

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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)

To: The Commission

REPLY COMMENTS OF THE BLOOSTON RURAL CARRIERS

The law firm of Blooston Mordkofsky Dickens Duffy & Prendergast, LLP (“Blooston”), on behalf of its rural telephone and wireless carrier clients listed in Attachment A (the “Blooston Rural Carriers”), respectfully submits the following reply comments in the above-captioned proceeding regarding the extension of roaming obligations to broadband data services. In brief, the comments in this proceeding show that the Commission has ample authority to impose automatic roaming obligations for mobile broadband data services, and to ensure that that data roaming services are provided pursuant to just and reasonable rates and on reasonable terms and conditions. Consumers have come to expect that they will have access to data services wherever and whenever they have access to voice service, and ensuring that all carriers have the ability to meet these expectations is unquestionably in the public interest. The availability of automatic data roaming will give small and rural service providers incentive to invest in network upgrades necessary for advanced services, knowing that their customers can access these services when they travel. In support whereof, the following is shown:

I. Commenters Have Demonstrated that the FCC has Legal Authority to Establish Automatic Roaming Obligations for Broadband Data Services

The comments in this proceeding establish beyond any doubt that the FCC has legal authority under the Communications Act of 1934, as amended (the “Act”) to

establish automatic roaming obligations for mobile broadband data services, under a variety of theories.

With respect of Title III of the Act (Provisions Related to Radio), the FCC has previously concluded that it has authority to regulate the use of wireless spectrum under Title III without regard to whether the service being provided is voice or data, whether it is a “telecommunications” or “information” service, whether it is being provided on a common carrier or private carrier basis, or even whether it is interconnected with or otherwise “touches” the public switched network.¹ Commenters widely agree with the Commission on this point, and observe that the FCC has broad discretion to regulate the use of radio spectrum in the public interest.² SouthernLINC cites to relevant language in Sections 301, 303 and 309(j) of the Act, as well as Sections 307 and 316,³ and it is joined by numerous other commenters in noting that only a public interest finding is needed for Commission to properly exercise its regulatory authority under Title III.⁴ The Blooston Rural Carriers agree with this analysis. Comments of AT&T focus on Section 332 of the Act and argue that the FCC lacks authority to regulate data roaming under that statutory provision because broadband Internet access and other mobile data services are provided without interconnection to the public switched telephone network.⁵ However, because

¹ *Second FNPRM* at ¶ 66 (citing *Wireless Broadband Internet Access Ruling* at ¶ 36).

² *See, e.g.*, June 14, 2010 Comments of Cellular South, Inc. (*Cellular South Comments*) at pp. 4-7; June 14, 2010 Comments of SouthernLINC Wireless (*SouthernLINC Comments*) at pp. 12-18; June 14, 2010 Comments of Rural Cellular Association (*RCA Comments*) at pp. 2-6; June 14, 2010 Comments of United States Cellular Corporation (*USCC Comments*) at pp. 9-10; June 14, 2006 Comments of OPASTCO and NTCA (*OPASTCO and NTCA Comments*) at pp. 7-9.

³ *SouthernLINC Comments* at p. 15.

⁴ *See, e.g.*, *Cellular South Comments* at p. 6 (“The scope and extent of the Commission’s authority under Title III of the Act is bounded only by the statutory instruction that the Commission ground its action in the public interest.”); *RCA Comments* at p. 6.

⁵ *See* June 14, 2010 Comments of AT&T, Inc. (*AT&T Comments*) at pp. 12-19

data roaming involves use of the spectrum, the FCC is free to rely upon other Title III provisions for authority to develop rules, restrictions, and conditions to govern the manner in which data roaming is provided, as long as those rules serve the public interest.

The comments in this proceeding also establish that the Commission has authority to regulate data roaming as a common carrier service under Title II. As MetroPCS has explained, “the FCC’s authority to regulate wireless data roaming derives from existing precedent under Title II that remains good law; the Commission need not and should not alter the legal footing or provide a new legal framework to sustain its jurisdiction.”⁶ Indeed, when broadband data roaming service is viewed in a functional manner, it is clearly a “separate, severable, non-integrated transmission service provided by a third-party wireless Roaming Partner” and it is therefore properly regulated as a transmission service that qualifies as “telecommunications” and as a “telecommunications service.”⁷

Because a provider of data roaming service provides what is properly viewed as a transmission service to the wireless end user (or the end user’s home carrier), and the data is only acted upon or the content is only provided by the home carrier, the Blooston Rural Carriers would strongly support a finding that Title II of the Act also provides the Commission with authority to regulate the provision of broadband data roaming. This would also allow the FCC to redress a significant harm to rural and regional carriers by ensuring that data roaming services are provided pursuant to just and reasonable rates and on reasonable terms and conditions.

⁶ June 14, 2010 Comments of MetroPCS Communications (*MetroPCS Comments*) at pp. 17-35.

⁷ *Id.* at p. 18.

II. The Record Shows that Consumers Should Have the Ability to Access Non-Interconnected Data Wherever they are Roaming on a Technically Compatible Network

It is unquestionably in the public interest to protect and promote consumer expectations of seamless connectivity by extending automatic roaming obligations to include broadband data. Evidence in the record for this and other FCC proceedings,⁸ and the experience of large, regional and small carriers, shows a tremendous growth in mobile data usage. The Blooston Rural Carriers agree with Cellular South that this growth in mobile data traffic makes it all the more important for the FCC to adopt policies to ensure that consumers benefit from competitive markets for mobile data services.⁹ Wireless customers increasingly view the ability to have nationwide access to voice and data services as an integral to their wireless experience, and the ability to offer such access is absolutely necessary if consumers are to view small and regional carriers as viable alternatives to nationwide carriers like Verizon Wireless, AT&T, Sprint Nextel and T-Mobile.¹⁰ The Blooston Rural Carriers therefore urge the FCC to maintain its focus on the consumer's experience when adopting new data roaming policies and rules. It would be unfair and contrary to the public interest if the Commission were to allow carriers to degrade the speed or quality, or to limit the availability of broadband service for roaming customers while offering faster or better quality data services to their own customers. As Commissioner Copps pointed out in the Commission's *2007 Roaming Order*, "[consumers] should be able to assume that their phones will work to the fullest

⁸ See, e.g., *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, Fourteenth Report, FCC 10-81 (rel. May 20, 2010) ("*Fourteenth Wireless Competition Report*") at para. 181.

⁹ *Cellular South Comments* at p. 13.

¹⁰ *MetroPCS Comments* at p. 13.

extent that technology permits, wherever they happen to be.”¹¹

OPASTCO and NTCA explain an unfortunate dynamic where 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 currently the more reliable services cease to be available when they travel outside the rural provider’s service area.¹² A logical solution would therefore be to impose automatic roaming obligations for data services that largely mirror rules that exist today for mobile voice services. In this regard, the Blooston Rural Carriers support the position of RTG that any automatic data roaming obligation should: (1) apply to the visited carrier in all markets and regardless of the spectrum usage rights of a requesting carrier; and (2) apply to the visited carrier regardless of the specific data throughput speed, so long as the host carrier offers data services to its own customers.¹³

The FCC should reject arguments raised by AT&T pertaining to harms caused by a “spectrum crisis” and the suggestion that data roaming traffic will overwhelm their networks. The Blooston Rural Carriers believe these fears are very much overblown and may be addressed through reasonable network management measures, provided that such measures are not used to discriminate against roaming traffic. A significant amount of data capacity will soon come on line as AT&T, Verizon and others deploy 700 MHz LTE networks, which are purpose-built for data. This additional data capacity should alleviate burdens on existing commercial wireless networks, while providing consumers with the

¹¹ Statement of Commissioner Copps, WT Docket 05-265, at 69 (released Aug. 16, 2007).

¹² *OPASTCO and NTCA Comments* at p. 2.

¹³ June 14, 2010 Comments of Rural Telecommunications Group, Inc. (*RTG Comments*) at p. 8.

potential for additional roaming networks to access.¹⁴ The Blooston Rural Carriers note, however, that efficient operation of the data roaming market will only be achievable if the FCC takes steps to ensure that 700 MHz consumer devices have the ability to access all paired 700 MHz spectrum bands.¹⁵

III. Comments Show that Availability of Automatic Data Roaming will Facilitate Competition by Rural and Regional Carriers and Spur Network Investment, for the Benefit of Consumers

As an added benefit of ensuring that all consumers have access to nationwide data roaming service, the FCC will promote the competitiveness of rural and regional wireless carriers. Industry consolidation and the ever-growing market strength of the large nationwide carriers have worked to limit the competitiveness of the mobile data market. However, as commenters have explained, a guarantee that smaller carriers would be in a position to negotiate and obtain reasonable data roaming arrangements from the large national carriers would enhance their competitive position. This would better enable the smaller carriers to attract capital investment and pursue deployment plans designed to optimize these carriers' use of licensed spectrum for the provision of advanced broadband services.¹⁶ Mandating the availability of reasonable, nondiscriminatory data roaming agreements will promote competition by new market entrants of all sizes by reducing their start-up expenses and allowing them to provide the always-available data services that consumers expect. This will allow small and rural carriers to focus on building coverage to unserved and underserved areas, while relying upon other carriers to provide

¹⁴ See, e.g. June 14, 2010 Comments of Verizon Wireless (*Verizon Comments*) at pp. 16-188.

¹⁵ See Comments of the Blooston Rural Carriers, In the Matter of 700 MHz Mobile Equipment Capability, RM-11592, (*filed* March 31, 2010).

¹⁶ *Cellular South Comments* at p. 15, 20 (CellularSouth correctly notes that "Investment banks consider a carrier's available data roaming opportunities when evaluating a carrier's business and its potential debt offerings.")

services in larger cities and towns. This will also allow services that rely upon newer wireless data technologies, such as WiMAX, LTE and MSS-ATC, and wireless technologies that may be introduced in the future, to deploy their networks incrementally while providing multi-mode devices to facilitate ubiquitous coverage for their customers.¹⁷ Consumers will feel comfortable “taking a chance” on a new service provider or a new advanced wireless technology if they know they will have access to an incumbent carrier’s data network, as a fallback.

AT&T and Verizon have it all wrong when they argue that data roaming obligations will significantly reduce incentives to invest in and expand advanced networks in rural areas,¹⁸ and suggest that roaming obligations will create an unsustainable level of entry and widespread losses across the industry without countervailing consumer benefits.¹⁹ To the contrary, small, rural and mid-tier carriers must be assured that their customers will be able to access wireless data services when they travel outside their home areas before they are comfortable in making significant investments. As one regional service provider explains, before pursuing a 4G upgrade, with a capital outlay of many millions of dollars and increased operating expenses, it must be confident in its ability to secure roaming agreements with other carriers.²⁰ This points to a “chicken and egg” situation which is a reality for small and regional carriers. They are not in a position to invest in advanced services unless there is sufficient demand

¹⁷ See, e.g., June 14, 2010 Comments of SkyTerra Subsidiary, LLC (*SkyTerra Comments*) [SkyTerra is constructing an MSS and MSS-ATC network]; June 14, 2010 Comments of Clearwire Corp. (*Clearwire Comments*) [Clearwire is constructing a WiMAX network that utilizes 2.5 GHz BRS/EBS spectrum].

¹⁸ *AT&T Comments* at pp. 42-47

¹⁹ *Verizon Comments* at p. 15 (citing Thomas W. Hazlett, Professor of Law and Economics, George Mason University)

²⁰ June 14, 2010 Comments of NTELOS, Inc. (*NTELOS Comments*) at p. 7.

and revenues from their rural subscribers. However, few consumers would want to obtain data services from a small or regional carrier if access is limited to their home area. Adoption of an automatic roaming requirement puts the chicken squarely before the egg. As OPASTCO and NTCA correctly observe, “this [...] 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.”²¹ If, conversely, the wireless services of smaller carriers are allowed to wither on the vine by inadequate roaming obligations, the competitive pressure created by such carriers will end, leaving in essence an oligopoly of a few giant carriers. This market concentration will not benefit consumers.

IV. Commenters Agree that Expanding the Availability of Automatic Data Roaming is Consistent with the National Broadband Plan

Many commenters agree that expanding the availability of automatic data roaming is fundamental to achieving the Federal government’s goals of seamless and widespread availability of broadband services, and expanding the availability of broadband in rural America, consistent with the Commission’s goals in developing its National Broadband Plan (NBP or Plan).²²

Cellular South correctly asserts that data roaming will promote entry and competition, consistent with goals articulated in the Broadband Plan, and that “[r]ural and small regional carriers will be in a better position to compete for customers, and retain customers, if they are able to make arrangements for these roaming services.” Moreover,

²¹ *OPASTCO and NTCA Comments* at p. 5.

²² *See, e.g., Cellular South Comments* at pp. 12-16; *MetroPCS Comments* at p. 41; *USCC Comments* at p. 14; June 14, 2010 Comments of Leap Wireless International, Inc. (*Leap Comments*) at pp. 4-5; *RCA Comments* at p. 7.

allowing the two largest wireless carriers to deny roaming services to the many customers of small, rural and mid-tier carriers would be contrary to the public interest, and would be inconsistent with the Plan's goal of ubiquitous broadband coverage for all Americans.

The Blooston Rural Carriers agree with Leap Wireless that “[m]andating automatic data roaming will advance the goals of the National Broadband Plan by fostering wireless broadband as a platform of innovation and growth. It will also resolve the current incongruity between voice and data regulations that leaves consumers at risk of having only limited functionality while roaming.”²³

²³ *Leap Comments* at pp. 4-5.

CONCLUSION

In order to promote competition between and among rural, regional and nationwide wireless carriers, and to fulfill customers' expectations of seamless service availability, the Blooston Rural Carriers urge the Commission to move quickly in adopting rules that require CMRS and other wireless carriers to provide automatic data roaming service to customers whose handsets/devices are technically compatible with the roamed-on network.

Respectfully submitted,

BLOOSTON RURAL CARRIERS



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Dated: July 12, 2010

Attachment A

The Blooston Rural Carriers

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BEK Communications Cooperative	Steele, ND
The Chillicothe Telephone Company	Chillicothe, OH
Command Connect, LLC	Sulphur, LA
Consolidated Telcom	Dickinson, ND
CTC Telcom, Inc.	Cameron, WI
Custer Telephone Cooperative, Inc.	Challis, ID
Dumont Telephone Company	Dumont, IA
Emery Telcom-Wireless, Inc.	Orangeville, UT
Golden West Telecommunications Cooperative, Inc.	Wall, SD
Kennebec Telephone Co., Inc.	Kennebec, SD
LCDW Wireless Limited Partnership	Lonsdale, MN
Midwest AWS Limited Partnership	Spring Grove, MN
North Dakota Network Co.	Minot, ND
Nucla-Naturita Telephone Company	Nucla, CO
Peñasco Valley Telecommunications Cooperative, Inc	Artesia, NM
Polar Communications Mutual Aid Corporation	Park River, ND
Ponderosa Telephone Company	O'Neals, CA
Premier Wireless, Inc.	Sioux Center, IA
Public Service Communications	Reynolds, GA
Reservation Telephone Cooperative	Parshall, ND
Santel Communications Cooperative	Woonsocket, SD
Silver Star Wireless	Freedom, WY
Smithville Spectrum, LLC	Ellettsville, IN
South Central Utah Telephone Association	Escalante, UT
South Slope Cooperative Communications Co.	North Liberty, IA
Uintah Basin Electronic Telecommunications	Roosevelt, UT
Venture Communications Corp.	Highmore, SD
Webster Calhoun Cooperative Telephone Co.	Gowrie, IA
West River Cooperative Telephone Company	Bison, SD
WUE, Inc.	Pioche, NV

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