

February 12, 2013

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

**Re: Cellphone-Mate Inc.  
Permitted Written *Ex Parte* Presentation  
WT Docket No. 10-4**

Dear Ms. Dortch:

Cellphone-Mate files this letter to highlight the Commission's ample authority under Title III of the Communications Act to authorize the use of signal boosters in wireless spectrum without the express consent of the major wireless carriers. As the ultimate steward of the limited resource of public spectrum, the Commission has authority to "[p]rescribe the nature of service to be rendered by each class of licensed stations,"<sup>1</sup> which empowers the Commission, subject to the demands of the public interest, to "[m]ake such rules and regulations and prescribe such restrictions and conditions not inconsistent with law, as may be necessary to carry out the provisions of this chapter."<sup>2</sup> That wireless carriers' use of the spectrum is subject to the Commission's obligations and authority was a key holding of the *Data Roaming Order* recently upheld in the D.C. Circuit, which provides clear legal and policy precedent for the authorization of signal boosters.<sup>3</sup>

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<sup>1</sup> 47 U.S.C. § 303(b).

<sup>2</sup> 47 U.S.C. § 303(r).

<sup>3</sup> *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Second Report and Order (rel. Apr. 7, 2011) ("*Data Roaming Order*"); *Cellco Partnership v. Federal Communications Commission*, No. 11-1135 (D.C. Cir. filed Dec. 4, 2012) ("*Cellco v. FCC*")

The Commission adopted the *Boosters NPRM* “to facilitate the development and deployment of well-designed signal boosters, which hold great potential to empower consumers in rural and underserved areas to improve their wireless coverage in their homes, at their jobs, and when they travel by car, recreational vehicle, or boat.”<sup>4</sup> The Commission recognized that despite widespread mobile coverage, boosters nonetheless provided a valuable tool to address coverage gaps and improve reliability.<sup>5</sup> The *NPRM* first proposed a license-by-rule approach under the provisions of Section 307(e) for a citizens band radio service.<sup>6</sup> The proposed license-by-rule framework was attractive because it obviated the need for individual licenses, thus minimizing administrative burdens on the public, Commission licensees, and agency staff<sup>7</sup> and maximizing the ability of customers to receive the greatest benefit from the spectrum.

Although the Commission’s authority to license a new service by rule under Section 307 is well established,<sup>8</sup> this approach nonetheless has significant drawbacks. Recognizing the potential limitations of the license-by-rule approach, the Commission sought comment on whether it would be “more appropriate” to authorize signal boosters under existing carrier licenses, akin to the authorization for subscriber equipment such as handsets.<sup>9</sup> Under this approach, the Commission would modify Section 1.903(c) of its rules to authorize the use of properly certificated fixed and mobile signal boosters by subscribers and non-subscribers.<sup>10</sup>

Based on the substantial record that has been developed in this proceeding, it has become clear that authorizing signal boosters under existing carrier licenses through modification of Section 1.903(c) is the more parsimonious, flexible, and legally sound approach. In particular, strong precedent for this approach can be found in the Commission’s *Data Roaming Order*, adopted in 2011 and recently upheld on appeal by the DC Circuit.

The *Boosters NPRM* was not an isolated effort by the Commission to promote deployment of mobile voice and broadband services in the United States. Indeed, it was by its

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<sup>4</sup> Amendment of Parts 1, 2, 22, 24, 27, 90 and 95 of the Commission’s Rules to Improve Wireless Coverage Through the Use of Signal Boosters, WT Docket No. 10-4, Notice of Proposed Rulemaking, FCC 11-53, ¶ 1 (rel. Apr. 6, 2011) (“*Boosters NPRM*”).

<sup>5</sup> *Id.*

<sup>6</sup> *Data Roaming Order*, ¶ 29.

<sup>7</sup> *Id.*

<sup>8</sup> *See, e.g.*, Amendment of Parts 1 and 95 of the Commission’s Rules to Eliminate Individual Station Licenses in the Remote Control (R/C) Radio Service and the Citizens Band (CB) Radio Service, PR Docket No. 82-799, Report and Order, 48 Fed. Reg. 24884, ¶ 25 (1983).

<sup>9</sup> *Boosters NPRM*, ¶ 32.

<sup>10</sup> *Id.* (citing 47 C.F.R. § 1.903(c)).

own terms “one element of a set of initiatives designed to promote deployment of mobile voice and broadband services in the United States”<sup>11</sup> and ensure that consumers received the full benefit of spectrum allocated for mobile wireless use. Only two days after the *Boosters NPRM* was adopted, the Commission promulgated its *Data Roaming Order* for the purpose of affording consumers with mobile data plans nationwide access to licensed spectrum being used for subscriber-based mobile data services.<sup>12</sup> The Commission found that the new rule would further two of its key priorities: “promot[ing] consumer access to nationwide mobile broadband service” and “facilitating the provision of mobile services in a manner that provides the greatest benefit to consumers.”<sup>13</sup>

Reiterating that “[s]pectrum is a public resource”<sup>14</sup> the Commission adopted the *Data Roaming Order* under Title III’s “broad authority to manage spectrum...and modify[] spectrum usage conditions in the public interest.”<sup>15</sup> Specifically, the Commission invoked Section 303(b), which authorizes the agency to “[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class” and Section 303(r), which empowers the Commission, subject to the demands of the public interest, to “[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter.”<sup>16</sup> The Commission also noted that the roaming rule “furthers the goals” of other statutory provisions such as Section 706(a) and (b) of the Telecommunications Act of 1996.<sup>17</sup>

As stated in Section 1.903(c) of the Commission’s rules, “authority for subscribers to operate mobile or fixed stations in the Wireless Radio Services...is included in the authorization held by the licensee providing service to them.”<sup>18</sup> Under the data roaming requirement, a customer that roams onto another licensee’s network is necessarily and implicitly operating under the roamed-on carrier’s license because that is “the licensee that is providing service to

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<sup>11</sup> *Boosters NPRM*, ¶ 2.

<sup>12</sup> *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Second Report and Order (rel. Apr. 7, 2011) (“*Data Roaming Order*”).

<sup>13</sup> *Id.*, ¶ 1, 9 (citing *Second Further Notice*, 25 FCC Rcd at 4207, ¶ 50, 4211, ¶ 60).

<sup>14</sup> *Id.*, ¶ 62

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* (47 U.S.C. § 303(b), (r)).

<sup>17</sup> 47 U.S.C. § 1302 (mandating the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans”).

<sup>18</sup> 47 C.F.R. § 1.903(c).

[the roaming customer].”<sup>19</sup> Importantly, Section 1.903(c) provides authority not for the subscriber, but explicitly for the subscriber’s “mobile or fixed station.”<sup>20</sup> This requirement to permit a customer to operate a mobile or fixed device on the roamed-on carrier’s network *using the roamed-on carrier’s license* does not require explicit authorization or consent of the roamed-on carrier.<sup>21</sup>

The Commission’s exercise of authority in the *Roaming Order* and the Commission’s authority to authorize the use of boosters under carrier licenses are highly analogous. In terms of policy goals, the necessity for boosters arises from the same rationale for roaming, which is that the Commission wishes to allow customers to “remain connected when they travel outside their own provider’s network coverage areas...and thus promote connectivity for and nationwide access to mobile data services such as e-mail and wireless broadband Internet access.”<sup>22</sup> Boosters fill a key role in rural, remote, and difficult-to-reach areas where there is no other carrier to roam onto, indeed, where there continues to be no carrier at all.

Legally as well, the *Roaming Order* and the DC circuit’s decision in *Cellco v. FCC* firmly establish the key conclusion that the Commission is empowered to subordinate a licensee’s right to use licensed spectrum to the right of its subscribers to use non-interfering signal boosters to maximize the benefits of the wireless service they pay to receive. Although AT&T has argued that Section 301 of the Act prevents the Commission from authorizing the use of consumer signal boosters on “CMRS carriers’ exclusive-use spectrum without a license or licensee consent,”<sup>23</sup> this claim was implicitly rejected in *Cellco v. FCC* when the D.C. Circuit upheld the Commission’s authority to require carriers to accept roaming customers—and their devices—to operate on another carrier’s spectrum under Sections 303(b) and 303(r).<sup>24</sup>

For these reasons, Cellphone-Mate urges the Commission to modify Section 1.903(c) of the Commission’s rules to authorize the use of boosters under existing carrier licenses. Such an approach efficiently preserves and promotes the long-recognized benefits of boosters in bringing

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<sup>19</sup> 47 C.F.R. § 1.903(c).

<sup>20</sup> *Id.*

<sup>21</sup> Although the *Order* permits carriers to “negotiate the terms of their roaming agreements” with other carriers, *Order*, ¶ 43, it does not impose any obligation on individual subscribers to request authorization or consent to roam onto another carrier’s network. Such a requirement would be contrary to the entire goal of the roaming order in establishing a “seamless” data network.

<sup>22</sup> *Data Roaming Order*, ¶ 1.

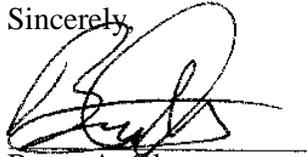
<sup>23</sup> Letter from Michael Goggin to Marlene H. Dortch, WT Docket No. 10-4, at 1 (July 2, 2012) (“*AT&T Letter*”).

<sup>24</sup> *Cellco v. FCC* at 13 (“We think it clear that the data roaming rule falls well within the Commission’s Title III authority.”)

connectivity to all Americans and is well within the Commission's firmly-established authority as the steward of scarce spectrum resources. Further, authorizing signal boosters in this manner obviates the need for individual consumers to secure the express consent of carriers, a process that would be fraught with uncertainty and potentially counterproductive burdens. Finally, by authorizing signal boosters pursuant to the underlying authorizations of existing carriers, the Commission will establish the ground work necessary to enable small businesses to utilize well-designed wideband signal boosters to ensure that customers and employees have access to the services of all of the wireless carriers while inside their business establishments.

Please contact the undersigned if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce A. Olcott", written over a horizontal line.

Bruce A. Olcott  
Counsel to Cellphone-Mate Inc.