,¹ Verizon and AT&T remain steadfastly opposed to eliminating the home roaming exclusion. And, Verizon is the one who has proposed that the Commission include factors in the reconsideration order that may be taken into consideration when considering whether it might be appropriate to deny a particular roaming request.² Unfortunately, providing a list of factors that the two dominant carriers can seize upon may incent them to deny roaming requests. Ironically, this concern is not resolved by expanding the list of factors to include additional possible considerations. The longer the list, the greater the chance that a carrier desiring to deny a roaming request will find one or more factors to use as a pretense.

(2) Even if the Commission describes the listed factors as representative and not exhaustive, they inevitably will be given special weight in any complaint proceeding. This will reduce the Commission's flexibility in assessing roaming complaints based upon the changed facts and circumstances that might apply when the complaint arises. Since the market will change, any factors specified now risk being tethered to a point in time which has become irrelevant. The better approach is for the Commission to rely upon the core legal principles specified in Sections 201 and 202 – as elucidated by a long body of case law – and to then consider the precise facts and circumstances that exist if and when a complaint arises. Proceeding without a predetermined list of factors would allow the Commission to give appropriate weight to changes in the marketplace as they occur.

(3) Some of the possible factors that have been eluded to by the staff (*e.g.*, the nature, extent and pace of the requesting carrier's build-out) pertain to competitively sensitive information. The prospect of gaining such information in a complaint proceeding could encourage the carrier being asked for roaming to favor litigation over a negotiated resolution. Indeed, the Commission should expect the serving carrier to insist that the requesting carrier provide information on each factor before it will act on a roaming request. This raises competitive concerns and could stifle robust competition.

(4) A laundry list of factors may create a disincentive for carriers to reach voluntary agreements. Carriers that are disinclined to grant roaming requests will be incented by the factors to roll the dice on litigation rather than resolve potential disputes through voluntary settlements.

If the Commission nonetheless opts to enumerate factors that may be considered in determining whether a denial of a particular roaming request is reasonable, it should take a series of steps to reduce the potentially anticompetitive effects of such factors:

¹ There used to be a dichotomy between the Big 4 carriers (Verizon, AT&T, Sprint and T-Mobile) and the smaller carriers with respect to roaming policy, but Sprint and T-Mobile now have weighed in against the insidious effects of the in-market roaming exclusion. This is a noteworthy shift.

² See Verizon Wireless *Ex Parte* Notification, WT Docket No. 05-265, filed Mar. 4, 2010.

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First, the Commission should find unambiguously that Commission policy *strongly favors* both in-market and out-of-market automatic voice roaming. A strong pro-roaming policy is mandated by Section 1 of the Communications Act which obligates the Commission “to make available so far as possible, to all the people of the United States, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges...”

Second, the Commission should implement its pro-roaming policy by establishing a *presumption* in favor of automatic voice roaming *both* in and out-of-market. A request by a licensed carrier for its customers to be allowed to roam automatically on the facilities of another technically-compatible carrier should be deemed presumptively valid.

Third, the appropriate way for the Commission to give substance to this presumption is to put the burden in any complaint proceeding on the carrier who is denying the roaming request. A requesting carrier should be deemed to have established a *prima facie* case of a violation of Sections 201 and 202 if it demonstrates that a request for automatic voice roaming service has been made and denied. Upon making this *prima facie* case, the burden of proof would shift to the carrier denying roaming service to demonstrate that the denial was reasonable. It is only at this point that the denying carrier would be entitled to invoke the “factors.”

Fourth, in order to prevent existing services from being suspended to roaming subscribers, the Commission should make clear that pre-existing roaming arrangements will remain in place pending the resolution of any complaint pertaining to an extended or modified arrangement. Maintaining the *status quo* during the negotiation of a revised or extended roaming arrangement will eliminate the incentive for a carrier to opt for litigation in order to disrupt the service to a competitor’s customers. Accordingly, the Commission should find that, if the requesting party had a previous roaming agreement in place when it made the request for a revised or extended agreement, the requesting party will be entitled to continue to receive roaming services on the same terms as the existing agreement until its request is resolved, either through the Section 208 complaint process, through some other adjudicatory process, or by mutual agreement between the parties. This approach is similar to the one taken with interim interconnection arrangements which remain in place while parties are either negotiating in good faith or undertaking arbitration.³ Interim service arrangements of this nature assure that service to existing customers will not cease during the pendency of any litigation.

Fifth, if the Commission is inclined to consider whether a requesting carrier is licensed to provide service in any part of the geographic area where roaming is sought, it should not limit its inquiry to a consideration of the nature and extent of the carrier’s build-out. In addition, it should consider *why* the carrier has not completed construction everywhere.

³ See, e.g., 47 C.F.R. § 51.715(c).

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Among other factors, the Commission should consider whether there are legitimate business reasons which justify explain why the requesting carrier has not build out the spectrum it holds in the market. For example, (a) are there technological considerations – *i.e.*, the carrier is waiting for next generation advanced technology (*e.g.*, LTE) or for equipment development (*e.g.*, 700 MHz A block handsets); (b) was the carrier forced to buy a larger market area (*e.g.*, a REAG) earlier than desired due to the exigencies of the spectrum auction process; (c) are there external financial and other considerations that have affected the build-out schedule (*i.e.*, a credit crunch; economic and competitive considerations that make build-out uneconomic; scarcity of suitable antenna sites and backhaul arrangements); (d) does the requesting carrier’s business model serve to justify its build-out schedule and priorities (*i.e.*, the demographics of the requesting carrier’s customer base reduce the priority for building out certain areas that do not exhibit the target demographics; the availability of high cost universal service funds is uncertain); (e) are there external factors that justify delayed build out in a particular area (*i.e.*, depressed local economic conditions coupled with entrenched existing competitors); (f) what are the propagation characteristics of the spectrum held by the requesting carrier and how much spectrum does the incumbent hold (*i.e.*, would the new entrant be at a significant coverage, service or cost disadvantage); (g) what is the competitive mix in the market where roaming is sought (*i.e.*, is the technology of the new entrant already being deployed; how many competitors already are in service and how large is the potential customer base).

Sixth, the Commission must consider whether there are any indicia that roaming is being denied for anticompetitive reasons. The following factors could indicate an anticompetitive intent: (a) is the denying carrier offering roaming or wholesale access to any third party on terms similar to or more favorable than the terms denied to the roaming requestor (if so, this indicates that the denial is not based upon the reasonableness of the rate, but rather is based upon the identity of the requestor); (b) is the denying carrier seeking to charge discriminatory rates in-market and out-of-market (if so, this indicates that the denial is not based upon cost considerations); (c) does the denial of roaming service potentially adversely affect existing subscribers of the requesting carrier by disrupting an existing roaming arrangement (if so, the potential competitive implications of the service denial must be considered); (d) does the denying carrier hold significant undeveloped spectrum licenses itself (if so, it should be estopped from denying roaming service to a competitor primarily based upon the failure of the requesting carrier to develop a particular license area); (e) has the requesting carrier offered to pay the denying carrier an amount greater than or equal to the denying carrier’s costs and/or an amount that has been accepted by other third party carriers (if so, the denial would appear to be based upon competitive considerations and not upon economic considerations or market-specific considerations; as the National Broadband Plan recognizes, constructing additional facilities in certain portions of certain-markets may be uneconomic and unnecessarily duplicative, or tower sites, backhaul and customer equipment may not be sufficiently available in the market); (f) is the requesting carrier providing a distinguishable competitive service that is enjoying market acceptance in markets where the requesting

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carrier is competing head-to-head with the serving carrier (if so, the denying carrier would gain a competitive benefit by disallowing the customers of the requesting carrier from enjoying roaming services); (g) is the denying carrier willing to make its roaming agreements public (if not, the presumption must be that the carriers is discriminating among and between requesting carriers, and disfavoring requests from carriers where denying roaming works to its competitive advantage); (h) what are relative market shares of the requesting carrier and the carrier denying roaming service (disparity raises the concern that the denying carrier is seeking to lock in its competitive advantage); and (i) does the denying carrier have a history of ending up in roaming disputes (if so, the pattern and practice raise a concern that the denials are competitively motivated)? If one or more of these factors exists, the Commission should conclude that the denial of roaming was not reasonable or defensible.

Seventh, the Commission should determine whether there are equitable considerations that support the roaming request. For example, the Commission should consider whether the requesting carrier (a) has a history of compliance with the Commission's rules (including any applicable build-out deadlines); (b) is providing substantial beneficial services to the public considering its operations as a whole; (c) has made meaningful progress in building out its licensed spectrum when its holdings are considered on an aggregate basis; (d) is providing beneficial competition in terms of price and/or nature of services offered that will be enhanced if the roaming it requests is provided; and (e) is providing services in significant portions of its licensed service areas.

MetroPCS respectfully submits that the approaches set forth in this letter will help alleviate, but not completely eliminate, the possibility that the two dominant carriers will use the denial of roaming to further limit competition in the CMRS marketplace.

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

Respectfully submitted,



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