

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Reexamination of Roaming Obligations of |) | WT Docket No. 05-265 |
| Commercial Mobile Radio Service Providers |) | |
| and Other Providers of Mobile Data Services |) | FCC 10-59 |

**COMMENTS
OF THE
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES
AND THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

I. INTRODUCTION & SUMMARY & STATEMENT OF INTEREST

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and the National Telecommunications Cooperative Association (NTCA) (collectively, the Associations) hereby submit these comments in the above-captioned proceeding.¹ All of the Associations' members are rural telephone companies as that term is defined in the Communications Act of 1934, as amended.² The Associations' members provide a wide array of communications services to their rural communities, including local exchange service, broadband Internet access, multichannel video service, long distance, and wireless service. A recent NTCA survey of its members found that of those providers who offer wireless service, 54 percent offer

¹ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Order on Reconsideration and Second Further Notice of Proposed Rulemaking (rel. Apr. 21, 2010) (FNPRM).

² 47 U.S.C. §153(37).

mobile service and currently 32 percent offer a mobile broadband product.³ Given a favorable regulatory climate, the number of mobile providers who offer broadband will increase exponentially. Eighty-eight percent of those survey respondents currently offering wireless service indicated that they had plans to deploy next generation technology in the next 1-2 years.⁴ The Associations' members compete directly with the nationwide wireless providers for subscribers. A full 12 percent of NTCA's wireless survey respondents indicated that they have at one time been prevented from offering wireless service due to the actions of a national wireless carrier.⁵

The Commission should extend its automatic roaming obligations to mobile data services. To date, rural wireless carriers' efforts to secure data roaming agreements with the large, nationwide carriers have been extremely difficult, and in the rare case an agreement is reached, the costs are often prohibitive. Thus, rural consumers are often forced to choose between substandard mobile data services provided by a nationwide carrier or reliable services offered by a rural carrier, but that cease to be available when they travel outside of the provider's license area. A data roaming rule would enable rural consumers to enjoy seamless mobile data services that are available wherever they may live, work, or travel.

Contrary to the claims of the large, nationwide carriers, a data roaming rule will not excessively burden their wireless networks. Considering that the total number of subscribers to rural and regional wireless carriers pales in comparison to the tens of millions of subscribers of the larger wireless carriers, these claims should be dismissed. Finally, the Commission has the legal authority under Title III of the Communications

³ NTCA 2009 Wireless Survey Report (released April 2010).

⁴ *Id.*

⁵ *Id.*

Act to adopt a data roaming rule, and it should do so immediately for the benefit of rural consumers.

II. THE COMMISSION SHOULD EXTEND ITS AUTOMATIC ROAMING OBLIGATIONS TO MOBILE DATA SERVICES TO ENSURE THAT RURAL CONSUMERS HAVE SEAMLESS, AFFORDABLE, AND WIDELY AVAILABLE ACCESS TO THESE VALUABLE SERVICES

The Commission should require all providers of mobile data services to make available data roaming to all requesting wireless carriers at reasonable rates and on reasonable terms and conditions. This will help to ensure that rural consumers enjoy the benefits of seamless, affordable, and widely available mobile data services to the same extent as most consumers across the nation. It will also assist the Commission in achieving its goals of increased competition and the increased availability of mobile broadband Internet access service.⁶

The availability of data roaming is critical to the ability of all consumers to enjoy the benefits of mobile data services regardless of where the consumer chooses to live, work, or travel. This is especially true for rural consumers. This is because in the absence of data roaming availability,⁷ many rural consumers face a difficult choice when choosing a mobile data services provider. They can choose the services of a large nationwide carrier and receive service that is quite often spotty in the rural areas where they live and work. Or, they can choose the mobile data services offered by their local rural wireless carrier and obtain excellent service in the areas where they live and/or work but lose service entirely when they travel outside the small geographic license area of that

⁶ FNPRM, ¶¶ 50-51.

⁷ The FNPRM seeks comment on, “the effect on consumers in the absence of data roaming requirements in terms of the coverage and service they will receive?” *Id.*, ¶72.

local provider. The absence of a data roaming rule therefore ultimately sentences rural consumers to substandard mobile data services.

The Associations' members report that their ability to provide subscribers with data roaming at affordable rates is very limited. To begin with, rural wireless carriers' attempts to enter into negotiations with the nationwide wireless providers for data roaming agreements are many times rejected out of hand, with a citation to the lack of a data roaming requirement in the Commission's rules. This trend has increased as the mobile wireless industry has begun to transition to 3G wireless services. Thus, absent immediate Commission action, many rural consumers' access to these beneficial services will remain limited.

In addition, while some rural wireless carriers have been able to secure data roaming agreements for 2G and 2.5G wireless services (and far fewer have secured agreements for 3G services), the roaming rates charged are very often cost prohibitive. Among the Associations' members, roaming rates of 30 cents per megabit of mobile data usage are not uncommon. In fact, one Association member has reported that their agreement with a nationwide carrier for 3G roaming services includes a rate of \$1 per megabit of mobile data usage. These costs must often, necessarily, be passed on to the rural carriers' subscribers. With roaming rates of \$1 or even 30 cents per megabit of mobile data usage, a rural wireless carrier's subscriber that utilizes e-mail or views a movie on their wireless handset when traveling outside their provider's small license area could be assessed hundreds of dollars in roaming charges.

Even worse, these "take it or leave it" roaming agreements often force the rural wireless carrier to provide the large carrier with data roaming services at rates far below

the rate charged by the large carrier and sometimes below the rural carrier's actual cost to provide the service. The Associations' members have also reported that their data roaming agreements with the nationwide carriers include provisions requiring the nationwide carrier to pay one flat price to compensate for all of the data usage of their customers while the data usage of a rural carrier's subscribers must be paid on a per megabit basis.

Absent immediate Commission action, more rural consumers will be left without access to the affordable, high-quality, and widely available mobile data services available to their urban counterparts. The Commission should therefore adopt a data roaming rule requiring all providers of mobile data services to make available data roaming to all requesting wireless carriers at reasonable rates and on reasonable terms and conditions.

III. AN AUTOMATIC DATA ROAMING REQUIREMENT WILL PROMOTE INVESTMENT IN MOBILE BROADBAND NETWORKS

Contrary to the inevitable claims of a few nationwide wireless carriers, a data roaming rule will encourage investment in mobile wireless broadband networks. The adoption of a data roaming rule will provide rural wireless carriers with the ability to offer rural consumers mobile data services that are seamless and nationwide in scope and therefore reasonably comparable to those enjoyed by consumers in urban areas of the country. This, in turn, will lead additional rural consumers to adopt mobile data services, providing rural wireless carriers with increased revenues and an increased incentive to invest in improving their mobile wireless networks.

Claims that a data roaming requirement would discourage network investment fail to consider that it would make little sense for a wireless carrier of any size to pursue a business strategy that relies primarily on roaming in place of facilities deployment. It

makes more sense to buildout license areas, which is more economical in the long-term than ongoing reliance on roaming in a carrier's home market. Nevertheless, the Commission has recognized that, "no mobile wireless provider – including the four nationwide providers – has built out its entire licensed service area, and consequently all providers employ roaming to some extent to fill gaps in their coverage."⁸ More importantly, though, rural wireless carriers are obviously constrained by the small size of their geographic license areas, and therefore must rely on roaming outside the boundaries of those areas. Finally, considering that buildout requirements are attached to most spectrum licenses, concerns that the adoption of a data roaming rule would discourage home market buildout are misplaced.

The Commission is undoubtedly correct when it states that, "the availability of data roaming services will likely play a major role in the future development of the broadband data market...[and] resolving the issue will provide regulatory certainty."⁹ The FNPRM also recognizes that, "roaming services have helped to promote competition and seamless nationwide coverage in the mobile telephony market."¹⁰ The Commission should not abandon its successful policy that has recognized that wireless carriers of all sizes employ roaming services in order to serve their subscribers, a policy that has, in part, led 277 million Americans to adopt mobile wireless services.¹¹ The Commission should therefore extend its automatic roaming requirements to mobile data services to

⁸ *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*, Fourteenth Report, WT Docket No. 09-66 (rel. May 20, 2010) (14th Wireless Competition Report), ¶125.

⁹ FNPRM, ¶52.

¹⁰ *Id.*

¹¹ 14th Wireless Competition Report, ¶155.

ensure that rural consumers can enjoy these valuable services wherever they may live, work, or travel.

IV. ROAMING TRAFFIC FROM RURAL WIRELESS CARRIERS WILL NOT HAVE A SIGNIFICANT IMPACT ON NATIONWIDE PROVIDERS' NETWORK CAPACITY

The large, nationwide wireless providers make much of the claim that mandatory data roaming will strain the capacity of their wireless broadband networks and negatively impact the mobile data experience for all wireless consumers. This claim is nothing more than a thinly veiled attempt by the nationwide providers to protect their existing competitive advantage. More importantly, the Commission should consider that the number of subscribers to rural and regional wireless carriers, in the aggregate, pales in comparison to the tens of millions of subscribers to the services of the larger wireless carriers. Thus, concerns that the adoption of a data roaming rule will burden large carriers' wireless broadband networks should be dismissed.

V. THE COMMISSION HAS THE LEGAL AUTHORITY TO EXTEND ITS AUTOMATIC ROAMING OBLIGATIONS TO DATA ROAMING

The Commission has the authority pursuant to Title III of the Communications Act of 1934, as amended,¹² to extend its automatic roaming obligations to mobile data services. This remains true despite the recent DC Circuit Court of Appeals decision in *Comcast vs. FCC*.¹³ The Commission's classification of wireless broadband Internet access service as an information service does not change the fact that mobile data services operate via licensed spectrum.¹⁴ That being the case, these services fall squarely

¹² Communications Act of 1934 (codified, as amended, at 47 U.S.C. § 151, *et seq.*).

¹³ *Comcast Corporation v. FCC*, No. 08-1291 (April 6, 2010).

¹⁴ *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, 22 FCC Rcd 5901, 5914-5915, ¶36 (2007) (Wireless Broadband Internet Access Order) (stating that, "our decision today to classify wireless broadband Internet access services as information

within the Commission's statutorily delegated responsibility, pursuant to Title III of the Communications Act, to establish conditions attending to the grant of spectrum licenses that promote the public interest. Thus, the Commission need not ground its authority to adopt data roaming rules in either Title I or Title II of the Communications Act.

Turning to the specific provisions of Title III, the Commission can look to Section 303, which grants it the authority to adopt obligations applicable to spectrum licensees that further the goals and requirements of the Communications Act if those obligations are "in the public convenience, interest, or necessity."¹⁵ Sections 301, 307, and 316 provide the Commission with similar grants of authority.

The extension of the Commission's automatic roaming obligations to mobile data services would, inarguably, be "in the public convenience, interest, or necessity." As noted above, the availability of data roaming will provide rural consumers with mobile data services that are seamless, affordable, and widely available. It would also provide new entrants (and those incumbents that will soon initiate their buildout of AWS and 700 MHz licenses that are presently encumbered) the means to buildout on an incremental basis and establish themselves in the marketplace. This will, in turn, assist the Commission in achieving its goal¹⁶ of increasing facilities-based competition in the mobile wireless broadband market. The achievement of each of these goals is clearly within the public interest.

services does not affect the applicability of Title III provisions and corresponding Commission rules to these services.").

¹⁵ 47 U.S.C. § 303.

¹⁶ As the FNPRM notes, section 303(r) grants the Commission authority to adopt obligations attending to spectrum licenses if those obligations further the goals and requirements of the Communications Act. 47 U.S.C. § 303(r).

The Commission therefore has the unambiguous statutory authority under Title III of the Communications Act to extend its automatic roaming obligations to mobile data services. It should exercise that authority expeditiously for the benefit of rural consumers.

VI. CONCLUSION

The Commission should extend its automatic roaming obligations to mobile data services. This is necessary to ensure that rural consumers can enjoy the benefits of mobile data services in the same manner as their urban counterparts. A data roaming rule will also lead additional rural consumers to adopt mobile data services, providing rural wireless carriers with increased revenues and an increased incentive to invest in improving their mobile wireless networks.

Contrary to the inevitable claims of the large, nationwide carriers, a data roaming rule will not excessively burden their wireless networks. Considering that the number of subscribers to rural and regional wireless carriers, in the aggregate, pales in comparison to the tens of millions of subscribers to the services of the larger wireless carriers, these claims should be dismissed. Finally, the Commission has the authority to adopt a data roaming rule under Title III and should do so immediately for the benefit of rural consumers.

Respectfully submitted,

**ORGANIZATION FOR THE PROMOTION AND
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June 14, 2010

CERTIFICATE OF SERVICE

I, Brian Ford, hereby certify that a copy of the comments of OPASTCO and NTCA was sent via email, on this, the 14th day of June 2010, to those listed on the attached sheet.

By: /s/ Brian Ford
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